

**Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL CHN 2/2024  
(Please use this reference in your reply)

25 January 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 52/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the possible admission of evidence allegedly obtained under torture or other cruel, inhuman or degrading treatment or punishment in the ongoing trial of Mr. Jimmy Lai Chee-Ying (Mr. Jimmy Lai), a dual Chinese and British national based in Hong Kong SAR. Mr. Lai is facing charges of collusion with foreign agents brought against him under the Law of People's Republic of China on Safeguarding National Security in the Hong Kong and Special Administrative Region (National Security Law) and sedition under the relevant laws.

I wish to stress that the absolute prohibition of the reliance on evidence obtained as a result of torture or other ill-treatment in any proceedings is a fundamental protection which is key to uphold the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment as well as the rights of a fair trial.

The case of Mr. Jimmy Lai has been raised by Special Procedures in different communications, including AL CHN 9/2020 and AL CHN 1/2023 to which your Excellency's Government responded respectively on 10 July 2020 and 1 May 2023<sup>1</sup>.

Further, concerns about the National Security Law, as well as its alleged use to target human rights defenders and activists, have been expressed in communications OL CHN 13/2020 dated 19 June 2020, OL CHN 17/2020 dated 1 September 2020 and AL CHN 9/2021 dated 13 August 2021<sup>2</sup>.

According to the information received:

Mr. **Jimmy Lai**, a 76-year-old Chinese and British citizen based in Hong Kong, is an entrepreneur, former media owner, writer, known for his engagement in local civic space. He is the founder of *Apple Daily*, which was one of the most popular newspapers in Hong Kong until it was closed by the

<sup>1</sup> See AL CHN 9/2020 and reply:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25187>,  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35421>. AL CHN 1/2023 and reply:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27848>,  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37508>.

<sup>2</sup> See OL CHN 13/2020:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25354>. OL CHN 17/2020 and reply:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>,  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35721>. AL CHN 9/2021 and reply:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26592>,  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36624>.

authorities in June 2021.

Mr. Jimmy Lai has been an outspoken critic of the Chinese government. He has been allegedly repeatedly targeted by the Hong Kong authorities because of his political opinions and engagement on matters of public interest including democracy and human rights. As a result, he has faced numerous criminal prosecutions, including in connection with his peaceful participation in the 2019-2020 protests<sup>3</sup>.

Mr. Lai was arrested on 10 August 2020 and is currently deprived of liberty in Hong Kong. He is presently standing trial for alleged collusion with foreign agents and sedition.

According to reports, Mr. Lai's trial began on 18 December 2023, more than one year after the originally set date of 1 December 2022. The Prosecution made opening statements on 2 January 2024, and witnesses were scheduled to be heard starting from 15 January 2024.

Among the listed key prosecution witnesses in the trial of Mr. Lai is a co-defendant and alleged co-conspirator. His testimony is considered to be potentially key to Mr. Lai's case.

On 10 August 2020, this witness was reportedly arrested during protests in Hong Kong on charges of collusion with foreign agents under the National Security Law. He was subsequently released on police bail.

On 23 August 2020, he was reportedly arrested again, together with 11 other individuals on their way to Taiwan by maritime transport by the Chinese coast guard. All 12 were reportedly subsequently taken to mainland China, to a prison in Shenzhen, and held in criminal detention and reportedly, *incommunicado* with no access to their family or legal counsels and accused of attempting to travel illegally to Taiwan by boat. Following the trial for this alleged crime of illegally crossing the border, he was sentenced to 7 months' imprisonment and a fine.

On 22 March 2021, he was deported back to Hong Kong SAR and reportedly remains deprived of his liberty. He is currently facing trial in the same proceedings brought against Mr. Jimmy Lai as a co-conspirator. He pleaded guilty to the charges on 19 August 2021.

It is alleged that this key prosecution witness was subjected to torture and/or other cruel, inhuman or degrading treatment or punishment during his detention in the Shenzhen prison, and that, as a result, he was forced to confess that he conspired with Mr. Jimmy Lai to collude with foreign entities.

Additionally, various cases have been reported of infliction of physical and psychological torture against human rights defenders, including the use of

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<sup>3</sup> Mr. Jimmy Lai has been prosecuted in four separated sets of criminal proceedings arising from his peaceful participation in the pro-democracy 2019-2020 protests. Convicted in 2021 in all four cases, he has been issued lengthy sentences of imprisonment. He was also prosecuted for fraud involving the alleged breach of the terms of the lease of the Apple Daily premises, which resulted in his conviction in October 2022, for which he was sentenced in December 2022 to a term of imprisonment of 5 years and 9 months.

unlawful fixed restraints<sup>4</sup>, such as the “tiger chair,” and forced confessions<sup>5</sup>. These reports further document harsh conditions in secret detention centres in China<sup>6</sup>. Additionally, concerns continue to be raised about the alleged use of the system of Residential Surveillance at a Designated Location (RSDL) in China which exposes persons to serious abuse, including incommunicado detention for long periods and in undisclosed locations, and to an environment permissive of extracting information and confessions in contravention of the absolute prohibition of torture<sup>7</sup>.

In 2013, RSDL was introduced as amended in the 2012 Criminal Procedure Law article 73 in relation, *inter alia*, to persons suspected of endangering State security or of terrorist activities. The police were reportedly given the power to detain persons at secret detention facilities *incommunicado* and interrogate them, without access to a lawyer or their family.

The UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has raised their grave concerns and recommended that China repeal the provisions under the Criminal Procedure Law that allows for *de facto incommunicado* detention, as well as the RSDL system<sup>8</sup>, recognizing that these measures incentivise torture and other cruel, inhuman or degrading treatment or punishment. The Committee also recommended a range of safeguards against torture and ill-treatment, including that the Chinese authorities should ensure that all public officials and any other person acting in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture<sup>9</sup>.

In August 2018, various Special Procedures mandate holders including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, described conditions of detention of RSDL as analogous to incommunicado and secret detention and tantamount to enforced disappearance exposing detainees to the risk of torture and other ill-treatment<sup>10</sup>. While the Chinese Criminal Procedure Law was amended in 2018, the RSDL system remains in force in cases of crimes endangering national security or terrorist activities.

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<sup>4</sup> The Special Rapporteur on Torture listed such fixed restraints as inherently cruel, inhuman or degrading and therefore prohibited under international human rights law, in her 2023 report to the General Assembly: A/78/324.

<sup>5</sup> See Amnesty International report 2022/2023, p.124: <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>; Safeguards Defenders report, 2021, “Locked up inside China secret RSDL jails”: <https://safeguarddefenders.com/sites/default/files/pdf/Locked%20Up%20%28High%20Res%20version%29.pdf>, p. 32 and seq.

<sup>6</sup> Ibid.

<sup>7</sup> See A/HRC/WGAD/2022/9, para. 43 (c): <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-9-CHN-AEV.pdf>; <https://safeguarddefenders.com/sites/default/files/pdf/Locked%20Up%20%28High%20Res%20version%29.pdf>, p.33; Concluding Observations of the fifth periodic report of China CAT/C/CHN/CO/5, 3 February 2016, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsIEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2>, para.20.

<sup>8</sup> See Concluding Observations of the fifth periodic report of China CAT/C/CHN/CO/5, 3 February 2016, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsIEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2>, paras 14 and seq.

<sup>9</sup> Ibid., para. 7(a).

<sup>10</sup> See OL CHN 15/2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23997>.

While I do not wish to prejudge the accuracy of these allegations, I am concerned that the evidence that is imminently scheduled to be presented against Mr. Jimmy Lai during his present trial were obtained as a result of torture or other ill-treatment inflicted against one of the prosecution witnesses; and that an investigation by the authorities into these allegations has reportedly not yet been undertaken. Such an investigation would be necessary prior to the admission of any such evidence into the proceedings of Mr. Jimmy Lai. If the information is established, this would be contrary to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, obligations to prevent torture and other ill-treatment, and the important “exclusionary rule”, in violation of article 7 of the International Covenant on Civil and Political Rights (ICCPR); and articles 1, 2, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by China on 4 October 1988. They would also be in violation of due process and fair trial standards, set forth in article 14 of the ICCPR.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to any investigation already undertaken, and action taken, in respect of the above-mentioned allegations of unlawful obtainment of information or a confession regarding any prosecution witness in the trial of Jimmy Lai. If no such investigation has yet been launched, please explain why.
3. Please provide detailed information on how the exclusionary rule set forth in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is provided for and implemented in PR China and Hong Kong SAR. Within this context, please explain the applicable law, procedure and practice to challenge the admission and use of material evidence alleged to be obtained by torture or other cruel, inhuman or degrading treatment or punishment during trials in the respective legal proceedings.
4. Please also provide information on any additional measures and safeguards in force to prevent torture or other ill-treatment pursuant to articles 2 and 16 of the CAT.
5. In respect of the duty to investigate all allegations of torture and other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to the victims, please provide information on all measures and efforts taken or planned to be taken to fulfil this duty.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Alice Jill Edwards  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, I would like to remind your Excellency's Government the following relevant international human rights standards, which appear to have been disregarded considering the reported allegations:

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an *erga omnes* and *jus cogens norm*, as expressed as a principle of customary international law.

Torture and cruel, inhuman or degrading treatment or punishment are prohibited under article 5 of the Universal Declaration of Human Rights (UDHR) and article 7 of the ICCPR. Even though China has not ratified the ICCPR, it has accepted the continued application of the ICCPR to Hong Kong following the handover on 1 July 1997<sup>11</sup>.

Further, torture and cruel, inhuman or degrading treatment or punishment are prohibited in articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by China on 4 October 1988. Accordingly, pursuant article 2 of the CAT, China has undertaken to ensure to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 1 of the CAT defines torture as *“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions,”* the infliction of severe pain or suffering for the purpose of, *inter alia*, obtaining information or a confession being a purposive element.

Regarding the guarantees of a fair trial – human right enshrined in article 10 of the UDHR and in article 14 of the ICCPR<sup>12</sup> - article 15 of the CAT operates as a reinforcement of fair trial rights as well as a prohibition on its own against being able to rely on any evidence obtained through torture and other cruel, inhuman or degrading treatment or punishment, in legal proceedings by providing that *“no statement which is established to have been made as a result of torture may be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”* The objective of this article is to ensure that any statement or confessions procured by torture is not admissible and must not be admitted against a party to legal proceedings. Article 15 of the CAT reinforces the international commitment to preventing the use of torture and other ill-treatment

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<sup>11</sup> [UNTC](#), note 2.

<sup>12</sup> *Ibid.*

(article 2 and 16) and underscores the importance of upholding the rule of law in legal proceedings and of guaranteeing the right of the accused to a fair trial.

Article 12 provides the obligation of each State Party to the CAT to “*ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction*” (article 12 CAT). This article reflects the international community’s commitment to preventing and addressing torture, ensuring that allegations are investigated thoroughly and impartially, and that victims receive proper redress and compensation when torture is confirmed.