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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017

Opinion No. 59/2017 concerning Hu Shigen, Xie Yang and Zhou Shifeng (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 15 February 2017 the Working Group transmitted to the Government of China a communication concerning Hu Shigen, Zhou Shifeng and Xie Yang. The Government replied to the communication on 9 March and 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. Hu Shigen, born on 14 November 1955, is a national of China. His usual place of residence is Beijing. According to the source, Mr. Hu graduated from Beijing University with bachelor's and master's degrees in literature and later taught at the Beijing Language Institute (now Beijing Language and Culture University). A member of the Independent Chinese PEN Center, Mr. Hu took part in pro-democracy activities after events in Tiananmen Square in 1989. His activities included helping to establish the China Free Democratic Party and the China Free Labour Union. The source further reports that in 1994, Mr. Hu was sentenced to 20 years in prison for "organizing and leading a counter-revolutionary group" and "counter-revolutionary propaganda and incitement". He was released in 2008, having served 16 years of his sentence. It is alleged that Mr. Hu endured torture while in detention, at one point falling critically ill. Following his release, Mr. Hu resumed advocating for human rights, democracy and the rule of law. The source notes that in retaliation for these activities authorities placed Mr. Hu under surveillance, house arrest and detention. Mr. Hu is the leader of underground Christian churches in Beijing. He was also allegedly targeted in a crackdown aimed at lawyers and other civil society advocates that began in July 2015, known as the "709 crackdown".

5. Xie Yang, born on 4 February 1972, is a national of China. His usual place of residence is Changsha City, Hunan Province. According to the source, Mr. Xie is a lawyer who has worked on cases involving activists arrested during the "Jasmine crackdown" in 2011, members of the New Citizens' Movement and mainland supporters of the Hong Kong protests in 2014. Mr. Xie has also openly condemned assaults against human rights lawyers in retaliation for defending their clients. The source reports that Mr. Xie himself became a victim of such an assault when he represented the family of a man shot by the police in May 2015.

6. Zhou Shifeng, born on 18 November 1964, is a national of China whose usual place of residence is Beijing. According to the source, Mr. Zhou began to practise law in 1995 and in 2007 established the Beijing Fengrui law firm. He has represented clients in several high-profile cases. Under his leadership, the Beijing Fengrui law firm employed nearly one hundred lawyers, including several prominent human rights lawyers. He also hired activists as advisers to the firm. Mr. Zhou was detained during the 709 crackdown. Mr. Zhou also established the China Lawyers Defence Fund, which aimed at supporting families of lawyers who were experiencing pressure from authorities across the country.

7. The source reports that Mr. Hu disappeared on 10 July 2015, while he was on his way to an underground church to give a sermon. No notice or warrant was provided to his family. Mr. Hu was formally arrested on 8 January 2016. Before being formally arrested, Mr. Hu was put under "residential surveillance at a designated location", during which his location was not disclosed to his lawyers or family.

8. The source further reports that on 11 July 2015, at around 5.40 a.m., Mr. Xie, along with two colleagues, was seized by a dozen plainclothes police officials from the Hongjiang City Public Security Bureau in his hotel room in Hunan Province. None of the officers showed identification. However, before confiscating all Mr. Xie's belongings and taking him into custody, they did produce a summons for questioning. The police stated that Mr. Xie and his colleagues were suspected of "gathering a crowd to disrupt the order of a work unit" and needed to be taken to a police station to assist with the investigation. The source adds that later that day, Mr. Xie was planning to meet with victims of a forced demolition project. The day after his apprehension, Mr. Xie was transferred to a building at the National University of Defence Technology in Changsha City that has housed retired officials. This location was not disclosed to his lawyers or family. Mr. Xie was held in that building under residential surveillance at a designated location for the next six months, until he was formally arrested on 9 January 2016.

9. The source also reports that Mr. Zhou was detained on 10 July 2015, at around 7.30 a.m., by three unidentified men at the hotel where he was staying. A hood was placed over this head and he was taken away by force. No notice or warrant was shown to him. The

source notes that Mr. Zhou was detained after he met with his client, who had just been released from detention. Mr. Zhou was formally arrested on 8 January 2016. Before being formally arrested, he was put under residential surveillance at a designated location, during which his location was not disclosed to his lawyers or family.

