

Decision No. 66/1993 (People's Republic of China)

Communications addressed to the Government of the People's Republic of China on 14 October 1991 and 3 February, 8 April and 6 November 1992.

Concerning: Zhou Lunyou, Peter Liu Guangdong, Su Zhumin, Yang Libo, Father Francis Wang Yijun, Xu Guoxing, Liu Qinglin, Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma et Dawa Lhanzum (communication of 14 October 1991); Jingyi Wei, Youshen Zhang, Weiming Zhang (communication of 3 February 1992); Zhang Dapeng and Dorje Wangdu (communication of 8 April 1992); and Hu Hai (communication of 6 November 1992), on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question, (except that of Hu Hai) within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of decision No. 43/1993.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the replies provided by the Government to the sources and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. It was alleged in the communications from the sources, summaries of which were transmitted to the Government, that:
  - (a) Zhou Lunyou, a poet in his late 30s from Sichuan province, was arrested on 15 August 1989 and held in detention without charge until he was sentenced to three years of re-education through labour in February or March 1990. He was then reportedly transferred to the Ebian Chachang labour camp in Sichuan province. The exact accusations against him were not known to the source, but he was believed to be detained because of his involvement in unofficial publishing of various avant-garde poetry magazines.
  - (b) Peter Liu Guangdong, the 72-year-old Roman Catholic Bishop of Yixian, who belonged to the "underground church", a group of priests, bishops and lay people that remained loyal to the Vatican and conducted religious activities independently of the Government-recognized church. He was arrested by police on 26 November 1989 and sentenced on 21 May 1990 to three years of re-education through labour. This order was issued by the Labour Re-education Administrative Committee of Baoding City People's Government. It accused

Liu Guangdong of "planning, organizing and forming an illegal organization" and "taking part in illegal activities". He was reported to have been sent to a labour camp near Tangshan city, Hebei province.

(c) Su Zhimin, the 58-year-old Roman Catholic Vicar-General of Baoding, arrested on 17 December 1989 and sentenced on 21 May 1990 by the Baoding City Labour Re-education Administrative Committee to three years of re-education through labour. Su Zhimin, who was reported to have taken part in the Chinese Bishop's Conference held in Sanyuan in November 1989, was accused of "taking part in illegal activities". He was also sent to the labour camp near Tangshan city, Hebei province.

(d) Yang Libo, the 77-year-old Roman Catholic Bishop of Lanzhou, reportedly also a participant in the Chinese Bishop's Conference at Sanyuan. He was arrested by police on 25 December 1989, held for several months for shelter and investigation by police in Zhangye, then sentenced during the summer of 1990, without a trial, to three years of re-education through labour by the Labour Re-education Administrative Committee of Gansu Provincial People's Government. He was accused of disturbing social order and not showing any willingness to reform. It was believed that he was serving his sentence in Lanzhou.

(e) Father Francis Wang Yijun, the 75-year-old Vicar-General of Wenzhou, sentenced by the Labour Re-education Administrative Committee of Wenzhou City People's Government to three years of re-education through labour on 5 February 1990, the day on which he completed his eight-year prison term because of his religious convictions. Reportedly, the order to detain him stated that while serving his eight-year sentence he still refused to repent and accept the Government's "educational liberation", resisted reform and maintained illegal ties to the underground Catholic Church of Wenzhou. The new sentence was specified to run from 20 March 1990 to 19 March 1993.

(f) Xu Guoxing, a 36-year-old Protestant preacher from Shanghai, arrested on 6 November 1989, reportedly for having "seriously interfered and damaged the regular order of religious activities". An order assigning him to three years of re-education through labour was issued by the Shanghai Municipal Public Security Bureau on 1 November 1989. He was accused of having formed in 1986 an independent religious group, the Holy Spirit Society, and of travelling to various areas near Shanghai, in Jiansu, Zhejiang and Anhui provinces, in order to establish branches of this group. The sentence would run from 6 November 1989 to 5 November 1992. Xu Guoxing was sent to carry out the sentence in a labour camp known as the Da Fung farm, in northern Jiangsu province.

(g) Liu Qinglin, a 59-year-old Protestant evangelist in Moguqi, arrested in July 1989 and sent to a labour camp for three years of re-education through labour, reportedly because he had carried out religious activities without official approval. He was also accused of having "indulged in unbridled witch doctor activities". It was believed that he was arrested because of his growing popularity as an independent preacher in Moguqi.

