

OPINION No. 30/2000 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 22 March 2000

Concerning Rebiya Kadeer (Abikim Abdiriyim)

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 Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
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, in 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 would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the communication, in the morning of 11 August 1999, Ms. Rebiya Kadeer, a businesswoman in Xinjiang Uighur Autonomous Region, was arrested in front of the Yingdu Hotel in Urumqi, capital of Xinjiang Province, where she had gone to meet with a group of visiting staff members of the United States Congressional Research Service. The next morning at 1.30 a.m. two of her sons, Ablikim Abdiriyim and Alim Abdiriyim, were also detained in Urumqi. Her secretary, Kahrman Abdukirim, was also apprehended. All those arrested in the

context of the case were released on 14 August 1999, with the exception of Rebiya Kadeer and Ablikim Abdiryim. Ms. Kadeer reportedly was briefly held initially at Tianshan Regional Jail before being transferred to Liudaowan Prison in Urumqi. She is reported to be in poor health as a result of her detention.

6. The source points out that Ms. Kadeer is married to a United States resident and former Chinese political prisoner, Mr. Sidik Rouzi, who has criticized the treatment, by the Chinese authorities, of the Uighus, the majority Muslim ethnic group in Xinjiang Uighur Autonomous Province. He has done so through Radio Free Asia since 1996, when he obtained asylum in the United States.

7. In September 1999, Ms. Kadeer was charged with “providing secret information to foreigners” and her case was reportedly referred to Beijing before she was indicted on 21 February 2000 under article 111 of the Chinese Criminal Code. Her son Ablikim Abdiryim reportedly faced similar charges. It is reported that upon her arrest, Ms. Kadeer was found in possession of pieces of paper written in English. While Ms. Kadeer speaks no English, this paper was a translation of the message about her situation that she was supposed to give to the group she was about to meet.

8. On Thursday, 9 March 2000, Ms. Kadeer was tried before the Intermediate People’s Court in Urumqi. According to the source, the trial was held in camera on the morning of 9 March. Although it is reported that she was legally represented, no member of her family was allowed to attend the trial, and none of the nine people present in the court room was of Uighur origin. After a two-hour audience and trial, Ms. Kadeer was sentenced to eight years’ imprisonment for providing allegedly classified information to foreigners. The source contends that Ms. Kadeer’s sentence must be interpreted as punishment for her husband’s public criticism of the Government. Ablikim Abdiryim and Kahrman Abdukirim were allegedly sentenced separately, without trial, to terms of re-education through labour of two and three years, respectively.

9. In the light of the allegations, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that Ms. Rebiya Kadeer was detained and subsequently convicted solely on the grounds that she had tried to tell others of the insecure situation in which she found herself, whereas in doing so she was merely exercising her right to freedom of expression. Similarly, there is reason to believe that both Ms. Kadeer’s conviction and the related convictions of her son, Ablikim Abdiryim, and her secretary, Kahrman Abdukirim, with no legal justification or trial, represent punishment and reprisals for the political opinions expressed by Ms. Kadeer’s husband, who has been granted asylum in the United States.

10. The Working Group has already expressed its opinion to the effect that the characterization of allegations of human rights violations as State secrets (OP No. 19/1999 (People’s Republic of China)) infringes not only international human rights standards, as many procedures established by the Economic and Social Council and the Commission on Human Rights encourage and legitimize the collection of such information, but also articles 5 and 6 of the Universal Declaration of Human Rights.

11. The offence with which Ms. Kadeer was charged, i.e. any information which she might provide, is under the protection of article 19 of the Universal Declaration of Human Rights, which states that the right to freedom of expression “includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”, and since its dissemination, even outside the territory, is guaranteed by that article, such an initiative cannot constitute an offence and cannot therefore be punished.

12. The Government has not denied that the sentencing to labour re-education of Ms. Kadeer’s son, Ablikim Abdiryim, and her secretary, Kahrman Abdukirim, was clearly related to her conviction, which indicates that they were not convicted for an ordinary offence. The Working Group notes that, when it visited the People’s Republic of China, the Government informed it (see report of the Working Group to the Commission on Human Rights, E/CN.4/1998/44/Add.2, para. 94) 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.

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

The deprivation of liberty of Rebiya Kadeer is arbitrary, as being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon the opinion rendered, the Working Group requests the Government:

- (i) To take the necessary steps to remedy the situation and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights;
- (ii) To take the necessary measures to bring its legislation into line with international standards and principles and to accelerate the process of ratification of the International Covenant on Civil and Political Rights, which the Government has signed.

Adopted on 27 November 2000