

DECISION No. 46/1995 (PEOPLE'S REPUBLIC OF CHINA)

Communication: addressed to the Government of the People's Republic of China on 22 April 1994.

Concerning: 81 persons (whose names are given in the attached list).

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 communication 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 cooperation of the Chinese Government in forwarding a reply within 90 days of the transmittal of the letter by the Working Group as regards 44 of the 81 cases concerned.
3. (Same text as para. 3 of Decision No. 35/1995.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Chinese Government. The Working Group transmitted the reply provided by the Government to the source and received its 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 as well as the comments provided by the source.
5. Due to the large number of cases submitted in the communication, the Working Group has resorted to the following grouping of cases, so as to facilitate their examination:
 - (a) Cases regarding which the Working Group is in a position to adopt a decision on their merits;
 - (b) Cases regarding persons who, according to the Government, are no longer in detention (release or death);
 - (c) Cases regarding persons who, according to the Government, "have had no dealings with the judicial organs".
6. As regards the cases with respect to which the Working Group is in a position to adopt a decision on their merits, all of them are concerned with the exercise of the freedoms of conscience, religion, opinion, expression, assembly and association.
 - (i) Cases concerning the exercise of the freedom of thought, conscience and religion (art. 18 of the Universal Declaration of Human Rights and art. 18 of the International Covenant on Civil and Political Rights)
 - Buddhist nuns having expressed their attachment to their religion through demonstrations accompanied by slogans and by singing religious-patriotic songs and prayers, in particular praising the

Dalai Lama (Pashang Lhamo - Nyidrol - Yeshe - Dekyi Wangmo - Dhondup Dolma); having already spent long time in prison (Sangmo - Dawa Yangkyi - Dawa (Gyaltsem Dolkar) - Palden Yanghyi - Tseten* - Penpa Choezom*); or having merely demonstrated or attempted to demonstrate in public (Rinchen Choedron - Dekyi - Phurbu Dolkar - Kelsang Drolma - Zompa - Goekyi - Rinchen Drolma - Yangkyi - Nyima Migmar - Phurdrol - Ngawang Chemo - Tsering - Rigchoq); or, regarding Muslims, for having distributed leaflets protesting against restrictions imposed on religious activities, in particular by shutting down mosques (Ohmer Khan Mahsun* - Abdul Malik*).

(ii) Cases concerning the exercise of the freedom of opinion and expression (art. 19 of the Universal Declaration of Human Rights and art. 19 of the International Covenant on Civil and Political Rights)

- Accusations concerning the fact of having been in contact with foreign journalists or of having sent information abroad, in particular regarding human rights issues (Zhang Xianliang - Wu Shishen - Ma Tao - Gao Yu*); or, in the case of a historian, of having written and published a book supporting views on the question of Uighur which were different from the official ones (Turgun Almas*); or of having distributed an "unofficial magazine" (Chen Yanbin*); or having drafted and distributed pro-democracy leaflets (Chen Wei* - Rui Chaohuai* - Xing Honwei* - Xu Dongling* - Zhang Guojun*); or a document on the question of human rights entitled "Statement on the Question of Human Rights in China" (Zhang Chunzhu*); this category also comprises the case of a former journalist, founder of the Chinese League of Human Rights (Ren Wanding*); the case of a historian having protested against alleged official discrimination regarding minorities (Kajikhumar Shabdan*); and the case of a school administrator who had sent a petition to the United Nations on alleged human rights violations by Government officials (Mantimyn*).

(iii) Cases concerning the exercise of the freedom of peaceful assembly (art. 20 of the Universal Declaration of Human Rights and art. 21 of the International Covenant on Civil and Political Rights)

- In two of the cases submitted to the Working Group persons were convicted and sentenced to prison terms for hanging a banner with the slogan "We have not forgotten 4 June" and for having written and distributed leaflets calling for a public commemoration of the

* When the Government has not provided information on a case, the person's name is marked by the sign *.

anniversary of 4 June 1989 (Liao Jia'an) or for having put up posters on a college campus to the same effect (Yu Zhuo). In one case a person was convicted and sentenced to a term in a labour camp for having attempted to organize a meeting of veteran pro-democracy campaigners (Fu Shenqi).

(iv) Cases concerning the exercise of the freedom of association, including trade union (art. 20 of the Universal Declaration of Human Rights and art. 22 of the International Covenant on Civil and Political Rights

- In all of the cases concerned, persons were detained for having been active in unrecognized non-violent associations of a political or trade union character, as follows: "Republican Party" (Zhang Minpeng); "China Branch of the Democratic Front" (Yao Kaiwen - Gao Xiaoliang); "China Alliance Association" (Zhou Yuan - Liu Kai); "Beijing Workers Autonomous Federations" (Xiao Delong); "Liberal Democratic Party of China" (Hu Shigen* - Gao Yuxiang* - Lu Jingsheng* - Wang Tiancheng* - Wang Peizhong* - Chen Qinglin*); "China Progressive Alliance" (Kang Yuchun* - Lu Zhigang* - An Ning* - Wang Jianping* - Lu Mingxia* - Meng Zhongwei* (who was also accused of having contacts with the dissident Shen Tong who resides in the U.S.A.); "Social Democratic Party of China" (Ding Mao* - Liu Baiyu* - Xing Shimin* - Liu Wensheng* - Lu Yanghua* - Gao Changyun* - Zhang Jian* - Xu Zhendong* - Lu Yalin*).

