



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April-4 May 2012****No. 7/2012 (China)****Communication addressed to the Government on 16 January 2012****Concerning: Chen Wei****The Government replied to the communication on 17 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 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 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. Mr. Chen Wei, a Chinese citizen, is a human rights activist.
4. The source reports that on 20 February 2011, Mr. Chen was summoned for interrogation by Chinese National Security officers from a unit in the Suining City Public Security Bureau. It is unknown whether Mr. Chen was presented with a warrant or any other decision by a public authority. Mr. Chen's home was subsequently searched and officers allegedly confiscated his computer and other materials belonging to him. Mr. Chen was placed in Suining City Detention Centre, where he remains to date.
5. The source reports that on 21 February 2011, the Suining City Public Security Bureau issued a formal notice stating that Mr. Chen was being detained on a criminal charge of "inciting subversion of State power" under Article 105(2) of the Criminal Law of the People's Republic of China. On 28 March 2011, it announced that Mr. Chen had been formally arrested on the same charge.
6. Since his arrest, Mr. Chen has been refused access to his family and has had very limited access to his lawyers. Mr. Chen was brought to trial on 23 December 2011 before the Suining Municipal Intermediate People's Court of Sichuan Province on charges of "inciting subversion of State power". He was sentenced to nine years' imprisonment and deprivation of his political rights for a further two years.
7. The source alleges that the indictment against Mr. Chen referred to articles he wrote for foreign websites on topics related to the political system and human rights in the People's Republic of China.
8. The source reports that Mr. Chen was one of the students who participated in the 1989 protests held in Tiananmen Square. He had been imprisoned in Qincheng prison in Beijing and released in January 1991. Subsequently, in May 1992, Mr. Chen was again arrested for commemorating the events of 4 June 1989, and for organizing a political party, and was sentenced to five years' imprisonment. According to the source, Mr. Chen has in recent years emerged as a leading figure in the organization of various human rights activities in Sichuan Province alongside Mr. Liu Xianbin, who is the subject of Opinion No. 23/2011 of the Working Group. Mr. Chen is also a signatory of Charter 08, a document containing a number of reform proposals which was co-written by Mr. Liu Xiaobo, who is the subject of Opinion No. 15/2011 of the Working Group.
9. On 26 December 2011, the United Nations High Commissioner for Human Rights expressed concern that "[t]he conviction and extremely harsh sentencing of Chen Wei indicates a further tightening of the severe restrictions on the scope of freedom of expression in China that has been seen over the last two years". The United Nations High Commissioner for Human Rights called "upon Chinese authorities to release any person detained for peacefully exercising his or her right to freedom of expression".
10. In light of the foregoing, the source submits that Mr. Chen's detention is arbitrary as it arises from the peaceful exercise of his rights to freedom of opinion and expression as provided for under article 19 of the Universal Declaration of Human Rights.

Response from the Government

In its response, the Government provided the Working Group with the following information:

11. Mr. Chen Wei, unemployed, had been sentenced in December 1994 to five years' imprisonment for the offence of endangering national security and deprived of political rights for two years. He was released on 28 May 1997.

12. On 23 December 2011, Sichuan province Suining City Intermediate People's Court conducted a trial and found that, since 2009, Mr. Chen had seriously violated specific regulations of Chinese Criminal Law endangering society by way of rumours, defamation, etc. to slander and to instigate the overthrow of the existing State power. The court concluded that he should be punished according to the law.

13. Mr. Chen had been sentenced for the offence of endangering national security, did not repent after serving his previous sentence and again committed the offence of endangering national security. As a repeat offender, he should therefore be punished severely according to the law.

14. The Court of First Instance sentenced Mr. Chen to nine years' imprisonment for the offence of inciting subversion of State power, and deprived him of political rights for two years.

15. During the trial proceedings, the Court had fully guaranteed Mr. Chen's litigation rights, except for that of self-representation; however the two lawyers assigned to him also fully delivered their opinions.

16. Mr. Chen's relatives were present at the hearing. The Court handled the case fully in accordance with the law and facts, the trial procedures were legal, and there was no question of arbitrary detention. After the Court announced its first instance verdict, Mr. Chen refused to accept the verdict and appealed against the decision. The first instance verdict of the Court has already become legally effective.

