

OPINION No. 19/1999 (CHINA)

Communication addressed to the Government on 11 January 1999

Concerning Li Hai

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. Its mandate was clarified and extended by resolution 1997/50. Pursuant to its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Group transmitted the reply provided by the Government to the source, which did not comment on the Government's reply. The Group is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the source, Li Hai had collected the names and the particulars of victims of human rights violations since the late 1980s and had conveyed his information to independent human rights organizations based abroad.

6. He was apprehended on 31 May 1995 but was not formally arrested until 5 April 1996, when he was charged with “leaking State secrets”. His trial took place on 21 May 1996. At its conclusion, he was sentenced to nine years’ imprisonment and two years’ deprivation of all his political rights. Although the sentence declared the trial to be an open one, family members were not allowed to attend the trial. The appeal of Li Hai was rejected in January 1997. It is reported that Li Hai is in poor health.

7. In its reply, the Government confirms that Li Hai was sentenced by the Chaoyang District People’s Court in Beijing to nine years’ imprisonment for “foraging into State secrets” and that his appeal was rejected by the Beijing Higher People’s Court, which upheld the lower court’s decision. The Chang’an Legal Office in Beijing assigned Mr. Wan Lindan to conduct Li’s defence in both instances. Moreover, the Government provides the following clarifications:

(a) At the beginning of 1993, Li Hai sought out and amassed a large volume of State secrets for foreign organizations, in breach of Chinese law;

(b) Because the case related to State secrets, the two courts each conducted closed hearings, in accordance with article 111 of the Code of Criminal Procedure. Regarding the claim in the communication that “the written judgement states that the trial was public, but Li’s family was not allowed into the court”, it transpired, upon investigation, that because of a proof-reading error, the original statement in the written judgement passed on Li in first instance that the trial was “not open to the public” was printed as “open to the public”. The court of second instance showed the original of the lower court’s judgement to defence counsel, and it was acknowledged that there had been a proof-reading error;

(c) According to the Government, Li Hai is now serving his sentence in a Beijing prison and is in normal health.

8. In the opinion of the Working Group, the foregoing shows that, without prejudice to the question whether Li Hai enjoyed guarantees of the right to a fair trial, as stated in the Government’s reply, he is accused of having sought out and amassed a large volume of State secrets for foreign organizations, in breach of Chinese law, but no details are given on the nature of such secrets and the source’s allegations that he was collecting names and particulars of individual cases of human rights violation is not contested.

9. Before expressing an opinion on this case, the Working Group considers that it should first answer the following question: can information on allegations or, a fortiori, evidence of human rights violations legally be characterized as State secrets?

10. In the light of its experience, the Working Group finds that:

(a) Under article 5 (c) of 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, everyone has the right “to communicate with

non-governmental or intergovernmental organizations”, for the purpose of promoting and protecting human rights and fundamental freedoms. According to article 6 (a) of the Declaration, everyone has the right, individually and in association with others, “to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”;

(b) Many procedures established by the United Nations and, in particular, by the Economic and Social Council and the Commission on Human Rights with a view to guaranteeing the promotion and protection of human rights, encourage and legitimize the collection of such information;

(c) Such a characterization would suggest that the Office of the United Nations High Commissioner for Human Rights, established by General Assembly resolution 48/141 creating the post of United Nations High Commissioner for Human Rights, is a body which keeps a large volume of State secrets;

(d) The International Covenant on Civil and Political Rights and, in particular, its article 41 on the remedy of inter-State communications, invites States themselves, not only individuals, to bring situations of human rights violations to the attention of the Human Rights Committee.

11. On the basis of the foregoing, the Working Group is of the opinion that:

(a) Such a characterization would be contrary to the international procedural standards prescribed in the field of human rights and that it can therefore not be regarded as constituting an offence;

(b) Since such information cannot be characterized as being a State secret, it is information within the meaning of article 19 of the Universal Declaration of Human Rights, which provides that freedom of expression “includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” and, since its dissemination, even outside the territory, is guaranteed by the above-mentioned article 19, such an initiative cannot, of itself, constitute an offence, much less an aggravating circumstance.

12. In other words, the Working Group considers that collecting and disseminating of information relating to allegations and, a fortiori, to evidence of human rights violations are ways of exercising the right to freedom of expression guaranteed by article 19 of the Universal Declaration of Human Rights.

13. In the light of international standards, this legal analysis demonstrates that Li Hai was sentenced to a term of imprisonment for having exercised the right to freedom of expression guaranteed to every person by the Universal Declaration of Human Rights, article 19 of which states that this right includes the right to impart information regardless of frontiers.

14. In view of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Li Hai is arbitrary, since it is contrary to article 19 of the Universal Declaration of Human Rights and falls within category II of the categories applicable in the consideration of cases submitted to the Working Group.

15. Consequently, the Working Group requests the Government to take the necessary measures to remedy the situation in order to bring its legislation on State secrets into line with international standards and principles.

Adopted on 16 September 1999