

**PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chair: Ms. Leigh Toomey (Australia)

Vice-Chair: Ms. Elina Steinerte (Latvia)

Mr. Sètondji Roland Adjovi (Benin)

Mr. Seong-Phil Hong (South Korea)

In the matter of

Zhang Baocheng, citizen of the People's Republic of China (“**Mr. Zhang**”)

v.

The People's Republic of China (“**State**”)

Petition for Relief and Request for Allegation Letter Pursuant to the Individual Complaint Procedure of the UN Working Group on Arbitrary Detention.

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I. INTRODUCTION AND SUMMARY

Pursuant to the mandate of the UN Working Group on Arbitrary Detention (WGAD), the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),¹ and the publication “Working with the United Nations Humans Rights Programme, a Handbook for Civil Society” (Handbook for Civil Society),² United Nations Watch, a nongovernmental human rights organization, is permitted to provide information on a specific human rights case or situation in a particular country, or on a country’s laws and practices with human rights implications. Zhang Baocheng, through his wife, Liu Juefan, has authorized Hillel Neuer and Dina Rovner from United Nations Watch to submit this individual complaint on his behalf to the WGAD.

Mr. Baocheng is a Chinese pro-democracy activist who has been subject to harassment and surveillance by the Chinese authorities, including two previous arrests for his political activism. He was detained on 27 May 2019, just a few days before the thirtieth anniversary of the Tiananmen Square Massacre, on charges of “picking quarrels and provoking trouble,” a crime typically used to persecute dissidents, and was formally arrested on 4 July 2019 on that charge, as well as on an additional charge of “promoting terrorism and extremism and inciting terrorist attacks,” a charge commonly employed against Uighur Muslims in Xinjiang. These are vague crimes under Chinese law.

Mr. Zhang has now been detained for more than seven months without ever appearing before a judge. After his case was transferred to the Beijing procuratorate, it was sent back to the police for further investigation, apparently due to lack of evidence. A trial date has not been scheduled. Furthermore, like his prior two arrests, this arrest also targets Mr. Zhang for his political activism. This is clear, among other things, from the timing of the arrest just before the Tiananmen Square anniversary, questions about Mr. Zhang’s political activities during the interrogation, and his continued detention despite lack of evidence. In addition, Mr. Zhang’s detention has been characterized by numerous due process violations, including detention without a warrant, searches conducted without warrants, prolonged pretrial detention, lack of judicial review, and denial of communication with family.

Accordingly, the Chinese authorities’ detention of Mr. Zhang constitutes an arbitrary deprivation of liberty on multiple grounds, particularly Category I, Category II and Category III as established by the WGAD.³

¹ See Manual of Operations of the Special Procedures of the Human Rights Council, ¶¶ 23, 38 and 133 (Aug. 2008), http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf.

² See Working with the United Nations Humans Rights Programme, a Handbook for Civil Society, 108 (2008), http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

³ Methods of work of the Working Grp. on Arbitrary Det., UN Doc. A/HRC/36/38, ¶¶ 8 (July 13, 2017), <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

II. QUESTIONNAIRE

The following questionnaire was retrieved from Fact Sheet No. 26 of the WGAD available on the website of the United Nations High Commissioner for Human Rights in accordance with the Manual of Operations.⁴

A. IDENTITY

1. **Family name:** Zhang
2. **First name:** Baocheng
3. **Sex:** Male
4. **Birthdate:** 19 June 1959
5. **Nationality:** Chinese
6. (a) **Identity document (if any):** Identity Card
(b) **Issued by:** Fengtai Branch of Department of Public Security of Beijing
(c) **On (date):** 16 Feb. 2011
(d) **No.:** 110104195906192037
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**
Human rights activist
8. **Address of usual residence:** 2#502, Yard A2, Xiaotun Road, Fengtai District, Beijing, China

B. ARREST

1. **Date of arrest:** 27 May 2019
2. **Place of arrest (as detailed as possible):** According to United Nations Watch sources, the arrest took place in the parking lot of the police station.
3. **Forces who carried out the arrest or are believed to have carried it out:** Officers of Fengtai Branch Department of Public Security of Beijing.
4. **Did they show a warrant or other decision by a public authority?** According to United Nations Watch sources no warrant was shown at the time of arrest. However, at the request of Mr. Zhang's daughter, the authorities mailed her the Notice of

⁴ Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Det., Working Grp. on Arbitrary Det., <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

Detention dated 28 May 2019 and stamped by the Fengtai Branch of Public Security of Beijing which she received on 1 June 2019.

5. **Authority who issued the warrant or decision?** The Notice of Detention was issued by Fengtai Branch Department of Public Security of Beijing.
6. **Reasons for the arrest imputed by the authorities:** See discussion *Background Section D(4)* below.
7. **Relevant legislation applied (if known):** Chinese Criminal Law and Criminal Procedure Law.

C. DETENTION

1. **Date of detention:** Formally arrested on 4 July 2019.
2. **Duration of detention (if not known, probable duration):** Ongoing since 27 May 2019.
3. **Forces holding the detainee under custody:** Beijing police.
4. **Places of detention (indicate any transfer and present place of detention):**
Mr. Zhang was in the Qingta Police Station for the first day of his detention. Then he was transferred to the Fengtai Detention Center in Beijing. At the end of September 2019, Mr. Zhang was transferred to the Beijing First Detention Center.
5. **Authorities that ordered the detention:**
The Notice of Formal Arrest was issued by the Fengtai Branch Department of Public Security of Beijing and approved by the Procuratorate of Fengtai District. The Fengtai Branch Department of Public Security of Beijing is not an independent entity. It acts on orders from the Public Security Department of Beijing.
6. **Reasons for the detention imputed by the authorities:**
Upon being formally arrested, Mr. Zhang was charged with “picking quarrels and provoking trouble” under Article 293 of the Criminal Code and “promoting terrorism and extremism and inciting terrorist attacks” under Article 120 of the Criminal Code.
7. **Relevant legislation applied (if known):** Articles 120 and 293 of the Chinese Criminal Code and Chinese Criminal Procedure Law.

D. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION

1. Background: China's Systematic Repression of Dissidents and Activists

China is an authoritarian one-party political system led by President Xi Jinping who is also the Secretary General of the Chinese Communist Party. No Chinese national leader is freely elected.⁵ In March 2018, President Xi amended the constitution to eliminate presidential term limits, enabling him to rule the country indefinitely.⁶ He further tightened his grip on power through a selective anti-corruption campaign which he has used to remove potential rivals.⁷ Notwithstanding this campaign, government corruption is still believed to be pervasive.⁸

Under President Xi, China brutally silences criticism and dissent through a variety of tactics, including torture, enforced disappearances and arbitrary detention. The Chinese Human Rights Defenders NGO asserts that under President Xi, China has become “the most draconian and invasive since the 1980s.”⁹ According to Human Rights Watch, “human rights activists are now enduring their worst persecution since peaceful protesters took to Tiananmen Square and streets across China in 1989.”¹⁰

China severely restricts basic civil liberties including freedom of expression and freedom of association in violation of Articles 19 to 22 of the International Covenant on Civil and Political Rights (“ICCPR”) and Articles 19 and 20 of the Universal Declaration of Human Rights (“UDHR”).¹¹ The work of civil society in China is highly constrained due to restrictive legislation such as the 2017 Foreign NGO law and other limiting measures.¹² As a result of a recent crackdown, a number of prominent advocacy NGOs were recently forced to shut down¹³ and by January 2019, nearly 6,000 NGOs had been sanctioned.¹⁴ In its most recent review of

⁵ Freedom in the World 2019: China, FREEDOM HOUSE (2019), <https://freedomhouse.org/report/freedom-world/2019/china>.

