

**OPINION No. 12/2003 (CHINA)**

Communication addressed to the Government on 31 January 2003.

Concerning: Liu Xianbin and Li Bifeng.

**The State has signed but not 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 submitted an information concerning the case.
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 reply of the Government was forwarded 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.
5. According to the source, Liu Xianbin, a Chinese national born on 25 August 1968 and residing in Suining city, Sichuan province, is a leading member of the China Democratic Party (CDP) in Sichuan province and the acting director of China Human Rights Observer, an unofficial organization.
6. For several years, Liu Xianbin has written open letters to the authorities and participated in nationwide campaigns promoting democracy and human rights in China. He reportedly spent two years in prison for his participation in the 1989 democracy movement.
7. On 7 July 1999, Liu Xianbin was reportedly arrested without a warrant at his home by Suining city State security officers and taken into custody. He was formally arrested on 13 July 1999.
8. On 6 August 1999, the Suining City Intermediate Court reportedly sentenced Liu Xianbin to 13 years' imprisonment for "incitement to subvert State power" under article 105 of the March 1997 provisions of the Chinese Criminal Procedure Law. According to the information received, Liu Xianbin did not have the opportunity to have a defence lawyer and spoke in his own defence at the trial. His wife reportedly attempted to hire a lawyer but was unsuccessful as a series of lawyers withdrew from the case following pressure from Chinese authorities.
9. According to the information received, the public security authorities presented the following evidence during the trial: holiday telegrams to organizations overseas were cited as evidence of Liu Xianbin's collusion with overseas groups and a plot to establish the CDP abroad; comments taken out of context from an article Liu Xianbin had written for the China Human Rights Monitor were cited as evidence of this propagation of anti-Communist Party views; Liu Xianbin's essays were categorized as attacks on China's rural responsibility system and

population planning policy; and Liu Xianbin's open letters to Chinese leaders were considered attacks on the socialist judicial system and humanitarian aid. Liu Xianbin is reportedly serving his sentence at the Sichuan No. 3 Prison.

10. Li Bifeng, a Chinese national born in 1965 and residing in Mianyang city, Sichuan, is a labour activist and a representative of an unofficial organization called Chinese Conscience and Care Action which publishes information about laid-off workers' protests and their living conditions. He is also a poet and a writer who edited a dissident magazine in the mid-1980s and was imprisoned for five years for his involvement in the 1989 democracy movement.

11. In June 1997, Li Bifeng allegedly wrote an open letter to the international press containing information on a workers' protest in Mianyang city where 100,000 laid-off workers from three bankrupt textile factories demonstrated against factory managers' embezzlement of their unemployment-relief money. The protest reportedly culminated with a crackdown by the People's Army in which over 100 workers were wounded and more than 80 arrested.

12. In 1997, Li Bifeng also reportedly wrote to the Central Committee of the Chinese Communist Party to urge them "to free all political prisoners ... and end one-party rule". In 1998, he further reportedly published a survey showing that 98 per cent of redundant workers surveyed felt that lay-offs were not implemented on an equitable basis and that the Government needed to reform the social security system.

13. On 8 March 1998, while en route to visit his two-year-old daughter in Mianyang, Li Bifeng was reportedly detained without a warrant at a tollbooth by officers of the Mianyang City State Security Bureau.

14. He was reportedly formally arrested on 6 April 1998 and charged with "fraud" on 24 August 1998. According to the information received, the charge was related to the sale of a safe deposit box from his place of work.

15. On 24 August 1998, after a one-day trial, Li Bifeng was sentenced to seven years' imprisonment for fraud under article 193 (3) of the Chinese Criminal Law. No witnesses reportedly testified against him. The only evidence was an "IOU slip" allegedly linking Li Bifeng to a suspect transaction. According to the information received, his lawyer was strongly advised not to defend him.

16. Li Bifeng is reportedly serving his sentence at the Chuandong prison in Sichuan province where he has been detained since April 1998. Prior to this date, he was reportedly detained at Jiangyou City Detention Centre.

17. The Government of China, in its reply stated that it has carefully investigated the matters alleged in the communication and informed the Working Group that

(a) Li Bifeng has been arrested and taken into custody by the Beijing city public security authorities with due approval from the Beijing city people's procurator's office on suspicion of fraud. His family was notified in accordance with prescribed legal procedure. On 28 April 1998, the Mianyang city people's court sentenced him to seven years' fixed-term imprisonment for the offence of fraud and he is currently serving his sentence in Ya' an prison;

(b) Liu Xianbin was sentenced on 7 August 1999, by the Suining city intermediate level people's court to 13 years' fixed-term imprisonment and stripped of his political rights for three years for the offence of subverting the authority of the State and he is currently serving his sentence in Chuandong prison.

18. The Government added that the arrests of Mr. Li and Mr. Liu were carried out exclusively because they were suspected of having breached Chinese law. In handling the above cases, the Chinese public security authorities also complied strictly with legal procedure; the lawful rights of the persons concerned have been fully protected and neither is a case of arbitrary detention.

19. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source stated that the Government's response failed to supply facts or additional information to support its assertion regarding compliance with Chinese laws and procedures and also failed to provide any supporting documentation and information regarding such compliance. The source concluded that the Government detained Mr. Li and Mr. Liu in connection with the peaceful expression of their human rights and has failed to afford them the procedural protections guaranteed by Chinese law and international treaties.

20. Accordingly, in the view of the Working Group, the Government has merely stated that in both cases Chinese law has been correctly applied and the proper procedure scrupulously followed, and has not provided any information whatsoever concerning the nature of the charges against Mr. Li and Mr. Liu; the Government has also failed to present any evidence or arguments to refute the source's detailed allegations to the effect that the detention and conviction of Li Bifeng and Liu Xianbin were the result of the peaceful pursuit of trade union and/or political activities.

21. The Government does not contest the fact that Li Bifeng and Liu Xianbin have been imprisoned in the past, the former for five years and the latter for two years, for their involvement in the 1989 pro-democracy movement, or that Mr. Liu is the leader of the China Democratic Party, an unrecognized political party, and that Mr. Li is active in China Human Rights Observer, an unofficial trade union organization. The Government merely draws attention to the fact that, before their arrests, Mr. Liu and Mr. Li were unemployed.

22. The Government has failed to adduce convincing arguments to refute the allegations of the source, which maintains that Liu Xianbin was sentenced to 13 years' imprisonment for publishing articles critical of the Government and the Chinese Communist Party and that Li Bifeng was found guilty of fraud, without any evidence and without benefit of a fair trial, because he had conducted an investigation into the laying-off of 20,000 workers in Sichuan province, and after having written an open letter to the authorities and published information on disturbances said to have occurred in that province.

23. Consequently, the Working Group can only conclude that Mr. Li and Mr. Liu were arrested and deprived of their liberty for having peacefully exercised their right to freedom of opinion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights. As to the allegations of violations of the right to a fair trial, the Working Group considers that it does not have sufficient information to give an opinion on the matter.

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

The detention of Li Bifeng and Liu Xianbin is arbitrary, being in contravention of article 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.

25. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation in respect of the above-mentioned persons, in order to bring it into conformity with the provisions 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 4 September 2003