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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9220 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Working Group on Arbitrary Detention

REFERENCE: 2017/CHN/OPN

17 January 2017

Dear Mr. Genser,

I would like to refer to the 77th session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of deprivation of liberty submitted to it.

In accordance with paragraph 18 of the Working Group's revised methods of work, I am sending to you, attached herewith, the text of Opinion No. 46/2016 (China) adopted on 22 November 2016, regarding a case submitted by your organization.

In conformity with its revised methods of work, the Working Group transmits its Opinions to the source of the petitions, forty eight hours after having transmitted it to the relevant Government.

This Opinion will be published on the website of the Working Group and reflected in its annual report to the Human Rights Council. In the meanwhile, we would encourage you to treat the information given to you by the Working Group on this matter with discretion.

Yours sincerely,

Lucie Viersma
Secretary

Working Group on Arbitrary Detention

Mr. Jared Genser,
Perseus Strategies, LLC
1824 Jefferson Place NW
Washington, DC 20036
+1.202.466.3069 (phone)
+1 202.478.5162 (fax)
jgenser@perseus-strategies.com

CC: Nicole Santiago, and Samuel Ritholtz

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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016****Opinion No. 46/2016 concerning Wu Zeheng and 18 others (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/30/69), on 1 June 2015 the Working Group transmitted a communication to the Government of China concerning Wu Zeheng and 18 others. The Government replied to the communication on 23 July 2015. The Working Group transmitted a communication with additional information to the Government of China on 1 July 2016. The Government has not replied to this second communication. 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. **Wu Zeheng** (hereinafter Mr. Wu) is a Chinese national born on 18 July 1967 in Huilai, Guangdong Province, China. He usually resides in Yinshi Yayuan condominium complex, Zhuhai City, Guangdong Province, China. Mr. Wu, also known as Buddhist Zen Master Shi Xingwu, is a prominent Buddhist leader and a businessman.

5. On 29 July 2014, the police conducted a raid on a number of businesses and living compounds run by Mr. Wu's religious group, Huazang Dharma. Around 11.00 pm, approximately 100 armed and regular police rushed into the Yinshi Yayuan condominium complex to search the residents. More than 20 uniformed policemen and more than 10 police officers in civilian clothes broke into Mr. Wu's apartment and conducted a search without a warrant, disturbing a gathering of Mr. Wu and 19 of his students.

6. The police then searched homes of several Mr. Wu's students and, on 30 July 2014, proceeded to arrest Mr. Wu and nearly 50 others, including 20 children. While the majority of detainees have been released, Mr. Wu and the following 18 individuals are still being held in detention centres located in the city of Zhuhai:

- (i) Meng Yue, female, aged 44;
- (ii) Yuan Ming, female, aged 38;
- (iii) Wu Haiwuan, male, aged 35;
- (iv) Ni Zezhou, male, aged 43;
- (v) Zhao Weiping, male, aged 55;
- (vi) Li Huichun, male, aged 52;
- (vii) Zhang Guihong, male, aged 47;
- (viii) Yi Shuhui, female, aged 49;
- (ix) Su Lihua, female, aged 36;
- (x) Sun Ni, female, aged 45;
- (xi) Zhu Yi, female, aged 38;
- (xii) Lu Hunye, female, aged 38;
- (xiii) Lin Zhanrong, male, aged 43;
- (xiv) Shang Hongwei, female, aged 48;
- (xv) Ren Huining, female, aged 26;
- (xvi) Chen Sisi, female, aged 33;
- (xvii) Wang Ziyin, female, aged 61;
- (xviii) Liu Runhong, female, aged 40.

7. Mr. Wu is being held at Zhuhai No. 2 Detention Center along with three other male associates. The other 15 people are being held at Zhuhai No. 1 Detention Center. In the first 24 hours of his detention, Mr. Wu was kept awake for 16 hours, denied food and water and consecutively questioned by four different groups of police officers. Mr. Wu is currently being held in a small cell with no bed or bedding materials, and forced to sleep on the floor. He has been denied access to medication and warm clothing. Other details of his current situation in detention are unknown. It is reported that the other 18 detainees are being held in overcrowded rooms where they must take turns to sleep. Previous attempts made by family members to deliver warm clothes to detention centers have been denied.

8. On 5 September 2014, 36 days after Mr. Wu and his associates were arrested, the Zhuhai Public Security Bureau (PSB) has formally presented the legal arrest notice, citing "suspicion of using a cult organization to undermine the full implementation of law enforcement" as the reason for the arrest under Article 300 of the Chinese Criminal Law.

