

OPINION No. 5/2002 (CHINA)

Communication addressed to the Government on 3 September 2001

Concerning: Tang Xi Tao, Han Yuejuan, Zhao Ming and Yang Chanrong

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 provided 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 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. 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, which has not provided it 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. Because of their similar nature, the cases of the four following practitioners of Falun Gong are being dealt with in a single opinion:

(a) Mrs. Tan Xi Tao according to the information received, is a 64-year-old retiree who has studied and practised Falun Gong since 1996, which has helped her to overcome health problems. She has been detained several times, the latest being while she was on her way to Canton on holiday, and was sentenced to two years in a labour camp for disturbing public order and membership of an illegal organization. It is also alleged that her trial took place in camera and that her request for a lawyer was denied. She was reportedly subjected to ill-treatment, which led to heart trouble and psychological problems;

(b) Mrs. Han Yuejuan, 43-year-old widow of Liu Mingfang, a former United Nations military observer, graduated from Zhongshan University. She is a former Secretary-General of Dongshan District Literature and Arts Federation, a former Director of the Theory Education Section of the Propaganda Department of Dongshan District and a Falun Gong practitioner. She was first detained for 15 hours on 22 July 1999 and was pressed to give up her faith in Falun Gong. She was again arrested on 26 July 1999, in early June 2000, in July 2000 and in December 2000, when she was allegedly subjected to ill-treatment and even torture. In June 2000, she was dismissed from her post, and in October 2000, her application for a passport was refused. On 23 June 2001 she was arrested in Guangzhou by members of the police and was taken to an unknown destination where she was interrogated every two hours for three consecutive days. On 27 June 2001, Ms. Han was taken to Tianpingjia Detention Centre in Dongshan District in Guangzhou, where she is currently being detained;

(c) Mr. Zhao Ming, 30-year-old, a graduate of the Department of Computer Science of Tingshua University, a postgraduate student at the Computer Science Department of Trinity College in Dublin, a former network engineer with Tingshua Unisplendour Group and a practitioner of Falun Gong. He was arrested on 13 May 2000 in Beijing at the home of a fellow Falun Gong practitioner, after his passport was confiscated to force him to give up his faith, thus preventing him from returning to Ireland to continue his studies. On 7 July 2000, he was sentenced to one year's imprisonment in a labour camp, and was allegedly tortured and subjected to ill-treatment. His sentence was extended for a further period of six months;

(d) Mr. Yang Chanrong, a Falun Gong practitioner, was arrested on 27 December 2000 at his home by members of the police who did not show an arrest warrant. His wife, Ms. Zhou Fengling, was also arrested. According to the source, she died in prison on 12 July 2001, allegedly as a result of torture. It was reported by the source that she was seen handcuffed to a torture device known as the "Forbidden Board" at Xilin Detention Centre. It was also reported that their five-year-old son had been missing since they were arrested. Mr. Yang was later sentenced to three years' imprisonment in a labour camp.

6. In its reply, the Government reported that it has carefully reviewed the circumstances and stated the following concerning the persons in question:

(a) Tang Xin Tao, a 64-year-old woman with an elementary education, lives in Guangzhou City. From March to May 2000, she repeatedly took part in activities directed against government institutions, seriously disrupting social order and the regular work of government departments. In June 2000 she was ordered by the Guangzhou Re-education through Labour Commission to undergo two years of re-education through labour until 17 June 2002 for disrupting social and administrative order. On 6 July 2000 she was sent

to the Chatou labour rehabilitation facility in Guangzhou. When she entered the facility, her relatively advanced years and difficult life were taken into account, and she was frequently taken to the clinic for check-ups and was given prompt treatment for her complaints;

(b) Han Yuejuan is a 43-year-old college graduate and native of Dongshan District in Guangzhou City. On 21 July 1999, Ms. Han, in collusion with others, plotted and organized nearly 1,000 Falun Gong practitioners to besiege the Guangdong provincial government, and on numerous occasions thereafter organized and instigated activities aimed at undermining public security, seriously affecting social order and disrupting the work of the Government and the lives of the masses, to the disgust of the broad masses. On 5 July Ms. Han was detained on the order of the Guangzhou Municipal Security Department on suspicion of organizing and utilizing a heretical organization to break the law and commit crimes. The Guangzhou public security authorities are currently investigating her case in accordance with the law;

(c) Zhao Ming is a 30-year-old Han Chinese male and a native of Changchun City, Jilin Province, who graduated from Qinghua University in 1998 and went to Ireland in March 1999 to study at Trinity College, Dublin, at his own expense. In May 2000 Mr. Zhao was ordered by the Beijing Re-Education through Labour Commission to undergo one year of re-education through labour for having participated in the illegal activities of a heretical organization and for having disrupted the social order. While serving his term, Mr. Zhao violated re-education-through-labour disciplinary regulations on numerous occasions, and his period of re-education was consequently extended for 10 months, that is until 3 December 2002;

(d) Yang Chanrong is a 41-year-old male high school graduate from Changzhou City, and an employee of the Shuyan Industrial Raw Material Supply and Marketing Corporation. Since July 1999, he has repeatedly engaged in Falun Gong activities. On 3 November 2000, the Changzhou Re-education Labour Administration, acting in accordance with the relevant regulations, ordered Mr. Yang to undergo three years' re-education through labour. His wife, Zhou Fenglin, was also engaged in illegal Falun Gong activities and she was detained in accordance with criminal legislation for the offence of organizing and utilizing a heretical organization to break the law and commit crimes. While in prison she started refusing food because of her obsession with Falun Gong and desire to achieve a state of "completeness", fell ill and although the public security authorities and medical department organized a prompt rescue effort, they were unable to save her life. Her death, according to the medical examiner of the procurator's office, was caused by lobar pneumonia and electrolyte disturbance. The Government concluded by saying that the six-year-old son of Ms. Zhou and Mr. Yang has not disappeared and is currently being raised by Mr. Yang's elder brother.

