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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. 54/2021 concerning Zhang Baocheng (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 28 May 2021 the Working Group transmitted to the Government of China a communication concerning Zhang Baocheng. The Government replied to the communication on 15 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. Zhang Baocheng, born in 1959, is a citizen of China residing in Beijing.

5. The source submits that Mr. Zhang is a businessman turned human rights activist. Since 2006, he has engaged in human rights advocacy, specifically to promote democracy and the rule of law in China. He was a leader of the New Citizens' Movement, a decentralized civil rights movement that campaigned for democracy and government transparency.

6. Reportedly, the New Citizens' Movement was launched in 2009 and began attracting members in 2010, when a "citizens' pledge" was published, calling on citizens to undertake a set of obligations to advance rights and social change. Over the next few years, the Movement grew as members conducted informal meetings around the country. The source reports that the Government cracked down on members of the Movement, partly due to their focus on alleged corruption. In 2013 and 2014, over 18 activists of the Movement were arrested and convicted for various crimes related to their activism, including Mr. Zhang. At least seven activists related to the Movement were deprived of their liberty in 2014 for their activism.

7. The source asserts that Mr. Zhang was subject to targeting and persecution by the authorities, including two previous arrests. In March 2013, Mr. Zhang and three other activists affiliated with the New Citizens' Movement were detained after holding a demonstration calling on officials to disclose their wealth and campaigning against alleged government corruption. Mr. Zhang was arrested on charges of unlawful assembly, but was ultimately charged with disrupting order. The indictment accused him of having unfurled banners, of issuing leaflets and of using an amplifier to give speeches. Mr. Zhang was tried and convicted in April 2014; he was released from prison on 30 March 2015, two years after his original arrest.

8. According to the information received, after the New Citizens' Movement was suppressed, Mr. Zhang continued his human rights advocacy. As a result, he was subjected to threats and surveillance by the police, including through cameras installed outside his apartment and at the entrance to his apartment building, and tracking and wiretapping devices in his car. Mr. Zhang was arrested for the second time on 31 May 2016, along with two other activists, prior to the anniversary of the events that took place in Tiananmen Square. On that occasion, he was detained for over a month.

9. The source reports that following his release, Mr. Zhang helped a number of other activists who had been arrested and that the Beijing police warned him several times of the consequences of his actions. In December 2018, Mr. Zhang spoke outside a courthouse to express support for a prominent lawyer facing trial.

10. According to the source, Mr. Zhang was detained on 27 May 2019, ahead of the thirtieth anniversary of the events on the Tiananmen Square. A number of other activists were also arrested ahead of that date.

11. On the morning of 27 May 2019, Mr. Zhang was reportedly involved in a minor car accident in the parking lot of his apartment building. He agreed with the other driver to resolve the accident by going to the local police station. After Mr. Zhang walked out of the police station, plain-clothes officers detained him in the police station parking lot.

12. It is submitted that at the time, the police confiscated Mr. Zhang's car keys and immediately searched his car, but not in the presence of Mr. Zhang and without a warrant, claiming he was suspected of hiding guns. The police also conducted a body search of Mr. Zhang and interrogated him twice without the presence of an attorney. No illegal objects were found on Mr. Zhang or in his car. The police did not inform Mr. Zhang of his rights.

13. Although no warrant was shown at the time of the arrest, at the request of Mr. Zhang's family, the authorities mailed a notice of detention, dated 28 May 2019 and stamped by the Fengtai Branch of Public Security of Beijing. It was received on 1 June 2019.

14. The source states that during his interrogation, Mr. Zhang was asked about his tweets concerning re-education camps for Uighurs in the province of Xinjiang and his assistance to the family of an imprisoned activist.

15. According to the information received, the police searched Mr. Zhang's home twice, allegedly on the suspicion that he was hiding guns. The first search was conducted on 27 May 2019, without an order of search and without Mr. Zhang, who was still in police custody, being present. During the search, the police confiscated two computers and two mobile phones. The second search was conducted in the early morning of 28 May 2019, with Mr. Zhang present and with an order of search issued by the police. During that search, the police confiscated another mobile phone and Mr. Zhang's house keys. No illegal objects were found during either of the searches. Both searches took place before Mr. Zhang was permitted to consult with an attorney.

16. The source explains that although Mr. Zhang was detained on 27 May 2019 and has been in custody since then, he was only formally arrested on 4 July 2019. He was allegedly detained on the suspicion of hiding guns. However, the source submits that this was only a pretext as no guns or other illegal objects were found after the police searched Mr. Zhang personally, his home and his car.

17. The source notes that according to the notice of detention dated 28 May 2019, Mr. Zhang was charged with "picking quarrels and provoking trouble", which the source submits is a vague charge under article 293 of the Chinese Criminal Code, often used against dissidents. The notice of formal arrest was not issued until 4 July 2019. It contains an additional charge of "promoting terrorism and extremism and inciting terrorist attacks", which is allegedly frequently used to detain Uighur Muslims in Xinjiang.

