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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022**

### **Opinion No. 64/2022 concerning Yalqun Rozi (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 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 12 April 2022 the Working Group transmitted to the Government of China a communication concerning Yalqun Rozi. The Government submitted a late response on 27 June 2022. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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

## Submissions

### *Communication from the source*

4. Yalqun Rozi (or Rouzi Yalikun), born in 1966, is a citizen of China. His usual place of residence is the city of Urumqi, Xinjiang Uighur Autonomous Region, China. He was 50 years of age at the time of his detention.
5. According to the source, Mr. Rozi is a renowned Uighur writer, literary critic and public speaker. He worked on the editorial board for the Uighur Textbook Department of Xinjiang Education Press from 2001 to 2011. He participated in the compiling and editing of the Uighur literature textbooks for elementary and middle schools to be used across the entire Uighur region. He had also been responsible for compiling extracurricular textbooks in the area of the humanities, as well as teaching manuals for each of these books. He retired in 2015 due to the state of his health.
6. The source notes that these textbooks had been approved for use by the Government before they were distributed to schools. However, after 13 years of using these textbooks, the authorities considered the books to be problematic and detained Mr. Rozi along with other members of the Textbook Compiling Committee.
7. The source specifies that throughout the month of September 2016, Mr. Rozi and the entire membership of the Textbook Compiling Committee for Uighur literature books were summoned to Xinjiang Education Press for urgent meetings, which later became known to be police questioning sessions. Mr. Rozi and his colleagues were picked up from their homes every morning by a vehicle and taken to the police for questioning during the daytime. During the questioning sessions, their cell phones were confiscated. After a day-long questioning by the police, they would be returned to their respective homes. They were also ordered not to leave Urumqi during September 2016.
8. On 6 October 2016, Mr. Rozi was taken away by the police from his residence in Urumqi. The arrest was reportedly carried out by the police and the Discipline Inspection Commission. According to the source, the authorities did not show a warrant or other decision by a public authority at the time of the arrest.
9. The source also notes that no warrant or any other official legal notice was given to Mr. Rozi's family members either before or after his arrest. Rather, the content of the decision was obtained through another internal document from Mr. Rozi's place of work – Xinjiang Education Press. In February 2017, after months of enquiries, the family managed to obtain an internal document from Xinjiang Education Press entitled "The decision about Yalqun Rozi". That document contained a decision about cancelling Mr. Rozi's retirement benefits. It also stated that Mr. Rozi was suspected of committing the crime of "inciting separation of the nation", a crime sanctioned in the Criminal Law of China. Mr. Rozi was therefore arrested by the Urumqi Public Security Bureau on 30 December 2016, with the approval of the Urumqi People's Procuratorate.
10. The source specifies that from 6 October 2016 to 30 December 2016, Mr. Rozi was detained and interrogated at an undisclosed location without any charges being laid against him. He was unable to contact his family. On 30 December 2016, Mr. Rozi was relocated to the Midong Detention Centre, where he was held in pretrial detention for over two years until early January 2018. In early January 2018, he was sentenced to 15 years of imprisonment and transferred to a prison in Urumqi, where he remains to date. Reportedly, Mr. Rozi was not allowed to receive medical treatment for his health problems throughout his detention. Moreover, his family members were not allowed to contact him for three years starting from his initial detention on 6 October 2016. It is reported that currently, the family is also unable to contact Mr. Rozi.
11. The source specifies that on 3 January 2018, Mr. Rozi was tried, having been indicted on the charge of "inciting subversion of State power". He was sentenced to 15 years in prison in what, according to the source, has been a biased trial process.
12. In this regard, the source submits that Mr. Rozi was deprived of adequate legal representation during the entire judicial process, as his defence counsel during the trial was a State-appointed Uighur attorney who carried out his duties in fear of retaliation from the

authorities. Moreover, the source submits that the judicial system in the Xinjiang Uighur Autonomous Region lacks independence, serving as a tool for the authorities to implement their policies.

13. The source adds that a picture released by the authorities in April 2021 which seems to have been taken during the trial in January 2018 showed that Mr. Rozi was severely emaciated after the arrest due to malnutrition and torture. The source states that all the above elements indicate that the international norms relating to fair trial were not observed. More specifically, it points out the alleged breach of articles 9 and 10 of the Universal Declaration of Human Rights.

