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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 69/2017 concerning Tashi Wangchuk (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/36/38), on 7 September 2017, the Working Group transmitted to the Government of China a communication concerning Tashi Wangchuk. The Government replied to the communication on 13 October 2017. China is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Mr. Wangchuk is a 31-year-old Tibetan shopkeeper from Jyekundo County in Kham, Eastern Tibet (Yushu, Qinghai Province).
5. According to the source, Mr. Wangchuk publicly advocated for greater Tibetan language education in local schools in Tibetan populated areas. As part of his activities, Mr. Wangchuk travelled to Beijing in May 2015 to explore the possibility of filing a formal complaint against local government officials for failing to ensure education in the Tibetan language.
6. In September 2015, journalists from the New York Times newspaper travelled to Jyekundo County to meet with Mr. Wangchuk. In November 2015, Mr. Wangchuk's name appeared in an article and short documentary in the New York Times, in which he was quoted as advocating for the right of Tibetans to study in their mother tongue. The source notes that Mr. Wangchuk had explicitly told the newspaper that he was not calling for Tibetan independence.
7. On 27 January 2016, Mr. Wangchuk was detained in Jyekundo County. The source alleges that his family was not notified of his detention until 24 March 2016, in violation of Chinese law, which requires that a detainee's family be notified of his or her arrest within 24 hours. According to the source, Mr. Wangchuk had no contact with his family until September 2016.
8. The source alleges that, during the first week of his detention, Mr. Wangchuk was tortured and suffered extreme inhuman and degrading treatment. He was initially held for a lengthy period in a "tiger chair" to keep him uncomfortable, and was subjected to strenuous interrogation. The source also alleges that Mr. Wangchuk was repeatedly beaten by two police officers and that his interrogators threatened to harm his family.
9. On 24 March 2016, Mr. Wangchuk was charged with "inciting separatism". If found guilty of that offence, he faces up to 15 years' imprisonment.
10. The source submits that, despite the fact that Mr. Wangchuk was charged in March 2016, his lawyers were only allowed to visit him for the first time on 19 June 2016. Thereafter, they were allowed to visit him on 8 and 9 September and 2 November 2016, and 4 and 7 March 2017. During their visits in March 2017, Mr. Wangchuk's lawyers found that he was suffering from joint pain and requested that a medical examination be made. It is unknown whether the requested examination was provided. The source submits that Mr. Wangchuk is at risk of further torture while in detention.
11. In September 2016, the prosecutor sent Mr. Wangchuk's case for criminal trial before the Yushu Intermediate Court in Qinghai Province. In December 2016, in what is reportedly an unusual step, the prosecutor asked the Court to send the case back to the prosecution for further investigation. That additional investigation was concluded on 4 January 2017, and the case was returned to the Court for trial.
12. The source notes that, despite the case having been returned to the Court, Mr. Wangchuk has still not received updated information about the formal indictment or the charges against him. His lawyers have been told by the presiding judge that the Court is currently verifying the evidence and negotiating with the prosecution regarding the current charge of inciting separatism. It is believed that the charge may be changed.
13. In addition, the source notes that documents submitted to the prosecution by the police indicate that the investigation into Mr. Wangchuk's activities focuses on the New York Times documentary about his unsuccessful efforts to use the legal system to challenge government policies.
14. According to the source, early in March 2017, the judge approached Mr. Wangchuk and his family to request additional information about their lawyers, including how they had been hired and how much they were being paid in legal fees.

15. The source alleges that Mr. Wangchuk's arrest and detention have taken place against a backdrop in which it is increasingly difficult for the Tibetan people to exercise their linguistic and cultural rights. In 2010 and 2012, proposed changes to replace Tibetan with Mandarin as the language of instruction in schools and universities led to peaceful protests. According to the source, local community-based language empowerment initiatives promoting the Tibetan language have been closed down by the Government, which claims that the Tibetan language contains "splittist" (i.e. separatist) vocabulary.

16. The source states that Chinese policies in relation to the Tibetan language are inconsistent with provisions of Chinese law and international law. For example, the source refers to the Constitution of China and the Regional Ethnic Autonomy Law, which stipulate that all minority nationalities have the right to use their own spoken and written languages. The source notes that, in China, the Law on the Standard Spoken and Written Chinese Language, the Compulsory Education Law and the National Plan for Medium and Long-Term Education Reform and Development (2010-2020) also provide for the language rights of minority groups.

