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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 16/5, 17/2 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the nine-year prison sentence handed down to Mr. **Chen Wei**, and the 10-year prison sentence handed down to Mr. **Chen Xi** on 23 December 2011 and 26 December 2011, respectively. Mr. Chen Wei is a human rights defender, pro-democracy campaigner and writer. Mr. Chen Xi is a human rights defender and member of Guizhou Human Rights Forum, a network of pro-democracy activists in Guizhou Province.

Both Messrs. Chen Wei and Chen Xi are veteran human rights activists, having taken part in the pro-democracy protests of 1989. Both have been incarcerated on previous occasions in connection with their human rights work, Mr. Chen Wei having reportedly spent six years in prison and Mr. Chen Xi allegedly having been imprisoned for 13 years.

Mr. Chen Wei was the subject of a previous communication sent to your Excellency's Government on 2 March 2011 by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 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. We regret that to date no reply has been transmitted by your Excellency's Government to this communication.

Mr. Chen Xi was the subject of previous communications sent to your Excellency's Government on 11 December 2009, by the Special Rapporteur on the situation of human rights defenders, and on 7 December 2010, 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We acknowledge the response to the former communication which was transmitted by your Excellency's Government on 4 January 2010. We regret that to date no reply has been transmitted by your Excellency's Government to the latter communication.

According to the information received:

On 23 December 2011, Mr. Chen Wei was sentenced to nine years' imprisonment for "inciting subversion of state power" in Suining City in Sichuan Province. As part of this sentence, he is also reported to have had his political rights suspended for a further two years, as set out in Article 54 of the Criminal Law of the People's Republic of China. It is reported that the charges brought against him related to essays calling for freedom of speech, reform of China's one-party system and praising the growth of civil society, which Mr. Chen Wei was accused of posting online and sending to organisations outside of China.

Reports indicate that Mr. Chen Wei's trial was held behind closed doors and lasted less than two hours in total. According to the information received, he was detained on 20 February 2011, and formally charged on 28 March 2011. It is alleged that he was only permitted to see a lawyer on five occasions throughout the duration of his pre-trial detention, and that he was only allowed to communicate with his family in writing.

According to the information received, on 14 January 2012, Mr. Chen Wei was permitted to meet with members of his family for the first time since his detention almost 11 months previously. This 30-minute meeting reportedly took place at the

Suining City Detention Centre. Sources indicate that Mr. Chen Wei has undergone a physical examination in Jintang Prison, Chengdu, in recent days, before being returned to the detention centre. Reports suggest that he will be transferred to a prison next week.

On 26 December 2011, it is reported that Mr. Chen Xi was sentenced to 10 years' imprisonment for "inciting subversion of State power", as well as having his political rights suspended for an additional three years, as set out in Article 54 of the Criminal Law of the People's Republic of China. According to the information received, the presiding judge cited as evidence 36 articles written and published online by Mr. Chen Xi which, inter alia, critique the Chinese political system, call for democratic reform, and discuss the importance of civil society.

Reportedly, the trial of Mr. Chen Xi lasted two hours and 30 minutes in Guizhou Intermediate People's Court, and the judge refused to allow him to present his final statement. Reports indicate that he had been arrested on 29 November 2011, and that his family was notified of the arrest on 11 December 2011.

According to the information received, Mr. Chen Xi's wife has not been permitted to visit her husband while in detention. He is reportedly being held at Guiyang City No. 1 Detention Centre.

Concern is expressed that the prison sentences handed down to Messrs. Chen Wei and Chen Xi may be directly related to their legitimate exercise of their right to freedom of opinion and expression, particularly due to their human rights work and their pro-democracy campaigning. Concern is also expressed regarding their physical and psychological security in light of the lengthy nature of the sentences handed down.

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 cases of Messrs. Chen Wei and Chen Xi. 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, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I would also like to draw your Excellency's Government's attention to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]". I would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners

adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

Concerning the allegation that Mr. Chen Wei’s trial was held behind closed doors, we wish to underline that everyone shall have the right to a fair and public trial according to article 10 of the UDHR. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings. The courts may only exclude all or part of the public “for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice”, (Human Rights Committee General Comment No. 32, CCPR/C/GC/32, para. 29). Apart from these exceptional circumstances, a hearing must be open to the general public.

With regard to the defendant’s alleged limited access to his lawyer during his pre-trial detention and the alleged lack of access to his lawyer since the trial, we wish to stress “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings” in accordance with principle 1 of the Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). Additionally, principle 8 of the aforementioned instrument requires that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.”

In respect of allegations that Mr. Chen Xi was sentenced in the absence of his lawyer following a very brief one-session hearing and in violation of procedural safeguards, we believe that any trial should last a reasonable amount of time to allow a thorough review of the case, the exercise of the rights to defence and to ensure the fairness of the proceedings in full compliance with article 10 of the UDHR and principle 6 of the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

Given our concerns that the sentencing of Messrs. Chen Wei and Chen Xi may be related to the legitimate exercise of their right to freedom of opinion and expression, we would like to remind your Excellency’s Government to take all necessary steps to guarantee the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights

(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.”

Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions 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 this connection, 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, 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.

- 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.

- 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 Messrs. Chen Wei and Chen Xi are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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 Messrs. Chen Wei and Chen Xi in compliance with the above international instruments.

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 these cases to the Human Rights Council, 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 summary of these cases accurate?
2. Has a complaint been lodged by or on behalf of Messrs. Chen Wei and Chen Xi?
3. Please specify the current whereabouts of Messrs. Chen Wei and Xi, in which prisons they are to serve their sentences, and when Mr. Chen Wei will be transferred.
4. Please provide the full details of the legal basis for the charges that have been brought against Messrs. Chen Wei and Chen Xi and the subsequent sentences handed down, and how they are compatible with international norms and standards on the right to freedom of opinion and expression.
5. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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.

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

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
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