Advance edited version

Distr.: General
27 June 2018

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 22/2018 concerning Liu Feiyue and Huang Qi (China)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. 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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 8 December 2017, the Working Group transmitted to the Government of China a communication concerning Liu Feiyue and Huang Qi. The Government replied to the communication on 19 January 2018. 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).

Submissions

Communication from the source

4. Huang Qi, born on 7 April 1963, is a citizen of China. He resides in Shizhong District, Neijiang City, Sichuan Province.

5. The source states that Mr. Huang is a prominent journalist. He was the director of the Chinese human rights monitoring website, 64 Tianwang Human Rights Centre,[1] which he established in 1998. After the establishment of the website, the Centre started to disseminate reports about alleged cases of enforced disappearances and trafficking. By the mid-2000s, the Centre had also begun reporting on other alleged human rights violations, and on complaints against government officials.

6. The source reports that Mr. Huang has been targeted by the authorities since he began his journalistic activity. He has served two prison sentences, of eight years in total, which were allegedly handed down in reprisal for his work. In 2003, Mr. Huang was given a five-year sentence for "inciting subversion of State power". In 2009, he was sentenced to three years in prison for "illegal possession of State secrets". According to the source, this sentence relates to Mr. Huang's meeting with families of children who died in schools that collapsed during the 2008 earthquake in Sichuan Province.

7. After each release from prison, Mr. Huang resumed reporting on the human rights situation in China. Mr. Huang and 64 Tianwang Human Rights Centre have received international recognition, including the Reporters Without Borders Press Cyber-Freedom Prize, awarded to Mr. Huang in 2004, and the Reporters Without Borders Press Freedom Prize, awarded to the Centre in 2016.

8. The source reports that, late in the evening of 28 November 2016, Mr. Huang was detained at his residence in Neijiang City by approximately 15 police officers from the cities of Chengdu, Mianyang and Neijiang. Police officers also searched Mr. Huang's home and confiscated some of his possessions. They detained him without showing a warrant or other decision by a public authority. Mr. Huang was then allegedly subjected to incommunicado detention. Furthermore, it is reported that, when Mr. Huang was taken into custody, his mother and a volunteer at 64 Tianwang Human Rights Centre, who has sent messages about Mr. Huang's arrest, were also being held incommunicado by the authorities.

9. The source also states that Mr. Huang was formally arrested on 16 December 2016. He is currently being held in custody at Mianyang City Detention Centre, Sichuan Province, by Mianyang City Public Security Bureau.

10. The source specifies that Mr. Huang's detention was ordered by Sichuan Province Public Security Department. According to the authorities, the legal basis for the detention was article 111 of the Criminal Law on the illegal dissemination overseas of State secrets. The article provides that whoever steals, spies with relation to, buys or unlawfully supplies State secrets or intelligence for a body, organization or individual outside the territory of China shall be sentenced to fixed-term imprisonment of not less than 5 years but not more than 10 years. If the circumstances are especially serious, he or she shall be sentenced to fixed-term imprisonment of not less than 10 years, or life imprisonment. If the circumstances are minor, he or she shall be sentenced to fixed-term imprisonment of not more than 5 years, criminal detention, public surveillance or deprivation of political rights.

11. The source alleges that Mr. Huang was detained in reprisal for his exercise of the rights to freedom of expression and of association through his work at 64 Tianwang Human Rights Centre. Mr. Huang has allegedly suffered acts of torture and other forms of ill-treatment during his detention. The source notes that Mr. Huang was detained at a time when the authorities had intensified the suppression of groups and individuals reporting on alleged human rights abuses inside China. Two more journalists who had been volunteering

[1] See http://64tianwang.com/ (available in Chinese only).

with the Centre were allegedly pressured by the authorities, detained and eventually imprisoned.

12. The source reports that, on 6 April 2016, 64 Tianwang Human Rights Centre published a police document issued in March 2016 by the Sichuan Province Public Security Department. The document ordered the authorities to suppress Mr. Huang's journalistic activity and the reporting by 64 Tianwang Human Rights Centre's website, claiming it to be a reactionary overseas website that specialized in sending information on scandals inside China to foreign countries. The source states that the publication of the document appears to have played a role in Mr. Huang's current detention and has probably made him, his colleagues and his website an even greater target for the authorities. The source thus argues that the authorities have violated Mr. Huang's rights to freedom of expression and of association.

