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Human Rights Council
Working Group on Arbitrary Detention

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Opinion No. 6/2023 concerning Naghmat Hamit, Tajinisa Yimin and Dilixiati Wulibaiyi (China)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 28 December 2022, the Working Group transmitted to the Government of China a communication concerning Naghmat Hamit, Tajinisa Yimin and Dilixiati Wulibaiyi. The Government submitted a late reply on 6 March 2023. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Naghmat Hamit is a citizen of China, born in 1965. He is of Uighur ethnicity. He is a businessman with a usual place of residence in Xinjiang Uighur Autonomous Region.
5. Tajinisa Yimin is a citizen of China, born in 1965. She is of Uighur ethnicity. She is a housewife with a usual place of residence in the city of Hotan, Xinjiang Uighur Autonomous Region.
6. Dilixiati Wulibaiyi is a citizen of China, born in 1962. He is of Uighur ethnicity. He is a writer, translator and businessman with a usual place of residence in the city of Kuytun, Xinjiang Uighur Autonomous Region.

Case of Mr. Hamit

7. The source reports that, in 2016, Mr. Hamit attended a family reunion in Turkey. Upon his return to China, the authorities confiscated his passport. In 2017, he was arrested at his home by the authorities, who did not show a warrant or other decision by a public authority. Moreover, the authorities have not communicated the reasons for his arrest.
8. Mr. Hamit was taken to one of the re-education camps in the Xinjiang Uighur Autonomous Region. Since his arrest, he has been held incommunicado, without access to legal counsel of his choosing or to his family.
9. In 2019, the authorities briefly released Mr. Hamit for two weeks due to his ill health. However, after that period, Mr. Hamit was taken to a detention camp again. He continues to be held incommunicado. The authorities have provided no information about the exact location of the camp Mr. Hamit is being held in, the legal basis for his continued detention, including the relevant legislation, or Mr. Hamit's well-being.
10. The source submits that the lack of transparency by the authorities surrounding the detention of Mr. Hamit makes it impossible to ascertain the reasons for his arrest and the charges against him. It is submitted that Mr. Hamit is detained arbitrarily and has been subjected to various forms of torture and ill-treatment. Moreover, it is submitted that Mr. Hamit's ongoing incommunicado detention in the camp is one of the emblematic cases in the persecution of the Uighurs.

Case of Ms. Yimin

11. The source states that Ms. Yimin was arrested by the police at the beginning of 2021, when she was visiting her family in the city of Urumqi. The police did not show a warrant or other decision by a public authority, nor did they communicate the reasons for her arrest.
12. Ms. Yimin was taken to one of the re-education camps in the Xinjiang Uighur Autonomous Region. Since her arrest, she has been held incommunicado without access to legal counsel of her choosing or to her family. The authorities have provided no information about the exact location of the camp Ms. Yimin is being held in, the legal basis for her continued detention, including the relevant legislation, or Ms. Yimin's well-being.
13. The source adds that Ms. Yimin's close family resides in Turkey. Furthermore, the source reports that her husband was taken to the re-education camp in 2017 and has reportedly died since then due to acts of torture inflicted upon him by the authorities. There is therefore grave concern with respect to Ms. Yimin's life and health.

Case of Mr. Wulibaiyi

14. The source reports that Mr. Wulibaiyi was arrested by the authorities on 6 March 2018 at his home in the city of Kuytun. The authorities did not show a warrant or other decision by a public authority, nor did they communicate the reasons for his arrest.
15. Upon his arrest, Mr. Wulibaiyi was taken to one of the re-education camps in Kunes, Xinjiang Uighur Autonomous Region. Since his arrest, he has been held incommunicado, without access to legal counsel of his choosing or to his family. The authorities have provided

no information about the legal basis for his continued detention, including the relevant legislation.

16. The source adds that Mr. Wulibaiyi was a member of the Communist Party of China, has worked for the Government and was a translator of official publications. However, the authorities reportedly confiscated his passport and later arrested Mr. Wulibaiyi, after he had visited Kazakhstan, including mosques there, and downloaded WhatsApp.

17. The source submits that the lack of transparency of the authorities surrounding the detention of Mr. Wulibaiyi makes it impossible to ascertain the reasons for his arrest and the charges against him. Moreover, it is submitted that Mr. Wulibaiyi's ongoing incommunicado detention in the camp is one of the emblematic cases in the persecution of the Uighurs.

