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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 on 1 July 2016. The Government has not replied to that 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);

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(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 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. 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. At around 11 p.m., approximately 100 armed and regular police entered 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 the homes of several of 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 the detainees have since been released, Mr. Wu and the following 18 individuals are still being held in detention centres located in Zhuhai City:

- Meng Yue, female, aged 44
- Yuan Ming, female, aged 38
- Wu Haiwuan, male, aged 35
- Ni Zezhou, male, aged 43
- Zhao Weiping, male, aged 55
- Li Huichun, male, aged 52
- Zhang Guihong, male, aged 47
- Yi Shuhui, female, aged 49
- Su Lihua, female, aged 36
- Sun Ni, female, aged 45
- Zhu Yi, female, aged 38
- Lu Hunye, female, aged 38
- Lin Zhanrong, male, aged 43
- Shang Hongwei, female, aged 48
- Ren Huining, female, aged 26
- Chen Sisi, female, aged 33
- Wang Ziyin, female, aged 61

- Liu Runhong, female, aged 40

7. Mr. Wu is being held at Zhuhai No. 2 Detention Centre along with three other male associates. The other 15 people are being held at Zhuhai No. 1 Detention Centre. 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 centres have been denied.

8. On 5 September 2014, 36 days after Mr. Wu and his associates were arrested, the Zhuhai Public Security Bureau formally presented a 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 Chinese Criminal Law.

9. The source argues that the detention of Mr. Wu and his associates is arbitrary under category II, as they were 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 and article 19 of the Universal Declaration of Human Rights; to freedom of religion guaranteed under article 18 of the Covenant and article 18 of the Universal Declaration of Human Rights; and to freedom of association guaranteed by article 22 (1) of the Covenant and article 20 (i) of the Universal Declaration of Human Rights. The source notes that, although China has yet to ratify the Covenant, 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, since Mr. Wu published the open letters to the Government alleging and criticizing its corruption in 1998 and 1999, he has been targeted and persecuted by government officials. Mr. Wu was sentenced to 11 years of imprisonment following the publication. The source states that, even after serving 10 and a half years in prison, Mr. Wu continues to be harassed by the 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 in order to limit their legitimate religious expression. This is demonstrated by the fact that the Government made the above claim only after Mr. Wu had published his letter. As a result, not only have his associates been personally punished, but also any business affiliated with the Buddhist sect of Huazang Dharma or led by a follower of the sect has been targeted. This persecution, the source claims, is a direct result of Mr. Wu’s expression of opinion in the past and 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. More specifically, the source claims that the authorities failed to inform Mr. Wu and his associates promptly of the charges against them at the time of their arrest, in violation of international law. Article 9 (2) of the Covenant and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment require that “[a]nyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. The source points out that the Government failed to inform Mr. Wu correctly of the reason for his arrest at the time of his arrest on 30 July 2014. The Government issued a formal arrest warrant outlining the charges against Mr. Wu only on 5 September 2014. The source claims that such an unreasonably long period of time fails to meet the requirement of prompt notice under international law.

13. In addition, the source claims that the Government failed to afford Mr. Wu and his associates the presumption of innocence established under article 11 (1) of the Universal Declaration of Human Rights, as State-run newspapers published libellous information about Mr. Wu and his associates after their arrest. Specifically, *Legal News* (published in Guangdong Province) has accused Mr. Wu and 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 television station have continued to discredit Wu by claiming that he has 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. In that 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.

*Response from the Government*

16. On 1 June 2015, the Working Group addressed a communication to the Government 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 replied on 23 July 2015 with the response below.

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 China by committing the crimes of sabotaging legal enforcement by organizing and using an evil cult, raping women, defrauding money, producing and selling toxic and hazardous food and other illegal activities. On 18 May 2015, on the basis of an investigation conducted by the public security bodies of Zhuhai City, the People's Procuratorate of Zhuhai City reviewed the outcome of the investigation and initiated legal proceedings against the above-mentioned suspects at the Intermediate People's Court of Zhu Hai City.