10. The source reports that the authorities that ordered the detentions were the Tianjin Municipal Hexi District Public Security Bureau, the Tianjin No. 2 Intermediate People's Court (in the cases of Mr. Hu and Mr. Zhou) and the Changsha City Public Security Bureau (in the case of Mr. Xie). Mr. Hu and Mr. Zhou are currently incarcerated at Tianjin No. 1 Detention Centre, while Mr. Xie is detained at Changsha No. 2 Detention Centre. Mr. Hu and Mr. Zhou are being held by the Tianjin Municipal Public Security Bureau while Mr. Xie has been held by the Changsha City Public Security Bureau.

11. According to the source, Mr. Hu and Mr. Zhou were arrested on suspicion of "subversion of State power" and have been sentenced to 7 1/2 and 7 years' imprisonment, respectively. Mr. Xie was initially charged with "inciting subversion of State power" and, on 16 December 2016, was indicted for the additional crime of "disrupting court order".

12. The source cites the main legal basis for the detention as article 105 (1) of the Criminal Law of China (subversion of State power), which stipulates fixed-term imprisonment of not more than 3 years for participants, 3 to 10 years for active participants and not less than 10 years or life imprisonment for those who organize, plot or carry out a scheme to subvert State power or overthrow the socialist system, and ringleaders and others who commit major crimes. Additionally, the source recalls article 105 (2) of the Criminal Law (inciting subversion of State power), which provides for a fixed-term imprisonment of not less than 5 years, criminal detention, public surveillance or deprivation of political rights for those who incite others by spreading rumours or slanders or any other means to subvert State power or overthrow the socialist system.

13. The source submits that the detentions of the above-mentioned human rights defenders were unlawful and violated international human rights norms and Chinese legal and procedural standards. In all three cases, no notice or warrant for summoning for questioning issued by either the People's Procuratorate or the Public Security Bureau was shown, as stipulated by article 117 of the Criminal Procedure Law. Moreover, the detentions of the above-mentioned individuals violate principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

14. The source further argues that the detentions of the three human rights lawyers were acts of reprisal against them for their activism and for exercising their right to free association, given that all three have been human rights defenders for many years. Mr. Hu was a leading member of a church, while Mr. Xie had defended many politically sensitive cases since 2011. Mr. Zhou and his firm have taken on an increasing number of human rights cases in recent years and represented victims of religious persecution and detained human rights advocates. The source points out that Mr. Hu, Mr. Xie and Mr. Zhou are part of a loose civil society network of human rights lawyers and activists seeking to promote the rule of law in China. The source notes that this solidarity network was targeted by authorities in July 2015 and, consequently, all three human rights defenders have suffered because of their activism.

15. The source further notes that according to the court transcript of Mr. Hu's closed hearing, which took place in August 2016 at Tianjin No. 2 Intermediate People's Court, the procuratorate accused him of leading a religious group that worked on advocacy campaigns around "politically sensitive" cases. Mr. Zhou was accused of using the Beijing Fengrui law firm as a platform for launching these activities. Mr. Hu was accused of meeting with Mr. Zhou and a dozen other people at a restaurant in Beijing in February 2015 to organize such activities, a meeting that public security officers recorded. One of the "politically sensitive" cases was that of the family of a man shot by police in May 2015, whom Mr. Xie represented.

16. The source argues that the criminal charges against Mr. Hu, Mr. Xie and Mr. Zhou are a pretext used by authorities to punish them for their activism. Mr. Hu and Mr. Zhou have been convicted of subversion of State power while Mr. Xie was initially detained on charges of inciting subversion of State power. The source alleges the existence of a trend

whereby the Government suppresses citizens' efforts to establish independent political parties by arbitrarily applying criminal charges related to subversion of State power to any acts of association or expression. The source concludes that, by doing so, authorities send a strong signal that exercising and defending human rights are acts that "threaten national security".

17. The source further argues that there have been serious procedural and legal violations throughout the detention period in all three cases and during the trials of Mr. Hu and Mr. Zhou. For instance, it is stated that the ongoing incommunicado detention of Mr. Hu, Mr. Xie and Mr. Zhou is a grave violation of their legal rights. None of the families of the three individuals have received a detention notice nor have they been informed of their whereabouts, in violation of article 83 of the Criminal Procedure Law, which stipulates that a detainee's family must be notified within 24 hours of his or her detention. Mr. Hu had been missing for three months until his lawyer discovered in October 2015 that Tianjin police had transferred him on 7 August 2015 to residential surveillance at a designated location. The police nevertheless refused to disclose this location. Mr. Xie and Mr. Zhou were subjected to the same incommunicado residential surveillance and their families and lawyers were denied the right to communicate with and visit them. The source adds that such acts by authorities grossly violate principles 14, 15, 16, 17 and 18 of the Body of Principles.

