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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighths session, 19-27 April 2017.

Opinion No. 5/2017 concerning Huang Wenxun, Yuan Bing and Yuan Xiaohua (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 mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/33/66), on 13 February 2017 the Working Group transmitted to the Government of China a communication concerning Huang Wenxun, Yuan Bing and Yuan Xiaohua. The Government has replied to the communication on 23 March 2017. 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 Wenxun, also known as Huangzi, born on 16 February 1990, is a Chinese national. His usual place of residence is Huizhou city, Guangdong province. The source informs that Mr. Huang began his social activism in 2011, when he was a student, in order to support prisoners of conscience. According to the source, in 2013, before his current detention, Mr. Huang has been detained multiple times. He was also subjected to beatings in retaliation for taking part in demonstrations, including in a demonstration calling on top officials to disclose their financial assets. Before having been taken into custody, Mr. Huang took part in the advocacy campaign tour “Enlightening China”, intended to encourage citizen activism and promote the idea of democracy and the rule of law.

5. Yuan Bing, also known as Yuan Fengchu, born on 19 January 1982, is a Chinese national. His usual place of residence is Guanshiao Village, Xindian Town, Chibi city, Hubei province. Mr. Yuan Bing began his engagement in pro-democracy activities in 2010. He travelled across the country, meeting activists and discussing strategies to promote democracy in China. Formerly a school security guard, Mr. Yuan Bing lost his job after local authorities have forcibly returned him to Hubei province in 2012. The source informs that Mr. Yuan continued to peacefully protest on topics ranging from anti-corruption to China’s ratification of the International Covenant on Civil and Political Rights. He carried out this activity despite recurrent arbitrary detentions and violent assaults in retaliation for his advocacy work. Before his current detention, he had previously been detained in January 2013, while taking part in a demonstration defending media freedom in support of the Southern Weekly newspaper.

6. Yuan Xiaohua, born on 6 December 1972, is a Chinese national. His usual place of residence is Xinwan Town, Yuanjiang City, Hunan Province. Mr. Yuan Xiaohua is a democracy activist. He graduated from Hunan Normal University and became a teacher. He then moved to Guangdong to work in the private sector and began to get involved in organizing gatherings to discuss democracy and initiated a series of rallies. Mr. Yuan Xiaohua advocated on behalf of political prisoners and supported local democracy movements like the Wukan Village protests by farmers in Guangdong in 2011. According to the source, because of his activism Mr. Yuan Xiaohua has lost his job, as local authorities often detained and forcibly returned him to Hunan, in retaliation for his activities. In 2012, Mr. Yuan Xiaohua was detained for one month. During this time he was reportedly tortured by being deprived of sleep for six days. Mr. Yuan Xiaohua had been previously detained in April 2013 in Dongguan City in Guangdong, for taking part in a rally calling for the release of activists reportedly deprived of their liberty for exercising their right to peaceful assembly, association and expression. 7. The source informs that during his tour “Enlightening China” Mr. Huang has stopped in the city of Chibi and Mr. Yuan Xiaohua and Mr. Yuan Bing joined him there to show their support. The source also informs that in the early morning of 25 May 2013, Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua, along with several other activists, were detained in a park by a group of men, who did not identify themselves. Activists were planning to take a photograph holding signs that promote Mr. Huang’s advocacy tour.

7. The source also informs that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were seized in what appeared to be a planned abduction. Reportedly, a group of unidentified men has appeared immediately after activists have gathered in a park. These unidentified individuals proceeded to take belongings of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua, including their identification cards and wallets. Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were then taken to the Chimagang Police Station.

8. According to the source, at the time that three men were taken into custody, authorities did not provide them with a police notice or a reason for the arrest, despite their repeated requests to be notified of the legal basis of their arrest and detention. Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua had learnt that they were under the 15-day administrative detention for “unlawful assembly” only several days after the arrest.

9. The source also informs that after Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua have served the 15-day administrative detention; they were transferred to the Chibi City Detention Center, where on 8 June 2013 they were put under criminal detention for “inciting subversion of state power”. On 13 July 2013, Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were officially arrested.