Legal analysis

18. The source submits that the deprivation of liberty of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi is arbitrary under categories I, III and V of the Working Group.

19. In the context of category I, the source alleges that Uighurs and other primarily Muslim ethnic minorities in the Xinjiang Uighur Autonomous Region are subject to extrajudicial detention, torture, restrictions on religious practice and extensive surveillance. It is submitted that the assertion that mass detention and incommunicado detention are justified by "re-education" to prevent extremism is inconsistent with the Government's international law obligations. The source recalls that the Xinjiang Uighur Autonomous Region's regulation on "de-extremification" is incompatible with the obligations of China under international human rights law.² The source asserts that the aim of homogenizing society is not considered a legitimate aim under international human rights law and that restrictions and violations of fundamental rights, including the re-education camps, are considered unlawful.

20. The source further recalls that, as emphasized by the Working Group, the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.³ Nevertheless, even though arrest or detention may be authorized by domestic law, it may, nonetheless, be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.⁴ The source also recalls with respect to the re-education centres that, according to the special procedures of the Human Rights Council, these centres amount to detention centres due to their coercive character.⁵

21. The source notes that, according to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the term "extremism" has no purchase in binding international legal standards, and when operative as a criminal legal category, it is irreconcilable with the principle of legal certainty and is therefore, per se, incompatible with the exercise of certain fundamental human rights.⁶ Domestic law authorizing and setting out the grounds and procedures for arrest and detention must conform to international legal standards. Any deprivation of liberty outside the context of criminal charges cannot amount to an evasion of the limits on the criminal justice system by providing the equivalent of criminal punishment without the applicable protection.

22. The source argues that the deprivation of liberty of Uighurs, including that of Mr. Hamit, Mrs. Yimin and Mr. Wulibaiyi, is arbitrary since it is based on overbroad and vague counter-terrorism legislation. The source recalls that, following its visits to China in 1997 and 2004, the Working Group emphasized in its reports that charges involving vague and imprecise offences jeopardized the ability of individuals to exercise their fundamental

² Communication CHN 21/2018.

³ Opinion No. 66/2021, para. 54.

⁴ Human Rights Committee, general comment No. 35 (2014), para. 12.

⁵ Communication CHN 21/2018.

⁶ A/HRC/49/45, para. 33.

rights and were likely to result in arbitrary deprivation of liberty.⁷ Furthermore, prolonged detention without charge or trial, secret, prolonged incommunicado or indefinite detention without review and any form of detention without periodic re-evaluation of the justification for continuing the detention are forms of arbitrary detention.⁸

23. The source also notes that the petitioners are still forcibly disappeared. “Enforced disappearance” is defined in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of law.

24. It is argued that, although China is not a State party to this Convention, it is bound by the prohibition of committing enforced disappearance under customary international law. It is argued that persons taken to the camps are effectively disappeared, including Mr. Hamit, Mrs. Yimin and Mr. Wulibaiyi. They have been reportedly taken to these camps and subjected to indoctrination for unspecified periods of time. The source states that such camps constitute a large-scale case of enforced disappearance and arbitrary detention.⁹

25. In the light of the foregoing, the source submits that the detention of Uighurs by the Government constitutes a prima facie violation of 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.

26. Furthermore, the source recalls that no formal charges have been laid against Mr. Hamit, Mrs. Yimin and Mr. Wulibaiyi, who have also not been provided with access to legal remedies or contact with the outside world, and are being held for unspecified periods of time, which is tantamount to enforced disappearance and arbitrary detention. Accordingly, in the present case, the source concludes that the prolonged ongoing incommunicado detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi constitutes a deprivation of liberty under category I.

27. The source submits that enforced disappearance is a prima facie form of arbitrary detention and therefore the period during which Mr. Hamit, Mrs. Yimin and Mr. Wulibaiyi are forcibly detained constitutes a violation of their right to be considered as persons before the law, in contravention of article 6 of the Universal Declaration of Human Rights.

28. It is further submitted that, in placing Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi outside the protection of the law, the enforced disappearance deprives them of their legal safeguards as detainees, including the right to habeas corpus and the right to be promptly brought before a judicial authority, in violation of their rights under articles 8, 9 and 10 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

29. The source concludes that, noting the above arguments, the arrest and ongoing detention of Mr. Hamit, Mrs. Yimin and Mr. Wulibaiyi is arbitrary and falls under category I as it lacks a legal basis, in violation of article 9 of the Universal Declaration of Human Rights.