7. Firstly, the Working Group takes note of the fact that, in its reply, the Government does not contest the nature of the facts of which the persons concerned are accused. Secondly, the Working Group also notes that neither in the description of the facts as presented by the source nor in the Government's reply was it alleged or asserted that the deeds imputed had been carried out by violent means or by inciting violence; it therefore results that these activities were exercised peacefully. Thirdly, the Working Group notes that the Chinese authorities describe the facts concerned, from a legal point of view, as "taking part in subversive activities" (16 cases out of 44 regarding which the Chinese authorities provided a reply to the Working Group); "disrupting public order" (4 cases); "illegally organizing workers' pickets" (2 cases); or "illegally supplying State secrets to persons outside the country" (2 cases, consisting of contacts with the exiled dissident Shen Tong or communicating to a foreign journalist a text of a speech made by a leader of the Chinese Communist Party during the Party congress).

8. It follows from these considerations that the continued detention of the persons mentioned in § 6 (i-iv) above, is based on the exercise by these persons of their fundamental rights and freedoms guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights.

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

(a) to declare arbitrary in terms of Category II of the principles applicable in the consideration of the cases submitted to the Working Group:

- As contrary to article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of thought, conscience and religion, the detention of Pashang Lhamo - Nyidrol - Rinchen Choedron - Dekyi - Zompa - Goekyi - Rinchen Drolma - Yangkyi Phurdrol - Ngawang Chemo - Tsering - Rigchog - Yeshe - Dekyi Wangmo - Dhonlup Dolma - Sangmo - Dawa Yangkyi - Dawa (Gyaltsen Dolkar) - Palden Yanghyi - Tseten - Penpa Choezom* - Ohmer Khan Mahsun* - Abdul Malik*.
- As contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of opinion and expression, the detention of Zhang Xianliang - Wu Shishen - Ma Tao - Gao Yu* - Turgun Almas* - Chen Yanbin* - Chen Wei* - Rui Chaohuai* - Xing Honwei* - Xu Dongling* - Zhang Guojun* - Zhang Chunzhu* - Ren Wanding* - Kajikhumar Shabdan* - Mantimyn*.
- As contrary to article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of peaceful assembly, the detention of Liao Jia'an et Yu Zhuo.
- As contrary to article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of association, including trade unions, the detention of Zhang Mingpen - Yao Kaiwen - Gao Xiaoliang - Zhou Yuan - Xiao Delong - Fu Shengi - Hu Shigen* - Gao Yuxiang* - Lu Jingsheng* - Kang Yuchun* - Lu Zhigang* - An Hing* - Wang Jianping* - Lu Mingxia* - Meng Zhougwei* - Wang Tiancheng* - Wang Peizhong* - Chen Inclin* - Ding Mao* - Liu Baivu* - Xing Shimin* - Xu Zhendong* - Liu Wensheng* - Lu Yanghua* - Gao Changyun* - Zhang Jian* - Xu Zhendong* - Lu Yalin*.

(b) To file the cases of persons who are no longer in detention following their release: Gao Yu, Phurbu Dolkar, Kok Fai Kwok, May Chong, Bam Bang Yang, Ina Yang, Denis Balcombe, Daughin Chan, Paul Star; as well as the case of Nyima Migmar who, according to the source, died two weeks after being released; and the case of Kolsang Drolma who also reportedly died after being released.

(c) To file the cases of persons who, according to the Government, have had no dealings with the judicial organs, namely Yu (or Shen) Liangqing - Huang Xiuming - Liu Kai - Tian Yang (or Tian Xi).

10. Consequent upon the decision of the Working Group declaring the detention of the persons mentioned in § 9 (a) 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 30 November 1995.

Names of persons submitted to the Government of the People's Republic of China
by communication dated 22 April 1994

Hu Shigen, Gao Yuxiang, Kang Yuchun, Lu Zhigang, Lu Jingsheng,
Wang Tiancheng, Wang Peizhong, Chen Qinglin, Chen Wei, Zhang Chunzhu,
Rui Chaohuai, Xing Honwei, Xu Dongling, Zhang Guojun, An Ning, Wang Jianping,
Lu Mingxia, Meng Zhongwei, Ding Mao, Liu Baiyu, Xing Shimin, Liu Wensheng,
Lu Yanghua, Gao Changyun, Zhang Jian, Xu Zhendong, Lu Yalin, Yu Liangqing,
Huang Xiuming, Tian Yang, Liao Jia'an, Zhang Minpeng, Yu Zhuo, Yao Kaiwen,
Gao Xiaoliang, Zhou Yuan, Liu Kai, Xiao Delong, Fu Shenqi, Zhang Xianliang,
Chen Yanbin, Gao Yu, Wu Shishen, Ma Tao, Ren Wanding, Pashang Lhamo, Nyidrol,
Rinchen Choedron, Dekyi, Phurbu Dolkar, Kelsang Drolma, Zompa, Goekyi,
Rinchen Drolma, Yangkyi, Nyima Migmar, Phurdrol, Ngawang Chemo, Tsering,
Rigchog, Yeshe, Dekyi Wangmo, Dhondup Dolma, Sangmo, Penpa Choezom,
Dawa Yangkyi, Dawa (Gyaltsem Dolkar), Palden Yanghyi, Tseten, Turgun Almas,
Ohmer Khan Mahsun, Kok Fai Kwok, May Chong, Bam Bang Yang, Ina Yang,
Dennis Balcombe, Daughin Chan, Paul Star, Kajikhumar Shabdan, Mantimyn,
Abdul Malik.