18. Defendant Wu Zeheng was accused of sabotaging legal enforcement by organizing and using an 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 an evil religion. Defendant Yuan Ming was accused of the crime of sabotaging legal enforcement by organizing and using an 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 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 a detainee has been and is being deprived

of his liberty.<sup>1</sup> 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 and no independent evidence was produced to contradict them.

22. In the view of the source, specifically, the Government has failed to refute or deny the allegations below 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 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 open letters in 1998 and 1999 directed at the Government, criticizing its corruption. The source argues that this persecution, most recently demonstrated in his current detention, is in clear violation of international human rights law<sup>2</sup> and domestic law, as freedom of expression also includes the right to a dissenting political opinion.<sup>3</sup> 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 Government detained the petitioners for exercising their right to freedom of religion. According to the source, the 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 law<sup>4</sup> and domestic law. The source argues that Wu Zeheng and his associates are followers of the Buddhist sect Huazang Dharma, which the 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 Government to arbitrarily oppress religious groups.

25. The source submits that the persecution of Wu Zeheng 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”<sup>5</sup> and is just another example of discrimination by the Government. 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”.<sup>6</sup> The source contends that the Government neither attempts to justify the decision to designate the Buddhist sect Huazang Dharma as an “evil cult”, nor provides any information or evidence even suggesting that Wu Zeheng’s activities in relation to his religious practice have sabotaged the enforcement of law.

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 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

<sup>1</sup> See opinion No. 2/2003 of 7 May 2003.

<sup>2</sup> Specifically, art. 19 (1) of the International Covenant on Civil and Political Rights, and art. 9 of the Universal Declaration of Human Rights.

<sup>3</sup> See Human Rights Committee general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11.

<sup>4</sup> See art. 18 of the Universal Declaration of Human Rights and art. 18 of the Covenant.

<sup>5</sup> See Bethany Allen-Ebrahimian, “Chinese State Media Warns Against 14 ‘Evil Cults’”, in *Foreign Policy*, 6 June 2014, available from <http://foreignpolicy.com/2014/06/06/chinese-state-media-warns-against-14-evil-cults/>.

<sup>6</sup> Response from the Government.

association with one another and the Buddhist sect Huazang Dharma, a clear violation of their right to freedom of association under international human rights<sup>7</sup> and domestic law; although Wu Zeheng has tried to live in peace and stay out of Chinese politics, the Government has systemically persecuted him and his associates. In fact, on the day of their arrest, many people had convened at Wu Zeheng's home, 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 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 that 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 the 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, and thus reaffirms that their detention is arbitrary under category III, and that 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 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 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 rights<sup>8</sup> 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 enforcement agents<sup>9</sup> and imposes criminal liability where that prohibition is violated. Despite those protections, Wu Zeheng has been deprived of sleep and food, forced to sleep on a hard floor and denied access 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 does not dispute this charge.

31. Seventh, the source states that the 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 entered Wu Zeheng's home and forcibly detained nearly 50 people, damaging Wu Zeheng's home in the process, all without the requisite warrant.

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<sup>7</sup> See art. 20 (1) of the Universal Declaration of Human Rights and art. 22 (1) of the Covenant.

<sup>8</sup> See art. 5 of the Universal Declaration of Human Rights and art. 7 of the Covenant.

<sup>9</sup> Article 50 of the Criminal Procedure Code provides that "[i]t 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". Available from <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0000001>.

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. Article 9 (2) of the Covenant and Principle 10 of the Body of Principles require anyone who is arrested to be informed, at the time of the arrest, of the reasons for their arrest and to be informed promptly of any charges against them.<sup>10</sup> The source maintains that the Government failed to inform Wu Zeheng correctly of the reason for his arrest at the time he was detained, on 30 July. 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 Government also ignores independent commentary by the United States of America Commission on International Religions Freedom,<sup>11</sup> the Harvard University Carr Center for Human Rights Policy, Christian Solidarity Worldwide<sup>12</sup> and the Independent Chinese PEN Centre,<sup>13</sup> which have all criticized the arbitrary and biased nature of Wu's arrest and current detention.

