

**OPINION No. 47/2006 (PEOPLE'S REPUBLIC OF CHINA)**

**Communication: addressed to the Government on 29 June 2006.**

**Concerning: Chen Guangcheng.**

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

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. (Same text as paragraph 3 of Opinion No. 32/2006.)
3. 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 of the observations by the source.
4. According to the information submitted by the source, Chen Guangcheng is a citizen of the People's Republic of China born in 1971 and resident in East Shigu Village, Shuanghou Township, Yinan County, Linyi City, Shandong Province. Chen Guangcheng, who is blind since early childhood, is a self-taught lawyer and has a long history of campaigning for the rights of farmers and the disabled. He assisted villagers in solving drinking water pollution problems when he was attending Nanjing Chinese Medicine University in 2000. He created and ran the "Rights Defense Project for the Disabled" under the auspices of the Chinese Legal Studies Association between 2000 and 2001. Since 1996, he has provided free legal consultation to farmers and the disabled in rural areas. In 2003, he was sponsored by the "International Visitors Project" to visit the United States of America. In 2004, he ran a "Citizen Awareness and Law for the Disabled Project" supported by the United States National Endowment for Democracy and the Monica Fund.
5. Starting in April 2005, Chen Guangcheng and his wife, Yuan Weijing, began to investigate villagers' claims that Linyi City authorities were employing extensive violence in implementing government birth quotas. Later, they put together briefs for lawsuits against officials involved. Their work, and that of activists and lawyers who visited the area to assist in documenting the abuses and in providing legal advice to villagers who wished to take legal action, represented the first known concerted domestic effort to challenge the use of violence in the enforcement of China's population policy. The first report on the subject was made public on 10 June 2005 through the Citizens Rights Defense Network (gongmin weiquan wang).
6. On 12 August 2005, Chen Guangcheng and Yuan Weijing were put under de facto house arrest. Chen Guangcheng was said to be held under "residential surveillance", but according to the relevant law (see paragraph 21 below), if such measure is to be applied to a suspect, a residential surveillance decision must be issued and shown to the suspect, who must sign or put his mark on it. None of this reportedly occurred in Chen Guangcheng's case.

7. The house arrest was enforced by security guards paid on a daily rate by village and township officials and the Yinan County Public Security Bureau (PSB). Yinan PSB statements called them “militia”, but they reportedly did not meet the official criteria for militia members. Chen Guangcheng’s house arrest was overseen by various local government and Communist Party officials, including the Shuanghou Township mayor and party secretary, and the Yinan County party school president, party secretary and party office director.
8. On 25 August 2005, Chen Guangcheng evaded the police surrounding his village and went to Shanghai and Nanjing, then to Beijing, to seek help from lawyers. In Beijing, friends arranged for him to meet foreign journalists, diplomats, and international legal experts, to discuss the lawsuits.
9. In the afternoon of 6 September 2005, Chen Guangcheng was detained at the home of a friend in Beijing by six men who said they were public security officers from Shandong. The men shoved Chen Guangcheng into a car. He was held overnight in a hotel, where the head of the Linyi Public Security Bureau (PSB) and the city’s deputy mayor came to see him in the morning. The Linyi PSB head told Chen Guangcheng that he had revealed news information to foreign media and was suspected of violating article 111 of the criminal law (illegally providing intelligence to foreign countries), for which the maximum sentence is life in prison. However, neither the six public security officials from Shandong Province who deprived Chen Guangcheng of his freedom on 6 September, nor the head of the Linyi PSB showed him any arrest warrant or other document justifying his detention. The men from the Linyi PSB coercively took Chen Guangcheng back to his home.
10. Chen Guangcheng was again placed under house arrest without any order to that effect. On 9 September 2005 his landline and mobile phone services were cut off, and his computer seized. On 23 September 2005 public security officials searched his house from 2.50 to 10 p.m., without showing any warrant or other document justifying the search.
11. On 4 October 2005, law lecturer Xu Zhiyong and lawyers Li Fangping and Li Subin attempted to visit Chen Guangcheng and negotiate with local officials to have his house arrest lifted. The lawyers were stopped on their way to the house. Chen Guangcheng reportedly managed to leave his house and spoke with them briefly, but was then forcibly taken back. When he resisted, he was beaten up by men surrounding his house. The lawyers tried to go to Chen Guangcheng’s house, but they were stopped and Xu Zhiyong and Li Fangping were beaten up. Thereafter, all three were taken to Shuanghou Township Police Station where they were interrogated until the following morning. They were told that the case now involved “State secrets” and were escorted back to Beijing.
12. On 24 October 2005, two other Beijing scholars and friends of Chen Guangcheng went to visit him. As Chen Guangcheng ran out to greet them, he was stopped and beaten by around 20 men stationed outside. The visitors were quickly escorted away. Chen Guangcheng’s wife, Yuan Weijing, has also been prevented from leaving the house, and was beaten when she came out to greet visitors on 27 December 2005.
13. On 30 October 2005, Chen Guangcheng’s lawyer filed a lawsuit on his behalf before the People’s Court of Yinan County, charging two Shuanghou Township officials with intentional injury for their involvement in beating him outside his house on 24 October when friends came

