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Working Group on Arbitrary Detention

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Opinion No. 45/2025 concerning Bilal Mohammed and Yusufu Mieraili (Cambodia and Thailand)

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 working methods,[1] on 2 January 2025 the Working Group transmitted to the Governments of Thailand and Cambodia a communication concerning Bilal Mohammed and Yusufu Mieraili. The Government of Thailand has not replied to the communication. The Government of Cambodia submitted a late response on 24 March 2025. Both States are Parties 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).

[1] A/HRC/36/38.

1. Submissions

(a) Communication from the source

4. Bilal Mohammed, born on 29 January 1985, is a citizen of China. He belongs to the Uighur ethnic minority and is from Urumqi, Xinjiang Uighur Autonomous Region, China.

5. Yusufu Mieraili, born on 1 October 1989, is a citizen of China. He belongs to the Uighur ethnic minority and is from Urumqi, Xinjiang Uighur Autonomous Region, China. While in Thailand he resided in Bangkok. He was initially arrested on 1 September 2015 in Cambodia and later arrested by the Thai authorities.

6. On 17 August 2015, a bomb exploded at the Erawan Shrine in Bangkok, killing 20 people and injuring more than 120. CCTV footage captured an individual in a yellow T-shirt abandoning a backpack prior to the explosion.

7. On 19 August 2015, a general arrest warrant was issued by Bangkok South Criminal Court for the person captured in the CCTV footage at the crime scene. The warrant listed six charges, including conspiracy to commit premeditated murder and involvement in the bombing that had resulted in casualties, serious injuries and damage to property.

8. The arrest of Mr. Mohammed and Mr. Mieraili was carried out without any warrant, under order No. 3/2558 issued by the Head of the National Council for Peace and Order. They were not informed of the reason for their arrest in a language they could understand.

9. According to the police, suspected bomb-making materials similar to those used in the Erawan Shrine bombing were discovered inside Mr. Mohammed's room upon his arrest. However, in his written testimony submitted to Bangkok Military Court, Mr. Mohammed maintained his innocence and claimed that he had only found out on the day of his arrest about the bombing after being shown photographs of the incident.

10. At the time of Mr. Mieraili's arrest, the authorities informed the media that he was suspected of either planting the bomb or assembling it.

11. In April 2016, Mr. Mohammed testified before Bangkok Military Court that he had left Urumqi and, in early 2015, travelled to Viet Nam. There, he met an individual who made him a false passport and promised to take him to Malaysia for work in September 2015. At the time of his arrest, Mr. Mohammed was temporarily staying in Thailand awaiting travel to Malaysia.

12. Mr. Mohammed was arrested on 29 August 2015, at around 7 a.m., in a rented room in Bangkok. His arrest was carried out by a group of police and military officers, operating under the authority of the peace and order maintenance officers pursuant to order No. 3/2558. He was not informed of the reason for his arrest in a language he could understand.

13. Mr. Mohammed was then subjected to seven days of administrative detention until 4 September 2015 inside the 11th Army Circle military base, located in Nakhon Chai Si subdistrict, Dusit district, Bangkok, in accordance with article 6 of order No. 3/2558. Peace and order maintenance officers, comprised of military personnel reporting to military supervisors, ordered the first seven-day administrative detention.

14. On 4 September 2015, Mr. Mohammed was brought before Min Buri Provincial Court in Bangkok, a civilian court, for the first time and charged with illegal possession of explosives. Following the court's decision to detain him awaiting trial, Mr. Mohammed was transferred to the Min Buri remand prison in Bangkok for pretrial detention.

15. As for Mr. Mieraili, he reportedly travelled from China to Thailand on a tourist visa in early 2015, where he planned to stay temporarily before resettling in a third country. In Thailand, an arrangement was made by Mr. Mieraili's agent for him to be a shareholder in a company operating an export business. He would then use the company as proof of income to apply for a visa to travel to his intended destination. At the time of his initial arrest, Mr. Mieraili was in Phnom Penh, Cambodia, on business.

16. On 1 September 2015, Mr. Mieraili was arrested by the Cambodian police in Phnom Penh on grounds that were not made clear to him by the authorities. He was then taken to the Cambodian-Thai border, in Aranyaprathet district, Sa Kaeo Province, in Thailand. The

Cambodian authorities released Mr. Mieraili at the border. He was then intercepted by Thai police and soldiers patrolling the area as representatives of the peace and order maintenance officers, pursuant to order No. 3/2558.

17. Following his arrest, Mr. Mieraili was held at the 11th Army Circle military base for seven days, in accordance with order No. 3/2558. On 7 September 2015, he was transferred to the police. Peace and order maintenance officers, comprised of military personnel reporting to military supervisors, then ordered the first seven-day administrative detention.

18. On 8 and 9 September 2015, Mr. Mieraili was held at Min Buri metropolitan police station in Bangkok. On 9 September 2015, he appeared before Min Buri Provincial Court for the first time and was charged with illegal possession of explosives. Following the court's decision to detain him before trial, Mr. Mieraili was transferred to the Min Buri remand prison.

19. On 14 September 2015, the Director General of the Department of Corrections ordered the transfer of Mr. Mohammed and Mr. Mieraili to the Nakhon Chai Si temporary remand facility, established pursuant to Ministry of Justice directive No. 314/2558, dated 8 September 2015. It was located inside the 11th Army Circle military base in Bangkok.