34. In addition, the source submits that the detention of the petitioners occurs during a time when the Government has increasingly targeted religious leaders and their associates, in order not only to forcibly silence their criticisms of the State, but also to deter their civil organizing. In the view of the source, 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.<sup>14</sup> The source maintains that, in recent times, with conflict with the Muslim Uyghur population in the north-west and the burgeoning of a Christian Han population, the 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 some cities, entire churches were razed. In addition to this, the source reports that an increasing number of religious groups have been persecuted in China under its 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.<sup>15</sup>

35. To further update the Working Group, the source reports that Wu and his associates are at the end of their trial, but the Government has continued to violate their due rights in many ways, including by denying them a public trial. The source contends that, although Chinese State-run media has repeatedly publicly commented on the proceedings of the trial, the trials have been completely closed off to the public and even to members of the legal defence team. In the view of the source, this failure to provide a public trial is in violation

<sup>10</sup> See art. 9 (2) of the Covenant and Principle 10 of the Body of Principles.

<sup>11</sup> See [www.uscirf.gov/news-room/press-releases/china-uscirf-condemns-arrest-chinese-buddhist-leader-wu-zeheng-and](http://www.uscirf.gov/news-room/press-releases/china-uscirf-condemns-arrest-chinese-buddhist-leader-wu-zeheng-and).

<sup>12</sup> See [www.csw.org.uk/2012/03/22/news/1175/article.htm](http://www.csw.org.uk/2012/03/22/news/1175/article.htm).

<sup>13</sup> See [www.chinesepen.org/english/buddhist-sect-leader-detained-during-raid#more-2532](http://www.chinesepen.org/english/buddhist-sect-leader-detained-during-raid#more-2532).

<sup>14</sup> See "Cracks in the Atheist Edifice", *The Economist*, 1 November 2014, available from [www.economist.com/news/briefing/21629218-rapid-spread-christianity-forcing-official-rethink-religion-cracks](http://www.economist.com/news/briefing/21629218-rapid-spread-christianity-forcing-official-rethink-religion-cracks).

<sup>15</sup> Guobin Zhu, "Prosecuting 'Evil Cults': A Critical Examination of Law Regarding Freedom of Religious Belief in Mainland China", in *Human Rights Quarterly*, 25 August 2010, available from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1664950](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664950).

of article 14 (1) of the Covenant,<sup>16</sup> article 10 of the Universal Declaration of Human Rights<sup>17</sup> and article 25 of the Constitution of China. 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, at present, the below two people continue to face charges and, while their trial officially ended recently, they are still waiting for a verdict. Furthermore, 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:

- Wu Zeheng, male age 48
- Meng Yue, female, age 44

37. The source also reports that the trials of the below three individuals have concluded. The three were found guilty and transferred to “residential centres in disclosed locations” and are now in the process of receiving reduced sentences should they admit their guilt. The individuals are:

- Yuan Ming, female, age 38
- Zhao Weiping, male, age 55
- Liu Runhong, Female, age 40

38. According to the source, the remaining 14 individuals were released on 18 May 2015, after spending 10 months in detention without a trial, after signing an agreement no longer to be associated with an “evil cult”. It remains the source’s view that, from their arrest to their release, the individuals’ 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. The individuals are:

- Wu Haiwuan, male, age 35
- Ni Zezhou, male, age 43
- Li Huichun, male, age 52
- Zhang Guihong, male, age 47
- Yi Shuhui, female, age 49
- Su Lihua, female, age 36
- Sun Ni, female, age 45
- Zhu Yi, female, age 38
- Lu Hunye, female, age 38
- Lin Zhanrong, male, age 43
- Shang Hongwei, female, age 48
- Ren Huining, female, age 26

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<sup>16</sup> Furthermore, according to Principle 36 of the Body of Principles: “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”.

<sup>17</sup> See art. 10 of the Universal Declaration of Human Rights.



- Chen Sisi, female, age 33
- 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 on which to conclude that the detention of Wu and his associates is arbitrary 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 Government is arbitrary in that it violates the law and the rights and fundamental freedoms established in the Covenant, the Universal Declaration of Human Rights and the Body of Principles, and falls within categories II, III and V.

