

OPINION No. 30/1998 (CHINA)

Communication addressed to the Government on 10 October 1995

Concerning Zhou Guoqiang

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial nonobservance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, but the latter did not provide the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The communication, a summary of which was forwarded to the Government, concerns Zhou Guoqiang, age 38, a poet, law professor, founder of the Beijing Autonomous Workers' Federation, and promoter of the November 1993 Peace Charter that called for democratic reforms. On 3 March 1994, the police arrested him in Beijing while he was selling t-shirts with anti-Government slogans. Zhou Guoqiang was charged with "writing and distributing 'anti-government' articles to organizations abroad" and "collaborating with hostile organizations and elements both inside and outside the country to carry out anti-government activities". He was

sentenced, on 15 September 1994, to three years of re-education through labour and was held at Shuanghe Labour Camp in Heilongjiang Province. Zhou Guoqiang had been detained earlier in April 1983 and July 1989 and was placed under house arrest in May 1993 for his human rights activities.

6. In its reply, the Government confirms that the Labour Re-education Commission of the Municipality of Beijing ordered Zhou Guoqiang, in March 1994, to perform three years of re-education through labour for his activities relating to instigating disturbance and seriously upsetting the social order.

7. The source, in its observations on the Government's reply, notes with concern that Zhou Guoqiang was sentenced, in July 1995, to an additional year's imprisonment for an alleged attempt to escape from the labour camp where he was being held. Furthermore, the source informed the Working Group that Zhou Guoqiang was released in January 1998.

8. Under paragraph 17 (a) of the Working Group's revised methods of work, "if the person has been released for whatever reason, following reference of the case to the Working Group, the case is filed; the Group, however, reserves the right to render an opinion, on a case-by-base basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned". In the present case, the Working Group considers that, given the questions of principle raised in the case of Zhou Guoqiang, notably in the context of the problem of "re-education through labour", the principle of freedom of expression, and having regard to the facts of the case, it is appropriate to formulate an opinion.

9. After having completed its visit to China, the Working Group, at its twentieth session, decided to resume the consideration of cases concerning China, notably in the light of the following paragraphs of its report on the visit to China (E/CN.4/1998/44/Add.2) which deal with the issue of re-education through labour:

"94. During the course of the visit, the members of the Working Group delegation inquired of the authorities whether the measure of re-education through labour was applicable to persons who disturbed the public order by peacefully exercising their fundamental freedoms guaranteed by the Universal Declaration of Human Rights ... and who were not prosecuted under the criminal law. The delegation was informed that the measure of re-education through labour was only applied to those who had committed minor offences under the common law and who were not required to be formally prosecuted. The Working Group strongly believes that if the measure is applied to persons who disturb the public order as indicated, the commitment of such individuals to re-education through labour would clearly be arbitrary."

"99. [T]he Working Group considers that re-education through labour should be decided under the a priori supervision of a judge while maintaining its administrative nature ..."

10. The Group considers that its observations contained, in paragraph 94 of its report cited above, apply in the case of Zhou Guoqiang, who merely exercised his rights recognized under

the Universal Declaration of Human Rights: on the one hand, in article 18 (freedom of thought and conscience), article 19 (freedom of expression and opinion), article 20 (freedom of peaceful assembly and of association) and article 23 (right to establish a trade union and to affiliate oneself with a trade union) and, on the other hand, in article 8 (right to an effective remedy), article 9 (freedom from arbitrary arrest and detention) and article 10 (right to a fair trial).

11. In the light of the above, the Working Group renders the following opinion:

The sentence of Zhou Guoqiang to re-education through labour is arbitrary, as it contravenes articles 7, 9, 18, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

12. As a consequence of the present Opinion, the Working Group requests the Government to take all necessary steps to implement its recommendations made after its visit to China, in particular the recommendation that calls for the establishment of a permanent independent tribunal for or associating a judge with all proceedings under which the authorities may commit a person to re-education through labour (see E/CN.4/1998/44/Add.2, para. 109 (d)).

Adopted on 4 December 1998