
Advance Edited VersionDistr.: General
14 February 2020

Original: English

Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019****Opinion No. 76/2019 concerning Chen Shuqing and Lü Gengsong (China)**

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

2. In accordance with its methods of work (A/HRC/36/38), on 3 July 2019 the Working Group transmitted to the Government of China a communication concerning Chen Shuqing and Lü Gengsong. The Government submitted a late response on 25 September 2019. 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. Chen Shuqing, born on 26 September 1965, is a citizen of China. Mr. Chen usually resides in the city of Hangzhou, Zhejiang Province.

5. According to the source, Mr. Chen is a dissident and freelance writer who has faced persecution by the authorities. In 1989, when he was a student at Hangzhou University, Mr. Chen participated in the pro-democracy protests in Tiananmen Square in Beijing. From 1998, after the Government declared the Democracy Party of China illegal, Mr. Chen has served as the director of the national organizing committee of this party. Mr. Chen served a four-year sentence for “inciting subversion of State power” for posting a pro-democracy essay online. After his release in 2010, Mr. Chen resumed his participation in demonstrations and pro-democracy activities, and as a result, was repeatedly summoned and questioned by the police.

6. The source reports that on 11 September 2014, Mr. Chen was detained in his home in Hangzhou by City Public Security Bureau police officers, who searched his home and seized a computer hard drive, a mobile telephone, some writings and other items.

7. The source further reports that officers presented a warrant issued by the Hangzhou City Public Security Bureau. The reason imputed by the authorities for the arrest was subversion of State power. Article 105 (1) of the Criminal Law of China (“subversion of State power”) stipulates a fixed term of 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 the scheme of subverting State power or overthrowing the socialist system, as well as for ringleaders and others who commit major crimes.

8. The source submits that Mr. Chen was formally arrested on 21 October 2014 and imprisoned on 14 June 2016, after having been sentenced to 10-and-a-half years in prison for subversion of State power by the Hangzhou City Intermediate People’s Court. Mr. Chen is expected to be released on 10 March 2025, at the completion of the sentence. Mr. Chen is currently being held in Qiaosi prison in the city of Hangzhou, Zhejiang Province. He was previously held at the Hangzhou City Detention Centre.

9. According to the source, Mr. Chen has appealed his conviction and prison sentence with the Higher People’s Court of Zhejiang Province, which upheld the original verdict on 1 November 2016. In addition, in May 2018, Mr. Chen submitted a complaint to the authorities to challenge the legality of his prison sentence. The source states that it is not known whether the authorities have issued an official response to the complaint.

10. Lü Gengsong, born on 7 January 1956, is a citizen of China. Mr. Lü usually resides in Hangzhou, Zhejiang Province.

11. The source reports that Mr. Lü is a human rights activist, a dissident and writer who has faced persecution by the authorities. In 1989, while he was teaching at Zhejiang Higher Professional School of Public Security, Mr. Lü took part in the pro-democracy movement. In 1993, he was fired from his teaching position because of his activism. After the dismissal, Mr. Lü worked as a freelance writer and became affiliated with the banned Democracy Party of China. Mr. Lü frequently wrote articles critical of government policies, human rights violations and the country’s political system.

12. In 2007, Mr. Lü was arrested on suspicion of “inciting subversion of State power” because of the essays he wrote for foreign news websites. In 2008, he was sentenced to four years in prison. In the same year, Mr. Lü received the Imprisoned Writer Award from the Independent Chinese Pen Center. The source reports that after his release from prison in 2011, the police subjected Mr. Lü to harassment, intimidation and short-term detentions due to his ongoing pro-democracy activities. The authorities have searched his home on many occasions, confiscated computers and documents, and kept him under tight surveillance.

13. On 7 July 2014, Mr. Lü was detained by City Public Security Bureau police officers in Hangzhou, Zhejiang Province. On the same day, more than 20 police officers searched

his home and confiscated many items, including seven computer hard drives, six USB keys and five mobile telephones.

14. The source reports that, as in the case of Mr. Chen, officers presented Mr. Lü with a warrant issued by the Hangzhou City Public Security Bureau. The reason for the arrest imputed by the authorities was the subversion of State power.