to visit Chen Guangcheng and Yuan Weijing. The two officials allegedly headed a group of more than 20 militia men who beat Chen Guangcheng with fists and sticks, knocked him down several times and kicked him. Chen Guangcheng was not able to see a doctor to verify his injuries because the militia surrounding his house rejected his requests to seek medical attention, but there were a number of eye witnesses on the scene. So far the court has ignored Chen Guangcheng's suit.

14. On 11 March 2006, Chen was arrested at home by Yinan County police and taken to the Yinan Detention Centre. The police did not show a warrant or other document justifying the arrest. At Yinan Detention Centre, Chen was held incommunicado for three months. Only on 10 June 2006, the Yinan County police acknowledged he was detained there.

15. On that day, 10 June 2006, Chen Guangcheng was formally detained on suspicion of "gathering crowds to obstruct traffic" and "destructing property". On 21 June 2006, officials of the Yinan PSB issued Chen arrest warrant No. 193 (2006), stating that the Yinan County People's Procuratorate approved that the county PSB carry out the arrest of Chen Guangcheng on suspicion of "intentional destruction of property" and "gathering a crowd and disturbing traffic order", and recalling the relevant provisions of the Chinese Criminal Code (hereinafter "CCC") and Criminal Procedural Law.

16. On the same day, 21 June 2006, Chen Guangcheng's lawyers were able to visit him in detention for the first time in three months. When the lawyers asked him where he was detained during those three months, prison guards interrupted the discussion, preventing Chen Guangcheng from answering the question. His family has not been allowed to visit. His wife remains under house arrest.

17. The following day, 22 June, Mr. Li Jinsong, one of Chen Guangcheng's lawyers, was taken into police custody for questioning. On 23 June 2006, two lawyers, Li Jinsong and Li Subin tried to visit Chen Guangcheng's wife, Yuan Weijin, and to provide legal counsel on matters related to obtaining medical parole for Chen Guangcheng. They were stopped in front of Chen Guangcheng's house and beaten by guards who were there enforcing the residential detention of Yuan Weijin. On 24 June 2006, all six lawyers who went to Linyi County to provide legal counsel and handle procedures in Chen Guangcheng's and three other villagers' cases returned to Beijing. It was reported that due to the harassment they encountered, they were unable to carry out their work. On 27 June 2006, lawyers Li Jinsong and Li Subin went back to Linyi, trying to meet with Chen Guangcheng's wife, Yuan Weijin, in order to obtain a copy of the arrest warrant, convey to her Chen Guangcheng's condition at the detention centre, and also to obtain her signature in order to process legal papers to apply for medical parole for Chen Guangcheng. Again, they were harassed by thugs in the village while police refused to intervene. Around 20 men turned over their car and smashed their cameras. Li Jinsong was then taken to the police station for questioning.

