

**OPINION No. 17/2005 (CHINA)**

**Communication addressed to the Government of China on 6 and 12 October 2004.**

**Concerning Mr. Liu Fenggang and Mr. Xu Yonghai.**

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government did not provide it with the requested information, despite repeated invitations to do so. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. According to the information received, Mr. Liu Fenggang, a citizen of China born on 23 December 1959, is a religious activist usually resident in Beijing. On 6 August 2004, the Hangzhou Intermediate People's Court found him guilty of illegally sending State secrets abroad, an offence punishable under article 111 of the Criminal Law of China, and sentenced him to a three-year prison term. The charges brought against Mr. Liu arise from his transmitting a report on the suppression of religious activities in China to publications organizations based outside China, such as the United States-based *Christian Life Quarterly* and the Christian Aid Association. The Hangzhou Intermediate People's Court delivered the sentence of 6 August 2004 publicly, but the trial took place in secret and Mr. Liu is currently serving his sentence at an undisclosed location.
5. According to the court judgement, Mr. Liu was ordered to live under surveillance on 13 October 2003 and formally detained on 14 November 2003. The source, however, asserts that Mr. Liu had in fact been arrested without an arrest warrant by the Hangzhou Public Security Bureau on 13 October 2003 and detained at a secret location until his formal detention started. The judgement also notes that Mr. Liu received an order to live under surveillance on 14 May 2004, which suggests that he had been released from detention. The source, however, alleges that Mr. Liu was not released at that time. The judgement gives Mr. Liu credit for the time already served in detention before his conviction, but not for the periods lived under surveillance, so that his three-year term expires on 4 February 2007.
6. The source argues that the detention of Mr. Liu is arbitrary because it results from the exercise of his right to freedom of conscience and religion and his right to freedom of expression. Also, the source mentions that the investigation and reporting of incidents of governmental oppression of religion, in particular of Home churches, does not involve any questions of national intelligence and national security that would justify limiting the freedom of expression; that article 111 of the Criminal Law of China is overly broad and was misused to punish the legitimate exercise of freedom of expression as a crime against State security; and that the conviction and detention of Mr. Liu violate articles 35 (freedom of speech), 36 (freedom of religion) and 41 (right to criticize abuses by State organs) of the Constitution of the People's Republic of China.
7. The source further states that Mr. Liu did not benefit from due process of law and a fair trial because his detention in secret by the Hangzhou Public Security Bureau from 13 October to 14 November 2003 violated article 64 of the Criminal Procedure Law of China (CPL). The detention was not based on an arrest warrant and he was detained informally at an undisclosed location. In the absence of an arrest warrant, his subsequent detention was also unlawful. The request for the approval of the arrest was not submitted within the three-day time limit provided by article 69 of CPL, and the requirements for the exceptional extension of this time limit to up to 30 days were also not met. The source also argues that in searching Mr. Liu's home and seizing a variety of items, officials of the Hangzhou Public Security Bureau failed to

present a search warrant, thereby violating article 111 of CPL. Mr. Liu was tried behind closed doors, in violation of his right to a fair and public hearing, guaranteed by international law and by article 111 of CPL. There were no circumstances justifying such restriction of the trial.

8. Mr. Xu Yonghai, a 43-year-old man born on 26 November 1960, citizen of China, a medical doctor at a Beijing hospital considered to be a freedom of religion activist, was detained on 9 November 2003 and formally arrested on 4 December 2004. As he was already being held in detention at an undisclosed location when his formal arrest took place, the location of the arrest is unknown. From details known later, it is likely that he was detained in the Xiaoshan District of Zhejiang Province.

9. According to the source, as a result of his activities to promote freedom of religion, Mr. Xu had previously been harassed by Government authorities. He spent three years in a Re-education Through Labour camp. After his detention in November 2003, he was charged with illegally revealing State secrets overseas for printing a report on the alleged suppression of religious groups in Xiaoshan District, Zhejiang Province. He was tried in secret and, on 6 August 2004, convicted. Only a portion of the judgement has been made public. Mr. Xu was sentenced to two years' imprisonment.

10. The Government did not challenge the allegations of the source, although it was given the opportunity to do so. The Working Group therefore finds that the complaint against Mr. Liu Fenggang and Mr. Xu Yonghai is in fact that indicated in the communication, namely: having transmitted reports critical of the restrictions on or repression of religious freedom to foreign-based non-governmental organizations. The Working Group finds that this activity, although critical of the Government, relates nonetheless to the right to freedom of expression, which includes freedom to search for, receive and disseminate information and ideas of any kind, without restrictions of borders, in oral, written, printed or any other form. The Working Group concludes that the case under consideration relates to the peaceful exercise of the right to freedom of expression and opinion, a right guaranteed by article 19 of the Universal Declaration of Human Rights.

11. In the light of the foregoing, the Working Group expresses the following opinion:

The detention of Mr. Liu Fenggang and Mr. Xu Yonghai 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.

12. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Liu Fenggang and Mr. Xu Yonghai in order to bring it into conformity with the provisions and principles enshrined in the Universal Declaration of Human Rights.

13. The Working Group recommends that the Government consider ratifying the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005