20. In early 2019, the 11th Army Circle moved its base to Chaeng Watthana Road, Bangkok. On 11 March 2019, the Ministry of Justice announced the repeal of directive No. 314/2558 and the establishment at the new 11th Army Circle military base of the Thung Song Hong temporary remand facility for offenders held in relation to national security, under the administration of the Bangkok remand prison. In November 2019, both men were transferred to the Thung Song Hong temporary remand facility.

21. Even after the case was transferred to a civilian court, Bangkok South Criminal Court, following the enactment of order No. 9/2562 of the Head of the National Council for Peace and Order on 9 July 2019, Mr. Mohammed and Mr. Mieraili were reportedly not transferred to a civilian detention facility.

22. They are currently the only two detainees at the military facility. The civilian prison officers at the Thung Song Hong temporary remand facility, which is under the administration of the Department of Corrections of the Ministry of Justice, are responsible for the detention of both Mr. Mohammed and Mr. Mieraili. Despite being formally under a civilian authority, the Thung Song Hong temporary remand facility is situated within a military base and is supervised by military personnel.

23. Min Buri Provincial Court was involved in the initial stages of proceedings concerning Mr. Mohammed and Mr. Mieraili, ordering their detention after their appearance in court. Later, the detention warrants before and during the trial were ordered by Bangkok Military Court, after the case had been transferred to it from Min Buri Provincial Court in September 2015. After the case was transferred to Bangkok South Criminal Court in July 2019, Mr. Mohammed and Mr. Mieraili did not submit a motion to request temporary release from the court.

24. On 23 November 2015, Bangkok Military Court formally accepted the Military Prosecutor's indictment against Mr. Mohammed and Mr. Mieraili on 10 criminal charges in relation to the bombing.

25. The charges against them include the crime of conspiring to commit premeditated murder; illegal possession of unauthorized explosives and using explosives to kill others; conspiring to bring a weapon into the city without a sound reason; conspiring to cause an explosion; conspiring to cause an explosion that led to the deaths of others, serious injuries and property damage; conspiring to commit and attempting premeditated murder; conspiring to cause property damage; conspiring to possess unauthorized explosive materials; conspiring to possess weapons without authorization; and illegal entry into Thailand. If convicted, both men could face the death penalty.

26. The source submits that the detention of both individuals is arbitrary, falling under categories I, III and V.

27. In relation to category I, it is argued that the deprivation of liberty was without legal basis. Both men were arrested without a warrant, under order No. 3/2558. The entire

proceedings violated the international obligations of Thailand. They were placed under seven-day administrative detention without charge and without judicial review in facilities not recognized as regular detention centres.

28. Furthermore, order No. 3/2558 was not subject to judicial review because, according to article 44 of the Interim Constitution of Thailand, all orders of the National Council for Peace and Order issued after 22 May 2014 were considered legal, constitutional and final. National courts consistently upheld detentions under that order, even rejecting habeas corpus petitions. Articles 13 and 14 of the order granted impunity to peace and order maintenance officers.

29. In relation to category III, the source submits that the detention of Mr. Mohammed and Mr. Mieraili at the temporary remand facilities within the 11th Army Circle military base for more than eight years before and during trial is arbitrary and unreasonable, thus rendering it a violation of article 9 of the Covenant. Holding a civilian in a military facility is also in violation of the principle of separation of classes of detainees, stipulated in principle 11 of the draft principles governing the administration of justice through military tribunals.

30. The Nakhon Chai Si temporary remand facility was not officially recognized as a place of detention until over a week after the arrests of Mr. Mohammed and Mr. Mieraili, when Ministry of Justice directive No. 314/2558 issued on 8 September 2015 and published in the Official Gazette on 11 September 2015 announced the establishment of a temporary detention facility at the 11th Army Circle military base.

31. Furthermore, Ministry of Justice directive No. 314/2558, justifying the detention of non-military individuals at the Nakhon Chai Si temporary remand facility, and the Ministry of Justice announcement, dated 11 March 2019, determining the location of the Thung Song Hong temporary remand facility, contradict the principle of legality. They fail to provide an explanation of any special circumstances that would justify not holding detainees with other suspects in officially recognized civilian detention facilities.

32. Since the arrest operations were carried out under the framework of order No. 3/2558, both men were arrested without a warrant, were not informed in a language they could understand of the reason for their arrest at the time and were not promptly informed of the charges against them, as required in article 9 of the Covenant and general comment No. 35 (2014) of the Human Rights Committee.

33. At no time during and after the arrests or during the administrative detention were Mr. Mohammed and Mr. Mieraili informed of the charges against them, nor were they informed of their rights during the questioning in a language they could understand. Furthermore, they were not informed of their right to legal representation of their choosing, the right to have their families notified of their arrest or detention or their right to be visited by and correspond with trusted individuals during the entire administrative detention period.

34. Only after the administrative detention period, when police inquiries were conducted at the Nakhon Chai Si temporary remand facility, were Mr. Mohammed and Mr. Mieraili informed by the police inquiry officer of the charges against them and the rights to which they were entitled.

35. Furthermore, it is recalled that article 9 (3) of the Covenant mandates that detainees must be promptly brought before a judge. However, Mr. Mohammed and Mr. Mieraili were held in administrative detention for seven days for questioning before being brought before a judge – a period exceeding the 48-hour limit recognized by the Human Rights Committee.

