

**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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA CHN 6/2016

20 July 2016

Excellency,

We have the honour to address you in our capacity as 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 24/6, 25/18 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the serious health condition, allegations of torture and ill-treatment, and on-going arbitrary detention of human rights defender Mr. **Yang Maodong**, commonly known by his pen-name **Guo Feixiong**.

Mr. Guo Feixiong is a prominent human rights lawyer and human rights defender who has been actively involved in pro-democracy and anti-corruption initiatives in China. In 2015, he received the Front Line Defenders Award for Human Rights Defenders at Risk.

Mr. GUO Feixiong (also known as 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) by the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression and independence of judges and lawyers, and the then Special Representative of the Secretary-General on the situation of human rights defenders; on 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, and the

Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, the rights to freedom of peaceful assembly and association, and the situation of human rights defenders (case no. CHN 9/2013); on 7 August 2015 by the the Working Group on Arbitrary Detention, and the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, the situation of human rights (case no. CHN 8/2015); and on 3 June 2016 by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment (case no. CHN 4/2016).

We acknowledge receipt of the responses from your Excellency's Government dated 17 May 2006, 4 January 2007, 17 January 2007, 15 January 2008, 22 August 2013, 2 September 2015, and 10 February 2016. A reply has yet to be received to the communication sent in June 2016.

We remain extremely concerned about the physical and psychological integrity of Mr. GUO Feixiong, in particular given the new information received. Below is a summary of the most recent aspects of the case, and the new information received.

*Background information on the case:*

In August 2013, Guo Feixiong was arrested after being seen at a public protest against Government censorship of written media. On 27 November 2015, he was sentenced to six years in prison by the Tianhe District People's Court in Guangzhou on charges of "gathering crowds to disturb public order", and "picking quarrels and provoking trouble". This last charge was added by the judge at the time of sentencing.

According to reports received, Mr. Guo has been subject to torture and ill-treatment and denied access to adequate healthcare while in detention. As a consequence of this, his health has progressively deteriorated and, since 2015, he has been transferred to a prison hospital on several occasions. Reports indicate that relatives of Mr. Guo have asked the prison authorities to transfer him to a higher level hospital given his fragile health. The request has been denied so far.

According to new information received:

On 9 May 2016, Mr. Guo was subjected to a humiliating medical procedure against his will which was filmed by prison officials who threatened to make the video public. He was also forced to shave his head and was instructed to kneel down everytime he was in the presence of prison officials.

This degrading and humiliating treatment prompted Mr. Guo to begin a hunger strike on 9 May 2016, which he has been pursuing for over 70 days (71 days on

18 July 2016) with the request to be transferred from Yangchun Prison, where he is currently held. Since 14 May 2016, reports indicate that he has been force-fed twice a day through his nose, and is being given intravenous supplements without his consent.

Mr. Guo was last seen by relatives or legal counsel in June 2016 when his weight had dropped from 75kg to 52kg and it could be learned that he continued to bleed from his nose and mouth, and still had internal bleeding. When relatives attempted to visit him they were only allowed to exchange written notes with him. Family members have been told to go back to visit him on 28 July.

Grave concern is expressed about the health situation of Mr. Guo, which seems critical. In this connection, we are extremely concerned about allegations of cruel and degrading treatment of Mr. Guo in detention, including though medical procedures administered against his will. Grave concern is expressed about Mr. Guo's physical and mental integrity given the prolonged hunger strike and allegations that he is not receiving adequate health care given the circumstances, including medical attention with his full and informed consent. Concern is further expressed regarding denial of access to relatives and legal counsel over the past few weeks. We reiterate our previous concerns at the criminalization of legitimate human rights activities and the exercise of the rights to freedom of expression and of peaceful assembly that has formed the legal basis for the arrest, conviction and detention of Mr. Guo, which is incompatible with China's obligations under international human rights law.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above-mentioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the rights of Mr. Guo not to be deprived arbitrarily of his liberty in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. Further, we would like to draw attention to the right to not be subjected to torture or cruel, inhuman, or degrading treatment or punishment, or arbitrary detention, as enshrined in article 7 of the ICCPR.

In this connection, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which China ratified on 4 October 1988.

Regarding the health situation of Mr. Guo and his access to adequate health care in detention, we would like to remind your Excellency's Government of its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 27 March 2001, and which provides the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art.12). In this sense, States Parties should take all the necessary steps in order to ensure all medical

services and medical attention in the event of sickness (Art.12.2). This right shall be exercised without discrimination of any kind (art.2.2) and establishes an obligation by the part of the State to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment 14, Para. 34).

Moreover, the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, underline that prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9). In addition, the 1955 Standard Minimum Rules for the Treatment of Prisoners as revised in 2015 (known as ‘Mandela Rules’) recognize that the provision of health care for prisoners is a State responsibility, free of charge without discrimination, and should pay special attention to those with special health-care needs (Rules 24, and 25). The rules clearly stress the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment, including solitary confinement (Rules 43-45).

Acts of forced feeding as well as other types of physical or psychological coercion against individuals who have opted for the extreme recourse of a hunger strike may constitute cruel, inhuman or degrading treatment, which in turn may amount to torture. In this context, we would like to underline that the best way to try to end a hunger strike is to address the underlying human rights violations that are the basis of the protest. Authorities have a duty to look for solutions to situations created by a hunger strike, including through good faith dialogue about the grievances, always respecting the wishes of individuals.

Regarding the legal foundation for the conviction and detention of Mr. Guo, we would like to remind your Excellency’s Government about the right to freedom of opinion and expression, as guaranteed by article 19 of the ICCPR, as well as the right of peaceful assembly, as set forth in Article 21 of the ICCPR. Paragraph 3 of article 19 sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law. We express concern at the criminalization of expression through repressive legislation that is used to target speech that is viewed as dissenting or critical. We would like to remind your Excellency’s Government that criminal sanctions, in particular imprisonment for such expressions are not deemed proportional with an effective exercise of the right to freedom of expression. In this respect, we reiterate the recommendations made in the report E/CN.4/2000/63.

With regard to the alleged connection between Mr Guo’s legitimate human rights work and his arrest, conviction and detention, we would like to refer to 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 articles 1, 2, 5, 6, 8 and 12.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to ensure the physical and mental integrity of Mr. Guo and safeguard his rights in compliance with international instruments.

As 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 observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. 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.
4. Please provide the full details of any prosecutions which have been undertaken, including regarding the alleged degrading and humiliating treatment suffered by Mr. Guo in detention. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information about the health situation of Mr. Guo, including access to adequate and specialized medical care in detention, and the monitoring of his hunger strike with his full and informed consent.
6. Please indicate what measures have been taken to ensure that human rights defenders in China are able to carry out their legitimate work in a safe and enabling environment without fear of violence, threats or acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

We intend to publicly express our concerns about this case in the near future as, in our view, the information upon which our actions will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The

press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

After having transmitted an urgent appeal to the Government, the Working Group on Arbitrary detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure. 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.

José Guevara  
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai  
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