13. According to the source, in February 2017, Mr. Huang's lawyers met with Mianyang City national security officers to discuss his case. Officers allegedly told the lawyers that the case related to State secrets, given the publication of the above-mentioned police document. The source alleges that government officials retroactively classified the police document as "top secret," taking advantage of loopholes in the national State Secrets Law.

14. The source adds that Mr. Huang's case involved various procedural and legal violations. For instance, no official detention notice was provided to Mr. Huang's family when he was taken into custody, in violation of article 83 of the Criminal Procedure Law. The article stipulates that the Public Security Bureau must produce an official notice when placing an individual under detention. The source also states that, during the first few weeks, Mr. Huang was subjected to incommunicado detention. It is alleged that the authorities did not allow him to meet with a lawyer for the first eight months after his arrest. The first visit by Mr. Huang's lawyer only took place on 28 July 2017, eight days after the police recommended his case for indictment. Prior to that date, the authorities refused to allow visits by the legal counsel on the grounds that they might "endanger national security", as Mr. Huang's case allegedly involved "State secrets". The source notes that this restriction, contained in article 37 of the Criminal Procedure Law, is frequently applied by the authorities in cases of detention of human rights defenders. The source adds that article 37 also states that detainees should be given access to a lawyer within 48 hours of making the corresponding request. According to principle 18 (1) and (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a detainee should be entitled to communicate and consult with his or her legal counsel and should be allowed adequate time to do so, a safeguard that Mr. Huang was denied.

15. After the visit to the Detention Centre in July 2017, Mr. Huang's lawyer reported that his client's long-standing health condition had deteriorated further, and that, on 5 July 2017, the authorities at the Detention Centre had stopped providing him with medical treatment. This denial of medical care occurred when several of Mr. Huang's health problems turned life-threatening. His family and supporters thus began to fear that he might die in detention. The source specifies that, in 2010, Mr. Huang was diagnosed with an incurable and potentially fatal condition, which resulted in limited kidney function. Reportedly, Mr. Huang must take nine doses of medication each day to treat his condition. Mr. Huang was frequently hospitalized, most recently just a few months before his current detention. According to the source, Mr. Huang is at risk of rapid renal failure. In addition, he is suffering from hydrocephalus, heart disease, emphysema and the effects of pneumonia. It is reported that he has lost a lot of weight.

16. The source reports that Mr. Huang was interrogated by rotating teams of several dozen investigators, and forced to stand for four to six hours a day over a period of several weeks, despite his weak physical state. Reportedly, officers tried to pressure him to confess to the crimes of which he had been accused while being videotaped. The source notes that this is a common tactic employed by the authorities regarding many other human rights defenders in the past two years. The source observes that the ongoing mistreatment of Mr. Huang is similar to the retaliatory treatment received by him during previous periods of incarceration. It is alleged that Mr. Huang was often tortured during those periods. Acts of torture applied to Mr. Huang included physical and sexual assaults. He was also often

forced to sleep next to the toilet. In 2009, when Mr. Huang was in prison, his lawyers reported that he had two tumours on his chest and stomach, and that he was suffering from headaches and cardiac issues. His lawyers thus requested that the authorities release Mr. Huang on bail for medical treatment. However, the authorities have never responded to this request.

17. The source reports that, in the course of Mr. Huang's current detention, in January 2017, twice in February 2017 and also in April 2017, his lawyers requested the authorities to release him on bail on medical grounds. However, the authorities turned down each application. International and national human rights activists have unsuccessfully called on the authorities to release Mr. Huang on humanitarian grounds, citing his deteriorating health and his alleged arbitrary detention. Mr. Huang's lawyers also submitted a request to Mianyang City Public Security Bureau to make public Mr. Huang's medical history, any medical treatment he has received, his diet and any other information related to his health in detention. However, Mianyang City Public Security Bureau refused to grant this request.

18. The source submits that the denial of medical treatment for Mr. Huang confirms well-documented instances of torture of incarcerated human rights defenders in China. The source argues that Mr. Huang's life-threatening health problems qualify him for release on medical grounds, according to the Measures for Carrying Out Medical Parole for Prisoners issued by the Ministry of Justice. The source states that the failure or refusal by the authorities to provide adequate medical treatment to Mr. Huang constitutes ill-treatment. The source sustains that article 18 of the Regulation on Detention Facilities and article 26 of the Measures for the Implementation of the Regulation on Detention Facilities, which stipulate that incarcerated individuals in China should receive prompt medical care, have not been enforced in the case of Mr. Huang. It is submitted that the ill-treatment of Mr. Huang by the authorities violates, among other international standards, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Basic Principles for the Treatment of Prisoners.