18. According to the source, Mr. Zhang was not allowed to meet with his attorney until 16 June 2019, three weeks after the arrest. Reportedly, his meetings with his attorneys are strictly monitored and are therefore not confidential. They take place under the surveillance of the authorities and may be cancelled by the police at any time. Mr. Zhang's attorneys did not initially have access to any of the case files. However, in late September 2019, some five months after the arrest, after the case was transferred to the Beijing Second Procuratorate, attorneys were able to see the case files, which reportedly do not contain evidence for any of the charges.

19. The source notes that the evidence for the charge of "picking quarrels" is a statement that he fabricated and disseminated information about an imprisoned human rights activist being seriously ill and helped his family petition in Beijing. The evidence for the "terrorism" charge is a re-tweet of a video of Islamic State in Iraq and the Levant (ISIL). However, the source notes that the attorneys have not been able to retrieve this re-tweet or Mr. Zhang's comment about it. On 6 November 2019, the Procuratorate returned the case to the police for further investigation, apparently due to the lack of evidence.

20. The source reports that since being detained on 27 May 2019, Mr. Zhang has been interrogated numerous times. He has not been permitted any communication with his family, either by telephone or in person. He is not permitted to make telephone calls to anyone at all.

21. It is submitted that Mr. Zhang has been subjected to mistreatment while in pretrial detention. He has been held together with common criminals and suffered isolation, as prisoners were ordered not to speak with Mr. Zhang after he tried to claim certain rights. The conditions Mr. Zhang was held in were poor, including overcrowding, lights switched on 24 hours a day, inhumane physical inspections and food lacking nutrients. Mr. Zhang's lawyers have not been able to send him warm clothing due to restrictive prison rules, which will, according to the source, impact his health. In addition, Mr. Zhang suffers from serious dental problems and has not been provided with proper dental care while in prison. Shortly before his arrest, one of his teeth was removed. He continues to endure tooth pain in prison and, as a result, has difficulty eating.

22. Mr. Zhang was reportedly first brought before a judge on the day of his trial on 18 August 2020, more than one year after his arrest. Although the authorities have stated that the trial would be open to the public, it was ultimately held behind closed doors. The source states that the authorities used the prevention of the spread of the coronavirus disease

(COVID-19) to justify this. Mr. Zhang's supporters and family who attempted to attend the trial were not permitted to enter the court.

23. Furthermore, the source states that the trial lasted only a few hours. The only evidence presented by the prosecution were Mr. Zhang's tweets concerning re-education camps for Uighurs and the interrogation record about how he accommodated a family member of an imprisoned activist. The source asserts that this is not sufficient to prove that Mr. Zhang's conduct fell outside the scope of the law.

24. The source further states that on 10 November 2020, the Beijing No. 2 intermediate court convicted Mr. Zhang of two crimes: picking quarrels and provoking trouble and promoting terrorism and extremism. He was sentenced to three years and six months imprisonment, from 27 May 2019 to 26 November 2022, plus a fine of 2,000 yuan. He is currently being held at the Beijing No. 3 detention centre.

25. Mr. Zhang has filed an appeal, which is pending before the Higher People's Court. On 4 February 2021, Mr. Zhang's lawyer was denied a request to meet with his client at the Beijing No. 3 detention centre. Mr. Zhang was not permitted to meet with his lawyer again until 13 April 2021, five months after their previous meeting.

26. The source reports that Mr. Zhang's communication with his family continues to be heavily restricted and he is prohibited from sending them letters. He is not permitted any visitors other than his attorney. Letters sent by a family member from abroad were not delivered to Mr. Zhang in detention.

27. The source notes that Mr. Zhang suffers from chronic illnesses and has received his medications. However, his health has deteriorated due to the poor prison conditions, which include insufficient nutrition and outdoor time.

28. The source submits that the deprivation of liberty of Mr. Zhang falls under categories I, II and III of the methods of work of the Working Group. In relation to category I, the source submits that there is no legal basis for the detention of Mr. Zhang. It argues that the two crimes Mr. Zhang was charged with, "picking quarrels and provoking trouble" and "promoting terrorism and extremism and inciting terrorist attacks", are vaguely worded crimes under Chinese law. The former is allegedly typically used to persecute dissidents and suppress their rights to freedom of expression and association, while the latter is often used against Uighur Muslims in Xinjiang.

29. The source further argues that both the Committee against Torture and the Committee on the Elimination of Racial Discrimination have expressed concern about these types of laws being used to suppress dissent.²

30. The source also recalls that in this regard, the Working Group has stated that "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".³ It states specifically that the Working Group has held the crime of "picking quarrels and provoking trouble" to be "so vague and overly broad that it was impossible to invoke a legal basis justifying the deprivation of liberty".⁴ The source also recalls the Working Group's similar finding concerning the crime of "inciting subversion of State power", which it argues is similar to the charge of inciting terrorism in the present case.⁵

31. The source further submits that Mr. Zhang has not had an opportunity to challenge his detention in court, which is itself grounds for finding his detention arbitrary under category I.

32. The source explains that the arrest and detention of Mr. Zhang fall under category II, as they relate to his exercise of his rights to freedom of opinion, expression and association under articles 19 and 20 of the Universal Declaration of Human Rights (and, respectively, articles 19 and 21 of the Covenant). In addition to these requirements under international law,

² CERD/C/CHN/CO/14-17, para. 36, and CAT/C/CHN/CO/5, para. 36.

