

**General Assembly**Distr.: General
20 May 2014

Original: English

**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-ninth, 22 April-1 May 2014****No. 8/2014 (China)****Communication addressed to the Government on 9 August 2013****Concerning Mr. Xing Shiku****The Government replied to the communication on 27 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, 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. Mr. Xing Shiku (hereinafter Mr. Xing), born in 1962, was arrested on 15 February 2007 at the Beijing South Railway Station in the Municipality of Beijing. The arrest was allegedly carried out by the police under the direction of the Heads of the Office for Letters and Visits in Daowai District Government, Harbin City, Heilongjiang Province. No arrest warrant was reportedly presented.
4. The source reports that following his arrest, Mr. Xing was immediately transported to the Daowai District Psychiatric Hospital in Harbin City, Heilongjiang Province, as ordered by the Office for Letters and Visits of the Daowai District Government in retaliation for filing complaints to government authorities about corruption and violation of labor rights.
5. On 16 March 2007, the State Bureau for Letters and Visits in Beijing ordered Mr. Xing's release after his wife, Ms. Guirong Zhao (hereinafter Ms. Zhao), reportedly complained to higher authorities in Beijing about the circumstances of his detention.
6. On the day of his release, the source alleges that the director of the Daowai District Government's Office for Letters and Visits led a group of thugs to forcibly seize Mr. Xing and return him to the Psychiatric Hospital in Harbin City, where he remains today.
7. According to the source, the Daowai authorities have justified Mr. Xing's continued detention on the basis that he suffers from a psychiatric disorder or mental illness. The source informs that doctors in the Harbin City Psychiatric Hospital have acknowledged that Mr. Xing does not suffer from any mental illness. The hospital authorities maintain that Mr. Xing's release may only be ordered by the local officials who have committed him to the institution and who have assumed guardianship rights over him.
8. In the source's view, Mr. Xing has been forcibly held for over six years in retaliation for filing complaints to government authorities about corruption and problems related to the privatization of the State-owned company where he once worked. Authorities responsible for his detention had demanded that he stop petitioning, which he refused to do. The source asserts that there has been no official investigation carried out into the reasons for Mr. Xing's detention.
9. The source submits that Mr. Xing has suffered cruel treatment while held in the psychiatric hospital. In a videotaped interview, he stated that he has been tied up in chains, and that hospital staff have struck his head with electric pricks. The source maintains that Mr. Xing has suffered problems in his legs and other illnesses due to the extended detention and abuses suffered, and has not received proper medical care for these.
10. The source reports that since Mr. Xing's wife complained to higher authorities in Beijing in March 2007 about Mr. Xing's mistreatment, she has also been detained in "black jails" (makeshift, extralegal detention facilities) several times, and for a total of more than 300 days. The source submits that Ms. Zhao was also tortured. Unable to bear such mistreatment, she has reportedly attempted to commit suicide a number of times. In further retaliation against Mr. Xing and his wife, their daughter was allegedly once blocked from attending school.

11. On 13 April 2013, Mr. Xing's wife reportedly visited the Psychiatric Hospital in Harbin City and requested the hospital director to release Mr. Xing. According to the source, she was informed that the local government is paying the hospital to detain Mr. Xing and therefore the director is not permitted to release him without the order of the local government.

12. The source informs that Mr. Xing's wife thereafter telephoned an official in the local government with a phone number provided by the psychiatric hospital. Reportedly, the official noted her number and told her to wait for a return telephone call. Additionally, Mr. Xing's wife went to the local government office several times to request his release. She has had no response to date.

13. The source conveys that Mr. Xing's wife has sent letters to departments of the central government regarding the circumstance of his detention. Mr. Xing and his wife have also granted interviews relating their experience. These interviews, narratives and letters have been published online.

14. The source refers to the Working Group's Deliberation No. 7 on Issues related to Psychiatric Detention in which the Working Group stated that "psychiatric detention shall not be used to jeopardize someone's freedom of expression...".

15. The source submits that the circumstances of Mr. Xing's six years of continued detention in a psychiatric hospital is contrary to articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights which the People's Republic of China has signed.

Response from the Government

16. In its response of 27 September 2013, the Government provided the following information:

17. Mr. Xing was a factory worker retired for medical reasons on account of the fact that he suffered from schizophrenia and had lost the ability to work, and his retirement was examined and approved by the Harbin Labour Protection Department in February 2006.

18. In April 2006 there was a disagreement over the company's restructuring and policy changes at Harbin Printing Factory No. 2. Mr. Xing went to Beijing to petition the higher authorities, and loitered in the embassy district, where he frequently threatened to commit suicide if some preconditions were not met.

