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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

#### Opinion No. 9/2022 concerning Wang Jianbing (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,<sup>1</sup> on 28 December 2021 the Working Group transmitted to the Government of China a communication concerning Wang Jianbing. The Government replied to the communication on 27 January 2022. 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).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Wang Jianbing, born in 1983, is a citizen of China, residing in Guangzhou, Guangdong Province, China.

5. The source informs the Working Group that Mr. Wang is an independent labour and disability rights activist. Since 2018, he has provided legal and community support for former construction workers who have contracted chronic illnesses, such as pneumoconiosis, as a result of being exposed to poor working conditions. According to the source, this is a pervasive issue in the country's construction industry. Mr. Wang has also worked to support the #MeToo movement in China. Furthermore, he has spent much of his career in the non-profit sector working in the spheres of youth education, development in rural areas and supporting persons with disabilities.

6. The source informs the Working Group that, on 19 September 2021 at around 3 p.m., Mr. Wang was apprehended by officers from the Guangzhou Public Security Bureau from his rented residence located in Guangzhou, and forcibly disappeared and detained. Mr. Wang was reportedly apprehended together with a friend. Some of Mr. Wang's personal belongings were also seized. It is unknown whether the authorities showed a warrant to Mr. Wang at the time of his detention.

7. Furthermore, according to the information received, the front door lock was changed and the front door security camera was removed. On 20 September 2021, officials from the Guangzhou and local Gansu police services went to Mr. Wang's family and reportedly told them not to seek help from others. They did not provide any information about Mr. Wang's arrest or about any of the coercive measures he was being held under. The authorities also refused to provide his family with any formal notice of detention at that time.

8. On 5 November 2021, the authorities provided the family of Mr. Wang with a written notice stating that he had been arrested on 27 October. From 19 September to 27 October 2021, Mr. Wang was therefore forcibly disappeared and detained. The source emphasizes the fact that Mr. Wang's whereabouts were unknown until 5 November 2021, when his family received the formal arrest notice.

9. Prior to receiving the notice, between 28 and 30 September 2021, Mr. Wang's family visited all levels of the Guangzhou Public Security Bureau in order to request information about his case. On 28 September, at the Xingang police station, Haizhu District, they were finally informed that Mr. Wang had been arrested by the Guangzhou Public Security Bureau. However, Xingang police officers refused to tell the family which department was responsible for handling the case, the specific charge, any coercive measures that had been used or where Mr. Wang was being held.

10. During the same period, between 28 and 30 September 2021, Mr. Wang's family filed complaints with several offices of the Guangzhou Public Security Bureau, as well as the Guangzhou Procuratorate. In their complaints, they reported the violations of national law carried out by the police and the public security departments in not informing family members of the charges brought against Mr. Wang or the coercive measures under which he was held. To this date, no official response has followed these complaints.

11. The source proceeds to explain that, according to the formal arrest notice presented to Mr. Wang's family on 5 November 2021, Mr. Wang was being held at the Guangzhou detention centre No. 1. However, according to the source, Mr. Wang's name and identification number are not on the detention centre's online system for depositing funds for detainees, which raises doubts about whether he is in fact being held there.

12. The reasons for the detention imputed by the authorities is, according to the source, "inciting subversion of State authority". The legal basis for the detention, including the relevant legislation applied, is reportedly article 105 (2) of the Criminal Code of China (2020), which states that whoever incites others by spreading rumours, committing slander or using any other means to subvert the State authority or overthrow the socialist system is to be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; and ringleaders and others who commit

major crimes are to be sentenced to fixed-term imprisonment of not less than five years. The source adds that it is considered a national security offence.

13. The source reports that the authorities have not disclosed which coercive measures they applied to hold Mr. Wang before his formal arrest on 27 October 2021. Moreover, he continues to be held incommunicado even after his family received a formal arrest notice on 5 November.

14. According to the source, it is possible that Mr. Wang has been held in the Guangzhou detention centre No. 1 throughout the entire time. It quotes article 91 of the Criminal Procedure Law of China (2018), which stipulates that the police authorities can detain someone for up to 30 days before presenting the case for arrest to the Procuratorate. The Procuratorate has seven days to approve the arrest.