³ Opinion No. 62/2018, para. 57.

⁴ Ibid., para. 58.

⁵ See opinion No. 15/2019.

Chinese law also protects the right to freedom of expression. The source notes that articles 35 and 41 of the Constitution provide that “citizens of the People’s Republic of China have the freedom of speech, of the press, of assembly, of association” and “have the right to criticize and make suggestions regarding any state organ or functionary”.

33. The source argues that the arrest and continuous detention of Mr. Zhang are based solely on his peaceful political activities, which fall within the protection of freedom of expression and of association under both international and domestic law. In this regard, the source first argues that the police claimed that Mr. Zhang was detained based on the suspicion of “hiding guns.” However, no guns or other illegal objects were found after the police searched Mr. Zhang personally, his home and his car. Mr. Zhang was nevertheless not released but charged with other crimes. Furthermore, the source points out that more than five months after his detention, there was still insufficient evidence of any crimes, resulting in the Procuratorate transferring the case back to the police for further investigation. Secondly, it is noted that when searching Mr. Zhang’s house, the police confiscated two computers and three mobile phones, indicating that they were not really concerned about guns, but instead were interested in investigating his political activities. Finally, during his interrogation, the police reportedly asked Mr. Zhang about matters related to his activism, such as his tweets on the re-education camps in the province of Xinjiang and his assistance to the family of an imprisoned activist.

34. The source further states that the current detention of Mr. Zhang is consistent with the history of past violations of his rights to freedom of expression and association. Mr. Zhang has reportedly been subjected to harassment and surveillance, as illustrated by his arrest on two occasions: in March 2013 along with other activists during a demonstration by the New Citizens’ Movement and in May 2016 just before that year’s anniversary of the events in Tiananmen Square. The source adds that the authorities have a practice of detaining dissidents to prevent their activism on the anniversary date. The source notes that the timing of Mr. Zhang’s current arrest, just before the thirtieth anniversary of the events in Tiananmen Square, is a further proof that the detention is intended to suppress and punish Mr. Zhang for his political activism.

35. According to the source, charges against Mr. Zhang also confirm that his detention was not for a legitimate purpose. Mr. Zhang was charged with “picking quarrels and provoking trouble,” a common charge against dissidents. He was also charged with “promoting terrorism and extremism and inciting terrorist attacks”, a charge employed against Uighur Muslims in Xinjiang. The source reiterates that both the Committee against Torture and the Committee on the Elimination of Racial Discrimination have expressed concern over the use of vague national security crimes against dissidents in China. In addition, the Working Group has emphasized that “charges involving vague and imprecise offences jeopardize the fundamental rights of those who wish to exercise their freedom of expression and are likely to result in arbitrary deprivation of liberty”.⁶

36. The source recalls that while article 19 (3) of the Covenant allows governments to restrict freedom of expression in limited circumstances that “are provided by law and are necessary: (a) for respect of the rights or reputations of others or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals”, this is not such a case. The Human Rights Committee has held that any restriction of expression is legitimate only if it is (a) provided by law, (b) for the purpose of protecting the rights or reputations of others, or national security or public order and (c) “necessary” for that limited purpose.⁷ In this regard, the Working Group has explained that: “Peaceful expression of opposition to any regime cannot give rise to arbitrary arrest.”⁸

37. The source concludes that the deprivation of liberty of Mr. Zhang is arbitrary under category II because it results from his peaceful exercise of his rights to freedom of opinion, expression and association, guaranteed by international human rights law.

⁶ See opinion No. 69/2017.

⁷ See *Robert Faurisson v. France*, communication No. 550/1993.

⁸ Opinion No. 25/2000, para. 12.

38. In relation to category III, the source submits that Mr. Zhang was subjected to an illegal search and arrest. It recalls that article 9 (2) of the Covenant and principles 4 and 10–13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, set out the obligations of States with respect to searches and arrests of detainees. Specifically, the detention must be “ordered by, or be subject to the effective control of, a judicial or other authority”, the detainee must be “informed, at the time of arrest, of the reasons for [the] arrest” and “promptly informed of any charges against him”, the detainee and his counsel must receive “prompt and full communication of any order of detention”, the records of arrest must be duly recorded and communicated to the detainee or his counsel and the detainee must be informed of his rights “at the moment of arrest, or promptly thereafter”.

39. According to the source, at the time he was detained, the Government failed to inform Mr. Zhang of the reason for his arrest and of his rights. The police did not present Mr. Zhang with an arrest warrant and searched Mr. Zhang’s home and car without a warrant.

40. Furthermore, the source states that while Mr. Zhang was told he was being detained on “suspicion of hiding guns”, the notice of detention charged him only with the vague crime of “picking quarrels and provoking trouble”. More than one month later, the notice of formal arrest added the crime of “promoting terrorism and extremism and inciting terrorist attacks”.