14. The source adds that the investigation into the Uighur literature textbooks and the arrests of Mr. Rozi and other members of the Textbook Compiling Committee were carried out by the authorities immediately after the appointment of the Party Secretary and his arrival in the Xinjiang Uighur Autonomous Region.

15. The source further alleges that during that period, the authorities started to set up checkpoints, widely implement monitoring systems, suppress freedom of speech and religion, build detention facilities in the region, and arrest a large number of Uighur intellectuals, artists and businessmen. According to the source, these actions were aimed at suppressing Uighur culture, language, heritage and religion. The problems relating to the Uighur literature textbooks thus serve as a pretext for abolishing Uighur-language education, according to the source.

16. The source recalls that Uighur literature textbooks were compiled by Mr. Rozi and his colleagues under the strict guidelines of the Ministry of Education of China and had gone through several rounds of review before their release. Furthermore, before the start of every new school year, these textbooks went through new rounds of review by the Government. The source therefore submits that if there had indeed existed some sort of collusion or radical content in these textbooks, it would have been detected far earlier. But these textbooks had been in circulation for over 10 years and had gone through numerous government reviews without any significant issue, notes the source.

17. The source also emphasizes that the contents of these textbooks were either directly obtained from the previous versions of the Uighur literature textbooks that had been in use for several decades, or were chosen from essays and stories legally published in Uighur-language magazines and newspapers which themselves had already gone through close government review before being published, or were translated directly from Chinese literature textbooks.

18. According to the source, the Government's claims that these textbooks contained radical ideas are therefore groundless. It concludes that the sentencing of Mr. Rozi for inciting subversion of State power is a tool used by the authorities to detain individuals on political grounds. It further submits that the use of this vague piece of legislation is an abuse of domestic law and can be considered as arbitrary.

19. Moreover, the source states that the arrest and sentencing of Mr. Rozi is a clear violation of article 7 of the Universal Declaration of Human Rights because Mr. Rozi received discriminatory legal treatment by the Chinese authorities on the basis of his ethnic identity. Mr. Rozi was reportedly arrested and sentenced not for any wrongdoing but because of the State policy of no longer allowing the Uighur ethnic minority to enjoy their own culture, to profess and practise their own religion and to use their own language.

20. The source therefore concludes that the deprivation of liberty of Mr. Rozi falls within categories I, II, III and V of the Working Group.

#### *Response from the Government*

21. On 12 April 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 13 June 2022, detailed information about the current situation of Mr. Rozi and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of China under international human rights law.

Moreover, the Working Group called upon the Government of China to ensure his physical and mental integrity.

22. The Government submitted its response on 27 June 2022, that is, after the deadline given by the Working Group. The response is therefore considered late, and the Working Group cannot accept the response as if it had been presented within the time limit. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the methods of work of the Working Group. Under paragraph 16 of its methods of work, the Working Group may render an opinion on the basis of all the information it has obtained.

### **Discussion**

23. In determining whether Mr. Rozi's detention was 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>2</sup> In the present case, the Government has chosen not to challenge in a timely manner the *prima facie* credible allegations made by the source.

#### Category I

24. The Working Group notes the uncontested allegations that Mr. Rozi was taken away by the police on 6 October 2016 and subsequently detained. There was no arrest warrant, nor was an explanation of the reasons for the arrest provided. In fact, it took months for the family of Mr. Rozi to obtain any information about the reason for his arrest and detention. All these allegations were put to the Government, which chose not to address them in its late reply.

25. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. As it has previously stated, in order for a 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 through an arrest warrant.<sup>3</sup>

26. The international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>4</sup> Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Noting that this was denied to Mr. Rozi, the Working Group finds a violation of article 9 of the Universal Declaration of Human Rights.

27. Furthermore, the Working Group notes the uncontested submission that from 6 October 2016 to 30 December 2016 Mr. Rozi was held at an undisclosed location, without charges, and interrogated. In its late reply, the Government merely states that during the investigation, interrogation and detention of Mr. Rozi, the public security organs strictly abided by the Criminal Procedure Law of China and the Ministry of Public Security's Procedural Regulations for Public Security Organs Handling Criminal Cases, Detention Centre Law Enforcement Rules and other relevant laws and regulations, handled the case in accordance with the law, enforced the law according to the standards, and fully protected the legal rights of the suspect. In the Working Group's view, this lacks sufficient detail and does not rebut the allegations made by the source.

