

OPINION No. 17/1999 (CHINA)

Communication addressed to the Government on 11 January 1999

Concerning Liu Xiaobo (43 years old)

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 non-observance 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 Group transmitted the reply of the Government to the source and received its comments. The Group 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, as well as the observations by the source.
5. According to the source, Liu Xiaobo was detained in October 1997 after having disseminated two open letters which called upon the Government to guarantee freedom of speech, press and religion. He was allegedly detained without charge or trial and sentenced to three years of re-education through labour. He had already been detained previously, for eight months, between May 1995 and January 1996, for his involvement in a petition campaign.

6. In its reply, the Government confirmed that Liu Xiaobo had been assigned to three years of re-education through labour by the Beijing Municipal Re-education Through Labour Committee.

7. The Government provided the following details:

(a) Liu Xiaobo, sentenced together with others, repeatedly stirred up trouble and disrupted public order. When he was sentenced by the Committee, he objected and hired a lawyer to file an appeal on his behalf;

(b) The Xuanwu District People's Court in Beijing took up the case in March 1997. Before the trial opened, Liu had seen his common-law partner Liu Xia (to whom he is now married) and his appointed lawyers. The court, having determined that the facts of Liu's wrongdoing were clear and the decision to assign him to re-education had been proper, upheld the decision of the Re-education Through Labour Committee by judgement of 4 April. Liu has since submitted a fresh appeal;

(c) According to the Government, in assigning Liu Xiaobo to re-education through labour, the Chinese authorities acted in strict accordance with the appropriate laws and followed thorough and strict procedures. His rights have been fully respected and protected. For these reasons, there can be no question of "arbitrary detention".

8. Without determining the question of whether Liu Xiaobo has benefited from all the guarantees for a fair and impartial trial, the Working Group observes that the Government, in its reply:

(a) Firstly, basically confirms the various steps of the proceedings taken against Liu Xiaobo without refuting in essence the allegation that he was prosecuted and sentenced for disseminating two open letters calling upon the Government to respect freedom of speech, press and religion;

(b) Secondly, only makes mention of the fact that Lui Xiaobo "repeatedly stirred up trouble and disrupted public order" without giving any supporting evidence to back up these charges beyond the two open letters cited above.

9. The Working Group therefore deems that Liu Xiaobo was prosecuted and sentenced to the administrative measure of re-education through labour, and therefore deprived of his liberty, simply for exercising fundamental rights which are laid out in articles 18 and 19 of the Universal Declaration of Human Rights: the right to freedom of conscience and religion (art. 18) and the right to freedom of opinion and expression (art. 19).

10. Noting also that no one denies that Liu Xiaobo exercised these rights peacefully, the Working Group recalls paragraph 94 of its report to the Commission on Human Rights on its visit to the People's Republic of China (E/CN.4/1998/44/Add.2), which reads as follows:

"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 (such as freedom of opinion and expression, religion, etc.), 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.”

11. It must be concluded from the above that the detention of Liu Xiaobo may be regarded as being in conformity with national legislation. However, the Working Group is of the opinion that this legislation is contrary to the provisions of articles 18 and 19 of the Universal Declaration of Human Rights.

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

The re-education through labour sentence of Liu Xiaobo is arbitrary, as it contravenes articles 18 and 19 of the Universal Declaration of Human Rights and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

13. Consequently, 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 re-education through labour should not be applied to individuals who have merely peacefully exercised their right to freedom of opinion and expression.

Adopted on 15 September 1999