



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its fifty-ninth session, 18–26 November 2010****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 in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in resolution 15/18 of 30 September 2010. According to its revised methods of work, the Working Group forwarded a communication addressed to the Government on 13 August 2010.
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:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty 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 belonging to the local Yulin City Police as well as to the Beijing Police.

7. According to the source, Zhisheng Gao is one of the country's best-known lawyers and human rights defenders. He rose to prominence in the 1990s by representing rural citizens against widespread corruption at the local level. In 2001, he was named one of the ten best lawyers in China by the Ministry of Justice. In 2005, his licence 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 Zhisheng Gao nor cited any legislation relevant to his case. They have not publicly acknowledged holding Zhisheng Gao in custody, but witnesses have seen Zhisheng Gao accompanied by security officers in Shaanxi. No charges were made and no notice was given to Zhisheng 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 Zhisheng Gao, "according to Chinese law, is where he should be". On 15 February 2010, the Chinese Embassy in Washington, D.C., informed the Dui Hua Foundation that Zhisheng Gao was "working in Urumqi", but his family did not know of this fact, nor had they heard any word from Zhisheng Gao himself.

10. Zhisheng Gao was convicted in December 2006 on charges of inciting subversion after giving a forced confession in the face of threats made against his children. He was given a suspended four-year sentence with five years' probation and placed under house arrest. Later, he claimed that during his 54-day detention he was beaten almost continuously or forced to sit motionless, surrounded 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 Zhisheng Gao is arbitrary because the Government has not invoked any legal basis justifying his deprivation of liberty. Zhisheng Gao has not been formally charged with any offence under 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. Zhisheng 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 which 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, Zhisheng Gao has been deprived of his right to select and meet a lawyer of his choice.

14. The source adds that Zhisheng 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 International Covenant on Civil and Political Rights. 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 (art. 36 of the Constitution 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 Covenant. Zhisheng Gao's detention is a response to his peaceful association with religious minorities.

15. The source concludes that Zhisheng Gao's detention also violates articles 35, 36, 37, 41, 51 and 125 of the Constitution 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. Zhisheng Gao is a brilliant lawyer known for the defence of human rights, in particular those of persons with a low income. He also advocates against corruption and the violations of the rights of religious groups. Because of his activities, 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 of the reasons of his detention. Zhisheng Gao has not benefitted 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". Zhisheng 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 Zhisheng Gao is in its hands since 4 February 2009 and since that date no charge has been communicated to Zhisheng 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, Zhisheng Gao has not benefitted from a fair trial, particularly given the fact that the only justification for his arrest in the light of the above-mentioned elements relies on strong convictions that he has expressed, the alleged grounds for a withdrawal of his licence 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 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]
