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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 29/2012 (China)

Communication addressed to the Government on 21 March 2012

Concerning Gulmira Imin

The Government replied to the communication on 30 April 2012.

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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 or her sentence or despite an amnesty law applicable to the detainee) (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; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Gulmira Imin, born in 1978, is an ethnic Uyghur of Chinese nationality from the Xinjiang Uyghur Autonomous Region.

4. Ms. Imin worked at a local government office called Tianshan Dongmen in Aksu, Xinjiang. She graduated in 2000 from the Chinese-Uyghur translation department in Xinjiang University and was a contributor to the Uyghur-language website called Salkin.

5. Between 5 and 7 July 2009, protests in Urumqi took place, which escalated into violence. The protests were widely reported in the local and international media and were said to have begun peacefully, with protesters demanding an investigation into the killing of Uyghur workers in a toy factory in Guangdong.

6. The unrest was subsequently blamed by authorities on separatist forces cooperating inside and outside the country. Ms. Imin was accused of being one of the six organizers who planned the demonstration.

7. In October 2009, a China Central Television (CCTV) documentary, entitled *The July 5 Riot from Start to Finish* specifically named Ms. Imin and showed her in prison attire. The documentary claimed that Ms. Imin had leaked State secrets to her husband, who lived in Norway, basing the allegation on the fact that she had made a series of telephone calls to him on 5 July 2009. The source reports that those telephone calls were merely to inform her husband about the demonstration. Ms. Imin reportedly informed him that the demonstration was legal and was being held to mourn the two ethnic Uyghur victims who had been killed in the incident in Guangdong. The demonstration had been publicized through the Internet several days before as a peaceful gathering. She also told her husband that police had used violence to disperse the demonstration and that numerous individuals had been killed. She further told him of the chaos that erupted during the demonstration.

8. Between 5 and 6 July, an information blackout was allegedly instituted in the Xinjiang region where the demonstration had taken place. The blackout remained in place for nearly 10 months and thereby largely cut off contact between residents and the outside world. Telephone and Internet connections were shut down or inaccessible, which made contact with Ms. Imin difficult.

9. On 14 July 2009, Ms. Imin was reportedly arrested at her home by Xinjiang National Security Forces. The arrest was based on allegations that she had planned and organized the demonstration on 5 July 2009 in Urumqi. Initially, relatives and friends believed that Ms. Imin had been killed in the aftermath of the demonstration and only learned of her detention three months after her arrest, when they viewed the CCTV documentary aired in October 2009.

10. The source submits that Ms. Imin's arrest and detention are linked to her position as a contributor to the Uyghur-language website Salkin and to her participation in the demonstration that had taken place. The source also submits that Ms. Imin had been critical

of the Government in her articles published online. The Salkin website, as well as other Uyghur-language websites, was reportedly blamed by the authorities for fomenting the unrest in July 2009.

11. The source submits that although Ms. Imin was arrested on 14 July 2009, she was only brought to trial in April 2010. It is not known where she had been detained prior to that as her family was not informed of her whereabouts.

12. Around April 2010, Ms. Imin was sentenced to life in prison by the Urumqi Intermediate People's Court. Her lawyer, whom she had never met, was also present at the trial.

13. During the trial, Ms. Imin allegedly tried to address the court with regard to the torture and ill-treatment she had experienced during her time in police custody. She also reportedly indicated that she and other detainees had been coerced into signing a document without knowing its content. Ms. Imin has reportedly been tried and sentenced along with one other Uyghur staff member of Salkin and other Uyghurs who were accused of having websites linked to the aforementioned unrest. She is currently detained at the Xinjiang Uyghur Autonomous Region Women's Prison, Urumqi City.

14. Ms. Imin's sentencing was not publicly known until August 2010. According to the source, she has tried to appeal the court decision against her, but this appeal has been rejected.

15. The source argues that Ms. Imin has not committed any discernible crime under domestic or international law and that the reason imputed by the authorities for her arrest, detention, conviction and sentencing was her alleged organization of the ethnic Uyghur demonstration on 5 July 2009. The source further states that Ms. Imin's conviction has been used to criminalize her peaceful exercise of her human rights.

