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CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15)
CHN 2/2013

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 17/2, 17/5, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of **Ms. Li Yan**, who is at risk of imminent execution in Sichuan province, China.

According to information received:

On 24 August 2011, Ms. Li Yan, aged 41, was sentenced to death by the Ziyang City Intermediate People's Court for of intentional homicide under article 232 of the Chinese Criminal Code, for the murder of her husband on 3 November 2010. Ms. Yan's appeal for clemency had been denied by the Sichuan Provincial Higher People's Court, which upheld the verdict on 20 August 2012. Her last appeal to the Supreme People's Court in Beijing was recently dismissed. She is currently reported to be at risk of imminent execution.

Allegedly, Ms. Li Yan murdered of her husband, Mr. Tan Yong, after having been subjected to prolonged domestic violence. It is reported that Mr. Tan Yong abused her physically and emotionally since early 2009, including by beating her, stubbing cigarettes out on her face and locking her outside during very low winter temperatures. Allegedly, he also cut off one of her fingers.

It is reported that, after having been attacked, Ms. Li Yan sought hospital treatment for her injuries, as well as protection from the police authorities. The police authorities allegedly did not ensure follow-up to her complaints by initiating investigations or issuing an order to protect her.

Ms. Li Yan reportedly did not receive an adequate level of legal assistance during the proceedings against her. The lawyers who represented her at the first-instance and second-instance trials were reportedly appointed by the Chinese authorities and did not provide an adequate level of defence. It is also alleged that the evidence of the defence was not given sufficient consideration in the courts, and that the witnesses of the defence, including Ms. Li Yan's brother, were not invited to testify. The defence evidence included police records of complaints and records from the local Woman's Federation presented by Ms. Li Yan, as well as several photographs showing the bruises on Ms. Li Yan's face allegedly caused by cigarette burns, and various accounts from the family.

It is also alleged that the courts did not fully consider Ms. Li Yan's psychological state at the time of the murder, as well as the fact that she may have acted in self-defence at that moment.

According to the information, the Sentencing Guideline of the Peoples' Court published by the Supreme Peoples' Court in 2009 expressly provides for 'family disputes' as a category for sentence reduction. A sentence reduction was, however, not applied in the case of Ms. Li Yan.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and be carried out against Ms. Li Yan, after proceedings which did not comply fully with international human rights law standards of fair trial and due process guarantees. We are also concerned at the level of domestic violence suffered by Ms. Li Yan, and the reported repeated failure of the authorities to ensure protection and accountability in this case.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Ms. Li Yan, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute Ms. Li Yan, and to commute without delay the death sentence imposed against her.

We would like to bring to the attention of your Excellency's Government that, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), that your Excellency's Government signed on 5 October 1998. Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty

provides that “Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.” Safeguard 4 further stipulates that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

We would also like to bring to your Excellency’s attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency’s Government in 1980), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

We would like to draw your Excellency's Government’s attention to paragraph 2 of General Comment 20 of the Human Rights Committee, which provides that, “The aim of the provisions of article 7 [on the prohibition of torture and other cruel, inhuman and degrading treatment or punishment] of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the

individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” (adopted at the 44th session of the Human Rights Committee, 1992).

We would like to draw your Excellency’s Government’s attention to paragraph 18 of the General Comment No. 2 of the Committee against Torture (CAT/C/GC/2, 24 January 2008), where the Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

In this connection, we would like to refer your Excellency’s Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.; [...] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

In its General Comment No. 32, the Human Rights Committee further indicated that: “ ‘Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”

The right to be assisted by a lawyer is also set forth in 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, in particular in principle 1, which states: “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”; and principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.” Principle 15 of the Basic Principles on the Role of Lawyers also states: “Lawyers shall always loyally respect the interests of their clients.”

Furthermore, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 6, which states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

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 Ms. Li Yan 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 the case accurate?
2. Please provide detailed information on each stage of the judicial proceedings conducted against Ms. Li Yan, and indicate how they comply with the requirement and guarantees of a fair trial and due process under international human rights law. Please specify in particular how a stringent level of legal assistance and of examination of the defence evidence was ensured in this case.
3. Please explain the reasons why Ms. Li Yan’s complaints of domestic violence were not followed up by a protection order to ensure her physical and mental integrity, and why a prompt investigation and prosecution into the abuses she had been reportedly been subjected to was not undertaken.

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 Ms. Li Yan 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.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
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