9. The source argues that detention of Mr. Wu and his associates is arbitrary under category II (detention resulting from the exercise of fundamental rights protected by international law), as they have been arrested and detained solely on the basis of the peaceful exercise of their rights to freedom of opinion and expression guaranteed under Article 19 (1) of the International Covenant on Civil and Political Rights (the ICCPR) and Article 19 of the Universal Declaration of Human Rights (the UDHR), the right to freedom of religion guaranteed under the Article 18 of the ICCPR and Article 18 of the UDHR as well as the right to the freedom of association guaranteed by the Article 22(1) of the ICCPR and Article 20 (i) of the UDHR. The source notes that even though the People's Republic of China has yet to ratify the International Covenant on Civil and Political Rights (ICCPR), it is a signatory and is therefore obliged to refrain from acts that would defeat the treaty's object and purpose.

10. The source thus submits that ever since Mr. Wu published the open letters to the Government of the People's Republic of China alleging and criticizing its corruption in 1998 and 1999, he has been targeted and persecuted by Government officials. Mr. Wu was sentenced to eleven years of jail term following this publication. The source states that even after serving ten-and-a-half years in prison, Mr. Wu continues to be harassed by authorities.

11. The source notes that the Government has claimed that Mr. Wu and the followers of the Buddhist sect of Huazang Dharma are members of an evil cult with the intent of limiting their legitimate religious expression. This is evidenced by the fact that the Government claimed this only after Mr. Wu published his letter. As a result, not only have his associates been personally punished, but any business affiliated with the Buddhist sect of Huazang Dharma or led by a follower of this sect has been targeted as well. This persecution, the source claims, is a direct result of Mr. Wu's expression of opinion in the past as well as of his continued role as a leader and teacher in the Huazang Dharma religious community.

12. The source further argues that the detention of Mr. Wu and his associates also falls under category III (total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR and relevant international instruments accepted by the States concerned). More specifically, the source claims that authorities failed to promptly inform Mr. Wu and his associates of the charges against them at the time of their arrest, in violation of international law. Article 9(2) of the ICCPR and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles") require that "[a]nyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall promptly be informed of any charges against him."¹ The source points out that the Government failed to correctly inform Mr. Wu of the reason for his arrest at the time of his arrest on 30 July 2014. The Government has issued a formal arrest warrant outlining the charges against Mr. Wu only on 5 September 2014. The source claims that such unreasonably long period of time fails to meet the requirement of prompt notice under the international law.

13. Additionally, the source claims that the Government failed to afford Mr. Wu and associates the presumption of innocence established under the Article 11(1) of the UDHR, as state-run newspapers published libelous information about Mr. Wu and his associates after their arrest. Specifically, "Legal News" (Guangdong Province) accused Mr. Wu and

¹ A/RES/43/173.

his associates of running a cult and conducting criminal activities that pose a threat to society. Other media outlets, such as "Metropolis Daily", "Southern Daily" and the Guangdong TV station have continued to discredit Wu by claiming that he used Huazang Dharma to enrich himself and rape female students, crimes with which he has never been charged. In August 2014 a group of 26 Chinese lawyers led by Mr. Wu's domestic counsel came together and released a statement condemning this defamation of character.

14. Finally, the source submits that the detention of Mr. Wu and his associates also falls under category V set forth by the UN Working Group on Arbitrary Detention. In this regard, the source claims that Mr. Wu and his associates were targeted and detained because of their religious beliefs and association.

15. The source thus argues that the detention of Mr. Wu and his associates therefore falls under categories II, III and V set forth by the UN Working Group on Arbitrary Detention.

Response from the Government

16. On 1 June 2015, the Working Group addressed a communication to the Government of China requesting detailed information about the current situation of Mr. Wu and his associates. 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 law. The Government of China replied on 23 July 2015 with the following response.

17. Wu Zeheng (male, born on 7 July 1967, from Jieyang, Guangdong Province) was suspected of being in collusion with Meng Yue, Zhao Weiping, Yuan Ming, Liu Runhong and others in violating the Criminal Law of People's Republic of China by committing the crimes of sabotaging legal enforcement by organizing and using evil cult, raping women, defrauding money, producing and selling toxic and hazardous food and other illegal activities. On 18 May 2015, based on the investigation conducted by the public security organs of Zhuhai City, Guangdong Province, the People's Procuratorate of Zhuhai City reviewed the outcome of the investigation and initiated legal proceedings against the above mentioned suspects to the Intermediate People's Court of Zhu Hai City.

18. Defendant Wu Zeheng was accused of sabotaging legal enforcement by organizing and using evil cult, rape, fraud and producing and selling toxic and hazardous food. Defendant Meng Yue and Zhao Weiping were accused of the crime of sabotaging legal enforcement by organizing and using evil religion. Defendant Yuan Ming was accused of the crime of sabotaging legal enforcement by organizing and using evil religion and the crime of fraud. Defendant Liu Runhong was accused of the crime of producing and selling toxic and hazardous food.

