
Advance Edited Version

Distr.: General
2 February 2022

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 76/2021 concerning Zhang Shaojie (China)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 20 August 2021 the Working Group transmitted to the Government of China a communication concerning Zhang Shaojie. The Government replied to the communication on 18 October 2021. The State is not a party to the International Covenant on Civil and Political Rights.

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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Mr. Zhang is a citizen of China, born in 1965 and usually residing in Nanle County, Henan Province. According to the source, Mr. Zhang is a Christian pastor who has helped disadvantaged groups to defend their rights and interests for many years. In particular, he has accompanied members of his congregation from the Three-Self Patriotic Protestant Church travelling to Beijing to present grievances to central government officials over the land rights dispute with the authorities of Nanle County.

5. The source recalls that the church, for which Mr. Zhang was the chairman and president, is officially sanctioned by the Government. Mr. Zhang has also served as a member of the political consultative body of the Communist Party in Nanle County.

6. The source informs the Working Group that, on 17 November 2013, Mr. Zhang was taken into police custody without a detention notice, at the Three-Self Patriotic Protestant Church in Nanle County, Henan Province. Reportedly, Mr. Zhang had gone to the church premises to meet with the Nanle County Public Security Bureau Chief and a police deputy, when approximately 12 officers from the Nanle County Public Security Bureau entered the building and arrested him. Mr. Zhang was placed under criminal detention the next day, when more than 20 church members were also taken into custody. Mr. Zhang was formally arrested on 22 November 2013.

7. The source specifies that the legal basis for the arrest imputed by the authorities was article 290 of the Criminal Code of China, on gathering a crowd to disrupt social order, which stipulates that, where people are gathered to disturb public order to such a serious extent that work in general, production, business operation, teaching or scientific research cannot go on and heavy losses are caused, the ringleaders shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; the active participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. Moreover, another provision which was invoked was article 277 of the Criminal Code, on obstructing official duties. The latter article stipulates that whoever, by means of violence or threat, obstructs a functionary of a State organ from carrying out his functions according to law shall be sentenced to a fixed term of imprisonment of not more than three years, criminal detention or public surveillance or be fined.

8. The source informs the Working Group that Mr. Zhang was initially held at the Nanle County Detention Centre in Henan Province and later transferred to the Baitiaohe Prison in the City of Puyang, Neihuang County.

9. On 4 July 2014, Mr. Zhang was imprisoned, having been sentenced to 12 years in prison by the Nanle County People's Court for the crimes of gathering a crowd to disrupt social order and fraud, stipulated in articles 266 and 290 of the Criminal Code of China, respectively. The source specifies that article 266 of the Criminal Code stipulates that whoever, for the purpose of illegal possession, unlawfully raises funds by means of fraud shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than ¥20,000,² but not more than ¥200,000; if the amount involved is large, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years, but not more than 10 years, and shall also be fined not less than ¥50,000, but not more than ¥500,000; if the amount involved is especially large, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years and up to life imprisonment, and shall also be fined not less than ¥50,000, but not more than ¥500,000, or be sentenced to confiscation of property.

10. The Puyang City Intermediate People's Court held appellate proceedings on Mr. Zhang's conviction and punishment and, on 21 August 2014, upheld the original 12-year prison sentence. Mr. Zhang's lawyers reportedly had not been told about the date of the

² A sum of 6.2 yuan is equivalent to 1 United States dollar (World Bank exchange rate as at 2013).

appeal hearing or permitted to attend the proceedings. In October 2014, Mr. Zhang was transferred to Henan Province Prison No. 2 in Xinxiang City. Mr. Zhang's subsequent applications for appeal reportedly have not been approved. He is set to be released on 16 November 2025, upon the completion of his sentence.

11. In December 2019, Mr. Zhang reportedly presented extreme changes in his personality. The source expresses concern that the change in personality may be connected to the medication that the prison medical staff have been giving Mr. Zhang, purportedly for the treatment of high blood pressure.

12. On 8 January 2021, Mr. Zhang's family received a notice stating that he had been transferred to the Zhengzhou Municipal Prison. The notice also stated that, after being transferred, he would be subject to two months of "educational measures". During that period, his family would be permitted to see him once a month, but he would not be permitted to receive anything during the visits. The source expresses concern that Mr. Zhang would thereby be deprived of necessities usually brought by his family members.