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<sup>2</sup> [A/HRC/19/57](#), para. 68.

<sup>3</sup> See, for example, opinions No. 72/2021, No. 89/2020, No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

<sup>4</sup> Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

28. The Working Group therefore considers that Mr. Rozi was subjected to de facto enforced disappearance following his arrest on 6 October 2016 until 30 December 2016 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.<sup>5</sup> The disappearance of Mr. Rozi clearly violated his right to challenge the lawfulness of detention before a court under article 9 of the Universal Declaration of Human Rights.<sup>6</sup> Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>7</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Rozi was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights has thus also been violated. The Working Group refers the case to the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

29. The Working Group notes that Mr. Rozi spent two years in pretrial detention and recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.<sup>8</sup> It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.<sup>9</sup>

30. In order to give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>10</sup> The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.<sup>11</sup>

31. According to the source, none of this appears to have taken place in the case of Mr. Rozi. The Government has not explained the reasons for the imposition of pretrial detention, nor for the length of it. Especially noting its findings in the sections on categories II and V (see below), the Working Group finds that Mr. Rozi's pretrial detention violated article 9 of the Universal Declaration of Human Rights.

32. The Working Group now turns to the allegations that Mr. Rozi was charged with, sentenced and imprisoned for the crime of inciting subversion of State power. The Government, in its late reply, specifies that Mr. Rozi was charged and sentenced to life imprisonment in accordance with the regulations contained in article 103 paragraph 1, article 385, article 386, article 383 paragraph 1 subparagraph 2, article 25 paragraph 1, article 26, article 56 paragraph 1, article 57 paragraph 1, article 64, article 67 paragraph 3, and article 69 of the Criminal Law of China. The Working Group notes that article 103 of the Criminal Law refers to the crime of "splitting the State or undermining unity of the country".

33. 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. The Working Group recommended that those crimes be defined in precise terms and that legislative measures be taken to introduce an exemption from criminal

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

<sup>6</sup> See opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 35/2018, No. 46/2017 and No. 45/2017.

<sup>7</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 ([A/HRC/30/37](#)), para. 3; and [CAT/C/VNM/CO/1](#), para. 24.

<sup>8</sup> Opinions No. 8/2020, para. 54; No. 1/2020, para. 53; No. 57/2014, para. 26; No. 49/2014, para. 23; and No. 28/2014, para. 43.

<sup>9</sup> [A/HRC/19/57](#), para. 54.

<sup>10</sup> See opinions No. 29/2020 and No. 51/2020.

<sup>11</sup> *Ibid.*; opinion No. 83/2019, para. 68; and 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, guideline 15.

responsibility for those who peacefully exercise their rights guaranteed by the Universal Declaration of Human Rights.<sup>12</sup>

34. In the present case, Mr. Rozi was charged – among other charges – under a vague and imprecise offence of organizing, plotting or carrying out a scheme of splitting the State or undermining unity of the country. This provision does not define what conduct amounts to splitting the State or undermining unity of the country. The communication of mere thoughts, ideas or opinions could potentially fall within the prohibited conduct. Moreover, the determination of whether an offence has been committed appears to be left entirely to the discretion of the authorities. Importantly, there is nothing to suggest that Mr. Rozi engaged in or incited violence as part of his activities, which might have given cause to restrict his behaviour. On the contrary, he chose to work peacefully, and as a writer had authored several books that had been in circulation in schools for more than a decade with the full approval of the authorities.

35. As the Working Group has stated, 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.<sup>13</sup>

36. Noting all the above, the Working Group concludes that the arrest and subsequent detention of Mr. Rozi for the crime of “splitting the State or undermining unity of the country” was arbitrary and falls within category I as lacking a legal basis in breach of article 9 of the Universal Declaration of Human Rights.

37. Considering all the above, the Working Group concludes that the arrest and detention of Mr. Rozi violated article 9 of the Universal Declaration of Human Rights and lacked a legal basis and was therefore arbitrary under category I.