36. Moreover, article 9 (4) of the Covenant affords the right to access judicial authority at any time during deprivation of liberty in order to challenge its lawfulness. In the present case, such a petition was not submitted. However, several petitions challenging the lawfulness of the detention under order No. 3/2558 were submitted to the Thai courts. Those petitions were rejected, with the courts stating that detention under such order was lawful.

37. It is also submitted that the lawyer of Mr. Mohammed's own choosing was not allowed to accompany him during the questioning, the examination or the crime scene re-enactment in early September 2015. That constituted a significant violation of the guarantee of a fair trial and the application of the principle of equality of arms, in breach of

article 14 of the Covenant, rules 61 and 120 of United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

38. At the examination stage, State-appointed lawyers were provided to both defendants. For Mr. Mohammed, documents produced during the examination were signed by the State-appointed lawyer, certifying all such examination and the testimony given by him. Mr. Mohammed was able to access a lawyer of his own choosing for the first time in mid-September 2015. Mr. Mieraili was able to secure a lawyer of his own choosing four months later.

39. Despite having access to lawyers, and although lawyers were allowed to meet with their clients at the Nakhon Chai Si temporary remand facility, it is reported that the lawyers were not able to speak privately with the defendants, in breach of article 14 of the Covenant, the Nelson Mandela Rules and principle 22 of the Basic Principles on the Role of Lawyers. The meetings were always held in the presence of armed military personnel and within their sight and hearing.

40. The source also submits that, despite the secrecy surrounding conditions at the Nakhon Chai Si temporary remand facility and the Thung Song Hong temporary remand facility, their location inside a military base and the lack of clarity on the procedures that govern detention at those facilities, there have been reports about inadequate detention conditions and ill-treatment of prisoners in those facilities. Those concerns include cruel, inhuman or degrading treatment, inadequate access to healthcare, failure to respect the religious customs of detainees, limited contact with the outside world and the lack of recreational activities.

41. At least two other detainees who were held at the Nakhon Chai Si temporary remand facility under order No. 3/2558 during the same period as Mr. Mohammed and Mr. Mieraili reportedly died under undisclosed circumstances.

42. Mr. Mohammed has allegedly been tortured and mistreated at the Nakhon Chai Si temporary remand facility. The confessions by Mr. Mohammed during the examination stage, admitting his involvement in the Erawan Shrine bombing incident, were the result of torture and other ill-treatment by military and police officers at the Nakhon Chai Si temporary remand facility between 14 and 26 September 2015. Mr. Mohammed has been reportedly subjected to waterboarding, the use of a dog at close proximity to intimidate him and threats of death and extradition to his country of origin.

43. On 19 April 2016, Mr. Mohammed reportedly testified before Bangkok Military Court that an inspector from the special branch of the police involved in the investigation and acting as a Thai-English interpreter had punched him in the stomach during questioning. That officer was reportedly the same officer present when Mr. Mohammed and Mr. Mieraili were presented to the press for a crime re-enactment staged by the police on 26 September 2015.

44. On 17 May 2016, before being brought into Bangkok Military Court from a prison van, Mr. Mohammed and Mr. Mieraili cried out for help. Mr. Mieraili, speaking in English, reportedly stated that they were innocent and pleaded for help. Mr. Mohammed, visibly emotional, appeared to speak in a foreign language before stating in English that he is a human being.

45. In March 2020, following the defendants' transfer to the Thung Song Hong temporary remand facility, Mr. Mohammed's lawyer raised concerns in a media interview about their detention conditions, including the poor quality of food, the lack of halal food and the strict conditions for visits.

46. On 17 January 2022, Mr. Mohammed and Mr. Mieraili reported poor conditions at the Thung Song Hong temporary remand facility when, after a two-year wait, they appeared before Bangkok South Criminal Court. They reported that they were not allowed to contact their relatives or spend time in the prison yard and were fed pork despite their Muslim faith.

47. On 29 August 2023, Mr. Mohammed was taken to the courtroom at Bangkok South Criminal Court in a wheelchair. His lawyer reportedly informed the Court that Mr. Mohammed was unable to stand up for a long period of time, was unable to sleep and

had toothache and blurry vision. He had never received proper healthcare at the Thung Song Hong temporary remand facility, in violation of articles 7, 9 and 10 of the Covenant, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and the Nelson Mandela Rules.

48. Mr. Mieraili had lost weight because of the facility's persistent failure to provide halal food. He has not been permitted to contact relatives or allowed time in the prison yard.

49. On 20 February 2024, the two defendants both appeared in the courtroom in wheelchairs and testified that they had continued to be fed pork and that their health had significantly deteriorated from refusing to eat the food provided by the staff at the Thung Song Hong temporary remand facility.

50. At the end of the witness examination hearing, the Court reportedly ordered the staff at the Thung Song Hong temporary remand facility, which is under the administration of the Ministry of Justice's Department of Corrections but is located in a military facility, to ensure that both defendants were provided with meals that complied with Islamic customs.

51. In March 2024, the Minister of Justice of Thailand visited the two defendants at the Thung Song Hong temporary remand facility to check on their well-being, which had apparently improved. On 25 June 2024, they were no longer in wheelchairs when they appeared at Bangkok South Criminal Court. However, the source notes that it was not possible to acquire further information on the well-being of the two individuals directly.

