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**Human Rights Council**  
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024****Opinion No. 2/2024 concerning Alavedi Buvacir, Hudavedi Bumeyrem, Abudukelimu Alimu, Abuduli Aibibu and Bahaguli Aibibu (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,<sup>1</sup> on 26 October 2023, the Working Group transmitted to the Government of China a communication concerning Alavedi Buvacir, Hudavedi Bumeyrem, Abudukelimu Alimu, Abuduli Aibibu and Bahaguli Aibibu. The Government has not replied to the communication. 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,

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\* Miriam Estrada Castillo did not participate in the discussion of the present case.

<sup>1</sup> [A/HRC/36/38](#).

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## 1. Submissions

### (a) Communication from the source

4. Alavedi Buvacir is a citizen of China. Ms. Buvacir is a housewife, and her usual place of residence is Kasghar City, Xinjiang Uighur Autonomous Region. She was 48 years old at the time of her arrest.

5. Hudavedi Bumeyrem is a citizen of China. Her usual place of residence is Kasghar City, Xinjiang Uighur Autonomous Region. She was 29 years old at the time of her arrest.

6. Abudukelimu Alimu is a citizen of China born in 1989. His usual place of residence is Urumqi, Xinjiang Uighur Autonomous Region.

7. Abuduli Aibibu is a citizen of China, born in 1941. Mr. Alimu is a retired policeman. He served in the police force for 30 years before retiring in 1998. His usual place of residence is Turfan, Xinjiang Uighur Autonomous Region.

8. Bahaguli Aibibu is a citizen of China born in 1983. She graduated from the Economy and Finance Department of Xinjiang University with distinction. After the graduation, she began working for the Chinese railway telecommunication company. Her usual place of residence is Turfan, Xinjiang Uighur Autonomous Region.

#### (i) Arrest and detention of Ms. Buvacir and Ms. Bumeyrem

9. The source submits that Ms. Buvacir and Ms. Bumeyrem are a mother and daughter, who have relatives residing in Türkiye. In 2019, they were arrested by police authorities at their home in Kasghar City, Xinjiang Uighur Autonomous Region. No warrant was shown and no reasons for the arrest were given.

10. Currently, Ms. Buvacir and Ms. Bumeyrem are believed to be both deprived of their liberty incommunicado in one of the re-education camps located in the Xinjiang Uighur Autonomous Region. Family members residing abroad are unable to contact Ms. Buvacir or Ms. Bumeyrem. Most of their family members residing in China are reportedly also deprived of their liberty.

11. Furthermore, the authorities have not given information about the exact whereabouts or reasons for the detention of Ms. Buvacir or Ms. Bumeyrem, despite requests at the consulate of China in the States where their family members reside abroad. The legal basis for the detention of Ms. Buvacir and Ms. Bumeyrem, the charges and the relevant legislation applied are also unknown.

12. The source submits that the ongoing incommunicado detention without charges of Ms. Buvacir and Ms. Bumeyrem is one of the examples of the persecution by the authorities against persons of Uighur ethnicity, in serious violation of their fundamental human rights under the Universal Declaration of Human Rights.

#### (ii) Arrest and detention of Mr. Alimu

13. The source submits that Mr. Alimu was arrested on 28 August 2017 at midnight at his home by the Chinese authorities. No warrant was shown and no reasons for the arrest were given.

14. Mr. Alimu currently remains deprived of liberty incommunicado. His exact whereabouts, as well as the legal basis for the detention, the charges and the relevant legislation applied, are also unknown.

15. For two years following Mr. Alimu's arrest, his family was reportedly unable to gather any information about his whereabouts. It then became known that he could possibly be in a prison in the city of Korla located in the Xinjiang Uighur Autonomous Region.

16. The source reports that eventually the Chinese authorities allowed Mr. Alimu to speak to a close relative. However, this contact was only allowed to take place in Chinese. Given that the relative is unable to speak Chinese, the conversation could not take place.

17. Given that Mr. Alimu's remains incommunicado, and his exact whereabouts are unknown, grave concerns therefore exist with respect to his life and health.

