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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. 4/2024 concerning Abdülcabbar Celil Karluk, Suliya Tuerxun, Ailijiang Mamuti and Yasin Abdurrahman (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 17 October 2023 the Working Group transmitted to the Government of China a communication concerning Abdülcabbar Celil Karluk, Suliya Tuerxun, Ailijiang Mamuti and Yasin Abdurrahman. 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,

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

¹ [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. Abdülcabbar Celil Karluk (Jiaper Jilili) is a citizen of China, born on 16 June 1970. His usual place of residence is the city of Kashgar, Xinjiang Uighur Autonomous Region.

5. Suliya Tuerxun is a citizen of China. Her usual place of residence is the town of Shuiding, Ili Kazakh Autonomous Prefecture, Xinjiang Uighur Autonomous Region.

6. Ailijiang Mamuti is a citizen of China whose usual place of residence is in Xinjiang Uighur Autonomous Region.

7. Yasin Abdurrahman is a citizen of China whose usual place of residence is in Bayingolin Mongol Autonomous Prefecture, Xinjiang Uighur Autonomous Region. He was 56 years old at the time of his arrest and was involved in farmwork and herding.

(i) Arrest and detention of Mr. Karluk

8. The source reports that Mr. Karluk was arrested around March 2017 at his home in Kashgar. No warrant was shown, and no reasons for the arrest were given.

9. After his arrest, Mr. Karluk spent approximately two years in one of the re-education camps located in Xinjiang Uighur Autonomous Region. The authorities did not give a reason for his detention. The legal basis for the detention, including the legislation applied, remains unknown.

10. According to the source, in 2019, Mr. Karluk was reportedly released from the re-education camp because he had been paralysed while in detention. Grave concerns exist with regard to the current state of Mr. Karluk's health, as he cannot move or communicate effectively.

11. The source submits that Mr. Karluk might have been subjected to medical experiments while in detention. The source also submits that Mr. Karluk's health has been irreversibly altered by the torture and ill-treatment to which he was subjected and the medical experiments carried out on him by the authorities in the camp.

(ii) Arrest and detention of Ms. Tuerxun

12. The source reports that Ms. Tuerxun was arrested in May 2018 at her workplace. No arrest warrant was shown, and no reasons for the arrest were given. However, the source notes that the arrest was carried out after Ms. Tuerxun had visited her adult child who was studying in Türkiye. Reportedly, members of Ms. Tuerxun's family have also been arrested.

13. After her arrest, Ms. Tuerxun was transferred to one of the re-education camps located in Xinjiang Uighur Autonomous Region, where she currently remains. The authorities have not given reasons for her continued detention. The legal basis for her detention, including the legislation applied, remains unknown. Since her arrest, Ms. Tuerxun's exact whereabouts have remained unknown, and she cannot be contacted.

14. The source submits that Ms. Tuerxun's ongoing incommunicado detention without charge is an example of persecution by the authorities against persons of Uighur ethnicity and constitutes a severe violation of her most fundamental rights under the Universal Declaration of Human Rights.

(iii) Arrest and detention of Mr. Mamuti

15. The source reports that Mr. Mamuti was arrested in May 2017 by the authorities at his home in Xinjiang Uighur Autonomous Region. No warrant was shown, and no reasons for the arrest were given.

16. After his arrest in late May 2017, Mr. Mamuti was transferred to one of the re-education camps located in Xinjiang Uighur Autonomous Region, where he currently

remains. The authorities have not given reasons for his continued detention. The legal basis for his detention, including the legislation applied, remains unknown. Since his arrest, Mr. Mamuti's exact whereabouts have remained unknown, and he cannot be contacted.

17. The source submits that Mr. Mamuti has been deprived of liberty solely because his adult child is studying in Türkiye. His ongoing incommunicado detention without charge is an example of persecution by the authorities against persons of Uighur ethnicity and constitutes a severe violation of his most fundamental rights under the Universal Declaration of Human Rights.

