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UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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Dear Mr. Genser,

I would like to refer to the thirty-sixth 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, after having transmitted them to the governments concerned, to the sources of information which had submitted the cases for the Group.

In accordance with the Working Group's decision I am sending you, attached herewith, the Opinion No.2/2003 submitted by your organization. This Opinion will also be reproduced in the Working Group's next report to the Commission on Human Rights.

Yours sincerely,

Miguel de la Lama
Secretary
Working Group on Arbitrary Detention

Attached: Opinion No. 2/2003 (People's Republic of China)

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OPINION No. 2 /2003 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 27 January 2003

Concerning: Yang Jianli

The State has signed but not yet 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 by resolution 1997/50, and extended by resolution 2003/31. Acting in accordance with its methods of work, the Working Group sent to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requested 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, in 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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned 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 co-operation of the Government. The Working Group regrets, however, that the Government has addressed not all the important issues raised by the source. 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. According to the information submitted to the Group, Yang Jianli, 39 years old, a citizen of the People's Republic of China a legal resident in the United States of America, was arrested on 26 April 2002 at the Kunming Airport, by members of the Kunming City Public Security Bureau, reportedly for entering China with false or incomplete identity documents. Forces that carried out the arrest did not show any arrest warrant nor other decision by a public authority.

It was reported that Mr. Yang was brought to a hotel near the airport. He was able to speak by telephone with his wife, Ms. Fu Xiang, who was at their home in Brookline, Massachussetts, on the evening of 26 April 2002. Mr. Yang informed his wife that he had been detained and was being held in a hotel room guarded by police officers. He spoke to his wife again the next day on the morning of 27 April. Since then, he has been detained incommunicado. It is believed that he was being held at the Beijing Public Security Bureau Detention House.

According to the information received, Yang Jianli was born in China and remains a Chinese citizen. In June 1989 he was reportedly forced to flee China given his involvement in the events known commonly as the "Tiananmen Square uprising of 1989". In 1992 he received a resident alien card ("green card") from the United States Government. In 1991, he obtained a Ph.D in mathematics from the University of California at Berkeley. Ten years later, he received a Ph.D in political economy and government from Harvard University's Kennedy School of Government. Yang Jianli is the founder and president of the organization called Foundation for China in the 21st Century and has been active in the movement to promote democratization since the 1980's.

Authorities have allegedly refused to allow members of his family to visit Yang or to arrange to provide him with legal counsel. No formal charges have been presented against him. It was further reported that authorities informally acknowledged Yang's detention after approximately two months, when on 21 June 2002, police authorities in the city of Linyi in Shandong Province, informed Yang's brother, Mr. Yang Jianjun, by telephone, that Yang had been formally arrested on 2 June 2002. This was an informal notification.

It was alleged that the failure of the authorities to provide a copy of the formal detention notice to Mr. Yang's family deprives them under Chinese law of the authority to retain legal counsel on Yang's behalf. It was argued that lawyers can not take up the case without a copy of the detention notice.

It was said that Article 64 of the Criminal Procedure Law of the People's Republic of China states that within 24 hours after a person has been detained, the detaining authority must notify the family or employer of the detainee of the reasons for the detention and the place of custody except in such circumstances where such notification would hinder the investigation. Authorities failed to notify Mr. Yang's family within 24 hours of his detention.

It was further said that Article 69 of the Criminal Procedure Law permits detention without a warrant in certain emergency circumstances. There is ordinarily a time limit of 37 days for such detention. It was alleged that the authorities failed to release him within the 37-day time limit.

The source pointed out that although the law requires that the detainee be permitted rapid access to legal counsel, Mr. Yang has not been provided with access to a lawyer. Authorities have failed to provide Yang's family with a copy of the detention notice, so that his family might arrange legal representation for him, effectively denying Mr. Yang access to legal counsel.

