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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November – 4 December 2015

Opinion No. 39/2015 concerning Su Changlan (China)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.

2. In accordance with its methods of work (A/HRC/30/69), on 22 September 2015 the Working Group transmitted a communication to the Government of China concerning Su Changlan. The Government has not replied to the communication. The State is not a party to the International Covenant on Civil and Political Rights.

3. 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 sentence or despite an amnesty law applicable to him) (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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Ms. Su Changlan is a 44-year-old national of the People's Republic of China. According to the source, Ms. Su has a history of human rights activism. Ms. Su was an elementary school teacher for over a decade but was dismissed from her position because of her public and political activism. She is now a prominent activist in Guangdong Province advocating for election, land and women's rights.

5. In 1999, Ms. Su successfully provided assistance to rural married women whose land had been taken away in Sanshan Village in Nanhai City, Guangdong, safeguarding the continuity of their right to land after they marry someone from a different village. As a result of her efforts in producing a substantial amount of legal materials, including complaints and appeals, affected women received some compensation for land that had been taken away from them. Ms. Su has become a popular mobilising figure among villagers advocating against land confiscation in Sanshan. The source submits that Ms. Su's advocacy work has made her a frequent target of surveillance, harassment and retaliation from local authorities.

6. On the morning of 27 October 2014, Ms. Su was forcibly taken from her home by Nanhai National Security guards and police officers from Guicheng Police Station, Nanhai Branch of the Foshan Public Security Bureau (PSB). According to the source, the Nanhai National Security Guards and Foshan PSB officers verbally summoned Ms. Su but did not produce a warrant. The officers cited charges of "creating a disturbance" under Article 293 of the Criminal Law of the People's Republic of China as the reason for the arrest. In the afternoon of the same day, five officers returned to Ms. Su's home while her husband was there and confiscated three computers, but did not disclose why or where Ms. Su was being detained.

7. Ms. Su was taken to Guicheng Police Station in Nanhai District. She was interrogated about her posts on 'WeChat', a popular messaging tool in China, and charged with a more serious crime of "inciting subversion of state power". The source informs that the alleged offence relates to Ms. Su's online support for pro-democracy protests in Hong Kong in September 2014. Ms. Su was then transferred to Nanhai District Detention Centre. Her family did not receive a detention notice.

8. On 3 December 2014, Ms. Su was formally arrested on suspicion of inciting subversion of state power. Under Article 105(2) of the Criminal Law of the People's Republic of China, this offence is punishable by fixed-term imprisonment of not less than five years, criminal detention, public surveillance or deprivation of political rights to those who incite others by spreading rumours or slander or use any other means to subvert State power or overthrow the socialist system. The source points out that Ms. Su's detention occurred at a time of widespread detention of individuals who expressed support for the pro-democracy movement in Hong Kong. According to the source, in October 2014, more than 100 mainland Chinese activists, writers and artists were detained to deprive them of their rights to expression and movement.

9. The source alleges that serious procedural violations occurred during Ms. Su's arrest and pre-trial detention. Firstly, the source claims that by refusing to produce a warrant

when taking Ms. Su away and when later seizing her property, the police violated Article 83 of the Criminal Procedure Law of the People's Republic of China which requires PSB officers to produce an official notice when placing a person in detention.

10. Furthermore, after Ms. Su was taken from her home, her family did not know of her whereabouts until she was formally arrested on 3 December 2014. The source alleges that, at the detention centre, local authorities registered Ms. Su under a different name in order to deny her the right to access legal counsel. When Ms. Su's husband enquired about her at the detention centre, staff told him that there was no individual being detained under that name. Ms. Su later confirmed to her lawyer that she was informed by the authorities that she had been registered under a different name when brought to the detention centre.

11. According to the source, Ms. Su was denied visits by her lawyer and family over the first six months of her detention, as government officials cited concerns over "possible obstruction to investigation". Letters written by Ms. Su and her husband to each other were never received, nor did Ms. Su receive postcards sent to her by supporters. After months of unsuccessful requests to see Ms. Su, her husband and brother protested in February 2015 in front of a police station, holding banners that said "Conscience is not violence. Su Changlan is innocent". They were both detained for nearly one month. The source asserts that Ms. Su only gained access to her legal representative on 6 May 2015, over six months after she had been taken from her home.