19. After learning of this situation, the authorities of Daowai District in Harbin immediately conducted an investigation and confirmed through the medical records of Harbin Specialized Hospital No. 1 that Mr. Xing had been clinically diagnosed with schizophrenia and that he had twice been brought to that hospital for treatment, once in 1992 by his work unit and once in 2005 by his wife, Zhao Guirong.

20. In accordance with the relevant legal provisions of the People's Republic of China, Mr. Xing was found unable to ensure civil behaviour, as he suffers from schizophrenia, an incurable disorder that can flare up at any time and pose a threat to other persons or their property. He thus could have posed a threat to or adversely affected the maintenance of public order in Beijing.

21. In view of this, and in accordance with the principle under which it was responsible for a person residing in its territory, on 16 February 2007 the people's administration of Daowai District, Harbin, dispatched an official to urge Mr. Xing to return, only to find that his condition had worsened. The official immediately attempted to contact Mr. Xing's legal guardian, Zhao Guirong, and kept doing so, to not avail.

22. With no legal guardian present, it was decided on humanitarian grounds to escort Mr. Xing back to Harbin and to promptly bring him to Specialized Hospital No. 1 in Harbin, Heilongjiang Province, for examination and treatment.

23. The Government contends that it is not true that Mr. Xing was arrested and taken into custody by police at Beijing South Railway Station acting under the orders of local government officials and without the presentation of an arrest warrant. The authorities of Daowai District, Harbin, never received an order for his release issued on 16 March 2007 by the State Bureau for Letters and Visits.

24. Upon his return to Harbin, examinations conducted by the Specialized Hospital No. 1 confirmed that Mr. Xing was suffering from schizophrenia. It was therefore decided that he should be immediately hospitalized for treatment.

25. Due to the fact that neither his legal guardian, Zhao Guirong, nor his family members could be contacted, in accordance with article 17 of the general principles of the Civil Law of the People's Republic of China, the Bureau of Industrial Information and Commerce in Daowai District, Harbin, acting as trustee of Harbin Printing Factory No. 2, where Mr. Xing had worked (and which had since been restructured), temporarily took on the responsibility to act as his guardian and arranged for his hospitalization and treatment.

26. Mr. Xing's diagnosis and treatment during his hospitalization were conducted strictly in accordance with hospital regulations and procedures. His hospitalization therefore, in the Government's view, did not constitute detention.

27. Mr. Xing remained in the hospital from 16 February to 16 March 2007, and after his condition stabilized somewhat, he was transferred to the specialized psychiatric hospital in Daowai District to continue his treatment. At that stage, according to that hospital's records of his diagnosis and treatment, he did not recover and must remain hospitalized for further treatment.

28. Taking into account Mr. Xing's and his family's special circumstances (financial difficulties, the fact that Mr. Xing's second wife, Zhao Guirong, abandoned her family for extended periods and rarely fulfilled her responsibilities to watch over Mr. Xing and to raise his daughter from a previous marriage, and the fact that Zhao Guirong has only visited Mr. Xing once since his hospitalization in 2007), the people's administration of Daowai District, in a spirit of compassion, help for the poor, humanitarian assistance and aid for the needy, has defrayed all the costs of Mr. Xing's hospitalization and treatment since he was admitted six years ago, totalling 82,300 yuan renminbi.

29. With regard to the allegation of torture of Mr. Xing, the Government contends that the information provided by the source is not consistent with the facts. Specialized Hospital No. 1 in Harbin is the largest and most respected specialized hospital in Heilongjiang Province. It is managed in accordance with set standards. The specialized psychiatric hospital in Daowai District is a grade-A, fully equipped specialized medical facility of the highest standard.

30. The Government refers to the case records kept by these two hospitals on Mr. Xing's diagnosis and treatment according to which, while he was hospitalized he received, in strict accordance with the treatment plan drawn up by his attending physician, systematic psychological and behavioural modification therapy, work and recreational therapy and drug therapy, as well as proper daily life care.

31. The Government informs that the investigations have shown that neither of these two hospitals have implements of torture such as electric shock batons or iron chains and that Mr. Xing has not been subjected to any kind of torture, including being tied up in chains, struck on the head with electric shock batons or held in detention for extended periods, and that he was not denied proper medical care.

32. The Government contends that there are no “black jails” in prisons in China, as alleged by the source, or other such illegal places of detention operating in violation of the law.

33. On 9 March 2010, the public security authorities, acting in accordance with article 23 of the Law of the People’s Republic of China on Public Security Administrative on Punishments, issued a public written decision as Public Security Administrative Penalty Ruling No. 0166 of 2010, imposing on Zhao Guirong an administrative penalty of 10 days’ administrative detention for disrupting the social order. This, in the Government’s view, was a normal way of proceedings and was in accordance with the law. Zhao Guirong was never “detained in a black jail for more than 300 days”, for complaining to higher authorities, as asserted in the communication from the source.