18. The source submits that Mr. Alimu's ongoing incommunicado detention without charges is an example of the persecution by the authorities against persons of Uighur ethnicity and constitutes a severe violation of his fundamental human rights under the Universal Declaration of Human Rights.

(iii) *Arrest and detention of Mr. Aibibu and Ms. Aibibu*

19. The source submits that Mr. Aibibu and Ms. Aibibu are a father and daughter, who have relatives residing in Türkiye. According to the source, in October 2017, Mr. Aibibu was arrested by the authorities at his home in Xinjiang Uighur Autonomous Region. No warrant was shown and no reasons for the arrest were given.

20. The source notes that the arrest took place after Mr. Aibibu had returned from Türkiye, where he had travelled to meet his newborn grandchild. After his arrest, Mr. Aibibu was transferred to one of the re-education camps located in the Xinjiang Uighur Autonomous Region. He was briefly released from detention in January 2019 but re-arrested in April 2020.

21. He is believed to be currently deprived of his liberty in one of the re-education camps. The authorities have not given the reason for his continued detention. The legal basis for his detention, including relevant legislation applied, is also unknown. From the moment of his arrest until the time of the submission, Mr. Aibibu's exact whereabouts remained unknown, and he could not be contacted.

22. Given that Mr. Aibibu is currently 83 years old and remains incommunicado, grave concerns exist with respect to his life and health.

23. The source notes that, in 2018, it became known that the entire family of Mr. Aibibu who were residing in China, including his daughter, Ms. Aibibu, had been placed in re-education camps.

24. The source informs the Working Group that Ms. Aibibu was arrested by police authorities on two occasions, on 11 June 2017 and 6 November 2019, at her home. No warrant was shown and no reasons for the arrests were given.

25. Ms. Aibibu was initially sentenced to five years' imprisonment for sending money by bank transfer to her father, Mr. Aibibu. Her sentence was then increased to 12 years' imprisonment. The exact charges and the legal basis for the sentencing, including relevant legislation applied, are unknown.

26. Ms. Aibibu remains deprived of her liberty at an unknown location. Her siblings are also in detention in a re-education camp.

27. The source submits that Mr. Aibibu's and Ms. Aibibu's ongoing incommunicado detention is another example of the persecution by the authorities against persons of Uighur ethnicity and constitutes severe violation of their fundamental human rights under the Universal Declaration of Human Rights.

(iv) *Legal analysis*

28. The source submits that detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu, 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 fall under categories I, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

29. In relation to category I, the source submits that, since 2017, the authorities have detained a large number of men and women in internment camps or prisons located throughout Xinjiang Uighur Autonomous Region. The assertion that mass detention and incommunicado detention is justified in order prevent extremism is inconsistent with the

Government's obligations under international law. In this context, the source recalls the joint communication by United Nations special procedures mandate holders, in which they stated that the Xinjiang Uygur Autonomous Regulation on De-extremification was incompatible with the obligations of China under international human rights law.<sup>2</sup>

30. The source also recalls that it has been emphasized by the Working Group that the principle of legality requires that laws be formulated with sufficient precision so that the individual can gain access to and understand the law and regulate his or her conduct accordingly.<sup>3</sup> Nevertheless, an arrest or detention may be authorized by domestic law and be nonetheless 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 and lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>4</sup> With respect to the "re-education centres", United Nations special procedure mandate holders have stated that, due to their coercive character, those centres amounted to detention centres,<sup>5</sup> notes the source.

31. Moreover, the source recalls that the term "extremism", when operative as a criminal legal category, is irreconcilable with the principle of legal certainty and is therefore per se incompatible with the exercise of certain fundamental human rights.<sup>6</sup> 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 applicable protections. The source submits that the internment of persons of Uighur ethnicity, including the above-mentioned individuals, is arbitrary, given that it is based on overbroad and notoriously vague counter-terrorism legislation.

