

# UN Working Group on Arbitrary Detention Decision 2003

## OPINION No. 10/2003 (CHINA)

Communication addressed to the Government on 16 September 2002.

Concerning: Wang Bingzhang, Yue Wu and Zhang Qi.

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

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
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, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The communication, a summary of which was forwarded to the Government, concerns
  - (a) Dr. Wang Bingzhang, male, born on 30 December 1947, a Chinese national living in New York City, United States of America, a human rights and pro-democracy activist. The United States of America has granted him political asylum;
  - (b) Yue Wu, male, born on 7 August 1947, a Chinese national living in Paris with a refugee travel document; also a human rights, pro-democracy activist. According to the source, he is an internationally recognized labour leader. He participated in the 1989 Tiananmen Square demonstrations; and
  - (c) Zhang Qi, female, born on 29 December 1962, a Chinese human rights activist and Zhong Gong leader. It was reported that she was wanted by the Government and that she escaped to Thailand in 2000. At the end of 2001, she was granted political asylum in the United States of America.
6. It was reported that these persons were arrested on or about 26 June 2002 on the border between China and Viet Nam near northern Quang Ninh province, by members of the Chinese Public Security Bureau or by members of the Chinese People's Liberation Army. They were initially held near the border and then transferred to Beijing, where they were being held. No arrest warrants were allegedly presented at the time of their arrest.
7. The Government, in its response, maintains that Wang Bingzhang is under investigation by the Chinese State security authorities on suspicion of the offence of espionage. In May 1999, a warrant was issued for his arrest on suspicion of violent terrorist activities.
8. The Government adds that at about 10 p.m. on 3 July 2002, the public security authorities in Fangchenggang city in the Guangxi Zhuang Autonomous Region received reports of a kidnapping and promptly raised the alarm. Three persons were discovered, tied up, in the Baihu temple in the northern suburbs of the city. According to statements by the three persons, they had been abducted on 27 June in Quang Ninh province in Viet Nam and a ransom of US\$ 10 million had been demanded. As the ransom was not paid, they were blindfolded and moved around from place to place until 3 July 2002, when they were rescued by the Chinese police.
9. Following investigation, the local public security authorities were able to identify the three abducted persons as Wang Bingzhang, Yue Wu, and Zhang Qi.
10. The Government states that in view of the fact that Wang Bingzhang was suspected of having committed an offence, and in accordance with the rules of law establishing jurisdiction in this case, Wang Bingzhang was handed over by the Guangxi public security authorities to their counterparts in Guangdong for investigation. As Mr. Wang was suspected of involvement in the offences of espionage and the organization and conduct of violent terrorist activities, the Guangdong public security authorities, acting in accordance with the law, ordered him to be kept in his home under surveillance. On 5 December 2002, with the approval of the procuratorial authorities, the Guangdong police, acting in accordance with the law, took Mr. Wang into custody. His case is still undergoing further investigation.
11. With respect to the cases of Yue Wu and Zhang Qi, the Government states that they have been cleared of any involvement in the offences of espionage and the organization of violent terrorist activities of which Mr. Wang is suspected. The public security authorities have lifted the orders placing them under surveillance in their homes.
12. In its explanatory remarks, the Government states that this case is a criminal matter of great seriousness involving the suspected endangering of Chinese State security and public safety. According to an investigation of the facts conducted by the Chinese State security authorities, Mr. Wang had established close ties with the Taiwanese espionage and intelligence authorities, who had paid him to collect and steal Chinese State secrets for them.
13. The Government also reported that for a long time, Mr. Wang has openly advocated violence and terrorism, asserting that violent methods, kidnapping and explosives must be used and claiming that he himself had plotted, organized and carried out

many violent terrorist activities. It adds that the measures adopted by the police against him are exclusively in response to his suspected commission of criminal offences.