52. Moreover, Mr. Mohammed and Mr. Mieraili's right to be presumed innocent, guaranteed under article 14 of the Covenant, was violated, as the authorities made public statements affirming the guilt of the accused persons during several press conferences organized by the police. On 25 September 2015, the Commissioner-General of the Royal Thai Police stated that the evidence available was sufficient to find Mr. Mohammed guilty. He noted that, while additional supporting evidence was required to determine whether Mr. Mohammed was the individual in the yellow T-shirt captured in the CCTV footage, his personal opinion was that, based on what he saw on television and using common sense, they looked similar. He stated that, although it could not come to a final conclusion, the investigative team had been confident of his guilt since the first day they had arrested Mr. Mohammed.

53. The crime scene re-enactment was conducted on 8 and 9 September 2015 with Mr. Mieraili and on 26 September 2015 with both Mr. Mohammed and Mr. Mieraili in a manner that significantly undermined the suspects' right to the presumption of innocence. The police dressed Mr. Mieraili and Mr. Mohammed in yellow T-shirts similar to the one worn by the man in the CCTV footage. The re-enactments also took place publicly, in front of the media and the public. Mr. Mohammed and Mr. Mieraili were shackled during the re-enactment and during all court hearings, in the presence of the public and the media.

54. Moreover, more than eight years had passed since the arrests of Mr. Mohammed and Mr. Mieraili, during which time both men were confined inside the 11th Army Circle military base. That period has far exceeded what is necessary and reasonable, in violation of their right to be tried without undue delay, provided under article 14 (3) (c) of the Covenant. Mr. Mohammed and Mr. Mieraili, who were not granted temporary release by the court, should have been tried as expeditiously as possible, as made clear by the Human Rights Committee in its general comment No. 32 (2017).

55. The trial had been ongoing for more than eight years. After the trial examination officially began on 16 February 2016, the evidence was presented in 25 thick files, comprising 1,243 items of testimony and evidence. In 2024, over 10 hearings were held, including hearings taking place from 20 to 23 February, on 26 March, on 28 May, from 25 to 28 June and on 24 September 2024. The next hearing is scheduled for 18 March 2025. There are still 125 witnesses to examine.

56. During that period, witness examinations were postponed twice due to difficulties with English-Uighur interpretation. On 26 March 2024, interpreters from the Embassy of China were unable to travel from China to appear in court, causing a postponement to 28 May 2024.

57. On 28 May 2024, two new judges were appointed to preside over the case. The defendants rejected the new interpreters from the Embassy of China as untrustworthy. For the first time since the trial had begun in 2016, the judges acknowledged the defendants' objection and approved their request for an independent interpreter. The witness examination was then further postponed to 25 June 2024.

58. The source asserts that the right to an interpreter has also been violated during both the investigation and trial stages. Mr. Mohammed, who does not understand English, and Mr. Mieraili, who has only a basic understanding of English, did not have access to a Uighur interpreter during questioning at any point in their seven-day administrative detention.

59. According to written testimony from Mr. Mohammed, dated 19 April 2016, during the police examination a Thai person who acted as a Turkish-language interpreter was provided. Additionally, a Thai-English interpreter, who serves as an inspector from the special branch of the police, was involved in the interrogation. The source alleges that this official subjected Mr. Mohammed to torture and other ill-treatment during inquiries between 14 and 26 September 2015.

60. Even with the presence of the Turkish-language interpreter, Mr. Mohammed faced challenges in following the proceedings. The source submits that, during the examination, Mr. Mohammed signed multiple documents in the Thai language that he could not understand, because he was unable to sustain being subjected to ill-treatment.

61. During the trial at Bangkok Military Court, proceedings were translated through two interpreters. However, in June 2016, the individual who initially served as an independent English-Uighur interpreter was arrested and his fate remains unknown.

62. On 15 November 2016, Bangkok Military Court appointed two English-Uighur interpreters provided by the Embassy of China to Thailand. The defendants rejected those interpreters because they were proposed by the Embassy and worked as radio reporters for a Uighur-language governmental radio station. Bangkok Military Court acknowledged the objection but deemed the interpreters appropriate. Despite the concerns raised, witness examinations continued with those interpreters.

63. The appointment of interpreters provided by the Embassy of China reportedly reflects a lack of awareness regarding the situation of the Uighur minority in Xinjiang Uighur Autonomous Region, China. On 25 June 2024, a new English-Uighur interpreter, provided by a non-governmental organization, as proposed by the defendants, was finally appointed by the Court.

64. Furthermore, while the public was allowed to observe the trial of Mr. Mohammed and Mr. Mieraili, several observers were turned away by Bangkok Military Court because of the purportedly limited seating in the courtroom, with priority given to those who had submitted advance notification of their attendance. Those admitted to the courtroom were instructed not to take any notes and to erase any notes they had already taken, despite having verbally informed the court of their presence as trial observers and having provided written notification that they would be observing the trial.

65. In relation to category V, the source submits that both defendants have been deprived of their liberty on discriminatory grounds, given their Uighur ethnicity and the alleged pattern of persecution of Uighurs in Thailand.

66. It is noted that, during 2013 and 2014, about 475 Uighurs reportedly fled to Thailand to seek asylum or await relocation to a third country. However, in Thailand, Uighur asylum-seekers have faced arrest, criminal prosecution, prolonged and indefinite detention and deportation to China.