15. The source submits that Mr. Lü was formally arrested on 13 August 2014, and imprisoned on 14 June 2016, after having been sentenced to 11 years in prison for subversion of State power by the Hangzhou City Intermediate People's Court. Mr. Lü is expected to be released on 6 July 2025, at the completion of the sentence. Mr. Lü is currently being held at Changhu Prison in the city of Huzhou, Zhejiang Province. He was previously held at the Hangzhou City Detention Centre.

16. According to the source, Mr. Lü has appealed his conviction and prison sentence with the Higher People's Court of Zhejiang Province, which upheld the original verdict on 1 November 2016. His lawyer was not allowed to meet with him or to be present during the appeal's hearing.

17. The source submits that the persecution of Mr. Chen and Mr. Lü for their roles within the Democracy Party of China has been part of the broader trend of suppression of members of this banned party. It is reported that, between April and August 2014, in addition to Mr. Chen and Mr. Lü, the Hangzhou police in Zhejiang Province summoned or detained six other members of the party. The police accused these individuals of various criminal offences, including inciting subversion of State power.

18. The source also reports that prior to having been taken into police custody in 2014, Mr. Chen and Mr. Lü had been both subjected to harassment by the police. During the period from February 2014 until the detention of Mr. Lü in July of the same year, the authorities had reportedly restricted his movement and put his house under the constant surveillance. Furthermore, the police had twice summoned Mr. Chen for questioning, in May and August 2014. These summons occurred after Mr. Chen had signed an open joint statement calling for the release of detained human rights defenders and had posted information online about the detention of Mr. Lü and the fact that he was being denied access to a legal counsel.

19. The source concludes that the criminal prosecution of Mr. Chen and Mr. Lü constitutes political retaliation for their exercise of the universal rights of peaceful expression and association. In particular, the authorities had allegedly reacted to essays attributed to Mr. Chen and Mr. Lü that were published on overseas websites and to their activities with the Democratic Party of China, including the meetings they had attended with other dissidents.

20. The source reports that according to the indictment against Mr. Chen, his alleged crimes were his involvement in the Democracy Party of China and the publication of essays on foreign websites. The subjects of those essays were pro-democracy and Party advocates, many of whom had been hospitalized or detained. In its verdict against Mr. Chen, the Hangzhou City Intermediate People's Court stated that he had published 14 articles on foreign websites and had issued proclamations, statements and articles that attacked and smeared State power and the socialist system.

21. The source also reports that, in the verdict against Mr. Lü, the same court determined that he had written and published numerous times articles on overseas websites, had gathered together members of the Zhejiang Chapter of the Democracy Party of China and had thus implemented plans to subvert the State power of China and overthrow the socialist system.

22. The source argues that the above acts by the authorities constitute violations of the rights of Mr. Chen and Mr. Lü to peacefully exercise freedom of expression and association. The source submits that these violations fall under category II of the Working Group.

23. Moreover, the source states that Mr. Chen and Mr. Lü were subjected to procedural violations of their legal rights from the time of their detention and throughout their court

proceedings. For weeks after the authorities had taken Mr. Lü into custody, his lawyer was not allowed to visit him at the Hangzhou City Detention Centre. The source notes that Mr. Lü was accused of a crime that fell into the category of endangering State security, which allowed the authorities to deprive him access to a legal counsel for more than 48 hours, which is the limit set for most other offences by article 37 of the Criminal Procedure Law of China. The family of Mr. Lü was not allowed to visit him until December 2016, nearly two-and-a-half years after he had been taken into custody. Reportedly, Mr. Lü's family is now able to meet him once a month in prison.

24. According to the source, the authorities initially set a trial date for 23 July 2015, for both Mr. Chen and Mr. Lü. However, they postponed proceedings without providing an explanation to the lawyers or families of the two defendants. Mr. Chen and Mr. Lü were tried separately, but by the same court and on the same date, 29 September 2015.

25. The source reports that, during the court hearing for Mr. Lü, the judge interrupted him before he could finish reading his defence statement. The families of Mr. Chen and Mr. Lü were allowed to attend the proceedings. However, the authorities did not allow other supporters to attend.

26. The source also states that Mr. Chen and Mr. Lü were both in custody for more than a year before they were tried. The source argues that this constitutes a prolonged pretrial detention according to international standards. The source specifies that the trials of both defendants began more than seven months after they were indicted on 17 February 2015, and the court issued the verdicts over nine months after hearing the cases. The source notes that delays in both the first-instance trials and the issuance of verdicts violate provisions of the Criminal Procedure Law of China. The source concludes that the above circumstances amount to arbitrary deprivation of liberty falling under category III of the Working Group.