17. According to the source, those national laws and other measures are not being implemented in Tibet. The source submits that Mr. Wangchuk was detained for publicly expressing his concern about the marginalization of the Tibetan language and culture and for his efforts to file a lawsuit against the authorities for failing to implement relevant legal provisions. Mr. Wangchuk was carrying out legitimate human rights activities and exercising his right to freedom of expression. The source adds that his arrest and detention are indicative of the repression of human rights defenders and Tibetans.

18. Mr. Wangchuk's last known location is the Yushu Detention Centre in Yushu, Qinghai Province. He has now been in detention for nearly two years.

19. Mr. Wangchuk was the subject of a joint urgent appeal by the Working Group and several other special procedure mandate holders addressed to the Government on 10 February 2017.¹ In the communication, the mandate holders expressed concern at the ongoing deprivation of liberty of Mr. Wangchuk since 27 January 2016, including allegations relating to his initial incommunicado detention; his ill-treatment during interrogations; his limited right to counsel; his lack of access to family members; irregularities in the criminal investigation; and failure to make public the indictment and evidence in the case. The mandate holders also expressed concern at the use of separatism-related charges as a means of criminalizing the legitimate exercise of freedom of expression and the defence of cultural rights, and of targeting human rights activities.

20. The Working Group acknowledges the reply from the Government to the joint communication, received on 27 March 2017. As noted in the joint urgent appeal, according to paragraph 23 of the Working Group's methods of work, the Government is required to respond separately to an urgent appeal and to a regular communication.

Response from the Government to the regular communication

21. On 7 September 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 8 November 2017 about the current situation of Mr. Wangchuk. The Working Group also requested the Government to clarify the legal provisions justifying his continued deprivation of liberty and their compatibility with the obligations of China under international human rights law. In addition, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Wangchuk.

¹ The mandate holders included the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22981>.

22. The Government responded to the regular communication on 13 October 2017. In its brief response, the Government stated that Mr. Wangchuk was in Yushu, Qinghai Province, Tibetan Autonomous Region, and that his first instance trial was ongoing. The Government further stated that the judicial authorities would handle the case in accordance with the law and would fully guarantee that Mr. Wangchuk's legal rights were respected. Finally, the Government added that Mr. Wangchuk was in good physical condition.

Discussion

23. The Working Group thanks the source and the Government for the information presented in the present case.

24. 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68). In the present case, the Working Group notes that the Government has not specifically addressed the allegations by the source and therefore considers that the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

25. In addition, there is a body of reliable evidence that supports the source's claims that the Government has targeted Mr. Wangchuk simply for calling for the right of Tibetans to maintain their language and culture to be respected and for the law to be upheld. The targeting of individuals for exercising their rights has been well documented over many years in cases brought to the Working Group in relation to China. For example, the Government has arbitrarily deprived individuals of their liberty solely for the peaceful exercise of their right to freedom of expression² and for their activities as human rights defenders.³ In several cases, the individuals targeted by the Government were members of minority groups, including Tibetans, who were critical of, or sought to change, government policy.⁴

26. In the present case, the source alleges that Mr. Wangchuk was charged on 24 March 2016 with inciting separatism, nearly two months after his arrest on 27 January 2016. Mr. Wangchuk's lawyers were subsequently informed that the charge was being negotiated by the judge and the prosecution, and it is believed that the charge may be changed. However, Mr. Wangchuk has not received any updated information about the indictment or the charges that form the legal basis of his detention. The Government has not provided any information or evidence to refute the allegations, such as charge sheets or an indictment confirming that Mr. Wangchuk has been informed of the charges and when that information was given, and whether he has been kept updated on any new charges. The Working Group concludes that Mr. Wangchuk was not informed promptly of the charges against him and has not been informed as to whether the charges are still current, in violation of his rights under articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. The Working Group takes this opportunity to reiterate its finding in previous cases involving China that any change to the charges brought against the accused to his or her disadvantage constitutes a clear violation of articles 9, 10 and 11 of the Universal

² See opinions Nos. 5/2017, 46/2016, 21/2014, 16/2011, 32/2007, 27/2006, 43/2005, 33/2005, 17/2005, 24/2004, 15/2004, 26/2003, 25/2003, 15/2002, 1/2002, 20/2001, 8/2001, 7/2001, 21/1999, 2/1999, 1/1999, 30/1998, 66/1993, 63/1993, 53/1993 and 43/1993.