18. Additionally, the source argues that Mr. Hu, Mr. Xie and Mr. Zhou were subjected to coerced removal of family-appointed lawyers and have allegedly accepted State-appointed attorneys, which constitutes a further breach of detainees' due process rights. The source adds that according to authorities, in January 2016, not long after his formal arrest, Mr. Zhou had fired his lawyer. However, no written communication was received from Mr. Zhou in this regard, and Mr. Hu's lawyers were not informed of any charges against him until the day of his trial in August. His lawyers were barred from attending his trial and later discovered that the Government had appointed a lawyer for him during the hearing. In the case of Mr. Xie, the source reports that authorities have repeatedly denied requests from his lawyers to meet with him. Authorities later claimed that Mr. Xie had appointed a different lawyer to represent him. The source argues that the lack of transparency about any changes in legal representation raises strong suspicions that police have abused their power by coercing or threatening detainees. The source submits that these violations breach Chinese law. In this context, the source cites article 32 of the Criminal Procedure Law, which stipulates that a criminal suspect has the freedom to choose his/her own legal counsel or to "entrust" the defence to certain individuals.

19. The source further reports that all three individuals faced obstacles to a fair trial, primarily by being held in prolonged pretrial detention without being brought before a judge for over a year (in the cases of Mr. Hu and Mr. Zhou). Mr. Xie has not yet received a verdict. The source argues that in Mr. Zhou's case, the Government has disregarded the principle of the presumption of innocence, as the Xinhua State media outlet accused his firm of running a "criminal syndicate" and, in July 2015, featured him on State television "confessing". The source notes that it is likely that this confession was obtained under duress.

20. According to the source, during Mr. Hu's and Mr. Zhou's trials in August 2016, the court failed to give the three-day advance public notice of trials, as required by Chinese law. Instead, the court posted trial notices either on the day of the trial or the night before. The court immediately convicted both men of subversion of State power after hearings that lasted just several hours, despite the seriousness of the charges. Additionally, both were represented by lawyers appointed by the Government. Authorities have prevented their chosen lawyers, supporters and family members from attending the trials by either detaining them or placing them under house arrest. According to the State media, Mr. Hu and Mr. Zhou pleaded guilty and promised not to appeal. There was no independent verification of their mistreatment over the previous year. The source argues that these are violations of the right to due process and a fair trial, contrary to principles 36, 37 and 38 of the Body of Principles.

21. The source highlights the disregard of domestic legal and procedural laws as well as international human rights standards demonstrated by authorities. For example, the source

affirms that Mr. Hu, Mr. Xie and Mr. Zhou were taken into police custody in what appeared to be de facto abductions, were held in secret locations, were denied access to a lawyer of their own choosing as well as access to their families, were vilified in State media and were not given public hearings by an independent court. The source also notes that lengthy pretrial detentions and the lack of access to legal counsel have made Mr. Hu, Mr. Xie and Mr. Zhou vulnerable to mistreatment, since a visit by a lawyer is a principal method for reporting mistreatment and a safeguard against it. Mr. Xie was granted a meeting with his lawyers in July 2016 on the condition that they would try to convince him to confess. Mr. Hu and Mr. Zhou have not been allowed to meet with their lawyers.

22. The source further reports that Mr. Xie was allegedly subjected to repeated torture and cruel punishment. For six months, during which the location of his detention was not disclosed to Mr. Xie's lawyers or family and they were not allowed to see him, he was reportedly subjected to torture and various forms of cruel mistreatment by officers, prosecutors and other officials. Torture techniques included sleep deprivation, long interrogations, beating, death threats and humiliation and other methods of psychological pressure. The apparent intention of authorities was to force Mr. Xie to confess to criminal behaviour and to incriminate other lawyers. As many as 40 individuals have allegedly been involved in inflicting torture and other cruel mistreatment on Mr. Xie since he was initially taken into custody.