(iv) *Arrest and detention of Mr. Abdurrahman*

18. The source reports that Mr. Abdurrahman was arrested in July 2017 at his home in Xinjiang Uighur Autonomous Region. No warrant was shown, and no reasons for the arrest were given. Reportedly, members of Mr. Abdurrahman's family have also been arrested.

19. Since his arrest, Mr. Abdurrahman has been forcibly disappeared, and it is presumed that he is still in detention. The source submits that he is detained in one of the re-education camps located in Xinjiang Uighur Autonomous Region. The authorities have not given reasons for his continued detention or information about the charges. The legal basis for the detention, including the legislation applied, remains unknown. Since his arrest, Mr. Abdurrahman's exact whereabouts have remained unknown, and he cannot be contacted.

20. According to the source, before his arrest, Mr. Abdurrahman had undergone nine operations, and the current state of his health is therefore a matter of concern.

21. The source submits that some members of Mr. Abdurrahman's family reside in Türkiye. His ongoing incommunicado detention without charge is an example of persecution by the authorities against persons of Uighur ethnicity and constitutes a severe violation of his most fundamental rights under the Universal Declaration of Human Rights.

(v) *Legal analysis*

22. The source submits that the detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman, 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 under categories I, III and V of the Working Group.

23. 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 are justified in order to prevent extremism is inconsistent with the Government's international law obligations. In this context, the source recalls the joint communication by special procedure mandate holders in which they stated that the Xinjiang Uighur Autonomous Region regulation on "de-extremification" was incompatible with the obligations of China under international human rights law.²

24. The source recalls that, as has been emphasized by the Working Group, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.³ Nevertheless, an arrest or detention may be authorized by domestic law and 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 With respect to the "re-education centres", the source notes that, according to the joint communication by special procedure mandate holders, due to their coercive character, these centres amount to detention centres.⁵

² See communication CHN 21/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24182>.

³ Opinion No. 66/2021, para. 54.

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

⁵ See communication CHN 21/2018.

25. Moreover, it is recalled 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.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 applicable protections. The source submits that the internment of persons of Uighur ethnicity, including the above-mentioned individuals, is arbitrary, since it is based on overly broad and notoriously vague counter-terrorism legislation.

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

27. The source states that Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman have been forcibly disappeared since they were sent to the re-education camps. It recalls that the International Convention for the Protection of All Persons from Enforced Disappearance defines the act in its article 2 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 places such a person outside the protection of the law. The source argues that, although China is not a party to the Convention, it is bound by the prohibition on committing enforced disappearance under customary international law. It is submitted that persons taken to re-education camps, including the three above-mentioned individuals, are effectively disappeared. The source asserts that the camps constitute a massive case of enforced disappearance and arbitrary detention.⁹

28. The source submits that the internment of persons of Uighur ethnicity, including Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman, 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.

29. Furthermore, the source states that no formal charges were presented against Mr. Karluk or have been presented against Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman, who, furthermore, are denied access to legal remedies, are denied contact with the world outside the re-education camps and have been held for unspecified periods of time, circumstances that are tantamount to enforced disappearance and arbitrary detention. Accordingly, the prolonged incommunicado detention of the above-mentioned individuals constitutes deprivation of liberty under category I of the Working Group.

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

31. The source submits that, in placing Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman outside the protection of the law, the enforced disappearance deprived them of the protection of legal safeguards for 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,

⁶ [A/HRC/49/45](#), paras. 33 and 34.

⁷ Opinion No. 15/2019, para. 33.

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

⁹ See [A/HRC/WGEID/115/1](#), annex I.

32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

32. In the light of the foregoing, the source concludes that the arrest and detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman is arbitrary and falls under category I as lacking legal basis, in breach of article 9 of the Universal Declaration of Human Rights.

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

34. It is recalled that Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman were arrested without a warrant and were not informed either of the reasons for their arrest or of any charges against them. They were forcibly sent to re-education camps. Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman have been held incommunicado in these camps since the time of their arrest. They did not enjoy their right to notify and communicate with their families or their right to have a lawyer. These elements constitute prima facie violations of principles 15, 16, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, the United Nations Declaration on the Protection of All Persons from Enforced Disappearance recognizes the right to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention. Article 10 (2) 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, to their counsel or to other persons with a legitimate interest. The Declaration, in its article 10 (3), also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons.