15. The source notes that it is also possible that Mr. Wang was held under residential surveillance at a designated location before being officially arrested. Under articles 74 to 79 of the Criminal Procedure Law, if an individual is suspected of committing national security offences, including “inciting subversion of State authority”, the authorities can hold the suspect under residential surveillance at a designated location. The source states that residential surveillance at a designated location is a form of incommunicado detention, with individuals who are subjected to it being held up to six months without access to a lawyer.

16. The source alleges that, although the authorities have refused to provide information about the evidentiary basis for the charges against Mr. Wang, he has been targeted for hosting casual social gatherings at his apartment. It is reported that, in the months since the date that Mr. Wang was forcibly disappeared, more than 40 people have been harassed, summoned, interrogated and coerced into signing false statements about him by the Guangzhou Public Security Bureau and other public security bureaux across the country.

17. In the course of these interrogations, the authorities have reportedly downloaded the contents of individuals’ smartphones for investigation and pressured them to sign fabricated testimonies asserting that participants had discussed politically sensitive topics during the gatherings. The source asserts that the testimonies were obtained under duress and will be used as evidence to support the charge of inciting subversion of State authority against Mr. Wang. The source reports that in reality the participants of the gatherings Mr. Wang hosted simply discussed their daily lives, providing emotional support and sharing thoughts about charitable causes and art, with their conversations rarely touching political topics.

18. The source informs the Working Group that, to date, Mr. Wang has not been granted access to see his family or his lawyer.

19. On 21 October 2021, Mr. Wang’s family and the lawyer chosen by his family submitted a request to the Guangzhou Public Security Bureau for the lawyer to be appointed as Mr. Wang’s counsel and for him to be allowed to meet with his client. Officials from the Public Security Bureau have reportedly refused to accept the lawyer chosen by Mr. Wang’s family and stated that they needed time to verify the authenticity of the documentation submitted.

20. On 19 November 2021, Guangzhou Public Security Bureau officials rejected the lawyer’s requests to meet with Mr. Wang and for Mr. Wang to be released on bail. The source notes that, in their response, the authorities did not raise concerns about the authenticity of the documents supporting the lawyer’s representation of Mr. Wang. Mr. Wang’s family members have also not been allowed to meet with him since he was detained.

21. The source submits that the deprivation of liberty of Mr. Wang falls within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. In relation to category I, the source states that Mr. Wang’s detention is not authorized under the Constitution or domestic law. It is therefore argued that the circumstances relating to Mr. Wang’s disappearance and detention constitute deprivation of liberty, lacking a legal basis under both the Constitution and domestic law.

22. The source explains that Mr. Wang’s detention is in violation of article 35 of the Constitution, which guarantees rights to free expression, peaceful assembly and free association. It is argued that Mr. Wang exercised these rights by gathering peacefully with

friends at his home to converse freely and that the authorities' actions in detaining Mr. Wang for hosting these gatherings have no constitutional basis.

23. Furthermore, the source notes that article 105 (2) of the Criminal Code, under which Mr. Wang has been charged, is too broadly worded to provide a specific legal basis for detention. According to the official arrest notice, Mr. Wang is being investigated for inciting subversion of State authority. The source recalls that the Working Group, in its opinion No. 11/2020, described this provision as vaguely and broadly worded, such that it could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law upheld by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.

24. According to the source, the national law cited to justify Mr. Wang's detention is too vague to be specifically and precisely applied to his actions, thus rendering his detention lacking a basis under national law. The source concludes that Mr. Wang's detention therefore fulfils the conditions to be considered as arbitrary under category I of the Working Group.

25. In relation to category II, the source argues that Mr. Wang's detention is a result of the exercise of his rights guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights. It is submitted that the authorities have forcibly disappeared and detained Mr. Wang to investigate him for hosting informal social gatherings in his home where he discussed a range of casual topics with his friends. The source concludes that the authorities have therefore detained Mr. Wang for exercising his rights to freedom of thought, expression, assembly and association and that Mr. Wang's detention fulfils the conditions for arbitrary detention under category II of the Working Group.