41. The source argues that these documents are deficient on several grounds. First, neither of them was ordered by a court; they were signed only by the Fengtai Branch of Public Security Department of Beijing (the police). While the notice of formal arrest states that it was approved by the Procuratorate of Fengtai District, the source recalls that the Working Group has previously explained that the Procuratorate is responsible for prosecutions and cannot be considered an independent and impartial authority.⁹

42. Secondly, the source states that the notice of detention does not satisfy the requirements of principle 12 of the Body of Principles. It does not specify the reason for the arrest, other than to name the crime for which Mr. Zhang is being charged, does not identify the law enforcement officials who carried out the arrest nor indicate a time for Mr. Zhang’s first appearance before a judicial authority. The source also notes that the document incorrectly states the date and time of detention as 9 a.m. on 28 May 2019, whereas Mr. Zhang was taken into custody one day earlier.

43. Thirdly, the source recalls that the notice of arrest is dated 4 July 2019, more than one month after the original detention. It also notes that while under national law a person may be held for up to 37 days before being formally arrested, that is before the arrest is approved by the Procuratorate, the Committee against Torture has previously stated that this period of time is “excessive” and increases the “risk of detainees being ill-treated or even tortured”.¹⁰

44. The source also argues that the search and arrest of Mr. Zhang contravened the Chinese Criminal Procedure Code. In that regard, it notes that articles 3, 83, and 91 of the Code require public security authorities to produce a warrant when detaining or arresting suspects. Likewise, articles 136 and 137 of the Code require the production of a warrant for conducting searches of criminal suspects and the presence of the suspect or his family during the search respectively. Notwithstanding these provisions, the source reiterates that the authorities did not produce a warrant for detaining Mr. Zhang or for the initial searches of Mr. Zhang’s home and car, which were conducted without Mr. Zhang or his family being present.

45. The source recalls that the detainee’s rights to communication and visitation with the outside world, including his family and legal counsel, are set forth in principles 15, 18 and 19 of the Body of Principles. Principle 15 requires that a detainee not be denied communication with the outside world for “more than a matter of days”. Principle 18 guarantees a detainee’s right to legal counsel, a right which is also encompassed in articles 10 and 11 of the Universal Declaration of Human Rights. Principle 19 affirms the detainee’s right to be visited by and to communicate with family.

⁹ E/CN.4/2005/6/Add.4, para. 32 (b) and (c).

¹⁰ CAT/C/CHN/CO/5, para. 10.

46. The source argues that in violation of the above-mentioned principles, the authorities have denied Mr. Zhang all telephone calls with the outside world, as well as visits and communication with his family. The authorities also denied Mr. Zhang access to counsel for the first three weeks after he was detained, until 16 June 2019. Mr. Zhang was effectively held *incommunicado* for a period of three weeks from 27 May 2019 to 16 June 2019, in contravention of international law. The source recalls that the Working Group has held that “holding persons *incommunicado* is not permitted under international law”.¹¹

47. Moreover, the source notes the authorities’ failure to notify Mr. Zhang’s family within 24 hours of his arrest. Principle 16 of the Body of Principles provides that promptly after arrest, a detained or imprisoned person shall be entitled to notify or require the competent authority to notify members of their family or other appropriate persons of their choice of their arrest, detention or imprisonment, except in circumstances where the exceptional needs of the investigation require delaying such notification. Similarly, article 83 of the Criminal Procedure Code contains a 24-hour notification requirement. The source argues that in violation of these provisions, the police did not notify Mr. Zhang’s family of his detention. The family learned about it independently. Only after Mr. Zhang’s family called the police to find out his whereabouts did the police send the notice of detention, which was received on 1 June 2019, five days after his detention.

48. The source also points out that a detainee’s right to counsel is guaranteed by articles 10 and 11 of the Universal Declaration of Human Rights. Principle 18 of the Body of Principles also requires that the detainee be provided with reasonable facilities to exercise his right to counsel, and that visits with counsel occur without delay or censorship and in full confidentiality. The source alleges that Mr. Zhang was denied the right to meet with his attorney for the first three weeks of his detention. Furthermore, although Mr. Zhang has been permitted visits with his attorney since 16 June 2019, they occur under surveillance, are not private or confidential and may be cancelled by the police at any time. The source recalls that in its concluding observations of 2015, the Committee against Torture expressed concern about restrictions on detainees’ access to and meetings with lawyers.¹²

49. The source reiterates that Mr. Zhang is being denied medical treatment while in detention, contrary to principle 24 of the Body of Principles, which sets forth a detainee’s right to a prompt medical examination and medical treatment.

50. The source also recalls the authorities’ failure to bring Mr. Zhang promptly before a judge. Article 9 (3) of the Covenant requires that a detained person be “brought promptly before a judge ... and shall be entitled to trial within a reasonable time or to release”. According to the Human Rights Committee, a delay of “over two months violates the requirement ... that anyone arrested shall be brought promptly before a judge”.¹³ Similarly, principle 11 of the Body of Principles provides that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority”. Principle 37 of the Body of Principles also states that a detainee’s arrest should be reviewed promptly by a judge or other authority and that a detainee should not be kept in detention without a written order from such authority. Furthermore, the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before a Court indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. In its concluding observations of 2015, the Committee against Torture expressed concern about the failure of the Chinese court system to bring criminal detentions under judicial control until a case is ready for trial. The source submits that despite these protections, the Government has detained Mr. Zhang for a prolonged period of time without the opportunity to challenge his detention.