13. The source submits that the deprivation of liberty of Mr. Zhang is arbitrary, falling under categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. More specifically, in relation to category II, the source argues that Mr. Zhang's detention constitutes a violation of his rights to the peaceful exercise of free expression, assembly and association, including those guaranteed under articles 18, 19 and 20 of the Universal Declaration of Human Rights.

14. The source specifies that Mr. Zhang's detention appears to be State retaliation for his advocacy and actions to uphold the rights of the members of his church congregation and other individuals, including for his efforts to pursue a land rights dispute with the Nanle County authorities and for assisting other individuals in seeking justice with regard to their personal grievances. The source recalls that Mr. Zhang and individuals associated with him have faced various forms of State retaliation for the peaceful exercise of their rights to freedom of expression, assembly and association.

15. The source is of the view that the local officials have retaliated against Mr. Zhang primarily for his efforts to defend rights to land that his church had purchased in order to construct a new chapel, a Bible school and a ministry centre. The local authorities reportedly opposed that development plan and attempted to seize the land from the church.

16. In November 2013, Mr. Zhang and other members of his church travelled to Beijing on three occasions to petition the central authorities to help to resolve the land dispute. The source highlights the fact that those peaceful and lawful advocacy efforts were referenced in the indictment against Mr. Zhang and cited as evidence of "gathering a crowd to disrupt social order".

17. Moreover, the source reports that many supporters of Mr. Zhang advocating for his release have faced violations of their rights by the security forces, including being subjected to surveillance, intimidation, physical assault and detention. Several days after Mr. Zhang and other congregation members were initially detained, more than 200 State agents congregated to guard the entrance to the church premises, along with police vehicles. The authorities have also installed surveillance cameras around the building.

18. The source submits that the deprivation of liberty of Mr. Zhang falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it and constitutes a violation of article 9 of the Universal Declaration of Human Rights.

19. The source maintains that State agents assaulted and intimidated lawyers who have attempted to defend Mr. Zhang, thereby preventing them from adequately representing him and depriving Mr. Zhang of his right to legal counsel. The source submits that individuals hired by the government in Nanle County attacked and harassed Mr. Zhang's lawyers, thereby preventing them from meeting with Mr. Zhang.

20. On 12 December 2013, those individuals reportedly blocked several lawyers from entering the Nanle County Detention Centre and, later that day, physically attacked the lawyers at a guesthouse where they were staying. After each incident, the lawyers called the

police emergency number and requested assistance. However, no police officers were dispatched, and the officer who answered the call reportedly said that it was not the police's responsibility to find the perpetrators.

21. Furthermore, on 13 December 2013, the same individuals reportedly assaulted the same group of lawyers and prevented them from entering the Nanle County People's Procuratorate, when the lawyers tried to lodge a protest against the alleged police harassment and denial of Mr. Zhang's right to legal counsel. One of the lawyers was hit in the head and suffered bleeding, while another had his glasses knocked off. A third lawyer had his jacket torn off, while others sustained injuries from the attack. In addition, several cellular telephones and tablet computers were taken from the lawyers. The lawyers, along with some foreign journalists, were forced to barricade themselves inside the procuratorate building.

22. The source submits that the circumstances of Mr. Zhang's initial detention and the criminal charges against him raise serious concerns about the legitimacy of his deprivation of liberty. The source specifies that, when detaining Mr. Zhang, the police officers did not produce an official notice, in violation of article 83 of the Criminal Procedure Code of China, which stipulates that public security bureau officers must produce a detention warrant when detaining an individual.

23. It is argued that Mr. Zhang was initially detained only on suspicion of gathering a crowd to disrupt social order and that the charge of disrupting official business was added when he was formally arrested. In December 2013, the police from the Nanle County Public Security Bureau completed an investigation, and, in January 2014, the prosecution recommended that the local court charge Mr. Zhang with fraud as well.

24. During the trial, one of Mr. Zhang's lawyers expressed his strong belief that the criminal case against his client featured abuses of his legal rights. He also argued that the police did not have probable cause for detaining Mr. Zhang. Mr. Zhang's defence thereby questioned the legality of his detention and submitted that he was taken into custody as a pretext that would allow the police to conduct searches of his home in order to gather evidence and to create a criminal case against him.