10. According to the source, Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were originally put under administrative detention for “illegal assembly” and later criminally detained on “inciting subversion of state power.” The Chibi City People’s Procuratorate then changed the charge against them to “gathering a crowd to disrupt order of a public place.”

11. The source further informs that the legal basis for the detention of abovementioned individuals is article 105 (2) of the Criminal Law of the People’s Republic of China (“inciting subversion of state power”), which stipulates a fixed term imprisonment of not less than five years, criminal detention, public surveillance or deprivation of political rights to those who incite others by spreading rumours or any other means to subvert the State power or overthrow the Socialist system. Furthermore, for the crime of “gathering a crowd to disrupt the order of a public place” article 291 of the Criminal Law of the People’s Republic of China stipulates a fixed-term imprisonment of not more than five years, criminal detention or public surveillance to those who are gathered to disturb order at railway stations or bus terminals, wharves, civil airports, marketplaces, parks, theatres, cinemas, exhibition halls, sports grounds or other public places, or to block traffic or undermine traffic order, or resist or obstruct public security administrators of the State from carrying out their duties according to law, if the circumstances are serious. Additionally, article 293 of the Criminal Law stipulates fixed-term imprisonment of up to five years to those who provokes troubles in a public place, causing serious disorder.

12. The source sustains that the detention of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua is an act of reprisal against them for exercising their rights to free expression, assembly and association. The source notes that Mr. Huang’s advocacy tour was intended to promote democracy and make Chinese citizens aware of their civil and political rights. Mr. Huang’s advocacy tour gathered momentum at every stop, as other activists joined him in the calls for free expression and the rule of law. It was in this context that Mr. Yuan Bing and Mr. Yuan Xiaohua went to support Mr. Huang and took photos holding banners stating “Enlightening China.”

13. The source also sustains that the criminal charges against Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were a pretext used by the Government to punish them for their advocacy efforts, in particular, for promoting the International Covenant on Civil and Political Rights (Covenant) and for calling for greater political awareness amongst citizens. According to the first indictment filed by the Chibi City People’s Procuratorate, Mr. Yuan Xiaohua and Mr. Yuan Bing were accused of coordinating a major rally in Guangzhou, in front of the headquarters of a state newspaper “Southern Weekly”. The source notes that the demonstration which took place in January 2013 was not organized by any particular individual or a group of people. Rather, it was reportedly a spontaneous rally where people gathered in order to support journalists working for this newspaper and to express their objection to interference from authorities. The source therefore argues that blaming activists for unplanned and peaceful demonstration held to protect freedom of media is not only legally baseless, but also constitutes an act of political abuse. In addition, the source notes that the indictment also mentioned that Mr. Yuan Bing called on multiple occasions for the Chinese Government to ratify the Covenant. The source argues that to detain an activist on the basis of his calls to ratify an international treaty signed by China is arbitrary and a contradiction to principles of upholding and promoting human rights that the State pledges at the United Nations.

14. The source furthermore sustains that there have been procedural and legal violations during the period of detention and first-instance trials. As such, the source informs that families of abovementioned individuals did not receive any written notice of their administrative or criminal detentions. The source further details that family members of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua have only obtained confirmation of their whereabouts after inquiring on repeated occasions at police stations in Chibi and at the

Chibi National Security Branch. Authorities confirmed the place of detention Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua to their families in the middle of July 2013, that is, more than one month after the initial detention. The source argues that such lack of notice by the police violates Article 83 of China's Criminal Procedure Law (CPL), which stipulates that a detainee's family must be notified within 24 hours of that individual being taken into custody.

15. Moreover, the source notes that three activists were not informed of reasons for the deprivation of their liberty at the time of the arrest in May 2013. All three individuals have experienced limited access to their lawyers, including immediately after being taken into custody and also on several instances in 2014, when authorities denied meeting requests filed by lawyers. The source specifies that lawyers had limited access to their clients because authorities classified their cases as "political" and "sensitive" and therefore meetings needed to be pre-approved.