*Additional information communicated to the Government*

41. On 1 July 2016, the Working Group addressed further communication to the Government containing the additional information below 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 divulging to the public the content of the trial on the grounds 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.<sup>18</sup>

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. The 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 the media outlets were State-run and that their accusations were wholly untrue, such action is equivalent to the Chinese Executive Branch declaring Wu and his associates guilty before any of the detainees were officially convicted, which is a direct violation of international law concerning the right to the presumption of innocence, as guaranteed under article 11 (1) of the Universal Declaration of Human Rights.

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. 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 law<sup>19</sup> 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, the court in Wu's case relied heavily

<sup>18</sup> See art. 14 (1) of the Covenant, art. 10 of the Universal Declaration of Human Rights and art. 25 of the Constitution of China.

<sup>19</sup> Specifically, the Supreme People's Court's Interpretation on the Application of the Criminal Procedure Law, chap. 4, sect. 5, art. 85.

on expert opinions that were not from those qualified institutions. In addition, 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.<sup>20</sup>

45. The co-defendants in the cases 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 those 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 those written statements, which further reveal the extent to which they had been manufactured by the prosecution. The source states that, when Wu’s defence lawyer challenged the testimonies as having been obtained while the “witnesses” had been in detention, they were reclassified as statements of co-defendants — which are not, under Chinese law,<sup>21</sup> legally admissible as a basis for conviction — but still considered by the Court as if they were witness testimonies. The source reports that the defence argued in response that the statements could only be taken as evidence if the co-defendants’ liberty were restored and if the co-defendants then reconfirmed the testimony collected during detention then presented it 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 was allowed for the defence; the prosecution relied on written statements from experts and the co-defendants; the defence’s request to cross-examine those individuals was denied; and the Court refused to allow the defence of 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 the claims fully, as required under Chinese law,<sup>22</sup> and the prosecution was allowed to rely on the evidence without having proven that the evidence had been collected legally. The source notes that, compounding these due process violations, Wu was also prevented from communicating with his lawyers during the Court hearings, thereby severely restricting his right to counsel. Furthermore, the source argues that the attempts by Wu’s lawyers to procure the case files at the start 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 that, 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 illegal cult to undermine implementation of the law”, “rape”, “fraud” and “production and sale of harmful food”) and sentenced him to life in prison and a fine of 7.15 million yuan (approximately \$1.1 million).<sup>23</sup> According to the source, also convicted with Wu were three of his associates — the aforementioned Meng Yue and Yuan Ming and 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

<sup>20</sup> Also conditions stipulated under art. 85.

<sup>21</sup> Under Criminal Procedure Law, art. 84, item 2, which specifically stipulates the eight types of evidence that courts allow, containing no alternative provisions.

<sup>22</sup> Art. 57 and item 2, art. 100 of the Criminal Procedure Law.

<sup>23</sup> Including 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”.

defence attempted to appeal the conviction, citing to the use of illegally obtained evidence and other due process violations. However, the source reports that, on 3 February 2016, without holding a hearing, the Guangdong High Court released an online statement saying that a second “trial” had 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. Those visits are extremely limited, as family members are allowed only one 15-minute visit per month. Furthermore, Wu is likely to be transferred to a prison in the Xinjiang Province of North-West China, but details surrounding the transfer are being kept secret.

## Discussion

49. The Working Group welcomes the cooperation of the Government in responding to the initial allegations communicated on 1 June 2015. It notes, however, that in its reply the Government 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).

*Claims regarding the arrests and issuance of charges, the detention without trial of 14 of Mr. Wu’s associates, the lack of court impartiality and the detention without trial of 14 of Mr. Wu’s associates, and claims of torture and forced confession*

50. The Working Group first considers whether the Government 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 the present opinion, including the following: (a) the fact that the search of Mr. Wu’s apartment of 29 July 2014 and the subsequent arrest of Mr. Wu and others on 30 July 2014 were conducted without a warrant; (b) the fact that Mr. Wu and his associates were not provided with a legal arrest notice until 5 September 2014, 36 days after their arrest.