67. The source attests that, in 2014, Thai authorities seized several groups of Uighurs in Songkhla and Sa Kaeo Provinces and held them in immigration detention centres. On 8 July 2015, the authorities reportedly deported 109 individuals to China, at the request of Chinese authorities, in violation of the international law principle of non-refoulement.

68. Uighur detainees in immigration detention centres in Thailand have reportedly been subjected to inhumane conditions, including severe overcrowding, inadequate food and lack of medical care. Between 2014 and 2023, at least five such individuals, including a newborn

infant and a child, reportedly died in detention. In 2023, two Uighur detainees died, reportedly from pneumonia and liver failure, in the Suan Phlu immigration detention centre in Bangkok, where they had been detained since 2014.

69. The discriminatory treatment of Mr. Mohammed and Mr. Mieraili is evident in the fact that they were the only two individuals accused of crimes against national security to be detained in the immigration detention centre.

70. On 15 January 2016, Mr. Mohammed's lawyer submitted a motion for a court inquiry into allegations that he had been subjected to torture and other ill-treatment in the Nakhon Chai Si temporary remand facility between 14 and 26 September 2015. On 23 August 2016, the Department of Corrections concluded that the allegations were unfounded, without providing reasoning or an explanation. Bangkok Military Court denied the detainees' transfer to a civilian facility and the Department of Corrections insisted they remain in the military facility, citing national security concerns.

71. On 29 August 2023, after Mr. Mohammed was taken to the courtroom in a wheelchair, the lawyer petitioned the Court to transfer him to an external hospital for treatment. On 1 September 2023, Bangkok South Criminal Court ordered that Mr. Mohammed be treated at the correctional medical institution.

(b) Responses from the Governments

72. On 2 January 2025, the Working Group transmitted the source's allegations to the Governments of Cambodia and Thailand under its regular communications procedure, requesting a reply by 3 March 2025.

73. On 10 February 2025 the Government of Thailand requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted, with a new deadline of 28 March 2025. The Working Group regrets that, despite the extension, it has received no reply from the Government of Thailand.

74. The Government of Cambodia submitted its reply on 24 March 2025, after the deadline. The Working Group cannot accept that response as if it had been 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 it has obtained.

2. Discussion

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

76. The present case involves two States, and the Working Group will discuss the issues relating to each State separately. In determining whether the detention of Mr. Mohammed and Mr. Mieraili detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[2]

(a) Allegations against Cambodia

77. The source has argued that, on 1 September 2015, Cambodian police arrested Mr. Mieraili in Phnom Penh without providing clear grounds for the arrest or ensuring he understood the reasons for his detention. The Cambodian authorities then transported him to the Cambodian-Thai border, in Aranyaprathet district, Sa Kaeo Province, Thailand, where they released him directly to representatives of the Thai authorities, who were waiting to intercept him. That coordinated handover effectively constituted an informal deportation or extradition without proper legal proceedings, due process protections or judicial oversight. On the basis of article 9 of the Covenant, the source submits that Mr. Mieraili was arrested

[2] A/HRC/19/57, para. 68.

without clear grounds and subsequently handed over to Thai authorities without proper legal proceedings; he was not informed of the reasons for his arrest and was not brought before a judicial authority.

78. In its belated response, the Government of Cambodia denies any involvement in Mr. Mieraili's arrest, asserting, by citing reports from the media, that he was arrested by Thai authorities at the Cambodian-Thai border in Sa Kaeo Province rather than by Cambodian police in Phnom Penh. The Government relies on various international and national news reports from September 2015 indicating that Thai military forces made the arrest while Mr. Mieraili was attempting to cross the border, with the Prime Minister of Thailand confirming that the arrest occurred in Sa Kaeo Province adjacent to the Cambodian border.

79. The source criticizes that response, arguing that Cambodia failed to conduct a proper inquiry using first-hand information, such as immigration records, that would definitively show whether Mr. Mieraili had entered or stayed in Cambodia, instead relying solely on media reports that merely cited statements of the Government of Thailand. Cambodia therefore offered no independent verification of the facts and failed to address the core allegation that the Cambodian authorities had arrested him in Phnom Penh before transporting him to the border for a handover to Thai forces.

80. The Working Group notes that, in its belated reply, the Government of Cambodia failed to disprove the allegations made against it. Rather than using first-hand information in its possession, the Government relied solely on media reports. The Working Group will thus proceed with examination of the source's allegations in respect of Cambodia raised under category I.

81. The Working Group recalls that article 9 (2) of the Covenant provides 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 in order 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.[3] This is typically done through an arrest warrant or arrest order (or equivalent document).[4] 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 as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[5]

82. The Working Group notes that Mr. Mieraili was not arrested in flagrante delicto, when the opportunity to obtain a warrant would not typically be available. According to the source's unrebutted submissions, Mr. Mieraili was arrested by the Cambodian police in Phnom Penh on grounds that were not made clear to him, without any arrest warrant or equivalent legal document being presented to him. The Cambodian authorities provided no legal justification for the arrest and failed to inform Mr. Mieraili of the reasons for his detention in a language he could understand, in violation of the above-mentioned provisions.

