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Human Rights Council Working Group on Arbitrary Detention

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No. 29/2011 (China)

Communication addressed to the Government on 1 February 2010

Concerning: Zhou Yung Jun

The State is a not 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. The mandate of the Working Group was clarified and extended 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 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 the 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; 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. Zhou Yung Jun (originally registered in the household registration of China under the name Zhou Yongjun; Zhou Yazhou, used by Chinese authorities), born in 1967, a registered refugee and legal permanent resident of the United States of America, is best known as a political dissent who was a student leader during the 1989 Tiananmen pro-democracy movement.
4. Zhou Yung Jun was arrested on 28 September 2008 at Sheung Wan ferry terminal while attempting to enter Hong Kong, China, from Macao, China, with a reportedly false Malaysian passport bearing the name Wang Xingxiang. Zhou Yung Jun was questioned about several alleged fraudulent letters written to Hang Seng Bank from overseas under the name of Wang Xingxiang by the Hong Kong police. After a few hours of investigation, the Hong Kong police authorities released him and concluded that Zhou Yung Jun was not the person sending those letters to Hang Seng Bank. However, Zhou Yung Jun was held by Hong Kong immigration authorities at the border until 30 September 2008.
5. On 30 September 2008, Zhou Yung Jun was secretly transferred to Shenzhen, a city in Guangdong province, on mainland China. At the same time, his case was reportedly handed over by Hong Kong immigration authorities to the Chinese police authorities or State Security authorities. Since then Zhou Yung Jun was allegedly kept under secret detention without getting registered under any identity until 8 May 2009.
6. Zhou Yung Jun was first kept in Shenzhen Second Detention Centre for seven days, starting from 30 September 2008. He was then transferred to the Shenzhen First Detention Centre.
7. According to the source, Zhou Yung Jun admitted his real identity, namely Zhou Yongjun, to the Chinese police on 7 November 2008. However, the Chinese authorities refused to register him under his real name. He was given a prisoner number 20 in Shenzhen First Detention Centre. In late November 2008, Zhou Yung Jun was transferred to Shenzhen Yantian Detention Centre under the name of Wang Hua.
8. On 8 May 2009, Zhou Yung Jun was officially arrested and for the first time accused of fraud under his real identity, namely Zhou Yongjun, by the Chinese police. He was then detained in the Public Detention Centre of Sichuan, Suining.
9. According to the source, Zhou Yung Jun was reportedly tortured in Shenzhen First Detention Centre, Shenzhen Second Detention Centre and Yantian Detention Centre. It was alleged that Zhou Yung Jun's family was threatened by the Chinese authorities after they hired Mo Shaoping, an attorney based in Beijing who is famous for defending political dissidents. Under pressure, Zhou Yung Jun dismissed Mo Shaoping. Zhou Yung Jun was later assigned an attorney by the Chinese authorities. It was reported that his attorneys were not allowed to review the complete file of his case.
10. According to the source, Zhou Yung Jun was put on trial on 19 November 2009 in Shehong, Sichuan province. The source argued that the trial was held in a secret place under severe surveillance by police forces.
11. On 15 January 2010, Zhou Yung Jun was sentenced to nine years' imprisonment and fined 80,000 yuan on the charge of attempted fraud in Shehong. Zhou Yung Jun has reportedly denied the charges and was to appeal his conviction.

12. Before his current arrest, Zhou Yung Jun had been arrested twice by the Chinese authorities. His first arrest took place in June 1989 after the Tiananmen pro-democracy movement. Zhou Yung Jun was reported to be a student leader and was elected as the chairman of the Autonomous Students Federation of Beijing Universities during the movement. He was officially charged with counter-revolutionary propaganda and incitement in March 1990. Two years after his arrest, in January 1991, Zhou Yung Jun was released. After his release in 1991, Zhou Yung Jun was refused registration by the local authorities of Sichuan. Since then he became an undocumented person.

13. In December 1998, Zhou Yung Jun was again arrested by the Chinese police in Guangzhou. He was reportedly sentenced to three years of re-education through labour without trial for the illegal exiting of China in 1992. It was reported that, during these three years, Zhou Yung Jun was tortured and forced to work in the labour camp.

14. After his release in 2001, the Chinese authorities allegedly refused to register him under his original identity. It was reported that, in 2002, the Chinese authorities registered Zhou Yung Jun under the name Zhou Yazhou with the date of birth 15 September 1967.

15. It was reported that in 2002, Zhou Yung Jun applied for naturalization in the United States of America. His application is pending before the United States Department of Homeland Security.

16. The source alleges that the detention of Zhou Yung Jun is arbitrary because it is devoid of any legal basis. In particular, the source submits that there is no legal basis for the Hong Kong immigration authorities to hand over Zhou Yung Jun, a third national or stateless person, to the Chinese police, because Hong Kong, as a special administrative region of China, remains judicially independent. It claims that the transferring of Zhou Yung Jun is in violation of the Hong Kong Basic Law of 1990 and Sino-British Joint Declaration on the question of Hong Kong of 1984.

17. The source asserts that Zhou Yung Jun should not have been put on trial in China for his alleged fraud because China has no jurisdiction over Zhou Yung Jun. It argues that the suspected act of fraud and consequences thereof did not take place within the territories of mainland China. It also argues that when Zhou Yung Jun was arrested, he had been refused Chinese citizenship by the Chinese authorities and was a permanent resident of the United States of America. In addition, the alleged victim of this case should be Hong Kong Hang Seng Bank or another overseas individual, neither a Chinese citizen nor China.