#### Category II

38. The Working Group notes that it is not contested that Mr. Rozi is a renowned Uighur writer, literary critic and public speaker who had worked on the editorial board for the Uighur Textbook Department of Xinjiang Education Press from 2001 to 2011. In this capacity, he participated in the compiling and editing of the Uighur literature textbooks for elementary and middle schools to be used across the entire Uighur region. He had also been responsible for compiling extracurricular textbooks in the area of the humanities, as well as teaching manuals for each of these books. All these books had undergone examination and review by the authorities initially, as well as subsequently at yearly intervals. As such, there was never any indication that the contents of these writings could give rise to any crime. Yet, Mr. Rozi was arrested, tried, and indeed received a very heavy sentence of life imprisonment on the basis of the crime of “splitting the State or undermining unity of the country” on account of the allegedly radical content of the books – the same books that had been reviewed by the authorities on a yearly basis.

39. The Working Group considers that the published work of Mr. Rozi falls within the right to freedom of opinion and expression protected by article 19 of the Universal Declaration of Human Rights. This right protects expression even when it may shock, offend or disturb,<sup>14</sup> although the Working Group cannot see how this could have happened in the present case, given that the books had been reviewed by the authorities on a yearly basis.

40. The Working Group recalls that detention purely for the peaceful exercise of rights protected by the Universal Declaration of Human Rights, including freedom of expression, may be arbitrary. In this regard, the Human Rights Council, in its resolution 24/5, “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights

<sup>12</sup> E/CN.4/1998/44/Add.2, paras. 42–53, 106–107 and 109 (c); and E/CN.4/2005/6/Add.4, paras. 73 and 78 (e). See also CAT/C/CHN/CO/5, paras. 36–37 (noting consistent reports that human rights defenders and lawyers continue to be charged, or threatened to be charged, with broadly defined offences as a form of intimidation).

<sup>13</sup> See, for example, opinion No. 41/2017, paras. 98–101.

<sup>14</sup> See, for example, opinions No. 27/2020 and No. 33/2019.

defenders, trade unionists and others". This echoes the principle enunciated in resolution 12/16, in which the Council calls upon States to refrain from imposing restrictions that are not consistent with the permissible restrictions to freedom of expression – such as restrictions on discussing government policies and on political debate; on reporting on human rights; on engaging in peaceful demonstrations or political activities, including for peace or democracy; and on expressing opinions and dissent, and one's religion or beliefs.

41. In the present case, the Working Group has not been presented with any reasons that might justify any restrictions on Mr. Rozi's freedom of expression as set out in article 29 (2) of the Universal Declaration of Human Rights. It therefore concludes that the arrest and detention of Mr. Rozi resulted from his peaceful exercise of freedom of expression, and was therefore arbitrary, falling under category II of the Working Group. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

### Category III

42. Given its finding that the deprivation of liberty of Mr. Rozi is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Rozi should have taken place. However, the trial did take place, and he was in fact sentenced to life imprisonment, deprivation of political rights for life and confiscation of all personal property, according to the late response of the Government. In addition, the Government, in its late reply, notes that the Higher People's Court of the Xinjiang Uighur Autonomous Region ruled to dismiss the appeal and upheld the original judgment. The source has submitted that there were severe violations of the fair trial rights of Mr. Rozi and that his subsequent detention therefore falls under category III of the Working Group. In its late response, the Government merely states that the litigation rights of Mr. Rozi and his defence lawyer were fully protected during the whole process of this case, but fails to address any of the specific allegations.

43. The source has submitted, and the Government does not contest, that Mr. Rozi was denied appropriate legal assistance during his detention and subsequent trial, since the State-appointed lawyer did not act diligently out of fear of reprisals from the authorities.

44. The Working Group is disturbed at the uncontested allegations that the State-appointed lawyer was unable to carry out duties diligently due to fear of reprisals, and recalls its jurisprudence stating that such acts against lawyers are entirely unacceptable and violate articles 10 and 11 of the Universal Declaration of Human Rights.<sup>15</sup> It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide a remedy whenever a violation nevertheless occurs.<sup>16</sup> The Working Group recalls that it is stated in principle 9 of the 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 that legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.<sup>17</sup> The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

45. In the light of all this, the Working Group considers that Mr. Rozi's right to legal assistance was denied in violation of his rights under articles 10 and 11 of the Universal Declaration of Human Rights. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>18</sup> The right to legal assistance is an essential element of the right to a fair trial, as it serves to ensure

<sup>15</sup> See opinions No. 42/2020, No. 66/2019, No. 28/2018, No. 70/2017, No. 36/2017, No. 34/2017, No. 32/2017, No. 29/2017 and No. 14/2017. See also [A/HRC/45/16](#), para. 54.