19. The source submits that Mr. Huang was detained solely because of his peaceful exercise of his rights guaranteed by the Universal Declaration of Human Rights. The source concludes that his detention falls within category II (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).

20. Mr. Huang was previously the subject of a number of joint urgent appeals sent on 8 December 2003, 30 November 2007, 18 June 2008 and 30 July 2009, by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders. The Working Group acknowledges replies from the Government of China received on 28 February 2008, 11 August 2008 and 18 December 2009.

21. Mr. Liu, born on 5 February 1970, is a citizen of China. He resides in Suizhou City, Hubei Province.

22. According to the source, Mr. Liu is an activist and a journalist. In 2006, he founded the Civil Rights and Livelihood Watch website.[2] The website contained reports on a wide range of alleged abuses of rights based on information collected from and about victims of forced evictions, demolitions and secret detentions, migrant workers denied their rights, unpaid teachers, rural children forced to drop out of school, and activists who were involuntarily committed to psychiatric institutions. In 1998, Mr. Liu joined a branch of the banned China Democracy Party in Hubei Province. Soon afterwards, he began to research and publish articles about non-violent civil and political rights movements. A participant in many advocacy campaigns, Mr. Liu belonged to a group of activists that, in 2003, launched a movement that urged the Government to implement political reforms. In 2004, in an

[2] See http://msguancha.com/ (in Chinese).

effort to promote the right to health, he collected over 500 signatures from individuals seeking more affordable medication.

23. The source reports that, during the evening of 17 November 2016, Mr. Liu was taken into custody by national security officers of Suizhou City. Allegedly, the officers did not show any warrant or other decision by a public authority. They searched his home and confiscated computers, printed materials and other belongings. At that time, Mr. Liu messaged other activists, stating that national security officers had taken him to a "mountain village," referring to a location where he had been detained on previous occasions. On 18 November 2017, he was placed in criminal detention on suspicion of "inciting subversion of State power". On 23 December 2016, Mr. Liu was formally arrested.

24. The source reports that Mr. Liu is currently being held in custody by Suizhou City Public Security Bureau in Suizhou City No. 1 Detention Centre. The legal basis for his detention is article 105 (2) of the Criminal Law on inciting the subversion of State power, which stipulates that those who incite others, by spreading rumours or slander, or by any other means, to subvert State power or overthrow the socialist system, are to be sentenced to a fixed term of imprisonment of not less than five years, criminal detention, public surveillance or deprivation of political rights.

25. The source submits that Mr. Liu's detention is an act of reprisal for his human rights advocacy work, particularly for his reporting of human rights abuses on the Civil Rights and Livelihood Watch website. The source sustains that Mr. Liu was detained when the authorities intensified their suppression of groups and individuals reporting on alleged human rights abuses inside China. On 6 December 2016, the police told Mr. Liu's lawyer that his client had been detained because he had "published articles that opposed the socialist system". In early August 2017, when recommending Mr. Liu's case for indictment to the local prosecutor, the police added the charge of "illegally disseminating State secrets overseas". The source argues that these actions by the police reflect the Government's attempt to curtail Mr. Liu's right to freedom of expression.

26. The source submits that there have been procedural and legal violations throughout Mr. Liu's current period of detention. For instance, Mr. Liu's family did not receive a detention notice after he was taken away on 17 November 2016. This lack of official police notification violates article 83 of the Criminal Procedure Law, which stipulates that a detainee's family must be informed within 24 hours after he or she is taken into custody. The day after Mr. Liu was detained, the police confirmed as much verbally to his family when they went to Suizhou City Public Security Bureau to enquire as to his whereabouts. Despite this verbal confirmation, the police still did not provide an official detention notice. The source adds that officers told Mr. Liu's family not to speak out publicly about his detention, or to seek assistance from the outside world.

27. The source submits that the authorities have attempted to intimidate Mr. Liu's defence lawyers and have obstructed their work on the case. Instances of such obstruction included preventing the lawyers from gaining access to their client. The authorities also prevented lawyers from visiting Mr. Liu for the first six months of his detention. They were thus denied visits on several instances, including on 6 December 2016, 12 December 2016, 21 January 2017 and 23 March 2017. Mr. Liu was only granted his first meeting with a lawyer on 25 May 2017. Since then, Mr. Liu has had several meetings with his legal counsel. The source adds that, soon after Mr. Liu's detention, the judicial authorities allegedly threatened his lawyer, leading to him halting work on Mr. Liu's case.