25. Moreover, Mr. Zhang's defence team referenced in court the change from the original to the eventual criminal charges, i.e. the addition of the fraud charge, and pointed out that the Government has failed to produce records of an investigation substantiating the criminal suspicion of fraud.

26. The source notes that a member of Mr. Zhang's congregation who prosecutors had named as the "victim" of the fraud charge went missing in December 2013. However, a statement supposedly from that individual was still presented at trial as evidence against Mr. Zhang. Mr. Zhang's lawyer requested that the person be called as a witness during the proceedings and asked the prosecution how it was possible to produce a written statement from a missing person. The lawyer was reportedly not provided with a response. The source affirms that the alleged witness has never pursued any fraud charge against Mr. Zhang and would have likely testified to his innocence in court. The source suspects that, even if such a statement had been made, it was done due to coercion from the police.

27. In addition to the 12-year prison sentence, the court also ordered Mr. Zhang to pay a fine of ¥100,000. In December 2014, local authorities reportedly withdrew several million yuan from the church bank account, which contained savings for the construction of the new church buildings, ordered the removal of the cross from the top of the church building and blocked the entrance to the church.

28. The source recalls that members of Mr. Zhang's family have been subjected to deprivation of liberty due to their association with Mr. Zhang and the criminal case against him.

29. The source informs the Working Group that Mr. Zhang has been subjected to torture and other forms of ill-treatment in prison, in part as retaliation for the fact that he did not admit criminal guilt. Reportedly, Mr. Zhang has been subjected to threats, solitary confinement in a small space, deprivation of sleep and natural light and deprivation of adequate food and nutrition.

Response from the Government

30. On 20 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 19 October 2021, detailed information about the current situation of Mr. Zhang and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of China under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Zhang's physical and mental integrity.

31. On 18 October 2021, the Government of China submitted its response, in which it explained that, on 15 November 2013, the police filed a case for investigation against Mr. Zhang, who was suspected of crimes. On 17 November, Mr. Zhang was criminally detained by the police. On 19 November, the police requested that the procuratorate investigate and arrest him on the suspected charges of obstructing government administration and fraud. On 22 November, officers of the procuratorate arrested him in accordance with the law. On 31 December, the police sent the case to the procuratorate for examination and indictment on the charges of fraud and gathering a crowd to disturb public order.

32. The Government explains that, on 14 January 2014, the procuratorate lawfully indicted Mr. Zhang on the charges of fraud and gathering a crowd to disturb public order. On 2 July, the Nanle People's Court of Henan Province, in the first instance court hearing, issued its verdict with regard to Mr. Zhang on the charges of fraud and gathering a crowd to disturb public order and sentenced him to 10 years' imprisonment and a fine of ¥100,000 on the charge of fraud. With regard to the charge of gathering a crowd to disturb public order, the Court sentenced him to three years' imprisonment, deciding to implement a cumulative sentence of 12 years and a fine of ¥100,000, demanding that he reimburse illegally obtained assets and return ¥700,000 to victims.

33. The Government notes that the court determined that Mr. Zhang, acting with the aim of unlawfully taking assets, and using means that employed false facts and that covered up the truth, cheated others out of their wealth, with a sum total that was extremely large, and that his conduct constituted fraud. With regard to Mr. Zhang and his associates gathering a crowd to disturb public order on many occasions, the circumstances were serious, resulting in the situation in which national organs and businesses could not operate normally, resulting in serious harm, and with Mr. Zhang as the primary culprit, whose behaviour constituted the crime of gathering a crowd to disturb public order. Mr. Zhang's having committed crimes on many occasions resulted in punishment and fines according to the law. According to the facts of Mr. Zhang's crimes, their nature and circumstances and the degree of social harm, the above-mentioned verdict was made in accordance with the law.

34. The Government notes that, after the verdict in the first instance trial, Mr. Zhang appealed. On 19 August 2014, the Puyang City Intermediate People's Court engaged in a hearing and rejected the appeal in accordance with the law, upholding the original verdict. Mr. Zhang is currently in prison serving his sentence, and with regard to its prisoners, the prison is implementing its policies of prisoner reform and protecting their rights according to the legally defined rights and interests of the prisoners. The prisoner in question has high blood pressure, and he has been taking medicine for that condition for a long time.