16. The source argues that such restriction of the right to legal counsel violates article 37 of the CPL, which states that a detainee should be given access to a lawyer within 48 hours of his or her request. The source also argues that pursuant to the "Body of Principles for the protection of all persons under any form of detention or imprisonment" a detainee shall be entitled to communicate and consult with his or her legal counsel and allowed adequate time to do so.

17. The source further informs that during extensive periods of incommunicado detention, Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were subject to torture and other inhumane treatment.

18. Furthermore, according to the source, Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua faced obstacles to a fair trial, primarily by being held in prolonged pre-trial detention without being brought before a judge, for a period close to three years in case of Mr. Yuan Bing and Mr. Yuan Xiaohua and full three years in the case of Mr. Huang. The source also argues that crimes the activists were suspected of committing changed multiple times, which demonstrates the arbitrary nature of the charges.

19. It is also alleged that lawyers were not informed in a proper and timely manner of procedural changes that occurred in cases of their clients, including when the Chibi City People's Court repeatedly delayed trial proceedings in April and July 2014. Initially, the lawyers were gathered for a pre-trial meeting in March 2014, but the trial proceedings had been extended several times until 19 April 2016, when both Mr. Yuan Xiaohua and Mr. Yuan Bing were tried. Mr. Huang stood trial on 24 June 2016 at the Xianning City Intermediate People's Court; few months after the prosecutors withdrew the original indictment and charged him with "inciting subversion of state power" instead. The activists were represented by their lawyers at the trials, but police cordoned off the courthouses and barred other activists from attending, and some were even detained. The source argues that the fact that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua have spent nearly three years or even more in pre-trial detention is a grave violation of their due process rights, specifically the right to fair trial, spelled out in article 14 in the Covenant.

20. The also source argues that as another sign of political persecution, the police and courts, in seemingly concerted efforts, held Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua beyond reasonably permitted periods of time by adding or replacing criminal charges.

21. The source informs that domestic legal remedies have proven to be futile. Lawyers received no official response to formal requests or complaints. In December 2014, when Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua had been held for approximately 19 months, their lawyers requested the Chibi City People's Procuratorate to release them, given the prolonged period of pre-trial detention. However, they do not receive an official reply. Subsequently, in February 2015, lawyers filed a similar request, which was denied. Furthermore, following meetings with their clients, lawyers have filed to the Procuratorate allegations of torture and mistreatment, requesting investigation and appropriate remedy. These motions yielded no results.

22. The Chibi City People's Court convicted Mr. Yuan Bing and Mr. Yuan Xiaohua on charges of "picking quarrels and provoking troubles" and "gathering a crowd to disrupt order of a public place," and sentenced them to 4 and 3.5 years, respectively. According to the information received from the source, Mr. Yuan Xiaohua was released in November 2016, after serving his 3, 5 year sentence. He filed a complaint with Chibi People's Court alleging his wrongful conviction, which was rejected. Mr. Huang is currently serving 5-year sentence in Chibi Prison, while Mr. Yuan Bing is serving 4 years in Xianning Prison, located in Hubei Province.

23. According to the source, lengthy pre-trial detention and limited access to legal counsel further exposed Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua to mistreatment in custody. The source alleges that during the detention, alleged victims have been subjected to inhumane and cruel treatment, including assault, forced labour without pay, deprivation of food and sleep and s threats. While serving his 15-day administrative detention in May-June 2013, Mr. Huang was twice subjected to electric shocks, in apparent retaliation for his questioning the legal basis for his and other' detentions. At the Chibi City Detention Center, Mr. Huang was reportedly deprived of food, blanket and access to a shower. He was forced to do extensive labour. Both Mr. Yuan Bing and Mr. Yuan Xiaohua were also required to work whilst in detention. Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua have suffered abuse and threats by cellmates. Their complaints about such threats were, however, ignored by officers and prosecutors stationed at the detention centre. The source adds that in addition to the physical pain and suffering, authorities have subjected abovementioned individuals to significant psychological stress. For instance, during the interrogation of Mr. Yuan Bing, authorities used a video clip featuring his mother in tears , allegedly in an attempt to pressure him to admit the wrong-doing.

