

Mandates of 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; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
CHN 4/2015:

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Excellency,

We have the honour to address you in our capacities 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 Human Rights Council resolutions 25/2, 25/18, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention and conviction of **Ms. Gao Yu**.

Ms. Gao Yu, aged 70, is a prominent former journalist who was based in Beijing. She is the former chief editor of Economics Weekly and also worked as a freelance journalist.

Ms. Gao Yu was the subject of a previous communication sent to your Excellency's Government on 7 December 2010 (see A/HRC/18/51, case no. CHN 29/2010). We regret that no response to this communication was received.

According to the information received:

On 24 April 2014, Ms. Gao Yu went missing after she last made contact with Deutsche Welle, a German newspaper. Her fate and whereabouts were unknown until 8 May 2014 when officials confirmed that she was detained by Beijing police in a criminal investigation for allegedly "illegally obtaining" a secret document and "leaking state secrets abroad" to editors of a foreign website in August 2013. These charges were reportedly based on a document known as "Document Number 9", detailing the Government's vision of pushing economic

reforms while maintaining ideological controls concerning issues such as democracy, civil society and freedom of press.

On the same day, Ms. Gao Yu appeared in an early morning news programme on China's national broadcaster, CCTV, during which she allegedly confessed to the charges made against her. She later told her lawyer that this alleged confession had been extracted under duress after the police had threatened to arrest her son. She was formally arrested on 30 May 2014. During the first two months of her detention, Ms. Gao Yu was repeatedly denied access to legal counsel. Her trial started on 21 November 2014, behind closed doors.

On 17 April 2015, Ms. Gao Yu was found guilty of "disclosing state secrets" and sentenced to seven years in prison by the Beijing Third Intermediate People's Court. It is reported that this sentence is widely based on the footage of her "confession" obtained under coercion and still used as evidence in court.

Ms. Gao Yu suffers from high blood pressure and Menière's disease. She also suffered severe gastroenteritis since she has been detained.

While we do not wish to prejudge the accuracy of these allegations, we wish to express grave concern at the allegations regarding the alleged arbitrary detention and conviction of Ms. Gao Yu and to the fact that these are reportedly related with her legitimate work as a journalist exercising the right to freedom of opinion and expression. Further, concern is expressed at the forced confession and the fact that this is being invoked as evidence.

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

As 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 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 detailed information concerning the legal grounds for the arrest, detention and conviction of Ms. Gao Yu and explain how these measures are compatible with international human rights norms and standards.
3. Please provide information on whether Ms. Gao Yu has had access to family members, legal counsel and medical personnel while in detention.

4. Please indicate what measures have been taken to ensure the physical and psychological integrity of Ms. Gao Yu while in detention.
5. Please provide information about the measures taken to ensure that journalists and women human rights defenders in China can carry out their legitimate activities without fear of harassment and prosecution.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we 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.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Gabriela Knäul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
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, we would like to recall the right to freedom of opinion and expression set forth in article 19 of the Universal Declaration of Human Rights.

We would further like to reiterate the principle enunciated in Human Rights Council Resolutions 12/16, which calls on States to refrain from imposing restrictions to the right to freedom of opinion and expression which are not consistent with international standards and 21/12 on safety of journalists which “condemns in the strongest term all attacks and violence against journalists, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment;” and “calls upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies.”

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to highlight articles 1, 2, and 12.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which China ratified on 4 October 1988, as well as its article 15, which provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

We would further like to draw your Excellency's Government's attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that exercising intimidation and coercion, as well as serious and credible threats, death threats, to the physical integrity of the victim or of a third person, can be regarded as cruel, inhuman or degrading treatment or to torture as understood by the Convention Against Torture.

We would like to refer your Excellency's Government to the right to a fair trial as contained in article 10 of the Universal Declaration of Human Rights, which includes the right to a public hearing by an independent and impartial tribunal. Further, we would like to remind your Excellency's Government of the right to access a lawyer as provided in principle 1 of the UN Basic Principles on the Role of Lawyers adopted by the eighth UN

Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba,
from 27 August to the 7 September 1990.