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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)

No. 2/2014 (China)

Communication addressed to the Government on 10 October 2013

concerning Chen Kegui

The Government replied to the communication on 23 December 2013.

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 the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), 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 State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(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 aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Chen Kegui is a national of the People's Republic of China. He usually resides in Dongshigu village, Shuanghou town, Jinan County, Shandong Province, China.

5. Chen Kegui is the nephew of Chinese rights advocate Chen Guangcheng, who was the subject of a highly publicized escape from house arrest to the embassy of the United States of America in Beijing in April 2012. Following these events, the source maintains that Chen Guangcheng's extended family was the subject of reprisals. The source reports that, in the early hours of 27 April 2012, shortly after news of Chen Guangcheng's escape had surfaced, Zhang Jian, the local deputy party secretary of Shuanghou village, Jinan County, along with several party officials and dozens of hired individuals, illegally entered the home of Chen Guangcheng's extended family, where Chen Kegui lived. They did not show any search or arrest warrant.

6. The source reports that the intruders confiscated various items, restrained the residents of the house and then attacked them. Chen Kegui was reportedly beaten all over his body. The source reports that Chen Kegui used a kitchen knife to defend himself and lightly injured Zhang Jian and two other intruders. The intruders subsequently left the house, after which time Chen Kegui escaped to a nearby field, where he used a cell phone to call the Jinan County police. He was later captured by the police, who took him on 29 April 2012 to the Jinan County Detention Centre, where he spent seven months in pretrial detention.

7. After being taken into custody, Chen Kegui reported that he was forced to confess to the charges made against him and admit guilt. He was held incommunicado until early May 2012, when his family was finally notified that he was in criminal detention. On 9 May 2012, the prosecutor issued a formal arrest warrant wherein Chen Kegui was charged with committing intentional homicide under article 17 of the Chinese Criminal Procedure Code.

8. In May 2012, the family hired private lawyers from Beijing and Shanghai to defend Chen Kegui. The lawyer they attempted to hire from Jinan was allegedly threatened by the local judicial bureau with disbarment if he took the case. The authorities prohibited Chen Kegui's lawyers and family from seeing him prior to his conviction. After the lawyers insisted that they had a right to see their client, they were reportedly informed by the local Public Security Bureau that legal aid lawyers from the county judicial bureau had been appointed to represent Chen Kegui, upon his request. The private lawyers appealed the Bureau's decision to appoint the legal aid lawyers.

9. The source reports that the indictment against Chen Kegui was issued in October 2012, copies of which were reportedly not made available prior to his trial. On 30 November 2012, the legal aid lawyers gave Chen Kegui's family and his private lawyers

two hours' notice of the start of the trial. His private lawyers were unable to attend, as they could not travel from their offices in Beijing and Shanghai within the time. Chen Kegui's family was barred by officials from observing the proceedings on the grounds that they were witnesses, who could only see the trial once they had testified. The source reports that they were never called to testify and were instead detained by authorities in a police vehicle from 2.00 p.m. until 5.00 p.m., while the proceedings were taking place. Two relatives with government connections attended the proceedings. Reportedly, only local, State-controlled media organizations were admitted into the trial.

10. The source reports that during the proceedings, only written witness statements, including that of Zhang Jian, were used. None of the witnesses were available for cross-examination. In the source's view, the court also failed to consider Chen Kegui's right to self-defence. Furthermore, the individuals who allegedly forcefully entered and attacked the inhabitants of the family home were never charged. The court also admitted into evidence an allegedly coerced confession from Chen Kegui.

11. At the end of the three-hour trial, the court convicted Chen Kegui on the charge of intentional infliction of injury, under article 234 of the Chinese Criminal Procedure Code. He was sentenced to serve three years and three months in Linyi Prison. The source reports that Chen Kegui was threatened by the Public Security Bureau with life in prison if he filed an appeal or did not cooperate with party authorities. Additionally, the legal aid lawyers failed to file an appeal within the 10-day deadline. The court rejected the appeal filed by Chen Kegui's private lawyers on the basis that their submission was invalid because they were not his lawyers.

12. The family was reportedly only able to obtain a copy of the verdict after their family's lawyers demanded it from the court. At some point between 12 and 14 December 2012, Chen Kegui's father was summoned to the police station, where two court judges and two court police officers gave him a statement, purportedly written by Chen Kegui, alleging that he had admitted guilt and did not want to appeal the verdict. However, his family maintained that the handwriting in the statement was not Chen Kegui's, which would indicate that the document had been forged. The family filed a motion on behalf of Chen Kegui to have the case reconsidered, but have yet to receive a reply.

