

**OPINION No. 1/2002 (CHINA)**

Communication addressed to the Government on 26 June 2001

Concerning: Cao Maobing

**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 resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. 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 submitted information concerning the case.
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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. The Working Group welcomes the cooperation of the Government. 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. According to the information submitted to the Working Group by the source, Cao Maobing, who is said to be an electrician at the Funing Silk Factory in Jiangsu Province, was forcibly committed to the Yancheng City No. 4 Psychiatric Hospital on 15 December 2000, 24 hours after he gave an interview to an international radio in which he spoke of his attempts to

form an independent labour union. He had helped organize strikes to protest against corruption in the factory and the lay-off of more than half of its 2,000 workers. In November 2000, more than 300 workers in the factory signed a letter of protest after not receiving their wages for more than six months.

6. Mr. Cao Maobing is not permitted to receive visits from his family, friends or fellow workers. In January 2001, he started a hunger strike demanding to be allowed to return to his home. Shortly after beginning the hunger strike, he was force-fed pills and given electric shock treatment. He is currently being held in a single room with over 20 psychiatric patients. Hospital authorities issued a document saying that Cao Maobing had been determined to be "suffering from paranoid delusions" that caused "his attempt to disturb the social order". According to the source, he displayed no symptoms of mental illness either at work or after being sent to the hospital.

7. The source considers that this person was detained for exercising his right to freedom of association and expression. The fact that the Yancheng City No. 4 Psychiatric Hospital is run by the Public Security Bureau supports the claim that Mr. Cao has not been detained for medical reasons. He was not given the benefit of a trial, and has thus been deprived of his right to due process. Because his detention is outside the competence of the judiciary, there is no legal remedy available to him. The duration of his detention is unlimited and has so far lasted for more than one year.

8. The Working Group first examined whether the holding of a person in a psychiatric institution amounts to detention within the meaning of its mandate. The position of the Working Group is that forcing an individual against his will to stay in such an institution may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In the present case the source contends that Cao Maobing has been held since December 2000 in Yancheng City No. 4 Psychiatric Hospital without being able to leave it. The Government did not refute this allegation. Therefore, the Working Group concludes that the holding of Mr. Cao Maobing in a psychiatric hospital amounts to deprivation of liberty.

9. Whether his detention is arbitrary or not depends on various factors. The allegations of the source and of the Government referred to above are basically contradictory. Against the detailed allegations of the source that the detention of Cao Maobing was politically motivated (he was detained immediately after giving an interview on international radio, the hospital is run by the Public Security Bureau, his relatives have been under pressure from the authorities), the Government limited its comments to stating that Mr. Cao's detention is exclusively attributable to his mental illness and that the allegation that he has been taken into custody because of his trade union activities is utter nonsense. The Government did not provide information in support of its allegation concerning the mental illness of Mr. Cao, nor did it provide specific information to convince the Working Group of the existence of sufficient safeguards against arbitrary detention of political opponents or trade union activists for alleged mental illness, namely information concerning the legal provisions governing the admission to and the holding of people with mental disorders in psychiatric hospitals, the system of monitoring the admission and stay in such institutions by an independent body in order to prevent abuse, and the remedies available to psychiatric patients and their families to obtain review of continued detention.

10. The Working Group cannot but conclude that the detention of Cao Maobing in a psychiatric hospital for more than one year is motivated by his trade union or political activities. Therefore, on the basis of the information available to it the Working Group is convinced that Cao Maobing is being detained for having peacefully exercised his right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights.

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

The detention of Cao Maobing in a psychiatric hospital is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Cao Maobing in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 18 June 2002