18. The source alleges that the detention of Chen Guangcheng is arbitrary. The authorities detain Chen Guangcheng in order to make him desist from providing legal assistance to families bringing lawsuits against the Linyi authorities' violent campaign to meet assigned population

targets<sup>14</sup> and from spreading information about these abuses. This is evidenced by the timing of the initial arrest, by the accusations of “illegally providing intelligence to foreign countries” after Chen Guangcheng spoke to foreign journalists about the lawsuits, by reports that the police forced some villagers to testify against Chen Guangcheng, saying that he fabricated the reports about abuses, and by the fact that local officials told Chen Guangcheng’s wife that her husband’s life would be in danger unless he abandoned the lawsuit.

19. On some occasions, Chen Guangcheng and his family have been told that releasing information about violence inflicted on rural people around Linyi City to enforce the population control policies constituted a breach of laws governing protection of State secrets.

20. The source further argues that from 12 August 2005 until 10 June 2006, when the Yinan PSB issued a detention order against Chen Guangcheng, there was no legal basis for the various forms of deprivation of liberty he suffered at the hands of officials (house arrest, abduction in Beijing on 6 September 2005 and detention at the Yinan County Detention Centre from 11 March to 10 June 2006). With regard to the house arrest, the source notes that Chen Guangcheng was said to be held under “residential surveillance”, a form of house arrest that can be applied by Public Security, Procuratorates, and Courts under the Criminal Procedure Law (CPL, articles 50 and 51), including in cases where authorities have insufficient evidence to charge a person with an offence but are investigating that person for criminal responsibility, or if the penalty for the alleged offence would be minor. The maximum period allowable for such detention is six months (CPL, article 58). However, according to the Regulations on Procedures of the Public Security Organs for Dealing with Criminal Cases (issued by the Ministry of Public Security in 1998), if such a measure is to be applied to a suspect, a residential surveillance decision must be issued by public security organs at county level or above and this document must be shown to the suspect, who must sign or put his mark on it (CPL, articles 95 and 96). At

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<sup>14</sup> The source reports that in July 2004, the Linyi City Party Committee and government had issued a document on strengthening population and fertility control work. Violent measures reportedly began to be used in some districts of Linyi City by the end of that year. In mid-February 2005, Linyi City government reissued the July 2004 document, in a move seen as encouraging the use of force to meet population control targets. According to Linyi residents, in March 2005 local authorities began forcing parents of two children to be sterilized and women pregnant with a third child to undergo abortions. Officials detained family members of those couples who fled, beat them and held them hostage. There has been official confirmation of the abuses in Linyi: on 19 September 2005, an official of the National Population and Family Planning Commission of China said that their investigation had found that there had been violations of law and policy in Linyi that had infringed the rights of citizens, and that as a consequence, some officials had been dismissed, while some were in detention and facing investigation for criminal responsibility.

Lawsuits filed by four villagers who suffered violent treatment in this campaign, Du Dejiang, Liu Benxia, Han Yandong and Hu Bingmei, were due to be heard in October 2005 in Yinan County People’s Court. But on 10 October 2005, the Court announced that the hearings would be postponed. Other villagers who had been planning to bring suit have pulled out after being harassed, threatened, or bribed.

no time was Chen Guangcheng shown a warrant ordering him to be put under residential surveillance, nor was he officially given any reasons for such a measure to be imposed on him. From 12 August 2005 until 10 June 2006, i.e. during 10 months, Chen Guangcheng's deprivation of liberty had no legal basis and was therefore arbitrary.