32. Following its visits to China in 1997 and 2004, the Working Group on Arbitrary Detention emphasized in its reports thereon that charges involving vague and imprecise offences jeopardized the ability of individuals to exercise their fundamental rights and were likely to result in arbitrary deprivation of liberty.<sup>7</sup> Furthermore, prolonged detentions without charge or trial and secret, prolonged incommunicado or indefinite detentions without review and keeping a person in any form of detention without periodic re-evaluation of the justification for continuing the detention were forms of arbitrary detention.<sup>8</sup>

33. The source states that Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu are still forcibly disappeared and have been since the time that they were sent to the re-education camps. The source recalls that, in the International Convention for the Protection of All Persons from Enforced Disappearance, the act is defined as follows: "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" (art. 2). The source argues that, although China is not a State party to the Convention, it is bound by the prohibition of committing enforced disappearance under customary international law. It is submitted that the persons taken to re-education camps are effectively disappeared, including the above-mentioned individuals. The source asserts that the situation of the camps constitutes a massive case of enforced disappearance and arbitrary detention.<sup>9</sup>

34. The source submits that the internment of persons belonging to Uighur ethnicity, including Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu constitutes

<sup>2</sup> See communication CHN 21/2018. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>3</sup> See opinion No. 66/2021, para. 54.

<sup>4</sup> Human Rights Committee, general comment No. 35 (2014), para. 12.

<sup>5</sup> See communication CHN 21/2018, p. 6.

<sup>6</sup> A/HRC/49/45, paras. 33 and 34.

<sup>7</sup> See opinion No. 15/2019, para. 33.

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

<sup>9</sup> See A/HRC/WGEID/115/1, annex I.

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.

35. Furthermore, the source states that no formal charges have been presented against Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu or Ms. Aibibu, who are furthermore not provided with access to legal remedies, are denied contact with those outside the re-education camps and are held for unspecified periods of time tantamount to enforced disappearance and arbitrary detention. Accordingly, the prolonged incommunicado detention of the above-mentioned individuals constitutes a deprivation of liberty under category I.

36. The source submits that enforced disappearance is a prima facie form of arbitrary detention and therefore the period during which the five above-mentioned individuals were forcibly detained constitutes a violation of their right to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights.

37. The source also submits that, in placing Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu outside the protection of the law, the enforced disappearance has deprived 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 the petitioners' rights enumerated under articles 8, 9 and 10 of the Universal Declaration of Human Rights and of principles 11, 32 and 37 of the Body of Principles.

38. In the light of the foregoing, the source concludes that the arrest and detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu is arbitrary and falls under category I, as it lacks legal basis, in breach of article 9 of the Universal Declaration of Human Rights.

39. In regard to category III, the source states that due process is one the tenets of the right to a fair trial.

40. The source recalls that Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu were arrested without a warrant and were not informed of either the reasons of their arrest or of any charges against them. They were forcibly sent to re-education camps. They are being held incommunicado in these camps and have been since the time of their arrest. They did not enjoy their right to notify and communicate with their families or their right to consult with a lawyer. These elements constitute prima facie violations of principles of 15 to 19 of the Body of Principles. Furthermore, in the Declaration on the Protection of All Persons from Enforced Disappearance, the right to be held and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention is recognized. Article 10 of the same 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 family, counsel or other persons with a legitimate interest. The Declaration also establishes the obligation to maintain every place of detention an official up-to-date register of detained persons (art.10).

41. The source argues that, in the present case, the rights of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu 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 violated, inter alia, articles 9 and 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.

42. The source submits that, although arrest and prolonged incommunicado detention fall within category I of the Working Group, such practices also constitute violations of the right to a fair trial. Secret and incommunicado detention constitutes a very serious violation of the norm protecting the right to liberty of a person under international law. The 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.<sup>10</sup>

43. The source recalls that incommunicado detention refers to a type of deprivation of liberty in which a detainee's communication with other human beings is either highly

<sup>10</sup> [A/HRC/22/44](#), para. 60.

restricted or non-existent, and accordingly, the detainee 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.

44. Another concern with regard to incommunicado detention is the fact that it may facilitate or in and of itself constitute torture.<sup>11</sup> The Body of Principles expressly states that communication of the detained or imprisoned person with the outside world, and in particular his or her family or counsel, is not to be denied for more than a matter of days.<sup>12</sup> Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu have been denied contact with their families and legal counsel.

