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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session (25–29 August 2014)

No. 21/2014 (China)

Communication addressed to the Government on 9 September 2013

Concerning Wang Hanfei

The Government replied to the communication on 30 October 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 States 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 which 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. Wang Hanfei (hereinafter Mr. Wang), a national of the People's Republic of China, born on 10 December 1966, was the editor of the Hong Kong-based journal, "*China Special Report*", a registered publication since 2009.

5. On 15 July 2012, Mr. Wang was arrested in Jiahe County by the Chenzhou City Public Security Bureau. No warrant was presented for his arrest. He was thereafter detained at Chenzhou Municipal Detention Centre and, on 7 May 2013, transferred to Chenzhou No. 1 Prison, where he remains today.

6. On 13 December 2012, the Beihu District People's Court in Chenzhou City, a first-instance trial court, convicted Mr. Wang pursuant to articles 225 and 266 of the Criminal Law of the People's Republic of China. Mr. Wang was found to have carried out illegal business activity for having printed approximately 6,000 copies of *China Special Report* in Shenzhen, Guangdong Province. He was also found guilty of fraud for allegedly requesting each employee in charge of *China Special Report* reporting stations in China to pay a deposit of 20,000 yuan to him.

7. The source reports that article 225 of the Criminal Law stipulates a fixed-term imprisonment of not more than five years to those who, in violation of State regulations, commit any of the following illegal acts in business operations and thus disrupts the market order: "(1) without permission, dealing in goods that are designated by laws or administrative rules and regulations as goods to be dealt in or sold in a monopoly way of other goods that are restricted in trading; (2) buying or selling import or export licenses, import or export certificates of origin or other business licences or approval papers required by laws or administrative rules and regulations; or (3) without approval of the competent State department, illegally engaging in securities, futures or insurance business; and (4) other illegal operations that seriously disrupt market order." Article 266 stipulates a fixed-term imprisonment of not more than three years to those who swindle public or private money or property.

8. Mr. Wang's appeal before the Chenzhou Intermediate People's Court in Chenzhou City on 4 March 2013 resulted in the verdict of the lower court being upheld. On 20 April 2013, the Court sentenced Mr. Wang to four years' imprisonment, due to expire on 14 July 2016. The source reports that activists were blocked from observing the trial. Furthermore, Mr. Wang's wife, Li Xuehong, was warned, by authorities, to keep silent about the case and has also been prevented from visiting her husband.

9. The source reports that Mr. Wang had published articles in *China Special Report* that disclosed alleged financial corruption, criticized Chinese authorities, and reported on the experiences of human rights activists in China. The source notes that Mr. Wang's arrest

on 15 July 2012 took place after he had exposed the alleged corruption by the Secretary of Chenzhou Communist Party and praised Nobel Laureate Liu Xiaobo. The source submits that Mr. Wang's sentence is a retaliatory measure for his having published articles that the authorities deem as being politically sensitive.

10. The source further reports that Mr. Wang has been seriously injured as a result of beatings suffered in prison. On 19 May 2013, his wife visited him in Chenzhou Prison and provided an eyewitness account of the stitches on Mr. Wang's face, as well as of impairment of his hearing as a result of his having been severely beaten on his left ear. Mr. Wang conveyed to his wife that prisoners were forced to work more than 15 hours a day and he had been beaten frequently since he could not complete the heavy load of work tasks.

11. The source argues that Mr. Wang has been convicted of multiple crimes and given a harsh sentence solely on the basis of the peaceful exercise of his rights guaranteed under the Universal Declaration of Human Rights. Mr. Wang has also been denied his right to a public trial. In light of the foregoing, the source submits that Mr. Wang's deprivation of liberty may be considered arbitrary under categories II and III of the categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

12. In its response of 30 October 2013, the Government provided the Working Group with the following information.

13. The Working Group received the material translated into one of its working languages on 24 June 2014.

14. Mr. Wang registered the establishment of the Hong Kong Independent Media Group Limited in Hong Kong and later established the *China Special Report* magazine.

15. Since 2009, *China Special Report* has illegally and without authorization established so-called correspondents' bureaux, liaison offices and agencies in over 10 provinces, districts and cities on the mainland, and has recruited numerous so-called reporters to carry out illegal interviewing and editing activities.

16. Mr. Wang and others charged "sponsorship fees" for the publication of articles in *China Special Report* and nominal "bureau management fees" for the establishment of correspondents' bureaux, seeking to secure illegal financial gains. On 15 July 2012, the public security agency in Chenzhou detained Mr. Wang on suspicion of fraud, in accordance with the law. On 13 December 2012, the Beihu District People's Court in Chenzhou, Hunan Province, began hearing the case in an open session, in accordance with the law, and found that Mr. Wang had intended to defraud others of 60,000 yuan — an enormous sum — and to conceal his true intentions, and that his behaviour constituted fraud. Mr. Wang violated national regulations by printing and publishing illegal publications that seriously threatened the social order and destabilized the market. The circumstances were serious; his conduct constituted illegal business operations.

17. On 24 December 2012, the first instance court issued a verdict, sentencing the accused, Wang Hanfei, to 3 years and 6 months' imprisonment and a fine of 10,000 yuan for fraud; and 6 months' imprisonment and a fine of 5,000 yuan for the offence of conducting illegal business operations. However, the court decided that he should serve 3 years and 6 months in prison and pay fines of 15,000 yuan.