35. The Government submits that Chinese judicial organs handled the case strictly in accordance with the law and guaranteed each lawful right of Mr. Zhang. At the investigation stage, indictment stage and trial stage, Mr. Zhang's rights of the person, property rights, right to speak, right to legal representation and other rights were all effectively guaranteed. The facts regarding Mr. Zhang's having committed crimes are attested to by witness testimony, video materials, written materials and physical evidence, with the facts clear, the evidence solid, the conviction accurate, the sentence appropriate and the procedures lawful. At the investigation, arrest and indictment stages, the procuratorate told Mr. Zhang about his rights and guaranteed each component of his procedural rights, and, in the interrogation process, there was no extracting evidence through torture, nor were there any threats, inducements or tricking him in any way in order to obtain the oral testimony. The courts strictly heard his

case in accordance with the law, completely guaranteeing each component of Mr. Zhang's procedural rights.

36. The Government notes that, on 13 December, during the process of Mr. Zhang's lawyer arguing the case on behalf of his client at the Nanle County People's Procuratorate Reception Hall, and the related dispute that occurred when the crowds gathered, employees quickly mediated and deescalated the dispute, and each side later left the scene. The procuratorate, in the process of receiving Mr. Zhang's lawyer, guaranteed the petitioners' rights in accordance with the law, and no incident of surrounding and attacking, or of beating, the lawyer occurred.

37. According to the Government, the Government of China protects citizens' rights to freedom of religion, in accordance with the law, and protects citizens in ensuring that their lawful rights and interests are not harmed. Mr. Zhang's relevant behaviour violated the Criminal Code of China, and the illegality of the facts of the crimes are clear and the evidence is full and irrefutable, and by reason, he should receive his legal punishment. Whether he is a Christian or whether he has any religious belief is not of any significance.

Additional comments from the source

38. On 20 October 2021, the Government's reply was sent to the source for further comments, which the source submitted on 26 October 2021, reiterating the points previously made. The source stresses that Mr. Zhang's procedural rights were not guaranteed at each stage of the criminal justice process, but were in fact violated at each stage.

39. The source underscores the failure of the Government to address the fact that, when detaining Mr. Zhang, police officers did not produce an official notice, in violation of article 83 of the Criminal Procedure Code of China, which stipulates that public security bureau officers must produce a detention warrant when detaining an individual. The source reiterates that no official notice was produced when Mr. Zhang was arrested.

40. The source also strictly rejects the claim that Mr. Zhang was ensured legal representation and that his lawyers were not attacked. In particular, the source contests the submissions of the Government regarding the events of 13 December as an untrue representation of the attacks that the lawyers sustained. The source also reiterates other impediments upon Mr. Zhang's right to legal assistance.

41. The source concludes by noting the failure of the Government to address the testimony of a witness who had disappeared, but which was nevertheless admitted during the trial. The source asserts that Mr. Zhang was detained purely for his religious beliefs.

Discussion

42. The Working Group thanks the source and the Government for their submissions.

43. In determining whether the deprivation of liberty of Mr. Zhang is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.³

(a) Category I

44. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously indicated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest

³ A/HRC/19/57, para. 68.

warrant.⁴ Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty, under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁵ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles.

45. In the present case, the Working Group observes that it is not contested that Mr. Zhang was taken into police custody on 17 November 2013. The source has clearly argued that that was done without any formal notice, although such was required by the national law, and the Government, while it had the opportunity, has not contested that submission. The Working Group therefore concludes that Mr. Zhang was detained in violation of his rights under article 9 of the Universal Declaration of Human Rights, given that no arrest warrant or other document legalizing his arrest was presented at the time. Mr. Zhang was also not promptly informed of the reasons for his arrest, in violation of article 9 of the Universal Declaration of Human Rights. Consequently, his arrest on 17 December 2013 was arbitrary.

