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**Human Rights Council  
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-second session, 20 – 29 April 2015****No. 3/2015 (People's Republic of China)****Communication addressed to the Government on 26 June 2014****Concerning Jiayi Ding****The Government replied to the communication on 20 August 2014****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. Jiayi Ding (hereinafter Mr. Ding), a Chinese national, is a human rights lawyer. In 2010, he began advocating for the rights of migrant children to undertake college entrance exams in their places of residence, rather than their places of origin, as required under China's "household registration" system. He has also been involved in the "New Citizens' Movement," which is a loose group of activists who advocate for social justice, and political and legal reforms.

4. On 17 April 2013, the officers of the Beijing Municipal Public Security Bureau arrested Mr. Ding at his home and searched his house, office and car. The officers showed an arrest warrant, issued pursuant to article 80 of the Criminal Procedure Law of the People's Republic of China, which allows the public security organs to detain an active criminal or a major suspect of crimes.

5. The source believes that Mr. Ding was seized because of his involvement in an anti-corruption campaign associated with the "New Citizens Movement". It is reported that the police had been closely monitoring Mr. Ding's role in the movement prior to apprehending him.

6. Reasons for the detention imputed by the authorities: "Gathering a crowd to disrupt order of a public place" through "holding banners calling for disclosure of Chinese officials' financial assets," and "inciting and organizing hundreds of people to appeal for equal access to education in front of the Ministry of Education building." For the crime of "gathering a crowd to disrupt the order of a public place," Article 291 of the Criminal Law of the People's Republic of China stipulates a fixed-term imprisonment of not more than five years, criminal detention or public surveillance to those who are gathered to disturb order at railway stations or bus terminals, wharves, civil airports, marketplaces, parks, theaters, cinemas, exhibition halls, sports grounds or other public places, or to block traffic or undermine traffic order, or resist or obstruct public security administrators of the State from carrying out their duties according to law, if the circumstances are serious.

7. Trial proceedings for Mr. Ding began on 27 January 2014 in the Haidian District People's Court in Beijing.

8. Prior to the trial, the court allegedly did not allow an adequate period of time for Mr. Ding's lawyer to review the case files, including the prosecutor's evidence against him, and prevented him from making copies of the files. The court also rejected his request to have a public hearing and instead held the hearing in private in a small courtroom. At the trial, Mr. Ding's lawyer refused to address the court to protest against these procedural irregularities. He subsequently resigned from legally representing Mr. Ding and the trial was thus suspended. Although a new lawyer was appointed for Mr. Ding thereafter, he faced difficulties in accessing Mr. Ding in detention.

9. Mr. Ding's trial resumed on 8 April 2014 in the Haidian District People's Court, with a heavy presence of the police outside the court. Activists supporting Mr. Ding and gathering outside the courthouse were dispersed and several foreign diplomats were prevented from attending the hearing. Furthermore, the police assaulted Mr. Ding's lawyer during a court recess after he gave a media interview. On 9 April 2014, Mr. Ding's lawyer walked out of the courtroom in protest, after he was given photocopies of the evidence against Mr. Ding, rather than the original.

10. On 17 April 2014, the judicial authorities disbarred Mr. Ding's lawyer to represent him, rejected his defense statement, and prevented him from attending the sentencing hearing.

11. On April 18, 2014, the court sentenced Mr. Ding to three-and-a-half-year imprisonment. Mr. Ding remains in detention at Beijing No. 3 Detention Center to date.

12. The source argues that Mr. Ding's detention is arbitrary, as he has been arrested, detained and sentenced solely on the basis of the peaceful exercise of his rights to freedom of opinion and expression, and freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights ("UDHR").

13. The source further submits that Mr. Ding's right to a fair trial has been violated in the present case, as the authorities deliberately prevented the public from attending the court hearing, contrary to articles 10 and 11 of the UDHR, as well as articles 11 and 152 of the Criminal Procedure Law 1996 and article 183 of the 2013 Criminal Procedure Law of People's Republic of China, which stipulate that first instance trials shall be heard in public. In addition, Mr. Ding's lawyers were not provided adequate access to Mr. Ding's case file, including the prosecutor's evidence against him, in violation of the international norms relating to the right to a fair trial. The source considers that the disregard for Mr. Ding's right to a fair trial is of such gravity as to give his detention an arbitrary character.