19. The case is now under trial.

Further comments from the source

20. The source states that, in its response, the Government of China failed to deny most, if not all, of the specific allegations set forth in the petition.

21. It also asserts that the Government does not explicitly and directly dispute that the law was applied in a discriminatory manner in Wu's case. Nor does it provide any evidence to contradict the evidence presented in its original petition. The source submits that the Working Group is called upon to assess whether the international norms and standards have been observed in the criminal procedure in which [the detainee] has been and is being

deprived of his liberty.² The source thus urges the Working Group to accept the facts as presented in the petition as admitted as they were not controverted by the Government of China nor was any independent evidence produced to contradict them.

22. In the view of the source, specifically, the Chinese Government has failed to refute or deny the following allegations concerning the detention of Wu Zeheng:

23. First, the source submits that the detention of Wu Zeheng and his associates is arbitrary under category II, because the Chinese Government detained the petitioner for exercising his right to freedom of expression. The source contends that Wu Zeheng has been targeted and persecuted by Government officials ever since he published the open letters to the Chinese Government criticizing its corruption in 1998 and 1999. The source argues that this consistent persecution, most recently realized in his current detention, is in clear violation of international human rights law³ and domestic law,⁴ as freedom of expression also includes the right to a dissenting political opinion.⁵ The source also argues the Government does not dispute this charge.

24. Second, the source contends that the detention of Wu Zeheng and his associates is arbitrary under category II, because the Chinese Government detained the petitioners for exercising their right to freedom of religion. According to the source, the Chinese Government has targeted Wu Zeheng and his associates because of their legitimate exercise of the right to religious freedom, in violation of international human rights law⁶ and domestic law.⁷ The source argues that Wu Zeheng and his associates are followers of the Buddhist sect Huazang Dharma, which the Chinese government has arbitrarily labelled as an "evil cult" under Article 300 of Chinese Criminal Law, which is an overbroad national security statute whose purpose is essentially to allow the Chinese government to arbitrarily oppress religious groups.

25. The source submits that his persecution is part of a heightened campaign against religion that has occurred in the past two years against many legitimate religions arbitrarily deemed to be "evil cults"⁸ and is just another example of Chinese Government's discrimination. The source states that, in its response, the Government merely restates the charges against Wu Zeheng, which include "sabotaging legal enforcement by organizing and using evil."⁹ The source contends that the Government does not attempt to justify the decision to designate the Buddhist sect Huazang Dharma as an "evil cult," nor does the Government provide any information or evidence even suggesting that Wu Zeheng's activities in relation to his religious practice sabotaged legal enforcement.

² Yang Jianli v. China, WGAD Opinion No. 2/2003, Adopted May 7, 2003.

³ International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No.16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 19(1) [hereinafter *ICCPR*]. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter *Universal Declaration*]. *Universal Declaration*, *supra* note 2, at art. 19; *ICCPR*, *supra* note 2, at art. 19(1).

⁴ XIAN FA, art. 35 & 41 (1982) (P.R.C.), <http://www.cecc.gov/pages/newLaws/constitutionENG.php?PHPSESSID=a87bd0448bea46b35a7c1a60ee1de976> (last visited Oct. 21, 2010) (*hereinafter* XIAN FA).

⁵ *Human Rights Committee General Comment No. 34 (2011) on Article 19: Freedom of Expression*, Sep.12, 2011 (adopted at 102nd session July 11-29, 2011), CCPR/C/GC/34 at paragraph 11.

⁶ *Universal Declaration*, *supra* note 2, at art. 18; *ICCPR*, *supra* note 2, at art. 18.

⁷ XIAN FA, *supra* note 3, at art. 36.

⁸ Bethany Allen-Ebrahimian, *Chinese State Media Warns Against 14 'Evil Cults'*, FOREIGN POLICY, Jun. 6, 2014, available at <http://foreignpolicy.com/2014/06/06/chinese-state-media-warns-against-14-evil-cults/>.

⁹ Government Response.

26. The source claims that the Government does not dispute that the prosecution and ongoing detention of Wu Zeheng and his associates is in violation of the internationally and domestically recognized right to freedom of expression.

27. Third, the source maintains that the detention of Wu Zeheng and his associates is arbitrary under category II, because the Chinese Government detained the petitioner for exercising his right to freedom of association. For the same reasons discussed above, the source argues that the Government is simply detaining Wu Zeheng and his associates because of their association with one another and the Buddhist sect Huazang Dharma, a clear violation of their right to freedom of association under international human rights¹⁰ and domestic law; though Wu Zeheng has tried to live in peace and stay out of Chinese politics, the Chinese Government has systemically persecuted him and his associates; in fact, on the day of their arrest many were convened at Wu Zeheng's home¹¹; and the Government does not dispute this charge.