46. The Working Group notes that it is not disputed that Mr. Zhang was formally arrested on 22 November 2013 on the basis of articles 290 and 277 of the Criminal Code of China. He was subsequently charged and imprisoned on the basis of articles 266 and 290 of the Criminal Code. The Working Group notes that it has previously been called upon to examine cases concerning charges laid under articles 266 and 277 of the Criminal Code.⁶

47. In its reports on its visits to China in 1997 and 2004, the Working Group emphasized that charges involving vague and imprecise offences jeopardized the ability of individuals to exercise their fundamental rights and were likely to result in arbitrary deprivation of liberty. The Working Group recommended that those crimes be defined in precise terms and that legislative measures be taken to introduce an exemption from criminal responsibility for those who peacefully exercised their rights guaranteed by the Universal Declaration of Human Rights.⁷

48. As the Working Group has noted, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.⁸ The Working Group has already called upon the Government to repeal article 277 of the Criminal Code or bring it into line with its obligations under international human rights law,⁹ but the circumstances of the present case evidence that that has not taken place.

49. In the present case, Mr. Zhang was arrested under a vague and imprecise offence of “obstructing official duties” and subsequently charged also with fraud under article 266 of the Criminal Code, a provision which the Working Group has already previously found to have been used to silence the peaceful exercise of rights protected by the Universal Declaration of Human Rights.¹⁰ Article 277 of the Criminal Code does not define what conduct amounts to “obstructing official duties”. The communication of mere thoughts, ideas or opinions could potentially fall within the prohibited conduct. Moreover, the determination of whether an offence has been committed appears to be left entirely to the discretion of the authorities. Indeed, the Government has not explained how Mr. Zhang’s conduct could be considered to amount to “obstructing official duties”. Importantly, there is nothing to suggest that Mr. Zhang engaged in or incited violence as part of his activities that might have given

⁴ See, e.g., opinions No. 46/2017, 66/2017, 75/2017, No. 93/2017, No. 35/2018, No. 79/2018 and No. 35/2019.

⁵ See opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

⁶ See opinions No. 43/2016 and No. 15/2019.

⁷ [E/CN.4/1998/44/Add.2](#), paras. 42–53, 106–107 and 109 (c); and [E/CN.4/2005/6/Add.4](#), paras. 73 and 78 (e). See also [CAT/C/CHN/CO/5](#), paras. 36–37.

⁸ See opinion 15/2019.

⁹ See opinion 15/2019, para. 35.

¹⁰ See opinion 43/2016.

cause to restrict his behaviour. On the contrary, he chose to work peacefully by advocating for his church.

50. Recalling that it is not contested that Mr. Zhang was formally arrested on 22 November 2013 on the grounds of, inter alia, “obstructing official duties” in breach of article 277 of the Criminal Code, the Working Group concludes that the arrest and subsequent detention of Mr. Zhang on the basis of article 277 of the Criminal Code was arbitrary and falls under category I as lacking legal basis in breach of article 9 of the Universal Declaration of Human Rights. Due to the failure of article 277 of the Criminal Code to meet the standard of principle of legality, the Working Group once again calls upon the Government to repeal article 277 of the Criminal Code or bring it into line with its obligations under international human rights law.

51. Given the above, the Working Group considers that the arrest and subsequent detention of Mr. Zhang was arbitrary and falls under category I, given that it was lacking legal basis.

(b) Category II

52. The source has argued that Mr. Zhang was detained due to the peaceful exercise of his religious freedom and specifically due to defending the land rights of his church. The Government, however, argues that Mr. Zhang was not detained due to his religious rights, but rather due to the commission of crimes, and notes that Mr. Zhang was charged with obstructing government administration and fraud. The Working Group observes that the Government has provided no account of the actions of Mr. Zhang that lead to the charges. It recalls that the present case is not the first time that it has seen a peaceful exercise of the rights protected by the Universal Declaration of Human Rights being punished under article 266 of the Criminal Code as “fraud” in China.¹¹

53. Noting that fact, the Working Group considers that Mr. Zhang was detained purely for the peaceful exercise of his freedom to religion, in a clear violation of article 18 of the Universal Declaration of Human Rights. In that regard, the Working Group recalls that article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one’s rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Article 1 (3) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also stipulates that freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

54. In the present case, the Government has offered no explanation as to what Mr. Zhang did that amounted to the alleged crimes, especially noting that the church to which Mr. Zhang belongs, and on behalf of which he acted, is an officially recognized church, duly registered in the country, as submitted by the source and not contested by the Government.