27. Additionally, the source reports that both Mr. Chen and Mr. Lü experienced health problems while in detention. The source expresses concern that the authorities have deprived them of medical treatment, in violation of national and international law and standards, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Basic Principles for the Treatment of Prisoners.

28. According to the source, Mr. Chen has high blood pressure and has lost four teeth since being taken into custody in September 2014. He has reportedly been able to exercise and make recommendations to the prison management on how to improve his treatment, but it is unclear if his treatment has, in fact, improved.

29. The source also reports that Mr. Lü's health condition has deteriorated owing to various serious illnesses and could continue to deteriorate to a critical level. More specifically, it is reported that Mr. Lü had contracted an oral ulceration, causing the loss of some of his teeth. He is also suffering from diabetes, high blood pressure, heart disease and necrosis of the gall bladder, causing gallstones. Mr. Lü has lost a significant amount of weight as a result of both the bad quality of prison food and the difficulty he has eating as a result of his dental problems.

30. The authorities had allegedly not allowed Mr. Lü to receive medical treatment for these conditions outside the prison. The authorities had planned to allow Mr. Lü to undergo gall bladder surgery. However, the procedure has still not been performed. Reportedly, a prison doctor had recommended delaying the surgery, since Mr. Lü's gall bladder was still partially functioning. Mr. Lü has consistently been given medication for high blood pressure and diabetes.

31. Finally, the source reports that prison authorities mistreated Mr. Lü in retaliation for his refusal to admit guilt to his criminal charges. His overall treatment has, nevertheless, improved. Initially, he had been kept under constant monitoring by guards. His shoes were confiscated at night in order to restrict his movement and he was exposed to cold temperatures, being provided with only a thin blanket. The prison authorities had not previously allowed Mr. Lü's family to provide him with clothing or with food. In addition, he had been deprived of reading and writing materials and blocked from using his own

money to buy daily necessities. It is reported that the authorities eventually lifted these restrictions.

Response from the Government

32. On 3 July 2019, 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, before 3 September 2019, detailed information about the current situation of Mr. Chen and Mr. Lü and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Chen and Mr. Lü's physical and mental integrity.

33. The Government submitted its response on 25 September 2019, a total of 22 days after the deadline for responding. The response is therefore considered late, and the Working Group cannot accept the response as if it had been presented within the time limit. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the methods of work of the Working Group. The response was nevertheless transmitted to the source on 18 October 2019. The source provided additional comments on 29 October 2019. Under paragraph 16 of its methods of work, the Working Group may render an opinion on the basis of all the information it has obtained.

Discussion

34. 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 (A/HRC/19/57, para. 68).¹ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

35. The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.²

36. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international and regional instruments.³ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁴

¹ Opinions No. 50/2017, para. 54; No. 61/2017, para. 26; No. 62/2017, para. 45; No. 69/2017, para. 24; No. 70/2017, para. 48; No. 75/2017, para. 34; No. 79/2017, para. 47; No. 11/2018, para. 41; No. 19/2018, para. 25; No. 35/2018, para. 24; No. 36/2018, para. 37; No. 37/2018, para. 27; No. 40/2018, para. 42; No. 43/2018, para. 71; No. 44/2018, para. 78; No. 45/2018, para. 39; No. 46/2018, para. 45; No. 52/2018, para. 68; No. 67/2018, para. 69; No. 70/2018, para. 31; No. 75/2018, para. 57; No. 78/2018, para. 67; No. 79/2018, para. 68; and No. 90/2018, para. 29.

² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports 2010*, para. 55; and opinions No. 41/2013, para. 27; and No. 59/2016, para. 61.

³ General Assembly resolution 72/180; Commission on Human Rights resolutions 1991/42 and 1997/50; Human Rights Council resolutions 6/4 and 10/9; and opinions No. 41/2014, para. 24; No. 28/2015, para. 41; No. 76/2017, para. 62; No. 83/2017, paras. 51 and 70; No. 88/2017, para. 32; No. 94/2017, para. 59; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.

⁴ Opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 33/2015, para. 80; No. 94/2017, paras. 47–48; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.