23. The source reports that Mr. Xie was subjected to extensive violent interrogations that lasted 22 hours a day for a week. National security guards beat Mr. Xie, repeatedly blew cigarette smoke into his face, inflicted pain on his leg, which was recovering from a previous injury, and hung him from the ceiling. At one point, Mr. Xie lost consciousness.

24. The treatment of Mr. Xie caused him extreme distress, anxiety and fear for his life and the lives of his family members. Allegedly, at times the torture became so unbearable that Mr. Xie wanted to commit suicide. In response, authorities increased the number of individuals monitoring Mr. Xie in order to prevent him from doing so. Mr. Xie has sustained multiple injuries as a result of the torture and mistreatment, including swollen legs, numbness and dizziness. He has not received any comprehensive medical examination or treatment.

25. The source further reports that the violence against Mr. Xie continued when he was transferred to Changsha No. 2 Detention Centre in January 2016, despite the complaints of mistreatment in this facility that he had filed. In the detention centre, he was held with prisoners charged with crimes punishable with the death penalty. Inmates were instructed to monitor him in his cell and beat him with shackles, which resulted in a 10-cm-long wound to his head. At one point, an inmate infected with HIV/AIDS was put in Mr. Xie's cell (east No. 3 cell) for more than two months and everyone in the cell had to share the same sanitary items. No investigation has been conducted into these occurrences and authorities have since refused to allow Mr. Xie's lawyers to meet with him. The source adds that due to retaliatory measures taken by authorities at the detention centre, Mr. Xie has been undernourished and his health has deteriorated, and in particular that he has developed gastrointestinal complications.

26. Mr. Xie's lawyers and family have sought to hold the perpetrators of his torture accountable but have experienced pressure from authorities. On 20 January 2017, Mr. Xie and his lawyer filed a complaint with the Changsha Procuratorate against 10 officers who were involved in torturing and mistreating him during the six-month period of residential surveillance at a designated location. They demanded an investigation and that the officers be prosecuted for their suspected criminal acts. After these allegations were made, Mr. Xie's family was summoned for questioning by Changsha City officials and authorities at Hunan University. Authorities indicated that they would summon Mr. Xie's lawyer next.

27. The source adds that since Mr. Xie's detention in 2015, his family has faced intimidation from authorities, in addition to travel bans and threats. Mr. Xie's family was repeatedly told not to speak to media, not to advocate for his release and not to meet with other families who have been affected by the 709 crackdown against human rights lawyers.

28. The source points out that those detainees who are held in secrecy and denied visits by lawyers and notification of families, such as those placed under residential surveillance

at a designated location, face a higher risk of being subjected to torture. The residential surveillance at a designated location scheme is legal in China under article 73 of the Criminal Procedure Law, which provides that an individual accused of “national security” crimes, such as Mr. Xie, can be held in a “police-designated” location for up to six months. The source points out that the families of such detainees must still be informed of their status within 24 hours, but that the police do not have to tell families the exact whereabouts of the detainees. The source argues that the law fails to provide detainees held under residential surveillance at a designated location with basic legal protection, including access to lawyers and the ability to challenge the legality of their detention. The source recalls that the Committee against Torture expressed “grave concern” over article 73 of the Criminal Procedure Law and urged China to repeal the provision “as a matter of urgency” during its 2015 review of the Government’s implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹

29. According to the source, other lawyers have also reported Mr. Xie’s torture allegations to government authorities under article 108 (1) and (3) of the Criminal Procedure Law, which requests citizens to report incidents of torture to the local police and the procuratorate. These agencies are then required to open investigations into the cases. According to the lawyers, the accused Changsha police officers should be investigated for “torturing to force confession” and “using violence to extract evidence” under article 247 of the Criminal Law. In addition, article 55 of the Criminal Procedure Law states that procurators must investigate accusations of forced confessions. The source recalls that under article 12 of the Convention against Torture, to which China has been a party since 1988, the Government is obliged to conduct prompt and impartial investigations into accusations of acts of torture committed by State agents.

30. The source adds that domestic remedies sought through legal channels have proven to be futile. The lawyers for Mr. Hu, Mr. Xie and Mr. Zhou received no response to repeated requests for meetings or complaints filed with Public Security bureaus, procuratorates and detention centres. In addition to being denied visitation rights, Mr. Zhou’s lawyer was summoned for questioning by the Changsha City Public Security Bureau and warned by the Changsha City Judicial Department not to travel to Beijing. After Mr. Zhou was formally arrested in January 2016, his lawyer went to Tianjin No. 1 Detention Centre and asked to see his client. Authorities denied the request, claiming that Mr. Zhou had engaged another lawyer to represent him. This claim was never confirmed in writing by Mr. Zhou.