34. The Government also refutes the allegations that Zhao Guirong was informed that Mr. Xing could not be released without an order from the local government. According to the Government, the specialized psychiatric hospital in Daowai District confirmed that ever since the patient, Mr. Xing, has been under treatment, his condition has been unstable, that his illness may flare up at any time, and that when it does, there is a severe likelihood that he may cause harm to others and to society.

35. This hospital is an independent, specialized medical and health treatment facility. The discharge of a patient is subject to strict rules and procedures and is based entirely on the patient’s condition and on the doctor’s orders. It is not subject to interference or intervention by any party.

Further comments from the source

36. In its comments of 11 November 2013, the source reiterated the allegations, namely, that Mr. Xing was forcibly sent back to his hometown after petitioning in Beijing in February 2007; that the authorities has committed him to a psychiatric hospital against his will for more than six years, even though Mr. Xing does not require psychiatric treatment and his family has consistently requested his release; that Mr. Xing has been tortured and subjected to other forms of mistreatment inside the psychiatric institution; and that Mr. Xing’s wife was illegally detained in a “black jail” (a makeshift, temporary detention facility) in retaliation for pursuing his release.

37. As to the Government’s claim that Mr. Xing’s wife, Zhao Guirong, abandoned her family for extended periods and only visited Mr. Xing once since his hospitalization in 2007, the source contends that, since Mr. Xing was initially detained in the psychiatric hospital in 2007, his wife Zhao Guirong has visited him in the hospital many times. Since the hospital where Mr. Xing has been illegally detained is close to their residence, Ms. Zhao has tried to visit her husband whenever she got a chance. Due to the obstruction by the hospital, many of the visits Ms. Zhao conducted were not known by authorities and done through the help of nurses working at the hospital.

38. The source also emphasises that Ms. Zhao and Mr. Xing met each other in 1993 and ran a grocery store together until 15 February 2007, when Mr. Xing was forcibly sent to the psychiatric hospital. Since then, Ms. Zhao has petitioned in Beijing to file complaints and appeal for justice on behalf of Mr. Xing. During the more than seven years that they have been apart, Ms. Zhao has frequently traveled from Beijing to Harbin to see Mr. Xing at Daowai District Psychiatric Hospital. Ms. Zhao has gone to various government departments to appeal, and also has posted more than ten thousand letters, including petitions, asking for assistance. However, she has received no response. For her efforts to rescue her husband, Ms. Zhao has used up all their savings, and has even mortgaged their only apartment. In the source’s view, all of this shows that Ms. Zhao has definitely not “abandoned her family,” as claimed by the Chinese Government.

Discussion

39. The Government confirmed that Mr. Xing was detained and placed in a psychiatric institution after he came to Beijing to petition the higher authorities on his disagreement with the policy of a local company, and loitered in the embassy district.

40. The Government also maintains that Mr. Xing was deprived of his liberty because, suffering from schizophrenia, he “was found unable to ensure civil behaviour” and could have “adversely affected the maintenance of public order in Beijing”. In this regard, the Working Group notes that there are no facts in the Government response which would indicate that Mr. Xing posed “a threat to other persons or their property”, as, according to the response, required by national law to justify the placement of a person in a psychiatric institution.

41. The Working Group recalls that psychiatric detention shall not be used to jeopardize someone’s freedom of expression.¹ In this case, the Working Group considers that Mr. Xing has been deprived of his liberty for over seven years because of the peaceful expression of his views and filing complaints to government authorities about corruption and problems related to the privatization of the State-owned company where he once worked.

42. The Working Group concludes that Mr. Xing has been detained arbitrarily in violation of article 9 of the Universal Declaration of Human Rights (UDHR) without any legal basis justifying the detention for having peacefully exercised his right to freedom of expression, as guaranteed by article 19 of the UDHR.

43. Thus, the deprivation of liberty of Mr. Xing falls within categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Mr. Xing Shiku has been arbitrary, being in contravention of articles 9 and 19 of the UDHR; it falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

45. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Xing Shiku and bring it into conformity with the standards and principles set forth in the UDHR.

46. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Xing Shiku and grant him compensation for the harm he has suffered during the period of his arbitrary detention.

47. In accordance with article 33(a) of its Revised Methods of Work, the Working Group considers it appropriate to refer the allegations of torture of Mr. Xing Shiku and Ms. Zhao Guirong to the Special Rapporteur on torture for appropriate action.

[Adopted on 23 April 2014]

¹ Deliberation No. 7 on issues related to psychiatric detention, para. 58(g) (in the Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, 1 December 2004).