28. Fourth, the source views that the detention of Wu Zeheng and his associates is arbitrary under category III, because the Chinese Government failed to afford the petitioners the presumption of innocence. In the case of Wu Zeheng and his associates, the source views that the state-run newspapers published libellous information about them after their arrest and that the state-run media organizations continued to publish this libellous information during the trial of Wu Zeheng, repeating rumours of the cultish nature of Huazang Dharma, Wu's religious group, and publishing non-public case materials on television. As these accusations are wholly untrue and made by a government-run newspaper, this is the equivalent of the Chinese Executive Branch declaring Wu and his associates guilty before any of the detainees were officially charged, let alone convicted, the source argues. The source views that such defamatory and dangerous accusations made by a state-sponsored newspaper are in direct violation of international law concerning the right to the presumption of innocence; thus, reaffirms that their detention is arbitrary under category III; and the Government does not dispute this charge.

29. Fifth, the source argues that the detention of Wu Zeheng and his associates is arbitrary under category V, because their discrimination is based on their being part of a protected class. In its view, in this case, the Government was motivated by the religious beliefs of Wu Zeheng and his associates; Wu Zeheng and his associates were targeted and detained because of their religious beliefs and association; in addition, the persecution experienced by the owners of businesses affiliated with the religion demonstrates that the Government of China is acting in a discriminatory nature on the basis of their religious affiliation; and the Government does not dispute this charge.

30. Sixth, the source contends that the Chinese Government tortured Wu Zeheng in violation of international and domestic law, i.e., in violation of the prohibition on the use of torture under international human rights¹² and Chinese law, the authorities subjected Wu Zeheng to torture during his detention. The source states that Chinese law specifically prohibits the mistreatment of detainees by law enforcement¹³ and imposes criminal liability where that prohibition is violated. Despite these protections, Wu Zeheng has been subject to sleep and food deprivation, was forced to sleep on a hard floor, and has been denied access

¹⁰ ICCPR, *supra* note 2 at art. 22(1); *Universal Declaration*, *supra* note 2, at art. 20(1).

¹¹ XIAN FA, *supra* note 3, at art. 35.

¹² *Universal Declaration*, *supra* note 2, at art. 5; ICCPR, *supra* note 2, at art. 7.

¹³ Article 50 of the Criminal Procedure Code provides that "It shall be strictly prohibited to extort confessions by torture, gather evidence by threat, enticement, deceit, or other illegal means, or force anyone to commit self-incrimination," Criminal Code of the People's Republic of China (Criminal Code) at art. 50, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0000001> (hereinafter *Criminal Procedure Code*).

to medication and warm clothing, the source argues. According to the source, moreover, the Government has failed to investigate and prosecute those responsible for this mistreatment of Wu Zeheng and the Government does not dispute this charge.

31. Seventh, the source states that the Chinese Government conducted an illegal search and arrest in violation of international and domestic law. The source argues that, although Chinese law specifically requires warrants when police conduct searches and arrest suspects, the Zhuhai Public Security Bureau stormed Wu Zeheng's home and forcibly detained nearly 50 people, damaging Wu Zeheng's home in the process, all without the requisite warrant.

32. The source further asserts that the Chinese authorities failed to promptly inform Wu Zeheng and his associates of the charges against them at the time of their arrest, in violation of international law. Citing that Article 9(2) of the ICCPR and Principle 10 of the Body of Principles require that "[a]nyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall promptly be informed of any charges against him."¹⁴, the source maintains that the Government failed to correctly inform Wu Zeheng of the reason for his arrest at the time he was detained on 30 July; that, instead, the Government waited until 5 September to issue a formal arrest warrant outlining the charges against him; such an unreasonably long period of time fails to meet the requirement of prompt notice under international law; and the Government does not dispute this charge.

33. The source reports that reputable independent observers have corroborated the facts supporting the allegations listed in the petition and noted above. The source contends that the Chinese Government also ignores independent commentary by the United States Commission on International Religions Freedom,¹⁵ Harvard University Carr Center for Human Rights Policy,¹⁶ Christian Solidarity Worldwide,¹⁷ and Chinese PEN,¹⁸ which all criticized the arbitrary and biased nature of Wu's arrest and current detention.

34. Additionally, the source submits that the detention of the petitioners occurs during a time when the Chinese Government has increasingly targeted religious leaders and their associates, not only to forcibly silence their criticisms of the State, but also to deter their civil organizing. The source views that the Communist party leadership has always felt uneasy regarding religion in China, viewing it as a threat to unity and an affront to the party's atheism.¹⁹ The source maintains that, in recent times, with conflict with the Muslim Uyghur population in the Northwest and the burgeoning of a Christian Han population, the Chinese Government has looked to suppress the growth of religion in the country; that, in 2014, hundreds of churches were forced to take down the crosses on their buildings, as the display was considered too ostentatiously religious by Chinese authorities; and that, in

¹⁴ ICCPR, *supra* note 2, at art. 9(2); Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, at Principle 10 [hereinafter *Body of Principles*].

