

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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January 9, 2013

Xi Jinping
General Secretary of the Communist Party of China
Zhongnanhai, Beijing, China
Postcode: 100017

Dear Mr. General Secretary:

Re: The extended and continuing illegal persecution of Mao Hengfeng by Chinese officials

Lawyers' Rights Watch Canada ("LRWC") is a committee of Canadian lawyers providing support internationally to human rights lawyers and advocates whose rights, safety, or independence are threatened as a result of their human rights advocacy.

The Observatory for the Protection of Human Rights Defenders, a joint program of the World Organisation Against Torture ("OMCT") and the International Federation for Human Rights ("FIDH"), as well as Amnesty International, Human Rights in China, and other international human rights monitors, have repeatedly drawn attention to the illegal and inhuman treatment which the Chinese Communist Party ("CCP") has inflicted on Ms. Mao Hengfeng over the past seven years. LRWC adds its voice to those international organizations in demanding an end to the illegal and reprehensible treatment of Ms. Mao that has appalled the international community over many years. Despite the chorus of international condemnation denouncing the torture and illegal incarceration of Ms. Mao, her tormentors have continued their crimes against her with impunity and with the apparent approval of the CCP of which you are the new leader..

LRWC has written to previous General Secretaries of the CCP on many occasions in response to the intimidation, mistreatment, illegal incarceration, arbitrary detention, malicious prosecution, torture, and murder of Chinese lawyers and other human rights defenders persecuted by Chinese authorities for simply engaging in legitimate human rights advocacy. Lawyers engaged in human rights work have also been wrongly barred from practising law. Information available to LRWC indicates that attacks on human rights defenders by Chinese authorities, including police, prosecutors, "courts", and officials of the Party you now lead are increasing.

Lawyers have had their licences to practise confiscated on patently specious grounds; lawyers and other human rights advocates have been intimidated, beaten, and occasionally murdered.

There is reason to believe that these attacks on human rights defenders in China have been the result of policies approved and implemented by the CCP. Now that you lead the CCP, we appeal to you to initiate the actions necessary to eliminate these abuses which have belied China's claim to be a nation governed by the Rule of Law.

Background Facts and International Law:
State actions against Mao Hengfeng have violated international law

Mao Heng Feng: LRWC calls for protection from unlawful detention and treatment.

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Ms. Mao Hengfeng is a Shanghai human rights advocate respected for her work defending housing rights, opposing wrongful forced evictions and promoting women's reproductive rights. Instead of protecting her right to engage in this legitimate human rights advocacy, Chinese authorities have relentlessly persecuted her since 2004. Chinese officials have perpetrated the following specific violations against Ms. Mao Hengfeng:

- January 12, 2007. Ms. Mao Hengfeng was sentenced by the Yangpu People's District Court in Shanghai to two and a half years' imprisonment for "intentional damage to property", after she broke one lamp in the room where she had been illegally and arbitrarily detained from May 23 to June 30 of 2006.
- April 16, 2007. Her sentence was upheld by the Shanghai Intermediate People's "Court" after a farcical appeal "hearing" which lasted only ten minutes and during which Ms Mao Hengfeng's lawyer was barred from entering the courtroom and summarily dismissed the appeal.

LRWC notes that preventing a fair hearing by barring the accused's legal representative from the hearing, which occurs frequently in China, violates minimum international fair trial standards including the provisions of the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR). As a signatory of the ICCPR, notwithstanding the fact that China has not yet ratified the convention, China has a positive moral obligation to ensure that all persons charged with a criminal offence are allowed to make full answer and defence through legal counsel. Denial of these rights to Ms. Mao Hengfeng renders her detention arbitrary. It is also illegal under Chinese law. The United Nations Working Group on Arbitrary Detention has identified the following as categories of arbitrary detention that violate article 9 of the ICCPR¹:

1. When a person is deprived of their liberty because they have exercised the rights and freedoms guaranteed in the UDHR and the ICCPR; and
2. When a person has been deprived of their liberty after a trial which did not comply with the standards for a fair trial set out in the UDHR and other relevant international instruments.