51. Finally, the source notes that Mr. Zhang is a subject of prolonged pretrial detention without bail. It recalls that the rights of a detainee to be released pending trial are set forth in principles 38 and 39 of the Body of Principles. Principle 38 provides that a detainee is entitled

¹¹ Opinion No. 69/2017, para. 37.

¹² CAT/C/CHN/CO/5, paras. 12–13.

¹³ See *Berry v. Jamaica*, communication No. 330/88.

to trial within a reasonable time, or to be released pending trial, while principle 39 requires that a detainee be released pending trial unless a judicial or other authority orders otherwise. The source reiterates that Mr. Zhang has not been presented before a judicial authority and given an opportunity for release pending trial.

52. Furthermore, the source notes that the trial was not held within a reasonable time. It states that the Working Group has explained that “the right to be tried within a reasonable time is one of the fair trial guarantees embodied in articles 10 and 11 of the Universal Declaration of Human Rights and principle 38 of the Body of Principles”, adding that if a detainee “cannot be tried within a reasonable time, he is entitled to be released”.¹⁴

Response from the Government

53. On 28 May 2021, the Working Group transmitted the allegations from the source to the Government of China under its regular communications procedure. The Working Group requested the Government to provide, by 26 July 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. The Working Group also called upon the Government to ensure Mr. Zhang’s physical and mental integrity.

54. On 15 October 2021 the Government submitted its response, which was over two months after the deadline for responding. The response is therefore considered late and the Working Group cannot accept the response as if it had been presented within the time limit. The Government did not request an extension of the time limit for its reply, as provided for in the methods of work of the Working Group.

Discussion

55. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion on the basis of all the information submitted, in accordance with paragraphs 15 and 16 of its methods of work.

56. 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.¹⁵

Category I

57. The source submits that Mr. Zhang was detained on 27 May 2019, pursuant to a notice of detention charging him with “picking quarrels and provoking trouble” under article 293 of the Chinese Criminal Code. His family was not notified of his arrest at that time. Following inquiries made by a family member, that person received his notice of detention on 1 June 2019. Mr. Zhang was formally arrested on 4 July 2019, pursuant to a formal notice of arrest that included an additional charge of “promoting terrorism and extremism and inciting terrorist attacks”. Further, the Working Group notes that the charge of “inciting subversion” is based on article 105 (2) of the Criminal Code which it has been called upon to examine previously.¹⁶

58. The Working Group therefore notes that until the formal notification of Mr. Zhang’s arrest was received, he was held in a situation of de facto enforced disappearance, as his family could not locate him and the authorities do not appear to have disclosed his location. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the person concerned, or to acknowledge his or her detention, lacks any valid legal basis under

¹⁴ Opinion No. 15/2019, para. 48.

¹⁵ [A/HRC/19/57](#), para. 68.

¹⁶ See opinions No. 15/2019 and No. 82/2020.

any circumstance. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 9 of the Universal Declaration of Human Rights.¹⁷ It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Declaration¹⁸ and principle 16 of the Body of Principles. Until he had access to counsel on 16 June 2019, three weeks after he was detained, the source submits that Mr. Zhang had been effectively held incommunicado since his detention on 27 May 2019. The Working Group considers that the incommunicado detention of Mr. Zhang violated articles 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights.¹⁹

59. According to the source, the Government failed to inform Mr. Zhang of the reason for his arrest at the time he was detained, or to inform him of his rights. The police did not present Mr. Zhang with an arrest warrant when he was first detained and searched his home and car without a warrant. At that time, he was also interrogated twice without the presence of his lawyer and subjected to a body search. The Working Group notes with concern that crucial investigatory steps, such as the searches, were conducted without warrants and that Mr. Zhang's interrogations occurred in the absence of legal counsel. The Working Group also finds credible the source's allegations of other procedural irregularities surrounding his arrest. In its jurisprudence, the Working Group has established that detention is arbitrary when evidence obtained without a search warrant is used in judicial proceedings.²⁰ This suggests that the authorities did not follow the necessary investigative procedures to ensure that Mr. Zhang's detention had a legal basis. The Working Group finds that such a failure to follow due process impacts the ability to mount a proper defence and contributes to the arbitrary nature of the detention.

60. International law concerning the right to personal liberty allows restrictions to this right and includes the right to be presented with an arrest warrant in cases that do not involve arrests made in flagrante delicto, to ensure the objectivity of the arrest process. A decision on whether the arrest is warranted must be taken by an outside authority, namely a competent, independent and impartial judiciary. This is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, and principles 2, 4 and 10 of the Body of Principles.²¹

61. As the Working Group has stated, it is not sufficient that there exists a law which authorizes an arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.²² In the present case, the arresting officers did not show an arrest warrant at the time of arrest,²³ in violation of articles 3 and 9 of the Universal Declaration of Human Rights.²⁴ As a result, the authorities did not establish a legal basis for Mr. Zhang's arrest.²⁵ In order to invoke a legal basis for the deprivation of liberty, the authorities should have informed him of the reasons for his detention when he was disappeared.²⁶ The failure to do so violated

¹⁷ See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

¹⁸ Opinion No. 15/2019, para. 44; No. 51/2019, para. 58; No. 56/2019, para. 79; and No. 25/2021, para. 44.