35. It is argued that, in the present case, the rights of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman 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.

36. The source submits that, although arrest and prolonged incommunicado detention fall within category I of the Working Group, such practices constitute violations of the right to a fair trial as well. Secret and incommunicado detention constitutes a very serious violation of the norm protecting the right to liberty of 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.¹⁰

37. 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 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 or her family and legal counsel renders a detention incommunicado.

38. Another concern with regard to incommunicado detention is the fact that it may facilitate or in and of itself constitute torture.¹¹ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 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.¹² Mr. Karluk was and Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman have been denied contact with their families and legal counsel.

39. 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

¹⁰ A/HRC/22/44, para. 60.

¹¹ See opinion No. 77/2023.

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

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.¹³ The source submits 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 has been committed in these camps, and the prolonged incommunicado detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman, allow it to be inferred that they have been subjected to torture and ill-treatment, thus rendering their detention arbitrary under category III of the Working Group.

40. Lastly, in relation to category V, the source submits that the cases of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman 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 single out ethnic and religious minorities in the region by conducting an ethnically targeted campaign of mass detention and ill-treatment.

41. The source recalls that Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman are ordinary people residing in Xinjiang Uighur Autonomous Region who happen to be of Uighur ethnicity. According to the source, they were targeted and detained because of their Uighur, Muslim and Turkic identities.

42. The source therefore submits that the four above-mentioned individuals were deprived of their liberty on discriminatory grounds due to, inter alia, their ethnic origin, language and religion. It 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 this case, the Uighur population in Xinjiang Uighur Autonomous Region).¹⁴ The source recalls that more than 1 million Uighurs are still in detention for reasons of their ethnicity.

43. The source therefore concludes that the detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman 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. It constitutes a violation of international law on prohibited grounds of discrimination. Their deprivation of liberty is thus arbitrary and falls within category V of the Working Group.

(b) Response from the Government

44. On 17 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 18 December 2023, detailed information about the current situation of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman and to clarify the legal provisions justifying their detention, as well as its compatibility with the obligations of China under international human rights law. The Working Group called upon the Government of China to ensure their physical and mental integrity.

45. 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

46. 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.

47. In determining whether the detention of the 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

¹³ A/56/156, para. 14. See also opinion No. 55/2019, para. 39.

¹⁴ A/HRC/36/37, para. 48.

the Government if it wishes to refute the allegations.¹⁵ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

48. As a preliminary matter, the Working Group notes that the allegations in the present case concern four individuals all belonging to the Uighur minority. In relation to the source's un rebutted allegations that Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman are being held at "re-education camps", with their current whereabouts unknown, and that Mr. Karluk was subjected to a similar detention regime in a re-education camp before his release in 2019, the Working Group recalls that deprivation of liberty is not only a question of legal definition, but also of fact.¹⁶ If the person concerned is not at liberty to leave, 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.¹⁷ Moreover, the Working Group recalls its visit to China in 1997 and its follow-up visit in 2004 and notes that, during both missions, it visited re-education camps, recognizing them as places of deprivation of liberty.¹⁸ The Working Group therefore concludes that the re-education camps are without a doubt places of detention, as it is clear that those held at them are there against their will and are unable to leave.

49. In making this finding, 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 specifically notes the internment of Uighurs in "re-education camps" and reiterates and highlights ongoing concerns about the conditions in such facilities, including the practice of "re-education", which impinges 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.¹⁹

(a) Category I

50. The source submits that Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman were arrested without a warrant and were not informed either of the reasons for their arrest or of any charges against them. Mr. Karluk was arrested around March 2017 and was detained in a re-education camp for two years before being released in 2019 because he had been paralysed while in detention. Ms. Tuerxun was arrested in May 2018 and transferred to a re-education camp after she had visited her adult child who was studying in Türkiye. Mr. Mamuti was arrested in May 2017 and remains detained in a re-education camp. Mr. Abdurrahman was arrested in July 2017 and forcibly disappeared. The source submits that he is currently detained in a re-education camp.

51. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.²⁰ This is typically²¹ done through an arrest warrant or arrest order (or equivalent document).²² Persons who are detained have the right to be promptly informed of the charges against them. This right is inherent in article 9 of the Universal Declaration of Human Rights, as well as in principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In the absence of a response from the Government and in the light of the source's submissions, the Working Group concludes that the rights of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman under article 9 of the Universal

¹⁵ A/HRC/19/57, para. 68.

¹⁶ Working Group on Arbitrary Detention, "Fact sheet No. 26/Rev.1", p. 11.

¹⁷ A/HRC/36/37, para. 56.

¹⁸ See E/CN.4/1998/44/Add.2; and E/CN.4/2005/6/Add.4, in particular para. 54.

¹⁹ A/HRC/49/45, para. 33.

²⁰ In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

²¹ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

²² See, for example, opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018, No. 89/2020 and No. 72/2021.

Declaration of Human Rights, as well as under principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, were violated.

52. The source submits that the four individuals were forcibly sent to re-education camps, where they were, or are being, held incommunicado following arrest. They were or still are unable to notify and communicate with their families or to exercise their right to have a lawyer. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of the detention before a court under article 9 (4) of the Covenant.²³ The Working Group recalls that the Special Rapporteur on torture has deemed that prolonged incommunicado detention in a secret place may amount to torture under article 1 of the Convention against Torture, noting that torture is most frequently practised during incommunicado detention.²⁴

53. Judicial oversight of detention is a fundamental safeguard of personal liberty²⁵ and is essential in ensuring that detention has a legal basis. Given that Mr. Karluk was and Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman 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 has been violated. They were or have been placed outside the protection of the law, in violation of their right to be recognized as persons before the law under article 6 of the Universal Declaration of Human Rights. In that regard, the Working Group emphasizes that, as it stated clearly following its visit to China in 2004: “The fact that the legal system of China classifies re-education through labour as an administrative deprivation of liberty as opposed to judicial deprivation of liberty governed by criminal law, does not affect China’s obligation to ensure judicial control over this form of deprivation of liberty.”²⁶

54. 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, which constitutes a violation of article 9 of the Universal Declaration of Human Rights, as well as a safeguard for the prevention of torture.²⁷ Moreover, prohibiting contact with the outside world contravenes rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)²⁸ and principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

55. According to the source’s unrefuted submission, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman have been, and Mr. Karluk was, unable to contact lawyers during this time. This, in the Working Group’s view, has undermined their right to challenge the lawfulness of their detention and enjoy fair trial rights under articles 9, 10 and 11 of the Universal Declaration of Human Rights and principles 11 (1), 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

56. The Working Group considers that the forcible transfer of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman to 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 disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.²⁹ The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

57. 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

²³ 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.

²⁴ A/56/156, paras. 14 and 39 (f). See also General Assembly resolution 68/156. See further opinion No. 55/2019, para. 39.

²⁵ 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.

²⁶ E/CN.4/2005/6/Add.4, para. 54.

²⁷ Opinion No. 19/2022, para. 52.

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

²⁹ See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

High Commissioner for Human Rights (OHCHR) in 2022, which documented 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 their family members or others to ascertain the fate of detainees: “While some interviewees seemed to know or suspect that family members had been taken to a VETC [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.”³⁰ The Working Group has itself faced similarly scarce information concerning the detention of Uighurs in Xinjiang Uighur Autonomous Region.³¹

58. The source submits that the internment of persons of Uighur ethnicity, including the above-mentioned individuals, is arbitrary since it is based on overly broad 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 that, 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: “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.”³²

59. 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 expressed concern about 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 ethno-religious minorities, including Muslim Uighurs, Buddhist Tibetans and Mongolians.³³

60. In the light of the foregoing, the Working Group considers the deprivation of liberty of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman to be arbitrary under category I.

(b) Category III

61. The Working Group notes that very little appears to be known about the trial proceedings regarding the four individuals. The charges against them are unknown, and the dates of their trials, as well as the details of the proceedings, if they ever took place, are equally unknown. The Government had an opportunity to clarify these points but chose not to do so.

