

Take Action

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This new regular feature, **“Take Action,”** provides up-to-date information about human rights defenders in detention and what you can do to help, along with links to current updates on our Web site. In each issue of CRF, a group of imprisoned human rights defenders will be introduced, along with ways to engage with NGOs, the United Nations and the Chinese government about these cases. The “What You Can Do” section at the end of these pages will provide more

details on the ways you can help and get involved.

Check out our Web site for the most up-to-date information, at www.hrichina.org and www.zhongguorenquan.org.

“Take Action” replaces previous regular features on human rights defenders and political prisoners in order to provide a more dynamic interface between CRF and HRIC’s Web site.

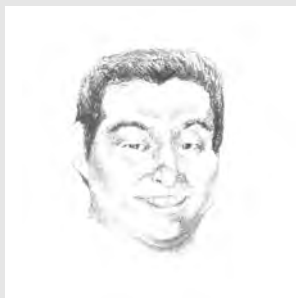
We appreciate your feedback! To contact us, email: communications@hrichina.org

WGAD INTRODUCTION

This inaugural “Take Action,” presents six cases of individuals currently in detention, and whose detentions have been determined arbitrary under international law. The United Nations (UN) Working Group on Arbitrary Detention is a “Special Procedure” of the Human Rights Council, the principal standing human rights body at the UN. It is a body comprised of independent international experts that meets regularly to consider the detentions of individual worldwide, and determine whether those individuals have been detained in accordance with international law.

Individuals in Arbitrary Detention

NAME	CASE SUMMARY	IMPRISONMENT
Yao Fuxin	<p>Yao, 58, was sentenced to seven years in prison on May 9, 2003. He was detained with another labor activist, Xiao Yunliang, after leading peaceful labor demonstrations in Liaoyang City, Liaoning Province, in 2002. Yao led workers from more than 20 factories in a rally opposing official corruption and demanding payment of backwages, a basic living allowance for laid-off workers and the implementation of a pension program.</p> <p>Yao is currently in need of medical care and treatment. He suffered a heart attack in August 2005, which damaged his vision and hearing.</p> <p>Charge: Subversion</p>	<p>Prison: Lingyuan No. 2 Prison</p> <p>Anticipated release: March 16, 2009</p>
Yang Jianli	<p>Yang, 43, was sentenced to five years in prison on May 13, 2004, after a prolonged and illegal detention. After his participation in the 1989 democracy movement, Yang left for the U.S. and was prohibited from returning to China. In 2002, Yang used a borrowed passport to return to China to investigate labor protests in the northeast. He was detained at the Kunming Airport for using a fake identity card. Yang is a permanent resident of the United States.</p> <p>Yang suffered a minor stroke in July of 2004 and is suffering from deteriorating vision.</p> <p>Charge: Reportedly, illegal entry into the country and spying for Taiwan</p>	<p>Prison: Beijing No. 2 Prison</p> <p>Anticipated release: April 25, 2007</p>
Liu Xianbin	<p>Liu, 38, was sentenced to 13 years in prison on August 6, 1999. Liu was a leading member of the China Democracy Party in Sichuan Province, and a director of China Human Rights Observer, an organization promoting human rights and democracy. Prior to his current detention, he had previously served two-and-a-half years in prison for participating in the 1989 democracy movement.</p> <p>Charge: subversion</p>	<p>Prison: Sichuan No. 3 Prison</p> <p>Anticipated release: July 6, 2012</p>



BASIC FACTS ABOUT
THE WORKING GROUP ON
ARBITRARY DETENTION
(WGAD):

- Comprised of five international experts¹
- Established by resolution in 1991²
- Mandated to investigate cases of arbitrary detention, to seek and receive information from governments, interna-

tional bodies, NGOs and individuals, and to report on their activities

- Meets three times a year to consider submissions, and makes conclusions based on the information received and responses it gets from the governments concerned, in accordance with international law, standards and norms
- Decisions are issued as part of its annual report.




PROCESS

The Working Group considers three categories of detention that may be arbitrary under international law:

Category I: Detentions that have no legal basis justifying deprivation of liberty (e.g., where someone remains in detention after the end of their prison term)