21. Finally, Chen Guangcheng's lawyers are prevented from meeting their client in private and from consulting with his family, and have not been given a copy of the arrest warrant setting forth the charges against Chen Guangcheng. Indeed, they have been harassed by thugs allegedly acting on behalf of the authorities and by the police in order to discourage and prevent them from assisting Chen Guangcheng.

22. The allegations of the source have been brought to the attention of the Government. In a statement dated 6 July 2006 the Government alleges that, on 11 March 2006, Chen Guangcheng and his family members Chen Guangjun, Chen Guangyu and others, assembled a crowd of villagers and obstructed traffic, causing a major traffic jam on national highway 205. On 12 March 2006, Chen Guangjun and Chen Guangyu were taken into criminal detention, in accordance with the law, on suspicion of having committed an offence under article 291 CCC, on the gathering of crowds for the purpose of disrupting the movement of traffic. Chen Guangcheng was held for questioning by the local public security authorities, in accordance with the law, on suspicion of involvement in the offence at the scene of the crime, and was released at 9 p.m. on 12 March 2006.

23. Article 291 CCC stipulates that "[w]here people are gathered to disturb order at railway stations or bus terminals, ferry landings, civil airports, market places, parks, theatres and cinemas, exhibition halls, sports grounds or other public places, or to block traffic or disrupt the movement of traffic, or to resist or obstruct public security officials from carrying out their duties according to law, if the resulting situation is serious, the ringleaders shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or surveillance".

24. The Government alleges that, in dealing with Chen Guangcheng and his associates, the public security authorities acted in compliance with the law, when remanding them in custody or holding them for questioning. Throughout this period their lawful rights were fully protected and there is no substance to the allegation that Chen Guangcheng was subjected to beatings and placed under house arrest.

25. The reply of the Government has been brought to the attention of the source for comments on 3 November 2006. Their response, dated 10 November 2006, may be summarized as follows.

26. The source notes that the statement of the Government fails to address their key challenges in their communication. It states that before Chen Guangcheng, Chen Guangjun, and Chen Guangyu were taken into criminal detention on 11 March 2006, Chen Guangcheng had already been subjected to illegal house arrest and residential surveillance for 197 days since mid-August 2005. His wife, Yuan Weijing, has now been under residential surveillance for 14 months without legal authorization.

27. With respect to the incident which took place on 11 March 2006 the source alleges that when Chen Guangcheng marched with other villagers to protest the beating of one villager, several dozens of police blocked their way and surrounded them on national highway 205,

thereby causing traffic disruption. The source states that after Chen Guangcheng was held for questioning by the local public security authorities on 12 March 2006, he was not released on that day and never released ever since. Instead, he was held under detention for 89 days without legal authorization until 11 June 2006 when authorities issued a criminal detention order. During the 89 days of illegal detention, the Yinan County Public Security Bureau refused to answer the family's repeated requests for information about the cause and location of his detention. His lawyers, who saw Chen Guangcheng at the Yinan Detention Centre for the first time in late June, confirmed with him that he was detained by public security officials at various locations between 12 March and 11 June 2006. The source referred to written testimonies collected by lawyers from witnesses, who were also detained and then released on bail, including Chen Guangdong, Chen Gengjiang, Chen Guanghe, Chen Guangyu, Chen Hua, and Han Yandong. These villagers were forced to confess or provide incriminating false information against Chen Guangcheng. They stated that police used various torture methods at the detention centre in order to break their will, such as tying them up to chairs with chains, deprivation of sleep for up to 15 days, and withholding of food and water.

28. On 24 August 2006, the Yinan County People's Court convicted Chen Guangcheng for "intentional destruction of property" and "gathering crowds to disrupt traffic" and sentenced him to four years and three months of imprisonment. However, the Linyi City Intermediate People's Court, when reviewing the appeal by Chen Guangcheng's lawyers, overturned this verdict on 30 October 2006 on the basis of insufficient evidence for convicting Chen Guangcheng for the offence stipulated in article 291 CCC. The Intermediate Court referred the case back to the lower court for retrial. The source alleges that under these circumstances Chen Guangcheng should have been declared innocent and immediately released from prison until proven guilty at a future retrial. However, Chen is still being held at the Yinan County Detention Centre in Shandong Province. According to the source, his continued detention is arbitrary and against Chinese law and it submits that the Government should respect the local courts' judicial independence in handling this case.