The source further reports that Mr. Yang's wife, Fu Xiang, travelled to China from the United States in an attempt to learn where her husband was being held and the reasons for his detention and to arrange for legal representation. She arrived on China on 23 May 2002 and was forcibly expelled from China on the same day.

6. In its observations to the allegations of the source, the Government provided the following information. Yang Jianli was apprehended by the Chinese public security authorities in April 2002 for unlawfully entering the country on another person's passport. On 21 June 2002, after obtaining due approval from the Beijing city procurator's office, he was taken into custody by the Beijing public security authorities on suspicion that his activities were in breach of the provisions of article 322 of the Chinese Criminal Code, relating to the offence of illegally crossing the State frontier, and, in accordance with due legal process, his relatives living in the country were notified. In the course of the investigation into Yang's case, the judicial authorities ascertained that he might also have committed other offences and his case is currently still under investigation, in accordance with the law.

China is a signatory or party to the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment and other international human rights instruments and unfailingly respects their universal provisions on human rights. At the same time, China has set in place comprehensive domestic legislation to safeguard human rights. Under the Chinese Constitution, citizens enjoy freedom of speech, of the press, of assembly, of association and other extensive freedoms and the Constitution stipulates that no citizen may be arrested except with the approval or by decision of the procurator's office and that arrests may only be made by the public security authorities. As for the prevention of torture, the Chinese Criminal Code and the Chinese Code of Criminal Procedure, together with the Police Act and other statutes, all contain strict provisions to that effect. Yang Jianli was taken into custody solely because he was suspected of having breached Chinese law. In the case in question, the Chinese public security authorities have acted in strict accordance with due legal process, the lawful rights of the person concerned have been fully protected. The action taken against Yang Jianli does not constitute instances of arbitrary detention.

7. In its reply to the observations of the Government the source contended that the Government failed to refute or deny most of the allegations concerning the detention of Yang Jianli.

8. Bearing in mind that the criminal procedure in the case of Mr. Yang Jianli is ongoing, the Working Group points out that its task is not to evaluate facts and evidence in a particular case; this would be tantamount to substituting itself for the domestic tribunals, which falls outside the Working Group's remit. The Working Group is called upon to assess, whether or not the international norms and standards have been observed in the criminal procedure during which Mr. Yang Jianli has been and is being deprived of his liberty.

9. In this respect, the Working Group found that the Government did not contest or refute the allegation that the authorities only informally acknowledged his detention after approximately two months, when they told Yang's brother by telephone that he had been arrested on 2 June 2002, whereas in fact he was apprehended at the airport on 26 April already and taken in detention since. The Government did not challenge the contention of the source that the silence of the authorities was contrary to Article 64 of the Criminal Procedure Law of the People's Republic of China, which provides that within 24 hours after a person has been detained, the detaining authority must notify the family of the reason of the detention and the place of custody except in such circumstances where the notification would hinder the investigation. Such circumstances were not invoked by the Government. It was not contested either, that the failure of the authorities to provide a copy of a formal detention notice to Mr. Yang's family deprived them from the authority to retain legal counsel on Mr. Yang Jianli's behalf. Furthermore, the Government did not deny that despite Article 69 of the Criminal Procedure Act, which permits detention for 37 days without a warrant in certain emergency circumstances, Yang was not released after the 37 days time limit expired.

10. Therefore the Working Group cannot but conclude that to keep Mr. Yang Jianli in detention for more than two months without an arrest warrant and without enabling his family to hire a lawyer to defend Yang constitute the infringement of the basic international norms relating to the right to a fair trial.

11. In the light of the foregoing the Working Group expresses the following opinion:

> The non-observance of Mr. Yang Jianli's right to a fair trial is of such gravity as to give his deprivation of liberty an arbitrary character. Therefore, his arrest and detention is arbitrary being in contravention of Article 9 of the Universal Declaration on Human Rights and of Article 9 of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon this opinion the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Yang Jianli in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 7 May 2003