31. Mr. Xie’s lawyers were repeatedly denied the possibility to meet with their client on the grounds that he was being investigated for a crime in the “endangering national security” category and a meeting with lawyers could allegedly “hinder the investigation” or “leak State secrets”, as stipulated in article 37 of the Criminal Procedure Law. From 17 September to 10 October 2016, Mr. Xie’s lawyer visited Changsha City No. 2 Detention Centre every day asking to see his client, but each time authorities claimed that Mr. Xie was being interrogated by a prosecutor. On 10 October, the police told Mr. Xie’s lawyer that he had hired a new lawyer. This claim was not confirmed by Mr. Xie. Lawyers, families, supporters and local organizations have posted public calls for the release of the three defenders and have unsuccessfully tried to visit them at the detention centres on a number of occasions. Families and supporters also tried to attend Mr. Hu’s and Mr. Zhou’s trials, but have suffered reprisals from authorities in the form of harassment, house arrest or detention.

32. The source concludes that Mr. Xie, Mr. Zhou and Mr. Hu have been detained solely because of the peaceful exercise of their rights guaranteed under the Universal Declaration of Human Rights. The circumstances of their detentions satisfy both category II and category III arbitrary detentions. Furthermore, the source submits that forced confession and torture should not have occurred, as stipulated in articles 1, 2 and 16 of Convention against Torture, which China has signed and ratified.

¹ See CAT/C/CHN/CO/5, paras. 14-15.

Response from the Government

33. The Working Group addressed a communication to the Government requesting detailed information about the current situation of Mr. Zhou, Mr. Hu and Mr. Xie. 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.

34. In its response, the Government stated that on 4 August 2016, Mr. Zhou was convicted of subverting State power and sentenced to seven years in prison by Tianjin No. 2 Intermediate People's Court. He was also deprived of his political rights for five years. Mr. Zhou pleaded guilty and told the court he would not appeal. On 3 August, Mr. Hu was sentenced by Tianjin No. 2 Intermediate People's Court to 7 1/2 years in prison after being convicted of subverting State power. He was also deprived of his political rights for five years. Mr. Hu pleaded guilty and said he would not appeal.

35. On 16 December 2016, Mr. Xie was prosecuted for suspected incitement of subversion of State power and disrupting court order. During the investigation and prosecution process, the litigation rights of Mr. Xie were guaranteed by public security and procuratorial organs in accordance with the law. Mr. Xie's lawyers have met Mr. Xie several times. His case is still under judicial consideration in accordance with the law.

36. The Government states that the three individuals in question were dealt with by the judicial organs not because they were "rights protection" lawyers or because they defended the legitimate rights of others in the courts, but solely because, under the pretence of "defending rights", they have long been engaged in criminal activities aimed at subverting the basic national system established under the Constitution of China.

37. Through open trials, it has been determined that Mr. Zhou and others colluded with criminals, plotted to subvert State power and promoted systematic ideologies, methods and steps of State subversion. Moreover, they used cases and incidents that had drawn the attention of the public; plotted, organized and instigated others to conduct illegal gatherings and provoke disruption at judicial organs and in other public venues; incited public confrontation against and hatred of judicial organs and the State, online and offline; and engaged in activities aimed at subverting State power and overthrowing the basic national system. Acts of the three individuals in question constitute serious violations of the Criminal Law.

38. All the defendants pleaded guilty and repented their wrongdoing in court. The Government respects and protects the human rights of its citizens. Torture is forbidden by Chinese laws, including the Criminal Law and the Criminal Procedure Law. The Criminal Procedure Law clearly stipulates that the extortion of confessions by torture and other illegal evidence-gathering methods such as threats, enticement and deception are strictly prohibited; no person may be forced to prove his own guilt. The Criminal Law stipulates that judicial employees who extort a confession from criminal suspects or defendants by torture or who use force to extract testimony from witnesses are to be sentenced to criminal detention for up to three years; those causing injuries to others, physical disablement or death are to be convicted and severely punished according to the penalties for the crimes of intentional injury and intentional murder. In addition, the People's Police Law stipulates that police officials may not extort confessions through torture or mistreat suspects through corporal punishment.