³ See opinions Nos. 43/2016, 11/2016, 39/2015, 3/2015, 49/2014, 8/2014, 59/2012, 7/2012, 23/2011, 15/2011, 26/2010, 47/2006, 23/2003, 12/2003, 10/2003, 19/1999, 17/1999, 19/1996 and 44/1993.

⁴ See opinions Nos. 4/2014, 3/2014, 29/2012, 29/2010, 36/2007, 33/2007, 11/2006, 32/2005, 21/2003, 13/2003, 7/2003, 5/2002, 36/2000, 35/2000, 30/2000, 28/2000, 19/2000, 8/2000, 46/1995 and 65/1993.

Declaration of Human Rights.⁵ In those cases, the Working Group has found that such a disadvantage can occur when charges are changed so as to place a defendant at the risk of receiving an immensely higher level of punishment when compared with the allegations made at the time of arrest. Mr. Wangchuk is already facing a substantial penalty of up to 15 years' imprisonment on the current charge of inciting separatism. Any change to the initial charge that would bring about a significant increase in the seriousness of the alleged offence and level of punishment may place Mr. Wangchuk at a disadvantage, particularly given that, since he was charged in March 2016, he has been preparing to face trial for the charge of inciting separatism.

28. Furthermore, the information presented by the source indicates that Mr. Wangchuk's case was only sent to the Yushu Intermediate Court in September 2016, over seven months after he was detained. This appears to be the first time that Mr. Wangchuk's case was ever brought before a court. While the prosecution took the unusual step of requesting that the court send Mr. Wangchuk's case back for further investigation, there is nothing to suggest that this process involved judicial review of the lawfulness, necessity and proportionality of his detention. The Government did not provide any information or evidence, such as a court transcript or court records, to demonstrate that the authorities had brought Mr. Wangchuk promptly before a court to review his detention, or that Mr. Wangchuk had been able to initiate such proceedings himself.

29. The ability to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to obtain without delay appropriate and accessible remedies is a non-derogable right under international law.⁶ States are obliged under international law to adopt specific measures that ensure meaningful access to that right by certain groups of detainees, including persons belonging to ethnic, cultural or linguistic minorities.⁷ As a Tibetan whose last known place of detention is in the Tibetan Autonomous Region, Mr. Wangchuk is particularly vulnerable to arbitrary deprivation of liberty that results from a lack of independent judicial oversight. The Government should have put safeguards in place to ensure that he had access to an initial review, as well as regular, periodic reviews, of his detention by the courts. At the very minimum, that should have included access to his family and lawyers, as well as to any civil society monitoring bodies that could have provided assistance.⁸ The Working Group finds that Mr. Wangchuk was not afforded his right to be brought promptly before a judicial authority or to bring such proceedings himself, contrary to articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and principles 11 and 37 of the Body of Principles. In the absence of a ruling on the lawfulness of Mr. Wangchuk's detention by a judicial authority, the Working Group concludes that no legal basis has been established for his detention (see, for example, opinions No. 46/2017 and No. 28/2016). Given that Mr. Wangchuk was not able to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated.

30. The Working Group therefore considers that there was no legal basis invoked to justify the arrest and detention of Mr. Wangchuk, and his deprivation of liberty falls within category I of the categories applied by the Working Group.

31. The source also alleges that Mr. Wangchuk was detained for exercising his right to freedom of expression by raising concerns about the marginalization of the Tibetan language and culture and advocating that the Tibetan language be taught in local schools.

⁵ See opinions No. 5/2017, para. 44; No. 39/2015, para. 25; and No. 49/2014, para. 20.

⁶ 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, paras. 4-5. The right to challenge the lawfulness of detention before a judicial authority is considered part of customary international law, which applies regardless of whether a State is party to the Covenant. See also the report of the Working Group on Arbitrary Detention on its Mission to China (E/CN.4/2005/6/Add.4), para. 52.

⁷ See Basic Principles and Guidelines, para. 33.

⁸ Ibid, paras. 16-17.

32. Following its visits to China in 1997 and 2004, the Working Group emphasized in its reports that charges involving vague and imprecise offences jeopardize the fundamental rights of those who wish to exercise their freedom of expression and are 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 exercise peacefully their rights guaranteed in the Universal Declaration of Human Rights.⁹

33. In the present case, Mr. Wangchuk has been charged with a vague and overly broad offence of “inciting separatism”. It is not clear how Mr. Wangchuk’s conduct could be considered as inciting separatism when he expressly told the New York Times that he was not calling for Tibetan independence. However, even if he had advocated for independence, there is no evidence to suggest that he engaged in violence or incited violent activity as part of his activities. On the contrary, he chose to work peacefully within the legal system of China to file a formal complaint against local government officials for failing to ensure education in the Tibetan language.