12. The source also reports that Ms. Su suffers from hyperthyroid heart disease which required medical treatment in hospital in 2014 prior to her detention, and can be fatal if not properly treated. Applications were made for Ms. Su to be released on bail due to her medical condition, but they were denied by the authorities. In addition, Ms. Su's husband submitted a Government Information Disclosure request in order to obtain information about Ms. Su's health conditions at the detention centre. After authorities refused to disclose any information, he commenced litigation against the Nanhai PSB. The case was heard on 7 April 2015, but the Nanhai People's District Court refused to give a verdict or announce when it would issue its verdict.

13. Ms. Su has also allegedly experienced degrading treatment and denial of medical care. The source asserts that guards at Ms. Su's detention centre strip-searched her after a visit from her lawyer, forcing her to remove her pants and underwear. The source claims that Ms. Su's cell is 80 square feet and is severely overcrowded as it is used to hold between 50 to 80 women. As a result, Ms. Su only has a space of 60 centimetres wide in which to sleep, which often prevents her from falling asleep. Ms. Su has been subjected to over a dozen harsh interrogations during which she was threatened with a severe prison sentence. She informed her lawyer that due to the poor living conditions and her health problems, she frequently suffers from numbness in her hands and feet, headaches and constant tearing in one of her eyes. Despite these physical problems, the source reports that the detention centre has restricted Ms. Su's access to medical treatment. For example, Ms. Su was denied medical care and suffered from a fever for over a week in April 2015.

14. According to the source, the detention centre has violated the Chinese Regulations on Administrative Detention Facilities which came into effect on 1 April 2012. Under these Regulations, detainees have the right to prompt notification of their families of their detention, prompt medical care, correspondence with the outside world (which includes a ban on inspection or confiscation of correspondence) and meetings with lawyers during the period of detention.

15. Ms. Su remains in detention at the Nanhai District Detention Centre. The source informs that, on 18 June 2015, the prosecution sent Ms. Su's case back to the police due to a lack of evidence. Her case is still pending and the police are collecting additional evidence in order to re-submit the case. Ms. Su's conditions of detention continue to be

poor. She has been suffering from heart stoppage, and uncontrollable tearing, and tremors in her hands and feet. She continues to be denied bail on medical grounds.

16. The source submits that Ms. Su's detention is arbitrary in accordance with categories II and III of the categories applied by the Working Group. The source argues that Ms. Su has been detained in retaliation for her advocacy activities, and solely on the basis of the peaceful exercise of her rights guaranteed under the UDHR. According to Ms. Su's lawyer, over half of her case materials relate to her exercise of free expression, including email exchanges between Ms. Su and others. Ms. Su has informed her lawyer that she suspects that the authorities are punishing her for representing thousands of disadvantaged farmers in litigation against the Government. In addition, the source informs that one month before her current detention, Ms. Su was detained to prevent her from attending the trial of a prominent activist who was arrested for leading an anti-corruption campaign.

17. Finally, the source submits that Ms. Su was detained incommunicado between 27 October and 3 December 2014 before being formally arrested. Further, it is alleged that she was denied access to legal representation until 6 May 2015, and has not been brought before a judicial authority since she was taken into custody.

Response from the Government

18. The Working Group transmitted the allegations from the source to the Government of the People's Republic of China on 22 September 2015 under its regular communication procedure. The Working Group requested the Government to provide detailed information by 23 November 2015 about the current situation of Ms. Su, and to clarify the legal provisions justifying her continued detention.

19. The Working Group regrets that it has not received a response from the Government to this communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's revised methods of work.

Discussion

20. In the absence of a response from the Government, the Working Group has decided to render this Opinion in conformity with paragraph 15 of its revised methods of work.

21. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues.¹ If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the given allegations. In this case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

22. The Government has therefore not rebutted the *prima facie* reliable allegation that Ms. Su was arrested and is being detained solely on the basis of the peaceful exercise of her rights to freedom of opinion and expression, and freedom of peaceful association. In particular, the Government did not refute the assertion that Ms. Su was arrested and is being detained to punish her for her advocacy activities, and to prevent her from supporting other peaceful activities such as pro-democracy protests in Hong Kong. The fact that this conduct is criminalized under domestic law in the People's Republic of China does not deprive Ms. Su of her rights under international law, including under the UDHR.² The

¹ See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

² The Working Group has emphasized this point in other opinions relating to the People's Republic of China. See, for example, Opinion Nos. 7/2012, 32/2007.

Government has not provided any evidence of the precise nature of the threat posed by Ms. Su, and has not demonstrated that there was specific evidence on which her arrest and detention was based.³

23. In addition, the Working Group refers to its previous opinions concerning recent individual communications received from various sources on the violation of human rights in the People's Republic of China.⁴ In these cases, findings have been made about the arbitrary deprivation of liberty of human rights defenders who peacefully exercised their rights under the UDHR, demonstrating that this is a systemic problem in the administration of criminal justice in China.

24. The Working Group concludes that Ms. Su has been deprived of liberty in violation of the rights to freedom of opinion and expression and freedom of association as guaranteed by articles 19 and 20 of the UDHR, and that the case falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

25. In addition, the Government has provided no evidence to rebut the allegations that Ms. Su was arrested and her property confiscated without a warrant. The Working Group notes that the PSB officers who removed Ms. Su from her home in October 2014 initially cited charges of "creating a disturbance". However, Ms. Su was later formally arrested in December 2014, over a month after she was taken from her home, on suspicion of "inciting subversion of state power", a more serious crime with significantly higher penalties. The Working Group has previously found in a similar case that such a change of charges to the disadvantage of the accused constitutes a clear violation of articles 9, 10 and 11 of the UDHR.⁵

26. Further, the Government has not denied that Ms. Su was held incommunicado prior to being formally arrested, denied legal representation for over six months, and has been in prolonged pre-trial detention without being taken before a judicial authority for over a year, in violation of articles 9, 10 and 11 of the UDHR.

27. The Working Group concludes that the breaches of articles 9, 10 and 11 of the UDHR in the case of Ms. Su are of such gravity as to give her deprivation of liberty an arbitrary character, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

28. The Working Group wishes to record its concern about Ms. Su's deteriorating health and wellbeing while in detention, particularly in relation to the allegations made by the source regarding degrading treatment, the refusal of bail on medical grounds, and the denial of medical care. The Working Group considers that the treatment of Ms. Su during her detention, which was not contested by the Government, may have violated the prohibition of cruel, inhuman or degrading treatment under article 5 of the UDHR. The Working Group will therefore refer the matter to the relevant Special Rapporteur for further consideration of the circumstances of this case and, if necessary, appropriate action.

29. Finally, the Working Group notes the source's allegation that Ms. Su has been deprived of her liberty in retaliation for her advocacy and work as a human rights defender. These activities are protected under the Declaration on the Right and Responsibility of

³ The Working Group has stated in its Deliberation No. 8 on Deprivation of Liberty linked to/resulting from the use of the Internet that a vague and general reference to the interests of national security or public order, without being properly explained and documented, is insufficient to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty are necessary (E/CN.4/2006/7, para. 43).

⁴ See, for example, Opinion Nos. 3/2015, 49/2014, 21/2014, 59/2012, 29/2012, 7/2012, 23/2011.

⁵ Opinion No. 49/2014, para. 20.

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as the UN Declaration on Human Rights Defenders), in particular articles 1, 2, 5, 6, 9 and 12. The Working Group will therefore refer the matter to the relevant Special Rapporteur for further consideration of the circumstances of this case and, if necessary, appropriate action.

Disposition

30. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ms. Su is arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the UDHR, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Su without delay and bring it into conformity with the standards and principles set forth in the UDHR.

32. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Ms. Su immediately and grant her reparation in accordance with international law for the harm she has suffered during the period of her arbitrary detention.

33. In accordance with article 33(a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of degrading treatment and denial of medical care to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action. The Working Group also refers the alleged retaliation against Ms. Su because of her work as a human rights defender to the Special Rapporteur on the situation of human rights defenders.

34. The Working Group encourages the Government to accede to the ICCPR.

[Adopted on 2 December 2015]