13. After the conviction, the prison authorities denied Chen Kegui's family access to visit him until January 2013, since when he has been allowed one visit per month of 20 minutes' length by one family member. Chen Kegui has reportedly been tortured in prison; this has included severe beatings and sleep and food deprivation. Chen Kegui conveyed that the authorities threatened to harm or kill his family, including his child, if he did not cooperate. The family reports visible signs of the abuse he has suffered, including significant weight loss, signs of physical injury and emotional distress. Medical treatment for injuries that he sustained as a result of the beatings has been withheld. The source states that Chen Kegui was refused immediate hospitalization for his presumed appendicitis, and once hospitalized was thereafter inadequately treated.

14. The source maintains that the Government has continued to harass and intimidate the Chen family. Around the anniversary of Chen Kegui's arrest, the police arrested and interrogated his mother and uncle. Individuals have repeatedly thrown dead birds, rocks and bottles at the family's home. Government officials have reportedly threatened to abduct Chen Kegui's son from his preschool. Police officials detained his father twice in August 2013 during a trip to Shanghai.

15. On the basis of the foregoing, the source submits that the detention of Chen Kegui constitutes an arbitrary deprivation of his liberty under categories II and III of the legal categories defined by the Working Group on Arbitrary Detention.

16. The source argues that the Chinese Government has violated a number of procedural requirements under domestic and international law in the case of Chen Kegui, including having tortured him, conducted an illegal search and arrest, failed to promptly notify his family of his detention, restricted his access to legal counsel of his own choosing during his detention and trial, restricted his right to examine witnesses during his trial, and denied him a fair and public trial.

17. The source argues that those actions violate articles 5 and 10 of the Universal Declaration of Human Rights; articles 7, 9 (2), 14 (1), 14 (3) (b, d, e, g) and 14 (5) of the International Covenant on Civil and Political Rights; principles 10, 15, 16 (1), 16 (4), 18 (1) and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; articles 3, 33, 34, 47, 50, 54, 64, 83, 91, 109, 111, 183, 245 and 247 of the Chinese Criminal Procedure Code; and article 178 of the Rules and Regulations for Criminal Procedure Law for the People's Prosecutor's Office.

18. The source submits that the Chinese Government detained Chen Kegui because he exercised the right to freedom of association with his uncle, Chen Guangcheng, pursuant to article 20 (1) of the Universal Declaration of Human Rights, article 22 (1) of the International Covenant on Civil and Political Rights and article 35 of the Constitution of the People's Republic of China. It argues that the Government then used Chen Kegui's act of self-defence as an excuse to imprison him in retaliation for his uncle's activities. In the source's view, Chen Kegui's actions in self-defence do not limit his right to freedom of association in the present case, as set out in article 22 (2) of the International Covenant on Civil and Political Rights.

Response from the Government

19. The Working Group transmitted the above allegations to the Government in a communication dated 10 October 2013, requesting detailed information about the current situation of Chen Kegui and clarification about the legal provisions justifying his continued detention.

20. The Government, in its reply dated 23 December 2013, set out the facts as follows: On 27 April 2012, Chen Kegui intentionally injured Zhang Jian and two others with kitchen knives, causing injury. He was tried in public and on 3 December 2012 was sentenced by Yinan County People's Court, in Shandong Province, to three years and three months of imprisonment. Chen Kegui was satisfied with the verdict and did not appeal it. Currently he is serving his sentence at Linyi Prison in Shandong Province.

21. The Government confirms that Zhang Jian, head of the local government, after learning that Chen Guangcheng had entered the embassy of the United States by unusual means, visited the home of his brother, Chen Guangfu, who is Chen Kegui's father. Zhang Jian and his colleagues demanded that Chen Guangfu cooperate with them and disclose information about Chen Guangcheng. Chen Guangfu agreed and left with Zhang Jian and his colleagues. Later, Zhang Jian, along with two of his colleagues, returned to Chen Kegui's home to retrieve his lost cell phone. Once there, Chen Kegui came out of his room with two kitchen knives. After recognizing Zhang Jian, he moved towards him, at which time one of Zhang Jian's colleagues attempted to seize Chen Kegui's knives. In the process, Chen Kegui caused serious injury to Zhang Jian and minor injury to his colleagues, before fleeing. The Government adds that these facts were confirmed by the three victims and several eyewitnesses. Furthermore, Chen Kegui confessed that he knew Zhang Jian and intentionally caused him injury. The Government concludes that there is no factual basis to the allegation that Chen Kegui acted out of self-defence.

22. The Government confirms that Chen Kegui was criminally detained on 30 April 2012, and that the Yinan Public Security Bureau delivered the detention notice to his father

on the same day. On 9 May 2012, following the public security organ's announcement of his arrest, it delivered the arrest notice to Chen Kegui's mother, that day. It asserts that both parents acknowledged receipt of such notification.