18. Mr. Wang did not accept the first instance decision and appealed against it. On 3 April 2013, the Chenzhou Intermediate People's Court, Hunan Province, tried the case in an open session, in accordance with the law, and came to the same findings regarding the facts as the first instance court, and on 18 April 2013, it issued a ruling rejecting the appeal

and upholding the original decision. In accordance with the relevant provisions of the Criminal Procedure Law of the People's Republic of China, the courts at both levels heard the case in open sessions, and fully respected Mr. Wang's legal rights. Mr. Wang hired a lawyer to defend him in court, and Mr. Wang's wife was among the numerous friends and relatives who attended the proceedings.

19. Mr. Wang is currently serving his sentence at Guiyang Prison, Hunan Province. It has been determined, after investigation and verification, that the educational and vocational training activities for prisoners are carried out strictly in accordance with the law, and that Mr. Wang has not been beaten or subjected to severe overtime work assignments.

Further comments from the source

20. In its comments, the source reiterates the allegations of mistreatment of Mr. Wang in prison.

21. With regard to the conviction for "illegal business activity", the source notes that the reason given by the Government is that Mr. Wang had printed around 6,000 copies of his Hong Kong-based journal, *China Special Report*. The source recalls that after the conviction, Mr. Wang's attorney said in his interview that, according to the Criminal Law of China, only the printing company, and not Mr. Wang, could conceivably be charged for printing 6,000 copies of *China Special Report* in Hong Kong.

22. Article 225 of the Criminal Law stipulates a fixed-term imprisonment of not more than five years to those who, in violation of State regulations, commit any of certain illegal acts in business operation and thus disrupts the market order, and if the circumstances are serious ("illegal business activity").

23. The source considers that the vague provision of article 225 of the Criminal Law, which criminalizes some unspecified "other illegal operations that seriously disrupt market order", is open to arbitrary interpretation and provides the Government with further means to punish individuals exercising their right of free expression. In particular, the source believes that the strict censorship by the Government, as provided for in Chinese law, severely deprives citizens of the right of free expression that is guaranteed by the Universal Declaration of Human Rights. It is under such censorship that the Government, by applying article 225 of the Criminal Law, essentially prohibits foreign and Hong Kong publications that address issues of rights and democracy from being printed, published and sold in mainland China.

24. With regard to the conviction for fraud, the source maintains that, as Mr. Wang argued in his final statement at trial, the money collected from the reporters was merely a deposit to guarantee that said reporters would follow through on their obligation to write reports for the publication, an agreement that the reporters accepted and acknowledged. Therefore, there was no incidence of "fraud" or intention of "possessing other individuals' property" on the part of Mr. Wang, which is required by article 266 of the Criminal Law as the basis to convict under such charge.

Discussion

25. The Working Group considers that the vague provision of article 225 of the Criminal Law, which criminalizes unspecified "other illegal operations that seriously disrupt market order", is open to arbitrary interpretation and prosecution of political opponents.

26. The case under consideration demonstrates that the unrestricted interpretation of the vague provision of "other illegal operations" has been applied to prosecute persons peacefully exercising the right to freedom of expression. The Government essentially

prohibits Hong Kong publications that address issues of rights and democracy from being printed, published and sold in mainland China. In its response, the Government states that Mr. Wang violated national regulations by printing and publishing “illegal publications” that, inter alia, “seriously threatened the social order”.

27. In fact, it is the Government which exploited the vagueness of article 225 to justify the prosecution of Mr. Wang for peacefully exercising his fundamental rights that are protected by international law. More specifically, Mr. Wang, the editor of the Hong Kong-based journal, *China Special Report*, was convicted for publishing articles that disclosed alleged financial corruption; criticized Chinese authorities; and reported on the experiences of human rights activists in China.

28. Concerning the conviction for fraud, the Government did not address Mr. Wang’s arguments at trial that the money collected from the reporters was merely a deposit to help guarantee that they would follow through on their obligation to write reports for the publication, an agreement that the reporters accepted and acknowledged.

29. The Government also did not rebut the allegation that Mr. Wang’s conviction was a retaliatory measure for publishing articles that the authorities deemed politically sensitive. In particular, Mr. Wang was arrested in July 2012, after exposing alleged corruption by the Chenzhou Communist Party Secretary and after praising Nobel Laureate Liu Xiaobo. Moreover, in its response, the Government did not make any reference to the evidence on the basis of which Mr. Wang was convicted, namely that the collection of money was fraudulent.

30. The Working Group reiterates that, in cases like the one under consideration, where there is a prima facie reliable allegation that a prominent human rights defender is deprived of liberty for a regular crime but, in fact, the person is being punished for the exercise of his or her fundamental rights, the burden is on the Government to provide the Working Group with reference to at least some specific evidence on which the conviction is based.¹

31. The Working Group considers that Mr. Wang has been deprived of liberty for having peacefully exercised his right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights. Thus, the deprivation of liberty of Mr. Wang falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to the it.

32. Regarding the source's allegation of violation of the right to a fair trial, namely, the right to a public hearing, the Working Group considers that, considering the information received from the source and the Government, it does not have sufficient information to conclude whether or not there has been violation of the right in question.

Disposition

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

The deprivation of liberty of Mr. Wang is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights; it falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

34. Consequent upon the opinion rendered, the Working Group requests the Government of China to take the necessary steps to remedy the situation of Mr. Wang and

¹ See Working Group on Arbitrary Detention, opinion no. 24/2013 (Cambodia), para. 14.

bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

35. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Wang.

36. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 25 August 2014]
