

OPINION No. 7/2003 (CHINA)

Communication addressed to the Government on 28 August 2002.

Concerning: Chen Gang, Zhang Wenfu, Zhong Bo, Liu Li, Wu Xiaohua, Gai Suzhi, Liu Junhua, Zhang Jiuhai, Zhu Xiaofei.

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

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
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 provided the Working Group 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. According to the information transmitted by the source, Chen Gang, male, 28 years old, resident of Tianshui city, Gansu province, was arrested in April 2002 by members of the Lanzhou city police, who beat and ill-treated him. He is detained in the Luergou Detention Centre, Tianshui city, Gansu province, and is reportedly in critical condition. The source further reports that Chen Gang was detained in November 1999 for 15 days when he went to Beijing to ask the Government to stop its persecution of Falun Gong. In January 2000, the Chief of the Politics and Law Committee of Tianshui city detained him for one month. Later, he was sent to the Ping'antai Labour Camp in Lanzhou city for one year of forced labour. While in detention in this camp, he was tortured severely. According to the reports received, guards bounded his arms and legs, sealed his mouth and nose, shoved him under a board bed and then stomped on it. In March 2001, he was released but the police did not allow him to go back to work and his salary was stopped by the work unit. It was further said that the police often went to his residence to harass him, which caused him to leave his home to live on the streets.
6. Zhang Wenfu, male, resident of Dalian city, Liaoning province, was reportedly arrested on 19 January 2002 and sent to Pulandian Detention Centre for 50 days. It was alleged that on 8 March 2002, without any legal procedure, he was transferred to the No. 5 Division of Dalian Labour Camp where he was put under strict supervision for over 40 days. He was not allowed to wash his face or brush his teeth, and was forced to do heavy labour for long periods each day. On 18 April 2002, he was transferred to the No. 8 Division of Dalian Labour Camp. On 28 April 2002, he started a hunger strike to protest the conditions of his detention. In response, he was allegedly tortured by three team leaders, Li Xuezhong, Li Shaofu and Peng Dahua, and by an inmate, Chi Diandong. His mouth and eyes were sealed with tape, his

hands were handcuffed and his head was beaten with a rubber baton. He was also beaten with a wooden board. Torturers used chopsticks to poke inside his mouth, causing it to bleed profusely. Later, he was locked in a compartment, handcuffed and forced to lie on a wooden board for a day.

7. Zhong Bo, female, 42 years old, employee of the Anda Chemistry Factory, resident of Anda city, Heilongjiang province, was reportedly arrested at her home on 31 May 2002 at 9 a.m. by six policemen led by Liu Yingshan, an officer from the 610 Office, an agency reportedly created specifically to persecute Falun Gong. At the compound of the Politics and Administration Department in Anda city, she was beaten with a wooden stick by six policemen led by Wang Jun, the Vice-Director of the Anda City Police Station. At the 610 Office she was subjected to electric shocks on her back. Her eyes bled and her face became black and swollen. That evening, she jumped from a second-floor window. The examination at Daqing City Hospital in Heilongjiang province showed that two of her right ribs and her teeth were broken. She lost all memory of what happened and cannot take care of herself.

8. Liu Li, female, resident of Taonan city, Jilin province, blind in one eye, was reportedly arrested at her home on 28 July 2002 together with 11 other Falun Gong practitioners and taken to the Taonan City Police Bureau. The Chief of the Department of Politics and Security, Liu Jinwei, told her that she would be sent to the Heizuizi Labour Camp in Changchun city or to re-education classes in Daan city. He told her that she would not be released unless she renounced Falun Gong.