26. In relation to category III, the source submits that the authorities have not observed international norms relating to Mr. Wang's right to a fair trial. It is submitted that the authorities have violated Mr. Wang's due process rights from the moment of taking him into custody, including by failing to provide any documentation concerning his detention for the first six weeks of his detention, denying him access to legal counsel, and reportedly interrogating and coercing others into making false, incriminating statements about Mr. Wang that will likely be used as evidence to prove the charges against him at the trial. The source maintains that the ongoing detention of Mr. Wang therefore violates his rights to a fair trial as guaranteed under article 9 of the Universal Declaration of Human Rights and fulfils the conditions of arbitrary detention under category III of the Working Group.

#### *Response from the Government*

27. On 28 December 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 28 February 2022, detailed information about the current situation of Mr. Wang and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of China under international human rights law. Moreover, the Working Group called upon the Government of China to ensure his physical and mental integrity.

28. On 27 January 2022, the Government submitted its reply. It explains that, on 19 September 2021, Guangzhou public security authorities, based on a lead, lawfully summoned Mr. Wang (38 years of age, from Tianshui Municipality, Gansu Province), who was suspected to have violated the law.

29. The Government further explains that, on 20 September 2021, the authorities criminally detained Mr. Wang according to the law. On 27 October, after the approval of the Procuratorate was received, he was arrested. Public security authorities have notified Mr. Wang's family and his lawyer according to legal regulations. The public security authorities have strictly followed the Criminal Procedure Law and other laws in prosecuting the case according to law and fully protected Mr. Wang's legal rights. The authorities have also implemented protection measures relating to the coronavirus disease (COVID-19) pandemic. The case currently continues to undergo investigation and prosecution.

*Further comments from the source*

30. On 31 January 2022, the reply of the Government was sent to the source for further comments, which it submitted on 8 February 2022.

31. In its further comments, the source argues that the Government's assertions fail to rebut the allegations in the submission that Mr. Wang was not lawfully arrested or detained. The source's initial submission detailed how Mr. Wang's arrest was unlawful under both the Constitution and domestic law of China, and that the law he was charged with violating had been previously found by the Working Group to be too broadly worded to provide a specific legal basis for detention.

32. In addition, according to the source, the Government's claim that the Criminal Procedure Law has been strictly followed is belied by numerous issues raised in the initial submission that remain unaddressed.

33. The source thus contends that, due to the Government's failure to refute the specific allegations raised in the original submission, it is responsible for arbitrarily detaining Mr. Wang and calls on the Government to rectify the numerous violations of Mr. Wang's rights by releasing him immediately and providing reparations for his illegal detention.

**Discussion**

34. The Working Group thanks the source and the Government for their timely submissions.

35. In determining whether the deprivation of liberty of Mr. Wang was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>2</sup>

36. The source has submitted that Mr. Wang's detention is arbitrary and falls under categories I, II and III of the Working Group. The Government, while not addressing the categories, argues that the detention of Mr. Wang is lawful under national law. The Working Group will proceed to address the allegations in turn.

*Category I*

37. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis.

38. In the present case, the Working Group observes that the source has submitted that Mr. Wang was arrested on 19 September 2021. The Government, however, submits that Mr. Wang was summoned to the police on that day but does not elaborate whether an actual arrest took place on that day. It does, however, clearly state that he was criminally detained on 20 September and further specifies that, on 27 September, Mr. Wang was arrested at the request of the prosecution. This means that, even if Mr. Wang was deprived of his liberty on 20 September, as submitted by the Government, the authorization for his detention was not issued until seven days later, on 27 September, and the authority authorizing this was the prosecution, namely, the Procuratorate.

39. As the Working Group has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it promptly to the circumstances of the case through an arrest warrant.<sup>3</sup>

40. International law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person

<sup>2</sup> A/HRC/19/57, para. 68.

<sup>3</sup> See, for example, opinions No. 76/2020, No. 35/2019, No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>4</sup> Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. The prosecutorial authorities do not satisfy this requirement. The Working Group therefore finds that Mr. Wang's rights under article 9 of the Universal Declaration of Human Rights were violated.

41. Moreover, the source has alleged that Mr. Wang was forcibly disappeared until 27 October 2021 and subsequently held incommunicado. Although this serious allegation was presented to the Government, it failed to address it.

