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HIGH COMMISSIONER FOR HUMAN RIGHTS

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
CHN 6/2012

11 July 2012

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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 17/2, 17/5, 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 circumstances surrounding the alleged torture in prison and the death of Mr. **Li Wangyang**, found dead, in hospital, on 6 June 2012.

According to information received:

Mr. Li Wangyang was a prominent human and labour rights activist in China. It is reported that he participated in the events of 4 June 1989, in Tiananmen Square. He was arrested on 9 June 1989, under charges of "counterrevolutionary propaganda and incitement" and sentenced to 13 years of imprisonment. After having been released before the end of his term, in June 2000, he was sentenced to ten years of imprisonment on 20 September 2001, for "inciting subversion of State power". Li Wangyang was eventually released in May 2011.

It is reported that during his first term in the Longxi Prison, Li Wangyang was subjected to severe physical abuse and torture. His teeth were allegedly pulled out in order to forcibly feed him. Due to severe beatings, he reportedly lost his eyesight. During his second term in Chishan Prison, he was also locked inside a cell of less than 1.5m in height and width for several months and with no basic sanitation. It is reported that at the moment of his release in May 2011, he was completely blind and almost deaf.

Soon after his release from prison in 2011, Li Wangyang was admitted to Daxiang District People's Hospital in Shaoyang City, Hunan Province, for medical treatment. It is reported that after giving interviews in 2012, Li Wangyang was brought under 24-hour police surveillance in the hospital. His last interview on 2 June 2012, allegedly concerned the events in Tiananmen Square of 4 June 1989, and the possibility of a system of multi-party democracy in China.

Li Wangyang was found dead in the morning of 6 June 2012, in his room at the Daxiang District People's Hospital. Li Wangyang was allegedly found hanged, with a noose, made of cloth, around his neck, and tied to a window bar. It is reported that the Shaoyang City authorities initially classified his death as a suicide, and later reclassified it as an accident. According to latest information, the Hunan Provincial Government has agreed to launch a follow-up investigation.

It is meanwhile reported that serious doubts are cast over the cause and circumstances of the death of Li Wangyang, with concerns expressed that Li Wangyang might have been murdered as a consequence of his statements expressed in his latest interviews. It is alleged that the very poor health condition of Li Wangyang would have rendered him physically unable to commit a suicide by hanging. The doubts also refer to the fact that, while found dead by hanging, the feet of Li Wangyang were touching the floor. Moreover, his family and friends informed that Li Wangyang had not shown any intention of committing suicide and his public statements before his death indicated his strong will to continue living.

Regarding the investigation process launched on the case of the death of Li Wangyang, the following alleged deficiencies have been brought to our attention:

- Inadequate process of conducting the autopsy of the body of Li Wangyang. It is reported that on the morning of 6 June 2012, the police took away the body of Li Wangyang despite objections from his family and friends. On 8 June 2012, the Shaoyang City authorities stated that an autopsy had been carried out that day and filmed in the presence of experts and local politicians. While the official authorities reportedly stated that the family gave consent to conduct the autopsy, other sources inform that they did not, or that they were forced to give consent. It is further reported that the results of the autopsy have not been made public, and that the lawyer chosen by the family did not attend the autopsy, despite the family's request for his presence.

- Immediate cremation of the body of Li Wangyang, against the wishes of his family members. It is reported that the body of Li Wangyang was cremated on 9 June 2012, the day after the autopsy was conducted. It is feared that important evidence for the investigation had been thus destroyed and the opportunities for alternative autopsies suppressed.
- Intimidation of Mr. Tang Jingling, the lawyer chosen by the family of Li Wangyang. It is alleged that Tang Jingling had gone missing for a few days. Upon his return, he allegedly declared that he had to renounce handling the case of the death of Li Wangyang, due to threats received by his family from the authorities.
- Illegal detention of Ms. Li Wangling, sister of Li Wangyang, and Mr. Zhao Baozhu, brother-in-law of Li Wangyang, as well as of his friends. It is reported that on 7 June 2012, Li Wangling and Zhao Baozhu were detained by the local authorities, along with two other friends, and are being illegally held in a hotel in Shaoyang. Since then, all efforts to reach them have failed, while the reason of their detention is unknown. In addition, Mr. Zhu Chengzhi, friend of Li Wangyang and human rights activist, is reported to have been sentenced to administrative detention. After a 14-day detention period, he had been allegedly illegally detained in the Yunan province. Another friend of Li Wangyang, Mr. Yin Zhengan, was detained for eleven days due to the fact that he allegedly refused to sign a letter committing himself not to investigate the death of Li Wangyang. It is reported that he had been missing since 17 June 2012.