¹⁹ See opinions No. 69/2017, No. 25/2021 and No. 30/2021.

²⁰ Opinions No. 83/2019, para. 51, and No. 37/2021, para. 69. See also opinions No. 36/2018, No. 78/2018, No. 83/2018, No. 31/2019 and No. 33/2019.

²¹ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 3/1993, paras. 6–7 and No. 43/1993, para. 6. For more recent jurisprudence, see, for example, opinions No. 76/2017, para. 55; No. 38/2018, para. 58; No. 68/2018, para. 39; and No. 82/2018, para. 29.

²² Opinions No. 10/2018, para. 45; No. 36/2018, para. 40; No. 46/2018, para. 48; and No. 46/2019, para. 51.

²³ Opinions No. 45/2019, para. 50, and No. 71/2019, para. 70.

²⁴ Opinions No. 30/2018, para. 39; No. 68/2018, para. 39; No. 33/2020, para. 54; No. 37/2020, para. 52; and No. 65/2020, para. 75.

²⁵ See, for example, opinions No. 93/2017, para. 44; No. 36/2018, paras. 39–40; No. 32/2019, para. 29; No. 45/2019, para. 51; and No. 46/2019, para. 51.

²⁶ See, for example, opinions No. 10/2015, para. 34; No. 32/2019, para. 29; No. 83/2019, para. 50; No. 31/2020, para. 42; and No. 33/2020, para. 55.

article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles.

62. According to the source, Mr. Zhang was first brought before a judge on the day of his trial, on 18 August 2021, more than a year after his arrest. As such he was not brought promptly before a judge during his pretrial detention, that is, within 48 hours of his arrest barring absolutely exceptional circumstances, according to the international standard set out in the Working Group’s jurisprudence.²⁷ On that basis, the Working Group finds that the Government has violated articles 3, 8 and 9 (3) of the Universal Declaration of Human Rights and principles 11, 32, 37 and 38 of the Body of Principles. The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before a Court affirm that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserving legality in a democratic society (paras. 2–3). That right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty (para. 11 and guideline 1, para. 47 (a)).²⁸ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.²⁹

63. In the present case, Mr. Zhang was charged under two vague and imprecise offences: “picking quarrels and provoking trouble” and “promoting terrorism and extremism and inciting terrorist attacks”. The Working Group considers that the charges against Mr. Zhang “are so vague and broad that they could be used to deprive individuals of their liberty without a specific legal basis”.³⁰ As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision that the individual can access and understand the law, and regulate his or her conduct accordingly.³¹

64. In its 2021 annual report, the Working Group raised concerns about human rights defenders being detained under vague and overly broad national security and antiterrorism provisions, giving the authorities wide discretion to criminalize their peaceful activities.³² The Working Group called upon governments to “put an end to practices that silence human rights defenders for their work, such as lengthy imprisonment terms, detention under vague and overly broad laws, and the repeated targeting of those who protect the rights of others, particularly defenders who act on behalf of, or belong to, marginalized groups”.³³ Specifically, the crime of “picking quarrels and provoking trouble” in breach of article 293 of the Criminal Code, has been previously examined by the Working Group,³⁴ which reached the conclusion that the principle of legal certainty was not satisfied and called upon the Government to address this provision.³⁵ The Working Group had already called upon the Government to repeal this article of the Criminal Code or bring it into line with its obligations under international human rights law.³⁶ The Working Group regrets that no action seems to have been taken.

65. While the Working Group has not made a specific finding regarding the crime of “promoting terrorism and extremism and inciting terrorist attacks”, it agrees with the source that it is comparable to the crime of “inciting subversion of State power” under article 105 (2) of the Criminal Law, which raises similar concerns relating to vagueness and legality. The Working Group notes with grave concern the source’s submission that this provision is often used against Uighur Muslims in Xinjiang. It recalls that the Committee against Torture

²⁷ See, for example, opinions No. 57/2016, paras. 110–111; No. 36/2019, para. 36; No. 82/2019, para. 76; and No. 78/2020, para. 49.

²⁸ See also opinion No. 39/2018, para. 35.

²⁹ See, for example, opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 59/2019, para. 51; and No. 65/2019, para. 64.

³⁰ See, for example, opinion No. 62/2018, paras. 7, 8, 57 and 58.

³¹ See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

³² [A/HRC/48/55](#), para. 48.

³³ *Ibid.*, para. 70.

³⁴ See opinions No. 62/2018, para. 58; No. 32/2020 paras. 50–51; and No. 25/2021, para. 52.

³⁵ Opinion 32/2020, paras. 60–61.