#### *Response from the Government*

14. In its response of 20 August 2014 (translation of which the Working Group received on 6 January 2015) the Government provided the following information:

15. On 18 April 2013, Mr. Ding was placed in criminal detention, in accordance with the law, on suspicion of the offence of unlawful assembly. On 25 May, his arrest was approved by the procuratorial authorities, and on 8 December his case was transferred to those authorities for investigation and indictment.

16. On 18 April 2014, the Haidian District People's Court in Beijing sentenced Mr. Ding in first instance to 3 years and 6 months' imprisonment for the offence of assembling a crowd to disturb order in a public place. After the announcement of the ruling issued in first instance, Mr. Ding lodged an appeal. The Beijing First Intermediate People's Court heard the case in accordance with the law, and on 18 July 2014 it dismissed the appeal and upheld the original decision.

17. According to the Government, the People's Court heard the case in strict accordance with the law and fully upheld Mr. Ding's legal rights during the proceedings.

18. The Governments maintains that the affirmations that Mr. Ding's lawyer was denied access to the case file, that the case was heard in secret or that the verification of evidence was hindered, for instance, are untrue. In particular, the Government states the following:

(a) The lawyer's right to review the case file was fully upheld. With regard to the hard copies of the files provided by the public prosecution authorities, the court made high-definition scans of all the files and burned them onto a disk that it gave to the defence lawyer. As for the video materials related to the case, the court specifically made

arrangements, reserving a convenient time and place, with the necessary equipment, so that the defence lawyer could consult them. However, after receiving notification, he did not go to the designated place to consult the materials;

(b) The trial was open to the public, in accordance with the law. A summary of the case, the defendant's name and the time and place of the trial were published three days before the trial's opening, which the public was allowed to attend. Members of the general public and the defendant's family were present both at the trial and at the sentencing in first instance. After Mr. Ding appealed, the Beijing First Intermediate People's Court conducted investigations and determined that the facts of the case were clear. In accordance with the provisions of article 223 of the Criminal Procedure Law of the People's Republic of China, it did not hold a trial, and it issued the ruling publicly;

(c) During the trial in first instance, the court investigated and debated the facts and evidence relevant to the conviction and sentencing. Mr. Ding's defence lawyer was able to make his case. Because the lawyer's words and deeds violated rules and regulations for the presentation of the case and decorum in court, the court, acting in accordance with the law, ordered him to desist and issued him a warning. At no point did it interfere with the lawyer's defence;

(d) During the trial in first instance, Mr. Ding's defence lawyer disrupted order in the court by moving around the courtroom as he pleased, interrupted the judge and left the courtroom in the middle of the trial without the court's permission. He abandoned his responsibilities as defence counsel and was in no way disqualified by the court from representing his client.

*Further comments from the source*

19. In its comments on the Government reply, the source reiterated that the case of Ding, who was tried on a charge of "gathering a crowd to disrupt order of a public place" for his involvement in an anti-corruption campaign linked to the "New Citizens' Movement" (a loose grouping of activists who have called for top Chinese officials to disclose their financial assets), did not involve any criminal charge or other circumstance that would allow for a closed trial.

20. The source also reiterated the allegations of the violations of the right to a fair trial. Namely, according to the source:

(a) The court did not allow an adequate period of time for the lawyer to review case files and the lawyer was prohibited from making copies of the files;

(b) The court arranged to hold the trial in a small courtroom and turned away the public by citing "limited space"; after resumption of the trial, activists were taken away from outside the courthouse, and several foreign diplomats were blocked from attending the hearing;

(c) The lawyer refused to speak in defense at trial as a form of protest over the procedural illegalities and stepped down from the case since he was not given access to proper case materials, while accusing court officials of not possessing sufficient authority;

(d) The new lawyer representing Mr. Ding walked out of the courtroom in protest after he was given photocopies of evidence against Ding instead of original documentation. The lawyer was given two warnings by the judge and then issued a fine;

(e) A day before sentencing hearing, judicial authorities rejected lawyer's qualifications to represent Ding. Authorities rejected lawyer's defense statement (regarding his walking out of the court in protest) and blocked him from attending the hearing;

(f) Since the conclusion of Mr. Ding's trial, judicial authorities in Beijing ordered a one-year suspension of legal practice to lawyer Cheng for allegedly "disturbing court order," while lawyer Sui has been told he may face a half-year suspension at a minimum.

