

OPINION No. 11/2006 (PEOPLE'S REPUBLIC OF CHINA)**Communication addressed to the Government on 26 October 2005****Concerning: Mr. Zheng Zhihong.****The State has signed but not ratified 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 and reconfirmed by resolution 2003/31. 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 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 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. Mr. Zheng Zhihong, a citizen of the People's Republic of China born on 14 October 1957, was a cadre at the Huanggang City Salt Company in Hubei Province. He lived at the company dormitory in Huanggang City.
7. At an unspecified time before the year 2000, Zheng Zhihong became a Falun Gong practitioner. In 2000 he went to Beijing to appeal for the right to practice Falun Gong. Security forces escorted him back to Huanggang City. He was held at the No. 1 Detention Center in Huanggang City for one month. In 2001, the police took Zheng

Zhihong into custody at his work unit without an arrest warrant and without charges and held him at the No. 2 Detention Center for 15 days.

8. On 9 March 2004, Mr. Zheng Zhong, father of Zheng Zhihong and also a Falun Gong practitioner, passed away. On 11 March 2004, the Huanggang City Foreign Trade Bureau held a courtyard memorial service for its former cadre Zheng Zhong. Some bureau officials and Falun Gong practitioners attended the service. Mr. Zheng Zhihong delivered a eulogy in which he stated that his father regained his health after practicing Falun Gong; that the police had monitored and pursued his father since 2002 and forced him into exile; that his work unit suspended his salary, and that he passed away under tremendous pressure and poor living conditions due to the loss of his income and the persecution. These allegations were also posted on the World Wide Web.

9. 20 May 2004, a group of police officers led by the political head of the Huangzhou District Police Department arrested Zheng Zhihong at his apartment. They held him at the No. 1 Detention Center. Zheng Zhihong's detention was accompanied by other measures of reprisal against those involved in the 11 March 2004 memorial service. The head of the Huanggang City Foreign Trade Bureau was transferred, and about eight Falun Gong practitioners who had attended the memorial service were arrested.

10. In June 2004, a formal arrest warrant was issued. In November 2004, the police charged Zheng Zhihong with "instigation" and "using superstitious sects or secret societies or weird religious organizations ... to undermine the implementation of the laws".¹ On 23 December 2004, the Huangzhou District Court tried Zheng Zhihong and sentenced him to five years of imprisonment.

11. Zheng Zhihong appealed the judgment on 29 December 2004. His attorney stated that his client had just followed the traditional Chinese custom of filial piety by delivering a eulogy at his father's memorial service and spoken words from his heart, so it could not be called "instigation". Rather, the Government prosecuted Zheng Zhihong because his father was a Falun Gong practitioner, because Falun Gong practitioners attended the service and because they appealed for justice. The Huanggang Intermediate People's Court rejected the appeal on 28 February 2005. The court cited Section 1 of Article 300 of the Criminal Law of China, and Section 4 of Article 1 of the Explanation of Specific Law Enforcement Applications Regarding Cases in Which People Organize Cults to Commit Crimes. Zheng Zhihong is currently detained at the Qinduankou Prison in Hubei Province.

12. The Government's reply is as follows: Zheng Zhihong, also known as Zheng Hong, is an ethnic Han male born on 14 October 1957 in the town of Huanggang, Huangzhou District, Hubei Province. He was formerly a cadre at the Huanggang City Salt Company. In March 2000 Zheng was sentenced by the Hubei public security authorities to one month's detention for going to Beijing to cause trouble and disturb public order. In December 2000 he was placed in administrative detention in accordance with the law by the Hubei public security authorities for 15 days for once

again disrupting public order. On 11 March 2004 he used the Huanggang Foreign Trade Bureau to hold a memorial service for his father, giving tremendous publicity to Falun Gong, vilifying the Government for subjecting his father to political repression because he had practised Falun Gong, and maliciously fabricating slanderous remarks to the effect that the Foreign Trade Bureau had withheld his father's salary and benefits. Under the influence of his inflammatory speech, the mood of the Falun Gong members to follow the hearse through the streets demonstrating, creating a major public disturbance.

The public security authorities, acting in accordance with the law, investigated these criminal acts – using a cult to organize a parade and disrupting public order – and seized more than 200 Falun Gong flyers and 44 Falun Gong compact discs from the Zheng home. On 20 May 2004, the public security authorities placed Zheng in criminal detention on suspicion of using a cult to undermine law enforcement; on 29 June the Huangzhou district procurator's office ordered his arrest, and on 16 November the Huangzhou district procurator's officer initiated criminal proceedings in the district court. The court, acting in accordance with the law, established a collegial panel, which heard the case. The prosecutor, the defendant and his counsel all participated in the hearing. During the proceedings the prosecutor read out the indictment, witnesses gave testimony and counsel provided a defence; the proceedings were conducted in public and in accordance with the law. The court found that the defendant Zheng Zhihong had disregarded national law, knowing that the Falun Gong cult was outlawed by the State, and instigated the disruption of public order and violated the provisions of national legislation and official regulations; his acts constituted a crime under article 300, paragraph 1, of the Criminal Law of the People's Republic of China and article 1, paragraph 4, of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Questions Concerning Specific Application of Laws in Handling Cases Involving the Organization and Use of Cults to Commit Crimes, and constituted the crime of using a cult to undermine law enforcement. He was sentenced to five years' imprisonment. Zheng did not accept this verdict and filed an appeal. The Intermediate People's Court in Huanggang heard the case, rejected the appeal and upheld the original verdict. Zheng is currently serving his sentence in the Qinduankou prison in Wuhan, Hubei Province.