9. Wu Xiaohua, female, 47 years old, an associate professor of the Environmental Art Department at Anhui Civil Construction Engineering College at Hefei city, Anhui province, was reportedly placed under house arrest in October 2001, during the Asia Pacific Economic Cooperation Summit held in Shanghai. Later, she was sent to a labour camp for women. She was allegedly tortured at the camp in a variety of ways, including having her mouth stuffed with rags and tissues soaked in urine and menstrual blood. In mid-October 2001, on the tenth day of a hunger strike she had initiated to protest against her detention, she was sent to the No. 4 People's Hospital at Hefei city, Anhui province. At the hospital she was stripped of her clothes and shocked with electric needles and an electric baton all over her body. She was threatened by a medical doctor, Dr. Li, with electric shocks until she became unconscious. She was also forcibly given injections and force-fed drugs. It was further reported that Professor Wu was first arrested in December 1999 for appealing in Beijing to the Government to put an end to its persecution of Falun Gong. She was allegedly tortured at the Anhui Female Detention Centre in Anhui province. Later she was transferred to the No. 4 People's Hospital of Hefei city where she also was tortured, including by being locked in a bathhouse full of mosquitoes for one night and being forced to use a pigpen full of spider webs as a toilet. At the end of April 2001, she was again arrested.

10. Gai Suzhi, female, 63 years old, a retired employee of the No. 2 Petrochemical Factory at Fushun city, Liaoning province, was reportedly arrested in August 2001 and sent to the Wujiabao Labour Camp at Fushun city, in spite of the fact that by law, the labour camp is not allowed to detain anyone who is older than 60. To protest her illegal detention, she has gone on hunger strike several times at the camp. She only weighs about 35 kg now and she has become

extremely sick. It was alleged that she has been cursed, beaten and tortured very often at the camp. It was further reported that Ms. Gai was first arrested in December 2000, when she went to Beijing to protest against the persecution of Falun Gong. She was detained for more than two months. Subsequently, she was arrested twice more.

11. Liu Junhua, male, aged 36, employee of Sanjiang Food Company at Jiamusi city, Heilongjiang province, was reportedly arrested on 9 April 2002 at his home at Jiamusi city by members of the Nanwei Police Station for his belief in Falun Gong. He is imprisoned in Xigemu Forced Labour Camp, Heilongjiang province. His wife was forced to leave home to avoid further harassment and persecution from local police. He had previously been detained and sentenced to two years of re-education through forced labour. At the end of October 2001, he was re-arrested in Mishan city and released after he went on hunger strike for 44 days.

12. Zhang Jiuhai, male, aged 35, from Liudian town, Pinggu district, Pinggu county, Beijing city, was reportedly arrested at his home on 6 August 2002 and sent to re-education classes in Pinggu county. It was further reported that he was previously detained from August 2000 to February 2002 in Tuanhe Labour Camp, Beijing, where he was severely tortured, reportedly because he refused to renounce Falun Gong. In April 2002, he was arrested again and administered shocks with electric batons at the Haidian District Police Bureau, Beijing. The local police ransacked his home six times and detained his father twice.

13. Zhu Xiaofei, male, former employee of Lushun 4810 Factory, resident of Lushunkou district, Dalian city, Liaoning province, was reportedly arrested on 26 November 2001 at his workplace by police. He was sent directly to Dalian Forced Labour Camp, in Liaoning province, where the guards allegedly ordered other inmates to monitor him and physically torture him by shocking him with electric batons. He was later transferred to Guanshan Forced Labour Camp in Changtu city, Liaoning province, where he is forced to do hard labour. It was further reported that Mr. Zhu had been previously detained twice at the Lushunkou District Police Station, where police officer Ye Qiang tortured him, choking him with a rope and shocking him with electric batons.

14. According to the source, the nine above-mentioned persons are being held in detention illegally solely because of their belief in Falun Gong. Many of them have been sent for re-education through forced labour without trial because they refuse to renounce their belief. The source adds that their activities were always peaceful.

15. The Government provided the Working Group with the following information.

16. Chen Gang, male, aged 25, resident of Tianshui city, Gansu province, was ordered by the Tianshui city labour rehabilitation committee in February 2000, to serve one year's re-education through labour for repeatedly disturbing the peace. In September 2002, the Tianshui city labour rehabilitation committee ordered Mr. Chen to serve three years' labour re-education for once again having disturbed the peace. While serving his term of labour re-education, Mr. Chen has not been subjected to any harassment or ill-treatment.