Category I

37. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

38. The source alleges, and the Government does not contest, that neither Mr. Chen nor Mr. Lü was brought promptly before a judge, within 48 hours of their arrests as per the international standard set out in the Working Group's jurisprudence.⁵ Furthermore, neither of them were afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of the detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex) indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that it is essential in order to preserve legality in a democratic society (paras. 2–3).

39. The Working Group has considered a number of cases concerning the deprivation of liberty by the Government under article 105 of the Criminal Law, which is aimed at punishing those who organize, plot or carry out the scheme of subverting State power or overthrowing the socialist system and those who incite others by spreading rumours or through the use of slander or any other means of subverting State power or overthrowing the socialist system. The individuals in these prior cases, as with Mr. Chen and Mr. Lü, were deprived of their liberty for online and offline comments or activities expressing their political views. For this reason, the Working Group has in the past found prosecution and imprisonment under article 105 of the Criminal Law to be arbitrary when they result from the legitimate exercise of fundamental human rights.⁶

40. The Working Group has made clear in its jurisprudence that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.⁷

41. Article 105 of the Criminal Law, in an overly broad and vague manner, criminalizes the legitimate exercise of human rights. By asserting that article 105 violates international human rights and lacks legal basis, the Working Group reiterates that the freedom of expression is a core tenet of a free and democratic society.⁸

42. The Working Group wishes to further elaborate on the detention under article 105 of the Criminal Law in view of the principle of legality and on its effect on Mr. Chen and Mr. Lü's case.

43. 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.⁹

44. In this regard, the Working Group finds that expressions such as “subverting State power or overthrowing the socialist system” and “incites others by spreading rumours or slanders or any other means to subvert State power or overthrow the socialist system” are vaguely and broadly worded. In that connection, the Working Group finds that such expressions cannot be considered as abiding by the principle of certainty (*lex certa*) – one

⁵ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

⁶ Opinion No. 36/2019, paras. 41–45.

⁷ Opinions No. 14/2017, para. 49 (detention pursuant to a law that criminalized consensual same-sex relations between adults); No. 43/2017, para. 34 (detention pursuant to a law that criminalized conscientious objection to military service); No. 40/2018, para. 45; No. 69/2018, para. 21. In all of those cases, the Working Group found that the detention lacked a legal basis and was therefore arbitrary under category I.

⁸ *Ibid.* See also opinion No. 20/2017, paras. 49–52.

⁹ Opinion No. 62/2018, para. 57.

of the core elements of the principle of legality – since they could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law guaranteed by the principle of legality contained in article 11 (2) of the Universal Declaration of Human Rights.

45. In the Working Group’s view, the principle of legality also requires the substance of penal law to be due and appropriate in a democratic society that respects human dignity and rights. Hence, the penal punishment must, at the minimum, satisfy the principle of necessity, the prerequisite of wrongdoing and the principle of guilt in the interest of formal and material justice.¹⁰

46. In this regard, the Working Group considers that the provisions of article 105 of the Criminal Law, which provide for a fixed-term of imprisonment of not less than five years for the exercise of fundamental freedoms, including those of expression and association, are neither necessary to protect public or private interests against injury nor proportionate to guilt. Punishment should fit the crime, not the criminal.

47. For these reasons, the Working Group considers that Mr. Chen and Mr. Lü’s deprivations of liberty lack a legal basis and are thus arbitrary, falling under category I.

Category II

48. The Working Group recalls that the rights to freedom of opinion and expression; freedom of peaceful assembly and association; and freedom of participation in political and public affairs are among the most fundamental human rights, deriving from the inherent dignity of the human person, reaffirmed and ensured by the international community in articles 19, 20 and 21 of the Universal Declaration of Human Rights.

49. The Working Group notes that Mr. Chen and Mr. Lü have worked as freelance writers and that they were also political dissidents and had thus been repeatedly subjected to persecution for their exercise of the freedom of opinion and expression and the freedom of peaceful assembly and association, including their participation in the 1999 pro-democracy movements in China. Mr. Chen and Mr. Lü have also been leading, or at least affiliated with, the Democracy Party of China that has been declared illegal by the Chinese authorities since 1998.