45. The source notes 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.<sup>13</sup> The source maintains that there is credible information regarding extensive and sustained torture and ill-treatment occurring in the re-education camps. It is therefore submitted that the pattern of physical and psychological violence that have been committed in these camps and the prolonged incommunicado detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu allow for the inference that they have been subjected to torture and ill-treatment, thereby rendering their detention as falling under category III of the Working Group.

46. In relation to category V, the source submits that the cases of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu are representative of a widespread pattern of detentions in Xinjiang Uighur Autonomous Region. The source asserts that evidence and reliable sources suggest that the authorities target ethnic and religious minorities in the region by conducting an ethnically targeted campaign of mass detention and ill-treatment.

47. The source recalls that Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu are ordinary people residing in the Xinjiang Uighur Autonomous Region who happened to be of Uighur ethnicity. According to the source, they have been targeted and detained because of their Uighur, Muslim and Turkic identities.

48. The source therefore submits that the five above-mentioned individuals were deprived of their liberty on discriminatory grounds due to, inter alia, their ethnic origin, language and religion. The source also submits that the deprivation of liberty of the aforementioned individuals is a prima facie case of deprivation of liberty on discriminatory grounds and forms part of a pattern of persecution against persons with similarly distinguishing characteristics (in the present case, the Uighur population in Xinjiang). The source recalls that more than 1 million Uighurs are still in detention for reasons of their ethnicity.<sup>14</sup>

49. The source therefore concludes that the detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu on discriminatory grounds amounts to a violation of their rights to equal protection of the law and to freedom from discrimination under article 7 of the Universal Declaration of Human Rights. It constitutes a violation of international law on prohibited grounds of discrimination. Their deprivation of liberty is therefore arbitrary and falls under category V.

**(b) Response from the Government**

50. On 26 October 2023, the Working Group transmitted the allegations from the source to the Government of China under its regular communications procedure. The Working Group requested the Government to provide, by 26 December 2023, detailed information

<sup>11</sup> Ibid.

<sup>12</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 15.

<sup>13</sup> A/56/156, para. 14; see also opinion No. 55/2019, para. 39.

<sup>14</sup> A/HRC/36/37, para. 48.

about the current situation of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu 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. The Working Group also called upon the Government of China to ensure their physical and mental integrity.

51. The Working Group regrets that the Government did not submit a reply or seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

## 2. Discussion

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

53. In determining whether the detention of above-mentioned individuals 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.<sup>15</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

54. As a preliminary matter, the Working Group notes that the allegations in the present case concern five individuals all belonging to the Uighur minority group. In relation to the source's un rebutted allegations that the five individuals are being held at "re-education camps", although it is believed that Mr. Alimu was initially detained in a prison, with their current whereabouts being unknown, the Working Group recalls that the 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.<sup>16</sup> Moreover, the Working Group recalls its visit to China in 1997 and its follow-up mission in 2004, and notes that, during both missions, it visited re-education camps, recognizing them as places of deprivation of liberty.<sup>17</sup> The Working Group therefore concludes that the re-education camps are without a doubt a place of detention, as it is clear that persons are there against their will and are unable to leave.

55. In making this finding, the Working Group also 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.<sup>18</sup> In her report, the Special Rapporteur specifically noted the internment of Uighurs in "re-education camps" and reiterated and highlighted ongoing concerns about the conditions in such facilities, including the practice of "re-education", which impinged on the most fundamental of rights, including the right not to be arbitrarily deprived of liberty, the right to respect for family life, including the prohibition of forced separation, and the rights to freedom of expression, association and religion or belief, as well as other cultural, economic and social rights.<sup>19</sup>

### (a) Category I

56. The source submits that Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu were arrested without a warrant and were not informed of either the reasons for their arrest or of any charges against them. Ms. Buvacir and her daughter, Ms. Bumeyrem, were arrested in 2019. Mr. Alimu was arrested in 2017. His family was reportedly unable to gather any information about his whereabouts for two years, at which point it became known that Mr. Alimu could possibly be in a prison in Xinjiang Uighur Autonomous Region. Mr. Aibibu was arrested after he returned from Türkiye and sent to a re-education camp,

<sup>15</sup> A/HRC/19/57, para. 68.