42. The Working Group notes that these allegations concern the imposition of the so-called residential surveillance at a designated location, which it considers a misnomer, as the criminal suspect or defendant who is subjected to it is confined not in his or her usual place of residence – that is, he or she is not under house arrest – but in a designated place of residence, which may well be a prison.<sup>5</sup> The authorities, in effect, have the power to make a person disappear, without judicial oversight. In the Working Group's view, such an enabling act for law enforcement officials is devoid of a legal basis.<sup>6</sup> The Working Group finds that placement in residential surveillance at a designated location is a violation of articles 6, 9, 10 and 11 (1) of the Universal Declaration of Human Rights.<sup>7</sup>

43. The Working Group and other special procedure mandate holders have expressed concern that the regime of residential surveillance at a designated location is being employed in a manner that violates human rights.<sup>8</sup> These concerns include the following:

(a) The practice, which consists of placing individuals in incommunicado detention for investigation for prolonged periods without disclosing their whereabouts, amounts to secret detention and is a form of enforced disappearance;

(b) The practice of imposing residential surveillance at a designated location without judicial oversight and without formal charges contravenes the right of every person not to be arbitrarily deprived of his or her liberty, and to challenge the lawfulness of detention before a court without delay, as well as the right of accused persons to defend themselves through legal counsel of their choosing;

(c) The provisions on residential surveillance at a designated location appear to allow persons suspected of certain crimes to be held incommunicado for long periods and in undisclosed locations, which may, in and of itself, amount to cruel, inhuman or degrading treatment or punishment, or even torture, and additionally may expose such persons to an increased risk of further abuse, including acts of torture;

(d) The provisions on residential surveillance at a designated location appear to be used to restrict the exercise of the right to freedom of expression and the rights to freedom of peaceful assembly and of association by human rights defenders and their lawyers.

44. In the present case, the Working Group therefore finds that Mr. Wang was subjected to de facto enforced disappearance following his arrest until the authorities acknowledged his arrest, in violation of article 9 of the Universal Declaration of Human Rights. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>9</sup> Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention lacks any

<sup>4</sup> Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

<sup>5</sup> See opinion No. 30/2021.

<sup>6</sup> Opinions No. 36/2019, para. 38; and No. 78/2020, para. 47.

<sup>7</sup> See, for example, opinions No. 30/2021 and No. 15/2019.

<sup>8</sup> See communication CHN 15/2018, available from <https://spcommreports.ohchr.org/TmSearch/Results>. See also opinions No. 30/2021, para 52; and No. 15/2019, para. 42.

<sup>9</sup> See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

valid legal basis under any circumstance. It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. The Working Group refers the case to the Working Group on Enforced or Involuntary Disappearances for further action.

45. Furthermore, the source has argued that, after the authorities acknowledged his arrest, Mr. Wang was held incommunicado. Once again, although this further serious allegation was presented to the Government, it failed to address it.

46. As the Working Group has consistently found, holding persons incommunicado violates their rights to be brought before a court and to challenge the lawfulness of their detention before a court under article 9 of the Universal Declaration of Human Rights.<sup>10</sup> The Working Group once again recalls that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>11</sup> and is essential in ensuring that detention has a legal basis.

47. Given that Mr. Wang was unable to contact anyone and especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge his or her detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights.

48. The Working Group further recalls that pretrial detention is an exceptional measure and is to be used only exceptionally, for the shortest period of time, following an individualized assessment by the judiciary that the person in question should be remanded in custody for such reasons as risk of flight or interference with the investigation. This was not the case for Mr. Wang and the Working Group therefore finds that his pretrial detention also violated his rights under article 9 of the Universal Declaration of Human Rights. In making this finding, the Working Group is particularly mindful of its findings under category II, as described below.

49. Lastly, the Working Group notes that the source has submitted that Mr. Wang is charged with inciting subversion of State authority, based on article 105 (2) of the Criminal Code. The Government does not address this submission, although it has had the opportunity to do so. The Working Group recalls that it has been called upon to examine article 105 (2) of the Criminal Code previously on a number of occasions.<sup>12</sup>

50. Following its visits to China in 1997 and 2004, the Working Group emphasized in its reports that charges involving vague and imprecise offences jeopardized the ability of individuals to exercise their fundamental rights and were likely to result in arbitrary deprivation of liberty. The Working Group recommended that those crimes be defined in precise terms and that legislative measures be taken to introduce an exemption from criminal responsibility for those who peacefully exercised their rights guaranteed by the Universal Declaration of Human Rights.<sup>13</sup>

51. As the Working Group has 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.<sup>14</sup> The Working Group had already called upon the Government to repeal article 105 (2) of the Criminal Code or bring it into line with its obligations under international human rights law,<sup>15</sup> but the circumstances of this case are evidence that this has not taken place.