18. Therefore, the source asserts that, according to the principle of locality jurisdiction, personal jurisdiction and protection jurisdiction of the Chinese Criminal Law, articles 6, 7 and 8 respectively, the agency of Public Security of mainland China lacks jurisdiction over Zhou Yung Jun's case.

19. The source alleges that Zhou Yung Jun is deprived of the right to counsel. Reportedly, his family has been threatened and Zhou Yung Jun was pressured to dismiss his initial attorney Mo Shaoping.

20. Furthermore, the source alleges that the detention and conviction of Zhou Yung Jun is likely related to his political background as a political dissent and a student leader in the 1989 Tiananmen events.

Response from the Government

21. In its reply of 5 May 2010, the Government confirms that Zhou Yung Jun was arrested on 8 May 2009 and accused of fraud by Sichuan Province Shehong County People's Procuratorate.

22. In May 2008, Zhou Yung Jun sent from abroad three letters to the bank Hong Kong Heng Sheng on behalf of Wand, with the purpose of transferring 6 million US dollars to

two different banks. These letters indicated different recipients. Once the bank agents proceeded to verification, they realized that the signature appearing on the letters did not correspond to the holder of the account, who reportedly had passed away. The transfer was not concluded.

23. The Shehong County People's Court condemned Zhou Yung Jun to nine years' imprisonment and a fine of 80,000 RMB. On appeal, the Sichuan Suining Intermediate People's Court confirmed the sentence.

24. The Government adds that Zhou Yung Jun was assisted by three lawyers, that his right to a defence was fully respected and that his lawyers had freely expressed themselves during the trial. The hearing was public and five of his relatives were present during the proceedings. Moreover, even though Zhou Yung Jun was sick prior to the proceedings, he had benefited from medical treatment and a doctor commissioned by the Court had certified that he was in good health to sit trial. The Government specified that Zhou Yung Jun did not appoint Mo Shaoping himself to represent him in the proceedings.

25. Finally, the Government clarifies that Zhou Yung Jun is of Chinese nationality and hence subject to the Chinese jurisdiction for the offences committed.

Comments from the source

26. In its comments, the source has produced letters by Jim Li (a lawyer from New York), Zhou Yung Jun regarding the condition of his arrest, his father and fiancée confirming the allegation of secret detention during more than seven months and the trial on the grounds of alleged frauds by a jurisdiction incompetent to know of his case. Further, the source reiterates that the hearing was not public because the persons who attended it were selected, neither the witnesses of the banks nor experts were heard relating to the alleged fraud and false identity. All the requests to clarify these and other matters were denied by the Court and the defence did not have free and unimpeded access to his case file.

27. The source clarifies that the Government does not contest any of these omissions or the fact that Zhou Yung Jun was compelled to renounce to his lawyer under the police's pressure and that he was not able to adequately prepare his defence.

Discussion

28. Article 9 of the Universal Declaration prohibits arbitrary arrest and detention declaring that, "no one shall be subjected to arbitrary arrest, detention or exile".

29. The prohibition of arbitrary detention is part of customary international law. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee in its general comment No. 29 (2001) on states of emergency, para. 11), which this Working Group follows in its opinions. Of assistance is the judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 and, in particular, the discussions by Judge Cançado Trindade on arbitrariness in customary international law with which the Working Group agrees.* The constant jurisprudence of the rulings contained in the opinions of this Working Group and of the other United Nations special procedures mandate holders is yet another source.

* See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports 2010*, para. 79; Separate Opinion of Judge Cançado Trindade, pp. 26–37, paras. 107–142.

30. In the present case, the Government, while recognizing that Zhou Yung Jun had been arrested officially on 8 May 2009, does not contest that he had been kept in secret detention since October 2008, the moment when he had been sent to China from Hong Kong. At no point was Zhou Yung Jun's family notified about his detention. On this point, the Working Group in its annual report reiterated that "secret detention is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict ... no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus" (report of the Working Group to the Council, A/HRC/16/47, para. 54). Therefore, it remains undisputed that between October 2008 and May 2009, Zhou Yung Jun was held in secret detention without any legal basis. The period of secret detention coupled with alleged ill-treatment and failure to promptly inform the accused of his rights and to bring him before a judge, leads the Working Group to conclude that his detention was arbitrary, falling into category I of the categories applicable to the consideration of cases submitted to the Working Group.

31. Similarly, the Government does not rebut grave and specific allegations advanced by the source as far as Zhou Yung Jun's right to a fair trial is concerned. The Government does not contest that Zhou Yung Jun was compelled to renounce to his lawyer under the police's pressure and threats to Zhou Yung Jun's family; that access to the hearing was selective and that no witnesses from the banks were summoned relating to the allegations of fraud reproached to Zhou Yung Jun. Nor has the Government provided any information about the evidence that allowed establishing beyond a reasonable doubt that Zhou Yung Jun was the author of the aforesaid letters. Furthermore, the Government failed to rebut the allegation that the State's Prosecution had informed Zhou Yung Jun's parents that his case is political in character and is a matter of national security. In the absence of the elements to rebut these allegations, the Working Group concludes that Zhou Yung Jun's detention is a result of serious breaches of his right to a fair trial and thus falls into category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Zhou Yung Jun between October 2008 and May 2009 was arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falling into category I of the categories applicable to the consideration of the cases submitted to the Working Group. The ongoing deprivation of liberty of Zhou Yung Jun is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falling into category III of the categories applicable to the consideration of the cases submitted to the Working Group.

33. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Zhou Yung Jun, proceed to his immediate release and accord him an enforceable right to compensation.

34. The Working Group encourages the Government to consider the possibility of ratifying the International Covenant on Civil and Political Rights.

[Adopted on 30 August 2011]