29. The Working Group notes that, despite the affirmation from the Government that Mr. Chen was released at 9 p.m. on 12 March 2006, it appears as if Mr. Chen is in detention waiting for retrial.

30. The Working Group holds that it is undisputed that Mr. Chen has been subjected to a deprivation of liberty in form of house arrest and residential surveillance at different stages between 12 August 2005 and 11 March 2006. This can be derived from the prohibition to leave his home and the fact that Mr. Chen was forced back to stay in it. The Working Group has considered, in its Deliberation No. 01, that house arrest is a deprivation of liberty whenever the person is not authorized to leave a closed area. The Working Group stresses that not even the Government argues that there exist any legal basis for his deprivation of liberty between these dates.

31. As to the period after 11 March 2006, when he was charged following a demonstration on that day pursuant to article 291 CCC for the gathering of crowds for the purpose of disrupting the movement of traffic by the Government, charges which were communicated on 11 June 2006 as those of "gathering crowds to obstruct traffic" and "destructing property", the Working Group finds that there were significant obstacles in the exercise of Mr. Chen's defence. It refers, namely, to his incommunicado detention from 12 March to 11 June 2006 and the limitations

imposed upon him with respect to contact with his lawyers, after which he was convicted on 24 August 2006 for these offences to four years and three months of imprisonment. Although the Linyi City Intermediate People's Court on appeal overturned this verdict, Mr. Chen has not been released since then. On the contrary, he will have been judged for these offences in a retrial scheduled for 27 November 2006.

32. As the Court decided to quash the judgement of the inferior court, the Working Group will not take a position on the non-observances of the guarantees of a fair and impartial trial, because, at least in principle, the failure to respect his right to fair trial can be redressed when Mr. Chen's case is retried. Whether the Court has, with this judgement, already remedied the situation, the Working Group for lack of sufficient information cannot comment on. However, if the information received is accurate, in relation to the continuance of Mr. Chen's detention despite the judgement of the Court, the Working Group would consider this very worrying.

33. The Working Group notes that, as stated by the source and which the Government did not contest, Mr. Chen is a well-known lawyer and activist of China, blind since early childhood, who has been documenting and investigating with his wife abuses by authorities in the governmental policy of birth quotas, and later providing legal advice and bringing law suits against officials involved. The Working Group concludes from the numerous statements the same officials have communicated to him that Mr. Chen has been detained several times in connection with these activities, be it with or without formal charges against him.

34. The Working Group believes that the charges Mr. Chen had and still has to face appear to be no other than obstacles to prevent him from continuing his work as a lawyer, defending villagers' rights, and raising his voice in their defence. Thus, Mr. Chen is being deprived of his liberty for his defence of human rights and in order to prevent him from and punish him for peacefully exercising the right to freedom of expression protected by article 19 of the Universal Declaration of Human Rights, which includes the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" and his right of freedom of assembly as enshrined in its article 20: "everyone has the right to freedom of peaceful assembly".

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

The detention of Chen Guangcheng is arbitrary, as it contravenes the principles and norms set forth in article 9 of the Universal Declaration of Human Rights and, for the period of 12 August 2005 until 12 March 2006, falls within category I of the categories applicable to consideration of cases submitted to the Working Group, and, for the period since 12 March 2006, falls within category II of the said categories.

36. The Working Group asks the Government to take the necessary steps to remedy the situation to bring it in conformity with standards and principles set forth in the Universal Declaration of Human Rights, and to consider the possibility of ratifying the International Covenant on Civil and Political Rights.

Adopted on 24 November 2006.