⁶ *Id.*; World Report 2019: China Events of 2018, HUMAN RIGHTS WATCH (2019), <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet>, [Hereinafter, *Human Rights Watch Report: China*].

⁷ *Human Rights Watch Report: China*, *supra* note 6; Lucy Hornby, *China's top judge denounces judicial independence*, FINANCIAL TIMES (Jan. 17, 2017), <https://www.ft.com/content/60ddd46-dc74-11e6-9d7c-be108f1c1dce>.

⁸ *Human Rights Watch Report China*, *supra* note 6.

⁹ *Defending Rights in a “No Rights Zone”: Annual Report on the Situation of Human Rights Defenders in China 2018*, CHINESE HUMAN RIGHTS DEFENDERS (Feb. 21, 2019), <https://www.nchr.org/2019/02/2018-hrd-report/>, [Hereinafter, *Defending Rights in a No Rights Zone*].

¹⁰ *Human Rights Activism in Post-Tiananmen China: A Tale of Brutal Repression and Extraordinary Resilience*, HUMAN RIGHTS WATCH (May 30, 2019), <https://www.hrw.org/news/2019/05/30/human-rights-activism-post-tiananmen-china>.

¹¹ *Freedom in the World 2019: China*, *supra* note 5.

¹² *Defending Rights in a No Rights Zone*, *supra* note 9.

¹³ *Freedom in the World 2019: China*, *supra* note 5.

¹⁴ *Defending Rights in a No Rights Zone*, *supra* note 9.

China, the Committee on Elimination of Racial Discrimination (CERD) expressed concern about China's growing restrictions on NGOs and the decreasing number of NGOs in China.¹⁵

Human rights defenders are regularly subjected to arbitrary detention, imprisonment and enforced disappearance.¹⁶ Arbitrary detention is used as a means to intimidate and punish human rights advocates and to prevent public demonstrations.¹⁷ According to data published by the U.S. Congress, there were nearly 1600 political prisoners in China as of October 10, 2019.¹⁸ Furthermore, the Chinese government uses criminal prosecutions to persecute human rights activists, charging them with vague crimes like "picking quarrels and provoking trouble."¹⁹ In 2018, several prominent human rights activists received lengthy prison terms.²⁰

Significantly, China has a practice of increasing surveillance, shutting off internet access and detaining or disappearing activists around the anniversary of the 1989 Tiananmen Square Massacre and other politically sensitive dates.²¹ In the lead-up to the thirtieth anniversary of that event on June 4, 2019, the Chinese government arrested dozens of people, several of whom were detained for "picking quarrels," including Mr. Zhang.²²

¹⁵ Comm. on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined fourteenth to seventeenth periodic reports of China, UN Doc. CERD/C/CHN/CO/14-17, ¶ 32 (Sep. 19, 2018) [Hereinafter *CERD Report China*].

¹⁶ *Human Rights Watch Report: China*, *supra* note 6.

¹⁷ See, e.g., U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2018 Country Reports on Human Rights Practices: China (March 13, 2019) [hereinafter *State Department Report on China*]; <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/china-includes-tibet-hong-kong-and-macau-china/>; Congressional-Executive Comm'n on China, Annual Report 2018, 115th Cong., 2nd Session, at 101-110 (Oct. 10, 2018), https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Annual%20Report%202018_2.pdf [Hereinafter *Congressional Report on China 2018*].

¹⁸ Congressional-Executive Comm'n on China, China: List of Political Prisoners Detained or Imprisoned as of Oct. 10, 2019 (1,598 cases), <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Pris%20List%2020191010.pdf>.

¹⁹ *Congressional Report on China 2018*, *supra* note 17 at 30, 104; *Defending Rights in a No Rights Zone*, *supra* note 9.

²⁰ *Human Rights Watch Report: China*, *supra* note 6.

²¹ *Defending Rights in a No Rights Zone*, *supra* note 9; *Silence, suppression in China on 30th Tiananmen anniversary*, BANGKOK POST (June 4, 2019), <https://www.bangkokpost.com/world/1688696/silence-suppression-in-china-on-30th-tiananmen-anniversary>; Lily Kuo, *Tiananmen Square: China steps up curbs on activists for 30th anniversary*, THE GUARDIAN (May 9, 2019), <https://www.theguardian.com/world/2019/may/09/tiananmen-square-china-steps-up-curbs-on-activists-for-30th-anniversary>; *Chinese Activists Detained, Under Surveillance on 'Politically Sensitive' Massacre Anniversary*, RADIO FREE ASIA (June 4, 2018), <https://www.rfa.org/english/news/china/anniversary-06042018115307.html>.

²² Tom Embury-Dennis, *Tiananmen Square: Dozens of activists detained or threatened in 'wave of persecution' ahead of 30th anniversary*, THE INDEPENDENT (May 31, 2019), <https://www.independent.co.uk/news/world/asia/tiananmen-square-anniversary-protests-china-beijing-june-4-xi-jinping-a8937756.html>.

2. Background: Due Process Violations are Common in China

Due process violations are rampant in China, and include the excessive use of pretrial detention, lack of access to lawyers and forced confessions.²³ According to the law, the authorities must notify a detainee's family of the fact of, reason for and place of detention within 24 hours of placing the suspect in detention. However, this can be waived for various reasons, including national security and a belief that notification will impede the case.²⁴ Furthermore, Chinese law permits detention for up to 37 days without formal arrest and in some cases for up to six months.²⁵ Pre-trial detentions of more than one year are common and few suspects are ever released on bail.²⁶ The Chinese authorities also restrict access to lawyers and interfere with the ability of lawyers to fully defend cases, especially in those considered politically sensitive.²⁷

In addition, detention facilities in China are known for being overcrowded with poor sanitation and humiliating living conditions.²⁸ Torture and other forms of cruel, inhumane or degrading treatment are common, including various forms of physical abuse, denial of medical treatment and forcing detainees to take unknown medications.²⁹ In their recent concluding observations, both the Committee Against Torture ("CAT") and CERD expressed concern about torture and ill-treatment of detainees.³⁰

3. Background: China's Judiciary Lacks Independence

The judiciary in China is not independent.³¹ It is dominated by the Chinese Communist Party ("CCP") which influences the appointment of judges, operation of courts, and verdicts and sentencing. This is especially evident in political cases.³² In March 2018, Zhou Qiang, President of the Supreme People's Court said that the judiciary's top priority for 2018 was to defend "the party's centralized and unified leadership with Xi Jinping as the core leader."³³ One year earlier, he had attacked the very notion of judicial independence, calling it a "false western ideal."³⁴ In February 2019, President Xi published an article in which he stressed

²³ *Freedom in the World 2019: China*, *supra* note 5; *Congressional Report on China 2018*, *supra* note 17 at 30.