The its explanatory remarks, the Government states that: Falung Gong, which has been legally banned by the Chinese Government, fraudulently uses some Buddhist, Taoist and Christian names and terminology to concoct a heresy that confuses people's minds and advocates such fallacies as the notion of a "global explosion" and the idea that sick persons cannot take medicine. In the name of religion, it hoodwinks and amasses money, harms lives, endangers society, tramples on human rights and causes a great many obsessed people to injure or kill themselves, leaving countless families to mourn their kin: this poses a tremendous threat to Chinese society. The cult continues to engage in such disruptive activities as destroying radio and television stations, cutting fibre optical cables, disrupting television signals and harassing those who disagree with them by telephone. All countries deal with cults, like the Branch Davididans in the United States of America and Aum Shinrikyo in Japan, in accordance with the law.

The Government further states that China is a country governed by the rule of law. In its handling of cases China's judiciary acts in strict compliance with such legislation as the Criminal Law and the Criminal Procedure Law of the People's Republic of China. China's legislation stipulates that any act involving the organization or use of a cult to undermine law enforcement is punishable under the law. Zheng Zhihong suffered legal consequences because he advocated a cult and used it to undermine social stability; the facts of his crime were clear, the evidence was conclusive, and his actions and their aftermath constitute elements of the crime of using a cult to undermine law enforcement, as clearly spelled out in the applicable legislation. China's judicial authorities acted in strict compliance with the law: throughout the investigation of Zheng's crime, his arrest, the hearing and judicial proceedings they observed due process, took due note of the evidence and upheld the defendant's legitimate interests, allowing him to fully exercise his right to a defence and a hearing. The allegations that "Zheng Zhihong's detention is arbitrary because the court that convicted and sentenced him was acting upon instructions of the Security Administration", that "the 610 Office had decided that Zheng would receive a five-year prison sentence before the trial began" and that "the police gave the court a note reading, 'be severe in handling this case', written by the deputy Governor of Hubei Province" are all inconsistent with the facts.

13. In its reply to the Government's observations, the source states that Mr. Zheng's original appellant letter has presented his case very clearly. The Chinese Government's response in fact corroborated the factual happenings of his case. What the Chinese Government tried to spin is its typical politically charged allegations. One key allegation was that Mr. Zheng "took advantaged of his father's funeral held by Huanggang City Foreign Trade Bureau to wantonly publicize Falun Gong and attack the government for politically persecuting his father for his father's practice of Falun Gong". "Influenced by his inciting language, other Falun Gong member became aroused". This allegation in itself showed what Mr. Zheng had done is no more than making a speech. To incriminate Mr. Zheng based on his speech is a shameless show, perhaps unknowingly so, to the Working Group Chinese Government's utter ignorance of the freedom of expression. The Chinese Government's response has also failed to explain how Mr. Zheng was allowed so, as it has claimed, "attack the government" in the funeral sponsored by the Foreign Trade Bureau, a government agency. The fact is, Mr. Zheng was invited to give a eulogy to his late father.

Another allegation made by the Chinese Government is "Mr. Zheng instigated dozens of Falun Gong member to follow the casked to stage a parade demonstration, and severely disturbed the social order". This only show how arbitrary the Chinese Government is to trump up charges – following the casket can be interpreted as a parade demonstration and called a disturbance to social order.

The third allegation is the discovery of "over 200 Falun Gong flyers and 44 Falun Gong CDs". Again, the Chinese Government is shameless showing to the Working Group how it disrespects the freedom of press.

In summary, the Chinese Government is giving the Working Group a complete admission of how it arbitrarily infringes the basic freedoms guaranteed by the Universal Declaration of Human Rights.

14. The Working Group notes that the Government agrees in essence with the facts as presented by the source. Mr. Zheng Zhihong expressed his beliefs and opinions as a Falun Gong member in the eulogy he held, as provided by the official protocol, at his father's funeral on 11 March 2004. Thereafter, Mr. Zheng Zhihong took part with other persons in a peaceful demonstration protesting against the Government's attitude towards Falun Gong. Finally, Mr. Zheng Zhihong had leaflets and CDs concerning the Falun Gong association at home.

15. The detention of Mr. Zheng Zhihong on the ground of these facts is incompatible with his right to freely express, in a peaceful manner, his religious beliefs and political opinions, and with his right to peacefully demonstrate.

16. The Working Group has already in previous opinions and on the occasion of its visits to China expressed its concern with regard to the treatment to which members of the Falun Gong association are subjected. It finds no justification for the Government to keep in force penal laws impeding the exercise of the right to freedom of association, expression and demonstration of citizens who peacefully exercise activities within that association.

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

The deprivation of liberty of Zheng Zhihong is arbitrary, as being in contravention of articles 18, 19 and 20 of the Universal Declaration of Human Rights and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

18. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 11 May 2006.

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Working Group on Arbitrary Detention
Secretary

Miguel de la Lanza
Miguel de la Lanza

Yours sincerely,

In accordance with the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No 11/2006 (People's Republic of China) regarding a case submitted by you (Mr. Zheng Zhishong). This Opinion will be reproduced in the Working Group's next report to the Human Rights Council.

I would like to refer to the forty-fifth session of the Working Group on Arbitrary Detention, in which the Working Group adopted several Opinions on cases of detention submitted to it. The Working Group decided, *inter alia*, to transmit its Opinions three weeks after having transmitted them to the governments concerned, to the sources of information which had submitted the cases to the Group.

Dear Sirs,

30 June 2006

REFERENCE: G/SO 2182

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