28. The source reports that, when refusing to allow visits by the legal counsel, the authorities often cited concerns based on the ground of "national security", as Mr. Liu's case involved a crime of "endangering State security". The source notes that this restriction, provided for by article 37 of the Criminal Procedure Law, is frequently applied in cases of detained human rights defenders. The source notes, however, that the same provision of the Criminal Procedure Law also stipulates that a detainee should be given access to a lawyer within 48 hours of making the corresponding request. Moreover, pursuant to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,

a detainee should be entitled to communicate and consult with his or her legal counsel and should be allowed adequate time to do so. Mr. Liu was allegedly denied this safeguard.

29. The source argues that the authorities presented a weak criminal case against Mr. Liu, while apparently aiming to punish him with a lengthy prison sentence. Suizhou City Public Security Bureau extended its investigation several times, a move that is allegedly a common indication that a case has a weak basis for criminal prosecution. On 23 May 2017, the Bureau recommended Mr. Liu's case for indictment. On 8 July 2017, the prosecution sent the case back to the police and extended the period of investigation by one month. On 8 August 2017, Suizhou City Public Security Bureau again announced that it recommended indictment in Mr. Liu's case, having added a serious criminal charge of "illegally disseminating State secrets overseas" under article 111 of the Criminal Law. The source notes that, although the supplementary investigation period had lapsed, the Public Security Bureau reportedly continued its investigation in order to "collect evidence" up to 11 August 2017. The investigation allegedly included interrogating Mr. Liu at the Detention Centre. The source submits that these actions by the authorities violate the provisions of article 171 of the Criminal Procedure Law, pursuant to which the period of supplementary investigation is limited to one month.

30. During Mr. Liu's detention, his lawyers have maintained that he is innocent of any criminal charges, and applied for him to be released on bail. However, the authorities denied this request.

31. The source notes that, prior to his current detention, Mr. Liu was subjected to continuous harassment, beatings and detention by the authorities. The authorities allegedly carried out such acts against Mr. Liu in retaliation for his activism. For instance, the source reports that Mr. Liu was taken into custody in October 2016, shortly before the opening of the Sixth Plenum of the Eighteenth Central Committee of the Communist Party of China. During that period, the police allegedly kept Mr. Liu at a guesthouse, tortured him and threatened him with further punishment if he continued his advocacy work. The authorities have allegedly repeated this warning to Mr. Liu during his current detention. The police also detained Mr. Liu for a short period in August 2016, before the Group of 20 Summit in Hangzhou.

32. The source submits that Mr. Liu has been detained solely due to the peaceful exercise of his rights guaranteed under the Universal Declaration of Human Rights, and that his detentions falls within category II (when the deprivation of liberty results from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights).

33. Mr. Liu was one of a number of individuals the subject of the joint urgent appeal sent on 2 March 2011 by the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of expression, the Special Rapporteur on human rights defenders and the Special Rapporteur on torture.

Response from the Government

34. On 8 December 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 7 February 2018 about the current situation of Mr. Huang and Mr. Liu. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention, and the compatibility of their detention with the obligations of China under international human rights law. In addition, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Huang and Mr. Liu.

35. The Government responded to the regular communication on 19 January 2018. In its response, the Government states that Mr. Huang is a 55-year-old, residing in Neijiang City, Sichuan Province. He is accused of the crime of illegally disseminating State secrets overseas. Mr. Huang has been placed in criminal detention according to law by the public security bodies of Sichuan Province on 28 November 2016. On 16 December 2016, the

prosecution approved Mr. Huang's arrest. Mr. Huang's case has been reviewed and filed for indictment.

36. Furthermore, the Government states that Mr. Liu is a 48-year-old male from Suizhou City, Hubei Province. Having been accused of the crime of inciting subversion of State power, on 18 November 2016, Mr. Liu was placed in criminal detention according to law by the public security bodies of Hubei Province. On 23 December 2016, the prosecution approved Mr. Liu's arrest. On 23 May 2017, Mr. Liu's case was submitted to the local prosecution service for indictment. It was subsequently filed for prosecution on 6 December 2017.