<sup>16</sup> See deliberation No. 10 ([A/HRC/45/16](#), annex I).

<sup>17</sup> See also the Basic Principles on the Role of Lawyers, paras. 16–22.

<sup>18</sup> [A/HRC/45/16](#), paras. 51–52; and 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 9 and guideline 8. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

that the principle of equality of arms is duly observed.<sup>19</sup> In the present case, the Working Group considers the denial of legal assistance to be a particularly egregious violation of articles 10 and 11 of Universal Declaration of Human Rights, given the very lengthy term of imprisonment that was imposed upon Mr. Rozi following a trial where he was denied legal assistance.

46. Furthermore, the Working Group is seriously concerned about the uncontested allegations that Mr. Rozi appeared severely emaciated during the trial, due to malnutrition and torture suffered. As the Working Group has stated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>20</sup> Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>21</sup> The burden is on the Government to prove that statements were given freely,<sup>22</sup> but in this case it has not done so. A forced confession taints the entire proceedings, also regardless of whether other evidence was available to support the verdict.<sup>23</sup> The Working Group finds a further breach of articles 10 and 11 of the Universal Declaration of Human Rights. It refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action. The Working Group also calls upon the Government to adhere to the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles).<sup>24</sup>

47. The Working Group also considers that the court failed to act independently and impartially when Mr. Rozi appeared before it without legal representation with visible signs of ill-treatment and consequently finds a further violation of article 10 of the Universal Declaration of Human Rights.

48. Considering all of the above, the Working Group concludes that the detention of Mr. Rozi is arbitrary and falls under category III.

#### Category V

49. The Working Group notes that it is not disputed that Mr. Rozi belongs to the Uighur minority in the Xinjiang Uighur Autonomous Region of China and in fact is a writer, literary critic and public speaker who is well known in the region. The source has submitted, and the Government has chosen not to contest, that he was arrested and remains detained due to his belonging to the Uighur minority and being of the Muslim faith.

50. The Working Group recalls the recent follow-up report to the joint study (of 2010) 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>25</sup> In this 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”.<sup>26</sup>

51. The Working Group also recalls its own recent jurisprudence, which documents a pattern in the attitude of the authorities towards the Uighur minority in China.<sup>27</sup> The Working Group also takes note of the recent report entitled “OHCHR assessment of human rights concerns in the Xinjiang Uighur Autonomous Region, People’s Republic of China”,<sup>28</sup> which

<sup>19</sup> See, for example, opinions No. 35/2019 and No. 76/2021.

<sup>20</sup> [A/HRC/45/16](#), para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22; and [E/CN.4/2003/68](#), para. 26 (e).

<sup>21</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

<sup>22</sup> See, for example, opinion No. 41/2020.

<sup>23</sup> Opinion No. 34/2015, para. 28.

<sup>24</sup> [A/HRC/51/29](#), paras. 50–51.

<sup>25</sup> [A/HRC/49/45](#).

<sup>26</sup> *Ibid.*, para. 33.

<sup>27</sup> See opinion No. 6/2022.

<sup>28</sup> See <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.



documents a pattern of discriminatory attitudes towards the Uighur minority in China and notes in particular that this has resulted in widespread arbitrary detention of Uighurs, stating, for example, that:

The systems of arbitrary detention and related patterns of abuse in Vocational Education and Training Centres and other detention facilities come against the backdrop of broader discrimination against members of Uighur and other predominantly Muslim minorities based on perceived security threats emanating from individual members of these groups.<sup>29</sup>

52. Significantly, the report concludes that “the extent of arbitrary and discriminatory detention of members of Uighur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity”.<sup>30</sup>

53. In the absence of any explanation by the Government as to the reasons for the arrest and detention of Mr. Rozi, or any rebuttal of the very serious allegations presented by the source, the Working Group concludes that the arrest and detention of Mr. Rozi was based on discrimination on the basis of him belonging to the Uighur minority and belonging to the Muslim faith, in violation of article 2 of the Universal Declaration of Human Rights. The Working Group therefore finds the detention of Mr. Rozi 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.

