

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 situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL CHN 3/2018

8 February 2018

Excellency,

We have the honour to address you in our capacities 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 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 33/30, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the torture and ill-treatment of **Mr. Wu Gan** (better known as *Tufu* – “The Butcher”) along with his sentencing to 8 years imprisonment for “subverting state power”.

Wu Gan is a Chinese human rights defender known for his online activism, raising awareness of human rights abuses and collecting funds in support of human rights activities.

According to the information received:

In May 2015, Mr. Wu Gan was arrested while protesting outside a courthouse at a demonstration over alleged wrongful convictions resulting from a death penalty case in 2000. In July 2015, his arrest was formalized based on charges of “inciting subversion of state power” and “picking quarrels and provoking trouble” by the Xiamen City People's Procuratorate.

Prior to his closed court trial held on 14 August 2017, Mr. Wu Gan had been detained for over 27 months, allegedly without access to his family. On 26 December 2017, he was sentenced to eight years imprisonment and deprived of political rights for a further five years for “subverting state power” by the Tianjin Municipal No.2 Intermediate People's Court.

Shortly after being sentenced, Mr. Wu Gan released a statement saying that he had rejected the authorities' request for him to plead guilty in exchange for a more lenient sentence. He also named 13 officials who had allegedly tortured him during detention.

Prior to his sentencing, Mr. Wu Gan and his lawyers indicated that they intended to appeal the conviction if he was found guilty. However, when lawyers requested to meet him immediately after he was sentenced, the detention centre refused their request and asked for verification of their eligibility to represent him in an appeal. Mr. Wu Gan's lawyers were only able to meet with him one day before the legally prescribed period for filing an appeal ended, on 5 January 2018. His lawyers have now officially filed an appeal.

We express serious concern over the sentencing of Mr. Wu Gan on charges that appear directly related to his activities in defence of human rights and fear that his conviction on the basis of repressive legislation represents a criminalisation of the rights to freedom of expression and freedom of assembly. We further express grave concern over Mr. Wu Gan's reports of torture and ill-treatment while in detention and urge your Excellency's Government to investigate any such allegations and prosecute alleged perpetrators.

We reiterate more general concern over continuous pressure on human rights defenders in China, which may have a chilling effect on civil society and the overall protection of human rights and human rights defenders in the country. In particular, concern is expressed at the vague and far reaching charges of "subverting state power", and "picking quarrels and provoking trouble" which have been regularly used to prosecute human rights defenders for their legitimate and peaceful work.

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 **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 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 detailed information concerning the legal grounds for the arrest, detention and conviction of Mr. Wu Gan and explain how these measures are compatible with international human rights norms and standards. Please clarify the alleged restrictions on Mr. Wu Gan's access to his lawyers, in particular during the appeal period.
3. Please provide detailed information on any investigation or inquiry which has taken place, or which is due to take place, regarding Mr. Wu Gan's allegations

of torture and ill-treatment suffered during his detention, along with any effort which may have been made in the prosecution of alleged perpetrators. If no such inquiry or investigation has taken place, please explain why.

4. Please provide detailed information concerning the legal grounds for allegedly denying Mr. Wu Gan access to his family during his detention and explain how these measures are compatible with international human rights norms and standards.
5. Please provide information on what steps have been taken to ensure that the detention conditions in Chinese detention centres, including with regards to torture and ill-treatment of detainees, comply with all relevant international human rights standards.
6. 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.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 allegation letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair 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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

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:

Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which the People's Republic of China signed on 5 October 1998, which provide for the rights to freedom of opinion and expression and the right to peaceful assembly respectively.

Article 7 of the ICCPR which states that "(n)o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

In addition and without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Wu Gan is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 of ICCPR and articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We would like to draw your Excellency's Government's attention to articles 2 and 16 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), which the People's Republic of China ratified on 4 October 1988, which impose obligations on States Parties to prevent occurrences of torture or ill-treatment, as well as articles 7 and 12 which require prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed along with the prosecution of perpetrators of such acts.

We would like to draw the attention of your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of expression. In this regard, we would like to highlight Human Rights Council resolution 12/16, calling on States to refrain from imposing restrictions on 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 furthermore like to call your Excellency's Government's attention to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that a restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military

threat, or an internal source, such as incitement to violent overthrow of the government. In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest (Principle 2).

We would like to refer your Excellency's Government to United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), especially rules 58 and 61 concerning access to family and legal representation.

In connection with the above alleged facts and concerns 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, 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 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.