52. The Working Group notes that the Government has not contested any of those claims in its reply. It finds that the aforementioned allegations involve violations of article 9 of the Universal Declaration of Human Rights and Principle 10 of the Body of Principles, giving the detention of Mr. Wu and his associates an arbitrary character under category III.<sup>24</sup>

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 a failure to allow the individuals to challenge their detentions in court constitutes a violation of article 10 of the Universal Declaration of Human Rights, giving the deprivation of their liberty an arbitrary character under category III.

<sup>24</sup> According to 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”.

54. In addition to the requirements under article 10 of the Universal Declaration of Human Rights, the Working Group also notes that Principle 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court specifies the 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 judgment, depending on the circumstances. It 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 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 (art. 11 of the Universal Declaration of Human Rights and principle 36 of the Body of Principles).<sup>25</sup>

56. The Working Group is also concerned to find that, despite the continued publicized comments by State-run media on the proceedings of the trial, the public and even the members of the legal defence team had no access to the trials, which corresponds to a failure to provide a public trial in violation of article 10 of the Universal Declaration of Human Rights<sup>26</sup> and article 25 of the Constitution of China.<sup>27</sup> Such a failure to provide a public trial would add considerable weight to giving the deprivation of liberty of the petitioners, including Mr. Wu, an arbitrary character.

57. The claims that the Chinese authorities used torture against 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 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by China on 4 October 1988, and article 5 of the Universal Declaration of Human Rights. According to article 8 of the Universal Declaration of Human Rights, Mr. Wu, Meng Yue and Yuan Ming are entitled to effective remedy for any torture that they suffered. The Government must provide a prompt and impartial investigation into the reports, as required under article 12 of the Universal Declaration of Human Rights. 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 to be in breach of article 10 of the Universal Declaration of Human Rights, falling under category III.

#### *Claims regarding pre-court detention conditions*

59. The Working Group notes with concern that the conditions in which the Government detained Mr. Wu and his associates violate the obligations of China to uphold the international human rights norms on detention. Specifically, that Mr. Wu was forced to suffer sleep deprivation and was denied food and water, in violation of rule 22 of the

<sup>25</sup> According to art. 11 (1) of the Universal Declaration of Human Rights: "Everyone 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". See also Principle 36 of the Body of Principles.

<sup>26</sup> See art. 10 of the Universal Declaration of Human Rights.

<sup>27</sup> See XIAN FA, footnote 4 above, art. 35.

Standard Minimum Rules for the Treatment of Prisoners;<sup>28</sup> was denied access to medication, in violation of Principle 24 of the Body of Principles;<sup>29</sup> and was denied access to bedding and warm clothing, in violation of Principle 19 of the Body of Principles.<sup>30</sup> Such conditions would also give 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 considers that the deprivation of liberty of Mr. Wu and his associates also resulted from their legitimate exercise of the right to freedom of opinion and expression, freedom of religion and freedom of association.

61. In its reply, the Government confirmed that Wu Zeheng, Meng Yue, Zhao Weiping and Yuan Ming had been arrested for their religious activities, giving no explanation of how that was deemed to be compliant with its international obligations. The obligatory nature of such norms is manifested in article 19 of the Universal Declaration of Human Rights, 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 Universal Declaration of Human Rights, 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 the discrimination against them and the persecution experienced by the owners of businesses affiliated with their 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:

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 is arbitrary and falls within categories II, III and V.

65. Consequent upon the Opinion rendered, the Working Group requests the Government to take the steps necessary 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 Universal Declaration of Human Rights.

<sup>28</sup> According to Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”): “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”, and “Drinking water shall be available to every prisoner whenever he needs it”.

<sup>29</sup> According to 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”.

<sup>30</sup> According to Rule 17 (1) of the Standard Minimum Rules: “Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating”.

66. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Wu and other petitioners deprived of their liberty immediately, and to accord Mr. Wu and 18 others an enforceable right to an effective remedy, including reparations, in accordance with international law.

**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.<sup>31</sup>

*[Adopted on 22 November 2016]*

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<sup>31</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.