

Mandate 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA CHN 8/2016

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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 24/7, 25/2, 24/6, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of the continued arbitrary detention and prolonged solitary confinement of Mr. Wang Bingzhang, his deteriorating health while in detention, the denial of access to a lawyer, the limited access for his family to visit for the past years, and allegations that the charges against him might be related to his peaceful activities as a pro-democracy activist.**

Mr. Wang Bingzhang, born on 30 December 1947, is a physician and pro-democracy activist and the founder of the overseas Chinese democratic movement.

On 5 December 2002, Mr. Wang was charged with "offences of espionage" and "the conduct of terrorist activities". He was tried on 22 January 2003 by the Intermediate People's Court in the city of Shenzhen in Guangdong province, and convicted and sentenced to life in prison on 10 February 2003. His appeal was rejected on 28 February 2003.

Mr. Wang Bingzhang was the subject of Opinion No. 10/2003 of the Working Group on Arbitrary Detention, adopted on 9 May 2003, where the Working Group declared his detention to be arbitrary, in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, thereby falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Mr. Wang was also the subject of two earlier communications, dated 11 November 2004 (see case CHN 37/2004) and 18 April 2014 (see case CHN 5/2014,

A/HRC/27/72) We thank the Chinese Government for its replies of 11 November 2004 and 19 June 2014 respectively, but find that they do not adequately address the concerns raised; in particular the issue of the prolonged solitary confinement of Mr. Wang Bingzhang. We also wish to refer to a related communication dated 3 April 2014 (see case no. CHN 4/2014, A/HRC/27/72), concerning the daughter of Mr. Wang Bingzhang, to which no reply has been received to date.

According to the information received:

Mr. Wang Bingzhang is currently serving a life sentence in solitary confinement in Shaoguan Prison in Shaoguan City, Guangdong Province. He was transferred from Beijiang Prison, Shaoguan City, Guangdong, to Shaoguan Prison in November 2013.

Mr. Wang Bingzhang has spent his entire sentence so far, 14 years, in solitary confinement. He is kept in an individual cell and is not allowed to speak or interact with fellow inmates. The only individuals he is allowed to communicate with are the prison guards who monitor his cell. Very occasionally, Mr. Wang Bingzhang is permitted to participate in group activities, such as Chinese New Year celebration, or group sports, but even during such events he is allegedly still forbidden to communicate freely with fellow detainees.

Mr. Wang Bingzhang is allowed to receive one 30-minutes family visit a month, and to send one letter a month. Many restrictions are applied to the family visits, one of which requires that the family members must be related by blood. Yet, all of Mr. Wang Bingzhang's blood relatives are living in North America, and many of them have consistently been denied visas to enter China (including his daughter, brother, sister and spouse) which leaves only around three or four family members who are permitted to visit. Given the logistics and costs of the journey from North America to Guangzhou, visits remain very infrequent (on average 2-3 a year). In addition, these visits are heavily monitored and in the presence of several guards, who often record the meeting on video.

Mr. Wang Bingzhang has been denied access to counsel for at least the last several years. A new lawyer, locally present in Guangzhou, was retained by the family of Mr. Wang to represent his interests in 2012, in accordance with Chinese law, following the withdrawal of his earlier lawyers due to the severe difficulties they were facing attempting to represent Mr. Wang. However, this new lawyer has not been able to see Mr. Wang and has in fact been denied access on at least 4 occasions, between late 2012 and end of 2013. He was also threatened by authorities with "consequences" including that his attorney license might be revoked if he continued representing Mr. Wang.

Mr. Wang Bingzhang's physical and mental health has deteriorated dramatically during the past fourteen years. This deterioration is reportedly closely linked to the conditions of his detention, at all times in solitary confinement. He allegedly suffers from [REDACTED]. According to reports received, he does not have access to any psychological care.

Grave concerns are expressed regarding the continued arbitrary detention of Mr. Wang Bingzhang despite the Opinion of the Working Group on Arbitrary Detention that the detention is arbitrary, regarding his prolonged solitary confinement, and his deteriorating health condition. Equal concern is expressed at the criminalization of expression through the application of national security provisions to target speech that is dissenting or critical. Further concerns are expressed regarding the denial of access to a lawyer and the limited access for his family to visit over the past years.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your government ratified in 1988. Prolonged or indefinite solitary confinement, defined in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day, runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (see the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268). Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

Furthermore, we would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015), which lay out generally accepted principles and practice in the treatment of prisoners and prison management. In particular, we would like to refer to Rules 43.1(b), 43.3, 44, 45 and 46 which refer to the use of disciplinary sanctions or restrictive measures, including solitary confinement, and the role of health-care personnel regarding any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of prisoners subjected to such sanctions or measures. We would also like to draw your attention to Rule 58 which provides that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals by corresponding or by receiving visits. Moreover, Rule 61 stipulates that prisoners shall be provided with adequate opportunity, time and facilities to be visited and to communicate and consult with a legal adviser of their own choice, without delay, interception or censorship and in full confidentiality. The right of any person arrested, detained or

imprisoned to have access to a lawyer is also enshrined in the UN Basic Principles on the Role of Lawyers (see in particular Principle 8).

Regarding access to healthcare 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), which was 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 that the right to health shall be exercised without discrimination of any kind (art.2.2), and should refrain from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment No. 14, para. 34). Furthermore, the 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).

We would moreover like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights. We would in this regard also make reference to Human Rights Council Resolution 12/18, calling upon States to refrain from using counter-terrorism as a pretext to restrict the right to freedom of expression in ways that are contrary to international human rights standards.

The full texts of the human rights instruments and standards recalled above are available on 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 safeguard the rights of Mr. Wang Bingzhang in compliance with international instruments. In view of Opinion No. 10/2003 of the Working Group on Arbitrary Detention, adopted on 9 May 2003, where the Working Group declared the detention to be arbitrary, we call for the immediate release of Mr. Wang Bingzhang.

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 any comment you may have on the above-mentioned allegations.

2. Please indicate the legal basis for the detention of Mr. Wang Bingzhang in solitary confinement, and how this is compatible with international human rights norms and standards.
3. Please provide information on any measures taken to ensure the physical and psychological integrity of Mr. Wang Bingzhang.
4. Please explain why Mr. Wang does not have access to legal counsel.
5. Please explain why Mr. Wang access to family members is limited and provide information on whether he has been able to receive letters from his family.
6. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that Mr. Wang receives the healthcare, including psychological care and medication, that he requires while in detention.

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.

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.

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