30. In relation to category III, the source recalls that due process is one of the tenets of the right to a fair trial. The source notes that, in the present case, Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi were arrested without a warrant and were not informed of either the reasons for their arrests or of any charges against them. They were forcibly sent to re-education camps. They are being held incommunicado in the camps and have been so since the time of their arrests. They have never enjoyed their right to notify and communicate with their families or the right to have a lawyer. These elements constitute prima facie violations of

⁷ Opinion No. 15/2019, para. 33.

⁸ Human Rights Committee, general comment No. 35 (2014), paras. 11 and 12.

⁹ [A/HRC/WGEID/115/1](#), annex I.

principles of 15, 16, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

31. Furthermore, the source recalls that the Declaration on the Protection of All Persons from Enforced Disappearance recognizes the right to be held and to be brought before a judicial authority promptly after detention to challenge the legality of the detention. Article 10 (2) of the Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place of detention to their families, counsel or other persons with a legitimate interest. The Declaration also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons (art. 10 (3)).

32. It is submitted that, in the present case, the right of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial court have been violated. Thus, the Government has been violating, among others, articles 9 and 10 of the Universal Declaration of Human Rights.

33. The source argues that, although arrest and prolonged incommunicado detention fall within category I, such practices constitute violations of the right to a fair trial as well. Secret and incommunicado detention constitutes a grave violation of the norms protecting the right to liberty of a person under international law. Inherent arbitrariness of these forms of deprivation of liberty lies in the fact that the individual is left outside the cloak of any legal protection.¹⁰ Incommunicado detention refers to a type of deprivation of liberty in which a detainee's communication with other human beings is either highly restricted or non-existent; and, accordingly, the detainee is held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus. Thus, denying a detainee contact with his family and legal counsel renders a detention incommunicado.

34. The source notes that another concern with regard to incommunicado detention is the fact that it may facilitate or in and of itself constitute torture. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment expressly states that communication of detained or imprisoned persons with the outside world and, in particular, their families or counsel should not be denied for more than a matter of days.¹¹ It is argued that, in the present case, Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi have been denied contact with their families and legal counsel. It is asserted that, in many cases, relatives of the detainees in re-education camps have had no news, as in the present case, about the whereabouts or well-being of their detained family members.

35. The source recalls that it is acknowledged among United Nations human rights bodies that prolonged incommunicado detention is capable of facilitating and constituting torture. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹² The source states that there is credible information regarding extensive and sustained torture and ill-treatment occurring in the camps. The source submits that the pattern of physical and psychological violence that has been systematically committed in the camps and the prolonged incommunicado detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi implies that they have been subjected to torture and ill-treatment, thus rendering their detention arbitrary under category III, as well.

36. Finally, in the context of category V, the source argues that the detention of a significant proportion of Uighurs prevents many of them from enjoying their own culture, using their own language or practising their own religion since, among others, sections of the aforementioned regulation on "de-extremification" indicate the national language is to be used and taught exclusively, certain minority names are to be prohibited and the aim of the regulation itself is to make religion more Chinese. Furthermore, according to the source, the

¹⁰ A/HRC/22/44, para. 60.

¹¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 15.

¹² A/56/156, para. 14; see further opinion No. 55/2019, para. 39.

Government has destroyed Uighur cultural and religious sites, including mosques, in an effort to erase signs of the regional Muslim identity.

37. It is argued that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi are ordinary people who happened to be Uighurs residing in the Xinjiang Uighur Autonomous Region. The source asserts that being a Uighur, a Muslim or a member of the Turkic minority was in and of itself enough to make them the targets and victims of arbitrary deprivation of liberty. The source notes that Mr. Wulibaiyi, despite being a member of the Communist Party of China and a translator of official documents, was targeted because of a suspicion regarding his loyalty to the Government. Accordingly, being an ethnic Uighur has made him a target.

38. The source therefore submits that the cases of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi are representative of 1 million or more men and women estimated to have been detained in Xinjiang Uighur Autonomous Region since 2017. According to the source, the corroborating evidence and reliable sources suggest that the Government has targeted ethnic and religious minorities in Xinjiang Uighur Autonomous Region by conducting an ethnically targeted campaign of mass detention.