²⁴ *No End in Sight: Torture and Forced Confessions in China*, AMNESTY INTERNATIONAL, 31 (2015), https://www.amnestyusa.org/files/no-end-in-sight_torture-and-forced-confessions-in-china.pdf [Hereinafter *Torture and Forced Confessions in China*].

²⁵ *State Department Report on China*, *supra* note 17.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; *Defending Rights in a No Rights Zone*, *supra* note 9.

²⁹ *Defending Rights in a No Rights Zone*, *supra* note 9; *Congressional Report on China 2018*, *supra* note 17 at 107.

³⁰ Comm. against Torture, Concluding observations on the fifth periodic report of China, UN Doc. CAT/C/CHN/CO/5, ¶ 20 (Feb. 3, 2016) [Hereinafter *CAT Report China*]; *CERD Report China*, *supra* note 15, at ¶ 38.

³¹ *Data Leviathan: China's Burgeoning Surveillance State*, HUMAN RIGHTS WATCH (Aug. 16, 2019), <https://www.hrw.org/news/2019/08/16/data-leviathan-chinas-burgeoning-surveillance-state>.

³² *Freedom in the World 2019: China*, *supra* note 5.

³³ *Id.*

³⁴ *China's top judge denounces judicial independence*, FINANCIAL TIMES (Jan. 17, 2017), <https://www.ft.com/content/60ddd46-dc74-11e6-9d7c-be108f1c1dce>.

the importance of the CCP's leadership over China's legal system and avowed that "We must never follow the path of Western 'constitutionalism,' 'separation of powers,' or 'judicial independence.'"³⁵ In practice, the government and the CCP instruct judges on how to rule, especially in politically sensitive cases.³⁶

In its most recent Concluding Observations for China, the CAT expressed concern about the lack of judicial independence in China, and particularly about Chinese Party Politics and Law Committees which coordinate the work of judicial bodies. The CAT stated that it was "concerned...at the necessity of keeping a political body to coordinate the proceedings, with a potential to interfere in judicial affairs, particularly in cases of political relevance."³⁷ In a November 2015 report discussing this issue, Amnesty International noted that these politics and law committees are headed by security officials. The report quoted a University of Hong Kong law professor who explained that "since the establishment of the PRC, the police have been the most powerful organ in the criminal process and the courts' role has been marginal. In this police-centric system, the court cannot be effective in vetoing a police decision."³⁸

4. The Arbitrary Detention and Prosecution of Mr. Zhang

a. Background Information on Mr. Zhang

Mr. Zhang is a Chinese businessman turned human rights activist. Since 2006, he has engaged in human rights advocacy, specifically to promote democracy and the rule of law in China.³⁹ Mr. Zhang was a leader of the now-defunct New Citizens' Movement ("NCM"), a decentralized civil rights movement which campaigned for democracy and government transparency.⁴⁰

The NCM was launched by civil rights lawyer Xu Zhiyong in 2009, and began attracting members in 2010 when Xu published a "Citizens' Pledge," calling on Chinese citizens to undertake a set of obligations to advance rights and social change in China.⁴¹ Over the next few years, the movement grew with members conducting informal meetings all around the

³⁵ Charlotte Gao, *Xi: China Must Never Adopt Constitutionalism, Separation of Powers, or Judicial Independence*, THE DIPLOMAT (Feb. 19, 2019), <https://thediplomat.com/2019/02/xi-china-must-never-adopt-constitutionalism-separation-of-powers-or-judicial-independence/>.

³⁶ *State Department Report on China*, *supra* note 17.

³⁷ *CAT Report China*, *supra* note 30, ¶ 22.

³⁸ *Torture and Forced Confessions in China*, *supra* note 24 at 28.

³⁹ *Zhang Baocheng*, CHINESE HUMAN RIGHTS DEFENDERS (Feb. 25, 2014), <https://www.nhrd.org/2014/02/prisoner-of-conscience-zhang-baocheng/>. [Hereinafter *Zhang Baocheng page*].

⁴⁰ *Chinese activist, critic of Communist Party Zhang Baocheng arrested for 'promoting terrorism,'* SOUTH CHINA MORNING POST (July 10, 2019), <https://www.scmp.com/news/china/politics/article/3018036/chinese-activist-critic-communist-party-zhang-baocheng-arrested>; Teng Biao, *China's growing human rights movement can claim many accomplishments*, WASHINGTON POST (April 18, 2014), https://www.washingtonpost.com/opinions/chinas-growing-human-rights-movement-can-claim-many-accomplishments/2014/04/18/7c5fb650-c707-11e3-bf7a-be01a9b69cf1_story.html; Austin Ramzey, *Beijing Court Upholds Legal Scholar's Sentence*, NEW YORK TIMES (April 11, 2014), <https://sinosphere.blogs.nytimes.com/2014/04/11/beijing-court-upholds-legal-scholars-sentence/>.

⁴¹ *New Citizens Movement Briefing Note*, HUMAN RIGHTS IN CHINA (May 2014), https://www.hrichina.org/sites/default/files/new_citizens_movement_briefing_note_2014.pdf. [Hereinafter *New Citizens Movement Briefing Note*].

country. However, the Chinese government ultimately cracked down on NCM members due in part to their heavy focus on government corruption. In 2013 and 2014 more than 18 NCM activists were arrested and convicted of various crimes related to their activism, including Mr. Zhang.⁴² At least seven activists related to the NCM were jailed in 2014 for their activism.⁴³

The government of China has engaged in a pattern of harassment and persecution against Mr. Zhang, including two previous arrests. In March 2013, Mr. Zhang and three other Beijing activists affiliated with NCM were detained after holding a demonstration in which they called for government officials to disclose their wealth as part of their campaign against government corruption. Mr. Zhang was arrested on charges of “unlawful assembly,” but was ultimately charged with “disrupting order.”⁴⁴ The indictment accused him of having “unfurled banners, issued leaflets and used an amplifier to give speeches.”⁴⁵ Mr. Zhang was tried and convicted in April 2014, and was released from prison on 30 March 2015, two years after the original arrest.⁴⁶

Although NCM was suppressed, Mr. Zhang has continued his human rights advocacy.⁴⁷ As a result he was subjected to threats, harassment and surveillance by the police. Surveillance included cameras installed outside his apartment and at the entrance of his apartment building and tracking and wiretap devices in his car. Mr. Zhang was arrested for the second time on 31 May 2016, along with two other activists, ahead of the Tiananmen Square Massacre anniversary.⁴⁸ That time he was detained for over a month.⁴⁹

Following his release, Mr. Zhang helped a number of other arrested activists.⁵⁰ In October 2018, he helped the 85-year-old mother of imprisoned activist Huang Qi, serving as her “bodyguard” while she visited various state offices to submit her petition on behalf of her son. Mr. Zhang posted pictures of this on Twitter. The Beijing police warned him several times of the consequences of his actions.⁵¹ In December 2018, Mr. Zhang spoke outside a courthouse to express support for a prominent lawyer who was on trial. He proclaimed that “everyone in China

⁴² *Id.*

⁴³ *Chinese Police Formally Arrest Beijing Rights Activist on ‘Terrorism’ Charges*, RADIO FREE ASIA (July 12, 2019), <https://www.rfa.org/english/news/china/dissident-terrorism-07122019065703.html>.

⁴⁴ *Zhang Baocheng page*, *supra* note 39.

⁴⁵ *In China, a week full of trials over dissent*, NEW YORK TIMES (Jan. 21, 2014), <https://www.rfa.org/english/news/china/dissident-terrorism-07122019065703.html>.

⁴⁶ *Id.*

⁴⁷ *Chinese activist, critic of Communist Party Zhang Baocheng arrested for ‘promoting terrorism,’* *supra* note 40.

⁴⁸ Chantal Yuen, *At least three activists detained in Beijing over Tiananmen Massacre commemoration*, HONG KONG FREE PRESS (May 31, 2016), <https://www.hongkongfp.com/2016/05/31/at-least-three-activists-detained-in-beijing-over-tiananmen-massacre-commemoration/>.

⁴⁹ *Chinese activist, critic of Communist Party Zhang Baocheng arrested for ‘promoting terrorism,’* *supra* note 40.

⁵⁰ *Chinese Police Formally Arrest Beijing Rights Activist on ‘Terrorism’ Charges*, *supra* note 43.

⁵¹ *Beijing Activist Faces Indictment. The Crime Appears to Helping Aged Mother of Dissident Huang Qi*, CHINA CHANGE (Oct. 31, 2019), <https://chinachange.org/2019/10/31/beijing-activist-faces-indictment-the-crime-appears-to-be-helping-the-aged-mother-of-dissident-huang-qi/>.

is living in fear and with lies. When there's more people willing to stand up [against bad government] it will allow more people to get rid of their fears."⁵²

b. Arbitrary Arrest and Detention of Mr. Zhang

Mr. Zhang was detained on 27 May 2019 ahead of the thirtieth anniversary of the Tiananmen Square Massacres. As is China's practice, a number of other activists were also arrested ahead of the anniversary, including Ou Biaofeng, Wang Mo and Shen Liangqing.⁵³ Although Mr. Zhang was detained on 27 May and has been in custody since then, he was formally arrested only on 4 July 2019.⁵⁴ The alleged reason for the detention was suspicion of "hiding guns." However, this was only a pretext as no guns or other illegal objects were found after police searched Mr. Zhang personally, as well as his home and car. Mr. Zhang's case is now before the Beijing Second Procuratorate. He is charged with "picking quarrels and provoking trouble" and "promoting terrorism and extremism and inciting terrorist attacks."

On the morning of 27 May 2019, Mr. Zhang was involved in a minor car accident in the parking lot of his apartment building and agreed with the other driver to resolve the accident by going to the local police station. After Mr. Zhang walked out of the police station, plain clothes officers detained Mr. Zhang in the police station parking lot.

At the time, the police confiscated Mr. Zhang's car keys and immediately searched his car outside the presence of Mr. Zhang and without a warrant, claiming he was suspected of "hiding guns." The police also conducted a body search of Mr. Zhang and interrogated him twice outside the presence of an attorney. No illegal objects were found on Mr. Zhang or in his car. The police did not inform Mr. Zhang of his rights.

During the interrogation, Mr. Zhang was asked about his tweets concerning the reeducation camps for Uighurs in Xinjiang province and his assistance to the mother of the imprisoned activist Huang Qi.

That same night, the police also searched Mr. Zhang's home twice, allegedly on the suspicion that he was hiding guns. The first search was conducted without an Order of Search, outside the presence of Mr. Zhang who was still in police custody. During that search, the police impounded two computers and two mobile phones. The second search was conducted just after midnight, in the early morning hours of 28 May, with Mr. Zhang present and with an Order of Search issued by the police. During that search, the police confiscated another mobile phone and Mr. Zhang's house keys. No illegal objects were found in any of the searches. All of this took place before Mr. Zhang was permitted to consult with an attorney.

According to the Notice of Detention dated 28 May 2019 (**Exhibit A** hereto), Mr. Zhang was charged with "picking quarrels and provoking trouble," a vague charge under Section 293 of the Chinese Criminal Code, often used against dissidents. The Notice of Formal Arrest

⁵² Chinese activist, critic of Communist Party Zhang Baocheng arrested for 'promoting terrorism,' *supra* note 40.

⁵³ *Relatives of Tiananmen Massacre Victims Pay Respects At Cemetery*, RADIO FREE ASIA (May 28, 2019), <https://www.rfa.org/english/news/china/tiananmen-wreaths-05282019143204.html>; *As the 30th Anniversary of Tiananmen Massacre Approaches, China Arbitrarily Rounds up Dissidents and Activists*, CHINA CHANGE (May 30, 2019), <https://chinachange.org/2019/05/30/as-the-30th-anniversary-of-tiananmen-massacre-approaches-china-arbitrarily-rounds-up-dissidents-and-activists/>.

⁵⁴ *Chinese Police Formally Arrest Beijing Rights Activist on 'Terrorism' Charges*, *supra* note 43.

(**Exhibit B** hereto) was not issued until 4 July 2019. It contains an additional charge of “promoting terrorism and extremism and inciting terrorist attacks,” frequently used to detain Uighur Muslims in Xinjiang.⁵⁵ Mr. Zhang has never been brought before a judge.

Police did not notify Mr. Zhang’s family of the detention. However, upon learning about it, Mr. Zhang’s daughter contacted the police asking about her father’s whereabouts. The police mailed her the Notice of Detention which she received on 1 June 2019.

Mr. Zhang was not allowed to meet with his attorney until 16 June 2019—three weeks after the arrest. His visits with his attorneys are strictly monitored. The visits are not private. They take place under surveillance and may be cancelled by the police at any time. Mr. Zhang’s attorneys did not initially have access to any of the case files. However, after the case was transferred to the Beijing Second Procuratorate in late-September 2019, some five months after the arrest, the attorneys were able to see the case files. They have stated that there is no evidence for either of the charges.⁵⁶

According to the attorneys, the evidence for the “picking quarrels” charge is “fabricating and disseminating information about Huang Qi being seriously ill and helping Huang Qi’s mother to petition in Beijing.” The evidence for the “terrorism” charge is a retweet of an ISIS video. However, the attorneys have not been able to retrieve the retweet or Mr. Zhang’s comment about it to put it in a proper context.⁵⁷ On 6 November 2019, the procuratorate returned the case to the police for further investigation, apparently due to lack of evidence. The case is now back before the Beijing Second Procuratorate.

Since being detained on 27 May 2019, Mr. Zhang has been interrogated numerous times. He has not been permitted any communication with his family, either by telephone or in person visits. He is not permitted any telephone calls at all.

According to his attorneys, Mr. Zhang has been subjected to “targeted persecutions” while in detention.⁵⁸ He is being held together with common criminals. He has also suffered isolation, as prisoners were ordered not to speak with Mr. Zhang after he tried to claim certain rights. The prison conditions where Mr. Zhang is being held are known to be poor with overcrowding, lights on 24-hours, inhumane physical inspections, and food lacking in nutrients, among other things. Mr. Zhang’s lawyers have not been able to send him fall or winter clothing due to restrictive prison rules. This will certainly impact his health. In addition, Mr. Zhang suffers from serious dental problems and has not been provided proper dental care while in prison. Shortly before his arrest, one of his teeth was pulled. He continues to endure tooth pains in prison and, as a result, has difficulty eating foods.

⁵⁵ *Criminal Arrests in Xinjiang Account for 21% of China’s Total in 2017*, CHINESE HUMAN RIGHTS DEFENDERS (July 25, 2018), <https://www.nchrd.org/2018/07/criminal-arrests-in-xinjiang-account-for-21-of-chinas-total-in-2017/>.

⁵⁶ *Beijing Activist Faces Indictment*, *supra* note 51.

⁵⁷ *Id.*

⁵⁸ *Id.*

E. INDICATE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY

Arbitrary deprivation of liberty is specifically prohibited by international law. The UDHR provides that “no one shall be subjected to arbitrary arrest, detention or exile.”⁵⁹ Arbitrary deprivation of liberty is defined in the ICCPR as any deprivation of liberty “except on such grounds and in accordance with such procedures as are established by law.”⁶⁰ Principle 2 of the *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment* (“Body of Principles” or “BOP”) further states that “arrest detention or imprisonment shall only be carried out strictly in accordance with the provisions of law.”⁶¹ For the reasons set forth below, the detention of Zhang Baocheng constitutes an arbitrary deprivation of his liberty falling within Category I, Category II and Category III as established by the WGAD.⁶²

1. Category I: No legal basis for the detention

The Working Group considers a deprivation of liberty to be arbitrary under Category I when “it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.” This includes cases where there is no legislative provision authorizing the detention or the authorities have not invoked a legal basis for the arrest through a duly issued arrest warrant and regular judicial review.⁶³

In this case, the Notice of Arrest dated 4 July 2019 charged Mr. Zhang with two crimes: “picking quarrels and provoking trouble” and “promoting terrorism and extremism and inciting terrorist attacks.” As noted above, these are vaguely worded crimes under Chinese law. The former is typically used to persecute dissidents and suppress their rights to freedom of expression and association, while the latter is often used against Uighur Muslims in Xinjiang.

Both the CAT and CERD have articulated concern about these types of laws being used to suppress dissent. The CAT said it was worried about “consistent reports that human rights defenders and lawyers, petitioners, political dissidents...continue to be charged...with broadly defined offenses as a form of intimidation [including] ‘picking quarrels and provoking troubles’, ‘gathering a crowd to disturb social order’ or more severe crimes against national security.”⁶⁴ Similarly, CERD expressed concern “that the broad definition of terrorism, the vague

⁵⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [Hereinafter Universal Declaration].

⁶⁰ G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [Hereinafter ICCPR].

⁶¹ Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, Principle 2, GA Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [Hereinafter Body of Principles].

⁶² Methods of work of the Working Grp. on Arbitrary Det., *supra* note 3, ¶ 8.

⁶³ Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV.B [hereinafter Fact Sheet No. 26].

⁶⁴ CAT Report China, *supra* note 30, ¶ 36.

references to extremism and the unclear definition of separatism in Chinese laws could potentially lead to the criminalization of peaceful civic and religious expression...”⁶⁵

In this regard, the Working Group has stated that “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.”⁶⁶ Specifically with respect to the crime of “picking quarrels and provoking trouble,” the Working Group has held it to be “so vague and overbroad that it was impossible to invoke a legal basis justifying the deprivation of liberty.”⁶⁷ The Working Group made a similar finding concerning the crime of “inciting subversion of state power” (similar to the inciting terrorism charge in this case).⁶⁸

Furthermore, Mr. Zhang has never appeared before a judge or had any opportunity to challenge his detention in court. The inability to legally challenge a detention is itself grounds for finding a detention arbitrary under Category I.⁶⁹

In light of the foregoing, the deprivation of liberty is arbitrary under Category I as it is without a legal basis.

2. Category II: Detention resulted from exercise of rights to freedom of expression and association

The Working Group considers a deprivation of liberty to be arbitrary under Category II when “the deprivation results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the [UDHR], and, in so far as State Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the [ICCPR].”⁷⁰ Though China has yet to ratify the ICCPR, it is a signatory, and therefore is obligated to refrain from acts that would defeat the treaty’s “object and purpose.”⁷¹ Furthermore, as a member of the United Nations and a state party to the UN Charter, China is bound to uphold its commitment to promote and encourage respect for human rights and fundamental freedoms.

The arrest and detention of Mr. Zhang is analyzed under Category II because it relates to the exercise of Mr. Zhang’s rights to freedom of opinion and expression and association under Articles 19 and 20 of the UDHR (respectively, Articles 19 and 21 of the ICCPR). In addition to the requirements of international law, Chinese law also protects the right of freedom of expression. Article 35 of the Chinese Constitution provides that “citizens of the People’s Republic of China have the freedom of speech, of the press, of assembly, of

⁶⁵ *CERD Report China*, *supra* note 15, ¶ 36

⁶⁶ *Wang Quanzhang, Jiang Tianyong and Li Yuhan v. China*, No. 62/2018, ¶ 57, Working Grp. On Arbitrary Det. (Aug. 24, 2018) [Hereinafter *Quanzhang v. China*].

⁶⁷ *Id.* at ¶¶ 57, 65.

⁶⁸ *Id.* at ¶¶ 57; *Yu Wensheng v. China*, No. 15/2019, ¶ 34, Working Grp. On Arbitrary Det. (April 26, 2019) [Hereinafter *Wensheng v. China*].

⁶⁹ *Quanzhang v. China*, *supra* note 66 at ¶ 59.

⁷⁰ Fact Sheet No. 26, *supra* note 63 at pt. IV.B.

⁷¹ Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1979, art. 18, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980); *see also Tashi Wangchuk v. China*, No. 69/2017 ¶ 44, Working Grp. On Arbitrary Det. (Nov. 20, 2017) [Hereinafter *Wangchuk v. China*].

association...” and Article 41 provides that they “have the right to criticize and make suggestions regarding any state organ or functionary.”⁷²

The arrest and continuous detention of Mr. Zhang is based solely on his peaceful political activities that were well within the protection of freedom of expression and of association by both international and domestic Chinese law. This is clear from the conduct of police during the arrest and interrogation. First, police claimed the reason for the detention was suspicion of “hiding guns.” However, no guns or other illegal objects were found after police searched Mr. Zhang personally as well as his home and car. Nevertheless, Mr. Zhang was not released and was charged with other crimes. Furthermore, more than five months after the detention, there was still insufficient evidence of any crimes and the procuratorate transferred the case back to the police for further investigation. Second, when searching Mr. Zhang’s house, the police confiscated two computers and three mobile phones, indicating that they were not really concerned about guns, but instead were interested in investigating his political activities. Finally, during his interrogation, police asked Mr. Zhang about matters related to his activism, such as his tweets on the reeducation camps in Xinjiang and his assistance to the mother of Huang Qi.

Moreover, the government’s current detention of Mr. Zhang is consistent with its past violations of his rights to freedom of expression and association. As noted above, Mr. Zhang has been subjected to harassment and surveillance and the Chinese authorities previously arrested Mr. Zhang on two occasions—in March 2013 along with other activists during an NCM demonstration; and in May 2016 just before that year’s anniversary of the Tiananmen Square Massacre, an anniversary date when China has a practice of detaining dissidents to prevent their activism. Also, the timing of this current arrest just before the thirtieth anniversary of that event is further proof that the detention is intended to suppress and punish Mr. Zhang for his political activism.

The charges against Mr. Zhang also confirm that his detention was not for a legitimate purpose. Mr. Zhang has been charged with “picking quarrels and provoking trouble,” a common charge against dissidents. He is also charged with “promoting terrorism and extremism and inciting terrorist attacks,” a charge employed against Uighur Muslims in Xinjiang. As noted above, both the CAT and CERD have criticized China’s use of vague national security crimes against dissidents. In addition, the Working Group has emphasized that “charges involving vague and imprecise offenses jeopardize the fundamental rights of those who wish to exercise their freedom of expression and are likely to result in arbitrary deprivation of liberty.”⁷³

While the ICCPR allows governments to restrict freedom of expression in limited circumstances that “are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*),

⁷² XIANFA art. 35, 41 (1982) (P.R.C.), <https://www.cecc.gov/resources/legal-provisions/china%27s-constitution> (last visited Dec. 8, 2019). The Chinese Constitution also provides that “[t]he exercise by citizens of the People’s Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.” *Id.*, at art. 51. However, this limiting provision cannot allow the government to restrict the right to freedom of expression below the standard established by its international obligations.

⁷³ See also *Wangchuk v. China*, *supra* note 71, ¶ 32.

or of public health or morals,” this is not such a case.⁷⁴ The Human Rights Committee, the body tasked with authoritatively interpreting the treaty, has held that any restriction of expression is legitimate only if it is, (1) provided by law, (2) for the purpose of protecting the rights or reputations of others, or national security or public order, and (3) “necessary” for that limited purpose.⁷⁵ In this regard, the Working Group has explained that “peaceful expression of opposition to any regime cannot give rise to arbitrary arrest.”⁷⁶

Thus, the deprivation of liberty is arbitrary under Category II because it results from Mr. Zhang’s peaceful exercise of his rights, guaranteed by international human rights law, to freedom of opinion and expression and freedom of association.

3. Category III: Due Process Rights

The Working Group considers a deprivation of liberty to be arbitrary under Category III, “when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR 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.”⁷⁷ Additionally, the Working Group will look to the Body of Principles.⁷⁸ Because the Chinese government violated numerous requirements of domestic and international law in this case, the continued detention of Mr. Zhang is arbitrary under Category III.

a. Illegal search and arrest

ICCPR Article 9(2), as well as BOP 4 and 10-13 set forth the obligations of states with respect to searches and arrests of detainees. Specifically, the detention must be “ordered by, or be subject to the effective control of, a judicial or other authority;”⁷⁹ the detainee must be “informed, at the time of arrest, of the reasons for [the] arrest and shall be promptly informed of any charges against him;”⁸⁰ the detainee and his counsel must receive “prompt and full communication of any order of detention;”⁸¹ the records of arrest must be duly recorded and communicated to the detainee or his counsel;⁸² and the detainee must be informed of his rights “at the moment of arrest, or promptly thereafter.”⁸³

⁷⁴ ICCPR, *supra* note 60, art. 19(3).

⁷⁵ See e.g. Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993, at ¶ 9.4, U.N. Doc. CCPR/C/58/D/550/1993(1996).

⁷⁶ See *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 6, E/CN.4/2001/14/Add.1, at p. 124.

⁷⁷ Fact Sheet No. 26, *supra* note 63, pt. IV.B.

⁷⁸ According to the Working Group’s Fact Sheet No. 26: “in order to evaluate the arbitrary character or otherwise of cases of deprivation of freedom entering into Category 3, the Working Group considers, in addition to the general principles set out in the Universal Declaration of Human Rights, several criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.” See Fact Sheet No. 26, *supra* note 63, Pt. IV.B.

⁷⁹ Body of Principles, *supra* note 61, Principle 4.

⁸⁰ ICCPR, *supra* note 60, art. 9(2); Body of Principles, *supra* note 61, Principle 10.

⁸¹ Body of Principles, *supra* note 61, Principle 11.

⁸² *Id.* at Principle 12.

⁸³ *Id.* at Principle 13.

It appears from the facts of the case that the government failed to inform Mr. Zhang of the reason for his arrest at the time he was detained or to inform Mr. Zhang of his rights. The police did not present Mr. Zhang with an arrest warrant and they searched Mr. Zhang's home and car without a warrant.

While Mr. Zhang was told he was being detained on "suspicion of hiding guns," the Notice of Detention charged the defendant only with the vague crime of "picking quarrels and provoking trouble." More than one month later, the Notice of Formal Arrest added the crime of "promoting terrorism and extremism and inciting terrorist attacks."

These documents are deficient on several grounds:

- Neither of these documents was ordered by a court. They were signed only by the Fengtai Branch of Public Security Department of Beijing, *i.e.*, the police. While the Notice of Formal Arrest states that it was approved by the Procuratorate of Fengtai District, the Working Group has explained that the procuratorate is responsible for prosecutions and "cannot be considered an independent and impartial authority."⁸⁴
- The Notice of Detention does not satisfy the requirements of BOP 12. It does not specify the reason for the arrest, other than to name the crime under which Mr. Zhang is being charged, does not identify the law enforcement officials who carried out the arrest, and does not indicate a time for Mr. Zhang's first appearance before a judicial authority. It also incorrectly states the date and time of detention as 9:00 AM on 28 May 2019, when Mr. Zhang was taken into custody one day earlier.
- The Notice of Arrest is dated 4 July 2019, more than one month after the original detention. While under Chinese law, a person may be held for up to 37 days before being formally arrested, *i.e.*, before the arrest is approved by the procuratorate, the CAT has said that this period of time is "excessive" and increases the "risk of detainees being ill-treated or even tortured."⁸⁵

The search and arrest of Mr. Zhang also contravened the *Chinese Criminal Procedure Code*. Articles 3, 83, and 91 of the Criminal Procedure Code require public security authorities to produce a warrant when detaining or arresting suspects.⁸⁶ Likewise, Articles 136 and 137 of the Criminal Procedure Code, respectively, require production of a warrant for conducting searches of criminal suspects and the presence of the suspect or his family during the search.⁸⁷ Notwithstanding these provisions, the Chinese authorities did not produce a warrant for detaining Mr. Zhang or for the initial searches of Mr. Zhang's home and car which were conducted outside the presence of Mr. Zhang or his family.

⁸⁴ *Wensheng v. China*, No. 15/2019, *supra* note 68, at ¶ 32.

⁸⁵ *CAT Report China*, *supra* note 30, ¶ 10.

⁸⁶ Criminal Procedure Code of the People's Republic of China, art. 3, 83, 91 (effective Jan. 1, 1997), <https://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china> [*Hereinafter Criminal Procedure Code*].

⁸⁷ *Id.* at art. 136, 137.

b. Denial of visits and telephone calls with family/Incommunicado detention

The detainee's rights to communication and visitation with the outside world, including family and legal counsel are set forth in BOB 15, 18 and 19. BOP 15 requires that a detainee not be denied communication with the outside world for "more than a matter of days."⁸⁸ BOP 18 states a detainee's right to legal counsel⁸⁹—a right also encompassed in Articles 10 and 11 of the UDHR. BOP 19 affirms the detainee's right to be visited by, and to communicate, with family.⁹⁰ However, in violation of these principles, the Chinese authorities have denied Mr. Zhang all telephone calls with the outside world as well as visits with family. The Chinese authorities also denied Mr. Zhang access to counsel for the first three weeks after he was detained—until 16 June 2019. Thus, Mr. Zhang was effectively held incommunicado for a period of three weeks, 27 May 2019 to 16 June 2019 in blatant disregard of international law. As the Working Group has held, "holding persons incommunicado is not permitted under international law..."⁹¹

c. Failure to notify family within 24 hours

BOP 16 provides that "within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for his detention and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them."⁹² Article 83 of the Chinese Criminal Procedure Code contains a similar 24-hour notification requirement.⁹³ In violation of these provisions, Chinese police did not notify Mr. Zhang's family about the detention. The family learned about it independently. Only after Mr. Zhang's daughter called police to find out her father's whereabouts did the police send her the Notice of Detention, which she received on 1 June, some five days after the detention.

d. Restrictions on meetings with counsel

As noted, a detainee's right to counsel is guaranteed by Articles 10 and 11 of the UDHR and BOP 18 which also requires that the detainee be provided with reasonable facilities to exercise his right to counsel, and that visits with counsel occur without delay or censorship and in full confidentiality. Mr. Zhang was denied the right to meet with his attorney for the first three weeks of his detention. Furthermore, although Mr. Zhang has been permitted visits with his attorney since 16 June 2019, they occur under surveillance, are not private or confidential, and may be arbitrarily cancelled by the police at any time. In its 2015 concluding observations, the CAT expressed concern about restrictions on detainees' access to, and meetings, with lawyers.⁹⁴

⁸⁸ Body of Principles, *supra* note 61, Principle 15.

⁸⁹ *Id.* at Principle 18.

⁹⁰ *Id.* at Principle 19.

⁹¹ *See also Wangchuk v. China, supra* note 71 at ¶¶ 37.

⁹² Body of Principles, *supra* note 61, Principle 16.

⁹³ Criminal Procedure Code, *supra* note 86, art. 83.

⁹⁴ *CAT Report China, supra* note 30, ¶¶ 10; 12.

e. Denial of medical treatment

BOP 24 sets forth Mr. Zhang’s right to a prompt medical examination and medical treatment.⁹⁵ In violation of this Principle, Mr. Zhang has been denied adequate medical treatment. He has serious dental problems and is not being provided with dental care. As a result, Mr. Zhang suffers from tooth pains and has difficulty eating foods.

f. Failure to bring Mr. Zhang promptly before judge

Article 9(3) of the ICCPR requires that a detained person should be “brought promptly before a judge...and shall be entitled to trial within a reasonable time or to release.”⁹⁶ According to the Human Rights Committee, a delay of “over two months violates the requirement...that anyone arrested shall be brought promptly before a judge.”⁹⁷ Similarly, BOP 11 provides that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”⁹⁸ BOP 37 also states that a detainee’s arrest should be reviewed promptly by a judge or other authority and adds that a detainee should not be kept in detention without a written order from such authority.⁹⁹ Furthermore, the *United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before Court*, adopted by the Working Group in 2015, indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation (para. 2).¹⁰⁰ In its 2015 concluding observations, the CAT expressed concern about the failure of the Chinese court system to bring criminal detentions under judicial control until a case is ready for trial.¹⁰¹

Despite these protections, the Chinese government has detained Mr. Zhang for over seven months without the opportunity to challenge his detention.

g. Prolonged pretrial detention without bail

The rights of a detainee to be released pending trial are set forth in BOP 38 and 39. BOP 38 provides that a detainee is entitled to trial within a reasonable time or to be released pending trial.¹⁰² BOP 39 requires that a detainee be released pending trial unless a judicial or other authority orders otherwise.¹⁰³ As noted, Mr. Zhang has never appeared before any judicial authority. Accordingly, Mr. Zhang is entitled to release pending trial.

⁹⁵ Body of Principles, *supra* note 61, Principle 24.

⁹⁶ ICCPR, *supra* note 60, art. 9(3).

⁹⁷ UN Human Rights Committee, *Berry v. Jamaica*, Communication No. 330/88, at ¶ 11.1, U.N. Doc. CCPR/C/50/D/330/1988 (1994).

⁹⁸ Body of Principles, *supra* note 61, Principle 11.

⁹⁹ *Id.* at Principle 37.

¹⁰⁰ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before Court, UN Doc. A/HRC/30/37 (July 6, 2015), Para. 2.

¹⁰¹ *CAT Report China*, *supra* note 30, ¶¶ 10; 12.

¹⁰² Body of Principles, *supra* note 61, Principle 38.

¹⁰³ *Id.* at Principle 39.

Furthermore, the trial is not being held within a reasonable time and has not even been scheduled yet, more than seven months after the detention. As the Working Group has explained, “the right to be tried within a reasonable time is one of the fair trial guarantees embodied in Articles 10 and 11 of the UDHR and Principle 38 of the Body of Principles,” adding that “if [a detainee] cannot be tried within a reasonable time, he is entitled to be released.”¹⁰⁴

Accordingly, the Chinese authorities’ numerous due process violations set forth above, render the detention of Mr. Zhang arbitrary pursuant to Category III.

F. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Mr. Zhang has not yet been tried or even brought before a court. Accordingly, the family is not yet able to challenge the detention in the Chinese court system.

G. FULL NAME, POSTAL AND ELECTRONIC ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION

Hillel Neuer, Executive Director, United Nations Watch

Dina Rovner, Legal Advisor, United Nations Watch

Address: Case Postale 191, 1211 Geneva 20, Switzerland

Tel: +41 22 734 1472

Fax: +41 22 734 1613

Email: drovner@unwatch.org

Please state whether you want your identity to be kept confidential: United Nations Watch waives its right to confidentiality.