7. The Government stated that the above-mentioned persons have been under investigation and are undergoing re-education through labour, their legal rights having always been fully protected, and that the allegations transmitted by the Office of the High Commissioner that these persons have been subjected to cruel punishment and ill-treatment are complete fabrications.

8. The Government stated that, like other organizations such as the Branch Davidians in the United States or the Aum Shinrikiyo in Japan, Falun Gong is quite simply a heresy. On the theoretical level, Falun Gong advocates doomsday and other extreme heretical ideas to create an atmosphere of terror; on the practical level, it legally amasses wealth and uses propaganda,

founder worship and other fallacies to control the minds of Falun Gong practitioners. A great many persons obsessed with Falun Gong go overboard in their infatuation and their minds become affected that they attempt suicide.

9. The Government also stated that, to date, more than 2,000 people have been injured or have died as a result of practising Falun Gong, and more than 650 have gone mad. In fact, Falun Gong has such extreme phenomena in China as collective immolations of obsessed persons and the derailing and overturning of trains; it is a very dangerous heretical organization. The Chinese Government has lawfully banned the Falun Gong organization precisely to protect the fundamental rights and fundamental freedoms of all persons, including Falun Gong practitioners and their families, and in so doing has obtained the broad support and endorsement of all segments of society.

10. The Government repeatedly stated that in the process of banning the Falun Gong, it has acted in strict compliance with the law. In the case of the overwhelming majority of ordinary practitioners the measures taken have consisted mainly of persuasion and education aimed at helping those persons recover their former everyday lives. Only a very few law-breaking criminal elements have been punished under the law. The Government concluded its remarks by stating that its methods are identical to those used by any other country in combating heretical practices, and therefore are universally understood by the international community.

11. In the light of the foregoing, the following may be concluded:

(a) The Working Group notes that Mrs. Tan Xi Tao was arrested because of her practice and defence of Falun Gong, in which she did in a peaceful manner and in exercise of the rights to freedom of belief, either alone or in community with others and in public or private, and to freedom of opinion and expression, which are guaranteed by the Universal Declaration of Human Rights;

(b) In the case of Han Yuejan, the Working Group notes that she was detained several times, the latest for membership of Falun Gong, and that the Government also accuses her of organizing and directing a demonstration, but neither indicates that the demonstration was a violent one nor offer any details to that effect. Consequently, Ms. Han Yuejan was detained for the peaceful exercise of internationally protected rights, such as the right to assemble and to demonstrate, freedom of belief and freedom to express opinions, including those which run counter to the opinions of the broad masses, as the Government stated in its reply;

(c) In the case of Zhao Ming, no satisfactory explanation was provided as to why his passport was confiscated, which prevented him from continuing his studies, nor was any reason given for his detention other than the fact that he freely exercised his rights to freedom of belief and opinion in the manner to which he was entitled;

(d) In the case of Yang Chanrong (Canrong, according to the source), the Government acknowledged that he was sentenced to re-education through labour for involvement in Falun Gong activities, as was his wife, who died in prison. The Working Group considers that the right to freedom of opinion and belief signifies that the mere adherence to or practise of a discipline or belief cannot be invoked as the only ground for detention.

12. The Working Group considers that, according to the information provided concerning these cases, the activities and protests of these four Falun Gong activists were peaceful and devoid of all violence. In particular, in these cases the persons concerned were detained for having peacefully exercised their right to demonstrate their belief in Falun Gong, which the Government has not denied. The Working Group is of the opinion that article 19 of the Universal Declaration of Human Rights, in particular, has been violated, as everyone, according to this article, has the right to freedom of belief, conscience and religion and as this right includes the freedom to manifest one's religion or belief and the freedom to hold opinions without interference and to impart them, either alone or in community with others, in public or private and through any media.

13. In its report on the visit to China (E/CN.4/1998/44/Add.2) the Working Group stated that administrative detention for re-education through labour should not be imposed on any person exercising his or her fundamental freedoms, as guaranteed by the Universal Declaration of Human Rights. In the cases at hand, detention does constitute a coercive measure designed to undermine the freedom of those persons to adopt beliefs of their own choosing.

14. In the light of the foregoing, the Working Group is of the opinion that the deprivation of liberty of Tang Xi Tao, Han Yuejuan, Zhao Ming and Yang Chanrong is arbitrary, as being contrary to articles 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the principles applicable to the consideration of cases submitted to the Working Group.

15. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of these four persons and to bring it into conformity with the standards and principles set forth 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