39. Accordingly, the source argues that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi were deprived of their liberty – and are still being detained arbitrarily – on discriminatory grounds, that is due to, inter alia, their ethnic origin, language and religion. The source also submits that the deprivation of liberty of the above-mentioned individuals is a prima facie case of deprivation of liberty on discriminatory grounds, since it followed a pattern of persecution against other persons with similarly distinguishing characteristics (in this case, the Uighur population in Xinjiang Uighur Autonomous Region). More than a million Uighurs are still in detention for no apparent reason, other than their ethnicity.¹³

40. The source also argues that, accordingly, the ongoing arbitrary detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi on discriminatory grounds amounts to a violation of the right to equal protection of the law and freedom from discrimination under article 7 of the Universal Declaration of Human Rights and constitutes a violation of international law on prohibited grounds of discrimination. Their deprivation of liberty is, thus, arbitrary and falls within category V.

41. In the light of the foregoing, the source concludes that the deprivation of liberty of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

Response from the Government

42. On 28 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 27 February 2023, detailed information about the current situation of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of China under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of China to ensure their physical and mental integrity.

43. On 6 March 2023, the Government submitted a late reply. While the Working Group welcomes the engagement of the Government, it notes that it did not seek an extension in accordance with paragraph 16 of the Working Group's methods of work. As such, the Working Group cannot accept the reply as if it were submitted on time.

Discussion

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

¹³ [A/HRC/36/37](#), para. 48.

45. In determining whether the detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi 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.¹⁴

46. The Working Group notes that the allegations in the present case concern three individuals from China, all belonging to the Uighur minority in the Xinjiang Uighur Autonomous Region of China. The source has alleged that the authorities arrested Mr. Hamit sometime in 2017 without a warrant or the reasons for his arrest being explained. He was subsequently taken to a re-education camp. Although he was released for two weeks in 2019, he was subsequently detained, with the authorities refusing to provide any information about the exact location of his place of detention or the reasons for his continued detention. In its late reply, the Government confirms that Mr. Hamit was criminally detained on 13 September 2017 on suspicion of aiding terrorist activities. According to the Government, he was sentenced in April 2018 to 19 years and 10 months of imprisonment by the Yining Municipal People's Court and he is currently serving this sentence in Wusu Prison.

47. In relation to Ms. Yimin, the source submits that the police arrested her at the beginning of 2021 without an arrest warrant or the reasons for her arrest being explained. Similarly to Mr. Hamit, it is submitted that she is detained at a re-education camp without the exact location of this facility being known. The reasons for her arrest or any charges against her have never been communicated by the authorities. In its late reply, the Government argues that Ms. Yimin was criminally detained on 25 July 2021. On 11 September 2021, the People's Procuratorate of Tianshan District, Urumqi, approved Ms. Yimin's arrest, in accordance with the law, for participating in a terrorist organization and transferred her for prosecution on 20 December 2021. According to the Government, the case is currently under judicial consideration. However, the Government provides no information in relation to her current whereabouts.

48. Finally, the source submits that Mr. Wulibaiyi was allegedly detained, on 6 March 2018, by the authorities, which neither provided a reason for his arrest nor presented an arrest warrant. He was subsequently taken to a re-education camp, the exact location of which has never been disclosed by the authorities. The source has been unable to provide any further details of the circumstances of their respective arrests, the charges brought against them, any trial proceedings or, indeed, of their exact whereabouts at present. In its late reply, the Government submits that, for the crime of aiding terrorist activities and refusing to provide evidence of terrorist and extremist crimes, Mr. Wulibaiyi was sentenced to 15 years in prison on 8 April 2018 and is currently serving his sentence in Xinyuan Prison.

49. All these very serious allegations were transmitted to the Government, which only provided a late reply. While this late reply engages in detailed explanation of the legislative framework in general, the Working Group regrets that it confirms that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi are in the custody of the authorities and that they have all been charged with terrorism and extremism offences, but provides no details regarding the alleged criminal activities, which prompted the charges or indeed the trial proceedings.