24. The source concludes that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were detained solely on the basis of the peaceful exercise of their rights guaranteed under the Universal Declaration of Human Rights (UDHR). The circumstances of their detentions satisfy both category II of the Working Group (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 UDHR) and category III of the Working Group (when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the UDHR 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). The source asserts that three years in pre-trial detention far exceed reasonable time under both Chinese law and international standards.

Response from the Government

25. On 13 February 2017, the Working Group addressed a communication to the Government requesting detailed information about the current situation of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention and details regarding the conformity of their detention with international human rights law.

26. In its response of 23 March 2017, the Government provided the Working Group with the following information:

27. On 8 June 2015, Mr. Huang Wenxun, Mr. Yuan Bing and Mr. Yuan Xiaohua were suspected of inciting subversion of state power and accordingly were put under criminal detention by Hubei public security organ. On 12 September 2015 they were transferred to prosecutorial body for review and prosecution.

28. On 9 May 2016, Hubei Province Chibi City People's Court sentenced Mr. Yuan Bing and Mr. Yuan Xiaohua to 4 and 3.5 years in prison, respectively, for crimes of picking quarrels and provoking troubles, and for gathering a crowd to disrupt order of a public place. On 24 June 2016, Hubei Province Xianning City Intermediate People's Court convicted Mr. Huang of inciting subversion of state power, sentenced him to 5 years in prison and deprived him of political rights for 3 years..

29. Chinese court believes freedom of speech is the fundamental right of citizens, but safeguarding national security is also responsibility that citizens must fulfil. China's

Constitution and law endow citizens with freedom of speech and rights to criticize, give advice and file complaints against State organs and its employees. However, at the same time, these provisions stipulate that when citizens exercise these rights, they must comply with the national law; they cannot endanger national security, social order, and public interests, and cannot harm other citizens' legitimate interests. Mr. Huang Wenxun disregarded the national constitution and law, through activities such as publicizing online and holding signs on the streets, expressed speech that endangered national security and interests, maliciously attacked the Socialist system and incited subversion of State power. These actions have exceeded legal boundaries of freedom of speech, constituting the crime of inciting subversion of state power in a public place. Mr. Yuan Bing and Mr. Yuan Xiaohua were holding banner, signs and calling out slogans. They have also refused to cooperate and obstructed state public security management personnel enforcing duty according to the law, and severely disrupted order of a public place. Both of them fabricated images and information to upload on the internet for dissemination, causing serious social public disorder. Their conducts constitute the criminal acts of gathering a crowd to disrupt social order, picking quarrels and provoking troubles.

30. During the detention, prosecution, and imprisonment period of Mr. Huang Wenxun, Mr. Yuan Bing and Mr. Yuan Xiaohua, the Chinese public security, court, and detention facility management department have safeguarded all their legitimate rights in accordance with the law, including litigation rights, appeal, communication, meeting, and access to medical care. The alleged "political persecution," "torture," and "inhuman treatment" do not exist. During the judiciary review process of the cases, Chinese court has handled the requests to extend the deadline for trials in accordance with the Chinese Criminal Procedural Law. Currently, Mr. Yuan Xiaohua has been released after serving his sentence fully. Mr. Huang Wenxun and Mr. Yuan Bing are still serving their sentences.

Further comments from the source

31. The source strongly refutes points made by the Government and affirms that the detentions of Mr. Yuan Bing, Mr. Yuan Xiaohua and Mr. Huang Wenxun have principally been acts of reprisal against them for their activism and for them exercising their rights to free expression, assembly and association. All three activists were seized during an advocacy campaign tour called "Enlightening China," during which activists gathered local human rights defenders in the cities that they visited to share meals and to advocate for a reform through peaceful demonstrations. The tour was intended to bring like-minded people together, to inspire citizen activism and to spread ideas about democracy, free expression and the rule of law. The tour was initiated by Mr. Huang and stopped at other cities before arriving to the city of Chibi in Hubei Province. At every stop, other defenders joined him and echoed the calls for transparency, accountability, free expression and the rule of law. Mr. Yuan Bing and Mr. Yuan Xiaohua went to support Mr. Huang in person and took photos together holding banners stating "Enlightening China." According to Mr. Yuan Xiaohua, their activities were peaceful and within the bounds of free expression as activists were merely holding banners and taking photos.