37. The Government also states that China is a country governed by the rule of law, which protects all legal rights enjoyed by criminal suspects according to law. During the period of review for indictment, procuratorial bodies did not find that confessions made to public security organs had been extracted under duress, or that those organs had committed any other legal violations in collecting evidence while investigating Mr. Huang or Mr. Liu. Moreover, the criminal suspects did not file complaints related to the extraction of confessions under duress and any other acts of unlawful evidence collection. Accusations that, among other things, Mr. Huang and Mr. Liu "have been tortured and ill-treated" are inconsistent with case facts.

Further comments from the source

38. On 14 February 2018, the Government's reply was transmitted to the source for its additional comments, with a request to reply by 15 March 2018. The source responded on 14 March 2018.

39. In its response, the source contests the submission by the Government and reiterates that Mr. Huang's case has involved attempts by public security organs to extract a criminal confession under duress, he has been subjected to torture and other forms of ill-treatment and there have been formal complaints filed about such mistreatment.

40. The source notes that Mr. Huang has consistently refused to confess to criminal behaviour during police interrogations, according to individuals familiar with his case. His case was sent for prosecution to the Mianyang City People's Court. Due to Mr. Huang's refusal to plead guilty to the alleged crimes, a move that might have seen him being granted "clemency", for example, in the form of lighter punishment, the Mianyang City People's Procuratorate reportedly recommended that Mr. Huang be sentenced to between 12 and 15 years in prison. The source maintains that Mr. Huang's current detention, the criminal charges against him and any criminal punishment in his regard constitute a violation of his rights to free expression and of association.

41. According to the source, contrary to the Government's claim that Mr. Huang has not been subjected to torture, he continues to be deprived of treatment for serious medical conditions, contributing to fears that he will die in custody. Mr. Huang is not receiving sufficient treatment for nephritis (inflammation of the kidneys), which has developed due to the fact that he suffers from crescentic glomerulonephritis, a potentially fatal kidney condition that has not been treated in detention. Mr. Huang has also faced several other forms of mistreatment in detention. He has reportedly been beaten by guards and by fellow detainees, acting on the orders of the guards. Mr. Huang has not been provided with toilet paper. His living allowance in detention has been frozen, preventing him from purchasing daily necessities. Mr. Huang has reportedly been deprived of healthy food and, due to poor nutrition and untreated medical conditions, he has lost more than 20 kg whilst in detention.

42. The source reports that Mr. Huang's original lawyer filed complaints about the mistreatment of Mr. Huang. This defence counsel also granted interviews to independent media outlets that have reported such abuses. In addition, Mr. Huang's family has written letters to Sichuan Province Higher People's Court and Mianyang City People's Court, appealing for his release on medical grounds. Neither of the above-mentioned authorities have provided a response.

43. Additionally, the source clarifies that the authorities took reprisals against Mr. Huang's legal counsel, first depriving him of his right to defend Mr. Huang, and then

blocking him from practicing his profession. Procuratorial and court officials repeatedly denied requests by Mr. Huang's lawyer for access to his client's criminal case files. It is further alleged that national security officers frequently questioned Mr. Huang's lawyer about his representation of Mr. Huang. On 22 January 2018, Mr. Huang's lawyer received an advance notice of administrative punishment from the Guangdong provincial judicial authorities, informing him that he was going to lose his licence to practice law. After he filed an application to contest this decision, he was granted a hearing with the provincial judicial bureau on 3 February 2018. After the hearing, the judicial authorities rescinded Mr. Huang's lawyer's license to practice law.

44. In relation to the case of Mr. Liu, the source argues that contrary to the Government's response, Mr. Liu's case has involved attempts by public security officials to extract a criminal confession under duress, particularly through pressure applied to his family.

45. It is further reported that, following harassment by national security officers, a member of Mr. Liu's family and a family friend urged him to confess to criminal wrongdoing. In addition, the authorities have closely monitored the content of communications and the channels of communication between Mr. Liu's above-mentioned family member and the outside world.

