

OPINION No. 1/1999 (CHINA)

Communication addressed to the Government on 21 July 1998

Concerning Xue Deyun (alias Ma Zhe) and Xiong Jinren, (alias Xiong Xiang)

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial nonobservance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
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 cases, in the context of the allegations made and the response of the Government thereto.
5. According to the source, two Chinese writers, Xue Deyun (pen name Ma Zhe) and Xiong Jinren, have been detained since 26 January 1998 and are awaiting trial without having been given an official reason for their arrest. The above-mentioned persons allegedly were arrested together with two other individuals, Ma Qiang and Wu Ruohai, as they were preparing to launch "China Cultural Renaissance", an unofficial literary journal supporting literary

freedoms. The police allegedly raided their homes without a warrant and confiscated draft copies of their works and address books. Ma Qiang and Wu Ruohai were reportedly released on 20 March 1998. Xue Deyun and Xiong Jinren, however, are still detained and could face, according to the source, charges of subversive activities. Xue Deyun had been previously detained on 29 December 1986 and imprisoned for three years for protesting with Beijing students in December 1986.

6. In its reply, the Government provides the following explanations: between May 1997 and January 1998, Xue Deyun and Xiong Xiang (also known as Xiong Jinren), by engaging in subversive activities, violated article 105 (2) of the Chinese Penal Code: fomenting subversion of State power and the overthrow of the socialist system by rumour-mongering, slander or other means, punishable by up to five years' imprisonment, labour in detention, placement under surveillance or deprivation of political rights. They were both legally detained in January 1998. In February 1998, with the approval of the Guiyang Municipal People's Court, they were placed under arrest. Xiong, having admitted his guilt, behaved well and showed signs of reform. He was spared a formal determination of criminal responsibility and has been set free. The Chinese judicial organs are at present engaged in proceedings against Xue Deyun.

7. In the Working Group's view, it follows from the above that:

(a) Xue Deyun and Xiong Jinren were intending to publish a literary, and hence cultural, journal and it is not disputed that its purpose was to express opinions peacefully, without inciting or resorting to violence;

(b) Xiong Jinren was set free because, among other reasons, he had admitted his guilt, and this presupposes that the acts of which he was accused were reprehensible, in particular being incompatible - which is not the case in this instance - with the exercise of the freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights, according to which "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media";

(c) Since the charges against Xue Deyun are of the same nature, they also concern the exercise of the rights guaranteed by the above-cited article 19 of the Universal Declaration of Human Rights;

(d) Xue Deyun is being prosecuted for violating article 105 (2) of the Chinese Penal Code, which prescribes punishment for "incitement to subvert the political power of the State and overthrow the socialist system by spreading rumours, slander or other means".

8. In this connection, the Working Group recalls that, in the report on its visit to the People's Republic of China in 1997 (E/CN.4/1998/44/Add.2), it made the following observations with regard to article 105 (2): because of the broad and imprecise definition it gives for this revised offence, which is included among offences "endangering national security" in Part II, chapter I, of the Penal Code, as amended in 1997, this article is "liable to be both misapplied and misused" (para. 45), particularly since the definition is such that "even communication of

thoughts and ideas or, for that matter, opinions, without intent to commit” - as in the present case - “any violent or criminal act, may be regarded as subversion. Ordinarily, an act of subversion requires more than mere communication of thoughts and ideas” (paragraph 46 of the above-mentioned report).

9. In the light of the foregoing, the Working Group:

(a) Considers that the detention of Xue Deyun (alias Ma Zhe) is arbitrary as it contravenes article 19 of the Universal Declaration of Human Rights and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) Takes note with satisfaction of the fact that Xiong Jinren (alias Xiong Xiang) has been released without trial but considers that, for the same reasons, the detention to which he was subjected between 26 January 1998 and the date of his release was of an arbitrary character, as being in contravention of article 19 of the Universal Declaration of Human Rights and thus falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Having declared the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People’s Republic of China to:

(a) Take the necessary measures to remedy the situation in order to bring the articles of the Penal Code on the endangering of national security into conformity with the standards and principles contained in the Universal Declaration of Human Rights, and particularly, with reference to this case, those contained in article 19;

(b) Complete at the earliest possible date the process of ratification of the International Covenant on Civil and Political Rights.

Adopted on 20 May 1999