<sup>16</sup> A/HRC/36/37, para. 56.

<sup>17</sup> See E/CN.4/1998/44/Add.2; and E/CN.4/2005/6/Add.4, para. 54, in particular.

<sup>18</sup> A/HRC/49/45, para. 33

<sup>19</sup> Ibid.

released in January 2019 and rearrested in April 2020. Ms. Aibibu was arrested in 2017 and again in 2019.

57. As the Working Group has previously stated, for deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>20</sup> This is typically<sup>21</sup> done through an arrest warrant or arrest order (or equivalent document).<sup>22</sup> Persons who are detained have the right to be promptly informed of the charges against them. This is inherent in article 9 of the Universal Declaration of Human Rights as well as principles 2 and 10 of the Body of Principles. Absent a Government response and in the light of the source's submissions, the Working Group concludes that the rights of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu under article 9 of the Universal Declaration of Human Rights, as well as principles 2 and 10 of the Body of Principles, were violated.

58. The source further submits that the individuals were forcibly sent to re-education camps, where they are being held incommunicado following their arrest. They are unable to notify and communicate with their families or exercise their right to consult with a lawyer. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 of the Universal Declaration of Human Rights.<sup>23</sup> The Working Group recalls that 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 under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, noting that torture is most frequently practised during incommunicado detention.<sup>24</sup>

59. Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>25</sup> and is essential in ensuring that detention has a legal basis. Given that Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu are unable to challenge their detention before a court, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. They were also placed outside the protection of the law, in violation of their right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights. In that regard, the Working Group emphasizes its findings following its mission to China in 2004, in which it clearly 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.<sup>26</sup>

60. The Working Group recalls that giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary protection against arbitrary detention in violation of article 9 of the Universal Declaration of Human Rights as well as a safeguard for the prevention of torture.<sup>27</sup> Moreover, prohibiting contact with the outside world is in contravention of rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>28</sup> and principles 15, 16 (1) and 19 of the Body of Principles.

61. In addition, their inability to contact lawyers during this time, an allegation that is unrebutted by the Government, has undermined their right to challenge the lawfulness of their detention and enjoy fair trial rights, enumerated under articles 9, 10 and 11 of the

<sup>20</sup> In cases of in flagrante delicto, the opportunity to obtain a warrant will not be typically available.

<sup>21</sup> See opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

<sup>22</sup> See, e.g. opinion No. 30/2017, paras. 58 and 59.

<sup>23</sup> See opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019, No. 15/2020, No. 16/2020 and No. 36/2020.

<sup>24</sup> A/56/156, paras. 14 and 39 (f). See also General Assembly resolution 68/156.

<sup>25</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 3.

<sup>26</sup> E/CN.4/2005/6/Add.4, para. 54.

<sup>27</sup> Opinion No. 19/2022, para. 52.

<sup>28</sup> Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74 and 75; and No. 45/2019, para. 76.



Universal Declaration of Human Rights and in principles 11 (1), 32 and 37 of the Body of Principles.

62. The Working Group considers that the detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu in re-education camps without allowing them contact with the outside world amounts to enforced disappearance in breach of article 9 of the Universal Declaration of Human Rights. Enforced disappearance is prohibited by international law and constitutes a particularly aggravated form of arbitrary detention.<sup>29</sup> The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

63. In this regard, the Working Group recalls the assessment of human rights concerns in the Xinjiang Uighur Autonomous Region of China issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2022, in which OHCHR documented the persistent failure of the authorities to provide any information concerning the detention of individuals belonging to the Uighur minority group and the near impossibility for their family members or others to ascertain the fate of the detainees. “While some interviewees seemed to know or suspect that family members had been taken to a [Vocational Education and Training Centre] facility or another form of detention, most remained unsure of the situation and, despite attempts at clarifying the whereabouts with the authorities, their fate remained unknown. This lack of knowledge and any contact has been particularly painful for families living at geographical distance abroad and requires immediate clarification by the authorities.”<sup>30</sup> The Working Group has also experienced similarly scarce information concerning the detention of Uighurs in the Xinjiang Uighur Autonomous Region.<sup>31</sup>