17. Zhang Wenfu, male, aged 40, resident of Dalian city, Liaoning province, was ordered by the Dalian city labour rehabilitation committee to serve two years and six months' labour re-education, to run from 20 January 2002 to 19 July 2004, for disturbing the peace. While serving his term of labour re-education, Zhang has never embarked on any hunger strikes.

18. Zhong Bo, female, aged 42, resident of Anda city, Heilongjiang province, was taken into criminal detention on 21 October 2002 for repeatedly disturbing the peace. On 11 November, she was granted medical parole. She has never been subjected, as alleged, to any harsh beatings, nor did she jump from a second-floor window and break two ribs.

19. Liu Li, female, aged 46, resident of Taonan city, Jilin province. On 3 February 2001, Ms. Liu was ordered by the local labour rehabilitation committee to serve one year's labour re-education for disturbing the peace, but, because she is blind in one eye, the order was amended to allow her to serve the term of labour re-education outside the custodial facility. While serving her term, Ms. Liu was once again ordered, in April 2002, to serve one year's labour re-education for disturbing the peace, which again was to be served outside the custodial facility. Ms. Liu is currently leading a normal life at home.

20. Wu Xiaohua, female, aged 48, formerly an associate professor at the Anhui Construction Industry College, was ordered on 28 January 2000 by the labour rehabilitation authorities to serve one year's labour re-education for causing a serious disturbance of the peace. While serving her term of labour re-education, the facility employees noticed that her mental state was very distracted and observed that she displayed other abnormal symptoms, such as a tendency to injure herself without cause or reason, to refuse food and other aberrations. On 17 July 2000, she was diagnosed by the Anhui psychiatric appraisal committee to be suffering from schizophrenia (of the paranoid variety), and incapable of responding to labour re-education. The labour re-education facility promptly took steps for her to receive medical attention outside the facility and she was thereupon discharged from her term of labour re-education. After undergoing treatment, Ms. Wu's state of health improved, but she once again conducted activities which seriously disturbed the peace. On 2 June 2001, the Hebei municipal labour rehabilitation committee ordered her to be examined by the expert appraisal committee of the provincial psychiatric hospital, with a view to identifying her psychiatric disorder. The diagnosis was that, during the period while her schizophrenia was in full remission, she was capable of responding to labour re-education, whereupon she was ordered to serve two years' labour re-education. While Ms. Wu was undergoing her term of labour re-education, the responsible authorities, acting on humanitarian grounds, frequently arranged prompt medical treatment for her and she was not subjected, as alleged, to any cruel treatment or insults or made to endure any electric shocks or physical beatings.

21. Gai Suzhi, female, aged 62, resident of Fushun city, Liaoning province, was ordered in October 2000 by the Fushun city labour rehabilitation committee to serve two years' labour re-education, to run from 19 October 2000 to 18 October 2002, for disturbing the peace. In view of her age, her poor physical condition and her many ailments, the labour re-education facility, following the relevant regulations, decided to allow her to serve her term of labour re-education outside the custodial facility. While serving her term, Ms. Gai once again caused a breach of the peace and was ordered to serve a further three months' labour re-education. Ms. Gai completed her term of labour re-education on 8 January 2003.

22. Liu Junhua, male, aged 36, resident of Jiamusi city, Heilongjiang province, was ordered by the Jiamusi city labour rehabilitation committee to serve two years' labour re-education, to run from 23 October 1999 to 22 October 2001, for disturbing the peace. While serving his term of labour re-education, Mr. Liu caused breaches of the facility rules and regulations and, on 3 November 2000, he conspired with other inmates to escape. On 28 September 2001 he was reapprehended by the public security authorities and returned to the facility to continue serving his term. On 9 June 2002, the Jiamusi City People's Court, acting in accordance with the law, sentenced him to 10 years' fixed-term imprisonment for the offence of sabotaging implementation of State law.

23. Zhang Jiuhai, male, aged 35, resident of Beijing, was ordered in July 2000 to serve one year's labour re-education for causing a disturbance of the peace. On 1 April 2002, the Beijing city labour rehabilitation authorities ordered him to serve two years' labour re-education, for having once again disturbed the peace. He is currently serving his term.

