

OPINION No. 15/2002 (CHINA)

Communication addressed to the Government on 11 July 2002.

Concerning: Yao Fuxin.

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 resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group sent to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having provided the requested 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 made comments on it. The Working Group is now 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 Group by the source, Mr. Yao Fuxin, a Chinese citizen was arrested on 17 March 2002 in Liaoyang city, Liaoning province, less than 1 km from his home, by plain clothes security officers belonging to the Liaoyang Public Security Bureau, who did not show any arrest warrant. However, the Public Security authorities denied they had detained Yao Fuxin until 21 March 2002. Yao Fuxin was held secretly in detention at an unknown location. Subsequently, he was transferred to Tieling Detention Centre in Liaoyang.

6. On 30 March 2002, Yao Fuxin was formally charged with “organizing illegal demonstrations” and “gathering a crowd to disrupt social order”, a crime punishable with imprisonment of three to seven years according to article 290 (1) of the Chinese Criminal Code.

7. A former employee of the Ferroalloy Factory in Liaoyang City, Yao Fuxin had helped to organize an independent inquiry into the company accounts after the factory directors declared bankruptcy and were widely accused of involvement in corruption scandals with the local authorities. He also led the workers in multiple drives to petition the Liaoyang city government, the Liaoning provincial government and the Central Government in Beijing. On 11 and 12 March 2002, he led a demonstration in front of the local government offices, made up of thousands of disaffected workers from the Ferroalloy Factory as well as from other local factories (Liaoyang Textile Factory, Liaoyang Leather Factory; Liaoyang Precision Tool Factory; Liaoyang Instruments Factory and Liaoyang Piston Factory). The demonstrators, who were angry about unpaid wages and benefits, demanded the resignation of the Chairperson of the Liaoyang People’s Congress, claiming he had failed to effectively represent workers’ interests with the Government. Liaoyang’s State-controlled television station announced that the workers had violated China’s laws on demonstrations and that some of them had “colluded with foreign hostile elements”.

8. The source further reports that on 18 March 2002, workers from more than 20 local and regional factories protested Yao Fuxin’s detention and demanded his immediate release. On 11 April 2002, authorities allowed his wife, Guo Xiujing, to visit him in Tieling Detention Centre. She reported that Yao Fuxin’s health had rapidly deteriorated. Prison authorities advised his daughter, Yao Dan, that Yao Fuxin was in a very serious condition after having suffered a heart attack and that he had been taken to a hospital. Police reportedly sent the hospital 10,000 yuan (US\$ 1,205) to cover his treatment, but did not allow his relatives to visit him at the hospital, raising speculation that he had been severely beaten in custody. According to Mr. Yao Fuxin’s relatives, he was in a perfect state of health prior to his arrest and had never had a history of heart problems.

9. According to the source, Yao Fuxin has been detained only because he has peacefully exercised his rights to freedom of expression, to freedom of association and to freedom of assembly, rights guaranteed by the Universal Declaration of Human Rights.

10. In its reply to the allegations of the source the Government stated that Mr. Yao Fuxin was employed at the rolled steel plant in Liaoyang city. Because of operating losses sustained over several years, in October 2001 the general meeting of employees’ representatives of the Liaoyang city Ferroalloy Factory, following consultations, decided to file for bankruptcy and proceedings were officially instituted. From 11 to 21 March 2002, more than 500 employees and retirees of the Liaoyang city Ferroalloy Factory applied to the city government for an increase in their relocation subsidies and economic compensation rates, and demanded that the corrupt managers and other staff at the enterprise should be punished. The Liaoyang city government gave extremely careful attention to their demands and promptly set up a board of inquiry to conduct a thorough and detailed investigation into the issues raised by the employees, and adopted the following measures to resolve the issue:

(a) Punishment, in accordance with the law, of the corrupt officials. The judicial authorities investigated the unlawful and criminal activities conducted by the corrupt officials

and took the following action: one person has been convicted; one person is being prosecuted; one person has been taken into criminal detention; three people are out on bail awaiting trial; and cases have been opened against a further seven people;

(b) All possible means are being deployed to raise funds to maintain the basic living conditions of the factory employees;

(c) Assistance is being mobilized to redeploy the staff laid off to other jobs. Thanks to efforts by the local government, the situation was quickly calmed.