83. Furthermore, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. Mr. Mieraili, according to the source's unrebutted submissions, was never brought before a judicial authority in Cambodia following his arrest. Instead, the Cambodian authorities transported him directly to the Cambodian-Thai border, where they released him to the Thai authorities, effectively bypassing any judicial oversight or review of the detention's lawfulness. As the Working

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

[4] Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

[5] 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 and 7; No. 3/1993, paras. 6 and 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 and 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; and No. 89/2020, para. 54.

Group has stated, the lawfulness of detention must be reviewed by a judicial authority, not by executive authorities. Consequently, the Cambodian authorities failed to establish the legal basis of Mr. Mieraili's detention in accordance with the provisions of the Covenant.

84. The Working Group considers that the Government of Cambodia has also violated its obligations under article 13 of the Covenant to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in accordance with law, and to allow them to submit reasons against the expulsion and to have the case reviewed by, and to be represented before, a competent authority. Thus, the Working Group considers that the Government of Cambodia is responsible for its own actions in the arrest, detention and deportation of Mr. Mieraili, as well as the subsequent violations of his rights in Thailand.

85. The Working Group thus concludes that the detention of Mr. Mieraili by Cambodian authorities failed to satisfy the requirements of article 9 of the Universal Declaration of Human Rights and article 9 (2) and (3) of the Covenant and is therefore arbitrary under category I.

(b) Allegations against Thailand

(i) Category I

86. The source alleges that the detention of both Mr. Mohammed and Mr. Mieraili is arbitrary, as it lacks proper legal basis, particularly during the initial phases of their detention.

87. Referring to its practice on article 9 (2) of the Covenant, the Working Group notes that neither Mr. Mohammed nor Mr. Mieraili were arrested in Thailand in flagrante delicto, when the opportunity to obtain a warrant would typically not be available. According to the source's unrebutted submissions, both individuals were arrested without a warrant, under order No. 3/2558, and were not informed of the reason for their arrest in a language they could understand. The Working Group observes that the seven-day administrative detention imposed on both men was in fact pretrial detention in a criminal case, as evidenced by their subsequent appearance before civilian courts on criminal charges. In the absence of any indication to the contrary, the Working Group agrees with the source that administrative detention was in reality part of the longer uninterrupted period of detention as criminal suspects. Thus, the Working Group cannot but conclude that the administrative detention was used to ensure their availability as criminal suspects without, however, safeguarding the procedural rights they would have had as suspects.[6] In the Working Group's view, that conduct on the part of the investigating authorities is arbitrary and runs counter to the principle of legality.

88. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. The Human Rights Committee has observed that 48 hours is ordinarily sufficient to satisfy this obligation, and any longer delay must remain absolutely exceptional and be justified under the circumstances.[7]

89. Mr. Mohammed, arrested on 29 August 2015, was first brought before Min Buri Provincial Court on 4 September 2015 – six days after his arrest. Mr. Mieraili, arrested on 1 September 2015, was first brought before Min Buri Provincial Court on 9 September 2015 – eight days after his arrest. Both periods far exceed the 48-hour limit recognized by the Human Rights Committee. Those delays cannot be considered exceptional or justified under the circumstances, particularly given that both men were available for judicial review throughout that period, but were still held in administrative detention at a military facility without charge or judicial oversight.

90. The Working Group thus concludes that the detention of Mr. Mohammed and Mr. Mieraili failed to satisfy the requirements of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (2) and (3) of the Covenant, and is therefore arbitrary under category I.

[6] See also opinion No. 64/2023, para. 70.

[7] See the Committee's general comment No. 35 (2014), paras. 32 and 33.

(ii) Category III

91. The source alleges multiple serious violations of the fair trial rights of Mr. Mohammed and Mr. Mieraili.

92. In that regard, the Working Group recalls that article 14 (1) of the Covenant provides that, in the determination of any criminal charge, everyone is to be entitled to a public hearing. It notes that, while the public was allowed to observe one of the hearings in the case of Mr. Mohammed and Mr. Mieraili, some observers were turned away due to limited seating in the courtroom, with priority given to those who had submitted advance notification of attendance. Additionally, observers were reportedly instructed not to take notes during the proceedings. However, the Working Group considers that limited courtroom capacity, particularly during the first year of proceedings when public interest is high, represents a reasonable justification for the administrative measure imposed, and the source has not provided sufficient evidence that those restrictions substantially undermined the public nature of the proceedings. Accordingly, the Working Group cannot conclude that there was a violation of the right to a public hearing under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant in the present case.

93. The Working Group further recalls that article 14 (3) (b) of the Covenant guarantees the right of all persons charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. According to principle 2 of the Basic Principles on the Role of Lawyers, detainees should have access to effective counsel at the earliest appropriate time. The Working Group notes the source's unrebutted submissions that the lawyer of Mr. Mohammed's own choosing was not allowed to accompany him during the questioning, the examination or the crime scene re-enactment in early September 2015, with only State-appointed lawyers provided initially. Mr. Mohammed was able to have access to his chosen lawyer only in mid-September 2015, while Mr. Mieraili secured counsel of his choosing four months later. That denial of access to counsel at critical stages of the proceedings violated their right to legal representation. Noting the lack of any response from the Government, the Working Group finds that the right of Mr. Mohammed and Mr. Mieraili to legal counsel at critical stages of the criminal proceedings was violated contrary to article 14 (3) (b) of the Covenant.