<sup>10</sup> See opinions No. 36/2020, No. 35/2018, No. 11/2018, No. 79/2017, No. 46/2017 and No. 45/2017.

<sup>11</sup> See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

<sup>12</sup> See opinions No. 66/2021, No. 82/2020 and No. 15/2019.

<sup>13</sup> [E/CN.4/1998/4/Add.2](#), paras. 42–53, 106–107 and 109 (c); and [E/CN.4/2005/6/Add.4](#), paras. 73 and 78 (e).

<sup>14</sup> See, for example, opinion No. 41/2017, paras. 98–101.

<sup>15</sup> Opinions No. 15/2019, para. 35; and No. 82/2020, paras. 48–52.

52. In the present case, Mr. Wang is charged under a vague and imprecise offence of inciting subversion of State authority, under article 105 (2) of the Criminal Code.<sup>16</sup> This provision does not define which conduct amounts to subversion and overthrowing the socialist system through rumours, slander or other means. The communication of mere thoughts, ideas or opinions could potentially fall within prohibited conduct.

53. Moreover, the determination of whether an offence has been committed appears to be left entirely to the discretion of the authorities. The Government has not explained how Mr. Wang's conduct could be considered as inciting subversion and overthrowing the socialist system. Importantly, there is nothing to suggest that Mr. Wang engaged in or incited violence as part of his activities that might have given cause to restrict his behaviour.

54. The Working Group therefore concludes that the arrest and subsequent detention of Mr. Wang on the basis of article 105 (2) of the Criminal Code was arbitrary in breach of article 9 of the Universal Declaration of Human Rights. The Working Group concludes so due to the failure of article 105 (2) of the Criminal Code to meet the principle of legality. The Working Group once again calls upon the Government to repeal article 105 (2) of the Criminal Code or bring it into line with its obligations under international human rights law.

55. Noting all the above, the Working Group concludes that the detention of Mr. Wang is arbitrary and falls under category I as lacking a legal basis.

#### *Category II*

56. The source has argued that Mr. Wang's detention violates his rights to freedom of expression and to freedom of peaceful assembly and association encapsulated in articles 18, 19 and 20 of the Universal Declaration of Human Rights. It is argued that Mr. Wang exercised these rights by gathering peacefully with friends at his home and that the actions of the authorities in detaining Mr. Wang for hosting these gatherings have no basis.

57. The Working Group notes that, while the Government had the opportunity to address these allegations, it has chosen not to do so. Significantly, the Government has provided no specific reason for the arrest and detention of Mr. Wang and there is no indication about which actions of Mr. Wang prompted his arrest.

58. The Working Group recalls that detention purely due to peaceful exercise of rights protected by the Universal Declaration of Human Rights may be arbitrary.<sup>17</sup> Indeed, in its resolution 24/5, the Human Rights Council reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views.<sup>18</sup> This echoes the principle enunciated in resolution 12/16, in which the Council calls upon States to refrain from imposing restrictions that are not consistent with international human rights law, including on the discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

59. The Working Group further recalls that freedom of opinion and freedom of expression as expressed in article 19 of the Universal Declaration of Human Rights are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.<sup>19</sup> Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.

<sup>16</sup> See also [A/HRC/48/55](#), para. 48.

<sup>17</sup> See, for example, opinion No. 66/2021.

<sup>18</sup> See also opinions No. 45/2017, No. 46/2017, No. 79/2017, No. 11/2018, No. 35/2018 and No. 36/2020.

<sup>19</sup> See, for example, opinion No. 50/2021.



60. Similarly, the right to freedom of thought, conscience and religion, encapsulated in article 18 of the Universal Declaration of Human Rights, belongs to everyone, as does the right to freedom of assembly and association, as protected by article 20 of the Universal Declaration of Human Rights.

61. With regard to all these rights, the Working Group recalls that 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 purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

62. However, the limitations on these rights and freedoms permitted under article 29 (2) of the Universal Declaration of Human Rights do not apply in the present case. The Government did not present any argument to the Working Group to invoke any of these limitations, nor did it demonstrate why bringing charges against Mr. Wang was a legitimate, necessary and proportionate response to his peaceful activities.

