

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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12 August 2019

His Excellency Mr. Xi Jinping, President of China
The State Council General Office
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RE: Denial of Medical Treatment to Lawyer Wang Quanzhang

Your Excellency,

We write on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations.

On 6 February 2019, LRWC, the International Association of Lawyers, the Law Society of England and Wales, Lawyers for Lawyers, and the German Bar Association [sent a joint letter](#) requesting that China annul Wang Quanzhang's conviction and immediately release him. As Mr. Wang remains in prison serving a sentence issued in violation of his rights to counsel, freedom from arbitrary detention, and due process, we continue our calls for his release. LRWC remains extremely concerned about the recent conviction and sentencing of human rights lawyer Wang Quanzhang.

This current letter calls on China to provide Mr. Wang with adequate medical care, in accordance with the international legal rights to life and to freedom from cruel and inhumane treatment. As a result of his continued incarceration, Mr. Wang has developed serious mental and physical health conditions, which require professional medical treatment. As far as we are aware, Mr. Wang has not been provided with access to any form of medical care. International law requires that all prisoners be able to access health care sufficient to ensure their mental and physical well-being. We write to request that China immediately comply with its international law obligations and provide Wang Quanzhang with medical care to treat his ongoing mental and physical ailments.

Background Information

Prior to his arrest, Mr. Wang Quanzhang practiced at the Beijing law firm Fengrui. He worked on cases of torture allegedly committed by the police, cases relating to alleged Falun Gong members, and cases involving land rights. He also notably defended political activists.

We understand that Mr. Wang was taken into custody by police on 3 August 2015. In addition, we are also aware that his whereabouts were unknown to any third party, including his family, and that he was being held incommunicado for a period lasting over three years.

On 28 January 2019, the Tianjin Municipal No.2 Intermediate People's Court (the "Court") found Mr. Wang Quanzhang guilty of "subversion of state power" and sentenced him to 4 years and six months in prison and a ban on exercising his political rights for a period of 5 years.

Mr. Wang remains in custody, more than four years after his original detention on 3 August 2015. China has not provided an account of what occurred during Mr. Wang's prolonged incommunicado detention. We are alarmed that Mr. Wang Quanzhang may have suffered serious mistreatment during this long incommunicado detention. Given the secrecy surrounding his detention, we are concerned that Mr. Wang may have been subject to torture, malnourishment, forced medication, or other forms of mistreatment that may have caused physical and mental distress.

On 28 June 2019, Mr. Wang's wife, Li Wenzu, and his son were permitted to see him for the first time since he was detained in August 2015. His wife reported that Mr. Wang had lost 30 pounds and that his memory was very hazy. She stated that Mr. Wang was a "totally changed man."

Li Wenzu again visited Mr. Wang on July 30, 2019. She reported that Mr. Wang seemed "dazed and anxious," and that he had not shown any signs of recovery compared to her previous visit in June. Following this July visit, Ms. Li immediately made an application for Mr. Wang's release on medical parole, as Mr. Wang requires immediate professional medical assistance to treat his mental and physical conditions.

Legal Right to Medical Treatment

International law requires that states provide prisoners with the most appropriate medical treatment in accordance with professional medical standards. China is bound to provide Mr. Wang adequate medical treatment.

China is a member of the United Nations Human Rights Council. As a member, China is expected to uphold the highest standards in the promotion and protection of human rights. China's actions must reflect its international responsibilities and commitments regarding human rights. It is indisputable that the rights to life and to freedom from torture and other cruel and inhumane treatment are fundamental to international human rights law, recognized in numerous international legal documents and in customary international law. China is clearly obliged to respect this right by providing medical treatment to Mr. Wang.

The United Nations Human Rights Committee's (HR Committee) has stated that international law requires¹ that adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of the right to life;² the right to be free from torture or cruel, inhuman or degrading treatment and punishment;³ and the right for prisoners to be treated with humanity and respect for human dignity.⁴

In its jurisprudence, the HR Committee often also points to the UN Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules"), which were adopted unanimously by the UN General Assembly in 2015,⁵ to reinforce the obligation of States to provide medical care and treatment for sick prisoners.⁶ The Rules specify that states are obliged to provide health care for prisoners to the same standard that is available in the community.⁷ States must provide this health care promptly.⁸ Health care professionals are also required to identify and report all ill-treatment that prisoners have been subject to while imprisoned, including psychological stress.⁹

The Mandela Rules also impose upon states an obligation to ensure that "sick prisoners who require specialist treatment shall be transferred to specialized institution or to civil hospital...."¹⁰ It is incumbent upon a state's obligation to uphold the right to life that prisoners are provided with proper medical treatment. If proper medical treatment is not available or provided in prison, the state must release the prisoner to allow them to receive proper medical care in an external medical facility. In these circumstances, it is necessary for China to permit Mr. Wang to be released on medical parole to receive adequate treatment for his mental and physical conditions.