## Discussion

### *Allegations of violations of articles 19 and 20 of the UDHR*

21. The Government has not rebutted the prima facie reliable allegation that Mr. Ding has been arrested, detained and sentenced solely on the basis of the peaceful exercise of his rights to freedom of opinion and expression, and freedom of peaceful assembly and association. Namely, the Government did not deny the assertion that Mr. Ding was arrested at his home after a close monitoring by the police of his role in the "New Citizens' Movement", a loose group of activists who advocate for social justice, and political and legal reforms

22. The Working Group recalls that it is not the first time that the Working Group considers the case where the Government applied arbitrarily the law on the crime of "gathering a crowd to disrupt the order of a public place" under Article 291 of the Criminal Law of the People's Republic of China to human rights activists who peacefully exercise their right to freedom of expression and freedom of association. In particular, in a similar case, the Working Group found arbitrary the detention of other human rights activist who was also formally convicted for violation of article 291 of the Criminal Code.<sup>1</sup>

23. Thus, the Working Group considers that Mr. Ding has been deprived of liberty for having peacefully exercised his right to freedom of expression and freedom of association as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights (UDHR). Thus, the deprivation of liberty of Mr. Ding falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

### *Allegations of violations of articles 10 and 11 of the UDHR*

24. As to the alleged violations of the right to a fair trial, the Working Group is not in the position to reach a conclusion because of the vagueness of the information provided by the source.

25. In particular, the source reiterates that prior to the trial the defence was provided with the copies of the prosecution material instead of original. The source, however, did not address the Government's assertion that the court made high-definition scans of all the files, burned them onto a disk, and gave it to the defence lawyer. Neither in its original submission nor in the subsequent comments the source elaborate on how the disclosure of the material in electronic format affected the ability of the counsel to prepare the defence in this particular case.

26. Instead, in its subsequent clarification, the source referred to the "theory of evidence", admissibility and reliability of evidence, "best evidence rule", and the Supreme People's Court's interpretation, according to which "evidence *adopted for verdict* should be original. Photocopies may be used only when there is indeed difficult to obtain the original documentation."

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<sup>1</sup> Opinion no. 47/2006 (China)

27. Apparently, the source confuses the *disclosure* of the material by the parties with the *presentation* of the evidence at the trial, which involves issues of its admissibility and reliability. Disclosure in electronic format as such does not constitute violation of the right to a fair trial. In fact, such form of disclosure is provided for in the Rules of the international criminal tribunals and is accepted practice in the International Criminal Court.<sup>2</sup>

28. Neither in its original submission nor in the subsequent comments and clarifications did the source elaborate on how the disclosure of the material in electronic format affected the ability of the counsel to prepare the defence in this particular case. Furthermore, had the source unambiguously alleged that it was at the trial that only copies of the evidence were presented and that the court, despite the defence request, refused to order the prosecution to present the originals, then the Working Group would enquire of the Government about the relevant information.

29. The source also reiterated the allegation that the court did not allow an adequate period of time for the lawyer to review case files. However, no further information, such as the time allocated to the lawyer for this purpose, whether he apply for the extension of time if it was considered inadequate, *etc.*, was provided by the source.

### **Disposition**

30. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Ding is arbitrary, being in contravention article 19 of the UDHR; it falls within category II of the categories applicable to the consideration of the 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 Mr. Ding and bring it into conformity with the standards and principles set forth in the UDHR.

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

[Adopted on 20 April 2015]

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<sup>2</sup> See, for instance, Rule 68(ii) of the ICTY Rules of Procedure, Rule 68(B) of the ICTR Rules, *Lubanga*, Decision on the E-Court Protocol, T. Ch., 24 January 2008, Moreover, pursuant to Regulation 26.4 of the ICC Regulations, “in proceedings before the Court, evidence other than live testimony shall be presented in electronic form whenever possible”; and, pursuant to Regulation 52.1, “during a hearing, evidence shall be presented in electronic format.”