50. In its late response, the Government does not contest the source’s claim that Mr. Chen and Mr. Lü have been charged, tried and imprisoned for their online and offline political activities and their role in the banned Democracy Party of China.

51. Article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one’s rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

52. In the view of the Working Group, the peaceful exercise by Mr. Chen and Mr. Lü of their right to freedom of expression and association and to participation in political and public affairs cannot reasonably qualify as posing threats against morality, public order and the general welfare in a democratic society.

53. The Working Group is, therefore, of the opinion that Mr. Chen and Mr. Lü’s deprivation of liberty is arbitrary, falling within category II, as it violates articles 19, 20 (1) and 21 of the Universal Declaration of Human Rights.

Category III

54. Given its finding that Mr. Chen and Mr. Lü’s deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that their detentions and trials should never have taken place. However, as the trials did take place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were

¹⁰ Opinion No. 10/2018, para. 53.

grave enough to give their deprivation of liberty an arbitrary character, so that it falls within category III.

55. The source alleges, and the Government does not contest, that Mr. Chen and Mr. Lü were arrested and tried under article 105 of the Criminal Law, which contains a definition of subversion of State power or overthrow of the socialist system. Prosecution under article 105 resulted in Mr. Chen and Mr. Lü being deprived access to legal counsel, which would have been afforded to them for most other offences under article 37 of the Criminal Procedure Law. During their pretrial detention, which lasted more than one year, Mr. Chen and Mr. Lü were not provided access to judicial assistance.

56. In this regard, the Working Group considers that the absence of legal counsel for Mr. Lü for the first few weeks of his detention at the Hangzhou City Detention Centre, as well as the denial of family visits until December 2016 – a period of almost two-and-a-half years – violated his rights to a fair trial and due process under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

57. Furthermore, the source alleges, and the Government does not contest, that Mr. Chen and Mr. Lü were tried in court in de facto closed-door proceedings. Their families were allowed to attend the proceedings but their supporters were denied access, in violation of their right to a public hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights. The Government has offered no justification to warrant such an exceptional procedure.

58. The Working Group also expresses its view that Mr. Chen and Mr. Lü's ill-treatment and denial of medical assistance, including Mr. Chen's loss of four teeth, undermined their ability to defend themselves and hindered their exercise of the right to a fair trial, especially in the light of the right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

59. Given the above considerations, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Chen and Mr. Lü's deprivation of liberty an arbitrary character that falls within category III.

Category V

60. The Working Group will now examine whether Mr. Chen and Mr. Lü's deprivation of liberty constitutes discrimination under international law for the purpose of category V.

61. The Working Group notes that Mr. Chen and Mr. Lü have been long-time pro-democracy activists – since the historic 1989 Tiananmen movement – and that they have already experienced imprisonment for their political activities, including those involving the outlawed Democracy Party of China.

62. The Working Group notes that Mr. Chen and Mr. Lü's political views and convictions are clearly at the centre of the present case and that the authorities have displayed an attitude towards them that can be characterized as discriminatory, as Mr. Chen and Mr. Lü have been the target of persecution and there is no explanation for this other than their exercise of the right to express such views and convictions.

63. For these reasons, the Working Group considers that Mr. Chen and Mr. Lü's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination based on political or other opinion, as well as on their status as human rights defenders, aimed at and resulting in ignoring the equality of human beings. Their deprivation of liberty therefore falls under category V.

64. In its 28-year history, the Working Group has found China in violation of its international human rights obligations in about 90 cases.¹¹ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in China, which amounts to a serious violation of international law. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.¹²

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

Disposition

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

The deprivation of liberty of Chen Shuqing and Lü Gengsong, being in contravention of articles 2, 3, 7, 9, 10, 11 (1), 19, 20 (1) and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

67. The Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Chen and Mr. Lü without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Chen and Mr. Lü immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

69. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Chen and Mr. Lü and to take appropriate measures against those responsible for the violation of their rights.

70. 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.

71. The Working Group recommends the Government to ratify or accede to the International Covenant on Civil and Political Right and its Optional Protocols.

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

¹² A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

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

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. Chen and Mr. Lü have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Chen and Mr. Lü;
- (c) Whether an investigation has been conducted into the violation of Mr. Chen and Mr. Lü'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-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

76. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹³

[Adopted on 21 November 2019]

¹³ Human Rights Council resolution 42/22, paras. 3 and 7.