¹⁵ CHINA: USCIRF condemns Arrest of Chinese Buddhist Leader Wu Zheng and Detention and Mistreatment of Religious Leaders, Oct. 30, 2014, available at <http://www.uscirf.gov/newsroom/pressreleases/china-uscirf-condemns-arrest-chinese-buddhist-leader-wu-zheng-and>.

¹⁶ Free Wu ZeHeng, Mar. 18, 2015, available at <http://carrcenter.hks.harvard.edu/news/free-wu-zheng>.

¹⁷ Buddhist Patriarch Suffers in Prison, Mar. 22, 2012, available at <http://www.csw.org.uk/2012/03/22/news/1175/article.htm>.

¹⁸ Buddhist Sect Leader Detained During Raid, Aug. 5, 2014, available at <http://www.chinesepen.org/english/buddhist-sect-leader-detained-during-raid#more-2532>.

¹⁹ Cracks in the Atheist Edifice, THE ECONOMIST, Nov. 1, 2014, available at <http://www.economist.com/news/briefing/21629218-rapid-spread-christianity-forcing-official-rethinkreligion-cracks>.

some cities, entire churches were razed.²⁰ In addition to this, the source reports that an increasing number of religious groups have been persecuted under China's archaic Anti-Cult law and that this law against "evil cults" has been used extensively to stifle religious freedom in the country, with the most prominent case being against worshippers of Falun Gong, a Taoism-based spiritual discipline that has been subject to a Chinese crackdown since 1999.²¹

35. To further update the Working Group, the source reports that Wu and his associates are at the end of their trial, but the Chinese government has continued to violate their due rights in many ways, including by denying them a public trial. The source contends that, though Chinese state-run media has repeatedly publicly commented on the proceedings of the trial, these trials have been completely closed off to the public and even to members of the defense's legal team. In the view of the source, this failure to provide a public trial is in violation of Article 14 (1) of the ICCPR,²² Article 10 of the UDHR,²³ and Article 25 of the Constitution of the People's Republic of China.²⁴ In addition, the source submits that the lack of independence and impartiality of the court has been obvious throughout the trial with the court officials themselves repeatedly referring to Huazang Dharma as an "evil cult."

36. The source reports that, currently, there are two people who are still facing charges and while their trial has officially ended recently, they are still waiting for a decision and if found guilty (which for all intents and purposes the source assumes they will be), then the source anticipates that they will be sentenced to lengthy prison terms:

- (i) Wu Zeheng, male, age 48
- (ii) Meng Yue, female, age 44

37. The source also reports that three of the detained had trials, were found to be guilty, were transferred to "residential centers in disclosed locations," and are now in the process of receiving reduced sentences should they admit their guilt:

- (i) Yuan Ming, female, age 38
- (ii) Zhao Weiping, male, age 55
- (iii) Liu Runhong, Female, age 40

38. According to the source, the remaining 14 were released on 18 May 2015, after ten months in detention with no trial, upon signing an agreement to no longer be associated with an "evil cult." It remains source's view that from their arrest to their release, the detentions were arbitrary as they were held for 10 months having been charged with crimes, but never had the opportunity to challenge their detentions in court.

- (i) Wu Haiwuan, male, age 35
- (ii) Ni Zezhou, male, age 43
- (iii) Li Huichun, male, age 52

²⁰ *Id.*

²¹ Guobin Zhu, *Prosecuting 'Evil Cults': A Critical Examination of Law Regarding Freedom of Religious Belief in Mainland China*, HUMAN RIGHTS QUARTERLY, Aug. 25, 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664950.

²² ICCPR, *supra* note 2, at art. 14; Principle 36 of the Body of Principles further elaborates that "a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense." *Body of Principles*, *supra* note 13, at Principle 24.

²³ *Universal Declaration*, *supra* note 2 note 26, at art. 10.

²⁴ XIAN FA, *supra* note 3, at art. 35.

- (iv) Zhang Guihong, male, age 47
- (v) Yi Shuhui, female, age 49
- (vi) Su Lihua, female, age 36
- (vii) Sun Ni, female, age 45
- (viii) Zhu Yi, female, age 38
- (ix) Lu Hunye, female, age 38
- (x) Lin Zhanrong, male, age 43
- (xi) Shang Hongwei, female, age 48
- (xii) Ren Huining, female, age 26
- (xiii) Chen Sisi, female, age 33
- (xiv) Wang Ziyin, female, age 61

39. The source requested that the Working Group consider this new information about the lack of a public trial and an independent and impartial judiciary as an additional basis by which to conclude that the detention of Wu and his associates' is arbitrary also under category III.