11. Yao Fuxin is not in fact an employee of the Liaoyang city Ferroalloy Factory. In the course of the events alluded to above, however, Mr. Yao colluded with employees of the Liaoyang city Ferroalloy Factory, taking advantage of their discontent to plan, instigate and carry out a number of destructive activities. Mr. Yao and his accomplices burst into the local government building, throwing the offices into turmoil, smashing public vehicles, blocking traffic and disrupting public order. The unlawful activities conducted by Mr. Yao and his accomplices seriously disrupted production activities in the city, as well as the inhabitants' daily lives and work routine, endangered public safety and property and provoked the strong disapproval of the general public. As Mr. Yao's conduct was in breach of relevant provisions of the Chinese regulations on the organization of assemblies and marches, on 27 March the public security authorities, acting in accordance with the provisions of article 296 of the Chinese Criminal Code, took him into criminal detention on suspicion of the crime of organizing an unlawful assembly, march or demonstration. Since Mr. Yao has been taken into detention, all his rights and interests have been fully protected, his state of health remains good and he has not been subjected to any form of torture.

12. As is evident from the circumstances described above, Mr. Yao was arrested because his activities breached the country's criminal law. Faced with criminal activities of this kind, no country governed by the rule of law will stand idly by and do nothing. The measures taken by the judicial authorities against Mr. Yao are entirely consistent with the law and do not in any way constitute arbitrary detention.

13. Commenting on the reply of the Government, the source pointed out that the actions taken by Yao Fuxin and his companions had been, throughout the events referred to in the communication, peaceful, and the Government's reference to Mr Yao's and others' wrongdoing and various violent acts is devoid of any factual basis. The source adds that on 20 March, three days after Yao Fuxin was arrested, a representative of the Ferroalloy workers presenting a petition at the municipal government offices ran into the building during a sudden rainstorm. That was the only time that anyone "burst into a local government building". The source goes on to state that according to Yao Fuxin's wife, far from inciting violence or disrupting public transport, Mr. Yao and the other labour leaders on several occasions dissuaded workers from blocking railway lines.

14. The source asserts that the arrest and detention of Yao Fuxin result from his merely exercising his right to freedom of assembly and association. The constant practice of the Working Group on Arbitrary Detention has been to regard detention carried out just to punish the

exercise of rights protected by international instruments as arbitrary. In fact, the relevant international instruments protect only the *peaceful* exercise of freedom of assembly and association.

15. In assessing whether the detention of Yao Fuxin is arbitrary, it is decisive to establish whether Mr. Yao exercised on the occasion in question his right to freedom of peaceful assembly, or, on the contrary, was engaged in violent acts. The presentation of the events by the source and the Government coincide in that the bankruptcy of the plant and its ensuing difficulty in paying wages to its employees caused tension in the locality; the versions of the source and the Government are completely contradictory, however, as to the peaceful or violent nature of Mr. Yao's acts.

16. It is the position of the Working Group that the Government did not support with convincing arguments its view that Yao Fuxin's acts were violent. The turmoil, and the violent role that Yao Fuxin allegedly played in it could - and in the Working Group's view, should - have been recorded in various ways. But the Government failed to support its allegation with convincing documents - such as copies of official records, witness statements in the criminal proceedings conducted against Yao Fuxin, or court decisions pronounced against him. Therefore, the Working Group concludes that Yao Fuxin's exercise of his right to assembly and association cannot be regarded *prima facie* as not peaceful.

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

The deprivation of liberty of Yao Fuxin is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights, to which China is a signatory, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. The Working Group requests the Government to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and to consider ratifying, as soon as possible, the International Covenant on Civil and Political Rights.

Adopted on 28 November 2002