14. The Government concludes that the authorities have acted in accordance with the law and that Wang Bingzhang is suspected of having conducted activities which constitute the offence of imperilling State security and public safety. In accordance with the provisions of articles 6 and 7 of the Chinese Criminal Code, Chinese judicial jurisdiction extends to any persons committing offences within the territory of China and to Chinese citizens committing the offences specified in the Code outside the territory of the country. At the same time, the home surveillance orders placed on Mr. Wang and his two companions were in compliance with the stipulations of articles 51 and 57 of the Chinese Code of Criminal Procedure and with the relevant provisions of international human rights instruments.

15. In its comments and observations, the source reacted to the Government reply by stating that on 27 June 2002, Wang Bingzhang, Yue Wu and Zhang Qi were accosted in the lobby of their hotel in Mongcai, Viet Nam, by a group of about 10 men dressed in plain clothes. Claiming to be Vietnamese police officers, they demanded that the trio accompany them to the local police station for questioning. Initially resisting, Mr. Wang was physically assaulted in the lobby and the trio finally relented. They possessed all the required travel documents, including Vietnamese visas, and had done nothing wrong.

16. An hour earlier Mr. Wang had met with a Chinese labour activist from Guangxi province who had come across the border. The meeting had been set up two months earlier and had focused on the labour movement in China, workers' discontent and rising unemployment; the situation of the Falun Gong and its campaign to win religious freedom; and the corruption of some Guangxi governmental officials.

17. The three persons were kidnapped by Vietnamese, taken across the border and handed over to Chinese officers. They were put in separate rooms in a motel where they stayed for three days, bound. During this time, the leader of the kidnappers demanded a US\$ 10 million ransom. He asked for family contact information from the trio, and all three provided addresses and telephone numbers. However, no family member was ever contacted by the kidnappers. After Mr. Yue accused his captors of being Chinese agents, he was beaten and gagged.

18. On 3 July 2002, the trio was taken to another motel, where they stayed for three additional days until they were driven to a Buddhist temple in Fangchenggang city in southern Guangxi province. They were left at the temple for a few minutes, until local Guangxi policemen arrived in cars. The police delivered them to the local police station, where they were detained until about 7 p.m. the next evening. They told the police that they had been kidnapped by robbers in Viet Nam and requested to go back. Although believing that in fact their abductors were Chinese agents, they were afraid to raise this with the local police who, they hoped, would permit them to go back to Viet Nam.

19. On the evening of 4 July 2002, the trio was transported to Nanning, the capital of Guangxi province. On the way, Mr. Yue asked the police, "What happened to the kidnappers?" The police refused to answer. For the next 12 or 13 days, they were detained at a police training academy in Nanning.

20. During Mr. Wang's initial six months in detention, during Mr. Yue's six months in detention, and Ms. Zhang's nine months in detention, they were never charged with any crime nor were warrants issued for their arrest and detention. No judicial hearings were held on the legality of their detention and no judicial order of detention was ever issued in their names. According to the source, they were denied access to a lawyer and were never informed that they had the right to the assistance of a legal counsel. They were denied permission to contact their families - except Zhang Qi, later in house arrest in her mother's house - to inform them of their detention or of the places where they were being detained and held incommunicado.

21. The source further considers that the Government denied any knowledge of the whereabouts of Wang Bingzhang, Yue Wu and Zhang Qi until international interest in the cases made the Government reverse itself. Only on 4 December 2002 did the Government admit that it had been holding them since 3 July 2002. The source pointed out that their "rescue" from abduction was a cover-up by the Government.

22. The source confirmed the assertion of the Government that Yue Wu and Zhang Qi were released in late December 2002.

23. The source adds that on 5 December 2002, Wang Bingzhang was finally charged with "offences of espionage" and "the conduct of terrorist activities". He was tried on 22 January 2003 by the Intermediate People's Court in the city of Shenzhen in Guangdong province. Mr. Wang claimed that he was innocent of all charges levelled against him. The trial only lasted half a day. It was closed to the public. The Government cited "State secrets" as the justification for the closed trial. No family members, supporters or reporters were permitted to attend. While the court charged Wang Bingzhang with the most serious of crimes, including terrorism and espionage, it refused to release any evidence of his wrongdoing.

