



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. 4/2014 (China)****Communication addressed to the Government on 14 August 2013****Concerning Ms. Ma Chunling****The Government replied to the communication on 25 September 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 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47,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);



(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. Ms. Ma Chunling, female, a citizen of China, is married and has a 10 year-old son. She has been a practitioner of Falun Gong.

4. In September 1999, Ms. Ma Chunling went to Beijing to petition for the right to practise Falun Gong. She was accompanied by her husband, who is not a Falun Gong practitioner. According to the source, they were both arrested by officers from Xiuyue Police Department and held at Liaoyun Detention Centre for an unspecified duration.

5. The source submits that on 18 May 2000 the authorities extracted a sum of 6,000 yuan from Ms. Ma Chunling and held her in detention for over a month. At the same time, a sum of 7,000 yuan was reportedly extracted from her husband and he was detained at Yaojia Detention Centre for two months. Soon thereafter he was dismissed from his employment at a water supply company.

6. The source reports that on 29 August 2012, Ms. Ma Chunling met an individual, who claimed to be a sailor, near Qingniwa Bridge in Dalian. She discussed the practice of Falun Gong with him and gave him a digital versatile disc (DVD) of the Shen Yun Performing Arts. The source alleges that the sailor reported Ms. Ma Chunling's affiliation with Falun Gong to the police.

7. Later the same day, Ms. Ma Chunling and her husband were arrested at their Dalian home by officers from the Beixhan Police Department in Dalian because Ms. Ma Chunling had publicly expressed her views about the practice of Falun Gong. They were allegedly interrogated for four hours before being released.

8. The source reports that on the day of her arrest, Ms. Ma Chunling's house was searched by six police officers, including Liu Tao and Xiao Dongyun, from the Xigang Police Department in Dalian. At that time, the officers seized two computers, one printer, three mobile phones and all Falun Gong books, flyers and materials. No warrant was produced for the search and seizure.

9. According to the source, Ms. Ma Chunling was severely beaten and injured by police agents on 5 September 2012, allegedly in retaliation for having reported the above-mentioned incidents internationally. The beatings caused severe bruising and abrasions on her body. She sustained serious injuries and required several stitches. Ms. Ma Chunling was thereafter detained in Jinjia Street Custody Centre in Dalian for an unknown period of time before being transferred to Yaojia Detention Centre in Dalian.

10. The source reports that Ms. Ma Chunling is currently being detained at Masanjia Labour Camp, where she has been sentenced to two years of re-education through labour. Labour camp officials have reportedly denied her family any visitation rights.

11. There is no information on whether the authorities presented an arrest warrant, detention order or any other written document justifying the detention of Ms. Ma Chunling.

It is also unknown whether she was ultimately charged with an offence and has had the opportunity to contest the allegations against her in a court of law.

12. The source alleges that the authorities are persecuting Falun Gong practitioners and submitting them to ill-treatment and torture. It cites two dates, 29 August 2012 and 5 September 2012, on which Ms. Ma Chunling had blood drawn and was submitted to other medical tests whilst in detention. In the source's view, this was done to ascertain her blood type and match tissue for possible future live organ transplants.

13. The source submits that the detention of Ms. Ma Chunling is devoid of any legal basis. Further, it is incompatible with her right to freely express, in a peaceful manner, her religious beliefs and political opinions, and with her right to peacefully demonstrate. As such, it is in contravention of articles 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights.

Response from the Government

14. In its response of 25 September 2013, the Government informed the Working Group that in 1999 and 2000 Ms. Ma Chunling had been lawfully placed in administrative detention and ordered to undergo re-education through labour for having disrupted the social order.

15. In August 2012, the Re-education through Labour Committee of the Municipal People's Government of Dalian, Liaoning Province, lawfully ordered her to undergo re-education through labour for having disrupted the social order once again. According to the Government, during that period, the Chinese public security authorities handled the case in accordance with the law, and no illegal searches or beatings took place.

16. The Government further informed the Working Group that in August 2013, Ms. Ma Chunling was granted an early release from her re-education through labour in accordance with the law, and she now leads a normal life in her home in Dalian.

Further comments from the source

17. The source confirmed the release of Ms. Ma Chunling.

Discussion

18. Although Ms. Ma Chunling has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release.

19. Ms. Ma Chunling was detained for peacefully practising Falun Gong and having publicly expressed her views about the practice of Falun Gong. It is for this exercise of her fundamental rights that Ms. Ma Chunling was deprived of her liberty for two years of re-education through labour.

20. The Working Group recalls that in previous opinions¹ and on the occasion of its visits to China,² it expressed its concern with regard to the treatment to which members of the Falun Gong association are subjected. It finds no justification for the Government to keep in force penal laws impeding the exercise of the rights to freedom of association,

¹ See, for instance, opinion No. 11/2006 (China) of 11 May 2006; opinion No. 32/2005 (China) of 2 September 2005; opinion No. 21/2003 (China) of 27 November 2003; opinion No. 7/2003 (China) of 9 May 2003; opinion No. 5/2002 (China) of 18 June 2002.

² See E/CN.4/1998/44/Add.2, para. 95.

expression and assembly of citizens who peacefully exercise activities within that association.

21. In the report on its visit to China, the Working Group also stated that the measure of re-education through labour should not be applied to any person exercising his or her fundamental freedoms as guaranteed by the Universal Declaration of Human Rights. In the case at hand, detention does constitute a coercive measure designed to undermine the freedom of those persons to adopt beliefs of their own choosing.³

22. The Working Group considers that Ms. Ma Chunling has been deprived of liberty for the mere fact of her practice of Falun Gong in a peaceful manner and in exercise of the rights to freedom of opinion and expression, which are guaranteed by international human rights law.

23. The Working Group considers that Ms. Ma Chunling was deprived of her liberty for having peacefully exercised her right to freedom of expression and assembly, as guaranteed by article 19 of the Universal Declaration of Human Rights. Thus, the deprivation of liberty of Ms. Ma Chunling falls within category II of the categories applicable to the consideration of cases submitted to the Group.

24. The Working Group also considers that in this case Ms. Ma Chunling was deprived of her liberty for practising Falun Gong, i.e. for reasons of discrimination, in violation of articles 2 and 7 of the Universal Declaration of Human Rights. Thus, the deprivation of liberty of Ms. Ma Chunling falls within category V of the categories applicable to the consideration of cases submitted to the Group.

Disposition

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

The deprivation of liberty of Ms. Ma Chunling was arbitrary, being in contravention of articles 2, 7, and 19 of the Universal Declaration of Human Rights; it falls within categories II and V of the categories applicable to the consideration of the cases submitted to the Working Group.

26. The Working Group, bearing in mind the release of Ms. Ma Chunling, requests the Government to grant her compensation for the harm and damage she suffered during the period of her arbitrary detention.

[Adopted on 22 April 2014]

³ Ibid.