94. Moreover, the Government failed to refute the allegations that confidentiality was not guaranteed for the communications of Mr. Mohammed and Mr. Mieraili with their lawyers. The Working Group reiterates that respect for lawyer-client confidentiality is an important part of the right to a defence. The right of a defendant to have private discussions with his or her legal counsel, without surveillance, constitutes one of the fundamental aspects of a fair trial.[8] If a lawyer is incapable of conferring with his or her client and obtaining confidential instructions, the legal assistance is significantly undermined.

95. In that respect, the Human Rights Committee has stressed that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications and, furthermore, lawyers should be able to advise persons charged with a criminal offence without restriction, influence, pressure or undue interference from any quarter.[9] According to principle 8 of the Basic Principles on the Role of Lawyers, all arrested, detained or imprisoned persons are to be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. The Working Group finds that this violation of lawyer-client confidentiality breached article 14 (3) (b) of the Covenant.

96. Concerning the allegations that Mr. Mohammed's self-incriminating statements were given under duress, the Working Group notes that the use of confessions extracted through ill-treatment that is tantamount if not equivalent to torture is a breach of article 14 (3) (g) of the Covenant and may also constitute a violation of the State's obligations under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The use of evidence or confessions obtained through torture or ill-treatment is

[8] A/HRC/54/51, para. 50.

[9] See the Committee's general comment No. 32 (2007), para. 34.

prohibited under international law and renders the trial and resulting conviction fundamentally unfair. The source submits that Mr. Mohammed's confessions admitting involvement in the Erawan Shrine bombing were the result of torture and ill-treatment, including waterboarding, intimidation through the use of dogs and death threats between 14 and 26 September 2015. Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements. In the absence of any rebuttal by the Government, the Working Group finds that the use of statements obtained under duress violated article 5 of the Universal Declaration of Human Rights and article 14 (3) (g) of the Covenant.

97. The Working Group further emphasizes that the presumption of innocence is one of the fundamental principles of a fair trial and is thus non-derogable[10] and guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt.[11] As the Human Rights Committee has stated, it is the duty of public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.[12]

98. In the present case, the Commissioner-General of the Royal Thai Police made public statements expressing confidence in Mr. Mohammed's guilt and stating that the investigative team had been confident of this since the first day they arrested Mr. Mohammed. Those statements by a public official amounted to a declaration of guilt and prejudged the assessment of facts by the competent judicial authority. Furthermore, defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. Mr. Mohammed and Mr. Mieraili were shackled during crime scene re-enactments conducted publicly before media and the public, and during all court hearings, including when Mr. Mohammed appeared in a wheelchair. Without any explanation from the Government as to why less intrusive security measures were not employed, the Working Group finds that those violations of the presumption of innocence breached article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

99. In addition, the Working Group notes that the Government has not addressed the submission made by the source that Mr. Mohammed and Mr. Mieraili were held in military facilities supervised by military personnel, tried by Bangkok Military Court from November 2015 to July 2019 and held together with convicted prisoners. That raises three issues. First, article 10 (2) (a) of the Covenant, and rules 11 and 112 of the Nelson Mandela Rules, require that those in pretrial detention be held separately from convicted persons, a provision that was ignored in the present case. Second, as the Working Group has pointed out:

> In the area of criminal law, when coercive measures are imposed, the right to defend oneself must be guaranteed during all phases of the proceedings. This requires equality of means for both the prosecution and the person charged. In order to ensure that equality, the legal system must provide for a separation between the authority driving the investigation and the authorities in charge of the detention and ruling on the conditions of the pretrial detention. This separation is a necessary requirement to avoid having conditions of detention be used to impair the effective exercise of the right to defend oneself, favour self-incrimination, or allow pre-trial detention to amount to a form of advance punishment.[13]

100. This means that those arrested on suspicion of the commission of a crime should not be held by the same authorities who are in charge of the investigation, a principle that was disregarded in the present case. The Working Group considers that the fact that the same military apparatus was responsible for both the detention and trial of Mr. Mohammed and Mr. Mieraili fundamentally compromised their right to a fair hearing and due process.

[10] Ibid., para. 6.
[11] Ibid., para. 30.
[12] Ibid. See also opinion No. 45/2019, para. 68.
[13] E/CN.4/2005/6, para. 79. See also opinion No. 28/2018, para. 85.

101. Third, the Working Group, in its practice, has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law and that, under international law, military tribunals can only be competent to try military personnel for military offences.[14] Moreover, in the present case, the Government had the possibility of explaining the involvement of a military judge in the case, but failed to do so. The Working Group therefore finds a breach of article 14 (1) of the Covenant.

102. The Working Group also observes that more than nine years have passed since the arrests of Mr. Mohammed and Mr. Mieraili, with their trial still ongoing and 125 witnesses remaining to be examined. That extended period far exceeds what is necessary and reasonable for criminal proceedings, even considering the complexity of the case. The defendants, who were not granted temporary release, should have been tried as expeditiously as possible, as made clear by the Human Rights Committee in its general comment No. 32 (2007).[15] The Working Group finds that this excessive delay violated their right to be tried without undue delay under article 14 (3) (c) of the Covenant.