Category II: Detentions imposed as a

Individuals in Arbitrary Detention, *cont.*

NAME	CASE SUMMARY	IMPRISONMENT
<p>Zhao Changqing</p> 	<p>Zhao, 38, was sentenced to five years in prison in a closed trial on July 10, 2003. Zhao was initially detained on November 7, 2002, after he wrote an open letter to the National People's Congress calling for major political reforms, which was signed by 192 dissidents.</p> <p>Zhao was placed in solitary confinement for 40 days in December 2005, and again for three months on February 18, 2006.</p> <p>Charge: subversion</p>	<p>Prison: Shaanxi Weilan Prison</p> <p>Anticipated release: November 6, 2007</p>
<p>Hu Shigen</p> 	<p>Hu, 52, was convicted on December 16, 1994, to 20 years in prison and an additional five years' deprivation of political rights. Hu is aveteran activist and a member of the "Beijing Fifteen," the largest group of labor and democracy activists to be tried since 1989. Hu helped to establish the China Freedom and Democracy Party and the China Free Trade Union. He was active in calling for a reassessment of the government's violent suppression of the 1989 Democracy Movement and in planning June 4 memorial activities.</p> <p>Hu suffers from intestinal and heart problems, malnutrition and chronic migraines, and requires a hearing aid. Hu has also dislocated several vertebrae, but requests for medical parole have been ignored by prison authorities.</p> <p>Charge: counterrevolutionary propaganda and organizing a counterrevolutionary group (since superseded in the 1997 Criminal Law)</p>	<p>Prison: Beijing No. 2 Prison</p> <p>Anticipated release: May 26, 2012</p>
<p>Zhao Yan</p> 	<p>Zhao, 44, was sentenced to three years in prison on August 24, 2006. Zhao was employed by <i>The New York Times</i> in its Beijing bureau as a research assistant. A long-time reporter on peasant issues, Zhao was detained on September 16, 2004, on suspicion of leaking information regarding Jiang Zemin's impending resignation as Chairman of the Central Military Commission. Although originally charged with "providing state secrets abroad," Zhao was eventually convicted of fraud on June 17, 2006, after several delays in his trial. He had served nearly two years of imprisonment by the time of his sentencing.</p> <p>Charge: providing state secrets abroad (dropped); fraud</p>	<p>Prison: Undisclosed</p> <p>Anticipated release: September 15, 2007</p>

What are the Special Procedures?

Special Procedures are mechanisms that have mandates to investigate human rights abuses, reporting to the Human Rights Council:⁶

- Established by resolution to address either specific country situations or thematic issues worldwide
- Currently addresses:
 - 28 thematic mandates (e.g., the right to freedom of expression, housing, and protecting human rights in the context of countering terrorism)
 - 13 country mandates in place (e.g., North Korea)⁷
- Mandate holders:
 - Individuals (e.g., the Special Rapporteur on the Right to Food, the Independent Expert on Human Rights and Extreme Poverty), or a group of experts, such as the Working Group on Arbitrary Detention.
 - Serving in their independent, personal capacity
 - Unpaid, but mandate offices are staffed by the Office of the High Commissioner.
- Activities:
 - Monitor, advise and report on human rights issues and trends
 - Receive complaints of human rights abuses and relay these concerns to governments or issue urgent appeals
 - Conduct country visits at the invitation of the country concerned⁸ (e.g., in December 2005, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited China, and issued a report on his findings and recommendations⁹)
 - Can investigate human rights in any country, and also consider the impact of non-state actors

result of exercise of rights and freedoms in the Universal Declaration of Human Rights (UDHR), and for State Parties, the International Covenant on Civil and Political Rights (ICCPR) (e.g., where an individual was detained as a result of exercising freedom of speech)

Category III: Detentions imposed in cases involving serious degradations of international norms of due process (e.g., where there was no fair trial)

SUBMISSIONS

- Can be made by various actors, including NGOs and individuals
- Should include information about detainees' background, facts relating to their activities prior to detention and about their trial, conditions of their

detention, and legal analysis as to why their detention is arbitrary according to one of the categories above.

DECISIONS: STEP-BY-STEP

- The Working Group assesses the information submitted, and if it believes there is a sufficient basis to believe that the individual concerned may be in detention arbitrarily, it will forward those allegations to the government concerned.³
- Where there is evidence to suggest that individuals currently are subject to torture or other abuses, these appeals will be carried out more quickly.
- The government then has a chance to reply, and those replies are generally forwarded to the individual or group that made the initial allegation.

- This group or individual then has another chance to respond, after which the Working Group makes its final determination.
- In its decision on a case, the Working Group lays out the facts of the case and analyzes why the detention is arbitrary, and then makes a recommendation that the country involved should take steps to remedy this abuse of international law.

HOW THE WORKING GROUP ENGAGES CHINA

The Working Group's **decisions** on cases of individuals detained in China have been based on issues relating to a lack of independent judiciary and imprisonment for exercising freedom of expression.

The Working Group has also taken two **missions to China** at the invitation of the Chinese government, in 1997 and a follow-up visit in 2004.⁴ During these missions, the Working Group met with government officials, lawyers, judges and prison officials, as well as prisoners.

