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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged detention and torture of Mr. **Vincent Wu**, by the Chinese Police in Guangzhou, China.

According to information received:

On 22 June 2012, Mr. Vincent Wu (Chinese name: Hu Wei Sheng or Wu Wai Sing), a naturalized American citizen, was detained by the Chinese Public Security Forces in Guangzhou city, Guangdong province, China, under the suspicion of organising a criminal syndicate (article 254 of the Chinese Criminal Law). It is reported that Mr. Vincent Wu is currently detained in Guangdong Detention Center. Reportedly, more than 40 people were arrested under the same circumstances. All of them were allegedly hooded and locked up in an undisclosed location while being interrogated.

During the investigation and interrogation phase, Mr. Vincent Wu was allegedly held incommunicado for a period of approximately three weeks and locked in handcuffs and ankle chains while being tortured with instruments, such as the tiger bench, or electric batons, which were forced inside his mouth and used on his genitals. Furthermore it is reported that Mr. Vincent Wu was also repeatedly beaten, suffered murder threats, was hung upside down and again beaten for hours without pause. It is reported that Mr. Wu became disabled due to the injuries sustained during torture. In addition it is reported that the Chinese police made him sit on the floor for hours and provided him with only one bottle of water and one small meal a day. According to the information received, Mr. Vincent Wu

confessed to crimes he did not commit, unable to withstand the torture to which he was allegedly subjected. Furthermore, it is reported that Mr. Vincent Wu has been held in solitary confinement since his arrest.

It is reported that witnesses confirmed evidence of cruelty, including multiple facial, body and extremity bruising and open wounds on Mr. Vincent Wu.

According to the information received, Mr. Vincent Wu was the victim of a plot set up by his business rivals and lawsuit opponents in order to frame him for crimes he did not commit. It is alleged that the police officers are torturing Mr. Vincent Wu's employees in order to force them to sign a paper admitting that he committed these crimes.

Furthermore, it is alleged that throughout the investigation process, the Chinese Public Security Department did not follow the agreements pursuant to the U.S.-PRC Consular Convention, which require Chinese authorities to report the detention of a U.S. Citizen to the Embassy no later than four days from the date of the arrest or detention, and to notify the family of the situation within 24 hours. Mr. Vincent Wu had his US passport confiscated by the Chinese authorities, allegedly in an attempt to hide any evidence that he is a US citizen. It is reported that as of today neither officials of the American Consulate, nor his family have been allowed access to Mr. Vincent Wu. It is reported that Mr. Vincent Wu's lawyer was only able to visit him twice. It is also reported that the lawyers representing Mr. Vincent Wu were intimidated and harassed by local authorities who warned them of repercussions if they speak publicly about the case.

According to recent information received, the trial of Mr. Vincent Wu is now set for 23 December 2012. It is reported that the "Prosecution Recommendation Proposal" of the Huizhou Public Security Bureau (PSB), which is a legal document listing the charges proposed by the PSB against Mr. Vincent Wu, indicates that there is a high chance that Mr. Vincent Wu will face the death penalty. Severe concerns are raised regarding the possibility of that the trial and ultimately the imposition of the death penalty will be based on evidence obtained under torture.

In addition, severe concerns are raised regarding Mr. Vincent Wu's health, since he is diagnosed with severe obstructive sleep apnea and poorly controlled hypertension, which require constant medical supervision and use of regular medicine. It is reported that the Chinese police is not providing medical attention to Mr. Wu and that his family attempted to send him medication, but the police refused to deliver it.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Vincent Wu 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).

Furthermore, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the situation of Mr. Vincent Wu. 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 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 also like to draw the attention of your Excellency's Government to article 15 of the CAT, which provides that, "Each 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 also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

In addition, we would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. Furthermore, we would like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this

respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

With regard to the concerns raised regarding Mr. Vincent Wu’s health, we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, rule 25(1) provides that, “(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed” (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

With regard to the alleged denial of contact with the family and outside world, we would like to draw the attention of your Excellency’s Government 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 [...]”. We would also like to draw your Excellency’s Government’s 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.”

Finally, we would like to draw the attention of your Excellency’s Government to article 14 of the CAT, which provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to remind you that paragraph 7e of Human Rights Council Resolution 16/23, which urges States “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken.”

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 Mr. Vincent Wu in compliance with the forementioned 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 accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Vincent Wu, and indicate how these measures are compatible with the aforementioned international human rights norms and standards.
3. Please indicate if an appeal has been filed on behalf of Mr. Vincent Wu and its current status before the court?
4. Please provide the details, and where available the results, of any investigation, medical examinations, 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?
5. Please provide information on steps taken by your Excellency's Government to 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.
6. Please provide information on the measures taken to ensure access of officials from the Consulate of the United States of America, Mr. Vincent Wu's family and his legal counsel.

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 person 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. Considering the irreversible nature of the death penalty, we request you not to execute the person mentioned above. 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.

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment