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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its 104th session, 10–14 November 2025****Opinion No. 73/2025 concerning Xie Yang (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 51/8.

2. In accordance with its methods of work,¹ on 28 July 2025, the Working Group transmitted to the Government of China a communication concerning Xie Yang. The Government submitted a late response on 10 November 2025. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

(i) Context

4. Xie Yang, born on 4 February 1972, is a citizen of China. Prior to his detention, he resided in Changsha City, Hunan Province.

5. According to the source, Mr. Xie is a human rights lawyer and has represented many human rights defenders, resulting in him being targeted by the authorities. Some of Mr. Xie's previous clients include human rights defenders arrested during the Jasmine Crackdown on the pro-democracy protests in 2011, during the suppression of anti-corruption campaigners of the New Citizens' Movement in 2013–2014 and during the suppression of the Southern Street Movement in 2012, as well as supporters of the Occupy Hong Kong protests in 2014. In early 2014, Mr. Xie reportedly spoke out against assaulting human rights lawyers in retaliation for defending their clients. He was reportedly later himself subject to a physical attack outside a courtroom, in 2015.

6. The source reports that, in July 2015, Mr. Xie was detained and subjected to torture while being held for six months under residential surveillance at a designated location. In May 2017, Changsha Intermediate Court convicted Mr. Xie of "inciting subversion" but exempted him from serving time in prison in exchange for renouncing his allegations of torture.

7. Mr. Xie was released on bail, but the authorities have reportedly kept him under close surveillance and continued to pressure him as he tried to conduct his legal work. In August 2020, the Judicial Bureau of Hunan Province reportedly revoked Mr. Xie's licence to practise law after accusing him of disobeying the court order. Mr. Xie has nevertheless continued to assist other fellow lawyers and to advocate for their fair trial rights.

8. Mr. Xie was reportedly using Chinese and international social media platforms to express his views about the political and judicial system of China. He was frequently interviewed by foreign media outlets about his views on human rights in China.

9. Mr. Xie was the subject of the Working Group's opinion No. 59/2017 and of the several communications of the special procedures.²

(ii) Arrest and current detention of Mr. Xie

10. The source informs the Working Group that Mr. Xie was arrested on the evening of 11 January 2022 at his home in Yuelu District, Changsha City. The forces that carried out the arrest are reported to have been national security officers from Changsha City. It is unknown whether the authorities showed Mr. Xie an arrest warrant.

11. The source specifies that, at the time of the arrest, Mr. Xie was in the middle of a video call with a law student studying at a foreign university who was seeking his views on human rights law in China. Mr. Xie's arrest occurred 17 days after he held a one-person demonstration in support of an activist, on 25 December 2021, and posted a photo and video online, including on social media.

12. It is reported that Mr. Xie's family received a written criminal detention notice on 17 January 2022, six days after his arrest. During the days when Mr. Xie's whereabouts were unknown, his family went to his household and discovered that the house had been searched and that Mr. Xie's two computers and a safe had been confiscated.

13. Mr. Xie was criminally detained following the decision of Changsha Public Security Bureau on charges of "inciting subversion of State power" (art. 105 (2) of the Criminal Code of China) and "picking quarrels and provoking trouble" (art. 293 of the Criminal Code). The source notes that the offence of "inciting subversion of State power" stipulates a fixed-term

² See communications CHN 3/2017, CHN 13/2024, CHN 15/2024 and CHN 8/2025. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

imprisonment of not less than five years, criminal detention, public surveillance or deprivation of political rights to those who incite others by spreading rumours or by slander or any other means to subvert State power or overthrow the socialist system. The offence of “picking quarrels and provoking trouble” stipulates a fixed-term imprisonment of up to five years to those who wilfully attack another person and the circumstances are serious; chase, intercept or curse another person and the circumstances are serious; forcibly take away, demand or wilfully damage or seize public or private property and the circumstances are serious; or create a disturbance in a public place causing serious disorder.

14. On 17 February 2022, Mr. Xie was formally arrested following the order of the Changsha Public Security Bureau. Changsha Procuratorate approved his formal arrest. The reason for the detention imputed by the authorities is “inciting subversion of State power” (art. 105 (2) of the Criminal Code).

15. On 23 August 2022, Changsha City People’s Procuratorate indicted Mr. Xie for “inciting subversion of State power”. The indictment indicated that Mr. Xie had published attacks and denigrated State power, the socialist system and the leadership of the Communist Party of China through his registered domestic and foreign social media accounts or by taking the opportunity of interviews with foreign media for inciting subversion of State power and the overthrow of the socialist system.

16. The indictment listed the following evidence: (a) since 2018, the defendant has used his social media accounts to spread rumours and defame, posting or forwarding multiple posts attacking State power, the socialist system and the leadership of the Communist Party of China; (b) since 2020, the defendant, taking advantage of interviews with foreign media outlets, has published speeches attacking State power, the socialist system and the leadership of the Communist Party of China in such ways as by spreading rumours and distorting facts in speeches published by the aforementioned media outlets, causing severe political impact.

17. The source notes that Mr. Xie has been held in pretrial detention for over three and a half years at Changsha No. 1 detention centre by the authorities from Yuelu Branch of Changsha Public Security Bureau.

18. In recent months, the staff at the detention centre have reportedly created numerous obstacles to Mr. Xie’s meetings with his legal counsel. On 25 April 2025, Mr. Xie was subjected to a strip-search before being allowed to meet with his lawyer. In February 2025, the authorities at the detention centre required the lawyer to leave his cell phone and papers outside of the meeting room. The source notes that other lawyers were permitted to keep their cell phones and papers during meetings with clients.

(iii) *Legal analysis*

19. The source submits that the deprivation of liberty of Mr. Xie is arbitrary, falling within categories II and III of the Working Group.

20. In relation to category II, it is submitted that the detention of Mr. Xie stems from his exercise of rights to freedom of expression and peaceful assembly. The source notes in this regard that, in the weeks prior to Mr. Xie’s arrest in January 2022, Mr. Xie campaigned for the release of a teacher who had reportedly been forcibly put into a psychiatric detention facility after writing online in support of another teacher who had questioned the official death toll of the Nanjing Massacre. Mr. Xie reportedly displayed signs in front of the school where that teacher had taught and at the local police station. Mr. Xie also posted about his protest on social media, which reportedly received a significant number of likes. The source observes that, while this incident appears to have prompted Mr. Xie’s detention on charges of “inciting subversion” and “picking quarrels”, Mr. Xie was formally arrested on 17 February 2022 on the sole charge of “inciting subversion”.

21. The source submits that the accusations in the indictment reflect the persecution of Mr. Xie by the authorities for exercising his protected right to freedom of expression. Mr. Xie has the right to freedom of expression and opinion guaranteed under article 35 of the Constitution of China and article 19 of the Universal Declaration of Human Rights. The source maintains that Mr. Xie’s posts about politics and human rights are a peaceful expression of his political views.

22. Furthermore, the source recalls that the indictment also accuses Mr. Xie for not “repenting” after being convicted of the same charges in 2017.³ With regard to the earlier charges, the source notes that the Working Group determined that his detention was arbitrary. The source submits that Mr. Xie’s current detention is an example of authorities repeatedly targeting human rights defenders, in violation of their right to free expression.

23. The source also submits that the offence of “inciting subversion” has been repeatedly used to target human rights defenders, lawyers, writers and others for their online expression. The source affirms that the evidence presented by the prosecution and accepted by courts often merely consists of the writings or verbal expressions of an individual or simply shows that he or she circulated certain articles containing dissenting views. In this regard, the source also recalls that the Working Group has previously described the “inciting subversion” provision as “vaguely and broadly worded” and 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.⁴

24. In relation to category III, the source asserts that the authorities violated Mr. Xie’s right to a fair trial, which is protected by international human rights standards and domestic law. The source affirms in this regard that Mr. Xie has been subjected to an enforced disappearance and denied access to a lawyer of choice for seven months. Furthermore, the authorities have reportedly attempted to force him to accept State-appointed legal counsel. Mr. Xie has also reportedly been subjected to torture and other ill-treatment and to unreasonably prolonged period of pretrial detention.

25. The source specifies that Mr. Xie’s family did not receive a detention notice until 17 January 2022, six days after he was detained, in violation of the article 85 of the Criminal Procedure Code of China, which stipulates that the family must be notified within 24 hours, although the law makes an exception when a person is accused of national security crimes, such as “inciting subversion”. In relation to the alleged enforced disappearance for seven months, the source submits that while the detention notice listed Changsha No.1 detention centre as the location of Mr. Xie’s detention, his family was reportedly unable to obtain any information about Mr. Xie there. When inquiries were made at Changsha No. 1 detention centre, the authorities rejected all requests to visit Mr. Xie. The source asserts that the authorities deliberately entered only Mr. Xie’s surname into the system and used a code to refer to him, thereby creating obstacles to tracking his whereabouts.

26. Furthermore, the source submits that Changsha Public Security Bureau has, on multiple occasions, denied meeting requests made by Mr. Xie’s lawyers. Mr. Xie was able to meet with a lawyer hired by the family for the first time on 3 August 2022, nearly seven months into his detention. From October 2022 to May 2023, the authorities at Changsha No. 1 detention centre reportedly prevented Mr. Xie from having access to his lawyer. He was next granted a meeting with his lawyer on 17 May 2023, after a period of eight months.

27. The source recalls that the article 37 of the Criminal Procedure Code allows for the police to deprive the detainee his or her right to access to a lawyer beyond 48 hours if the detainee is accused of an “endangering national security” crime. However, it is submitted that this provision violates international human rights law on access to counsel.

28. The source recalls previous communications from the Special Rapporteur on the independence of judges and lawyers, in which it was indicated that mechanisms for effective and equal access to lawyers must be provided for all persons within Chinese territory and to all individuals subject to Chinese jurisdiction, without distinction of any kind and that individuals charged with crimes should have prompt and private access to a lawyer of their choosing.⁵

29. Furthermore, it is submitted that, while the authorities appeared to allow Mr. Xie access to a lawyer of his choice on some occasions, they attempted to force him into accepting a State-appointed lawyer. Reportedly, on 11 April 2023, Mr. Xie had a pretrial hearing, which

³ Opinion No. 59/2017.

⁴ Opinion No. 11/2020, paras. 43 and 44.

⁵ See communication CHN 1/2024.

was convened without the attendance of Mr. Xie's lawyer, despite Mr. Xie's protest. It is further noted that the legal counsel eventually managed to attend the hearing.

30. The source affirms that Changsha Intermediate People's Court and Changsha City Procuratorate had been trying to force Mr. Xie into being represented by a State-appointed lawyer. The source notes that this practice "violates the right to a lawyer of one's choosing, negates equality of arms and leads to the imposition of longer sentences".⁶ It is also specified that government-appointed lawyers often fail to present a substantive defence, relying instead on allegations put forth by the authorities.

31. The source moreover makes allegations of torture and cruel, inhuman and degrading treatment. It is specified that, on 16 December 2022, Mr. Xie reportedly requested to see a new lawyer that he had selected, but the authorities stated that the lawyer did not come despite their summons. When Mr. Xie protested, the authorities reportedly chained and handcuffed him, preventing Mr. Xie from attaining an upright position, as a means of torturing him. Moreover, during 13 days of interrogation, from 12 to 25 January 2022, Mr. Xie was reportedly tortured and subjected to other ill-treatment at Changsha No. 1 detention centre, which included being chained up and beaten on three occasions by his interrogator. During this period, the authorities reportedly limited Mr. Xie's food and did not allow other prisoners to talk to him, to pressure him to confess.

32. Other instances of torture and ill-treatment included an instance whereby the authorities reportedly demanded payment of 20,000 yuan in cash in order to connect Mr. Xie's call to the prosecutor. Mr. Xie attempted to contact the prosecutor to protest the extension of his detention, in March 2024. Mr. Xie was allegedly requested to perform a dance and degrading acts in front of the surveillance camera from his cell, in exchange for his request to be accepted.

33. From 14 to 27 March 2024, Mr. Xie was handcuffed and chained in shackles in his cell except for the few hours he spent meeting with his lawyer on 18 and 19 March 2024. The source submits that the torture and ill-treatment violate both domestic and international human rights law. Mr. Xie reportedly filed a complaint with the prosecutor at the detention centre, but no action has been taken. The source recalls that, during Mr. Xie's previous instances in detention, between 2015 and 2017, he was tortured by no less than 40 officers and guards during the six months of residential surveillance at a designated location and at Changsha No. 1 detention centre.

34. The source notes that, given that Mr. Xie was tortured during his previous and current detention, his defence team requested at the pretrial meeting the recusal of several members of the judicial committee who were involved in Mr. Xie's previous proceedings in 2015–2017 to prevent the possibility of retaliation. The defence also requested the former presiding judge and the current judge to recuse themselves. The current judge has reportedly refused Mr. Xie's bail application without issuing a written decision. At the pretrial meeting, he attempted to continue the agenda without addressing requests from the defence. This was met with strong opposition and resulted in the meeting ending prematurely.

35. The source recalls that torture to extract confessions and the ill-treatment of detainees are criminal offences in China (arts. 247 and 248 of the Criminal Code). The Criminal Procedure Code prohibits the use of torture to extract confessions (art. 52) and excludes evidence obtained by torture (art. 56). Nevertheless, the source notes that the Committee against Torture raised concerns that torture was deeply entrenched in the criminal justice system, during the most recent review of the implementation by China of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

36. The source asserts that Mr. Xie was subjected to an unreasonable prolonged pretrial detention without bail. Since the beginning of his detention, Mr. Xie's lawyers have applied for bail on several occasions. In late January 2022, Changsha Public Security Bureau denied the application on the grounds that Mr. Xie might destroy or falsify evidence or collude with witnesses to fabricate testimony. Other applications have also been denied, and the judges have not provided the response in writing.

⁶ Ibid.

37. Mr. Xie's detention has been reportedly extended at least nine times since 29 November 2022. According to the source, the official notices on the extension of detention contained typos or missing information and did not follow the domestic legal provisions. Out of the nine notices, two were issued by Changsha City Public Security Bureau and Changsha City Procuratorate, with the remaining seven notices issued by Changsha Intermediate People's Court. However, the notices dated 29 November 2022 and 28 February 2023 showed the name of the issuing court as "Changsha City First Changsha Intermediate People's Court", which appeared to be typos, as the other five notices showed the issuer as "Changsha Intermediate People's Court". The source notes that the notice dated 28 February 2024 did not indicate an approval by the Supreme People's Court, as required by law.

38. On 2 September 2024, Changsha Intermediate People's Court called a pretrial meeting. Although Mr. Xie was represented by his lawyer, the source points to several procedural irregularities. The court reportedly failed to send the indictment 10 days ahead of the meeting to one of Mr. Xie's lawyers, as required under article 197 in the Criminal Procedure Code. The lawyer concerned had requested both in writing and by telephone to view and copy case files, as guaranteed by article 40 of the Criminal Procedure Code. However, the court reportedly never allowed the lawyer to do so before the meeting on 2 September 2024.

39. During the pretrial meeting on 2 September 2024, Mr. Xie's lawyers reportedly contested the procedural violations with the court, including lack of access to the indictment and case files ahead of the meeting. However, the judge insisted on conducting the meeting knowing that the defence has not been able to prepare for it.

(b) Response from the Government

40. On 28 July 2025, the Working Group transmitted the allegations from the source to the Government of China under its regular communications procedure. The Working Group requested the Government to provide it, by 26 September 2025, with detailed information about Mr. Xie and 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 China to ensure Mr. Xie's physical and mental integrity.

41. The Government submitted its reply on 10 November 2025, after the deadline. The Working Group cannot accept this response as if it were provided within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion on the basis of all the information that it has obtained.

(c) Additional information from the source

42. On 1 August 2025, the source informed the Working Group that, on 30 July 2025, the first instance trial of Mr. Xie had started at Changsha Intermediate Court. There were several procedural issues, including the lack of timely notification of one of his defence lawyers, who was thus unable to attend, and a refusal to allow his other defence lawyer to copy case files to prepare his defence. There was another hearing in October 2025 on an unknown date, but neither of Mr. Xie's lawyers was informed and therefore could not attend. There is still no further information regarding the verdict or sentencing.

43. The source also informed the Working Group that staff at the detention centre had created numerous obstacles to his meeting with legal counsel. For example, on 25 April 2025, Mr. Xie was subjected to a strip-search before being allowed to meet with his lawyer. In February 2025, the detention centre required the lawyer to leave both his cell phone and papers behind, while other lawyers were permitted to keep theirs during meetings with clients.

2. Discussion

44. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

45. In determining whether the deprivation of liberty of Mr. Xie is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented 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.⁷

46. The source has argued that the detention of Mr. Xie is arbitrary and falls under categories II and III. The Working Group will proceed to examine the information before it concerning those categories, as well as categories I and V ex officio.

(a) Category I

47. Although the source has not explicitly framed its submission under category I, the Working Group may examine issues ex officio when the information provided suggests deprivation of liberty that lacks legal basis.

48. The Working Group recalls that enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.⁸ According to the source's un rebutted submissions, Mr. Xie's family did not receive a detention notice until 17 January 2022, six days after his arrest, despite article 85 of the Criminal Procedure Code requiring notification within 24 hours. During that period, Mr. Xie's whereabouts were unknown to his family. When inquiries were made at Changsha No. 1 detention centre, the location listed in the eventual notice, the authorities rejected all requests to visit Mr. Xie and deliberately entered only his surname into the system, using a code to refer to him, thus creating obstacles for those wishing to track his whereabouts. The source reports that Mr. Xie was effectively forcibly disappeared for seven months, during which time his family was unable to obtain any information about him. By concealing Mr. Xie's whereabouts from his family and lawyers, the authorities placed him outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. This also violated his right to challenge the lawfulness of his detention before a court under article 8 of the Universal Declaration of Human Rights.

49. The Working Group notes that the source alleges that Mr. Xie was arrested on 11 January 2022 at his home. It is unknown whether the authorities showed Mr. Xie an arrest warrant. The Working Group recalls that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that, 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 to the circumstances of the case. This is typically⁹ done through an arrest warrant or arrest order.¹⁰ The right to be presented with an arrest warrant is inherent to the right to liberty and security of person and to the prohibition of arbitrary detention, under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4, and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹¹ The Government, in its late reply, did not argue that the arrest warrant had been presented. In the absence of specific information showing that Mr. Xie was presented with a proper arrest warrant, the Working Group concludes that his arrest also

⁷ A/HRC/19/57, para. 68.

⁸ See opinions No. 5/2020; No. 6/2020; No. 11/2020; No. 13/2020; No. 77/2020; No. 38/2021 and No. 25/2022. See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 17.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinion No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

¹⁰ Ibid., para. 27; and opinion No. 30/2017, paras. 58 and 59. See also Opinions No. 77/2023, paras. 49 and 50; No. 9/2025, para. 86; and No. 58/2025, para. 46.

¹¹ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8, and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 66/2019, para. 61; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 89/2020.

lacked proper legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights.

50. Furthermore, the Working Group observes that Mr. Xie has been charged under article 105 (2) of the Criminal Code, on “inciting subversion” of State power, as confirmed by the Government in its belated reply. The Working Group has previously noted that this provision does not define with sufficient precision what conduct amounts to “inciting subversion”. It therefore considers that this provision is vague and imprecise, allowing for the criminalization of conduct protected under international human rights law.¹² The determination of whether an offence has been committed appears to be left entirely to the discretion of the authorities. The Working Group again emphasizes that charges involving vague and imprecise offences jeopardize the ability of individuals to exercise their fundamental rights and are likely to result in arbitrary deprivation of liberty. 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.¹³ The Working Group thus observes that Mr. Xie was arrested, detained and charged under vague provision of the Criminal Code that fails to meet the principle of legality enshrined in article 11 (2) of the Universal Declaration of Human Rights.

51. The Working Group observes that Mr. Xie was formally arrested on 17 February 2022 following approval by the Changsha Procuratorate – a prosecutorial authority, not a judicial one. As the Working Group has consistently stated, the lawfulness of detention must be reviewed by a judicial authority, not by a prosecutorial authority.¹⁴ Judicial oversight of detention is a fundamental safeguard of personal liberty¹⁵ and is essential in ensuring that detention has a legal basis. The approval of Mr. Xie’s arrest by prosecutorial authorities, rather than by an independent court, fails to satisfy the requirement of judicial control over deprivation of liberty under articles 9 and 10 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

52. Mr. Xie has been held in pretrial detention for over four years, since January 2022. His detention has been extended at least nine times without sufficient justification. In its belated reply, the Government noted that trial duration was in compliance with relevant domestic laws, including article 208 of the Criminal Procedure Code. The Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception, and not the rule, and that it should be ordered for as short a time as possible.¹⁶ International human rights law is clear that it is not to be the general rule that persons awaiting trial must be detained, but release may be subject to guarantees to appear for trial. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.¹⁷ The need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence and using stereotyped formulas, without any individualized assessment or considering alternative preventive measures. The Working Group therefore considers that the prolonged pretrial detention in Mr. Xie’s case is excessive and unjustified.

53. The Government, in its belated response, provided only general assertions that detention complied with domestic law, without addressing the specific allegations raised by the source. Considering the above, the Working Group concludes that the detention of Mr. Xie lacks legal basis and is arbitrary, falling under category I.

¹² See, for example, opinion No. 66/2021, para. 55. See also [A/HRC/48/55](#), para. 48.

¹³ See, for example, opinion No. 41/2017, paras. 98–101.

¹⁴ Opinion Nos. 41/2020, para. 60; 6/2020, para. 47; 5/2020, para. 72; 14/2015, para. 28; and [A/HRC/45/16/Add.1](#), para. 35.

¹⁵ See [A/HRC/30/37](#), para. 3.

¹⁶ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54; Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

¹⁷ [A/HRC/19/57](#), para. 54.

(b) Category II

54. The source submits that the detention of Mr. Xie constitutes a violation of his rights to freedom of expression and peaceful assembly, including those guaranteed under articles 18 to 21 of the Universal Declaration of Human Rights. The Government did not address this allegation in its belated reply, but merely referred to the suspicion of Mr. Xie's having incited subversion of State power without providing further details.

55. The Working Group notes that, according to the source, Mr. Xie was detained primarily for his online criticism of the Government and for engaging in human rights advocacy. In the weeks prior to his arrest in January 2022, Mr. Xie campaigned for the release of a teacher who had reportedly been forcibly put into a psychiatric detention facility. Mr. Xie displayed signs in front of the school where the teacher had taught and at the local police station. He also made a post covering his protest on social media. On 25 December 2021, he held a one-person demonstration in support of an activist and posted a photo and video online.

56. The indictment against Mr. Xie specifically mentions his use of domestic and foreign social media accounts and interviews with foreign media as the bases for the charges. The indictment states that, since 2018, Mr. Xie used his social media accounts to post or forward posts attacking State power, the socialist system and the leadership of the Communist Party of China. It also states that, since 2020, Mr. Xie took advantage of interviews with foreign media outlets to publish speeches attacking State power, the socialist system and the leadership of the Communist Party of China.

57. The Working Group notes that those actions fall within the legitimate exercise of the right to freedom of expression, as protected under article 19 of the Universal Declaration of Human Rights. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of one's choice. Online expression and commentary on political matters, including criticism of government policies and officials, falls squarely within the protection of the right to freedom of expression. The Government has not demonstrated that Mr. Xie's expression posed any threat to national security, public order, public health or morals or the rights and freedoms of others that would justify restricting his rights.

58. The Working Group notes with grave concern that this is the second time Mr. Xie has been the subject of one of its opinions. In its opinion No. 59/2017, the Working Group found that Mr. Xie's previous detention on charges related to "inciting subversion of State power" was arbitrary and fell within categories II and III. The Working Group noted that Mr. Xie had been detained as part of the "709 crackdown" against lawyers and human rights defenders, that he had been subjected to torture and cruel mistreatment, including by as many as 40 individuals, and that his confession appeared to have been obtained under duress.

59. The current detention appears to follow the same pattern, with the indictment even citing as an aggravating factor Mr. Xie's failure to "repent" after his 2017 conviction. This suggests that Mr. Xie is being punished for continuing to exercise his fundamental rights despite previous persecution. The Working Group considers that the re-detention of an individual whose prior detention the Working Group has already found to be arbitrary, on similar charges related to the exercise of fundamental freedoms, not only constitutes a grave and repeated violation of international human rights law, but also demonstrates a deliberate and persistent refusal by the Government to comply with the Working Group's findings and recommendations. Such conduct undermines the integrity of the international human rights system and the authority of the Human Rights Council. The Working Group recalls that the Human Rights Council has requested the States concerned to take account of the views of the Working Group.¹⁸ The re-arrest of Mr. Xie on charges stemming from his continued exercise of the very rights the Working Group previously found to be protected represents a direct challenge to the international rule of law and may amount to an act of reprisal against him for having been the subject of the Working Group's opinion No. 59/2017.

¹⁸ Human Rights Council resolution 60/8, para. 6.

60. In the absence of a compelling explanation from the Government as to why restrictions on Mr. Xie's freedom of expression are justified, the Working Group concludes that Mr. Xie has been deprived of his liberty for the peaceful exercise of his rights to freedom of expression and peaceful assembly, in violation of articles 19, 20 and 21 of the Universal Declaration of Human Rights. His detention is therefore arbitrary, falling under category II.

(c) Category III

61. The source argues that the detention of Mr. Xie also falls under category III, due to non-observance of international norms relating to the right to a fair trial. Given its finding that the deprivation of liberty of Mr. Xie is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. Nevertheless, since the trial proceedings have occurred, the Working Group will examine the source's allegations.

62. The Working Group notes that the source reports that Mr. Xie was denied access to a lawyer of his choice for nearly seven months after his arrest. Mr. Xie was able to meet with a lawyer hired by his family for the first time on 3 August 2022, nearly seven months into his detention. Furthermore, from October 2022 to May 2023, Mr. Xie was again denied access to his lawyer, for a period of approximately eight months. The Government, in its belated response, did not address these specific allegations.

63. The Working Group recalls that 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 that such access must be provided without delay.¹⁹ This right is essential to ensuring that the principle of equality of arms is observed in criminal proceedings. Furthermore, according to principle 2 of the Basic Principles on the Role of Lawyers, the detainee should have access to effective counsel at the earliest appropriate time. The Working Group considers that this principle is fundamentally related to the principle of equality of arms, as enshrined in article 10 of the Universal Declaration of Human Rights.

64. The Working Group further notes the allegations that the authorities attempted to force Mr. Xie to accept a State-appointed lawyer. On 11 April 2023, a pretrial hearing was reportedly convened without the attendance of Mr. Xie's lawyer of choice. Article 11 of the Universal Declaration of Human Rights, interpreted in the light of international human rights law, guarantees the right of all persons charged with a criminal offence to communicate with counsel of their own choosing. In the present case, the Working Group finds that Mr. Xie's right to legal counsel of his choice was violated.

65. The Working Group also notes with concern the source's allegations that Mr. Xie's lawyers were obstructed from preparing an adequate defence. One of Mr. Xie's lawyers was not sent the indictment 10 days ahead of the pretrial meeting on 2 September 2024, as required under article 197 of the Criminal Procedure Code. The lawyer's requests to view and copy case files, as guaranteed by article 40 of the Criminal Procedure Code, were also denied. The court reportedly proceeded with the pretrial meeting despite knowing that the defence had not been able to prepare.

66. The Working Group further notes from the additional information furnished by the source that the first instance trial of Mr. Xie opened on 30 July 2025 at Changsha Intermediate Court. The source reports several procedural issues at the trial, including the lack of timely notification of one of Mr. Xie's defence lawyers, who was thus unable to attend, and a refusal to allow another of his defence lawyers to copy case files to prepare his defence. These restrictions significantly impaired Mr. Xie's ability to prepare and present his defence, in violation of article 11 of the Universal Declaration of Human Rights.

67. The Working Group notes the source's allegations that, on 25 April 2025, Mr. Xie was subjected to a strip-search before being allowed to meet with his lawyer. In February 2025, the detention centre required Mr. Xie's lawyer to leave both his cell phone and papers behind, while other lawyers were permitted to keep theirs during meetings with clients. Such differential treatment of defence counsel represents an additional obstacle to Mr. Xie's effective legal representation.

¹⁹ See [A/HRC/30/37](#), principle 9 and guideline 8.

68. The Working Group notes with grave concern the serious allegations of torture and ill-treatment, which mirror the findings in its opinion No. 59/2017. The Working Group has previously noted that Mr. Xie was subjected to torture techniques, including sleep deprivation, long interrogations, beating, death threats and humiliation, with as many as 40 individuals allegedly involved in inflicting torture and cruel mistreatment. In the current detention, the source reports that, during the 13 days of interrogation in January 2022, Mr. Xie was chained up and beaten on three occasions. He was subjected to food deprivation and isolation to pressure him to confess. On 16 December 2022, when Mr. Xie protested about not being allowed to see his selected lawyer, he was reportedly chained and handcuffed in a position preventing him from standing straight. From 14 to 27 March 2024, he was allegedly handcuffed and chained in shackles in his cell for nearly two weeks. He was also allegedly demanded to perform degrading acts in exchange for being allowed to contact the prosecutor.

69. The Working Group recalls that the ill-treatment and torture constitute a grave violation of human rights per se, in violation of articles 5 and 25 of the Universal Declaration of Human Rights and article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); it also seriously undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in the light of the right not to be compelled to testify against oneself or to confess guilt under article 11 (1) of the Universal Declaration of Human Rights. The Government's bare denial, in its late submission, that there was any "torture" is insufficient to rebut the detailed and serious allegations made by the source. The Working Group notes with concern that, despite the referral of Mr. Xie's case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in opinion No. 59/2017, Mr. Xie has again been subjected to similar treatment during his current detention.

70. The Working Group concludes that the above-mentioned violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Xie an arbitrary character. His detention therefore falls under category III.

(d) Category V

71. Although category V was not explicitly raised by the source, the Working Group has found under category II that Mr. Xie's detention resulted from his legitimate exercise of freedom of expression and peaceful assembly. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views. Accordingly, the Working Group will examine ex officio the information relating to this category.

72. The Working Group notes that Mr. Xie appears to have been targeted due to his political opinions, particularly his criticism of government policies and his advocacy for human rights. His detention followed his online activism, his one-person demonstration in support of a detained activist and his continuing work as a human rights lawyer despite having his license revoked. The indictment explicitly cites his social media posts and interviews with foreign media as the bases for the charges.

73. The authorities have therefore displayed an attitude towards Mr. Xie that can only be characterized as discriminatory. For this reason, and in the absence of any explanation from the Government that would refute this conclusion, the Working Group considers that the deprivation of liberty of Mr. Xie constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination, based on political or other opinion, as well as on his status as human rights lawyer, which is aimed at and results in ignoring the equality of human beings. His deprivation of liberty therefore falls under category V.

(e) Concluding remarks

74. In recent years, the Working Group has found China in violation of its international human rights obligations in numerous cases.²⁰ The Working Group is concerned that this might indicate a widespread or systemic practice of arbitrary detention in the country. The Working Group underlines that States have the obligation not to engage in acts that could constitute crimes against humanity and to prevent them and, if they are committed, punish those responsible.

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

3. Disposition

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

The deprivation of liberty of Mr. Xie Yang, being in contravention of articles 2, 3, 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

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

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

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

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

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

²⁰ See, for example, opinions 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, No. 30/2021, No. 9/2022, No. 41/2022, No. 64/2022, No. 88/2022, No. 6/2023, No. 30/2023, No. 38/2023, No. 77/2023, No. 2/2024, No. 4/2024, No. 34/2024, No. 7/2025, No. 9/2025, No. 10/2025 and No. 58/2025.

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 of 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.²¹

[Adopted on 14 November 2025]

²¹ See Human Rights Council resolution 60/8, paras. 6 and 9.