Further comments from the source

17. The source opined that the Government has presented no evidence or arguments (other than concluding statements) to refute the allegation that Mr. Chen's detention was and remains arbitrary under international human rights law because he is currently serving a nine-year prison sentence for "inciting subversion of State power" (Article 105(2) of the Criminal Law) solely for his writings. The indictment issued in his case cites as "evidence" of "inciting subversion" four essays written by Mr. Chen between March 2009 and January 2011: "The Disease of the System and the Medicine of Constitutional Democracy;" "The Key to China's Democratization is the Growth of a Civil Opposition;" "The Feet of the Rights Defence [Movement] and the Brain of the Constitutional Democracy Movement;" and "Thoughts on Human Rights Day Hunger Strike."

18. In the source's view, the Government's reply merely repeats the indictment's assertions that Mr. Chen's writings constituted "spreading rumours" and "defamation." It is clear that Mr. Chen's alleged offences were exercises of free expression protected not only by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (which China has signed but not ratified), but also by China's Constitution (Article 35). Accordingly, the source contends that Mr. Chen's deprivation of liberty is arbitrary under category II of the Working Group's methods of work.

19. With respect to the Government's claim that the court fully guaranteed Mr. Chen's procedural rights, including his right to self-defence and that his lawyers were permitted to fully present their defence opinions, it is not, in the source's view, supported by the facts.

Chinese authorities consistently prevented Mr. Chen from meeting with the defence counsel during his pre-trial detention, in violation of article 33 of the Chinese Lawyers' Law. Mr. Chen met with a lawyer only three times between 20 February 2011—the day he was detained—and 23 December 2011 – the day he was tried. Before the trial, Mr. Chen's lawyers were warned by police not to get “tied up in details” during their defence statements and not to give any media interviews. During the trial, Mr. Chen was not permitted to make a final statement in his defence – in violation of article 160 of the Criminal Procedure Law of China. In addition, only three of Chen's supporters (his wife, sister and brother) were present at the hearing, as numerous police surrounded the courthouse and packed the courtroom with government officials. More than 200 police vehicles blocked off roads leading to the courthouse to prevent supporters from attending the proceedings, and police forcibly dragged away activists who approached the scene. Mr. Chen's trial proceeded as a *de facto* closed hearing, in violation of article 152 of the Criminal Procedure Law, which requires first instance trials to be heard in public. The source concludes that, in light of the deprivation of Mr. Chen's fair trial rights, his detention is also arbitrary under Category III.

Discussion

20. In its response, the Government does not refute the allegation that Mr. Chen was convicted for the online publication of his articles calling for democratic reforms. However the Government stated that Mr. Chen was arrested and sentenced for “inciting subversion of the State power and overthrow of the socialist system.”

21. The Working Group considers that Mr. Chen was arrested and convicted for the exercise of his right to freedom of expression through the publication of articles and reports critical of the authorities. The fact that these peaceful expressions of opinion are criminalized under domestic law as the “incited subversion of State power and overthrow of the socialist system” does not deprive him of his right under article 19 of the Universal Declaration of Human Rights. In this regard, the Working Group recalls that in another Opinion concerning the People's Republic of China it emphasized that, although national laws might punish such conduct, it is, however, protected by the rights to freedom of opinion and expression and association in international law.¹

22. The Working Group reiterates that, in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights. Consequently, even if the deprivation of liberty is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law.²

23. The Working Group recalls that the holding and expression of opinions, including those which are not in line with official government policy, are protected by article 19 of the Universal Declaration of Human Rights.

24. In the Working Group's view, Mr. Chen was deprived of his liberty for peacefully exercising his right to freedom of opinion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights. Mr. Chen's deprivation of liberty thus falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

¹ Opinion No. 32/2007 (China) of the Working Group on Arbitrary Detention, para. 27.

² See, *inter alia*, Opinion No. 13/2007 (Viet Nam) of the Working Group on Arbitrary Detention, para. 29.

25. The Working Group shares the concern of the United Nations High Commissioner for Human Rights that “[t]he conviction and extremely harsh sentencing of Chen Wei indicates a further tightening of the severe restrictions on the scope of freedom of expression in China that has been seen over the last two years”.³

Disposition

26. In the light of the above, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Chen is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

27. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Chen Wei and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

28. The Working Group believes that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Chen and grant him an enforceable right to compensation.

29. The Working Group also calls upon the Government to consider ratifying the International Covenant on Civil and Political Rights.

[Adopted on 2 May 2012]

³ See “China: UN deeply concerned by conviction of human rights activist”, UN News Centre, 26 December 2011.