24. On 10 February 2003, Wang Bingzhang was convicted and sentenced to life in prison. His lawyers stated that there was not enough evidence to convict him. Mr. Wang appealed the court's verdict and sentence promptly. The appeal was rejected on 28 February 2003.

25. The source states that in light of the court's denial of Mr. Wang's right to the presumption of innocence; his right to adequate time and facilities to prepare for his own defence; his right to a fair trial before an independent and impartial tribunal; his right to call witnesses on his own behalf; his right to cross-examine witnesses testifying against him and, in general, the lack of any guarantee whatsoever that would ensure his adequate defence and a full hearing, Mr. Wang's trial was in contravention of internationally recognized standards for judicial proceedings.

26. The source adds that the accusations were wrongfully fabricated against him. It says it is common knowledge that the definition of terms like "espionage" and "endangering State security" are quite elastic and are therefore generally at variance with the narrower definitions employed by other countries to define these types of crime. It states that Wang Bingzhang's case represents the first time the Government has levelled terrorism charges against a pro-democracy dissident under its new anti-terrorism laws. It is also one of the harshest prison sentences ever imposed on any pro-democracy dissident by the Government.

27. After examining the communications from the source and the Government's response, the Working Group finds that:

(a) According to the Government, Wang Bingzhang, together with Yue Wu and Zhang Qi, were kidnapped by unidentified persons on 27 June 2002. Chinese officers rescued them when they found them in Baihu temple on 3 July 2002;

(b) Immediately after being rescued, Wang Bingzhang, Yue Wu and Zhang Qi were arrested by the authorities who had found them. The Government has not specified whether the authorities had a warrant to do so. Its response does not explain why kidnapping victims should suddenly become suspects accused of other crimes. Nor does it make it clear whether those responsible for the kidnapping have yet been sought, found or indicted;

(c) The three individuals, especially Wang Bingzhang, are, according to the source, internationally recognized activists in pro-democracy movements. The Government, on the other hand, speaks of Mr. Wang's advocating violence and the use of methods such as kidnapping and bombings, and claims that he has boasted of having organized and carried out many violent terrorist activities;

(d) Even so, the Government does not specify if, in fact, Mr. Wang ever carried out his intentions, and offers no evidence of any specific occasion on which Mr. Wang made the alleged calls to violence. Other than the kidnapping of which Mr. Wang himself was a victim, as the Government itself acknowledges, no information has been given about other kidnappings or acts of violence initiated by Mr. Wang;

(e) It seems clear that Mr. Wang, during his first five months in detention, did not have knowledge of the charges, the right to legal counsel, or the right to judicial review of the arrest and detention and that, after that date, he did not benefit from the right to the presumption of innocence, the right to adequate time and facilities for defence, the right to a fair trial before an independent and impartial tribunal, the right to a speedy trial and the right to cross-examine witnesses;

(f) This constitutes a series of violations serious enough to make his deprivation of liberty arbitrary, in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights;

(g) With regard to Yue Wu and Zhang Qi, the Working Group notes the Government's statement that they are no longer in detention, a fact confirmed by the source. It must, however, point out that the Government has not denied the fact that they were never charged with any crime and no warrant was ever issued for their arrest or detention during their nine- and six-month detentions, respectively. They were detained secretly and were not informed of any charges, and consequently it can be established that the detentions had no legal basis.

28. In the light of the foregoing, the Working Group renders the following opinion: It declares, pursuant to paragraph 17 (a) of its methods of work, that even though Yue Wu and Zhang Qi are no longer in detention, the deprivation of liberty in both cases was arbitrary, being manifestly without any legal basis and being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

It declares that the detention of Wang Bingzhang is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

29. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Wang Bingzhang and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. At the same time, it once again urges the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 9 May 2003