62. Mr. Karluk was detained in a re-education camp for two years before being released because he had been paralysed while in detention. The source submits that the exact reasons for his arrest and the charges against him remain unknown. Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman remain detained in re-education camps incommunicado, and the reasons and legal basis for their detention, including the relevant legislation, and their exact whereabouts remain unknown.

63. The source submits that the detention of persons of Uighur ethnicity is arbitrary, as it is based on overly broad and notoriously vague counter-terrorism legislation. The Working Group recalls that, following its visits to China in 1997 and 2004, it emphasized in its reports that charges involving vague and imprecise offences jeopardized the ability of individuals to

³⁰ “OHCHR assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China” (2022), para. 132.

³¹ See opinion No. 6/2022.

³² [A/HRC/49/45](#), para. 33.

³³ [CERD/C/CHN/CO/14-17](#), para. 36.

exercise their fundamental rights and were likely to result in arbitrary deprivation of liberty.³⁴ Furthermore, prolonged detention without charge or trial, and secret, prolonged incommunicado or indefinite detention without review, as well as keeping a person in any form of detention without periodic re-evaluation of the justification for continuing the detention, are forms of arbitrary detention.³⁵

64. The Working Group observes that Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman appear to remain in de facto indefinite detention in a so-called re-education camp. It recalls the alarm expressed by the Committee on the Elimination of Racial Discrimination at 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.³⁶ The detention of the individuals in the present case appears to resemble such a situation and, as clearly stipulated by the Working Group in its deliberation No. 4,³⁷ such a situation is inherently arbitrary, in violation of article 9 of the Universal Declaration of Human Rights.

65. In terms of procedural safeguards relevant to arbitrariness as envisaged under category III, there is considerable overlap with the issues raised in the discussion of category I above. There is a connection between lack of grounds for detention, as envisaged in category I, and lack of due process, as envisaged in category III.³⁸ The source alleges violations of due process rights, which are fundamental to the right to a fair trial. The serious opacity pertaining to the charges under which Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman are being detained, and under which Mr. Karluk was detained, with no indication that any clarification will be provided, the incommunicado detention of the four individuals, the lack of clarity about a trial, if any took place, the absence of a forum in which to challenge the detention, the lack of access to counsel, and the indefinite and prolonged detention of Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman and failure to release them amount to arbitrariness under category III and violate 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 for the Protection of All Persons under Any Form of Detention or Imprisonment.

66. The source further submits that the right of the four individuals to fair proceedings before an independent and impartial court has been violated. The Working Group regrets that it is unable to make a finding on this allegation due to insufficient information but notes the secrecy and scarcity of information surrounding the legal proceedings, if any took place, pertaining to the four individuals. It observes that the Government is in possession of this information but has neither provided it to the families of the individuals nor responded to the allegations raised in this regard.

67. The Working Group is disturbed at the secrecy that appears to surround the fate and whereabouts of Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman. Their family members have been unable to 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 on the pretext of countering terrorism.³⁹

68. The source submits that there is credible information regarding extensive and sustained torture and ill-treatment, including medical experiments, occurring in the re-education camps. It is therefore submitted that the pattern of physical and psychological violence that has been committed in these camps and the prolonged incommunicado detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman allow it to be inferred that they have been subjected to torture and ill-treatment. The source 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

³⁴ Opinion No. 15/2019, para. 33.

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

³⁶ CERD/C/CHN/CO/14-17, para. 40 (a).

³⁷ E/CN.4/1993/24, sect. II.

³⁸ Opinion No. 89/2017, para. 44.

³⁹ See A/HRC/49/45. See also A/HRC/13/42, paras. 18–23.

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 Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in her follow-up report on the joint study on global practices in relation to secret detention in the context of countering terrorism: “Secret detention is consistently, unrelentingly and brutally connected to the practice of torture and other cruel, inhuman and degrading treatment or punishment.”⁴⁰

69. Noting the serious violations alleged above and the preceding findings, the Working Group considers that the violations of the four detainees’ fair trial rights are of sufficient gravity as 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 after its follow-up mission to China in 2004⁴¹ and the absence of a response from the Government in the present case.