Ms. Mao Hengfeng's detention is arbitrary and contrary to both the UDHR and the ICCPR according to both these definitions. In carrying out peaceful human rights advocacy, she was exercising her freedoms of expression and association protected by the UDHR and the ICCPR. Neither the trial nor the appeal complied with the fair trial standards set out in the UDHR or the ICCPR.

China has a positive legal duty to ensure freedom of expression. As stated by the UN Special Rapporteur on Freedom of Expression,

The right to freedom of expression cannot be exercised passively, but requires a lasting commitment by States to ensure the mechanisms that guarantee and protect it. Mechanisms for criticism, including of political leaders, are deemed important to hold individuals accountable.²

¹ Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

² Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, 11th session, Agenda item 3, A/HRC/11/4, 30 April 2009, para 41, online at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.4.pdf>

Continuing with the facts regarding Ms. Mao Hengfeng,

- May 15, 2007: Ms. Mao Hengfeng was transferred from the police detention centre to prison in particularly degrading circumstances. She was allowed to wear only one very thin and loose shirt, which could hardly cover her body. When she protested, police beat her, and upon arrival at the prison, she was immediately placed in solitary confinement. Ms. Mao subsequently began a hunger strike to protest against her situation. On three occasions, prison guards forced her to eat, tying her hands, opening her mouth by force, and inserting a tube down her throat.
- September 13, 2007: At the instigation of prison authorities, a fellow inmate was forced to beat Ms. Mao Hengfeng for having revealed that she had been held in solitary confinement for 70 days in July and August of 2007, in violation of Article 15 of the Chinese Prison Law (which stipulates a maximum of 15 days). Ms. Mao was covered with bruises from that beating.

The UN Special Rapporteur on Torture has called on all states to ban the use of solitary confinement as a punishment and for an absolute prohibition of solitary confinement in excess of fifteen days.³

- September 24, 2007: Prison authorities sent Ms. Mao to the Nanhui prison hospital. At the hospital, Ms. Mao was tied to a bed and could move only her fingers. She was held in this condition until October 15, 2007, monitored by closed-circuit television, and force-fed by other inmates.
- June 3, 2008: She was again taken against her will to the prison hospital in Nanhui district, Shanghai. This time, Ms. Mao was stripped naked and again tied tightly to a bed. She was forcibly injected with unknown medications, which left her in great pain. Doctors also forcibly drew blood from Ms. Mao, and left her bleeding profusely. Ms. Mao was beaten once more, this time causing injuries to her breast, mouth, and genitals.
- February 23, 2010: At 2:00 am, Ms. Mao Hengfeng was arrested at her hotel in Beijing by Beijing and Shanghai police officers, and placed in administrative detention for ten days for “disturbing social order an obviously specious charge levied because she had exercised her constitutional right of free speech outside the Beijing No. 1 Intermediate People’s “Court” on December 25, 2009 by denouncing the illegal sentencing of Mr. Liu Xiaobo.
- Shortly thereafter, Ms. Mao Hengfeng’s husband, Mr. Wu Xuewei, learned that Ms. Mao had not been released at the end of her detention period in Beijing, but had instead been sentenced to one and a half years in a *Laogai* camp by Shanghai police. As you know China’s pretensions to Rule of Law notwithstanding, citizens can and regularly are sentenced to Laogai Camps under administrative regulations which involve no due process of law whatsoever.
- February 22, 2011: Ms. Mao Hengfeng was released on medical parole from the Anhui *Laogai* Camp because doctors had determined that her blood pressure had reached the level of “high risk”. She had also sustained serious injuries while in detention to the left side of her head and her lower back. Since that time, Ms. Mao has been confined to a wheelchair as a direct result of the beatings inflicted on her while in custody at the *Laogai* camp.
- February 23, 2011: More than ten police officers blocked the entrance to Ms. Mao Hengfeng’s home and prevented her from leaving the house. The police officers stayed in front of the house until February 24, 2011.