III. PETITION

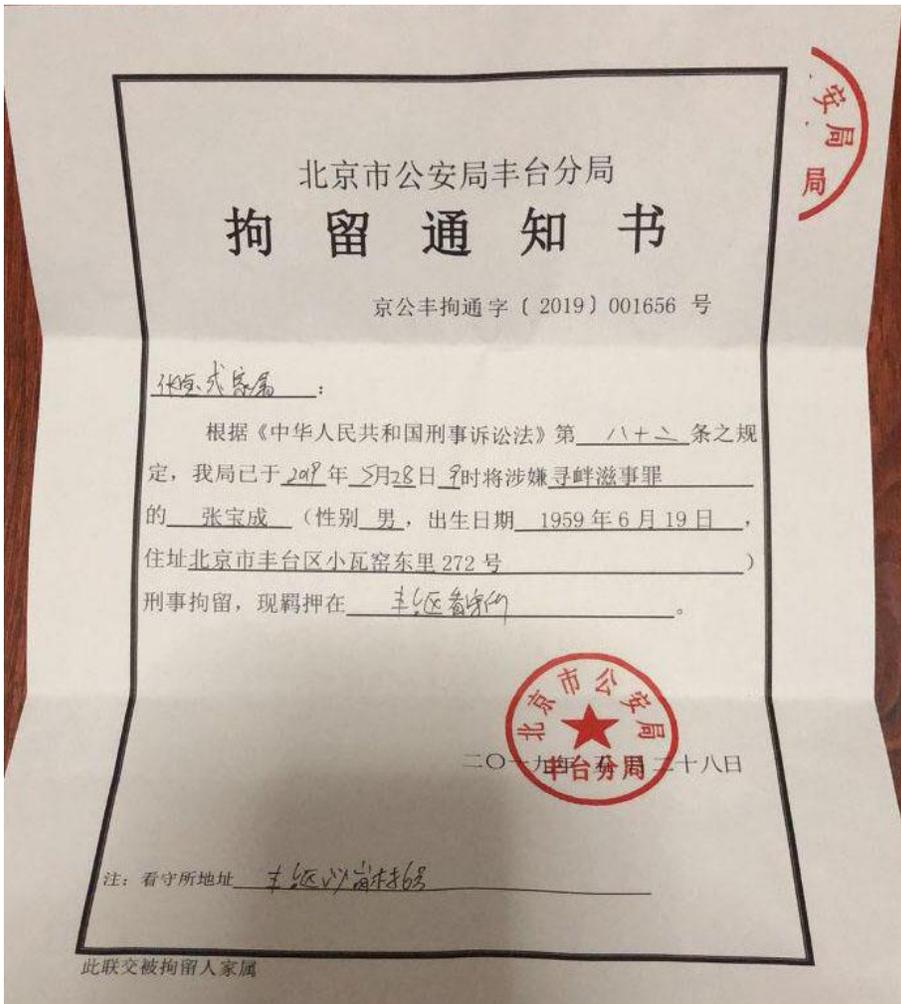
In accordance with resolution 42/22 of 26 September 2019, United Nations Watch hereby submits this individual complaint to the UN Working Group on Arbitrary Detention, and respectfully calls on the working group to initiate the procedure involving investigation of individual cases towards reaching an opinion of the WGAD declaring Mr. Zhang’s detention to be arbitrary and in violation of international law. Specifically, United Nations Watch calls on the WGAD:

- a. To initiate a procedure involving investigation of individual cases, in the case of Mr. Zhang and send an allegation letter to the state inquiring about his case generally, and

¹⁰⁴ *Wangchuk v. China*, *supra* note 71, ¶ 40; *see also Wensheng v. China*, No. 15/2019, *supra* note 68, at ¶ 48 (discussing pretrial detention of 15 months).

- specifically about the legal basis for his arrest, imprisonment, and/or the cruel, inhumane, and degrading treatment suffered by Mr. Zhang while in detention;
- b. To urge the People's Republic of China to release Mr. Zhang immediately and unconditionally, as he is arbitrarily and illegally being deprived of his freedom solely for peacefully exercising his right to freedoms of opinion, expression and association according to international law;
 - c. To issue an opinion declaring that Mr. Zhang's ongoing detention is arbitrary and in violation of international law as a result of Category I, Category II and Category III violations; and
 - d. To ask the People's Republic of China to guarantee that Mr. Zhang's rights will cease to be violated.

Exhibit A



Fengtai Branch of Department of Public Security of Beijing

Notice of Detention

Beijing Detention Number (2009)001656

Family Member of Zhang Baocheng:

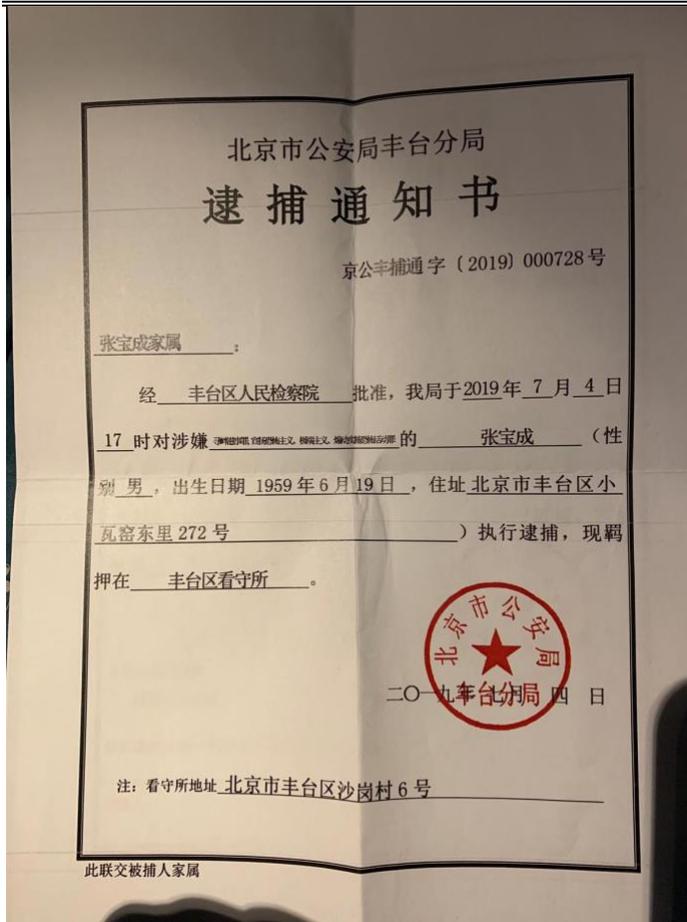
According to Article 82 of China's Criminal Procedure Law, we police have detained Zhang Baocheng (Gender male, Birth Date June 19 1959, Address 272, Xiaowayaodongli, Fengtai District, Beijing) at 9 o'clock of May 28 2019, with suspected crime of picking quarrels and provoking trouble . He is now detained at Fengtai Detention Center .

(Red Stamp:Fengtai Branch of Public Security Department of Beijing)

May 28 2019

This paper is to family member of the detainee.

Exhibit B



Fengtai Branch of Department of Public Security of Beijing

Notice of Formal Arrest

Beijing Arrest Number (2019)000728

Family Member of Zhang Baocheng:

By approval from Procuratorate of Fengtai District , we police have formally arrested Zhang Baocheng (Gender male, Birth Date June 19 1959, Address 272, Xiaowayaodongli, Fengtai District, Beijing) at 17 o'clock of July 4, 2019, with suspected crime of picking quarrels and provoking trouble, promoting terrorism and extremism and inciting terrorist attacks . He is now detained at Fengtai Detention Center .

(Red Stamp:Fengtai Branch of Public Security Department of Beijing)

July 4, 2019

This paper is to family member of the arrestee.