64. The source submits that the detention of persons of Uighur ethnicity, including the above-mentioned individuals, is arbitrary, given that it is based on overbroad and notoriously vague counter-terrorism legislation. While the Working Group is unable to make a finding due to insufficient information on the legislation, it recalls that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has consistently held that the term “extremism” has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty and is therefore per se incompatible with the exercise of certain fundamental human rights.<sup>32</sup> Furthermore, according to the same Special Rapporteur, the assertion that mass detention and incommunicado detention is justified by “re-education” to prevent extremism is incompatible with the Government’s international law obligations.<sup>33</sup> The Working Group notes that, in its concluding observations on the combined fourteenth to seventeenth periodic reports of China, the Committee on the Elimination of Racial Discrimination was concerned by reports that the broad definition of terrorism, the vague references to extremism and the unclear definition of separatism in Chinese laws could potentially lead to the criminalization of peaceful civic and religious expression and facilitate the criminal profiling of ethnic and ethnoreligious minorities, including Muslim Uighurs, Buddhist Tibetans and Mongolians.<sup>34</sup>

65. In the light of the preceding considerations, the Working Group considers that the deprivation of liberty of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu is arbitrary under category I.

**(b) Category III**

66. The Working Group notes that very little appears to be known about the trial proceedings, if any were held, for the five individuals. The charges against them are unknown

<sup>29</sup> See Opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

<sup>30</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region”, para. 132. Available at <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-asesment.pdf>.

<sup>31</sup> See opinions No. 6/2022, No. 88/2022, No. 6/2023, No. 38/2023 and No. 77/2023.

<sup>32</sup> [A/HRC/49/45](#), para. 33

<sup>33</sup> *Ibid.*

<sup>34</sup> [CERD/C/CHN/CO/14-17](#), para. 36.

and the dates of their trials, as well as details of those proceedings, if they ever took place, are also unknown. The Government had an opportunity to clarify all of this, but it chose not to do so.

67. Ms. Aibibu was reportedly sentenced to five years' imprisonment, which was then increased to 12 years' imprisonment for sending money by bank transfer to her father, but the source submits that the exact charges, the legal basis for the sentencing and the relevant legislation applied are unknown. Her father, Mr. Aibibu, is believed to be detained in a re-education camp incommunicado, and the reasons, legal basis, and relevant legislation applied for his detention and his exact whereabouts are unknown. In the case of Mr. Alimu, his family was reportedly unable to gather any information about his whereabouts until it became known that he could be in a prison in the Xinjiang Uighur Autonomous Region. The reasons, legal basis and relevant legislation applied to his detention, as well as his exact whereabouts, remain unknown. While Mr. Alimu was eventually granted permission to speak to a close relative, this did not occur, because contact was only allowed to be conducted in Chinese, a language that the relative did not speak; the conversation did not occur, and he is now incommunicado.

68. The source submits that the detention of persons of Uighur ethnicity is arbitrary, because it is based on overbroad and notoriously vague counterterrorism legislation. The Working Group recalls that, following its visits to China in 1997 and 2004, the Working Group emphasized in its reports thereon that charges involving vague and imprecise offences jeopardized the ability of individuals to exercise their fundamental rights and were likely to result in arbitrary deprivation of liberty.<sup>35</sup> Furthermore, prolonged detention without charge or trial, secret, prolonged incommunicado or indefinite detention without review and keeping a person in any form of detention without periodic re-evaluation of the justification for continuing the detention are forms of arbitrary detention. The Working Group also observes that all five individuals appear to be in de facto indefinite detention in a so-called "re-education camp". It recalls the observation by the Committee on the Elimination of Racial Discrimination regarding the detention of large numbers of ethnic Uighurs and other Muslim minorities, held incommunicado and often for long periods, without being charged or tried, under the pretext of countering religious extremism.<sup>36</sup> The detention of the five individuals in the present case appears to resemble such a situation and, as stipulated by the Working Group in its deliberation No. 4, is inherently arbitrary, in violation of article 9 of the Universal Declaration of Human Rights.

