

**OPINION No. 24/2004 (CHINA)**

**Communication addressed to the Government on 7 April 2004.**

**Concerning Mr. Zhang Yinan.**

**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. 20/2004.)
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. 20/2004.)
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 of the observations by the source.
6. The source informed the Working Group of the detention of Mr. Zhang Yinan, a Chinese citizen, born on 2 November 1957, a writer and leading historian of the unofficial House Churches in central Henan Province.
7. According to the information received, Christian House Churches choose not to register with the State-sponsored Three-Self Patriotic Movement Churches. Mr. Zhang played a central role in the unity movement which brought together four of the largest unofficial House Churches. He authored a united appeal to the official Three-Self Patriotic Movement Churches on behalf of four and wrote "The Unity Movement's Joint Confession of Faith of House Churches in China", two documents that were a catalyst in the national unification of House Churches. The "Joint Confession" explains reasons why the House Churches feel compelled to remain underground.
8. Mr. Zhang was arrested on 26 September 2003 at 9 a.m. at his home by police officers of the Public Security Bureau (PSB), who did not show an arrest warrant. Later that day, neighbours saw PSB officers searching Mr. Zhang's house and confiscating his computer and books. On 11 October 2003, he was charged with "conspiracy to subvert the national Government and the socialist order", under article 105 of the Criminal Law of China of 1997.
9. Mr. Zhang was found guilty of having drafted, on 2 October 1999, a document entitled "The Christian Constitution", which proposed to establish a federal Government that would use religion to govern China and overthrow the Communist Party and the current Government. He denied these charges. He was also found guilty of having distributed, in August 2003, the articles "Where does China go?", "Christ is the only way" and "The decrees of Christian House Churches in Henan", among other allegedly anti-Communist Party and anti-socialist writings.

10. On 3 November 2003, the Re-education Through Labour (RTL) Commission of Ping Ding Shan City, Lushan County, Henan Province, after having held a single hearing, issued verdict No. (2003) 203 sentencing Mr. Zhang to two years of re-education through labour, under the Temporary Law of Re-education Through Labour, article 10, item 1, and article 13. The sentence was reportedly pronounced without a trial or other adversarial proceeding. It was reported that during his hearing, Mr. Zhang was not allowed to have a lawyer, to rebut the Commission's evidence, or to present evidence in his own defence. The RTL Commission based its sentence solely upon the above-mentioned writings confiscated at his home.

11. According to the source, the RTL Commission disregarded international norms relating to a fair trial. Mr. Zhang was sentenced without trial; he was arrested without a warrant; he was detained without charges for 15 days; and he was denied access to a lawyer and to his family for 15 days.

12. The source considers that Mr. Zhang has been arrested and imprisoned for exercising his fundamental rights to freedom of opinion and expression, religious belief and peaceful association. His punishment is motivated by his Christian beliefs and activities. The source alleges that Mr. Zhang continues to be singled out by prison guards in the re-education through labour camp because of his faith.

13. The source states that Mr. Zhang has not expressed any anti-Government or anti-socialist sentiments and does not advocate the overthrow of the Government. Regrettably, the RTL Commission has taken his articles and writings out of context and distorted his ideas, which are based on the spiritual principles which lead his Church.

14. The Government replied to the source's allegations, reporting that:

(a) Zhang Yinan, male, age 46, from Henan Province: On 5 September 2003 the Public Security organs in Pingding Shan City, Henan Province, arrested him pursuant to article 61 of the Criminal Procedure Law for being illegally in possession of many classified State documents. On 31 October 2003, the RTL Commission of the Pingding Shan Municipal People's Government assigned Zhang to two years' re-education through labour under article 10, paragraph 1, of the Experimental Methods of Re-education Through Labour;

(b) Citizens have freedom of speech under the Chinese Constitution, but in exercising their rights and freedoms, they must not harm the interests or security of the State. Even the Universal Declaration of Human Rights clearly states that, when exercising their rights and freedoms, people are subject to the restrictions prescribed by law. The coercive measures taken by the Chinese law enforcement authorities against Mr. Zhang were all based on his suspected violation of Chinese law and have nothing to do with freedom of speech and opinion;

(c) In the course of dealing with this case, the Chinese law enforcement authorities abided strictly by legal procedure. China was one of the first States to become a party to the Convention against Torture, and prohibiting torture and other cruel, inhuman or degrading treatment or punishment has been the Chinese Government's constant policy. The Chinese Penal Code and Police Act, among other laws, contain exceptionally strict provisions on the prohibition of torture with a view to preventing and punishing the practice of torture or other cruel, inhuman or degrading treatment or punishment by State employees, law enforcement

personnel in particular, and protecting the legitimate rights and interests of detainees while in custody. During the handling of the present case, Mr. Zhang's legal rights have been fully guaranteed. There is no question of his having been tortured.

15. According to the source, the Chinese Government's response does not contest any of the facts set forth in its initial petition; it insists that Mr. Zhang was:

- (a) Arrested without a warrant;
- (b) Detained without charges and sentenced without trial by the RTL Commission to two years of re-education through labour;
- (c) He was not allowed to appoint a lawyer, to challenge the basis of the Commission's charges against him, or to present any evidence in his own defence prior to being sentenced.

16. The source concludes that Mr. Zhang was arrested, sentenced and punished solely on the basis of the Government's opposition to some of his Christian writings, in which he expressed his religious belief in Christianity and his support for the theological independence of China's Christian House Churches.

17. As stated by the source, the Government, in its response, has not denied that Mr. Zhang was arrested and detained without charges, was not provided with a lawyer, was denied access to his family, and finally was sentenced to two years in an RTL labour camp.

18. The Working Group noted, but is not convinced by, the arguments of the Government that the detention of Mr. Zhang is not arbitrary because in taking the decision to commit him to an RTL facility, the relevant laws have been respected.

19. The Working Group points out first that the Government did not refute the allegation of the source that Mr. Zhang has abstained, during all his activities, from any form of violence. Second, the system of re-education through labour, as regulated under Chinese law, shares many common features with criminal law sanctions. The administrative decision to place someone in an RTL facility is tantamount to blaming him for actions that are between errors and crimes. Third, RTL involves deprivation of liberty, a feature typical of criminal law sanctions.

20. On that basis Mr. Zhang ought to have enjoyed, during the administrative procedure that ended with a decision against him, all the due process safeguards provided by international law and standards, including being able to argue his case before a tribunal. Instead, he was committed to RTL after a summary procedure before an administrative organ obviously lacking the elements of the requisite independence and impartiality.

21. Moreover, the Working Group takes into account that the reasons stated by the Government for which the administrative authority decided to confine Mr. Zhang in an RTL camp constituted only the peaceful exercise of his freedom of expression, a right recognized in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 18 and 19 of the International Covenant on Civil and Political Rights, which prevent his being deprived of his liberty for this reason alone.

22. Forced confinement in an RTL camp, ordered by an administrative authority and without the relevant judicial control available through a trial, with all the necessary guarantees, is not in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

The deprivation of liberty of Mr. Zhang Yinan is arbitrary, as being in contravention of articles 9, 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.

24. 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, and to study the possibility of ratifying the International Covenant on Civil and Political Rights.

Adopted on 26 November 2004