Concern is expressed that Mr. Li Wangyang might not have committed suicide and rather may have been killed as a consequence of his activities as a human rights activist in China, in the exercise of his legitimate rights to freedoms of opinion, expression and peaceful assembly. Concern is also expressed that the investigation launched into his death was characterized by serious deficiencies. Further concern is expressed that Mr. Tang Jingling might have been harassed as a consequence of his activity as a family appointed lawyer in this case. We are also concerned of the reported illegal detention of the sister and brother-in-law of Li Wangyang, as well as of his friends.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Ms. Li Wangling and Mr. Zhao Baozhu, 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).

Furthermore, 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).

With respect to the allegations that during his first term in the Longxi Prison, Li Wangyang was subjected to severe physical abuse and torture, 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 your Excellency's Government's attention 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. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, 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 (the Istanbul Principles) as a useful tool in efforts to combat torture".

With respect to the concerns expressed on the circumstances of the death of Li Wangyang, we would like to refer your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) that China signed on 5 October 1998. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

We would like to further draw the attention of your Excellency's Government that international law requires that in cases of gross human rights violations, including suspected cases of arbitrary executions, there should be thorough criminal investigations. With regard to reported doubts on the cause of the death of Li Wangyang, we would like to refer to the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65. In particular, Principle 9 provides that "there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances, as well as that "the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall

include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses.”

The following principles further specify the duties of a Government on the conduct of investigations into suspected cases of extrajudicial, summary or arbitrary executions, including on the conduct of autopsies and the process of treating the body of the deceased, as well as on the protection of witnesses and families:

- Principle 12 states that “the body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology.”

- Principle 13 stipulates that “the body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible.”

- Principle 15 requires that complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation.

- Principle 16 states that “families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy,” as well as that the body of the deceased shall be returned to them upon completion of the investigation.

- Principle 17 requires that a written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.

Furthermore, 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.
- article 12 paragraphs 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.

Given our concern that Mr. Li Wangyang might have been killed as a consequence of his activities as a human rights activist in China and the exercise of his legitimate right to freedom of opinion and expression and peaceful assembly, we would like to remind your Excellency’s Government of its obligation to fully guarantee the right to freedom of opinion and expression in accordance with fundamental principles as set forth in 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.”

Moreover, we wish to underscore that as stipulated in Human Rights Council resolution 12/16, the following types of expression should never be restricted: (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.

We would also like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in 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."

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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."

With regard to the alleged intimidation of Mr. Tang Jingling, the lawyer chosen by the family of Li Wangyang, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, and in particular principle 16, which states: "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."; principle 17, which states: "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."; and principle 18, which states: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

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 the fore mentioned persons 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 above summary of the cases accurate?
2. Please provide full details, and where available the results, of any investigation, and judicial, forensic or other inquiries carried out in relation to these cases, including on the allegations of torture in prison and of murder of Li Wangyang. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the results of the autopsy conducted on Li Wangyang and explain the reasons for the decision to immediately cremate his body. Please specify whether the consent of the family of Li Wangyang was sought for the autopsy and the cremation.
4. Please indicate whether compensation will be provided to the family of the victim.
5. Please provide information concerning the legal grounds for the arrest and detention of Ms. Li Wangling and Mr. Zhao Baozhu, as well as of the friends of Li Wangyang, and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders.
6. Please indicate what measures have been taken to ensure that lawyers and human rights activists can operate in an enabling environment and can carry out their legitimate activities without fear of suffering harassment, stigmatization or attacks 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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that a thorough, prompt and impartial investigation is conducted into the allegations of torture in prison and the circumstances of the death of Li Wangyang. We further urge your Excellency's Government to ensure that the rights and freedoms of the family members of Li Wangyang, his friends, and any lawyers chosen by the family are respected. In the event that your investigations support or suggest the forementioned 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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