

OPINION No. 26/2010 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 6 July 2010.

Concerning: Zhisheng Gao.

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. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not provided the requested information.
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 non-observance 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 would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:
6. Zhisheng Gao a Chinese male and citizen is a lawyer by profession and was born on 20 April 1964. He was arrested on 4 February 2009 at his family home in Xiao Shi Ban Qiao Village, Jia County, Shaanxi Province, by at least seven security officers pertaining to the local Yulin City Police as well as to the Beijing Police.
7. According to the source, Mr. Gao is one of China's best-known lawyers and human rights defenders. He rose to prominence in the decade of 1990s by representing rural citizens against widespread corruption at the local level. In 2001, he was named one of China's ten best lawyers by the Ministry of Justice. In 2005, his license to practice was revoked and his law firm was shut down, reportedly in response to his open letters to both the National People's Congress and the Communist Party calling for an end to the abuse and attacks

against religious groups. His family, including his then 12-year-old daughter, was placed under surveillance.

8. The source adds that no arrest warrant was issued. Authorities have not made any official charges against Mr. Gao nor cited any legislation relevant to his case. They have not publicly acknowledged holding Mr. Gao under custody, but witnesses have seen Mr. Gao accompanied by security officers in Shaanxi. No charges were made and no notice was given to Mr. Gao's family about the location of or reason behind his detention.

9. In January 2010, the Foreign Ministry reportedly stated that "The relevant judicial authorities have decided this case" and that Mr. Gao, "according to Chinese law, is where he should be." On 15 February 2010, the Embassy of the People's Republic of China in Washington, D.C., informed the Dui Hua Foundation that Mr. Gao was "working in Urumqi", but his family did not know of this fact, nor had they heard any word from Mr. Gao himself.

10. Mr. Gao was convicted in December 2006 on charges of inciting subversion after giving a forced confession in the face of threats against his children. He was given a suspended four-year sentence with five years' probation and placed under house arrest. Later he denounced that during his 54-day detention he was beaten almost continuously or forced to sit motionless, enveloped by blinding lights. In September 2007, he was again detained after writing an open letter to the United States Congress on human rights violations in China. He was detained and allegedly tortured for 13 days.

11. According to the source, the detention of Mr. Gao is arbitrary because the Government has not invoked any legal basis justifying his deprivation of liberty. Mr. Gao has not been formally charged with any offense under the Criminal law or any other Chinese law. Further, his current detention may be related to actions for which he was previously detained; in particular, his advocacy on behalf of persecuted religious groups.

12. Mr. Gao's detention results from his exercise of the rights or freedoms guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) which the People's Republic of China has signed, but not yet ratified. The source points out that, as a signatory of the International Covenant on Civil and Political Rights, the State is obliged to refrain from acts that would defeat the treaty's object and purpose.

13. In addition, his *incommunicado* detention and without charge or notice to his family for more than one year and five months, constitutes a clear non-observance of the international norms relating to the right to a fair trial, of such gravity, as to give the deprivation of liberty an arbitrary character. In addition, Mr. Gao has been deprived of his right to select and meet a lawyer of his choice.

14. The source adds that Mr. Gao's detention also violates his right to freedom of thought, conscience and religion, protected by article 18 of both the Universal Declaration and the ICCPR. His detention is directly related to the exercise of his own freedom of thought and conscience as well as his determined advocacy to protect other citizens' constitutional rights to enjoy freedom of religious belief (article 36 of the Constitution of the People's Republic of China). It also violates his right to freedom of peaceful assembly and association, as enshrined in article 29 of the Universal Declaration and articles 21 and 22 of the ICCPR. Mr. Gao's detention is a response to his peaceful association with religious minorities.

15. The source concludes that Mr. Gao's detention also violates articles 35, 36, 37, 41, 51 and 125 of the Constitution of the People's Republic of China and articles 64, 69 and 75 of its Criminal Procedural Law. It also violates the rights established by the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173.

16. The Government did not respond in time to the letter from the Chairman of the Working Group dated 6 July 2010 and has not requested additional time to provide its response as laid out in paragraph 16 of the Working Group's Methods of Work. In these circumstances, the Working Group is able to render an opinion.

17. Mr. Zhisheng Gao is a brilliant lawyer known for the defense of human rights, in particular those with low income. He also advocates against corruption and the violations of the rights of religious groups. Because of his activities, Mr. Zhisheng Gao was forbidden to work in 2005. Thereafter he was arrested and tortured on several occasions, placed under house arrest and convicted for subversion.

18. According to the source, his arrest on 4 February 2009 was not accompanied with any warrant nor has he been notified in a precise manner of any charges pending against him. Moreover, his family has not been informed about the reasons of his detention. Mr. Zhisheng Gao has not benefited from the assistance of a lawyer nor has he had a proper trial. The only information available to the source and which stems from an official authority is that "Mr. Gao is where he should be in the light of the law of the People's Republic of China and that he works in Urumqi". Mr. Gao's family has not been able to confirm his whereabouts since they do not have any precise information about his place of detention nor developments following his arrest and eventual judgment. Such grave allegations have not resulted in any reaction on the part of the Government, notwithstanding the information submitted to it.

19. In the light of the foregoing, the Working Group considers that the Government, which has not contested the above declaration, recognizes that Mr. Gao is in its hands since 4 February 2009 and since that date no charge has been communicated to Mr. Gao; he has been allowed no access to a lawyer; his family does not know about his fate and whereabouts, whether he has been tried or what is his current situation. This leads the Working Group to believe that if he was tried, Mr. Gao has not benefited from a fair trial, particularly given the fact that the only justification for his arrest in light of the above-mentioned elements, relies on strong convictions that he has expressed, the alleged grounds for a withdrawal of his license and his criminal records. The Working Group considers that such a situation is in violation of Articles 9, 10, 11 and 18 of the Universal Declaration of Human Rights and it concerns categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

20. The Working Group reiterates its invitation to the Government to consider the ratification of the International Covenant on Civil and Political Rights that it has already signed. Consequent upon the Opinion rendered, the Working Group requests the Government to proceed to an immediate release of Mr. Zhisheng Gao and provide for reparation of the harm caused as a result of his situation. It further calls on the Government to bring the practice in the matter of arrests, detention and trials in conformity with international law.

Adopted on 19 November 2010.