

OPINION No. 26/2003 (CHINA)

Communication addressed to the Government on 12 June 2003.

Concerning: Ouyang Yi and Zhao Changqing.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government failed to provide it with the information concerning the allegations of the source.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. Nevertheless, despite 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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the source, Ouyang Yi was born on 18 June 1968. He is a high school teacher, a member of the organization called the China Democracy Party and one of the managers of a commercial web site (www.5633.com). When the communication was sent to the Working Group, he was detained at the Chengdu detention centre, in Chengdu, Sichuan province.
6. In the absence of any information from the Government, the Working Group cannot but proceed on the assumption that he is still being detained. It is alleged that so far no date has been set for trial. Ouyang Yi was reportedly apprehended on 4 December 2002 by members of the security police who searched his home and confiscated a number of documents, many of which were articles that Ouyang Yi had posted on the Internet. On 7 January 2003, Mr. Ouyang was formally charged by the Public Security Bureau with “inciting the overthrow of the State power” under article 105 of the Criminal Law as amended in March 1997. The relevant text of article 105, made available by the source, reads as follows:

“Whoever organizes, plots, or acts as a ringleader to subvert the political power of the State and overthrow the socialist system, shall be sentenced to life imprisonment, or not less than 10 years of imprisonment; active participants are to be sentenced to not less than three years to not more than 10 years of imprisonment; other participants are to be sentenced to not more than three years of imprisonment and deprivation of political rights.

“Whoever instigates the subversion of the political power of the State and overthrows the socialist system through spreading rumours, slandering, or other ways shall be sentenced to not more than five years of imprisonment and deprivation of political rights; the ringleaders and those whose crimes are grave shall be sentenced to not less than five years of imprisonment.”

7. Ouyang Yi had previously signed open letters and petitions calling for the release of political prisoners, which resulted in arrests and interrogations on a number of occasions, including a three-month detention. In 1999, he was evicted, along with his family, from his home and lost his teaching position. The source believes Mr. Ouyang's detention is related to the arrest of other Internet activists and for his open letter to the Sixteenth National Congress of the Chinese Communist Party (CPC).

8. The activities of which he is accused are criticizing the Government for its failure to conduct an appropriate economic policy and signing, together with 192 other people, an open letter to the National People's Congress calling for political reforms containing six initiatives: to reassess the 1989 democratic movement; to allow political exiles to return to China; to release Zhao Ziyang from house arrest and restore his political rights; to release all political prisoners; to ratify the International Covenant on Civil and Political Rights; and to expand, to the national level, the system of democratic village and municipal elections. At least seven other signatories of the petition were also arrested.

9. According to the source, Zhao Changqing was arrested on 7 November 2002 in Xi'an by Public Security Bureau (*Xi'an shi gong an ju*) officers, who failed to provide a proper arrest warrant. They had searched his flat a few days before his arrest. Mr. Zhao was kept in secret detention until 27 November 2002. On that day, Xi'an Public Security Bureau officials delivered an official notice of his detention (*xing shi zhu liu de tong zhi*) to his sister. On 27 December 2002, they delivered an official notice of arrest (*zheng shi bei bu*) to his elder brother, thus starting Mr. Zhao's formal arrest (*dai bu*). Mr. Zhao was charged with "incitement to subvert State power" (*shan dong dian fu guo jia zheng quan*), which falls under article 105 of the Criminal Law (whose text is reproduced above), a charge for which he could be sentenced to up to 15 years in prison.

10. The charges against Zhao Changqing are in connection with his efforts to draft and circulate an open letter to China's Sixteenth National CPC Congress in November 2002 (see paragraph 8).

11. Mr. Zhao is currently being held in the Xi'an Kangfu hospital under the supervision of the Xi'an Public Security Bureau. His health has drastically deteriorated since the start of his detention in November 2002. His tuberculosis became worse while in custody. His admittance to the hospital indicates the severity of his illness. No trial date has been set yet. Mr. Zhao has been denied bail. His family has hired legal counsel to defend him.

12. Zhao Changqing was previously arrested in June 1989 for taking part in the democracy demonstrations that year in Beijing. He was imprisoned in Xincheng prison in Beijing for more than half a year. In 1997, he gathered enough signatures to stand for election as a local representative to the National People's Congress, but soon afterward he was arrested and sentenced to three years in prison for endangering State security. He was released in March 2001 and since then he has continued his political activism.

13. According to the source, Mr. Zhao was arrested and is being held in detention for the peaceful exercise of his right to freedom of opinion and expression. The source further alleges

that the detention of this person is in violation of articles 64 and 65 of the Chinese Criminal Procedure Law, because a proper detention warrant was not presented at the time of his arrest and the arrest and detention procedures were improperly handled.

14. The Working Group believes that the above activities, as critical of the Government as they might have been, remain within the boundaries of Ouyang Yi's and Zhao Changqing's freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds orally, in writing, in print or by any other media, including the Internet, regardless of frontiers. In the present case, the Working Group does not possess any information that would indicate that such serious measures - detention and criminal proceedings - were necessary or unavoidable to protect public order. The wording of article 105 of the Chinese Criminal Law rather convinces the Working Group that the purpose of their detention is to oppress political opponents of the Government. Their activities represented an effort to take part in the government of the country by petitioning their representatives.

15. On the basis of the allegations made, which the Government has not denied, although it had the opportunity to do so, the Working Group concludes that the detention of Ouyang Yi and Zhao Changqing is motivated exclusively by their human rights and political activities, activities constituting the peaceful exercise of the right to freedom of expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

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

The deprivation of liberty of Ouyang Yi and Zhao Changqing 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.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ouyang Yi and Zhao Changqing. The Working Group also encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 28 November 2003