Response from the Government

16. The Working Group transmitted the above allegations to the Government in a communication dated 21 March 2012, requesting detailed information about the current situation of Ms. Imin and clarification about the legal provisions justifying her continued detention.

17. The Government responded on 30 April 2012 and set out the facts as follows.

18. On 26 June 2009, clashes occurred between some Xinjiang employees and other employees at a toy factory in Shaoguan, Guangdong province, resulting in the death of two Xinjiang employees. After the incident, Ms. Imin's Uyghur-language website Qing Feng Wang, administered according to the instructions of the World Uyghur Congress, disseminated the video of the incident through the network forums and social networking tools on the website. Ms. Imin actively participated in the activities mentioned above, and reported the arrangements and the incident itself abroad, in an attempt to obtain support from overseas separatist forces. After the incident, the public security organs detained Ms. Imin in accordance with the relevant provisions of criminal law.

19. The legal procedures are set out as follows in the communication from the Government. On 1 April 2010, the Urumqi City Intermediate People's Court tried Ms. Imin's case according to the law and delivered the following judgment: due to her participation and organization, planning and implementation of the incident that caused serious consequences of endangering the society, Ms. Imin violated article 103, paragraph 1, of the Chinese Criminal Code that constitutes the offence of secession. As Ms. Imin was in charge of organizing the illegal trouble-making activities and intentionally caused serious vandalism crime on 5 July 2009, she should be severely punished, and was therefore sentenced to life imprisonment and deprived of her political rights for life. She refused to

accept the verdict and appealed against the decision. After the second trial by the People's High Court of the Xinjiang Uyghur Autonomous Region, the court dismissed the appeal and upheld the previous decision. The local courts followed the provisions of the Criminal Code and the Criminal Procedure Code in trying this case, and a defence lawyer was appointed for Ms. Imin.

20. During the trial, the court fully guaranteed the accused's right to a fair trial, including her rights to defence; the defence lawyer represented her in court. During the trial, Ms. Imin's family members were present in the courtroom. From September 2010 until 30 April 2012, she has been serving her sentence in Xinjiang Uyghur Autonomous Region Women's Prison, and is in good health.

Further comments from the source

21. The source commented on the Government's response in its letter dated 9 July 2012. It refers to the fact that the purported "illegal gatherings" on 5 July 2009 in Urumqi have been widely regarded as peaceful demonstrations by Amnesty International, the United States Congressional-Executive Commission, among others, in which Uyghurs were merely exercising their right to peacefully protest and express their concerns. Although the source concurs that the catalyst for these protests was the deaths of two Uyghurs at the toy factory, it points to other reasons for the protests, including the lack of freedom of expression, religion, language rights, and the economic disparity between ethnic groups in the Xinjiang Uyghur Autonomous Region.

22. The source also underlines that, according to many independent and international non-governmental organizations, governments and organizations, the resulting ethnic unrest following the peaceful protests were entirely the result of the heavy-handed manner in which the authorities dealt with the protesters, and not as a result of the protesters, including Ms. Imin.

23. With reference to the response from the Government that Ms. Imin had been sentenced also for "leaking State secrets" and "splittism", which are crimes of "endangering State security" under the criminal law of China, the source contends that the authorities have regularly and arbitrarily used this vague provision to criminalize Uyghurs who peacefully attempt to exercise their human rights, resulting in their prosecution and imprisonment.

24. The source also reiterates that Ms. Imin did not meet her lawyer before her trial and has only seen him twice since her conviction.

Discussion

25. 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". The right to an effective remedy and due process rights are protected in articles 8 and 10, respectively, of the Universal Declaration of Human Rights.