50. The Working Group regrets the failure of the Government to engage with it constructively, and in a timely fashion, in providing responses to allegations concerning the detention of individuals in the Xinjiang Uighur Autonomous Region.¹⁵ The details of the detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi provided by the source are exceptionally scarce and, in its late reply, the Government provides little more than mere confirmation that three individuals were indeed detained and that Mr. Hamit and Mr. Wulibaiyi have been sentenced. Notwithstanding this, it is clearly alleged that the authorities have custody of these three individuals – and the Government has indeed confirmed this in its late reply, albeit providing very little detail of the circumstances of their respective arrests, charges and trial proceedings. In this regard, the Working Group recalls the 2022 assessment of human rights concerns in the Xinjiang Uighur Autonomous Region

¹⁴ A/HRC/19/57, para. 68.

¹⁵ See, for example, opinions No. 6/2022 and No. 88/2022.

carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in which it clearly documents the persistent failure of the authorities to provide any information concerning the detention of individuals belonging to the Uighur minority and the near impossibility for family members or others to ascertain the fate of detainees. While some of those interviewed by OHCHR seemed to know or suspect that family members had been taken to a vocational education and training centre or had been subjected to another form of detention, most remained unsure of the situation and, despite attempts at clarifying their whereabouts with the authorities, their fate remained unknown. This lack of knowledge and any contact was particularly painful for families living abroad and required immediate clarification by the authorities.¹⁶

51. Indeed, in the recent follow-up report to the joint study on global practices in relation to secret detention in the context of countering terrorism (2010), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted the ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention of Uighurs in the Xinjiang Uighur Autonomous Region.¹⁷ Finally, the Working Group itself has faced similarly scarce information concerning the detention of Uighurs in the Xinjiang Uighur Autonomous Region.¹⁸

52. In relation to the source's allegation that the three individuals are held at a so-called re-education camp, the Working Group notes that, in its late reply, the Government argues that Mr. Hamit is serving his sentence in Wusu Prison and Mr. Wulibaiyi is serving his in Xinyuan Prison, but it does not specify the whereabouts of Ms. Yimin. The Working Group also notes, however, that the Government did not explain whether any of the three individuals had been held in the so-called re-education camps, but did argue that such camps were not places of deprivation of liberty. In this regard, the Working Group recalls that deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected and the right to challenge the lawfulness of detention before a court afforded to the individual.¹⁹

53. Moreover, the Working Group recalls its visit to China in 1997,²⁰ as well as its follow-up visit in 2004,²¹ and notes that during both of these visits it visited re-education camps, recognizing them as places of deprivation of liberty. The Working Group is especially mindful of its conclusions related specifically to re-education camps following its follow-up visit, in which it stated that the fact that the legal system of China classified re-education through labour as an administrative deprivation of liberty, as opposed to judicial deprivation of liberty governed by criminal law, did not affect the obligation of China to ensure judicial control over that form of deprivation of liberty.²²

54. The Working Group therefore concludes that the re-education camp in which the three individuals in the present case may have been held is without doubt a place of detention as it is plainly clear that they are there against their will and are unable to leave.²³

55. In the light of all the above, the Working Group finds the allegations of the source to be credible and highlights, once again, the failure of the Government to respond to them, although it was given an opportunity to do so.

Category I

56. The Working Group observes that Mr. Hamit was detained on 13 September 2017, Mr. Wulibaiyi on 6 March 2018 and Ms. Yimin on 25 July 2021. The source argues that no

¹⁶ OHCHR, "OHCHR assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China" (Geneva, 2022), para. 132.

¹⁷ A/HRC/49/45, para. 33.

¹⁸ Opinion No. 6/2022.

¹⁹ A/HRC/36/37, para. 56.

²⁰ E/CN.4/1998/44/Add.2.

²¹ E/CN.4/2005/6/Add.4, in particular, para. 54.

²² Ibid.

²³ See also opinion No. 6/2022.

information has been provided by the authorities regarding the reasons for their detention, although the source argues that their detention is based on overly broad and vague counter-terrorism legislation (para. 22 above). In its late reply, the Government contends that all three individuals were detained in relation to alleged terrorism and extremism activities but provides no explanation as to which alleged actions may have led to such charges. Moreover, the Government provides no details in respect of the notification of charges and the circumstances of their respective arrests, subsequent detention and trial proceedings.

57. It is thus clear that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi have been detained by the authorities, they have all been charged and Messrs. Hamit and Wulibaiyi have been sentenced, while the trial of Ms. Yimin is ongoing. Disturbingly, the exact whereabouts of each of these three detainees since their respective arrests is unclear, as it is only in its late reply to the present communication that the Government has stated that Mr. Hamit is in Wusu Prison, while Mr. Wulibaiyi is in Xinyuan Prison. Notably, the whereabouts of Ms. Yimin have not been specified, albeit it is clear that she is in the custody of the Chinese authorities.