(h) Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma and Dawa Lhanzum, Tibetan nuns who were sentenced on 11 September 1989 to three years of re-education through labour by the Labour Re-education Administrative Committee of Lhasa. They were accused of "separatist activities" and of "breaking martial-law regulations" for reportedly shouting "long live independent Tibet" at a festival held in Lhasa on 2 September 1989. The source reported that Ngawang Chosum, aged 29, was being detained in Lhasa's Gutsa detention centre. The place of detention of the others was not reported.

(i) Jingyi Wei, Roman Catholic priest at Qiqihar, Heilongjiang province, was reportedly arrested in late 1989 or early 1990. Allegedly, his arrest was part of a crackdown on Roman Catholics who refuse to join the government-sanctioned Catholic Patriotic Association (CPA) and carry out religious activities independently of the CPA. Since September 1990 he was said to be held, without charge or trial, in Heilongjiang province after having been sentenced to three years of re-education through labour by the State Council of the PRC on the Question of Re-education Through Labour, an administrative punishment allegedly imposed without judicial supervision or approval.

(j) Youshen Zhang, aged 64, editor at a Cinefilm factory and Catholic community leader and member of the unofficial Roman Catholic church, was reportedly arrested by officers from Baoding Public Security Bureau at his home in Baoding on 1 March 1991. Allegedly, during a search at the house of a church leader in Baoding, police had found an article written by Youshen Zhang in which he analysed and criticized the government-sponsored Catholic Patriotic Association. The article was said not to have been written for publication. Reportedly, Youshen Zhang was sentenced to three years of re-education through labour. He was said to be held at Hengshui prison, south of Baoding.

(k) Weiming Zhang, aged 52, translator for a factory in Baoding City, Hebei province, was reportedly arrested on 14 December 1990 in Baoding, allegedly for his foreign connections and his active role in the unofficial Catholic church. It was reported that, since his arrest, his family had been denied access to him and had not been informed of the grounds for his detention. He was said to be detained without charge or trial, allegedly under administrative regulations on "shelter and investigation".

(l) Zhang Dapeng, aged 68, Roman Catholic lay leader, was arrested by Public Security (police) officers from Baoding City on 13 December 1990 at his home in Baoding City, Hebei province, allegedly under administrative regulations providing for the form of administrative detention known as "shelter and investigation". He was said to be held in detention without either criminal charges or an administrative detention order having been issued against him. It was alleged that Zhang Dapeng's arrest and detention stemmed from his activities in the unofficial Roman Catholic church in Baoding and his contacts with other Catholics who were also arrested in December 1990 during what was reported as a crackdown in Hebei Province on Roman Catholics who remained loyal to the Vatican and refused to join the officially sanctioned Catholic church.

(m) Dorje Wangdu (Duoji Wangdui), aged 33, Tibetan, arrested without a warrant on 22 April 1991 by agents of the Public Security Department of Lhasa Municipality, reportedly under procedures for "shelter and investigation" (shourong shencha). On 26 September 1991, the "Re-education through Labour" Administrative Committee of the Lhasa Municipal People's Government was reported to have issued a decision to impose a three years term of "re-education through labour" against Dorje Wangdu, who was said to be held at Rawa Labour Re-education camp since 28 September 1991. Allegedly, the official notice indicating his term of detention accused him of the following "illegal activities": having advised acquaintances to wear Tibetan clothes during the period of the Kalashakra Buddhist initiation ceremony held by the Dalai Lama in late 1990 in India; having distributed, on 23 February 1991, symbols of personal protection (cords blessed by a high lama) to monks in Ganden monastery; having made copies of "reactionary leaflets" carrying the red seal of Muru monastery and advised that these should be displayed "on relevant occasions". Allegedly, "reactionary leaflets" which had circulated in Sera monastery in Lhasa had also been found at Dorje Wangdu's home.

(n) Hu Hai, a peasant aged 58, of Liuzhuang, Henan province. He was placed under house arrest on 15 May 1991, charged on 28 May 1991 with "disturbing social order" and sentenced on 6 November 1991 to three years' imprisonment plus deprivation of political rights for one additional year. He was currently held at the 17th Labour Reform Detachment in Xinxian, Henan province. According to the source, Hu Hai was given a prison sentence for taking part together with other peasants in petitions against local taxes which the peasants described as excessive and arbitrary, imposed in 1990. He was reportedly charged with "disturbing social order" under article 158 of the Criminal Law, on the grounds that he had "incited the masses" to complain to the authorities, "unreasonably causing trouble and seriously disrupting the functioning of government work". The source added that article 41 of the Constitution of the People's Republic of China guaranteed Chinese citizens the right to petition higher authorities against abuses of power, neglect of duty or illegal actions taken by State functionaries. Hu Hai reportedly appealed against the verdict to the Intermediate People's Court of Xinxiang city, Henan province, but the Court rejected the appeal and upheld the original sentence.

