

**OPINION No. 20/2001 (CHINA)**

Communication addressed to the Government on 14 June 2001

Concerning: Wang Wanxing

**The State has signed but not ratified 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. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with 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 provided information concerning the case.

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, in 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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group welcomes the cooperation of the Government. However, it regrets that its reply was not informative enough and did not facilitate its task of investigating the case on specific points which were addressed in the letter of the Working Group's Chairperson. The Working Group transmitted the reply of the Government to the source, which provided the Working Group with its comments thereon. The Working Group believes that it 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 information submitted to the Working Group by the source, Wang Wanxing, who is said to be a veteran pro-democracy and human rights activist, has been and is still being detained in Ankang Psychiatric Hospital, Beijing. It is reported that Mr. Wang

was first detained on 3 June 1992, after attempting to unfurl a banner in Tienanmen Square in Beijing to commemorate the 1989 repression of the pro-democracy movement. He was taken against his will to Ankang Psychiatric Hospital, an institution allegedly run by the Public Security Bureau (PSB) and reserved for criminals deemed insane or a threat to society. He has spent the last nine years in this institution without trial or an independent medical examination, save for a three-month period from 19 August 1999 to 23 November 1999. After his detention, authorities pressured his wife, Ms. Wang Junying, to admit her husband's involvement in politics, assuring her that her husband would be held for no more than a month.

6. In early 1997, the authorities issued a document stating Mr. Wang had been determined to be "suffering from paranoid delusions" that caused "his attempt to disturb the social order". On 19 August 1999, he was released for a three-month probationary period, on the condition that he follow a strict set of rules imposed by the Haidian District of the Beijing PSB and the hospital authorities. These rules prevented him from contacting the press and people involved in the pro-democracy movement, and as well as from listening to international radio broadcasts.

7. On 18 November 1999, Mr. Wang telephoned Dr. Lü Qiuling, chief of staff and secretary of the Communist Party at the hospital, and informed her of his intention to convene a press conference to describe his seven years in Ankang Psychiatric Hospital. Dr. Lü reportedly told him that if he pursued his project, he would be returned to the hospital. On 23 November 1999, eight public security officers took Mr. Wang from his house and returned him to the hospital. His wife has refused to admit that Mr. Wang was mentally ill.

8. The source considers that Mr. Wang was detained simply for exercising his right to freedom of expression. The fact that Ankang Psychiatric Hospital is run by PSB supports the claim that he has not been detained for medical reasons. He was not given the benefit of a trial, and has thus been deprived of his right to due process. Because his detention falls outside the competence of the judiciary, there is no remedy available to him. The duration of his detention is unlimited and has lasted for nearly nine years already. The authorities have not provided any evidence to substantiate their allegation that Mr. Wang "attempted to disturb the social order".

9. The Government has made the following comments: Wang Wanxing, male, aged 52, ethnic Han Chinese, completed lower secondary education, and unemployed. In June 1992, Wang was removed from Tienanmen Square by policemen on duty in the square because he had gone there to conduct activities disturbing public order. Afterwards, it transpired that his mental state was not normal and, according to an appraisal by the judicial psychiatric appraisal division of Ankang Hospital in Beijing, he was diagnosed as suffering from "paranoia", and his dangerous behaviour was attributed to his state of delusion. At the time he was in Tienanmen Square conducting activities disturbing public order he had already lost his capacity for rational judgement and was no longer responsible for his actions. Afterwards, Wang underwent treatment in Ankang Hospital. In August 1998, Ankang Hospital arranged a three-month trial release of Wang, but during that period he fell ill once again and, after conducting tests on him, specialists at the diagnostic centre of Ankang Hospital came to the conclusion that Wang had suffered a relapse and had to be readmitted for observation and treatment. When the physician in charge of his case at Ankang Hospital informed Wang of this diagnosis, he expressed his acceptance. Up to the present time Wang has been undergoing treatment in hospital.

10. According to the relevant provisions of the Chinese Criminal Code, mentally ill persons whose actions can have dangerous consequences when in a state of diminished responsibility or loss of self-control, and who are confirmed as such by legal and other procedures, are not subject to criminal liability, but their family members or guardians are required to keep them under strict surveillance and to arrange for their medical treatment; if necessary, compulsory treatment is provided by government order.

11. As a mentally ill person with diminished responsibility it is perfectly normal and legitimate for Wang Wanxing to be receiving treatment in hospital; during his treatment his rights and interests have been fully safeguarded and he has never been subjected to any inhumane treatment. Wang's activities in violation of the law are attributable to his loss of self-control and are not politically motivated. The allegations that "political dissident" Wang has been taken into custody because of his political activities are utter nonsense.

12. Before taking a stand on the allegations made, the following two preliminary questions need to be answered: whether the conditions of Mr. Wang's detention are to be considered as deprivation of liberty and, if so, whether his deprivation of liberty was arbitrary.

13. The Working Group first examined whether the holding of a person in a psychiatric institution amounts to detention within the meaning of its mandate. The position of the Working Group is that keeping a person against his/her will in such an institution may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In the present case the source contends that Wang Wanxing had been held from 3 June 1992 to 19 August 1999 (and thereafter again from 23 November 1999 onwards) in Ankang Hospital without being allowed to leave it. The Government did not refute this allegation. Therefore, the Working Group concludes that the holding of Wang Wanxing in a psychiatric hospital amounts to deprivation of liberty.

14. Whether his detention is arbitrary or not depends on various factors. Against the detailed allegations of the source that the detention of Wang Wanxing was politically motivated (he was detained immediately after attempting to unfurl a banner in Tiananmen Square to commemorate the 1989 repression against the pro-democracy movement; Ankang Hospital is run by PSB; his wife has been under pressure from the authorities to admit her husband's intense interest in politics; while he was out of hospital for a probationary period he was prohibited from contacting the press and people involved in the pro-democracy movement and from listening to international radio broadcasts) the Government did not submit any evidence or arguments to the contrary. Moreover, the Government did not provide information concerning the legal provisions governing the admission to and the holding of people with mental disorders in psychiatric hospitals, the system of controlling admissions to and stay in such institutions by an independent body, be it a tribunal or a public authority, in order to prevent abuse, and the remedies available to psychiatric patients and their families to obtain a judicial review of the continued detention.

15. Since the Government failed to adduce convincing arguments or evidence to refute the allegations of the source, the Working Group cannot but conclude that the detention of Wang Wanxing in a psychiatric hospital for approximately 11 years is motivated by his political convictions which he has frequently manifested in public and to which he continues to give

expression. Therefore, on the basis of the information available to it the Working Group concludes that, in the light of the particular circumstances of this case, Wang Wanxing was and continues to be detained for having peacefully exercised his right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

16. Therefore, the Working Group expresses the following opinion:

The detention of Wang Wanxing in a psychiatric hospital is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

17. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Wang Wanxing in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 28 November 2001