46. The source reports that, on 12 December 2017, another lawyer met with Mr. Liu in detention, and learned from him that he had been indicted a week earlier for "inciting subversion of State power", but that the "State secrets" charge against him had been dropped. The indictment outlined "six major criminal allegations" against Mr. Liu. The source notes that activities outlined by the prosecutors focus on Mr. Liu's exercise of his rights to free expression, assembly and association. They include:

(a) Writing and publishing articles describing the political system of China as "autocratic";

(b) Writing annual reports critical of human rights violations in China, in particular during police "stability maintenance" operations, and the ongoing use of forced psychiatric detention of human rights defenders;

(c) Publishing articles and commentary about "politically sensitive" events that expose alleged abuses of human rights by the Government;

(d) Planning to publish cartoons and posters that expose alleged violations of human rights by the Government and call for the release of prisoners of conscience;

(e) Conducting interviews with foreign media that expose alleged abuses of human rights in China;

(f) Establishing the Civil Rights and Livelihood Watch human rights website, with the assistance of foreign entities.

47. The source maintains that Mr. Liu's current detention, the criminal charges against him and any criminal punishment in his regard constitute a gross violation of his rights to free expression and association.

Discussion

48. The Working Group notes with appreciation the timely engagement of both the Government of China and the source in providing submissions in relation to the detention of Mr. Huang and Mr. Liu.

49. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

50. In the present case, the Working Group was convinced that Mr. Huang is a prominent journalist in China, that he was the director of the Chinese human rights monitoring website 64 Tianwang Human Rights Centre, which disseminates reports on

alleged enforced disappearances, trafficking, human rights violations and complaints against Government officials.

51. The Working Group was also convinced that Mr. Liu is an activist and a journalist, that he founded the Civil Rights and Livelihood Watch website, which disseminates reports on alleged abuses of rights, for example on forced evictions and demolitions, secret detentions, migrant workers denied of their rights, unpaid teachers, rural children forced to drop out of school, and activists who were involuntarily committed to psychiatric institutions.

52. The Working Group is mindful of the fact that Mr. Huang is accused of the crime of illegally disseminating State secrets overseas, while Mr. Liu stands accused of the crime of inciting subversion of State power.

53. In this regard, the Working Group considers that the above-mentioned charges are so vague and broad that they could, as in the present case, result in penalties being imposed on individuals who had merely exercised their rights under international law. As the Working Group has previously stated, 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] Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

54. The Working Group recalls that, following its official visits to China in 1997 and 2004, it emphasized in its reports that vague and imprecise offences jeopardize the fundamental rights of those who wish to exercise their right to hold an opinion, or exercise their freedoms of expression, the press, assembly and religion, and that they are 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 their rights guaranteed in the Universal Declaration of Human Rights.[4]

Category II

55. The Working Group is aware that Mr. Huang and Mr. Liu both carry out human rights advocacy work, through the reporting of human rights abuses on the 64 Tianwang Human Rights Centre and the Civil Rights and Livelihood Watch websites. The Working Group was also convinced by the allegations of the source, which were not rebutted by the Government, that Mr. Huang and Mr. Liu were detained for the exercise of their rights as human rights defenders.

56. The Working Group notes that the work of human rights defenders is protected by the Universal Declaration of Human Rights, which recognizes that everyone has the right to hold opinions without interference, the right to freedom of expression which includes freedom to seek and impart information and ideas of all kinds through any media of choice, and the right to freedom of peaceful assembly and of association.[5] The work of human rights defenders is also protected by 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, which states that 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.[6]

[3] See, e.g., opinion No. 41/2017, paras. 98–101.

[4] See 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).

[5] See Universal Declaration of Human Rights, arts. 19–20.

[6] See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 1 and 5 (a); and General Assembly resolution 70/161, para. 8, in which the Assembly called upon States to take concrete steps to prevent and put an end to the arbitrary arrest and detention of human rights

57. The Working Group is therefore of the view that the detention of Mr. Huang and Mr. Liu, being contrary to articles 19 and 20 of the Universal Declaration of Human Rights, is arbitrary under category II.

58. The Working Group refers the matter to the Special Rapporteur on human rights defenders for further consideration of the circumstances of the case and, if necessary, appropriate action.

Category III

59. The Working Group is aware that, on 28 November 2016, Mr. Huang was detained at his residence by a number of police officers, who did not show an arrest warrant or other decision by a public authority. Initially, Mr. Huang was subjected to incommunicado detention. He was formally arrested on 16 December 2016.

60. As the Working Group has consistently argued, holding persons incommunicado is not permitted under international human rights law because it violates the right to challenge the lawfulness of detention before a court. The Special Rapporteur on torture has also argued that the use of incommunicado detention is prohibited under international law (see A/HRC/13/39/Add.5, para. 156). The Working Group therefore considers that the incommunicado detention of Mr. Huang violates articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights.

