

No. 16/2011 (China)

Communication addressed to the Government on 8 February 2011

Concerning: Liu Xia

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group forwarded a communication to the Government on 8 February 2011 and received a reply on 29 March 2011. The Working Group welcomes the cooperation of the Government.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).
4. The case concerns Liu Xia. The Working Group has at the same time considered the case of her husband, Liu Xiaobo (see opinion No. 15/2011 adopted on 5 May 2011).
5. The Working Group further points out that this is only one of several opinions in which it has been alleged that China is in violation of its international human rights obligations (see opinions No. 26/2010 and No. 29/2010). The Working Group reminds China of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Submissions

Communication from the source

6. The case was reported to the Working Group on Arbitrary Detention as follows: Liu Xia, born in XXXX, a national of China, usually resident in Qixian in Beijing, is a poet, artist and intellectual. Liu Xia is the wife of Liu Xiaobo, a democracy advocate and literary scholar who was awarded the Nobel Peace Prize on 8 October 2010.

7. In the days prior to the announcement of the Nobel Peace Prize, Liu Xia spoke to non-Chinese media about her fears that the Government of China would prevent Liu Xiaobo from receiving the Prize, should he be awarded it. Following the announcement of the Nobel Peace Prize on 8 October, journalists converged on Liu Xia's Beijing apartment. Police officers refused to allow Liu Xia to meet with any journalists. The following day, Liu Xia was escorted by Chinese police to see her husband in Jinzhou Prison in Liaoning Province. On 10 October, Liu Xia was brought back to her apartment in Beijing. According to the information received, the Chinese authorities placed a sign on the fence in front of Liu Xia's apartment block stating that "people in the residential compound do not accept interviews". The source reports that plain-clothes security agents stand in front of the gate to the compound, warning journalists and visitors away. Liu Xia is not allowed to leave the compound, except for short, approved trips, under police escort. Visitors to her apartment are forbidden. Liu Xia has been prevented from communicating with the outside world on the telephone or via the Internet, which were cut off in the hours following the announcement of the Nobel Peace Prize. Her mobile phone was also disconnected. A second replacement phone was also cut off. The Chinese authorities have prevented foreign diplomats from meeting Liu Xia.

Response from the Government

8. The Government's reply was received on 29 March 2011.

9. It acknowledges that the Working Group's letter has been received, and points out that the Government of China has conducted a careful investigation into the situation as mentioned in the letter. It identifies Liu Xia as female, 50 years old, Han Chinese, and a junior college graduate. It states that no legal enforcement measure has been taken against Liu Xia. It adds that China is a country of rule of law where the legal rights of the citizen are protected by the law. Finally, it requests that the content of the reply be included in the relevant file.

Comments from the source

10. The source points out that the Government has confirmed that there are no charges against Liu Xia, who has not been informed of any reasons justifying her detention. The source replies that the statement of the Government that it has taken no legal enforcement measures against Liu Xia is either an admission of the illegality of her detention—as there would be no legal basis for her continued house arrest—or incorrect. In either event, she should be immediately and unconditionally released from detention.

Discussion

11. Article 9 of the Universal Declaration of Human Rights prohibits arbitrary arrest and detention, declaring that "no one shall be subjected to arbitrary arrest, detention or exile".

12. The prohibition of arbitrary detention is customary international law, authoritatively recognized as a peremptory norm of international law or *jus cogens*; see, inter alia, the established practice of the United Nations as expressed by the Human Rights Committee in its general comment No. 29 (2001) on states of emergency (CCPR/C/21/Rev.1/Add.11, 31 August 2000, para. 11), which this Working Group follows in its opinions. Of assistance is the judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010, and in particular the discussions by Judge Cañado Trindade on arbitrariness in customary international law¹ with which the Working Group agrees. The International Covenant on Civil and Political Rights, other treaties and conventions, and the jurisprudence of the United Nations and other treaty bodies are important sources in determining the extent of what constitutes arbitrary detention in customary international law. Also important is the practice of international criminal courts, such as the ruling of the International Criminal Tribunal for the Former Yugoslavia (ICTY) cited in the present case (see para. 16 below). The constant jurisprudence of the rulings contained in the opinions of this Working Group, and of the other United Nations special procedure mandate

holders, dealing with a full range of human rights treaties and customary international law, is yet another source.

13. The Working Group will first address the issues of whether the conditions following from the restrictions on Liu Xia amount to a detention. According to the information it has received, and where the Government has not provided the Working Group with any further assistance, Liu Xia is under house arrest with limitations on her physical movements, on visits from others and on various means of communication.

14. In its deliberation No. 1 of 23 March 1992, the Working Group held that “house arrest 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 all other situations, it will devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character”.

15. In the constant jurisprudence of the Working Group this has been developed; for example, in opinion No. 2/2007 (Myanmar), the Working Group ruled that the conditions of Aung San Suu Kyi at her home in Rangoon, without contact with the outside world, constituted a detention and that the detention was arbitrary.

16. The Working Group has also been guided by the jurisprudence of the ICTY. In its 1996 ruling in the *Blaškić* case, the ICTY discussed house arrest in international law and national laws; it considered that house arrest constitutes detention and is subject to the same guarantees as detention in a prison facility.²

17. The Working Group has considered the different restrictions Liu Xia is subjected to, and holds that they amount to a detention.

18. Such measures require the full set of procedural guarantees that follow from articles 9 and 10 of the Universal Declaration of Human Rights. Liu Xia has the right to be informed of the reasons for the detention and promptly be informed of any charges against her. She has the right to be brought promptly before a judge, and the right to legal counsel. These core rights have not been observed in the case of Liu Xia. Her detention thus falls within category III of the categories applicable to the cases submitted to the Working Group.

19. The Working Group now turns to article 19 of the Universal Declaration of Human Rights, which provides that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

20. The source has argued that “Liu Xia’s deprivation of liberty is a direct consequence of her exercise of the right to freedom of expression as guaranteed under article 19 of the Universal Declaration of Human Rights”. Restrictions of the right to political free speech are strongly circumscribed by international law. In the case concerning Liu Xiaobo’s detention (see opinion No. 15/2011), the Working Group ruled that the Government had not justified the interference with Liu Xiaobo’s political free speech. The requirement of proportionality that applies to such restrictions is not satisfied by the reasons provided by the Government in that case. It follows in the Working Group’s view that the restrictions in the case of Liu Xia cannot be justified either. Her detention falls within category II of the categories applicable to the cases submitted to the Working Group.

21. Customary international law provides for an enforceable right of compensation. The Working Group has in its jurisprudence continued to develop, based on general principles, the right to a remedy, which primarily is a right to immediate release and to compensation. In this case, Liu Xia’s house arrest is to end immediately. She also has a claim to compensation.

Disposition

22. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Liu Xia, being in contravention to articles 9, 10 and 19 of the Universal Declaration of Human Rights, is arbitrary, and falls within categories II and III of the categories applicable to the cases submitted to the Working Group.

23. The Working Group requests the Government of China to take the necessary steps to remedy the situation, which include the immediate end of the house arrest, and adequate reparation to Liu Xia.

24. The Working Group would like to take this opportunity to invite China to ratify the International Covenant on Civil and Political Rights.
[Adopted on 5 May 2011]

¹See, respectively, International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports 2010*, para. 79; and Separate Opinion of Judge Cañado Trindade, pp. 26-37, paras. 107-142.

²ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-PT, Decision on the Motion of the Defence Filed Pursuant to Rule 64 of the Rules of Procedure and Evidence, 3 April 1996, paras. 19-24.