58. In these circumstances, the Working Group considers that the three individuals have been subjected to enforced disappearance given that they were detained by agents of the State, as confirmed by the Government in its late reply, and since then there has been a concealment of their fate and whereabouts, thus placing them outside the protection of the law. The Working Group recalls that, according to the Declaration on the Protection of All Persons from Enforced Disappearance, enforced disappearance constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.²⁴ In particular, as the Working Group has affirmed on numerous occasions, enforced disappearance is absolutely prohibited by international law and constitutes a particularly aggravated form of arbitrary detention.²⁵

59. Consequently, the Working Group finds that the detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi has violated articles 3, 6, 8 and 9 of the Universal Declaration, as such their detention lacks a legal basis. Their detention is therefore arbitrary and falls under category I.

Category III

60. The Working Group notes that, while there are very few details concerning the circumstances surrounding the detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi, there is even less known about the trial proceedings against them. In its late reply, the Government only stated that Mr. Hamit and Mr. Wulibaiyi had been sentenced and that the trial against Ms. Yimin was ongoing without giving any details of the proceedings and especially the manner in which the fair trial guarantees had been respected. In fact, the Working Group notes that the source was not able to provide any details concerning their arrests, whether any of them had been charged and stood trial, despite Mr. Hamit having been detained since 2017, Ms. Yimin since the beginning of 2021 and Mr. Wulibaiyi since 6 March 2018, and despite all three of them having stood trial, according to the Government in its late reply.

61. In these circumstances, noting the complete opacity of the proceedings against the three individuals, as well as noting the failure of the Government to provide any clarifications concerning the trial proceedings, the Working Group considers that the right to fair and public trial of the three individuals has been entirely disregarded. The Working Group recalls that, even in cases in which the trial of a person has concerned issues of national security or charges of terrorism and extremism, it has rejected trial proceedings shrouded in secrecy and opacity in which absolutely no information is provided to the public, let alone family, concerning the charges and trial proceedings, insisting that even in such cases trials must not only be impartial but also appear to be impartial to a reasonable observer.²⁶ In the present case, the absence of any information concerning the charges against and trials of Mr. Hamit,

²⁴ Article 1 (2).

²⁵ See opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021, No. 25/2022 and No. 88/2022.

²⁶ Opinion No. 78/2021, para. 97.

Ms. Yimin and Mr. Wulibaiyi, who were arrested years ago, is impossible to reconcile with the most basic guarantees of a fair trial. Indeed, it is only in its late reply that the Government suggests that trial proceedings have taken place or are under way, but no further details whatsoever are provided.

62. In the present case, irrespective of the charges against Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi, the failure of the authorities to provide any information concerning the trial proceedings leads the Working Group to conclude that the rights of all three individuals under article 10 of the Universal Declaration of Human Rights were violated since they were denied the fundamental right to a fair trial.

63. Noting all the above, the Working Group concludes that their detention has violated articles 6, 8, 10 and 11 (1) of the Universal Declaration of Human Rights and is thus arbitrary and falls under category III.

Category V

64. The Working Group notes that it is not disputed that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi all belong to the Uighur minority in the Xinjiang Uighur Autonomous Region of China. The source has submitted that they were arrested and remain detained due to their belonging to the Uighur minority and being of Muslim faith. In its late reply, the Government does not address these allegations specifically but states that “the so-called ‘ethnic discrimination’ problem does not exist in Xinjiang at all”. However, in its late reply, the Government only stated that Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi were arrested on terrorism and extremism charges but provided no details as to which alleged actions of these three individuals may have been construed as such.

65. The Working Group recalls the recent follow-up report to the joint study on global practices in relation to secret detention in the context of countering terrorism by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In this report, the Special Rapporteur detailed the practices of arbitrary mass and secret detention with other serious violations of international law directed at the Uighurs and the ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention.²⁷ The Working Group also recalls its own jurisprudence on the same subject.²⁸

66. In the absence of any explanation by the Government as to the reasons for the arrest and detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi or any rebuttal of the very serious allegations presented by the source, the Working Group concludes that the arrest and detention of these three individuals was based on discrimination on the basis of their belonging to the Uighur minority and being of Muslim faith, in violation of article 2 of the Universal Declaration of Human Rights.