32. The source strongly refutes accusations made by the Government against these individuals, particularly alleging their actions had endangered national security, social order and the public interest. According to their lawyers and to Mr. Yuan Xiaohua, throughout their advocacy activities, they did not encourage the use of language or activities to advocate for the overthrow of the Government or to cause any disruption in a public place. The content of their slogans specifically were about democracy, rule of law, governmental transparency and accountability, anti-corruption as well as against political persecution. The activists sought to inspire others to actively participate in civil and public affairs. The source argues that to label these advocacy efforts as "endangering national security" is to undermine and delegitimize human rights defenders. In addition, criminalizing defenders under such pretext runs counter to the Human Rights Council resolution (HRC 27/31), which calls on countries to stop targeting civil society in the name of national security and counter-terrorism. The source observes that crimes that Mr. Yuan Bing and Mr. Yuan Xiaohua have been convicted of, namely "gathering a crowd to disrupt order of a public place" and "picking quarrels and provoking trouble" are often used to prosecute demonstrators. These crimes have also been increasingly used to prosecute those who made

online commentaries about governmental corruption, non-transparency, lack of accountability and problems with government policies, or who shared information deemed “sensitive” by authorities.

33. The source adds that contrary to what the Government claimed in its response, legal and human rights of the detainees in question have not been protected. From the time of taking Mr. Huang, Mr. Yuan and Mr. Yuan into custody and throughout their detentions, authorities deprived them of their legal rights. The three men were seized by public security officials in a manner resembling abduction. Mr. Huang Wenxun recounted in written testimony that as they tried to gather in a park, a group of unidentified men suddenly appeared and immediately took all their belongings, including identification cards and wallets. Officials then forcibly took them to a police station. No notice or reason was given at the time, even after the activists had repeatedly asked for the legal basis of their detentions. According to Mr. Yuan Xiaohua, they did not obstruct officers from carrying out their work. In fact, they were reminding officers of the legal procedures stipulated under the Chinese law. No official notice or explanation was given to family members or lawyers. None of the three individuals’ families had received any notice or have been informed of their whereabouts, in violation of article 83 of China’s Criminal Procedure Law.

34. Furthermore, the source sustains that authorities have continually disregarded rules and regulations concerning the right to legal counsel. All three activists experienced limited access to their lawyers, including immediately after being taken into custody, in late 2013, as well as during some parts of 2014, when their lawyers’ requests for meetings were denied. The source argues that refusing to let lawyers meet with their clients violates article 37 of the Chinese Criminal Procedure Law, which stipulates that a lawyer should be able to visit a client within 48 hours of a request. Moreover, as the Government noted in its response, authorities changed the charges against activists multiple times, which, the source argues, further demonstrates the arbitrariness of charges. The source notes that for instance; all three individuals were initially criminally detained in June 2013, not in June 2015, as indicated by the Government in its response. The source explains that when authorities change criminal charges against an individual, the date of the criminal detention can also be changed, which in practice prolonged the pre-trial detention of these individuals.

35. The source sustains that the prolonged pre-trial detention of the three activists without being brought before a judge runs counter to international standards. Mr. Yuan Bing and Mr. Yuan Xiaohua were held in detention for nearly three years and Mr. Huang Wenxun was held for three years without being brought before a judge. Although the Chinese law allows authorities to hold detainees for a lengthy period of time before any judicial review, such long periods of deprivation of liberty without a trial violate international law on the right to a fair trial within a reasonable time. In some cases, even China’s Supreme People’s Court has repeatedly approved three-month extensions of detention before trials, appeal hearings or announcements of verdicts after a trial. According to international standards, pre-trial detention should be used only as a last resort because it undermines the principle of the presumption of innocence.