23. The Government asserts that during the investigation stage, on 9 May 2012, Chen Kegui filed an application to receive legal aid, which was granted the next day. Two lawyers were appointed to him, with whom he met with several times. During the prosecution stage, on 10 October 2012, Chen Kegui filed an application requesting the same two legal aid lawyers to represent him, and he met with them the same day. During the trial stage, on 30 November 2012, the two lawyers defended Chen Kegui. The court additionally authorized Chen Kegui to represent himself. The Government asserts that other lawyers, beyond Chen Kegui's two legal aid lawyers, have no right to intervene in the proceedings.

24. The Government reports that because Chen Kegui's mother and father were witnesses in his case, they were not permitted to attend the trial. They were not called to give testimony, in light of the sufficient and objective evidence presented, in addition to Chen Kegui's self-confession of his criminal behaviour. On 30 November 2012, the Yinan County People's Court held a public hearing with 50 fifty people present, including Chen Kegui's uncle, other locals, and journalists.

25. On 14 December 2012, ten days after the issuance of the verdict by Yinan County People's Court, Chen Kegui submitted a written statement to the court, waiving his right to appeal.

26. On 25 July 2013, Chen Kegui's father petitioned Yinan County People's Court for a retrial of the case. After examining the application, the Court orally informed Chen Kegui's father that the grounds for the petition had not been established and undertook to produce a written response later on.

27. Finally, regarding visits to the prison by his family and ill-treatment in prison, the Government believes that all due care has been taken in accordance with the legislation in force, so that Chen Kegui can enjoy all of the rights guaranteed under that legislation. From January 2013 to October 2013, Chen Kegui met with his family 10 times, for a half an hour each time.

Further comments from the source

28. In its comments on the Government's response, dated 26 March 2014, the source argues that the Government confirms the arbitrary nature of Chen Kegui's detention, and in particular, the political motives behind his arrest, by failing to dispute that its motivation in this case is Chen Kegui's association with his uncle, Chen Guangcheng, and that the confrontation that led to Chen Kegui's arrest began with an intrusion into the family home. According to the source, the Government's reply also fails to adequately address the post-arrest procedural violations in the case.

29. The source's comments also contain information that cannot be stated here, as those details were not communicated to the Government as part of the initial communication.

Discussion

30. 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, 10 and 11 of the Universal Declaration of Human Rights.

31. The Working Group recalls its deliberation no. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law.¹ In citing the major international and regional instruments for the promotion and protection of human rights in which the prohibition of arbitrary deprivation of liberty is recognized, the Working Group noted that detailed prohibitions of arbitrary arrest and detention were also contained in the domestic legislation of States not party to the International Covenant on Civil and Political Rights.² The Working Group concluded that the prohibition of arbitrary deprivation of liberty was part of treaty law and customary international law, and constituted a *jus cogens* norm.³

32. In the case of Chen Kegui, the following is alleged: an arrest, without a warrant, made in the course of an intrusion into a home; ten days of custody, from 29 April to 9 May 2013, without the petitioner having been informed of the charges against him; confessions made under duress; barriers that prevented his appointed counsel from preparing his proper defence; the inability to be represented by the lawyer chosen by his family to defend him; a closed hearing; the inability to cross-examine witnesses testifying against him; barriers in the exercise of remedies (by appeal); and the lack of an official response to the appeal filed on his behalf by his family.

33. Although the Working Group is pleased that the Government responded to its letter, it nonetheless regrets that it has not responded in an explicit and fulsome manner to all the allegations cited in the communication. In its response, the Government did not make a statement specifically on the fact that Chen Kegui was detained from 29 April to 9 May 2012, for 10 days, without being notified of the charges against him; on the confessions obtained under duress; on the fact that the lawyer appointed by the family of the defendant was unable to intervene in the proceedings; and on the impossibility of cross-examining witnesses at the hearing. Finally, the source contests the waiver of the appeal, and also notes the absence of a formal written response to the appeal against the conviction as brought by the family of Chen Kegui on his behalf.

34. All these violations have not been the subject of an adequate response by the Government, and constitute major obstacles to the holding of a fair trial that guarantees and respects the fundamental rights of the defence, as set out in articles 9, 10 and 11 of the Universal Declaration of Human Rights. The Working Group therefore concludes that the deprivation of liberty of Chen Kegui is considered to fall within category III of the categories applicable to the consideration of cases submitted to the Working Group.

35. The Working Group dismisses the argument that the case also falls within category I of the categories applicable to the consideration of cases of submitted to the Working Group, as the knife injuries for which Chen Kegui was pursued are not disputed.

Disposition

36. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Chen Kegui is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories referred to by the Working Group when considering the cases submitted to it.

¹ A/HRC/22/44, paras. 37–75.

² Ibid., para. 46.

³ Ibid., para. 51.

37. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Chen Kegui and the granting to him of compensation for the harm he has suffered during the period of his arbitrary detention.

38. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps that they have taken.

39. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights, which it signed on 5 October 1998.

[Adopted on 22 April 2014]