67. The Working Group therefore finds the detention of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi has violated articles 7 and 9 of the Universal Declaration and is thus arbitrary, falling under category V. The Working Group refers the present case to the Special Rapporteur on minority issues, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for further consideration.

Concluding remarks

68. The Working Group is disturbed at the total secrecy that appears to surround the fate and whereabouts of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi. Their families have been unable to establish the exact details of their arrests or their exact whereabouts. Indeed, it is only the late reply of the Government to the present communication that provides some information concerning their fate and whereabouts, as scarce as it is.

69. The Working Group also wishes to record its grave concern in relation to the uncontested allegations that the husband of Ms. Yimin died at the hands of the authorities of

²⁷ A/HRC/49/45, para. 33.

²⁸ See, for example, opinions No. 6/2022 and No. 88/2022.

a re-education camp following the treatment inflicted upon him there. The Working Group refers the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions for further consideration.

70. Indeed, the Human Rights Council stressed, in its resolution 37/3, that no one should be held in secret detention and called upon States to investigate all alleged cases of secret detention, including under the pretext of countering terrorism.²⁹ The Working Group also recalls that it is the duty of all Governments to treat their detainees with humanity and respect for their inherent dignity and value as human beings, as stipulated in rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

71. In its 30-year history, the Working Group has found China in violation of its international human rights obligations in more than 90 cases.³⁰ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in China, which amounts to a serious violation of international law. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³¹

72. The Working Group would welcome the opportunity to conduct a country visit to China. Given that a significant period of time has passed since its last visit to China in September 2004, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group looks forward to a positive response to its country visit request of 15 April 2015.

Disposition

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

The deprivation of liberty of Naghmat Hamit, Tajinisa Yimin and Dilixiati Wulibaiyi, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

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

75. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group

²⁹ Human Rights Council resolution 37/3, paras. 8 and 9; and [A/HRC/13/42](#), paras. 18–23.

³⁰ See decisions No. 43/1993, No. 44/1993, No. 53/1993, No. 63/1993, No. 65/1993, No. 66/1993, No. 46/1995 and No. 19/1996, and opinions No. 30/1998, No. 1/1999, No. 2/1999, No. 16/1999, No. 17/1999, No. 19/1999, No. 21/1999, No. 8/2000, No. 14/2000, No. 19/2000, No. 28/2000, No. 30/2000, No. 35/2000, No. 36/2000, No. 7/2001, No. 8/2001, No. 20/2001, No. 1/2002, No. 5/2002, No. 15/2002, No. 2/2003, No. 7/2003, No. 10/2003, No. 12/2003, No. 13/2003, No. 21/2003, No. 23/2003, No. 25/2003, No. 26/2003, No. 14/2004, No. 15/2004, No. 24/2004, No. 17/2005, No. 20/2005, No. 32/2005, No. 33/2005, No. 38/2005, No. 43/2005, No. 11/2006, No. 27/2006, No. 41/2006, No. 47/2006, No. 32/2007, No. 33/2007, No. 36/2007, No. 21/2008, No. 29/2008, No. 26/2010, No. 29/2010, No. 15/2011, No. 16/2011, No. 23/2011, No. 29/2011, No. 7/2012, No. 29/2012, No. 36/2012, No. 51/2012, No. 59/2012, No. 2/2014, No. 3/2014, No. 4/2014, No. 8/2014, No. 21/2014, No. 49/2014, No. 55/2014, No. 3/2015, No. 39/2015, No. 11/2016, No. 12/2016, No. 30/2016, No. 43/2016, No. 46/2016, No. 4/2017, No. 5/2017, No. 59/2017, No. 69/2017, No. 81/2017, No. 22/2018, No. 54/2018, No. 62/2018, No. 15/2019 and No. 36/2019.

³¹ See opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; and No. 35/2019, para. 65.

calls upon the Government to take urgent action to ensure the immediate release of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi.

76. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi and to take appropriate measures against those responsible for the violation of their rights.

77. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for appropriate action.

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

Follow-up procedure

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

(a) Whether Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. Hamit, Ms. Yimin and Mr. Wulibaiyi and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of China with its international obligations in line with the present opinion;

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

80. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

81. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

82. 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.³²

[Adopted on 28 March 2023]

³² Human Rights Council resolution 51/8, paras. 6 and 9.