40. The source also requested that the Petitioners should be released immediately from detention and that they should be provided an enforceable right of compensation. In its view, the continued detention of the Petitioners by the Chinese Government is arbitrary, in that it violates law as well as rights and fundamental freedoms established in the ICCPR, UDHR, and the Body of Principles, and falls within categories II, III, and V of the principles applicable in the consideration of the cases submitted to the Working Group.

Additional information communicated to the Government

41. On 1 July 2016, the Working Group addressed further communication to the Government of China containing the following additional information about the case, and invited comment from the Government. The Government did not reply.

42. The source states that Wu's trial began on 14 July 2015 and lasted 19 days. According to the source, he was tried on the charges of "organizing or using an illegal cult to undermine implementation of the law," "rape," "fraud," and "production and sale of harmful food."; the trial was closed to the public and even Wu's family members and some members of Wu's legal team were prohibited from attending; furthermore, Wu's lawyers were prohibited from opening the content of the trial to the public on the condition that, if they were to do so, their client would immediately be regarded as guilty. The source, argues that this failure to provide a public trial is in violation of both international law and Chinese law.²⁵

43. The source states that state-run news media were allowed exclusive access to the trial and published libellous information about Wu and his associates throughout the course of the proceedings; these media outlets repeated rumours of the cultish nature of Huazang Dharma, Wu's religious group, and published non-public case materials on television. The source claims that given that these media outlets were state-run, and that their accusations were wholly untrue, this action is equivalent to the Chinese Executive Branch declaring Wu and his associates guilty before any of the detainees were officially convicted - a direct violation of international law concerning the right to the presumption of innocence, as guaranteed under Article 11, para. 1 of the UDHR.

44. The source further claims that the lack of independence and impartiality of the Court has been evident throughout the trial, with the Court officials themselves repeatedly referring to Huazang Dharma as an "evil cult," prior to Wu and his associates' conviction.

²⁵ Article 14(1) of the ICCPR, Article 10 of the UDHR, and Article 25 of the Constitution of China.

Moreover, the source views that the Court's treatment of the evidence exhibited favouritism towards the prosecution. The source reports that, for each of the four charges, the Court relied heavily on expert opinions that failed to meet the appropriate standards of evidence and that, although Chinese law²⁶ stipulates that only institutions and experts with certificates issued by either the Ministry of Justice or the Provincial Judicial Administrative Department can provide expert opinions to the Courts, yet the Court in Wu's case relied heavily on expert opinions that were not from qualified institutions. Additionally, for the two 'expert opinions' relating to the charge of rape, the sources of the evaluation materials or samples were unclear and the evaluation processes and methods failed to meet professional regulations, further violating Chinese law, the source argues.²⁷

45. Co-defendants in the case of Meng Yue and Yuan Ming later made written witness statements to the effect that Wu had engaged in inappropriate sexual relationships with them. The source claims that these statements were collected illegally, as the prosecution obtained them through the use of confinement and torture. The source views that it was especially notable that there were several instances of identical phrasing in these written statements, which further evidenced the extent to which they were manufactured by the prosecution. The source states that when Wu's defence lawyer challenged these testimonies as having been obtained while the "witnesses" were in detention, they were reclassified as statements of co-defendants – which are not, under Chinese law,²⁸ legally admissible as a basis for conviction – yet they were still considered by the Court as if they were witness testimonies. The source reports that the defence argued in response that these statements could only be taken as evidence if the co-defendants' liberty were restored, they then reconfirmed the testimony collected during detention, and they presented their testimony in Court where they would be subject to cross-examination by Wu's defence lawyer.

46. The source further notes that the Court rejected the defence lawyer's request that the co-defendants who had been coerced into making the accusations appear for cross-examination of their statements. The source contends that, in fact, no witnesses were presented at the trial by the prosecution and none were allowed for the defence; the prosecution relied on written statements from experts and the co-defendants; the defence's request to cross-examine these individuals was denied; the Court refused to allow the defence any witnesses of its own; Wu's defence lawyer submitted an application to eliminate all illegal evidence from the legal proceedings, identifying for the Court the specific pieces of illegally-obtained evidence and substantially demonstrating the evidence's illegality; the Court, however, failed to investigate these claims fully, as required by Chinese law,²⁹ and the prosecution was allowed to rely on the evidence without having proven that the evidence was collected legally. The source notes that, compounding these due process violations, Wu was also prevented from communicating with his lawyers during the Court hearings, severely restricting his right to counsel. Furthermore, the source argues that Wu's lawyers' attempts to procure the case files at the beginning of the proceedings were obstructed by the local authorities, which delayed providing the files and blocked Wu's lawyers from making a copy of the files.