36. The source notes that whilst it is accurate to state that authorities have approved the extension of pre-trial detention, such acts represent seemingly concerted efforts by the police and prosecutors to exploit loopholes in the Chinese Criminal Procedure Law for political ends. The source sustains that authorities have arbitrarily applied provisions in the Criminal Procedure Law, which should be applicable in exceptional cases, to deprive individuals of their rights to due process. Article 89 of the Criminal Procedure Law permits criminal detention for 37 days before arrest or release. Following the formal arrest, a detainee can face periods of investigation of over one year. Articles 154, 157 and 158 of the Criminal Procedure Law allow police a period between three to ten months before it recommends an indictment. However, lengthy period of pre-trial detention is applicable only to cases involving “major crimes” or when the suspect has “committed a new crime,” subject to review by the prosecution. The source also argues that without an independent and effective compliant system in place that would enable detainees and their lawyers to file complaints about prolonged detention and other issues, authorities can unilaterally extend pre-trial detention.

37. The source further notes that abovementioned individuals have faced obstacles to obtaining fair trials, given that hearings were marred by violations of their legal rights. Initially, the lawyers were gathered for a pre-trial meeting in March 2014, but the trial proceedings were then extended several times until 2016, when both Mr. Yuan Xiaohua and Mr. Yuan Bing were tried in the month of April of that year. While the activists were represented by their lawyers, the police cordoned off courthouses and barred other activists from attending. Some individuals attempting to observe trials were detained. The source argues that this effectively made trials closed to the public. The source also alleges that judges denied lawyers full exercise of their profession in court. During Mr. Huang's trial in June 2016 at the Xianning City Intermediate People's Court, a few months after the prosecutors rescinded the original indictment, judge repeatedly stopped Mr. Huang as he tried to present their defence argument and question evidence presented by the prosecution.

38. The source finally notes that while in detention, all three individuals were subjected to assault, forced labour, various acts of torture and significant psychological pressure. Mr. Huang was subjected to electric shocks on two occasions. He was also deprived of food, of a blanket and of access to a shower. He was forced to do extensive labour. Both Mr. Yuan Bing and Mr. Yuan Xiaohua were also required to work in detention. All three individuals suffered beatings by cellmates, but their complaints were ignored by officers and prosecutors stationed at the detention center. In addition to the physical pain and suffering, authorities have subjected activists to significant psychological stress. In the case of Mr. Yuan Bing, a video clip of his mother in tears was used during interrogation to pressure him to admit a wrong-doing. Reportedly, Mr. Yuan Bing has frequently been threatened by his fellow cellmates, but his complaints have remained unanswered. The source sustains that in denying allegations of torture and mistreatment without conducting a full and independent investigation, the Government has breached Chinese domestic laws and procedures regarding prohibition of torture as well as the Convention against Torture, which China has signed and ratified.

Discussion

39. The Working Group thanks the source and the Government for their comprehensive submissions and replies, which allowed the Working Group to consider the case with a full understanding of the matter contested by the parties. The Working Group would like to emphasize that procedural rules on handling communications from sources and responses of Governments are contained in its methods of work¹.

40. On the basis of information provided to it the Working Group was convinced that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were detained on 25 May 2013 in a park at the City of Chibi by unidentified men. They were then brought to Chimagang Police Station. During the detention, abovementioned individuals were not informed of the reasons of the arrest, nor were they notified of the judicial order of the detention. The Government did not rebut the allegation that no reason for the arrest was given at the time of arrest of the applicants. Therefore, the detention of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua was contrary in accordance with category I of the Methods of Work of the Working Group.

41. The Working Group received credible information that was not rebutted by the Government that the family members of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua have only obtained confirmation of their whereabouts more than one month after the initial detention and that the three detainees had limited access to their lawyers, including immediately after being taken into custody.

42. The Working Group has previously recognized that "Any persons deprived of their liberty shall 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 means, modes or format 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

¹ See A/HRC/33/66.

before the court and to obtain without delay appropriate remedies.”² Such rights of detainees were not respected by Chinese authorities in the present case.