61. The Working Group was also convinced that, on 17 November 2016, Mr. Liu was arrested by national security officers who did not show any warrant or other decision by a public authority. He was subsequently placed in criminal detention on suspicion of "inciting subversion of State power". On 23 December 2016, Mr. Liu was formally arrested.

62. The Working Group was persuaded that, during the arrests of Mr. Huang and Mr. Liu, the authorities did not inform them of the reasons of the arrest. The Working Group would like to recall that persons deprived of their liberty are to be informed about their rights and obligations under law through appropriate and accessible means. Among other procedural safeguards, this includes the right to be informed, in a language and a means, mode or format that the detainee understands, of the reasons justifying the deprivation of liberty, the possible judicial avenue to challenge the arbitrariness and lawfulness of the deprivation of liberty and the right to bring proceedings before the court and to obtain without delay appropriate and accessible remedies.[7]

63. The Working Group also was convinced that the authorities denied Mr. Huang the opportunity to meet with his lawyer for the first eight months after his apprehension, and that the first meeting between Mr. Huang and his lawyer took place only on 28 July 2017. The Working Group is also aware that the authorities prevented lawyers from visiting Mr. Liu for the first six months of his detention. They were thus refused visits on several instances, including on 6 December 2016, 12 December 2016, 21 January 2017 and 23 March 2017. Mr. Liu was only granted his first meeting with his lawyer on 25 May 2017.

64. The Working Group would like to recall that persons deprived of their liberty are to have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons are to be promptly informed of this right.[8] This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their case, including through disclosure of information.[9] Legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation,

defenders, and in that regard strongly urged the release of persons detained or imprisoned, in violation of the obligations and commitments of States under international human rights law, for exercising their human rights and fundamental freedoms.

[7] See 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, principle 7, para. 10.

[8] Ibid., principle 9, para. 12.

[9] Ibid., para. 14.

hindrance or harassment. Authorities are to respect the privacy and confidentiality of legal counsel-detainee communications.[10]

65. The Working Group was convinced that, in the present case, Mr. Huang and Mr. Liu were not informed of their right to legal counsel at the moment of the arrest, and neither of them could communicate nor consult with their legal counsel, nor were they allowed adequate time to prepare their defence in the first eight months of detention, in the case of Mr. Huang, and in the first six months of detention, in the case of Mr. Liu. The right to legal representation is a fundamental prerogative of persons deprived of their liberty in order to be able to guarantee their right to challenge the lawfulness of the detention. Such acts and omissions by the authorities are a violation of due process of law guarantees, and are of such gravity that they render the detention of Mr. Huang and Mr. Liu in violation of articles 9 and 10 of the Universal Declaration of Human Rights. Their deprivation of liberty is therefore arbitrary under category III.

66. In view of the allegations of torture and other forms of cruel or inhumane treatment or punishment by the authorities against Mr. Huang and Mr. Liu, the Working Group refers this case for appropriate action to the Special Rapporteurs on torture and on health.

67. Lastly, and given the continuing international concern regarding the deprivation of liberty of human rights defenders, the Government may wish to consider the present to be an appropriate time to work with human rights mechanisms to bring its laws into conformity with its international obligations under the Universal Declaration of Human Rights. The Working Group would welcome the opportunity to conduct an official country visit to constructively assist the Government of China in this process. Furthermore, the Working Group encourages the Government of China to accede to and to ratify the International Covenant on Civil and Political Rights.

Disposition

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

> The deprivation of liberty of Huang Qi and Liu Feiyue, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories II and III.

69. The Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Huang and Mr. Liu 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 considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Huang and Mr. Liu immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

71. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Huang and Mr. Liu, and to take appropriate measures against those responsible for violations of their rights.

72. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteurs on torture, on health and on human rights defenders, for appropriate action.

Follow-up procedure

73. 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. Huang and Mr. Liu have been released and, if so, on what date;

[10] Ibid., para. 15.

(b) Whether compensation or other reparations have been made to Mr. Huang and Mr. Liu;

(c) Whether an investigation has been conducted into the violation of Mr. Huang's and Mr. Liu'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.

74. 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.

75. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

76. The Government should disseminate through all available means the present opinion among all stakeholders.

77. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.[11]

[*Adopted on 23 April 2018*]

[11] See Human Rights Council resolution 33/30, paras. 3 and 7.