47. The source reports, on 30 October 2015, the Zhuhai City Intermediate People's Court announced its verdict: it found Wu guilty on all four counts, ("organizing or using an

²⁶ Specifically, the Supreme People's Court's Interpretation on the Application of the Criminal Procedure Law, Chapter Four, Section Five, Article Eighty-Five.

²⁷ Also conditions stipulated under Article Eighty-Five.

²⁸ Under Criminal Procedure Law, Article Eighty-Four, Item Two, which specifically stipulates the eight types of evidence that the Court allows, containing no alternative provisions.

²⁹ Article 57 and Item 2, Article I 00 of the Criminal Procedure Law.

illegal cult to undermine implementation of the law," "rape," "fraud," and "production and sale of harmful food"), sentencing him to life in prison and the payment of a 7.15 million yuan fine, (approximately USD 1.1 million).³⁰ According to the source, also convicted with Wu were three of his associates – the aforementioned Meng Yue and Yuan Ming as well as Zhao Weiping. Each was sentenced to three to four years of imprisonment for "fraud" and "organizing or using an illegal cult to undermine implementation of law." The source submits that Wu's defence attempted to appeal the conviction, citing to the use of illegally obtained evidence and other due process violations. The source reports that, however, on 3 February 2016, without holding a hearing, the Guangdong High Court released an online statement saying that the second "trial" upheld the initial judgment, confirming Wu's life sentence.

48. According to the source, under Chinese law, there is no right to a second appeal; as domestic judicial remedies have been exhausted, Wu is now serving his life sentence; as of 1 March 2016, Wu's lawyer is no longer able to see him and visits are restricted to family members; these visits are extremely limited, as family members are allowed only one 15-minute visit per month; and Wu will likely be transferred to a prison in the Xinjiang Province of northwest China, but details surrounding the transfer are kept secret.

Discussion

49. The Working Group welcomes the cooperation of the Government in responding to the initial allegations communicated on 1 June 2015. The Working Group notes, however, that in its reply the Government of China did not rebut the *prima facie* reliable allegations submitted by the source. Furthermore, the Government did not choose to respond to the additional information communicated on 1 July 2016. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).³¹

Claims regarding the arrests and issuance of charges; Claims regarding the detention without trial of 14 of Mr. Wu's associates; Claims regarding the lack of court impartiality; Claims regarding the detention without trial of 14 of Mr. Wu's associate; Claims of torture and forced confession

50. The Working Group first considers whether the Government of China conducted the arrest and brought charges against Mr. Wu and his associates in contravention of the international norms relating to the deprivation of liberty.

51. At the outset, the Working Group is concerned by the factual elements that have led to this communication, including the followings: (1) the search of Mr. Wu's apartment of 29 July 2014 and the following arrest of Mr. Wu and others, made on 30 July 2014, were conducted without a warrant; (2) Mr. Wu and his associates were provided with a legal arrest notice on 5 September 2014, 36 days after their arrest.

³⁰ 12 years for "organizing or using an illegal cult to undermine implementation of the law," life for "rape," 14 years and 6 months and a 6.8 million yuan fine for "fraud," and 6 years and a 350,000 yuan fine for "production and sale of harmful food"

³¹ See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion Nos. 41/2013 (Libya), 48/2013 (Sri Lanka) and 57/2013 (Djibouti, Sweden and the United States of America), No. 52/2014 (Australia and Papua New Guinea). See also *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, pp. 660–661, para. 55.

52. The Working Group notes that the Government of China has not contested any of these claims in its reply. We find that the aforementioned allegations involve violations of Article 9 of the UDHR and Principle 10 of the Body of Principles, giving the detention of Mr. Wu and his associates an arbitrary character under category III.³²

53. The Working Group also confirms that 14 people associated with Mr. Wu were charged and detained for 10 months without the opportunity to challenge their detentions in court. Such failure to allow the 14 people to challenge their detentions in court also constitutes a violation of Article 10 of the UDHR, giving the deprivation of their liberty an arbitrary character under category III.

54. In addition to the requirements under Article 10 of the UDHR, the Working Group also notes that Principle 8 ('Time frame for bringing proceedings before a court') of the 'UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court' highlights: "[t]he right to bring proceedings before a court without delay to challenge the arbitrariness and lawfulness of the deprivation of liberty and to obtain without delay appropriate and accessible remedies applies from the moment of apprehension and ends with the release of the detainee or the final judgement, depending on the circumstances..." (A/HRC/30/37). Principle 8 of the Basic Principles also specifies that there is no statute of limitations to claims of remedies for periods of detention where the right to bring proceedings before a court without delay was not afforded. Accordingly, China is obliged to ensure that there is fair consideration of any claims made by the 14 persons detained for this period.

