

OPINION No. 43/2005 (CHINA)

Communication: addressed to the Government on 10 March 2005.

Concerning: Mr. Peng Ming.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government of China for having forwarded the requisite information.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
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.
5. 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, as well as the observations by the source.
6. The source informed the Working Group that Mr. Peng Ming, a citizen of China born on 11 October 1956, participated in 1997 in the establishment of the China Development Union (CDU), a non-governmental organization dedicated to promoting sound environmental policies and sustainable development in China. CDU was subsequently banned by the Government. From January 1999 to August 2000, the authorities detained Mr. Peng in a re-education-through labour camp. After his release from the camp, he moved to the United States of America, where he was granted refugee status. In October 2001, while in the United States, he participated in the establishment of the China Federation Party (CFP) and was elected its Chairman. The Party declared its intention to become the basis for future democratic governance in China.
7. In March 2001, the United States Immigration and Naturalization Service authorized Mr. Peng to immigrate into the United States. On 15 May 2001, the United Nations High Commissioner for Refugees (UNHCR) issued a document certifying that Mr. Peng Ming,

his wife Nie Ying, their son Peng Yiale and their daughter Peng Jia-Yin are considered refugees under the mandate of UNHCR. The certificate has a validity of four months. Mr. Peng arrived in the United States in August 2001. Most recently, on 19 March 2004, the United States Department for Homeland Security issued Mr. Peng Ming a Refugee Travel Document.

8. In May 2004, Mr. Peng travelled to Thailand and, from there, to Myanmar. The purpose of his travelling to Myanmar was to set up safe havens for Chinese refugees. On or around 22 May 2004, security forces of Myanmar arrested Mr. Peng on charges of possessing huge amounts of counterfeit yuan renminbi. On 28 May 2004, they handed him over to the police in Yun Nan province (China). He was detained at the Yun Nan Province Detention Centre.

9. According to a Detention Notice dated 16 June 2004, the Xishuangbanna Police Department detained Mr. Peng under section 61 of the Criminal Procedure Law on charges of “alleged possession and use of counterfeit currency”. According to a Detention Notice dated 18 June 2004, the Wuhan City Police detained Mr. Peng on 17 June 2004 on charges of “alleged administrative procedure law offences”. He was transferred to Wuhan City Detention Centre No. 2. According to an Arrest Notice dated 23 July 2004, the Wuhan City Police arrested Mr. Peng on that same day on charges of “alleged kidnapping”.

10. Mr. Peng continues to be detained at Wuhan City Detention Centre No. 2. Although his relatives have hired two lawyers practising in China to defend him, their access to him has been strictly limited. Mr. Peng suffers from painful kidney stones but is denied the required hospitalization.

11. The source further alleges that Mr. Peng is detained in order to prevent him from carrying out his political activities aimed at peacefully bringing to a fall the current Government of China and substituting it with a democratically elected Government. The continuously changing charges against Mr. Peng (first possession of counterfeit currency, then administrative procedure law offences, and finally kidnapping) corroborate that the criminal proceedings against him are arbitrary and a sham, covering the actual reasons for his detention. Also Mr. Peng’s previous detention in a re-education-through-labour camp bears out the purely political motives behind his detention.

12. The source finally states that Mr. Peng is being deprived of his right to due process. Already his being handed over to the Chinese authorities was in violation of international law, in particular of the principle of non-refoulement. Moreover, international law requires that persons in detention be provided access to their family and a lawyer. Mr. Peng is denied both.

13. In its response, the Government indicated that Mr. Peng Ming is an ethnic Han male born in 1965; he is university educated and a native of Beijing. In 2001 he began developing a terrorist organization. He used articles, publications and essays posted on the Internet to disseminate his violent terrorist ideology, raise funds, establish a base and recruit trainers. He used all sorts of methods including kidnapping and murder to carry out violent terrorist activities and sought to “bring Beijing to a standstill in an instant and create chaos”, provoking “concomitant social unrest and economic crisis”. In June 2003 he plotted to train terrorist cadres in Myanmar; the trainees he recruited would then teach their students how to carry out such

violent terrorist activities as kidnappings and murders. When they had completed their training the students would be given diplomas, and it was hoped that after returning to China they would actively recruit members for the terrorist organization and carry out kidnappings and terrorist activities.