69. In terms of procedural safeguards relevant to category III-type arbitrariness, there is considerable overlap with the issues raised in the discussion of category I above. The lack of grounds for detention in category I and the lack of due process in category III are connected.<sup>37</sup> The source alleges violations of due process rights, which are fundamental to the right to a fair trial. Absent any explanation from the Government, the Working Group observes the serious opacity pertaining to the charges under which the five individuals are being detained, with no indication that any of this will be clarified, their incommunicado detention and the lack of clarity around a trial, if any were held, the absence of a forum in which to challenge their detention, the lack of access to counsel, their indefinite and prolonged detention and the failure to release them amount to arbitrariness under category III and are in violation of articles 9 and 10 of the Universal Declaration of Human Rights and principles 10, 11, 15, 16, 17, 18, 19, 32 (1), 37 and 38 of the Body of Principles.

70. The source further submits that their right to fair proceedings before an independent and impartial court has been violated. The Working Group is unable to make a finding on this allegation due to the insufficiency of the information before it. Considering the secrecy and scarcity of information surrounding the legal proceedings, if any were held, pertaining to the five individuals, it notes that the Government is in possession of this information but has neither provided it to the families of the five individuals nor responded to the allegations in this regard. The Working Group is disturbed at the secrecy that appears to surround the fate and whereabouts of the five individuals. Their family members have been unable to

<sup>35</sup> See pinion No. 15/2019, para. 33.

<sup>36</sup> CERD/C/CHN/CO/14-17, para. 40 (a).

<sup>37</sup> See, e.g. opinion 89/2017, para. 44.

establish the exact details of their arrests and trials or their exact whereabouts. The Human Rights Council, in its resolution 37/3, stressed 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.<sup>38</sup>

71. The source maintains that there is credible information of extensive and sustained torture and ill-treatment and a pattern of physical and psychological violence having been committed in re-education camps. In this regard, the source recalls the prolonged incommunicado detention of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu. The source also notes that it is acknowledged among United Nations human rights bodies that prolonged incommunicado detention is capable of facilitating and constituting torture. Despite these allegations, the Working Group is unable to make a finding, due to insufficient information on the acts of torture alleged. Nonetheless, it recalls the finding of the joint study on global practices in relation to secret detention in the context of countering terrorism that secret detention was connected to the practice of torture and other cruel, inhuman and degrading treatment or punishment.<sup>39</sup>

72. Noting the serious violations alleged above and the preceding findings, the Working Group considers that the violations of the five detainees' fair trial rights are of sufficient gravity to meet the threshold for category III. In making these findings, the Working Group is especially mindful of its conclusions related specifically to re-education camps, made after its follow-up mission to China in 2004,<sup>40</sup> and the absence of a reply from the Government in the present case.

**(c) Category V**

73. The source submits that the cases of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu are representative of a widespread pattern of detentions in Xinjiang Uighur Autonomous Region, where the authorities target ethnic and religious minorities by conducting a targeted campaign of mass detention and ill-treatment. The five individuals are ordinary people residing, or who were residing, in Xinjiang Uighur Autonomous Region, of Uighur ethnicity who have been targeted and detained because of their Uighur, Muslim and Turkic identities. The source therefore submits that they are deprived of their liberty on discriminatory grounds, due to, inter alia, their ethnic origin, language and religion. The source also submits that their deprivation of liberty is a prima facie case of deprivation of liberty on discriminatory grounds and forms part of a pattern of persecution against persons with similarly distinguishing characteristics (in the present case, the Uighur population in Xinjiang). The source recalls that more than 1 million Uighurs are still in detention for reasons of their ethnicity.<sup>41</sup>

74. The Working Group recalls the recent follow-up report on 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 her 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 recorded the ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention.<sup>42</sup> The Working Group also observes that the Committee on the Elimination of Racial Discrimination acted under its early warning and urgent action procedures to express concern about the discriminatory character of severe and undue restrictions on a wide range of human rights, targeting predominantly Uighur and other ethnic Muslim communities in the Xinjiang Uighur Autonomous Region.<sup>43</sup>

<sup>38</sup> See also [A/HRC/13/42](#), sect. II.B.1.

<sup>39</sup> [A/HRC/13/42](#), para. 34. See also opinion No. 55/2019, para. 39.

