

OPINION No. 15/2004 (CHINA)

Communication addressed to the Government on 23 October 2003

Concerning: Huang Qi

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 conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
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 and received its comments.
5. 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, as well as the observations by the source.
6. According to the information received, Huang Qi, 40 years old, resident in Chengdu Shi, Sichuan Sheng, a former computer engineer, was arrested on 5 June 2000 at his home by four members of the Political Security Division of the Chengdu Public Security Bureau.
7. Huang Qi is the founder of two web sites: Scream Online and Tianwang Web. Various articles were published on the second of these sites on social issues such as the situation of 200 fishermen in Sichuan province and the demonstrations in Tiananmen Square in 1989. As a result of these activities, and before his detention, Huang Qi received threats from provincial government officials and the Chengdu Public Security Bureau closed down the Tianwang web site. However, this web site was later relaunched by others, who published articles on the deaths in prison of Falun Gong followers and on an organization called the China Democracy Party (CDP).
8. Huang Qi was arrested without an arrest warrant and subsequently accused of trying to undermine national unity by organizing separatist movements and organizing and carrying out subversive activities intended to overthrow the socialist system. On 14 August 2001, Huang Qi was tried by the Chengdu Intermediate Court in Sichuan. His trial was held in camera. Neither relatives nor journalists were allowed to attend. Only his two lawyers were allowed to be present; they had been authorized to have a single meeting with Huang Qi before the trial.
9. On 9 May 2003, about three years after his arrest, the Chengdu Intermediate Court in Sichuan sentenced Huang Qi to five years' imprisonment. He was given only 10 days to file an appeal, on which no decision has yet been forthcoming.

10. While Huang Qi was detained in detention centre No. 1 of the Chengdu Public Security Bureau, he was brutally beaten. He was injured in the testicles and the face and one of his teeth was broken, but he was given no treatment for his injuries. It is also reported that his relatives were not permitted to visit him.

11. The Government disputes the facts as reported by the source. The Government's assertions are summarized as follows:

(a) It admits that Huang Qi was indeed arrested on 5 June 2000, but claims that there was an arrest warrant and that his family was duly notified of his arrest. The Government states that Huang Qi was arrested for publishing rumours and defamatory and other material on the Internet to incite the masses to engage in activities that undermined the political authority of the State;

(b) With regard to the irregularities reported by the source in connection with the delay in holding the trial, the Government says that the trial began on 13 February 2001 and that, for procedural reasons, it had to be held in camera, as the case dealt with matters relating to State security. However, the sentencing hearings were held in open sessions, which were duly publicized;

(c) The trial had to be suspended on account of the state of Huang Qi's health and was resumed once his health was restored. On 9 May 2003, Huang Qi was finally sentenced to five years' imprisonment;

(d) According to the Government, Huang Qi's trial was suspended not only in accordance with the law, but also on basically humanitarian grounds. In addition, because of revelations in the course of the trial of new allegations against Huang Qi, the time limits on the investigation and custody had to be recalculated, and it was found that they could be longer. This was done in accordance with article 128 of the Code of Criminal Procedure;

(e) With regard to the source's assertion that there were no visits from family members, the Government states that while Huang Qi was in pre-trial detention his family took him money and gifts but never requested permission to see him. There was thus no refusal to allow visits. His two lawyers were able to meet with him on a total of four occasions and were able to fully exercise his right to a defence;

(f) The alleged ill-treatment of Huang Qi in the Chengdu detention centre is categorically denied. The Government explains the different legal measures taken in China to incorporate into domestic law the provisions adopted by the United Nations to prevent torture and ill-treatment. The Government reports that, while he was in custody in Chengdu, Huang Qi once injured himself with a pen in order to avoid being interrogated;

(g) The Government adds that Huang Qi did not accept the verdict and filed an appeal. On 7 August 2003, the Sichuan Supreme Court upheld the verdict;

(h) The Government concludes that the detention, trial and sentencing of Huang Qi complied fully with the Universal Declaration of Human Rights, which stipulates that freedom of expression is subject to such limitations as are determined by law. Huang Qi spread false

rumours and defamatory material over the Internet in order to incite subversion against State policy and this, in the Government's view, has nothing to do with the peaceful exercise of freedom of expression.

12. The source appreciates the amount of detail given in the Government's reply, but disagrees on several key points, for the following reasons:

(a) The long delay in the trial of Huang Qi was not due to health problems, since the longest period of delay came after the court sessions and before the verdict was handed down. Over two years passed between the beginning of the oral proceedings on 13 February 2001 and the handing down of the verdict on 9 May 2003, even though, under China's own legislation, the period between the beginning of oral proceedings and sentencing may not exceed 4½ months. In any case, there is no evidence that the new charges which the Government claims were brought against the defendant during the trial justified a delay in the proceedings. The only offences of which the defendant was convicted were those defined in articles 103-105 of the Criminal Code of the People's Republic of China, that is, those contained in the initial indictment;

(b) Nor is there any evidence that Huang Qi's health was the grounds for postponing the trial, since there has not yet been any investigation into the deterioration of his health as a result of the ill-treatment to which he was subjected or into the ill-treatment itself;

(c) With regard to the absence of visits from family members, the latter insist that they did ask to visit Huang Qi on several occasions and that each time they were refused permission to do so;

(d) The ill-treatment to which Huang Qi was subjected was reported in June 2000 to the Special Rapporteur on the question of torture of the Commission on Human Rights and is fully documented, with objective evidence such as the scar on his head, his missing tooth and the fact that several persons who saw him spoke of a suicide attempt by a man who, to use his own words, could "stand no more of this hell". Huang Qi was continually beaten and ill-treated by prison guards and fellow prisoners, which caused his physical and mental health to deteriorate.

13. The Working Group considers that the reported procedural delay in the trial of Huang Qi does not appear to have been excessive or sufficiently long to be considered as unreasonable or as constituting a limitation on the right set out in article 10 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights. It has been established that Huang Qi fainted during the first hearing, so that it was right to postpone the trial.

14. Any restrictions on the exercise of the right to freedom of expression must meet the following criteria: they must be specifically provided for in domestic legislation; they must be absolutely necessary in a democratic society; and they must be justified by the need to protect a legitimate national security interest. Articles 103-105 of the Criminal Code of the People's Republic of China refer to the subversion of State power and the overthrow of the socialist system, which leaves government authorities and judges broad discretion in their interpretation of these articles. The Government has not adequately explained to the Working Group to what extent the publication on the Internet of Huang Qi's articles and web pages could be so serious as to affect the peaceful exercise of his right to freedom of expression.

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

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

16. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, to take the adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights, and to study the possibility of amending its legislation in order to bring it into line with the Universal Declaration and the other relevant international standards accepted by that State.

Adopted on 15 September 2004