

Mandates of 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: AL
CHN 13/2015:

23 December 2015

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 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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of human rights activist and writer, **Mr. Yang Maodong**.

Mr. Yang Maodong (杨茂东), also known by the pen name Guo Feixiong (郭飞雄), is a human rights defender, legal activist, pro-democracy activist and writer. In 2015, he was awarded the Front Line Defenders Award for Human Rights Defenders at Risk. Mr. Maodong took part in peaceful demonstrations in January 2013, calling for freedom of the press in Guangzhou, which led to his consequent arrest on 8 August 2013.

Mr. Yang Maodong was the subject of urgent appeals and allegations letters sent on 6 March 2006 (case no CHN 8/2006) by the Special Rapporteur on the independence of judges and lawyers and the then Special Representative of the Secretary-General on the situation of human rights defenders; on 19 October 2006 (case no CHN 39/2006) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; on 1 December 2006 (case no. CHN 40/2006) and 30 November 2007 (case no. CHN 42/2007) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the then Special Representative of the Secretary-General on the situation of human rights defenders; on 22 August 2013 by 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 of the rights to freedom of peaceful assembly and association, and the Special Rapporteur on the situation of human rights defenders (case no. CHN 9/2013); and on 7 August 2015 by 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 situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (case no.CHN 8/2015). We acknowledge receipt of the responses of your Excellency's Government dated 17 May 2006, 4 January 2007, 17 January 2007, 15 January 2008, 22 August 2013 and 2 September 2015. We however reiterate our concerns in light of the allegations received below.

According to the information received:

On 27 November 2015, Mr. Yang Maodong (杨茂东, also known by the pen name Guo Feixiong (郭飞雄), were sentenced to six years in prison by the Tianhe District People's Court in Guangzhou. Mr. Maodong was initially charged with "gathering crowds to disturb social order", carrying the maximum penalty of four years' imprisonment. However, on sentencing the charge of "picking quarrels and provoking trouble", carrying an additional two years' imprisonment, was added by the presiding judge, thus denying Mr. Maodong's lawyers the opportunity to defend him against it.

Serious concern is expressed at the sentencing of Mr. Yang Maodong on disputed charges following allegations of ill-treatment in detention, conveyed to your Excellency's Government on 7 August 2015, which gave rise to substantial concerns over the guarantees of due process for the accused. Further concern is expressed that the trial and sentencing of Mr. Maodong are directly related to his legitimate and peaceful human rights work, including exercising his legitimate rights to freedom of expression and peaceful assembly. These concerns appear to be in violation of articles 10, 19 and 20 of the Universal Declaration of Human Rights (UDHR), which provide for the rights to a fair and public hearing; freedom of opinion and expression; and freedom of peaceful assembly and association, respectively. They also seem to contravene the fundamental principles set forth in the UN Declaration on Human Rights Defenders, in particular the articles 1, 2, 5, 6 and 12.

Additional concern is expressed about the broader impact of the above allegations, which may have a chilling effect on the situation of human rights defenders and the rights to freedom of expression and freedom of association in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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.

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 therefore 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 information concerning the legal grounds for the sentencing of Mr. Yang Maodong, and details how the trial, detention and sentencing of Mr. Maodong relates to his human rights work and exercise of the rights to freedom of expression and peaceful assembly.
3. Please provide information on how the right to a fair and public trial, as established in international norms and standards, has been respected in the case of Mr. Yang Maodong, in particular the new charge of “picking quarrels and provoking trouble” announced at his sentencing and his right to adequate time and facilities to mount a defence.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution of any sort.
5. Please indicate the measures taken to protect and promote the rights to freedom of expression and freedom of association in accordance with international norms and standards.

We would appreciate receiving a response within 60 days.

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.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer your Excellency's Government to articles 10, 19 and 20 of the Universal Declaration of Human Rights (UDHR), which provide for the rights to a fair and public hearing; freedom of opinion and expression; and freedom of peaceful assembly and association, respectively.

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 refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (operative paragraph 5).

In addition, we would like to refer to Human Rights Council resolution 24/5 (operative paragraph 2) in which the Council "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.”