The HR Committee has stated that "the State party by arresting and detaining individuals takes the responsibility to care for their life".¹¹ Further, the State has a duty to be proactive in

¹ See the following cases: Human Rights Committee 'Concluding Observations: Georgia' (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee 'Concluding Observations: Portugal' (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee 'Concluding Observations: Cambodia' (1999) UN Doc A/54/40 vol I 57 para 306; Human Rights Committee 'Concluding Observations: Congo' (2000) UN Doc A/55/40 vol I 43 para 282; Human Rights Committee 'Concluding Observations: Mongolia' (2000) UN Doc A/55/40 vol I 49 para 332; Human Rights Committee 'Concluding Observations: Syrian Arab Republic' (2001) UN Doc A/56/40 vol I 70 para 81(13).

² UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p 171, Article 6.

³ *Ibid*, Article 7

⁴ *Ibid*, Article 10

⁵ General Assembly Resolution 70/175, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (17 December 2015) [the "Mandela Rules"].

⁶ See, for example, Human Rights Committee, Communication No. 2146/2012: Human Rights Committee: Views Adopted by the Committee under article 5(4) of the Optional Protocol, 12 May 2017, CCPR/C/119/D/2146/2012, para 8.7, available at <http://juris.ohchr.org/Search/Details261>

⁷ *Mandela Rules*, *supra*, note 5, Rule 24

⁸ *Ibid*, Rule 27

⁹ *Ibid*, Rule 30

¹⁰ *Ibid*, Rule 22(2).

¹¹ *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

providing adequate medical care. The HR Committee has stated that it is “incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection.”¹²

Although China has not ratified the ICCPR, it is a member of the United Nations Human Rights Council, and is expected to adhere to the basic principles of international law by respecting well-recognized international legal obligations as enumerated in numerous international treaties and covenants. It is incumbent upon this membership that China respect the right to life and the right to be free from torture and other inhumane treatment.

China must also respect the provisions of the Universal Declaration on Human Rights, which further enumerates the fundamental status of the right to life¹³ and the right to freedom from “torture or to cruel, inhuman or degrading treatment or punishment.”¹⁴

The rights to life and to freedom from torture also form part of the body of customary international law, which all states are bound to respect and uphold.¹⁵ The HR Committee has recognized the right to life as “the supreme right from which no derogation is permitted.”¹⁶ Because access to medical treatment forms an integral component of the right to life, failure to provide such access can lead to serious breaches of the most fundamental protections of international law. China must respect this basic provision of international law and ensure that Mr. Wang is able to receive adequate medical treatment.

The United Nations Committee Against Torture (CAT), in its 2016 review of China, treats denial of timely and adequate medical attention and treatment as prohibited by the *Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT)¹⁷. In the same review, CAT also requires reporting, investigation and remediation by the Chinese Government. CAT recommends all instances of allegations of refusal to provide medical treatment in custody should be “promptly and impartially investigated by an independent body...”¹⁸ Further, CAT recommends that “those found responsible for deaths in custody that result from...denial of medical treatment are brought to justice and, on conviction, adequately punished”. In addition CAT recommends that, “Detained persons have access to adequate medical care, including to a doctor of their choice.”¹⁹

China has ratified the UNCAT and is bound to respect its provisions, as well as the recommendations of CAT in interpreting and applying the UNCAT. In the present case, China is obliged to respect Mr. Wang’s right to medical care, as a failure to adequately treat Mr. Wang’s medical conditions could amount to torture or other inhuman or cruel treatment.

¹² Lantsova v. Russian Federation (note 129) para 9.2.

¹³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 3.

¹⁴ *Ibid*, Article 5.

¹⁵ See UN Committee Against Torture, *General Comment No 2*, CAT/C/GC/2 (24 January 2008).

¹⁶ UN Human Rights Committee, *General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, CCPR/C/GC/36 (30 October 2019), at para 2.

¹⁷ *Concluding observations on the fifth periodic report of China*, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/CHN/CO/5, 3 February 2016.

¹⁸ *Ibid* at para. 25.

¹⁹ *Ibid* at para. 25.

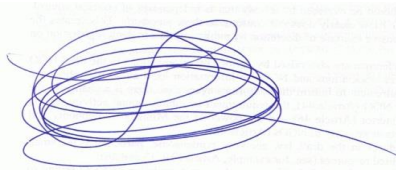
China has clear legal obligations under multiple international instruments and customary international law to respect Mr. Wang's right to life and his right to be free from torture or other inhuman and cruel treatment. In fulfilling these obligations, China must immediately allow Mr. Wang to receive adequate medical treatment for his mental and physical ailments. If this treatment cannot be provided adequately in the prison in which Mr. Wang is being held, China must allow Mr. Wang to be released immediately on medical parole in order to facilitate his access to adequate treatment in an external medical facility.

Action Requested

We request that China immediately comply with its international obligations pursuant to customary international law, its membership in the UN Human Rights Council, and the *Convention Against Torture*. Specifically, we request that China immediately grant Mr. Wang medical parole necessary to receive treatment for his mental and physical ailments.

We thank you for your attention to this very serious and urgent matter. We will continue to closely monitor this case and the cases of other members of the legal profession in China.

Respectfully,



Gail Davidson, LRWC Executive Director

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