24. Zhu Xiaofei, male, aged 26, resident of Dalian city, Liaoning province, was ordered on 1 October 2001 by the Dalian city labour rehabilitation committee to serve two years and six months' labour re-education, to run from 26 November 2001 to 25 May 2004, for causing a disturbance of the peace. He is currently serving his term in Guanshan labour re-education facility in Liaoning province.

25. In its observations, the Government states that China is a country governed by the rule of law. Chinese law fully safeguards the lawful rights and interests of persons undergoing labour re-education. Where persons undergoing labour re-education are concerned, the basic policy followed by the labour re-education facility is that they should be re-educated, guided by persuasion and thus reformed; that they should be accorded the same solicitude as parents accord their children, teachers accord their students and doctors accord their patients; that they should receive consideration, assistance and education; and that their lawful rights and interests should be protected in accordance with the law. At the same time, in the actual practice of labour re-education, full use is made of such procedures as the remission of terms, the granting of parole for terms to be served outside the facility and early release from detention in the facility, so that those undergoing labour education are reformed to the maximum extent. Once released from the labour re-education facility, students may return to their studies, employees and workers may resume employment and their rights to a normal life and job are fully upheld.

26. In its reaction to the reply from the Government, the source states that the Government of China used "disruption of social order" as the pretext for detaining Zhong Bo, Liu Li, Wu Xiaohua, Gai Suzhi, Chen Gang, Zhang Wenfu, Liu Junhua, Zhang Jiuhai and Zhu Xiaofei. According to the source, the Government failed to name the specific offences with which they had been charged. The source notes how strange it is that people of different ages (from 25 to 62), different professions (workers, professors, retirees) and from different locations suddenly develop the same tendency to "disrupt social order", many even repeatedly. According to the source, Zhong Bo, Liu Li, Wu Xiaohua, Gai Suzhi, Chen Gang, Zhang Wenfu, Liu Junhua, Zhang Jiuhai and Zhu Xiaofei are all Falun Gong practitioners and were persecuted for exercising the freedom of belief guaranteed by China's Constitution. They were repeatedly detained and tortured for refusing to renounce Falun Gong.

27. The Working Group notes that the Government of China has informed it that Zhong Bo, Liu Li and Gai Suzhi are no longer being detained. When this information was transmitted to the source, it was not disputed.
28. The Working Group further observes that the Government has not denied that Chen Gang, Zhang Wenfu, Wu Xiaohua, Liu Junhua, Zhang Jiuhai and Zhu Xiaofei are Falun Gong practitioners, or that they were detained in connection with the practice of this discipline.
29. As there is no evidence that Falun Gong is a violent belief, as far as the cases under consideration are concerned, its free exercise should be protected by article 18 on freedom of belief and article 19 on freedom of opinion and expression of the Universal Declaration of Human Rights.
30. Even though the sentence of re-education through labour is, as claimed by the Government, a more favourable measure offering better possibilities to the person concerned than a prison sentence imposed by a court judgement, it still constitutes, in the opinion of the Working Group, administrative deprivation of liberty that may be arbitrary in character, as found by the Group in its deliberation 04 of 1993 (see E/CN.4/1993/24, chap. II).
31. In its report on its visit to China (E/CN.4/1998/44/Add.2, para. 95), the Working Group stated that the measure of re-education through labour should not be applied to 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.
32. The Working Group therefore deems that these persons were prosecuted and sentenced to the administrative measure of re-education through labour, and therefore deprived of their liberty, mainly for exercising fundamental rights which are set out in articles 18 and 19 of the Universal Declaration of Human Rights: the right to freedom of conscience and religion (art. 18) and the right to freedom of opinion and expression (art. 19).
33. In the light of the foregoing, the Working Group issues the following opinion:
- Since Zhong Bo, Liu Li and Gai Suzhi have been released in the meantime, the Working Group decides, pursuant to paragraph 17 (a) of its methods of work, to file their case, without taking position as to whether their detention was arbitrary.
- The detention of Chen Gang, Zhang Wenfu, Wu Xiaohua, Liu Junhua, Zhang Jiuhai and Zhu Xiaofei is arbitrary, being in contravention of articles 18 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.
34. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of these 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 9 May 2003