

OPINION No. 23/2003 (CHINA)

Communication addressed to the Government on 11 July 2003.

Concerning: Xu Wenli.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. The Working Group regrets that the Government has not provided it with information about the facts alleged and its position on the merits of the case, despite an invitation to do so. Nevertheless, 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 substantiated allegations made.
5. According to the information submitted to the Group Xu Wenli is 60 years old, born on 1 January 1943, a resident of Beijing, currently being held at Yanqing prison in Beijing, considered a veteran pro-democracy activist, reportedly suffers from hepatitis B and shows signs of severe illness. He was arrested on 30 November 1998 at his home by members of the Beijing Public Security Bureau. A search warrant was presented after his arrest, to his wife, He Xintong, and his home was searched. Mr. Xu was accused of attempting to establish the Beijing and Tianjin branches of an organization called the China Democracy Party and was charged with endangering State security under article 105 of the Criminal Law as amended in March 1997.
6. On 21 December 1998, after a one-day trial that was closed to the public, Xu Wenli was sentenced to 13 years of imprisonment. He was denied legal representation and forced to present his own defence.
7. According to the source, since 1982 Xu Wenli has been in and out of prisons and detention centres as a result of his activities promoting democracy. He has initiated numerous movements and groups to promote human rights and democracy. Xu Wenli has spent much of his life, under constant public security surveillance. On 8 June 1982, he was sentenced to 15 years' imprisonment for "illegally organizing a clique to overthrow the Government". He was released in 1993. After his release, he was repeatedly held for questioning and accused of violating his parole. Five years later, in 1998, Xu Wenli attempted to officially establish an independent human rights monitoring group. After his efforts failed and he published two issues of an unauthorized newsletter, he was held at a Beijing police station for 24 hours and warned not to publish any material without first seeking official approval.
8. The source further reports that Xu Wenli participated in the 1979-1981 "democracy wall" movement. At that time, he helped to launch the April Fifth Forum, a major journal of

dissidence, wrote a 20-point list of suggestions to the Central Committee of the Communist Party, circulated a private newsletter, gave numerous interviews emphasizing the need for further democracy in a Marxist society and published several articles in Hong Kong.

9. The source adds that Xu Wenli is in need of immediate medical attention and should be treated outside prison. He has received only cheap and basic medicines from the prison authorities and has been denied proper medical treatment for his hepatitis. He has also lost all his teeth and his hair has turned white.

10. According to the source, Xu Wenli was imprisoned, for having published two unauthorized issues of a newspaper in March 1998. He has also been imprisoned, in violation of article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights, for his efforts to form an independent human rights monitoring group and the Beijing and Tianjin branches of the China Democracy Party as an opposition political party, for which he was charged with “endangering State security”.

11. The source alleges that the detention of Mr. Wu is also in violation of the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information, principle 7 of which states that “the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties”. According to the source, the authorities’ interpretation of “State security” violates both the letter and the spirit of the Johannesburg Principles.

12. The source lastly adds that Xu Wenli’s one-day trial, closed to the public and without right to a legal defence, was in violation of article 10 of the Universal Declaration of Human Rights.

13. According to the information received by the Working Group, Xu Wenli, who had previously been arrested in 1998 for acts of peaceful disobedience against the Government, was detained again on 30 November 1998. He was judged in only one day. He was not allowed the assistance of a lawyer and had to present his own defence. He was accused of endangering State security and was sentenced to 13 years in prison. The charges were based on the fact that since 1998 Xu Wenli had intended to organize a human rights group in China and a political organization. He had also written articles for an unauthorized magazine, for which he was warned that he was not allowed to publish any article without previous authorization from the Government. At present, Xu Wenli is serving his sentence and is very ill.

14. It appears that the activities of Xu Wenli were expressions of the legitimate right to freedom of expression and association as contained in articles 10, 19 and 20 of the Universal Declaration of Human Rights.

15. The trial of Xu Wenli failed to respect the minimal norms for a fair trial, because it was not public and the accused was not allowed the assistance of a lawyer or public defender.

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

The deprivation of liberty of Xu Wenli is arbitrary, being in contravention of articles 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Xu Wenli. The Working Group also encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003