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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
CHN 6/2013

17 July 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning allegations received of **arbitrary detention and criminal charges against peaceful protesters and other activists requesting to participate in the preparation of the People's Republic of China upcoming Universal Periodic Review (UPR), and the use of torture against one of them.**

According to the information received:

On 10 December 2008, the first request in relation to China's 2009 UPR was submitted by various activists, in response to which the State Council Information Office informed the petitioners on 18 December 2008 that consultations had been undertaken online following the publication of the draft report. On 14 January, 2009, Mr. Cao Shunli was allegedly apprehended by Beijing police for contacting

the State Council Information Office after requesting to be involved in the development of China's first National Human Rights Action Plan, a proposal he submitted alongside the request for information regarding the 2009 UPR on 10 December 2008. He was released the following day.

On 6 February 2009, Cao Shunli and Zhang Ming were allegedly arrested by Beijing police when they attempted to submit another application at the State Council Information Office to assist with the drafting of the National Human Rights Action Plan. Sources have informed that despite public statements made by your Excellency's Government providing assurances of broad consultation with the public for the drafting of the National Human Rights Action Plan, only government-funded or selected organisations were allowed to participate in this process.

On 9 December 2011, Cao Shunli reportedly presented a request to assist in the drafting of China's Human Rights Action Plan for 2012-2015, a proposal he had prepared with Hu Guang and Chen Jianfeng. Cao Shunli and Hu Guang were briefly taken into police custody. On 13 August 2012, more than a dozen activists, hoping to submit an application to the State Council Information Office for public disclosure of information about the drafting process, were allegedly detained, with the officers involved citing 'instructions from above' as the reason for non-disclosure about the process.

It is reported that in October 2012, a group of activists made a request to contribute to China's human rights report for the country's second UPR scheduled for October 2013. The report was due to be submitted to the United Nations Human Rights Council by 22 July 2013. Furthermore, they reportedly asked to meet relevant officials from Government ministries involved in drafting the national report to discuss strategies for responding to human rights abuses in China. They also requested more information regarding the working group tasked to compile the report for the 2009 UPR, including the qualifications of its members, and regarding the process for publication of the initial draft report and the collection of feedback in this regard.

On 15 November 2012, in response to a multitude of requests for information with regard to China's second UPR, it is reported that the Ministry of Foreign Affairs issued an official response stating that such materials constituted 'state secrets' and therefore could not be made public.

It is reported that, on 8 June 2013, a trial against Ms. Peng Lanlan, a Hunan activist who was involved in this campaign, was opened, following her detention on grounds of 'obstructing official business' in August 2012. It is alleged that during the period Ms. Peng spent in detention, she was on several occasions tied

to a so-called tiger bench, which if corroborated would amount to torture. Ms. Peng is reportedly being held at Dongcheng District Detention Center.

It is reported that a sit-in protest began outside the Ministry of Foreign Affairs on 18 June 2013, as approximately 150 to 200 activists awaited an official response to their request. Sources inform that, at one point, the Ministry had agreed to meet some of the protesters, but the latter reportedly rejected this on the grounds that UPR information should be made available to the public. Police allegedly monitored the protest until 1 July 2013, when at approximately 9 a.m. they detained many of the protesters. Sources have provided information that police and the Ministry officials then cordoned off the area in front of the Ministry building. The protesters were reportedly separated into two groups; those from Beijing, and those from outside the capital. Reports indicate that those from Beijing were allegedly taken away and interrogated at five different police stations, including Jinsong and Shuangjing police stations, whilst those from outside the capital were taken to Jiujiangzhuang temporary detention centre in four buses. The former group was released after approximately twelve hours of interrogation during which its members were allegedly informed that the sit-in protest was unlawful. The fate of the latter group remains unknown.

On 3 July 2013, Cao Shunli and several other activists reportedly returned to continue their protest, but have had to gather across the street as the area has been cordoned off.

Grave concern is expressed for the physical and psychological integrity of the non-Beijing protesters as their fate and whereabouts remain unknown. Concern is further expressed for the physical and psychological integrity of Ms. Peng Lanlan in the light of allegations that she may have been subjected to torture while in detention. Further concern is expressed at allegations that the arrest and detention of the protesters may have been motivated by their legitimate request to participate in the preparation of national reports ahead of China's upcoming Universal Periodic Review.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all

persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to refer your Excellency's Government to article 19 of the UDHR which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Similarly, we would also like to refer to article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this connection, we would like to further refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

We also wish to recall the provisions of resolution 12/2 of the Human Rights Council, which, inter alia, "condemns all acts of intimidation on reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and "calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)" (OP 3).

We would like to remind your Excellency's Government that during China's first UPR in 2009, the Government accepted a recommendation from Malaysia to "[c]onsider strengthening the positive engagement with civil society, nongovernmental organizations and academic institutions, with a view to enhancing the promotion and protection of human rights and fundamental freedoms of its people" (A/HRC/11/25, para. 114.6).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, since it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on the fate and whereabouts of the group of protesters from outside Beijing. If their fate and whereabouts are unknown, please provide the details of any investigation or other queries which may have been carried out. If no queries have been made, or if they have been inconclusive, please explain why.
3. Please provide the full details concerning the legal grounds for the arrest and detention of the above mentioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
4. Have any complaints been lodged by or on behalf of the alleged victims?
5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
6. Please explain what measures have been taken to ensure that all human rights defenders in China, in particular those wishing to engage in the preparation of the UPR scheduled for October 2013, can carry out their peaceful and legitimate activities without fear of judicial harassment, or any other restrictions, and how their participation in the UPR process is facilitated by your Excellency's Government.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Given the seriousness of the allegations, we would like to inform your Excellency's Government that we are considering issuing a press release in relation to the issues raised in the near future.

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

El Hadji Malick Sow

Chair-Rapporteur of the Working Group on Arbitrary Detention

Olivier de Frouville

Chair-Rapporteur of the Working Group on Enforced or Involuntary

Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Juan E. Méndez

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