³⁶ See, for example, opinions No. 62/2018, para. 57; No. 32/2020, paras. 60–61; and No. 25/2021, para. 78.

and the Committee on the Elimination of Racial Discrimination have expressed concerns about such types of laws being used to suppress dissent. The Committee against Torture stated that it was worried about “consistent reports that human rights defenders and lawyers, petitioners, political dissidents ... continue to be charged ... with broadly defined offences as a form of intimidation. Such offences reportedly include ‘picking quarrels and provoking troubles’, ‘gathering a crowd to disturb social order’ or more severe crimes against national security”.³⁷ Similarly, the Committee on the Elimination of Racial Discrimination expressed concern “that the broad definition of terrorism, the vague references to extremism and the unclear definition of separatism in Chinese laws could potentially lead to the criminalization of peaceful civic and religious expression”.³⁸

66. Following its visits to China in 1997 and 2004, the Working Group emphasized in its reports 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 exercise the rights guaranteed by the Universal Declaration of Human Rights.³⁹ The Working Group considers that, in the present case, the laws used to charge the detainees are so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.⁴⁰

67. Noting all the above, the Working Group therefore concludes that the arrest and subsequent detention of Mr. Zhang, was arbitrary and falls under category I as lacking a legal basis in breach of article 9 of the Universal Declaration of Human Rights.

Category II

68. The source has further argued that the arrest and detention of Mr. Zhang is based on his peaceful political activities, which are protected under freedom of expression and association by both international and domestic law.

69. Although freedom of opinion and expression is not without limitation, 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.

70. In the Working Group’s view, the principle of necessity and proportionality that is inherent in freedom of opinion and expression is equally so in other fundamental human rights.⁴¹ The Working Group, in its deliberation No. 9, confirmed that the notion of “arbitrary” includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary.⁴²

71. In view of the standard described above, the Working Group finds that the situation in the present case falls short of such requirement. Aside from the vague accusations of “picking quarrels and provoking trouble”, the Working Group has not seen information that would reasonably implicate Mr. Zhang in specific violent or criminal acts that pose threats to the rights and freedoms of others, morality, public order and the general welfare. The Working Group notes the source’s submission that the only prosecution evidence against Mr. Zhang during his trial was his tweets about re-education camps for Uighurs and interrogation records of how he accommodated a family member of an imprisoned activist. As such, the Working Group finds no legitimate aim or objective to justify his deprivation of liberty for his exercise of freedoms of expression and of association.

³⁷ CAT/C/CHN/CO/5, para. 36.

³⁸ CERD/C/CHN/CO/14-17, para. 36.

³⁹ E/CN.4/1998/44/Add.2, paras. 42–53, 106–107 and 109 (b) and (c); and E/CN.4/2005/6/Add.4, paras. 73 and 78 (e). See also CAT/C/CHN/CO/5, paras. 36–37.

⁴⁰ See, for example, opinion No. 32/2020, para. 51.

⁴¹ See, for example, opinions No. 58/2017, para. 48; No. 82/2018, para. 38; and No. 87/2018, para. 64.

⁴² A/HRC/22/44, sect. III.

72. The Working Group concludes that the detention of Mr. Zhang resulted from his peaceful exercise of the right to freedoms of opinion and expression and of association, and as such was contrary to articles 19 and 20 of the Universal Declaration of Human Rights. In the present case, the application of vague and overly broad provisions, as discussed above, adds weight to the Working Group's conclusion that Mr. Zhang's deprivation of liberty falls within category II.

73. In that regard the Working Group wishes to specifically recall Human Rights Council resolution 24/5, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others".

74. Further, according to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels", to communicate with non-governmental organizations and to have effective access in the conduct of public affairs.⁴³ The Working Group considers that the source's allegations demonstrate that Mr. Zhang was detained for the exercise of his rights under the above-mentioned declaration as a human rights activist and defender. The Working Group also reiterates that it applies a heightened standard of review in cases in which the freedom of expression, opinion, assembly and association is restricted or where human rights defenders are involved.⁴⁴

75. Accordingly, the Working Group concludes that the deprivation of liberty of Mr. Zhang was a result of his peaceful exercise of his rights to freedom of expression and of association as he engaged in advocacy for human rights for Uighur Muslims in the Xinjiang Uighur Autonomous Region and was contrary to articles 19 and 20 of the Universal Declaration of Human Rights. His deprivation of liberty is arbitrary and falls within category II. The Working Group refers this matter to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on minority issues, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the situation of human rights defenders.

Category III

76. 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. The source has alleged serious violations of Mr. Zhang's rights to a fair trial and to due process.

77. According to the source, Mr. Zhang was only permitted to meet with his attorney three weeks after his arrest, on 16 June 2019, and these visits were conducted under surveillance. Further, the source submits that the attorneys were only able to access the case file five months after Mr. Zhang's arrest and expressed the view that the files do not contain evidence to substantiate either of the charges against him.

78. For these reasons, the Working Group finds that Mr. Zhang's right to legal assistance at all times was not respected, as he was denied access to counsel for several weeks. The right to legal assistance is inherent in the right to liberty and security of person, as well as in the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights. The Working Group considers that this violation substantially undermined and compromised Mr. Zhang's capacity to defend himself in any subsequent judicial proceedings.

⁴³ See articles 1, 5 (c), 6 (c), 8, 9 (3) (c) and 11. See also General Assembly resolutions 70/161, para. 8, and 74/146, para. 12.