6. In its replies, the Government of the People's Republic of China confirms that cases (a) to (g) and (i) to (m) concern persons sentenced to three-year terms of re-education through labour. For case (h), this information, given by the source, is not confirmed by the Government in its reply. The reasons most often cited by the Government are the following:

Cases (a) and (m): Illegal activities. The source states that in case (a), this meant publication by a poet of unofficial avant-garde poetry reviews; in case (m) the offence was wearing traditional Tibetan dress on the occasion of a celebration.

Cases (b) to (f), (i), (k) and (l): Setting up an anti-State organization, not registered. According to the explanations given by the source, all these cases concern Catholics, particularly former priests who refuse to join the official Catholic Church. They come together with others who have remained loyal to the Vatican. According to the source the

activities they are accused of take the following forms: attending an unofficial meeting of bishops (cases (c) and (d)); calling for a demonstration (case (c)); printing seditious texts, persisting in clandestine religious activities and refusing to reform (case (e)).

Case (j): A Catholic who wrote a critical article against the official Church (discovered during a search and probably never published).

Case (h): Separatist activities and commission of offences, in particular by taking part in demonstrations forbidden under martial law, according to the Government of the People's Republic of China. According to the source, one of the charges was shouting the slogan "Long live independent Tibet" at a festival.

Case (m): Illegal activities, according to the Government, without further details. According to the source, this means wearing traditional dress on the occasion of the celebration of a ceremony presided over by the Dalai Lama in India in 1990.

Case (n): No reply by the date of this decision. He is apparently still deprived of his freedom.

7. As regards the safeguards offered by the procedure of sentencing people to re-education through labour, the Government of the People's Republic of China gave the following explanations:

"The statutory basis for China's system of education through labour is the Decision on Education through Labour, ratified by the seventy-eighth session of the Standing Committee of the 1st National People's Congress and proclaimed by the State Council on 3 August 1975; the supplementary regulations on education through Labour, ratified by the twelfth session of the Standing Committee of the 5th National People's Congress and proclaimed by the State Council on 5 December 1979; and the Provisional Procedures for Education through Labour, authorized by the State Council on 21 January 1982. These statutes prescribe the nature, orientation, mandate and review requirements of education through labour. They also provide for the accommodation, supervision and training of inmates, thereby ensuring that it will be exercised along rational and legal lines. Education through labour is an administrative measure of compulsory reform, conceived by China to prevent and reduce juvenile delinquency and safeguard social order. It is therefore an administrative, rather than penal, sanction. The subject of such sanction is usually one who has repeatedly and persistently transgressed against social order, or who, by the nature of the felony committed, is better suited to be reformed than to be put behind bars.

"Education through labour is subject to decision and review by special commissions set up by the local governments of provinces, autonomous regions and municipalities. The subject and the subject's family are given notification of the Commission's decision and the basis and duration of such administrative sanction. The subject is required to sign the notification. Objection to a decision can be made in an appeal

either to the Commission itself, for review within 10 days of receiving notification, or directly to a People's Court according to article 11 of the Administrative Procedural Law of the People's Republic.

"The law provides that a commission composed of local civic, public security and labour leaders shall oversee the administration of education through labour under the supervision of the People's Procuratorate. Those who are to be educated are sent to an institution set up for this purpose. The emphasis of the institution is on reform. It is accomplished strictly according to law in a humane, civilized and scientific manner. Each institution is equipped with a clinic staffed by professional medical personnel. While serving his term, an inmate is expected to divide his time between collective labour and vocational training aimed at his eventual reintegration into society.

"The policy of the State is to give the subject of education a new chance in life without discrimination. Once the subject has completed his term, he returns to his original place of residence. He will receive social assistance in finding employment or enrolling in a school. The Chinese authorities have discovered through practice that education through labour is an effective means of maintaining social order in China, one appropriate to the special character of the Chinese nation. Such a system is completely different from arbitrary detention."

8. The Working Group considered the question of re-education through labour in its Deliberation 04, (E/CN.4/1993/24, Chap.II). In its conclusions the Working Group determined that "The case of a coercive administrative measure whose purpose is not only occupational rehabilitation, but mainly political and cultural rehabilitation through self criticism" was among "cases where the measure of deprivation of freedom is inherently arbitrary in character".

9. In the light of the above the Working Group decides:

The detention of Zhou Lunyou, Peter Liu Guangdong, Su Zhumin, Yang Libo, Father Francis Wang Yijun, Xu Guoxing, Liu Qinglin, Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma et Dawa Lhanzum, Jingyi Wei, Youshen Zhang, Weiming Zhang, Zhang Dapeng and Dorje Wangdu and Hu Hai, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.