39. The above-mentioned cases were dealt with by Chinese judicial authorities in strict accordance with the laws and procedures. The legitimate rights of the defendants and criminal suspects, including the right to a defence and the right to complain, have been fully guaranteed.

40. The trial of Mr. Zhou and others was open to the public and all the defendants admitted in court that their legitimate rights had been safeguarded. They expressed gratitude to the judicial organs for the humane care during the judicial process. The so-called allegation of "extortion of confession by torture" is therefore fabricated and groundless.

41. Regarding the ongoing case of Mr. Xie, the Government notes that his litigation rights and other legitimate rights are safeguarded by the judicial organs in strict accordance with the law.

42. The Government therefore submits that Mr. Hu, Mr. Zhou and Mr. Xie were all tried pursuant to the law for their conduct, which violated Chinese criminal law. In August 2016, Mr. Hu and Mr. Zhou were both convicted of subversion of State power and sentenced to 7 1/2 and 7 years' imprisonment, respectively, by Tianjin No. 2 Intermediate People's Court. They were also deprived of their political rights for five years. Because Mr. Xie was suspected of disrupting the court order and inciting subversion of State power, the public security organs of Hunan have put him under designated residential surveillance. This step was taken in July 2015 as a compulsory criminal measure in accordance with the law. Hunan prosecutorial organs approved his arrest in January 2016 and, in December of the same year, transferred him to the Changsha City Intermediate People's Court for prosecution.

Further comments from the source

43. The source strongly refutes the points made by the Government and affirms that the detentions of the three individuals in question have been principally acts of reprisal for their activism and the exercise of their right to free association. Lawyers and the activists in question have taken on an increasing number of human rights cases in recent years and represented detained human rights advocates. They are part of a loose civil society network of rights lawyers and activists seeking to promote the rule of law in China. This network of solidarity for the defence of human rights was targeted by authorities in July 2015, when over 300 persons were abducted, detained, summoned or questioned in a massive nationwide police operation that became known as the 709 crackdown. Lawyers and the activists in question were among the primary targets of the crackdown because they had taken on some of the most controversial human rights cases. They had engaged in advocacy campaigns around "politically sensitive incidents", during which they jointly spoke about rights abuses or publicly called for legal reforms.

44. The source therefore strongly refutes the accusations against these individuals, particularly that "they have long been engaged in criminal activities, under the pretence of 'defending rights'". The source notes that the Government has publicly smeared the names of human rights lawyers and activists via the State media in order to delegitimize their activities and undermine their professional reputations. In these cases, the portrayal of human rights lawyers and activists as "criminals" started soon after the launch of the 709 crackdown. Without any official notice or explanation given to family members or lawyers, in addition to denying detainees access to legal counsel, State media sources, such as Xinhua, published articles claiming that police had "broken up a criminal gang" and that those detained were "implicated in serious crimes". The use of the State media has "guided" public opinion and vilified human rights lawyers, which has had the effect of "trying" the detainees and publicly depriving them of the presumption of innocence.

45. The source also notes that Chinese authorities have broadcast and published "confessions" in the State media to vilify detained lawyers and activists. Mr. Zhou is one of several detained Chinese human rights defenders whose videotaped "confession" was shown on television. In addition, Mr. Xie was interviewed by State media personnel under circumstances that his lawyers could not confirm, a practice that violates both Chinese law and international human rights norms. The lawyers have not been granted their due process rights and were essentially found guilty in the eyes of the public without a trial and without having met with their lawyers, conditions that strongly suggest that their "confessions" involved coercion, including psychological pressure and, possibly, torture. One of the lawyers who was detained and subsequently released during the 709 crackdown testified that interrogators had pressured him and that he was thus under immense duress when he "smeared" the name of Mr. Zhou and of others in an interview orchestrated by the Government.

46. The source submits that this kind of cruel, inhumane and unlawful treatment is just one method that authorities have used to denounce individuals or groups within the civil society and to control public discourse about "political threats" perceived by the

Government. The source argues that it is inhumane and cruel to put a detainee on television to “confess” before any hearing by an independent court has taken place, in violation of international standards.