34. The Working Group considers that Mr. Wangchuk’s advocacy, including his interview with the New York Times, falls clearly within the right under article 19 of the Universal Declaration of Human Rights to “seek, receive and impart information and ideas through any media and regardless of frontiers”.¹⁰ In the absence of a substantive response from the Government addressing the specific allegations made by the source, the only plausible explanation of Mr. Wangchuk’s arrest and detention is that he is being punished for his advocacy and activities as a human rights defender¹¹ and prevented from exercising his right under article 19. The timing of Mr. Wangchuk’s arrest in January 2016, just two months after an article about his activities was published in the New York Times, supports that view.

35. Accordingly, Mr. Wangchuk’s deprivation of liberty falls within category II of the categories applied by the Working Group. There is an insufficient basis for the Working Group to conclude that Mr. Wangchuk was deprived of his liberty on discriminatory grounds, such as his Tibetan heritage, and that his deprivation of liberty would fall within category V. He appears to have been targeted on the basis of his activities as a human rights defender, rather than on the basis of any of his personal characteristics. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

36. The Working Group is of the view that the source’s allegations also disclose violations of Mr. Wangchuk’s right to a fair trial. The information provided by the source, and not challenged by the Government, indicates that Mr. Wangchuk was detained incommunicado for nearly five months from the time of his arrest until 19 June 2016, when he met with his lawyers for the first time. Furthermore, Mr. Wangchuk’s family members were not informed about his detention until 24 March 2016 and had no contact with him until September 2016.

37. As the Working Group has consistently argued, holding persons incommunicado is not permitted under international human rights law because it violates the right to challenge the lawfulness of detention before a court (see, for example, opinions No. 45/2017, No. 56/2016 and No. 53/2016). Furthermore, prolonged incommunicado detention creates the

⁹ See the report of the Working Group on its visit to China (E/CN.4/1998/44/Add.2), paras. 42-53, 106-107 and 109 (b) and (c); and the report of the Working Group on its mission to China (E/CN.4/2005/6/Add.4), paras 73 and 78 (e).

¹⁰ See also the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly resolution 47/135, annex. Article 2 (1) of the Declaration provides for the right of persons belonging to national or ethnic, religious and linguistic minorities to enjoy their own culture and to use their own language. Article 2 (3) provides for the right of persons belonging to such minorities to participate in national decisions concerning the minority to which they belong. Article 3 (2) provides that no disadvantage shall result for any person belonging to such minority as the consequence of the exercise of the rights in the Declaration.

¹¹ The Working Group has determined that detaining persons on the basis of their activities as human rights defenders violates the right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights. See opinions No. 16/2017 and No. 45/2016.

conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has proved to be true in the present case, and may itself constitute torture or ill-treatment.¹² The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also argued that the use of incommunicado detention is prohibited under international law (see A/HRC/13/39/Add.5, para. 156).

38. For those reasons, the Working Group considers that the incommunicado detention of Mr. Wangchuk violates articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights. In addition, incommunicado detention for nearly five months effectively placed Mr. Wangchuk outside the protection of the law, in violation of his right to be recognized as a person before the law, as enshrined under article 6 of the Universal Declaration of Human Rights (see, for example, opinions No. 47/2017 and No. 46/2017). Moreover, the denial of contact between Mr. Wangchuk and his family for over seven months amounts to a violation of the right to have contact with the outside world, as enshrined under rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 16 and 19 of the Body of Principles.

39. Furthermore, the Working Group is of the view that the denial of Mr. Wangchuk's access to his lawyers for nearly five months, and the limited access he has had to his lawyers since June 2016, violate his right to legal assistance guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights, principles 15, 17 and 18 of the Body of Principles and rule 61 (1) of the Nelson Mandela Rules. As the Working Group states in principle 9 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, 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 the moment of apprehension (para. 12). The limited access to legal assistance in the present case is particularly serious given that Mr. Wangchuk is facing a charge that may result in up to 15 years' imprisonment, and that he was subjected to interrogation without the presence of his lawyers.