55. The Working Group notes with concern that the Government of China permitted State media to prejudice the impartiality of Mr. Wu's trial, and reminds China of its obligations to ensure that persons accused of a crime are presumed innocent and treated as such (Article 11 of the UDHR and principle 36 of the Body of Principles).³³

56. The Working Group is also concerned to find that, despite the continued publicised comments by state-run media on the proceedings of the trial, the public and even the members of the defense's legal team had no access to the trials, which corresponds to a failure to provide a public trial in violation of Article 10 of the UDHR,³⁴ and Article 25 of the Constitution of the People's Republic of China.³⁵ Such failure to provide a public trial would add considerable weight to rendering the liberty deprivation of the petitioners, including Mr. Wu, an arbitrary character.

57. The claims of torture that the Chinese authorities applied to Mr. Wu, Meng Yue, and Yuan Ming, are the most serious of all the claims presented. Having established a *prima facie* case, the burden of proof is on the Government of China to refute the allegations. The Government has chosen not to deny the allegations.

58. The prohibition on torture is a peremptory norm. It is also prohibited by Article 2(2) of the Convention against Torture, ratified by China on 4 October 1988, and Article 5 of the UDHR. According to Article 8 of the UDHR, Mr. Wu, Meng Yue, and Yuan Ming are

³² Principle 10 of the Body of Principles: Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

³³ Article 19 of the UDHR: (1) Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Principle 36 of the Body of Principles: 1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

³⁴ *Universal Declaration*, *supra* note 2 note 26, at art. 10.

³⁵ XIAN FA, *supra* note 3, at art. 35.

entitled to effective remedy for any torture that they suffered. The Government of China must provide a prompt and impartial investigation into the reports, as required under Article 12 of the UDHR. The *prima facie* use of forced confessions obtained through torture as evidence in the trial makes the conviction of Mr. Wu, Meng Yue, and Yuan Ming unsafe. The application of such torture renders their detention in breach of Article 10 of the UDHR, falling under category III.

Claims regarding pre-court detention conditions

59. The Working Group also notes with concern that the conditions in which the Government of China detained Mr. Wu and his associates violate China's obligations to the international human rights norms on detention. Specifically, that Mr. Wu was forced to suffer sleep deprivation and was denied food and water (a violation of rule 22 of the Standard Minimum Rules for the Treatment of Prisoners [Nelson Mandela Rules]),³⁶ was denied access to medication (a violation of Principle 24 of the Body of Principles),³⁷ and was denied access to bedding and warm clothing (a violation of Principle 19 of the Body of Principles).³⁸ Such conditions to which the detainees had been subjected to would also render significant gravity to the arbitrary nature of the detention.

Claims regarding the violation of rights to freedom of opinion, religion, and association

60. The Working Group views that the liberty deprivation of Mr. Wu and his associates also results from their legitimate exercise of the freedom of opinion and expression, the freedom of religion, and the freedom of association.

61. In its reply, the Government of China confirmed that Wu Zeheng, Meng Yue, Zhao Weiping, and Yuan Ming had been arrested for their religious activities, giving no explanation of how this was deemed to be compliant with its international obligations. The obligatory nature of such norms is manifested in the Article 19 of the UDHR, which guarantees the right to freedom of opinion and expression.

62. By detaining Mr. Wu and his associates for their peaceful enjoyment of the right to their freedom of opinion and expression, China has violated Article 19 of the UDHR, which gives their detention an arbitrary character under category II.

63. Finally, with regard to the application of category V, the Working Group also confirms that the detention of Wu Zeheng and his associates is arbitrary, because their discrimination and the persecution experienced by the owners of businesses affiliated with the religion is based on their being part of a protected class, i.e., their religious beliefs and association.

Disposition

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

³⁶ Rule 22 of the Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules"): 1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. 2. Drinking water shall be available to every prisoner whenever he or she needs it.

³⁷ Principle 24 of the Body of Principles: A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

³⁸ Rule 19 of the Body of Principles: 1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.

The deprivation of liberty of Mr. Wu and 18 others, being in contravention of Articles 5, 9, 10, 11, and 19 of the Universal Declaration of Human Rights, Principles 10, 19, 24 and 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Rule 22 of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) is arbitrary and falls within categories II, III, and V.

65. Consequent upon the Opinion rendered, the Working Group requests the Government of China to take the necessary steps to remedy the situation of Mr. Wu and 18 others without delay and bring it into conformity with the standards and principles set forth in the international norms relating to detention, including the UDHR.

66. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to accord Mr. Wu and 18 others an enforceable right to an effective remedy, including the reparations, in accordance with article 8 of the UDHR and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Follow-up procedure

67. 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. Wu and 18 others have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Wu and 18 others;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Wu and 18 others 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 the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

68. 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.

69. 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.

70. 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.³⁹

[Adopted on 22 November 2016]

³⁹ See Human Rights Council resolution 24/7, paras. 3 and 7.