47. Furthermore, the source notes that contrary to what the Government has claimed in its response, the legal and human rights of detainees have not been protected from the beginning and throughout the duration of their detentions. Egregious violations of legal rights include incommunicado detention during residential surveillance at a designated location for all the detainees. The families of the individuals received no notice about their whereabouts after they were seized, in violation of article 83 of the Criminal Procedure Law. Residential surveillance at a designated location, which is stipulated under article 73 of the Criminal Procedure Law, has been widely criticized as constituting enforced disappearance. The source adds that the foregoing circumstances grossly violate principles 14, 15, 16, 17 and 18 of the Body of Principles.

48. All three individuals concerned faced obstacles to a fair trial, primarily by being labelled in the State media as “criminals” before any hearing had taken place. In the case of Mr. Zhou, his “confessions” to criminal allegations were broadcast by the State media. These “confessions” also violate article 12 of the Criminal Procedure Law, which stipulates that suspects cannot be pronounced guilty without having been judged as such by a court.

49. The source further submits that Tianjin Municipal No. 2 Intermediate People’s Court, which tried and convicted lawyer Zhou and activist Hu, failed to give three-day advance public notices of the trials, as required by Chinese law. Instead, the court posted trial notices on its Weibo account either on the day of the trial or the night before. Further, the source observes that given the fact that defence lawyers of the detainees’ choice, family members and independent observers were absent during trials, statements made by defendants in court could not be verified as being declarations made without duress. The court quickly convicted both men of subversion of State power, each in hearings which lasted for about three hours despite the seriousness of the charges the individuals faced.

50. Mr. Hu was convicted of subversion of State power on 3 August 2016 and sentenced to 7 1/2 years’ imprisonment. Mr. Hu pleaded guilty and promised not to appeal his sentence, according to the State media. Police officials had taken his brothers into custody on 31 July, apparently to prevent them from attending the trial, while his family-appointed lawyer was never granted access to Mr. Hu. On 4 August, Mr. Zhou was sentenced to 7 years’ imprisonment for the same crime and by the same court. According to State media, Mr. Zhou also pleaded guilty and stated that he would not appeal the verdict. Mr. Zhou’s family was held under house arrest to prevent them from attending his trial and the Tianjin police detained some of his supporters. Mr. Zhou was never granted access to his family-appointed lawyer, whom authorities claimed he had fired in January 2016, without providing written verification of any such decision.

51. The source also observes that while it is true that torture is officially forbidden under Chinese law, as the Government claimed in its response, authorities in these cases have failed to enforce measures meant to prohibit ill-treatment and coerced confessions.

52. Forty individuals have been implicated in committing torture and other cruel mistreatment against Mr. Xie. The names and positions of over half of the suspected perpetrators have been identified and several of them are officials of municipal and provincial procuratorates.

53. The source further asserts that access to legal counsel is a paramount measure of torture prevention. However, Chinese authorities have failed to ensure this basic right in all these cases.

Discussion

54. The Working Group welcomes the prompt response of the Government to its communication and considers such cooperation to be a sound basis for continuing its dialogue with the Government on issues of arbitrary detention.

55. Mr. Hu is member of the Independent Chinese PEN Center and took part in pro-democracy activities after events in Tiananmen Square in 1989. Since 2008, after serving 16 years in prison, he has been advocating for human rights, democracy and the rule of law.

56. On 10 July 2015, Mr. Hu was detained on his way to an underground church to give a sermon and was put under residential surveillance at a designated location for six months. During this period, his location was not disclosed to his lawyers or family. Mr. Hu was formally arrested on 8 January 2016.

57. Mr. Xie is a lawyer who defended activists arrested during the Jasmine crackdown in 2011, belonged to the New Citizens' Movement and was among mainland supporters of the Hong Kong protests.

58. On 11 July 2015, Mr. Xie was detained, along with his two colleagues, in his hotel room in Hunan Province. Mr. Xie was held under residential surveillance at a designated location for the next six months, until he was formally arrested on 9 January 2016.

59. Mr. Zhou established the China Lawyers Defence Fund to support the families of lawyers experiencing pressure from authorities across the country.

60. On 10 July 2015, Mr. Zhou was detained by three unidentified men at his hotel. A hood was put over his head and he was taken away by force. No notice or warrant was reportedly shown. Mr. Zhou was formally arrested on 8 January 2016.