63. Notably, the Working Group has been presented with no evidence that any actions or expression by Mr. Wang incited violence or unrest. On the contrary, they appear to fall firmly within the permissible freedoms protected by articles 18, 19 and 20 of the Universal Declaration of Human Rights. Consequently, the Working Group concludes that Mr. Wang's arrest and detention resulted from the exercise of the rights and freedoms guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights and therefore falls under category II.

### *Category III*

64. Given its finding that the deprivation of liberty of Mr. Wang is arbitrary under category II, the Working Group emphasizes that no trial of Mr. Wang should take place. However, the proceedings against him are ongoing, as confirmed by the Government, and the Working Group will therefore proceed to examine the submissions under category III.

65. The source has alleged that Mr. Wang has been denied legal assistance from the time of his arrest, that he was unaware of the charges until months after his detention and that other individuals are being coerced to testify against him. While all these allegations were put to the Government, it has chosen not to address them but has merely stated that Mr. Wang's family and lawyer were notified of the charges against him and that all proceedings are carried out strictly in accordance with national law.

66. In the light of the above, the Working Group considers that Mr. Wang's right to legal assistance was denied in violation of articles 10 and 11 of the Universal Declaration of Human Rights. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>20</sup> The right to legal assistance is an essential element of the right to a fair trial, as it serves to ensure that the principle of equality of arms is duly observed.<sup>21</sup>

67. The failure of the authorities to notify Mr. Wang promptly of the charges against him also violated his right to a fair trial under articles 10 and 11 of the Universal Declaration of Human Rights, as Mr. Wang was thus prevented from preparing for his defence. Moreover, the Working Group finds a further breach of these provisions in the uncontested allegations that individuals are being coerced into providing testimony against Mr. Wang.

68. Given this, the Working Group concludes that the arrest and detention of Mr. Wang is arbitrary and falls under category III.

69. In making all the above findings, the Working Group wishes to address the argument presented by the Government in its reply that the arrest and detention of Mr. Wang has been carried out strictly in accordance with national law and procedure. The mandate of the

<sup>20</sup> [A/HRC/45/16](#), paras. 51–52; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

<sup>21</sup> See, for example, opinions No. 35/2019 and No. 76/2021.

Working Group does not entitle it to review whether national legal requirements have been followed. Rather, the mandate of the Working Group entitles it to examine whether international human rights obligations have been duly observed and, in this regard, the assertions by the Government that lawful procedures have been followed are not sufficient.<sup>22</sup> The argument that national law has been followed may never be accepted as an excuse not to follow the international human rights obligations of the Government.

#### *Concluding remarks*

70. The Working Group is disturbed by the uncontested allegations that Mr. Wang continues to be held incommunicado and that all contact with his family has been denied. The Working Group considers this to be a violation of rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

71. In its 30-year history, the Working Group has found China to be in violation of its international human rights obligations in numerous cases.<sup>23</sup> 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.<sup>24</sup>

72. Lastly, the Working Group would welcome the opportunity to conduct a country visit to China in order to assist the Government in addressing the arbitrary deprivation of liberty. Given that a significant period of time has passed since its visits to China in October 1997 and September 2004, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group recalls that it made a request to visit on 15 April 2015 and looks forward to a positive response.

#### **Disposition**

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

The deprivation of liberty of Mr. Wang Jianbing, being in contravention of articles 6, 8, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

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

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

<sup>22</sup> A/HRC/19/57, para. 68.

<sup>23</sup> 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, No. 15/2019, No. 36/2019, No. 72/2019, No. 76/2019, No. 11/2020, No. 32/2020, No. 78/2020, No. 82/2020, No. 25/2021 and No. 30/2021.

<sup>24</sup> 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; and No. 35/2019, para. 65.

law. In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Wang.

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

77. The Working Group requests the Government to bring its laws, particularly article 105 (2) of the Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by China under international human rights law.

78. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances for appropriate action.

79. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.

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

#### **Follow-up procedure**

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

82. 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.

83. 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.

84. 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.<sup>25</sup>

*[Adopted on 31 March 2022]*

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<sup>25</sup> Human Rights Council resolution 42/22, paras. 3 and 7.