

**OPINION No. 35/2000 (PEOPLE'S REPUBLIC OF CHINA)**

Communication addressed to the Government on 2 February 2000.

Concerning Yuhui Zhang

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by the 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 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, 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 welcomes the cooperation of the 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 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. It would be appropriate to set forth succinctly the allegations which have been brought to the attention on the Working Group by the source.

- (i) Mr. Zhang Yuhui, a Chinese national aged 35 years, who has resided in Macao for over nine years and owns a cleaning business there, was arrested on 10 November 1999 in Kaiping City, Guangdong Province, People's Republic of China. According to the source, it is unclear whether he was presented with an arrest warrant upon arrest, or whether he has been formally charged and, if so, on the basis of what legislation.
- (ii) In early November 1999, Mr. Zhang undertook a business trip to the People's Republic of China with his wife. He was arrested in Kaiping City and detained on the ground that he was practising Falun Gong, a traditional spiritual practice with millions of followers in the People's Republic of China and throughout the world. Falun Gong, as an organization, was banned by the Chinese authorities in July 1999.
- (iii) The source notes that many Falun Gong practitioners have been detained since July 1999 and sent for re-education through labour without trial, because they refuse to denounce their belief. Other followers have been sentenced to prison terms.
- (iv) Yuhui was an active Falun Gong practitioner in Macao. Following the government crackdown on the movement, he wrote numerous articles on Internet web sites to guide readers to think about the Falun Gong issue rationally. His writings were popular among both practitioners and non-practitioners. Yuhui had also written to the Macao office of the Xinhua news agency, voicing opposition to the ban on the movement in July 1999. It is argued that all Yuhui did was lawful and transparent. He himself had told his friends several times that he was in fear of being arrested, as he had been warned by the Xinhua news agency for expressing his beliefs.
- (v) The source does not identify the facility in which Mr. Yuhui is currently detained. It notes, however, that the authorities have thus far refused permission to his family to visit him.

6. The nature of the Government's reply makes it difficult for the Working Group to appreciate the conclusions arrived at by the court when it ruled that the defendant had "posed a threat to national and state security". It is apparent from the file that the activities of Mr. Yuhui were peaceful and that he was in no way directly involved in any violent activity. The Working Group believes that article 19 of the Universal Declaration of Human Rights has been violated. It reiterates that everyone has the right to freedom of opinion and expression and that the said right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers. There is nothing to suggest

that Falun Gong uses other than peaceful means to spread what the organization believes in. The Government of the People's Republic of China in its response has stated that Mr. Zhang Yuhui is a native of Kaiping City in Guangdong Province. In 1986, after graduation from the University of International Business and Economics in Beijing, he was employed to work with the units of the customs houses in Guangzhou and Lianhuashan. He was thereafter transferred to Macao in January 1990. The Government accepts that he was arrested on 11 November 1999 by the Guangdong Province public security authorities because, since July 1999, he had been engaged in illegal activities and disrupted the social order. According to the Government, Zhang had confessed his error and displayed a willingness to correct it, pursuant to which his punishment was converted to house surveillance. The Government states that the public security authorities, in dealing with Zhang Yuhui, have acted in strict compliance with the People's Republic of China's relevant laws and regulations. The Government also informed the Working Group that Zhang Yuhui was released on 21 December 1999 and claims that Zhang was not arbitrarily detained.

7. Taking into account the response of the Government, the Working Group believes that the reasons for Zhang Yuhui's detention have not been denied. It is not denied by the Government that he wrote numerous articles on Internet web sites relating to Falun Gong. The Government also does not deny that his writings were popular both with practitioners and non-practitioners. Neither does the Government deny that Zhang Yuhui opposed the ban on the Falun Gong movement in July 1999. The reasons given for Zhang Yuhui's detention are propagation of his ideas and beliefs. That he expressed his beliefs and opinions peacefully is not in issue. The Government decision that these activities are illegal and disrupt the social order and therefore justify arrest by the public security authorities cannot be justified since his detention is in direct violation of article 19 of the Universal Declaration of Human Rights.

8. The Working Group, consistent with its practice, would not have rendered an opinion with regard to Zhang Yuhui's detention, on account of his release on 21 December 1999. However, the Working Group believes that the fact that Zhang Yuhui was detained for propagating his ideas and beliefs peacefully is sufficient reason for the Working Group to render an opinion, despite Zhang Yuhui's release from detention.

9. In the circumstances, the Working Group is of the opinion that the detention of Zhang Yuhui from 11 November 1999 to 21 December 1999 was arbitrary and contrary to article 19 of the Universal Declaration of Human Rights, and falls within category II of its methods of work.

10. Consequently, the Working Group requests the Government of the People's Republic of China to take all measures necessary to remedy the situation and, consistent with article 19 of the Universal Declaration of Human Rights, not detain people for the peaceful propagation of their opinions.

Adopted on 27 November 2000