61. Mr. Hu, Mr. Zhou and Mr. Xie were all convicted of subverting State power. Mr. Hu and Mr. Zhou were sentenced to 7 1/2 years' and 7 years' imprisonment, respectively. Mr. Xie was indicted for the additional crime of disrupting court order.

62. The Working Group is pleased that the Government has responded to its letter. Nonetheless, it regrets that it has not responded in an explicit and comprehensive manner to all the allegations cited in the communication, including that the three individuals were detained for several months without formal charges being brought against them; that their confessions were obtained under torture and duress; and that lawyers engaged by the family of the defendants were unable to intervene in the proceedings.

63. The Working Group is thus convinced that Mr. Hu, Mr. Zhou and Mr. Xie were not informed of the reasons for their arrest; were not brought immediately before a judge; were not informed of their right to legal counsel of their choice; were not granted access to their legal representatives; were subjected to incommunicado detention throughout periods of residential surveillance at a designated location by the police; and that their families were not informed of their whereabouts for several months. Furthermore, the Working Group is concerned at serious allegations of torture leading to forced confessions; at the failure of the authorities to respect the right to be presumed innocent; and, finally, at the fact that Mr. Hu, Mr. Zhou and Mr. Xie were tried in hearings that were closed to the public and lasted only a few hours.

64. However, the Working Group is not convinced by the submission of the Government that the accused individuals confessed to the crimes of which they were accused. The Government provided no substantial information that confessions occurred during the criminal proceedings, before a judge and in full respect of due process guarantees. Following the 2015 review of the fifth periodic report of China, the Committee against Torture expressed concern over reports "indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions".²

65. The Working Group notes that the detention location was not disclosed to the lawyers or family members of Mr. Hu, Mr. Zhou and Mr. Xie pursuant to article 73 of the Criminal Procedure Law, which provides that an individual accused of national security crimes can be held in a police-designated location for up to six months. The Working Group recalls that the Committee against Torture expressed "grave concern" about article 73 and urged China to repeal the provision "as a matter of urgency" during its review in

² Ibid., paras. 20-21.

2015. In view of the allegations of torture submitted by the source, the Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration and, if necessary, appropriate action.

66. The Working Group considers that the detentions of Mr. Hu, Mr. Zhou and Mr. Xie took place in total or partial non-observance of the international norms relating to the right to a fair trial, in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights. The Working Group therefore concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivations of liberty of Mr. Hu, Mr. Zhou and Mr. Xie an arbitrary character, thus falling within category III.

67. Furthermore, the Working Group finds that Mr. Hu, Mr. Zhou and Mr. Xie were detained in violation of articles 19 and 20 of the Universal Declaration of Human Rights because the detentions were based on their activities to promote and protect human rights, and took place as part of the 709 crackdown against lawyers and human rights defenders. The Working Group therefore concludes that the deprivations of liberty of Mr. Hu, Mr. Zhou and Mr. Xie fall within category II.

68. The Working Group would like to point out that the legal representation of activists and the defence of human rights are activities protected under both the Universal Declaration of Human Rights and 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. The Working Group will therefore refer the matter to the Special Rapporteur on the situation of human right defenders for further consideration of the circumstances of the case and, if necessary, appropriate action.

69. Given the continuing international concern regarding the deprivation of liberty of human rights advocates, the Government may 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 a country visit to constructively assist the Government of China in this process. Furthermore, the Working Group encourages the Government of China to ratify the International Covenant on Civil and Political Rights.

Disposition

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

The deprivation of liberty of Hu Shigen, Xie Yang and Zhou Shifeng, being in contravention of articles 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories II and III.

71. The Working Group requests the Government to take the steps necessary to remedy the situation of Hu Shigen, Zhou Shifeng and Xie Yang without delay and bring it into conformity with international standards and principles, including those set out in the Universal Declaration of Human Rights.

72. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Hu Shigen, Zhou Shifeng and Xie Yang immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

73. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Special Rapporteur on the situation of human right defenders.

Follow-up procedure

74. 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. Hu, Mr. Xie and Mr. Zhou have been released and, if so, on what date(s);
- (b) Whether compensation or other reparations have been made to Mr. Hu, Mr. Xie and Mr. Zhou;
- (c) Whether an investigation has been conducted into the violation of Mr. Hu's, Mr. Xie's and Mr. Zhou'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.

75. 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.

76. 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.

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.³

[Adopted on 24 August 2017]

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