43. Furthermore, the Working Group was also convinced that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were not informed of the reasons of their arrest, were not warranted access to lawyer immediately after the apprehension and were not able to bring procedures before a court to challenge the lawfulness of the detention. In view that the partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights, is of such gravity as to give the deprivation of liberty of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua an arbitrary character, in accordance with Category III of the Working Methods of the Working Group.

44. The Working Group notes that Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua were subject to various accusations. Firstly, they have served a 15-day administrative detention for “unlawful assembly”. Secondly, they were transferred to the Chibi City Detention Center, where on 8 June 2013 they were placed under criminal detention for “inciting subversion of state power”. They were officially arrested on 13 July 2013. Thirdly, the Chibi City People’s Procuratorate then changed the charge against them to “gathering a crowd to disrupt order of a public place.” The Working Group has previously found in similar cases that such a change of charges to the disadvantage of the accused constitutes a clear violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights.³

45. The Working Group also notes that the Government of China argued that Mr. Huang disregarded the national constitution and law through activities such as publicizing online and holding signs on the streets, expressing opinions that endangered national security and interests, maliciously attacking the Socialist system and inciting subversion of State power. In view of the Government, these actions have exceeded legal boundaries of freedom of speech, constituting the crime of inciting subversion of state power. Mr. Yuan Bing and Mr. Yuan Xiaohua were holding banner, signs, calling out slogans in a public place. They have also refused to cooperate and obstructed state public security management personnel, which was enforcing duty according to the law and severely disrupted public order. Both of these individuals fabricated images and information in order to upload these on the internet for dissemination, thus causing serious social public disorder. Their conducts constitute criminal acts of gathering a crowd to disrupt social order, picking quarrels and provoking troubles.

46. The Working Group considers that in accordance with international law States should take measures to protect freedom of expression from attacks that seek to suppress such right. Limitations to freedom of expression should not be employed for silencing calls to promote other human rights, such as the right to participate in the Government through freely chosen representatives.⁴ Furthermore, under any circumstance, can an attack on a person exercising of his or her freedom of opinion or expression be compatible with articles 19 and 29 of the Universal Declaration of Human Rights. Arbitrary arrest, torture, threats to life and killing could all constitute forms of such an attack. Journalists and persons who gather and analyse information on the human rights situation and who publish human rights-related reports, including judges and lawyers, should be protected from threats, intimidation and attacks because of their activities.

47. The Working Group also points out that the three individuals in question were arrested and sentenced to three years of imprisonment on the basis of the restrictive interpretation of the criminal law, in contravention to provisions in the international law aimed at protecting the freedom of expression, such as the ones contained in the Universal Declaration of Human Rights.

² See Principles 7 and 9 of the United Nations Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court.

³ See A/HRC/WGAD/2014/49, paragraph 20 and A/HRC/2015/39, paragraph 25.

⁴ See Article 21 of the Universal Declaration of Human Rights.

Disposition

48. Although Mr. Yuan Xiaohua was released, the Working Group, in accordance with paragraph 17(a) of its Methods of Work, reserves the right to render an opinion whether or not the deprivation of liberty was arbitrary, notwithstanding the release. In the light of the foregoing, the Working Group renders the following opinion:

49. The deprivation of liberty of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua is arbitrary and falls within categories I, II and III of the Methods of Work of the Working Group.

50. Consequent upon the opinion rendered, the Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

51. 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. Yuan Bing immediately and to accord Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua an enforceable right to compensation and other reparations, in accordance with international law.

52. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and to the Special Rapporteur on the Situation of Human Rights Defenders, for appropriate action.

Follow-up procedure

53. 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. Yuan Bing have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua;

(c) Whether an investigation has been conducted into the violation of Mr. Huang, Mr. Yuan Bing and Mr. Yuan Xiaohua'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.

54. 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.

55. 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.

56. 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.⁵

[Adopted on 19 April 2017]

⁵ See Human Rights Council resolution 33/30, paras. 3 and 7.