103. The Working Group finally observes that the right to an interpreter is integral to the application of the right to defence and the principle of equality of arms in criminal proceedings. Mr. Mohammed and Mr. Mieraili, who do not adequately understand English, did not have access to Uighur-language interpreters during their seven-day administrative detention. Throughout the proceedings, they faced systematic problems with interpretation, including being provided with Turkish-language interpreters (a language that is not fully intelligible to Uighur speakers), and later being forced to accept interpreters provided by the Embassy of China, despite their objections based on their ethnic background and fear of persecution. The interpretation issues continued to plague the proceedings, with witness examinations being postponed twice owing to issues with English-Uighur interpretation.

104. According to the source's submission, in 2024, when new interpreters were provided by the Embassy of China, the defendants again rejected them as untrustworthy, citing the ongoing repression of Uighurs. Significantly, for the first time since the trial began in 2016, the judges acknowledged the defendants' objection and approved their request for an independent interpreter of their own choosing. Only on 25 June 2024 – over eight years after their detention began – were they finally provided with an independent English-Uighur interpreter. The Working Group finds that those prolonged difficulties with interpretation violated their right to adequate interpretation assistance under article 14 (3) (f) of the Covenant, irreparably undermined their defence rights and fundamentally affected their fair trial rights.

105. On the basis of the foregoing, the Working Group finds that the non-observance of the due process rights of Mr. Mohammed and Mr. Mieraili was of such gravity as to give their deprivation of liberty an arbitrary character under category III.

(iii) Category V

106. The source alleges that both individuals have been deprived of their liberty on discriminatory grounds as members of the ethnic Uighur community, reflecting the systematic pattern of persecution of Uighurs by the Thai authorities.

107. The Working Group recalls that article 2 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant prohibit discrimination on various grounds, including race, colour and national or ethnic origin. It notes that the source has provided detailed information regarding the systematic pattern of persecution of Uighurs by Thailand. It also notes that the broader context of the treatment by Thailand of Uighur asylum-seekers, including systematic arrests, prolonged detention and forced deportations in violation of the principle of non-refoulement, creates a pattern of discriminatory treatment that cannot be divorced from the present case. In the absence of any information from the Government to refute those allegations, the Working Group concludes that Mr. Mohammed and Mr. Mieraili have been subjected to discriminatory detention based on their Uighur ethnicity, in violation

[14] A/HRC/27/48, paras. 67–70. See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019.

[15] See para. 35.

of articles 2 and 26 of the Covenant and article 2 of the Universal Declaration of Human Rights.

108. The Working Group therefore concludes that the detention of Mr. Mohammed and Mr. Mieraili is arbitrary under category V of the Working Group.

(c) Concluding remarks

109. The Working Group is extremely concerned by the ongoing poor detention conditions to which Mr. Mohammed and Mr. Mieraili have been subjected during their prolonged detention. The Working Group notes with particular alarm that, on 20 February 2024, both defendants appeared in court in wheelchairs and testified that they continued to be fed pork despite their Muslim faith, and that their health had significantly deteriorated from their refusal to eat the food provided by the facility staff. While the Working Group acknowledges that the court subsequently ordered the facility to provide meals complying with Islamic customs and that Minister of Justice of Thailand visited the defendants in March 2024 to check on their well-being, the fact that such basic religious dietary requirements were denied for years demonstrates the systemic nature of their mistreatment.

110. The Working Group notes that their state of health had apparently improved, as evidenced by their appearance without wheelchairs at the hearings on 25 June 2024. The Working Group also acknowledges the recent development that, on 3 March 2025, Mr. Mohammed and Mr. Mieraili were transferred from the Thung Song Hong temporary remand facility to the Bangkok remand prison in Chatuchak district. While that transfer to a civilian facility represents a positive step, it comes after more than nine years of detention in military facilities, during which time the defendants suffered serious violations of their fundamental rights.

111. The Working Group reminds the Government of Thailand of its obligations under article 25 of the Universal Declaration of Human Rights, article 10 (1) of the Covenant and rules 1, 24, 25, 27, 30 and 118 of the Nelson Mandela Rules, which state that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of healthcare as available in the community. The prolonged detention in military facilities, the denial of basic religious dietary requirements and the isolation from other detainees constituted violations of those fundamental standards of humane treatment that cannot be remedied by belated corrective measures.

3. Disposition

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

Regarding Cambodia:

The deprivation of liberty of Yusufu Mieraili, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category I.

Regarding Thailand:

The deprivation of liberty of Bilal Mohammed and Yusufu Mieraili, being in contravention of articles 2, 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

113. The Working Group requests the Governments of Cambodia and Thailand to take the steps necessary to remedy the situation of Mr. Mohammed and Mr. Mieraili without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

114. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for:

The Government of Thailand to release Mr. Mohammed and Mr. Mieraili immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

The Government of Cambodia to accord Mr. Mieraili an enforceable right to compensation and reparations.

115. The Working Group urges both Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Mohammed and Mr. Mieraili and to take appropriate measures against those responsible for the violation of their rights.

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

4. Follow-up procedure

117. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and both Governments to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Mohammed and Mr. Mieraili have been released and, if so, on what dates;

(b) Whether compensation or other reparations have been made to Mr. Mohammed and Mr. Mieraili;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. Mohammed and Mr. Mieraili 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 Cambodia and Thailand with their international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

118. The Governments are invited to inform the Working Group of any difficulties they 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.

119. The Working Group requests the source and the Governments 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.

120. 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.[16]

[*Adopted on 26 August 2025*]

[16] Human Rights Council resolution 51/8, paras. 6 and 9.