³ UN Special Rapporteur on Torture Calls for the Prohibition of Solitary Confinement, New York, October 18, 2011.

- February 24, 2011: The commandant of the Anhui Laogai Camp, along with a dozen Shanghai and Anhui police officers, entered Ms. Mao Hengfeng's home and took her away. Her husband was given a copy of the "Notice Terminating Laogai Medical Release". The Notice accused Ms. Mao of "illegal activities inconsistent with medical parole", but did not specify what those activities were.

This failure to give adequate and timely notice of the charges is a violation of Articles 14 and 9 of the ICCPR. The Human Rights Committee, in *CCPR General Comment No. 32*, states at paragraph 31,

The right of all persons charged with a criminal offence to be informed promptly and in detail...of the nature and cause of criminal charges brought against them, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of article 14. This guarantee applies to all cases of criminal charges.

The Human Rights Committee has held that "one of the most important reasons for the requirement of "prompt" information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority."⁴ An arrest and detention for a "presumed connection with subversive activities" is not sufficient for the purposes of the ICCPR, including Article 9(2), without an explanation as to "the scope and meaning of 'subversive activities', which constitute a criminal offence under the relevant legislation", particularly where the right to freedom of expression is implicated.⁵

- Early November 2012: Ms. Mao Hengfeng was again arrested and sentenced to 18 months servitude in a *Laogai* camp, under yet another illegitimate charge of "disturbing socialist order". This rather silly catchall charge was a response to Ms. Mao exercising her constitutional right of free speech to criticize China's one child policy.

Laogai camps are used to detain people without charge, trial, or any kind of due process. Hundreds of thousands continue to be held in such facilities. The use of torture at these labor camps is well documented.

LRWC is deeply concerned about the ongoing abusive and humiliating treatment to which Ms. Mao Hengfeng is being subjected while in detention. We consider her detention to be arbitrary and unlawful; the grounds for her sentencing appear to be motivated only by a desire to sanction her human rights activism. We call upon the Chinese authorities to guarantee her physical and psychological integrity in all circumstances.

The conscious, systematic persecution in China of all lawyers and human rights advocates with the courage to stand up against illegal and undemocratic acts of government, and the perpetration of mass murder and torture by government officials shocks the conscience of lawyers, jurists, and legal scholars everywhere. These criminal acts by Chinese officials violate not only every relevant international convention and covenant to which China is a signatory, but also Chinese law as well, including the Chinese Constitution.

China has a responsibility to adopt all measures necessary to guarantee the life, livelihood, and physical safety of Ms. Mao Hengfeng and of all human rights defenders in China. This duty arises from China's membership in the United Nations (UN). This same responsibility also arises under many UN treaties which China is a signatory, including the ICCPR, and the *Declaration on Human Rights Defenders* (DHRD).

⁴ Communication No. 248/1987, *Campbell v. Jamaica*, at para. 6.3.

⁵ Communication No. 33/1978, *Carballal v. Uruguay*, at paras. 12-13.

Article 1 of the DHRD states: "every person has the right, individually or collectively, to promote the protection and fulfilment of human rights and fundamental liberties at the national and international levels". Articles 9(5) and 11 require your government to conduct prompt, impartial, and effective investigations into the coercive measures taken against all these human rights defenders.

More generally, LRWC condemns the recurrent use of torture and other cruel, inhuman, and degrading treatment of human rights defenders, which violates the provisions of the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")*, ratified by the PRC more than 24 years ago, and UN General Assembly Resolution A/RES/61/153, which provides that freedom from such treatments "is a ***non-derogable right that must be protected under all circumstances***".