14. The Government further states that during a two-year period between November 2001 and 2004 Mr. Peng, acting from outside China, had collected certain information about influential bank presidents, government officials and business leaders inside and outside China, and plotted, organized and carried out a series of kidnappings (all of which were aborted). On 22 May 2004, he had entered Thailand from Myanmar and was arrested by the Myanmar police, who found him to be carrying 108 million yuan in counterfeit money. On 20 July 2005, the Wuhan People's Procuratorate in Hubei Province brought proceedings against him in the Wuhan Intermediate People's Court, charging him with the crime of organizing and leading a terrorist organization, the crime of kidnapping and the crime of possessing counterfeit money. At the time of the Government's reply, the case was being heard.

15. The Government concludes by stating that terrorism constitutes a brutal violation of democracy and human rights and is the common enemy of all mankind and that it reflects utter disregard for human life and man's creations and casts a shadow over the life proclaimed in the Universal Declaration of Human Rights, a life "in which human beings shall enjoy ... freedom from fear". Accordingly, safeguarding human rights must involve cracking down on terrorism. The Government resolutely opposes all forms of terrorism and is actively responding to the United Nations Millennium Declaration by working alongside all countries of the world to support, adopt and coordinate measures to combat international terrorism.

16. The source, commenting on the response from the Government, argues that the Government is trying to distort the case in displaying Mr. Peng as a criminal and a terrorist, when he is clearly a foreign-based dissident, with United Nations refugee status, recognized by UNHCR. The source claims that the Government of Myanmar detained Mr. Peng on inaccurate charges, which amounts to a kidnapping act. The source claims that the same charges were used against Mr. Peng by the Chinese authorities, i.e. possession of counterfeit money in Myanmar. This pretext has also been used against other dissidents. The source argues that, if the Government of China insists on bringing Mr. Peng to trial, this should take place in a third country where he would be guaranteed a fair trial, which is not the case in China because he had been persecuted there in the past.

17. The source states that the Government confirms, in its essentials, the information provided by the source in relation to the circumstances in which Mr. Peng Ming's detention took place. Nevertheless, the Government does not provide any clarification with regard to the procedure followed in order to obtain that Mr. Peng Ming be expelled from Myanmar and transferred to the Chinese authorities of the Province of Yun-Nan.

18. The Government, which justifies Peng Ming's detention for his alleged terrorist ideology and activities of a violent nature, further reports that he is currently being judged for the charges that the District Procurator of Hubei Province has raised against him, relating basically to organizing and directing a terrorist organization, kidnapping and possession of counterfeit money.

19. The source reiterates that Mr. Peng Ming is, certainly, a political dissident opposed to the current Government and has published two books critical of the Government. It underlines, however, that, he did not, in any way, support terrorist objectives or carry out violent activities.

20. In its assessment of the information available in the communication at issue, the Working Group finds it difficult to consider the purposes attributed by the Government to Mr. Peng Ming's activities as equivalent to terrorist activities. The imprecise and diffuse way in which the Government describes the ideology of the organization created by Peng Ming, allegedly with the aim of "trying to paralyze the activity of Beijing by means of social worry and economic crisis" [sic] cannot be considered sufficient to substantiate charges of terrorist activity. In its evaluation, the Working Group takes into consideration the information provided by the source and not contested by the Government, that Mr. Peng Ming spent one and a half years in a "re-education through labour" camp and was recognized as a refugee by UNHCR.

21. In addition, the Government has not provided any specific information on the alleged "gathering of information on political and financial personalities" and aborted kidnappings that it imputes to Peng Ming.

22. Finally, though the Government reports that the District Attorney has also accused Mr. Peng Ming of counterfeiting 108 million Yuan, the link by which it connects this offence to Mr. Peng Ming's political activities, as well as the clear denial of this allegation by the source, allows the Working Group to suppose that this charge of a common crime could be politically motivated.

23. The Working Group considers that any limitation of Mr. Peng Ming's legitimate political and non-violent activities carried out peacefully and in exercise of his rights to freedom of association and expression would be contrary to the international human rights law enshrined in the Universal Declaration of Human Rights.

24. In the light of the foregoing, and without any need to analyse the allegedly irregular way in which Mr. Peng Ming was transferred from Myanmar to China, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Peng Ming is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

As a consequence of the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Peng Ming, and bring it in conformity with the principles set forth in the Universal Declaration of Human Rights.

The Working Group reiterates its recommendation to the Government of China to consider ratification of the International Covenant on Civil and Political Rights.

Adopted on 29 November 2005.