(c) Category V

70. The source submits that the cases of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman are representative of a widespread pattern of detentions in Xinjiang Uighur Autonomous Region, where the authorities single out ethnic and religious minorities by conducting a targeted campaign of mass detention and ill-treatment. The four individuals are ordinary people residing in Xinjiang Uighur Autonomous Region who happen to be of Uighur ethnicity and were targeted and detained because of their Uighur, Muslim and Turkic identities. The source therefore submits that Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman are, and Mr. Karluk was, deprived of their liberty on discriminatory grounds due to, inter alia, their ethnic origin, language and religion. It 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 this case, the Uighur population in Xinjiang).⁴² The source recalls that more than 1 million Uighurs are still in detention for reasons of their ethnicity.

71. 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 details the “practices of arbitrary mass and secret detention with other serious violations of international law directed at the Uighurs” and records the “ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention”.⁴³

72. 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.⁴⁴ Given the source’s unrefuted arguments that the detainees were all 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 these detentions were carried out on a discriminatory basis.

73. The scarcity of information and lack of any known legal proceedings indicate that Uighur ethnicity was the common and discriminatory basis for the detention of the four individuals. In this regard, the Working Group notes with alarm that members of Ms. Tuerxun’s and Mr. Abdurrahman’s families have reportedly also been deprived of their liberty. The Working Group notes with alarm what appears to be a practice of detaining family members. The Working Group regrets the Government’s failure to engage with it

⁴⁰ A/HRC/49/45, para. 6.

⁴¹ E/CN.4/2005/6/Add.4, paras. 43–60.

⁴² A/HRC/36/37, para. 48.

⁴³ A/HRC/49/45, para. 33.

⁴⁴ See, for example, opinions No. 3/2014, No. 66/2021, No. 6/2022, No. 64/2022 and No. 88/2022. See also “OHCHR assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region”; and A/HRC/36/37, para. 48.

constructively and in a timely fashion by providing a response to the allegations concerning the detention of these individuals in Xinjiang Uighur Autonomous Region.⁴⁵

74. The Working Group therefore finds the detention of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman to be 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

75. The Working Group is deeply concerned about the source's submission that Mr. Karluk might have been subjected to medical experiments while in detention. The source submits that Mr. Karluk's health has been irreversibly altered by the torture and ill-treatment to which he was subjected and the medical experiments carried out on him by the authorities in the camp. He was reportedly released from the re-education camp because he had been paralysed while in detention. Grave concerns exist with respect to the current state of Mr. Karluk's health, as he cannot move or communicate effectively. Moreover, according to the source, before his arrest, Mr. Abdurrahman had undergone nine operations, and the current state of his health is therefore a matter of concern. The Working Group recalls that it is the duty of all Governments to treat detainees with humanity and respect for their inherent dignity as human beings, as stipulated in rule 1 of the Nelson Mandela Rules.

76. In its 30-year history, the Working Group has found China to be in violation of its international human rights obligations in numerous cases.⁴⁶ 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.⁴⁷

77. 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 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 request of 15 April 2015.

3. Disposition

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

The deprivation of liberty of Abdülcabbar Celil Karluk, Suliya Tuerxun, Ailijiang Mamuti and Yasin Abdurrahman, 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.

⁴⁵ See opinions No. 6/2022, No. 88/2022 and No. 38/2023.

⁴⁶ 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.

⁴⁷ 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.

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

80. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman immediately and to accord them and Mr. Karluk an enforceable right to compensation and other reparations, in accordance with international law.

81. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman and to take appropriate measures against those responsible for the violation of their rights.

82. 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.

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

4. Follow-up procedure

84. 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. Tuerxun, Mr. Mamuti and Mr. Abdurrahman have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Karluk, Ms. Tuerxun, Mr. Mamuti and Mr. Abdurrahman 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.

85. 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.

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

87. 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.⁴⁸

[Adopted on 18 March 2024]

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