55. The Working Group therefore concludes that the detention of Mr. Zhang was arbitrary and falls under category II, given that it is in violation of article 18 of the Universal Declaration of Human Rights. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

(c) Category III

56. Given its finding that the deprivation of liberty of Mr. Zhang is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Zhang should have taken place. However, the trial did take place, and Mr. Zhang was sentenced to a very lengthy term of imprisonment. The source has submitted that there were severe violations of the fair

¹¹ Ibid.

trial rights of Mr. Zhang, especially with regard to his right to legal counsel of his own choosing, and that his subsequent detention therefore falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

57. In its reply to the source's submission, the Government only addresses part of the allegations, arguing that there was an altercation outside the court on 13 December which involved lawyers of Mr. Zhang, but denying any interference with the lawyers. The Working Group notes that the Government has not addressed the specific allegations of acts of intimidation against Mr. Zhang's lawyers, which in fact prevented the lawyers from meeting with Mr. Zhang. The Government also has not addressed the specific allegations that the lawyers were attacked on both 12 and 13 December 2013 and that the lawyers tried to lodge a complaint about the police harassment and denial of Mr. Zhang's right to legal counsel.

58. In the light of the above, the Working Group considers that Mr. Zhang's right to legal assistance was denied, in violation of his right under articles 10 and 11 of the Universal Declaration of Human Rights. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.¹² The right to legal assistance is an essential element of the right to fair trial, given that it serves to ensure that the principle of equality of arms is duly observed.¹³

59. Moreover, the Working Group is deeply concerned about the acts of violence and intimidation against Mr. Zhang's lawyers, which were further violations also of Mr. Zhang's rights under articles 10 and 11 of the Universal Declaration of Human Rights. The Working Group recalls that it has previously highlighted, on numerous occasions, that such acts against lawyers are entirely unacceptable and violate articles 10 and 11 of the Universal Declaration of Human Rights.¹⁴ It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedy whenever such a violation occurs.¹⁵ The Working Group recalls that principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court states that legal counsels are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.¹⁶ Moreover, the Working Group has also highlighted, on numerous occasions, the unacceptability of reprisals against lawyers who represent human rights defenders,¹⁷ as in the present case. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

60. The Government has failed to address the allegation that, although one of the witnesses in Mr. Zhang's case has disappeared, the written testimony of that witness was still allowed in court, despite the challenges made by Mr. Zhang's lawyers. At the very least, that denied Mr. Zhang and his lawyers the possibility to cross examine the witness, as required by the principle of the equality of arms, as encapsulated in articles 10 and 11 of the Universal Declaration of Human Rights. In that regard, the Working Group recalls that the essence of the right to a fair trial is the basic legal principle of equality of arms, under which the accused has the right to defend himself or herself effectively, either in person or through legal representation, which, in turn, presumes that the defendant is able to examine the evidence against him or her and to cross-examine any witnesses that are presented by the prosecution.¹⁸ That was denied to Mr. Zhang.

¹² [A/HRC/45/16](#), paras. 51–52; and [A/HRC/30/37](#), principle 9 and guideline 8; See also the Basic Principles on the Role of Lawyers, paras. 16–22.

¹³ See, for example, opinion 35/2019.

¹⁴ Opinions No. 14/2017, No. 29/2017, No. 32/2017, No. 34/2017, No. 36/2017, No. 70/2017, No. 28/2018, No. 66/2019 and No. 42/2020. See also [A/HRC/45/16](#), para. 54.

¹⁵ See deliberation No. 10 ([A/HRC/45/16](#), annex I).

¹⁶ See also the Basic Principles on the Role of Lawyers, paras. 16–22.

¹⁷ [A/HRC/48/55](#), para. 47.

¹⁸ Opinion No. 35/2019, para. 57.

61. The Working Group takes note of the uncontested allegations that Mr. Zhang's lawyers were not told about the date of his appeal hearing or permitted to attend the proceedings. Noting that the right to appeal, and the ability to effectively exercise that right, is an integral part of the right to a fair trial, the Working Group finds a further breach of articles 10 and 11 of the Universal Declaration of Human Rights.

62. Given the above, the Working Group considers that the detention of Mr. Zhang is arbitrary and falls under category III.

(d) *Concluding remarks*

63. The Working Group is disturbed about the allegations that Mr. Zhang has been ill-treated and tortured as a punishment for not confessing to his alleged crimes, that there have been changes in his personality, possibly due to the medication administered to him, and that "educational measures" have been ordered in relation to him. The source has also alleged that Mr. Zhang's family and relatives have suffered, and even been deprived of their liberty, because of their connection to his case.

