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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates 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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrests and administrative detention of four activists who have advocated for democracy and human rights, Mr. **Yang Lin**, Mr. **Yang Maodong**, Mr. **Li Huaping**, and Mr. **Liu Jiakai**.

Mr. Yang Maodong was the subject of urgent appeals and allegations letters sent on 6 March 2006 by the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders; on 19 October 2006 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; on 1 December 2006 and 30 November 2007 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders. We acknowledge receipt of the responses of your Excellency's Government dated 17 May 2006, 4 January 2007, 17 January 2007, and 15 January 2008.

According to the information received:

On 19 July 2013, Mr. Yang Lin, a 45-year old pro-democracy activist, was arrested on suspicion of "inciting subversion of state power" in southern Guangdong province. He is one of the signatories of 'Charter 08' which is a

manifesto signed by over 300 Chinese reformists, co-authored by Nobel Peace Prize laureate Liu Xiaobo. Mr. Yang Lin has criticized the one-party system and also called for disclosure of widespread corruption in China.

On 8 August 2013, Mr. Yang Maodong, also known by his pen name Guo Feixiong, based in Guangzhou province, was arrested by the police, and has subsequently been detained in Tianhe District Detention on charges of “gathering a crowd to disrupt order in a public space”. The family of Mr. Yang Maodong was only informed of his arrest on 17 August 2013, which is believed to be linked to his participation in a public protest in January 2013 to show support for the *Southern Weekend*, a Guangzhou newspaper which was struggling against censorship. Mr. Yang Maodong is a prominent human rights defender who spent five years in prison, in very difficult conditions, due to his human rights work.

On 10 August 2013, Mr. Li Huaping, originally based in Hunan province, was taken into custody and has been held in police custody since. He was arrested in Changsha City for “gathering a crowd to disrupt order in a public place,” and believed to be in custody in Hefei in Anhui province where the detention notice was issued. However, it is currently unknown where he is being held as of the date of this communication. Mr. Li has written extensively online using his pseudonym and advocated for democracy, rule-of-law reforms, constitutionalism, and social justice.

On 12 August 2013, Mr. Liu Jiakai, based in Hubei province, was arrested and detained on charges of “inciting subversion.” It is alleged that this detention is viewed as retaliation for his role in gathering fellow activists for dinner parties where the issues of human rights and justice are discussed. Sources inform that Mr. Liu was arrested various times in the past on the same charges, and that he was also dismissed from his job in late 2012 due to his activism. He is currently being held at Yichang City No. 1 Detention Centre.

Serious concerns are expressed that the arrests and administrative detention of Messrs Yang Lin, Yang Maodong, Li Huaping, and Liu Jiakai may be related to their activities exercising the legitimate rights to freedom of expression, peaceful assembly and association. Similar concerns are expressed about their physical and psychological integrity while in detention. Finally, serious concerns are expressed that the series of arrests reveals little room for dissenting voices in China and a worrisome sign of escalating crackdown on the rights to freedom of expression and of peaceful assembly.

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 (UDHR).

We would also 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 further 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 like to further 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 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 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.

We would like to bring to your Excellency's Government attention resolution 22/6 adopted by the Human Rights Council on 21 March 2013, and especially to operative paragraph 11 of the resolution, which call upon States "to ensure that all legal provisions and their application affecting human rights defenders are clearly defined, determinable and non-retroactive in order to avoid potential abuse to the detriment of fundamental freedoms and human rights, and specifically to ensure that (a) The promotion and the protection of human rights are not criminalized, and that human rights defenders are not prevented from enjoying universal human rights owing to their work, whether they operate individually or in association with others, while emphasizing that everyone shall respect the human rights of others; [...] (i) Dissenting views may be expressed peacefully."

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 Yang Lin, Yang Maodong, Li Huaping, and Liu Jiakai 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. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated in the UDHR.
4. Please provide information on the current whereabouts of Mr. Li Huaping.
5. Please provide the details on how the actions undertaken by public officials regarding the cases of Messrs Yang Lin, Yang Maodong, Li Huaping, and Liu Jiakai are compatible with the international norms and standards of the rights to freedom of opinion and expression, and peaceful assembly.

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.

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

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Chair-Rapporteur of the Working Group on Arbitrary Detention

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Maina Kiai
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