⁴⁴ Opinions No. 64/2011, para. 20; No. 54/2012, para. 29; No. 62/2012, para. 39; No. 41/2017, para. 95; and No. 57/2017, para. 46. See also opinion No. 39/2012, para. 45.

79. As the Working Group has stated in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after the moment of apprehension, and such access is to be provided without delay. The Working Group therefore finds that the delayed access to legal counsel and to the case file, as well as the failure to respect the privacy and confidentiality of communications between legal counsel and detainee, violated Mr. Zhang's rights to a fair trial and to due process under articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles. In addition, the Working Group recalls paragraph 21 of the Basic Principles on the Role of Lawyers, which requires the authorities to ensure access to information, files and documents to enable lawyers to provide effective legal assistance to their clients, and that such access be provided at the earliest appropriate time.⁴⁵

80. The source submitted that Mr. Zhang was convicted on 10 November 2020 on both charges after a trial that lasted a few hours. Despite the fact that he was charged with serious offences, the Working Group finds that the brevity of his trial suggests that Mr. Zhang's guilt had been predetermined, in violation of his right to be presumed innocent under article 11 of the Universal Declaration of Human Rights.⁴⁶ The source also submits that the Government used the COVID-19 pandemic to close the trial to the public. The Working Group recalls that in its deliberation No. 11 on the prevention of arbitrary deprivation of liberty in the context of public health emergencies, it noted that the introduction of blanket measures restricting access to courts and legal counsel could not be justified and could render the deprivation of liberty arbitrary.⁴⁷ For the reasons set out above, the Working Group is satisfied that the source has established that Mr. Zhang's trial did not meet the standards of a fair and public hearing by an independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights.

81. The Working Group notes the source's submissions that Mr. Zhang has not been permitted any communication with his family and is not permitted any telephone calls at all. The Working Group finds that this constitutes violations of Mr. Zhang's right to contact with the outside world under rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15 and 19 of the Body of Principles. Giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.

82. In light of the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Mr. Zhang an arbitrary character that falls within category III.

Category V

83. The Working Group finds that Mr. Zhang was targeted because of his activities as a human rights activist and defender. The source alleges that he has been subjected to harassment, intimidation and retaliation by the authorities for several years. He was previously arrested twice, including in May 2016, prior to that year's anniversary of the Tiananmen Square events. The source submits that Mr. Zhang's current arrest just before the thirtieth anniversary of those events demonstrates the Government's intention to suppress and punish Mr. Zhang for his political activism. The Working Group observes that Mr. Zhang's current detention appears to be consistent with this pattern.

84. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal

⁴⁵ See also [A/HRC/45/16](#) paras. 50–55.

⁴⁶ See, for example, opinions No. 75/2017, No. 36/2018 and No. 83/2018.

⁴⁷ [A/HRC/45/16](#), annex II, para. 21.

protection of the law under article 7 of the Universal Declaration of Human Rights.⁴⁸ Accordingly, the Working Group finds that Mr. Zhang was deprived of his liberty on discriminatory grounds, that is, due to his status as a human rights defender, as well as on the basis of his political or other opinions. That amounts to a violation of articles 2 and 7 of the Universal Declaration of Human Rights. His deprivation of liberty is thus arbitrary and falls within category V.

Concluding remarks

85. The Working Group further expresses its concern at Mr. Zhang's conditions of detention in an overcrowded prison, where the lights are kept on the whole day and he suffers poor nutrition and inhumane physical inspections. The source also notes that Mr. Zhang is not able to receive warm clothing, due to restrictive prison rules, and has been denied proper dental care, causing pain and creating difficulties for him to eat. While the Working Group notes the source's submission that Mr. Zhang has received medication for his chronic illness, it observes that the denial of dental treatment violates rules 24, 25, 27 and 30 of the Nelson Mandela Rules and principle 24 of the Body of Principles.

86. The Working Group is concerned about the deterioration of Mr. Zhang's health due to the poor conditions in detention. 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 Nelson Mandela Rules.

87. In its 30-year history, the Working Group has found China to be in violation of its international human rights obligations in over 1,000 cases.⁴⁹ The Working Group is concerned that this 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.⁵⁰

88. 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 last 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 request of 15 April 2015 for a country visit.

Disposition

89. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Zhang Baocheng, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

⁴⁸ See, for example, opinions No. 79/2017, No. 83/2018, No. 15/2019 and No. 45/2019; and [A/HRC/36/37](#), para. 49.

⁴⁹ 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. 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.

⁵⁰ See, for example, opinions No. 39/2011, para. 17; No. 50/2012, para. 27; No. 35/2019, para. 65; and No. 25/2021, para. 72.

90. 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.

91. 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 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.

92. 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.

93. The Working Group requests the Government to bring its laws, particularly articles 293 and 120 of the Criminal Law, into conformity with the recommendations made in the present opinion and with the commitments made by China under international human rights law.

94. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief, for appropriate action.

95. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.

96. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

97. 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.

98. 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.

99. 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.

100. 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 they have taken.⁵¹

[Adopted on 16 November 2021]

⁵¹ See Human Rights Council resolution 42/22, paras. 3 and 7.