#### *Concluding remarks*

54. The Working Group is seriously concerned about the uncontested allegations that the family of Mr. Rozi has been prevented from contacting him. Indeed, the Human Rights Council, in its resolution 37/3, stressed that no one was to 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>31</sup> The denial of contact with the family is also a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

55. Furthermore, the Working Group is seriously concerned about the denial of medical treatment to Mr. Rozi, as well as about the revocation of his retirement benefits which appears to be further retaliation by the authorities. 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 human beings, as stipulated in rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The denial of medical assistance also constitutes a violation of the Nelson Mandela Rules – rules 24, 25, 27 and 30 in particular.

56. Finally, the Working Group is alarmed that it is suggested by the source that the entire membership of the Textbook Compiling Committee for Uighur literature books may have been treated in a manner similar to Mr. Rozi, given that they all were summoned to meetings and interrogations as Mr. Rozi was (see para. 7 above). The Working Group urges the Government to fully respect the findings in the present opinion in relation to these other individuals as well.

57. In its 30-year history, the Working Group has found China in violation of its international human rights obligations in more than 90 cases.<sup>32</sup> The Working Group is

<sup>29</sup> See para. 146.

<sup>30</sup> Ibid., para. 148.

<sup>31</sup> See paras. 8–9; and see [A/HRC/13/42](#), paras. 18–23.

<sup>32</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.

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.<sup>33</sup> In making this finding, the Working Group recalls the assessment made in the report entitled “OHCHR assessment of human rights concerns in the Xinjiang Uighur Autonomous Region, People’s Republic of China”, published on 31 August 2022.<sup>34</sup>

58. The Working Group would welcome the opportunity to conduct a country visit to China. Given that a significant period of time has passed since its last visit to China in September 2004, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group looks forward to a positive response to its country visit request of 15 April 2015. It also recalls the specific recommendation for the Working Group to conduct a visit to China made in the “OHCHR assessment of human rights concerns in the Xinjiang Uighur Autonomous Region, People’s Republic of China”.<sup>35</sup>

### Disposition

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

The deprivation of liberty of Yalqun Rozi, being in contravention of articles 2, 3, 6, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

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

61. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Rozi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Rozi.

62. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rozi and to take appropriate measures against those responsible for the violation of his rights.

63. 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 the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on minority issues, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on freedom of religion or belief, for appropriate action.

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

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20/2005, No. 32/2005, No. 33/2005, No. 38/2005, No. 43/2005, No. 11/2006, No. 27/2006, No. 41/2006, No. 47/2006, No. 32/2007, No. 33/2007, No. 36/2007, No. 21/2008, No. 29/2008, No. 26/2010, No. 29/2010, No. 15/2011, No. 16/2011, No. 23/2011, No. 29/2011, No. 7/2012, No. 29/2012, No. 36/2012, No. 51/2012, No. 59/2012, No. 2/2014, No. 3/2014, No. 4/2014, No. 8/2014, No. 21/2014, No. 49/2014, No. 55/2014, No. 3/2015, No. 39/2015, No. 11/2016, No. 12/2016, No. 30/2016, No. 43/2016, No. 46/2016, No. 4/2017, No. 5/2017, No. 59/2017, No. 69/2017, No. 81/2017, No. 22/2018, No. 54/2018, No. 62/2018, No. 15/2019 and No. 36/2019.

<sup>33</sup> Opinions No. 35/2019, para. 65; 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; and No. 60/2012, para. 21.

<sup>34</sup> See para. 148.

<sup>35</sup> *Ibid.*, para. 151 (xii).

**Follow-up procedure**

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

- (a) Whether Mr. Rozi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rozi;
- (c) Whether an investigation has been conducted into the violation of Mr. Rozi's rights 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.

66. 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.

67. 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.

68. 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>36</sup>

[Adopted on 2 September 2022]

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<sup>36</sup> Human Rights Council resolution 42/22, paras. 3 and 7.