64. Although the Government denies those allegations, the Working Group recalls that it is the duty of all Governments to treat their detainees with humanity and respect for their inherent dignity as a human being, as stipulated in rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

65. The Working Group wishes to place on record that it is disturbed over the uncontested allegations that Mr. Zhang's supporters have suffered from harassment and persecution, and even detention, at the hands of the security forces (see para. 17 above). The Working Group considers such acts to be incompatible with the obligations of China under the Universal Declaration of Human Rights.

66. In its 30-year history, the Working Group has found China in violation of its international human rights obligations in over 100 cases.¹⁹ The Working Group is concerned that that indicates a systemic problem with arbitrary detention in China, which amounts to a serious violation of international law. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.²⁰

67. The Working Group would welcome the opportunity to conduct a country visit to China. Given that a significant period of time has passed since its most recent visit to China, in September 2004, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group looks forward to a positive response to its country visit request of 15 April 2015.

¹⁹ See decisions No. 43/1993, No. 44/1993, No. 53/1993, No. 63/1993, No. 65/1993, No. 66/1993, No. 46/1995 and No. 19/1996 and opinions No. 30/1998, No. 1/1999, No. 2/1999, No. 16/1999, No. 17/1999, No. 19/1999, No. 21/1999, No. 8/2000, No. 14/2000, No. 19/2000, No. 28/2000, No. 30/2000, No. 35/2000, No. 36/2000, No. 7/2001, No. 8/2001, No. 20/2001, No. 1/2002, No. 5/2002, No. 15/2002, No. 2/2003, No. 7/2003, No. 10/2003, No. 12/2003, No. 13/2003, No. 21/2003, No. 23/2003, No. 25/2003, No. 26/2003, No. 14/2004, No. 15/2004, No. 24/2004, No. 17/2005, No. 20/2005, No. 32/2005, No. 33/2005, No. 38/2005, No. 43/2005, No. 11/2006, No. 27/2006, No. 41/2006, No. 47/2006, No. 32/2007, No. 33/2007, No. 36/2007, No. 21/2008, No. 29/2008, No. 26/2010, No. 29/2010, No. 15/2011, No. 16/2011, No. 23/2011, No. 29/2011, No. 7/2012, No. 29/2012, No. 36/2012, No. 51/2012, No. 59/2012, No. 2/2014, No. 3/2014, No. 4/2014, No. 8/2014, No. 21/2014, No. 49/2014, No. 55/2014, No. 3/2015, No. 39/2015, No. 11/2016, No. 12/2016, No. 30/2016, No. 43/2016, No. 46/2016, No. 4/2017, No. 5/2017, No. 59/2017, No. 69/2017, No. 81/2017, No. 22/2018, No. 54/2018, No. 62/2018, No. 15/2019, No. 20/2019, No. 35/2019, No. 36/2019, No. 72/2019, No. 76/2019, No. 11/2020, No. 32/2020, No. 78/2020, No. 82/2020, No. 25/2021 and No. 30/2021.

²⁰ See opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; and No. 35/2019, para. 65.

Disposition

68. In the light of the foregoing, the Working Group renders the following opinion:
The deprivation of liberty of Zhang Shaojie, being in contravention of articles 9, 10, 11 and 18 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.
69. The Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Zhang without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.
70. The Working Group requests the Government to bring its laws, in particular article 277 of the Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by China under international human rights law.
71. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Zhang immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Zhang.
72. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Zhang and to take appropriate measures against those responsible for the violation of his rights.
73. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.
74. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.
75. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

76. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:
- (a) Whether Mr. Zhang has been released and, if so, on what date;
 - (b) Whether compensation or other reparations have been made to Mr. Zhang;
 - (c) Whether an investigation has been conducted into the violation of Mr. Zhang's rights and, if so, the outcome of the investigation;
 - (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of China with its international obligations in line with the present opinion;
 - (e) Whether any other action has been taken to implement the present opinion.
77. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.
78. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the

opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

79. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps that they have taken.²¹

[Adopted on 18 November 2021]

²¹ Human Rights Council resolution 42/22, paras. 3 and 7.