<sup>40</sup> [E/CN.4/2005/6/Add.4](#), paras. 54–59.

<sup>41</sup> [A/HRC/36/37](#), para. 48.

<sup>42</sup> [A/HRC/49/45](#), para. 33.

<sup>43</sup> Committee on the Elimination of Racial Discrimination, decision No. 1/108 of 23 November 2022.

75. The Working Group notes that the present case follows a series of instances in which it has found there to be persecution by China against Uighurs.<sup>44</sup> Given the source's unrefuted arguments that the detainees were all also targeted because of their Uighur ethnicity, and given the similar circumstances in the current case involving the detention of Uighurs for transfer to re-education camps, the Working Group considers that the source has demonstrated that the detention of these individuals were carried out on a discriminatory basis.

76. The scarcity of information and lack of any known legal proceedings also indicate that their Uighur ethnicity was the common and discriminatory basis for their detention. In this regard, the Working Group notes with alarm that most of the family members of Ms. Buvacir and Ms. Bumeirem who are residing in China are reportedly also deprived of their liberty. In 2018, it reportedly became known that the entire family of Mr. Aibibu who were residing in China, including his daughter Ms. Aibibu, were detained in "re-education camps". It recalls that Ms. Buvacir and Ms. Bumeirem are mother and daughter and that Mr. Aibibu and Ms. Aibibu are father and daughter. Ms. Aibibu is deprived of the liberty in a "re-education camp" and her siblings share the same fate.

77. The Working Group therefore finds the detention of Ms. Buvacir, Ms. Bumeirem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu arbitrary, falling under category V. The Working Group refers the present case to the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief, for further consideration.

**(d) Concluding remarks**

78. The source submits that there are grave concerns pertaining to the health of Mr. Alimu and of Mr. Aibibu, who is over 80 years old. The Working Group recalls that it is the duty of all Governments to treat their detainees with humanity and respect for their inherent dignity as a human being, as stipulated in rule 1 of the Nelson Mandela Rules.

79. The Working Group is deeply concerned by what appears to be a practice of detaining family members and a revolving door of arrests, releases and rearrests, as was the case with Mr. Aibibu and his daughter Ms. Aibibu. It is also alleged that, in 2018, it became known that the entire family of Mr. Aibibu residing in China were placed in re-education camps. The Working Group regrets the Government's failure to engage with it constructively and in a timely fashion in providing a response to the allegations concerning the detention of these individuals in the Xinjiang Uighur Autonomous Region.<sup>45</sup>

80. In its 30-year history, the Working Group has found China in violation of its international human rights obligations in numerous cases.<sup>46</sup> 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

<sup>44</sup> See, e.g. opinions No. 3/2014, No. 66/2021, No. 6/2022, No. 64/2022, No. 88/2022, No. 6/2023 and No. 38/2023. See also, OHCHR, "Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region"; and [A/HRC/36/37](#), para. 48.

<sup>45</sup> Opinions 6/2022; 88/2022; and 38/2023, para. 21.

<sup>46</sup> 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, No. 36/2019, No. 72/2019, No. 76/2019, No. 11/2020, No. 32/2020, No. 78/2020, No. 82/2020, No. 25/2021 and No. 30/2021.

circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>47</sup>

81. 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 previous mission 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 request of 15 April 2015.

### 3. Disposition

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

The deprivation of liberty of Alavedi Buvacir, Hudavedi Bumeyrem, Abudukelimu Alimu, Abuduli Aibibu and Bahaguli Aibibu, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights is arbitrary and falls within categories I, III and V.

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

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu and to take appropriate measures against those responsible for the violation of their rights.

86. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief, for appropriate action.

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

### 4. Follow-up procedure

88. 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 Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu;

(c) Whether an investigation has been conducted into the violation of the rights of Ms. Buvacir, Ms. Bumeyrem, Mr. Alimu, Mr. Aibibu and Ms. Aibibu 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;

<sup>47</sup> See, for example, 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.

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

89. 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.

90. 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.

91. 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.<sup>48</sup>

*[Adopted on 18 March 2024]*

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<sup>48</sup> Human Rights Council resolution 51/8, paras. 6 and 9.