26. The prohibition of arbitrary detention and related due process rights are part of customary international law. The prohibition of arbitrary detention has been authoritatively

recognized as a peremptory norm of international law or *jus cogens*.¹ This is the approach which this Working Group follows in its opinions.²

27. Furthermore, article 19 of the Universal Declaration of Human Rights guarantees the right to freedom of opinion and expression. Imparting news and political opinions is at the core of the right to free expression, and restrictions are subject to a strict proportionality requirement. In addition, any restrictions must be provided by law. The Human Rights Committee, in paragraph 25 of its general comment No. 34 (2011) on freedoms of opinion and expression, provides assistance in the application of the standard contained in article 19 of the Universal Declaration of Human Rights and customary international law:

a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. ... Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

28. In paragraph 34 of general comment No. 34, the Committee also provides that “restrictions must not be overbroad” and must conform to the principle of proportionality. In addition, according to the Human Rights Committee, a State must justify “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.³ The review of overly broad criminal offences has been developed in the jurisprudence of the Working Group.⁴

29. The Working Group has stated in its deliberation No. 8 on deprivation of liberty linked to/resulting from the use of the Internet that a vague and general reference to the interests of national security or public order, without being properly explained and documented, is insufficient to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty are necessary (E/CN.4/2006/7, para. 43).

30. In the report of its 2004 official visit to China, the Working Group expressed concern regarding definitions in criminal law legislation having such vague, imprecise or sweeping elements as “disrupting social order”, “endangering national security”, “violating the unity and integrity of the State”, “subverting public order”, “affecting national security” and the like (E/CN.4/2005/6/Add.4, para. 78). The Working Group recommended that those crimes be defined in precise terms and an exception be introduced into the Criminal Code to the effect that the peaceful activity in the exercise of the fundamental rights guaranteed by the Universal Declaration of Human Rights not be considered criminal (*ibid.*).

31. Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, following his official visit to China in 2005, noted that the current political offences in the Chinese Criminal Code were overly broad and stated that:

political dissidents, journalists, writers, lawyers, human rights defenders, Falun Gong practitioners, and members of the Tibetan and Uyghur ethnic, linguistic and

¹ 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, para. 11.

² See, among others, the Working Group’s opinions on China No. 29/2010, No. 15/2011, No. 16/2011 and No. 23/2011.

³ General comment No. 34, para. 35.

⁴ See, among others, opinions No. 28/2010 (Myanmar); No. 18/2011 (Saudi Arabia) and No. 25/2012 (Rwanda).

religious minorities were often prosecuted as a result of having exercised their human rights to freedom of speech, assembly, association or religion. They are often sentenced to long prison terms for political crimes such as endangering national security through undermining the unity of the country, subversion or unlawfully supplying State secrets to individuals outside the country.⁵

32. According to the information received by the Working Group, Ms. Imin was convicted of “leaking state secrets” and “splittism”, which are crimes of “endangering State security”.

33. Ms. Imin’s case demonstrates the objections to overly broad criminal offences. The Working Group points to the facts and legal procedures as set forth by the Government in its aforementioned response. The Government refers to different forms of exercise of free speech rights, including that Ms. Imin “reported the arrangements and the incident itself abroad, in an attempt to obtain support from overseas separatist forces”. The Government continues by listing general references to “participation and organization, planning and implementation of the incident that caused serious consequences of endangering the society” and initiating “serious vandalism crime”, without making clear which of those accusations the conviction is based on, or the supporting evidence for this.

34. The Government has failed to show in a sufficiently specific and individualized manner the precise nature of the threat posed by Ms. Imin, and the necessity and proportionality of her detention and subsequent conviction. The Working Group therefore concludes that the deprivation of liberty of Ms. Imin is in contravention of articles 8, 9, 10 and 19 of the Universal Declaration of Human Rights.

Disposition

35. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ms. Gulmira Imin is arbitrary and in contravention of articles 8, 9, 10 and 19 of the Universal Declaration of Human Rights. The detention falls within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

36. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Gulmira Imin and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group emphasizes that adequate remedy, under the specific circumstances of this case, would be the immediate release of, and adequate compensation to, Ms. Imin.

37. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

[Adopted on 29 August 2012]

⁵ E/CN.4/2006/6/Add.6, para. 61.