Please note that the National People's Congress amended the Chinese Constitution in 2004 to include the provision that "the State respects and safeguards human rights. Please note also that in April 2006, China submitted a document to the UN Secretariat in support of its candidacy for the Human Rights Council's first election. In that document China affirmed that the amendment to the Constitution was aimed at "defining the position of human rights in the overall national development strategy". As a member of the Human Rights Council, China is obligated to "uphold the highest standards in the promotion and protection of human rights", but to date China has never done so.

The recent endemic imprisonments, illegitimate court actions, surveillance, intimidations, and beatings carried out against Chinese Human Rights defenders by Chinese officials violate all the foregoing principles and obligations. Failure to protect and investigate such indefensible violations constitutes a breach of China's international duties.

LRWC calls on the Chinese Communist Party to comply with the requirements of the DHRD, UDHR, the *Basic Principles on the Role of Lawyers*, the ICCPR, and CAT.

China's systematic violations of the rights of all human rights lawyers and other human rights defenders in every part of China, is a party sharply contradict China's frequent claims to be implementing the Rule of Law. Clearly, there can be no Rule of Law, and no legal system deserving of international respect, in an environment where human rights advocates are routinely deprived of their livelihood and professional status, and even incarcerated, solely for espousing causes of which the Chinese Communist Party disapproves.

LRWC respectfully urges you to use your authority as the new leader of the CCP to act in accordance with the provisions of the aforementioned international and regional pacts and covenants ratified or signed by China. The Chinese legal system can never aspire to the respect of the international community so long as the Chinese government, "courts", police, and Justice Ministry continue to routinely violate every international convention to which China is a signatory.

We respectfully remind you that the ICCPR, to which China is a signatory, sets out a number of minimum guarantees to ensure fair trial standards. It is unfortunate that to date, the standard procedures of China's police, prosecutors, and courts have not come close to the most minimal standards set by the international community.

LRWC calls for an immediate and thorough investigation into the most recent outrageous rights violations against Ms. Mao Hengfeng, for her immediate release, and for the vacation of her latest spurious conviction by a Beijing court", clearly acting on the instructions of the CCP which you now lead. . LRWC also calls upon the government of China to take swift and effective action to ensure the security

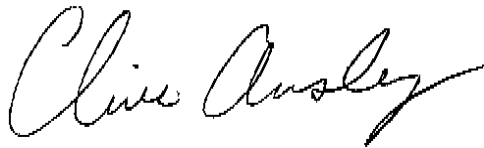
of all human rights defenders in China so they can continue to carry out their legitimate and important work of defending human rights.

Please advise LRWC by mail, e-mail or fax of the actions that the government of China is taking to:

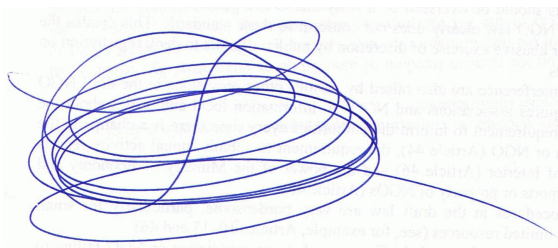
1. Implement the immediate release of Ms. Mao Hengfeng from prison;
2. Ensure the present and future safety of Mao Hengfeng and other Chinese human rights defenders;
3. Punish those who inflicted, directly or indirectly, the savage brutality and torture upon the person of Ms. Mao Hengfeng;
4. Instruct authorities to cease illegal activities against Ms. Mao Hengfeng, Mr. Gao Zhisheng, and all other human rights advocates currently being persecuted in China;
5. Release from custody Ms. Mao, Mr. Gao, and other human rights victims currently being mistreated by Chinese officials;
6. Ensure them adequate protection against further illegal assaults upon their liberty and persons, and against interference with their rights to practise their profession;
7. Direct a thorough and transparent investigation into the threats, intimidation, physical abuse, and illegal surveillance which now are everyday occurrences in the lives of Chinese Human Rights lawyers and lay advocates;
8. Ensure appropriate disciplinary measures for those responsible for the crimes committed in the name of the CCP.

LRWC awaits your response. Thank you for your attention to our concerns.

Yours truly,



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