- As a result of those visits, the Working Group made numerous recommendations related to legal standards, judicial independence and restrictions on defense lawyers.
- Most of these recommendations have not been enacted, despite certain reforms or discussed reforms to, for example, the administrative detentions procedures. In its follow-up visit in 2004 the Working Group noted that "none of the recommendations of the Working Group formulated in its earlier report have been followed."⁵

HRIC'S WORK WITH THE WGAD

HRIC regularly submits cases to the Working Group. Submissions are one way to enable individuals in detention in China to receive an independent, impartial review of their case, despite the lack of independence and rights to due process in the Chinese legal system.

As of November 2006, HRIC had made a total for **40 submissions** to the Working Group on Arbitrary Detention. All 13 cases for which a final decision has been made

were found to be arbitrary under international law. Seven of these individuals have since been released. The cases presented in the chart are the six individuals that remain in detention out of those 13, and are therefore in detention in violation of international law.

WHAT YOU CAN DO

An independent, international body has found these individuals to be deprived of their liberty arbitrarily, giving firm legal grounding for governments, activists and other groups to advocate on their behalf:

STAY INFORMED

UN Human Rights Council

<http://www.ohchr.org/english/bodies/hrcouncil/>

UN Working Group on Arbitrary Detention

<http://www.ohchr.org/english/issues/detention/index.htm>

Human Rights in China

<http://www.hrichina.org/> and

<http://www.zhongguorenquan.org>

SEND MESSAGES OF SUPPORT

Please remove the postcard from the insert in this issue of *CRF*, and send a personal message of support to these prisoners and their families. A simple note of encouragement can bring hope to those who are imprisoned. Let them know that they are not forgotten!

Because of the sensitivity and heightened surveillance over these individuals and their families, postcards can be sent to HRIC for safe and secure transmission.

CALL FOR THEIR IMMEDIATE AND UNCONDITIONAL RELEASE

Join the international community in calling for the immediate and unconditional release of these and other human rights defenders. You can send copies of letters expressing concern for prisoners to:

Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland

11, Chemin de Surville
1213 Petit-Lancy
Geneva
Switzerland
Email: mission.china@ties.itu.int

President Hu Jintao

The State Council General Office
2 Fuyoujie
Xicheng District
Beijingshi 100017, PRC

Minister of Justice, Wu Aiying

Ministry of Justice
10 Nandajie Chaoyangmen
Chaoyang District
Beijingshi 100020, PRC
Fax: 011 86 10 65 292345
Email: minister@legalinfo.gov.cn

Minister of Foreign Affairs, Li Zhaoxing

Ministry of Foreign Affairs
2 Chaoyangmen Nandajie
Chaoyang District
Beijingshi 100701, PRC

And for those subjected to ill-treatment:

Chinese Medical Association

42 Dongsi Xidajie
Beijing 100710, PRC
Fax: 86-10-6512-3754
E-mail: cmafrd@public3.bta.net.cn

International Committee of the Red Cross

19 avenue de la Paix
CH 1202 Geneva
Fax: 41 (22) 733 20 57

NOTES

1. Currently, these are Manuela Carmena Castriello (Spain, appointed in 2003), Leïla Zerrougui (Algeria, 2001), Soledad Villagra (Paraguay, 2000), Tamás Ban (Hungary, 2001), Seyed Mohammad Hashemi (Iran, 2002).
2. Resolution 1991/42.

3. The Working Group relies on international documents including the UDHR and ICCPR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. For further information as to the composition of a submission, see UN Fact Sheet No. 26, *The Working Group on Arbitrary Detention*, <http://www.ohchr.org/english/about/publications/docs/fs26.htm>.
4. A preparatory mission was also undertaken in 1996.
5. *Report of the Working Group on Arbitrary Detention, Mission to China*, E/CN.4/2005/6/Add.4 (December 29, 2004), para. 73.
6. The Special Procedures were established by the Commission on Human Rights, the former charter body that considered human rights issues and held annual sessions from 1946 through its final session in 2006. The Commission was replaced by the Human Rights Council as part of a series of reforms at the UN. Its establishment aimed to strengthen the place of human rights within the UN system; it became a standing body falling under the General Assembly, and holds sessions throughout the year. For more information on the Commission, see <http://www.ohchr.org/english/bodies/chr/index.htm>. The Council was established by General Assembly Resolution 60/251 on April 3, 2006, and held its elections on May 9, 2006, and its first session on June 19, 2006. See *Human Rights Council*, G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (March 15, 2006). During its first session, it assumed responsibility for the Special Procedures. *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Extension by the Human Rights Council of all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights*, A/HRC/1/L.6 (June 29, 2006).
7. For a full list, see <http://www.ohchr.org/english/bodies/chr/special/index.htm>.
8. Countries can also issue "standing invitations" to Special Procedures. Fifty-six countries have issued such standing invitations, meaning that they will always accept requests from special procedures to visit their country.
9. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak—Mission to China*, E/CN.4/2006/6/Add.6 (March 10, 2006).