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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9)
CHN 14/2011

15 July 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding the detention of Mr. **Qi Chonghuai**, a journalist, who has reported on issues relating to social injustices and corruption in Shandong Province.

Mr. Chonghuai has been the subject of a previous communication sent on 22 May 2008 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights defenders. A reply was received from your Excellency's Government on 11 August 2008 for which we wish to thank your Excellency's Government.

According to the information received:

On 25 June 2007, Mr. Chonghuai was arrested after posting an article on corruption by local government officials in the city of Tengzhou. On 13 May 2008, he was reportedly condemned to a four year sentence on charges of extortion and blackmail.

It is reported that his release was scheduled for 25 June 2011. However, on 27 April 2011, it is reported that Mr. Chonghuai was interrogated by the police and told that he would be detained beyond his sentence. It is further alleged that on 4 May 2011, Mr. Chonghuai was subjected to another interrogation by the police and he was allegedly denied access to his lawyers.

It is alleged that a new trial for charges of “embezzlement” and “extortion and blackmail” was reportedly scheduled for 9 June 2011, for which the lawyers of Mr. Chonghuai were given solely 12 days to prepare the defence. It is reported that a guilty verdict was delivered against Mr. Chonghuai and he was sentenced to a further eight years of imprisonment. The sentence was released 16 days before Mr. Chonghuai was due to be released on completion of a four year previous sentence. Mr. Chonghuai denied the charges of embezzlement, extortion and blackmail.

It is also alleged that the charges were brought against Mr. Chonghuai due to his decision of writing exposés when in prison. In fact, it is alleged that in 2009, Mr. Chonghuai smuggled a number of letters outside of Tengzhou prison in which he described regular beatings at the hands of the prison guards and other prisoners, with one such beating reportedly resulting in him losing consciousness for three days.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Chonghuai is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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 (UDHR).

Given our concern that Mr. Chonghuai has been sentenced as a result of his writing on legitimate issues such as corruption, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the UDHR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In addition, we would like to 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 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters;

- article 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Chonghuai are respected and that accountability of any person guilty of the alleged violations is ensured. We also request

that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, 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. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint or appeal been lodged by or on behalf of Mr. Chonghuai?
3. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide detailed information on how the sentencing of Mr. Chonghuai is in compliance with international norms and standards on the right to freedom of opinion and expression.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
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