40. The Working Group notes that it has been almost two years since Mr. Wangchuk was detained in January 2016 and he has been held in pretrial detention for that entire period. The right to be tried within a reasonable time is one of the fair trial guarantees embodied in articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 38 of the Body of Principles, and it has been violated in the present case. If Mr. Wangchuk cannot be tried within a reasonable time, he is entitled to be released.

41. Finally, the source alleges that Mr. Wangchuk has been subjected to acts amounting to torture and other ill-treatment, including being forced to sit in a "tiger chair" that causes considerable discomfort, being beaten repeatedly by police officers and being threatened that harm would be caused to his family. The Working Group finds those allegations to be credible, particularly in the light of the statement by the Committee against Torture in its most recent review of China that it had received detailed reports of cases of torture, deaths in custody, arbitrary detention and disappearances of Tibetans, and acts directed at other minority groups.¹³ The treatment of Mr. Wangchuk by the authorities violates the absolute prohibition of torture and ill-treatment under article 5 of the Universal Declaration of Human Rights and articles 2 (2) and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which China is party. The Working Group calls on the Government to investigate the allegations surrounding the treatment of Mr. Wangchuk, in accordance with its obligations under articles 4, 12 and 13 of the Convention, and to prosecute anyone found to have been involved in committing any acts of torture or ill-treatment. Finally, the Working Group notes that, although Mr. Wangchuk has been allegedly subjected to strenuous interrogation, the source has not provided any information as to whether Mr. Wangchuk was forced to provide a confession. According to

¹² See *Official Records of the General Assembly, Fifty-fourth session, Supplement No. 44 (A/54/44)*, para. 182 (a). See also General Assembly resolution 68/156, para. 27.

¹³ See CAT/C/CHN/CO/5, para. 40.

article 15 of the Convention, if any statement was made by Mr. Wangchuk as a result of torture, it must not be admitted as evidence against him.

42. The Working Group concludes that the violations of the right to a fair trial in the present case are of such gravity as to give the deprivation of liberty of Mr. Wangchuk an arbitrary character according to category III of the categories applied by the Working Group.

43. According to his lawyers, Mr. Wangchuk is suffering from joint pain and it is not known whether he has received medical treatment. He has been detained for nearly two years, after being initially held incommunicado and subjected to torture and other ill-treatment by the authorities. This treatment violates Mr. Wangchuk's right to be treated in a humane manner and with respect for his inherent dignity, as enshrined under principle 1 of the Body of Principles. Given those circumstances, the Working Group calls upon the Government: (a) to release Mr. Wangchuk immediately and unconditionally; (b) to drop all charges against him in relation to his advocacy for greater Tibetan language education; and (c) ensure that he has access to health care after his release, including physical and psychological rehabilitation for the torture and ill-treatment that he has suffered.

44. In its 25-year history, the Working Group has adopted 84 opinions in relation to China. In 77 of those cases, the Working Group found the deprivation of liberty to be arbitrary. 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.¹⁴ Moreover, as a signatory to the International Covenant on Civil and Political Rights since 1998, China is obliged under article 18 of the 1969 Vienna Convention on the Law of Treaties to refrain from acts which would defeat the object and purpose of the Covenant, including the repeated denial of the rights to liberty and to fair trial under its articles 9 and 14.

45. The Working Group would welcome the opportunity to work constructively with the Government in addressing concerns regarding the arbitrary deprivation of liberty in China. In April 2015, the Working Group sent a request to the Government to undertake a country visit, following its earlier visits in 1997 and 2004, and awaits a positive response. Given that the human rights record of China will be subject to review in November 2018 during the third cycle of the universal periodic review, an opportunity exists for the Government to enhance its cooperation with the special procedures of the Human Rights Council and to bring its laws into conformity with international human rights law.

Disposition

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

The deprivation of liberty of Tashi Wangchuk, being in contravention of articles 3, 5, 6, 7, 8, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

47. The Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Wangchuk without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group also urges the Government to accede to the International Covenant on Civil and Political Rights.

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

49. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

¹⁴ See, for example, opinion No. 47/2012, para. 22. See also the opinions cited in footnotes 2, 3 and 4 above in relation to the widespread and systematic arbitrary deprivation of liberty.

Wangchuk, including allegations that he has been tortured, and to take appropriate measures against those responsible for the violation of his rights.

50. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on the situation of human rights defenders for appropriate action.

Follow-up procedure

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

52. 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.

53. 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.

54. 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.¹⁵

[Adopted on 20 November 2017]

¹⁵ See Human Rights Council resolution 33/30, paras 3 and 7.