

**OPINION No. 33/2005 (CHINA)**

**Communication addressed to the Government on 14 December 2004.**

**Concerning Mr. Zhao Yan.**

**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. 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.

5. According to the communication, Mr. Zhao Yan, a citizen of China born on 14 March 1962, is a freelance journalist for the publication *China Reform*, and since May 2004 has been employed as a researcher in the Beijing bureau of the *New York Times*. Mr. Zhao's research focuses on the situation and rights of peasants in China and their efforts to organize.
6. On 16 September 2004, at around 9 p.m., Mr. Zhao was approached by two men at the Yaohan shopping centre in Pudong, Shanghai. The two men identified themselves as officers of the Shanghai State Security Bureau and showed Mr. Zhao a written notice, although it is unclear whether this document was an arrest warrant. They took him into custody at the Shanghai State Security Bureau, where he has been in detention ever since.
7. Mr. Zhao was formally arrested (*zhengshi daibu*) on or around 20 October 2004. His family was notified that he is in detention for "illegally providing State secrets abroad" (*wei jingwai tigong guojia mimi zui*). It is not clear whether a decision ordering his detention was issued at that or any other time, nor is it clear whether any steps to bring Mr. Zhao to trial have been initiated.
8. The authorities detaining Zhao Yan have not allowed him to contact his family or a lawyer.
9. The source submits that within the three or four days following the publication on 7 September 2004 of an article in the *New York Times*, revealing that Jiang Zemin would be resigning as Chairman of the Central Military Commission (which was officially announced only on 19 September), Mr. Zhao was twice contacted by the authorities and asked to meet them to discuss the article. Mr. Zhao became increasingly convinced that State security officers suspected him of having leaked the information to the paper. He turned off his mobile phone and stopped going to work. When he turned the phone on again in Shanghai on 16 September 2004, the authorities located and arrested him within an hour. The source also states that the arrest and detention of Zhao Yan may also be connected to his activities as a researcher into the situation and rights of peasants in China. The source received reports that Mr. Zhao intended to stage a hunger strike on behalf of peasant activist Zhang Youren, who is currently under residential surveillance, and that his detention is aimed at preventing him from doing so.
10. The Government replied that Chinese citizen Zhao Yan was arrested by the Beijing State Public Security Bureau on 20 October 2004, with the approval of the Beijing Municipal People's Procuratorate, on suspicion of involvement in illegally providing State secrets abroad. He is currently under investigation by the Beijing State Public Security Bureau, in accordance with the law.
11. China's Constitution and laws clearly state that citizens have freedom of speech and opinion. Article 35 of the Constitution reads, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." In exercising their rights and freedoms, however, citizens must honour the associated legal obligations. The Universal Declaration of Human Rights, while acknowledging citizens' various rights, also clearly states that, in exercising their rights and freedoms, people are subject to the limits laid down by law. The present case relates to a breach of the Penal Code:

all actions taken by the Chinese law enforcement authorities against Mr. Zhao have been based on his criminal conduct and are unrelated to his reporting or research activities. The accusations made in the communication are groundless.

12. In handling the case in question, China's law enforcement authorities have acted strictly in accordance with the Code of Criminal Procedure, the Public Security Regulations and so forth; that Mr. Zhao was arrested without an arrest warrant being issued is out of the question.

13. The source replied that the Government's response states that the exercise of the rights and freedoms guaranteed in the Chinese Constitution and recognized in the Universal Declaration of Human Rights are subject to the limits in the law, and that Mr. Zhao's detention and arrest are due to criminal conduct unrelated to his reporting or research activities. The clarification offered by the Government, however, does not offer any supporting documentation or other evidence to support the allegation that Mr. Zhao's detention is in fact unrelated to his activities. More detailed and targeted clarification is necessary to ensure that the criminal charges brought against Mr. Zhao have not been used as a pretext to punish him for his sometimes politically sensitive research and journalism. The lack of information relating to Mr. Zhao's specific criminal conduct, coupled with the additional charge of fraud brought against him in late May 2005, which allows authorities to detain him without trial for an additional six months, suggests that the criminal charges against him have been used simply as retaliation for the exercise of his right to freedom of speech.

14. The source notes that the Government's response states that law enforcement authorities complied with the Chinese Criminal Procedure Code, Public Security Regulations and other applicable laws. The response did not adequately or specifically address the procedural concerns raised in the source's submission with regard to Mr. Zhao's detention and subsequent arrest, specifically why he has not been granted any access to his family or legal counsel, and why he is being held in incommunicado detention without trial. Even before the new charge of fraud was added on 1 June 2005, Mr. Zhao had already been held in detention beyond the legal limit prescribed by Chinese law. The Chinese authorities are manipulating criminal legal procedures to detain Mr. Zhao without trial and deprive him of his due process rights under Chinese and international law.

15. The Working Group observes that in its reply the Government limits itself to justifying the deprivation of liberty of Zhao Yan with reference to the charges brought against him of having divulged State secrets abroad. As the source correctly points out, however, the Government did not provide any specific information that would explain those charges.

16. The Government also did not make any statements with regard to the second accusation, of fraud, which, according to the source, was brought against Zhao Yan to justify the duration of his detention.

17. Finally, the Working Group does not find credible the general assertions made by the Government concerning the strict legality of the process undergone by Zhao Yan to date. The Government did not submit any arguments as to why he is not allowed to be assisted by a lawyer and to stay in contact with his family, and why he was ordered to be detained incommunicado from the time of his arrest.

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

The deprivation of liberty of Mr. Zhao Yan is arbitrary, being in contravention of articles 9, 10 and 19 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.

19. 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 take adequate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 2 September 2005