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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022

Opinion No. 88/2022 concerning Qurban Mamut, Ekpar Asat and Gulshan Abbas (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 29 June 2022 the Working Group transmitted to the Government of China a communication concerning Qurban Mamut, Ekpar Asat and Gulshan Abbas. 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, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Mr. Qurban Mamut is a citizen of China, born in 1950. His usual place of residence is Urumqi, Xinjiang Uyghur Autonomous Region, China.

5. According to the source, Mr. Mamut is a prominent Uyghur intellectual. Until 2011, he was the editor-in-chief of a Uyghur-language magazine. In that position, he selected and edited works by influential writers on Uyghur culture, history, politics and social development for publication. After retiring, he continued to work part-time as editor-in-chief at the Xinjiang Science and Technology Publishing House. In 2005, he signed a petition advocating support for education in the Uyghur language.

6. Mr. Ekpar Asat is a citizen of China. His usual place of residence is Urumqi, Xinjiang Uyghur Autonomous Region, China. Mr. Asat was 29 years old at the time of his detention.

7. The source submits that Mr. Asat is a businessman who founded a popular social media platform featuring news, history, literature, columns, entertainment, music and legal updates. He is also a philanthropist working for older people and children with disabilities.

8. Ms. Gulshan Abbas is a citizen of China, born in 1962. Her usual place of residence is Urumqi, Xinjiang Uyghur Autonomous Region, China. Ms. Abbas is a retired physician.

Arrest and detention of Qurban Mamut

9. The source reports that Mr. Mamut was arrested, possibly in November, December or possibly as early as March or April 2017. His family, who reside in the United States of America, lost contact with Mr. Mamut in February 2017 after he travelled abroad to visit them.

10. It is believed that the arrest was carried out by officials of the Public Security Bureau in the Xinjiang Uyghur Autonomous Region, possibly at Mr. Mamut's residence in Urumqi. It is unknown whether the authorities presented a warrant for his arrest or if there was any other decision by a public authority with regard to Mr. Mamut. The legal basis for the arrest, including the relevant legislation applied, also remains unknown.

11. The source states that the Government has made very little information about Mr. Mamut's detention available to the public. In June 2020, during an interview with Radio Free Asia, an official of the public administration of the government of the Xinjiang Uyghur Autonomous Region revealed that he had been "classified as a 'detained person'". However, the official provided no further details about the circumstances of the detention. When asked whether Mr. Mamut was being held in a re-education camp or was serving a prison sentence, the official declined to answer.

12. The source believes that the main factor underlying Mr. Mamut's detention was his importance as an intellectual and cultural figure within the Uyghur community. It submits that, after 2016, as part of a wider counter-terrorism operation, the authorities in Xinjiang launched a campaign targeting intellectual, cultural and professional figures in Uyghur, Kazakh and other minority communities. The source notes that, as at late 2021, at least 312 prominent intellectual and cultural figures had been detained, although the actual number is believed to be higher.

13. The source recalls that, after 2016, detentions of minority intellectuals often featured previously sanctioned expressions of minority culture being used as potential evidence of separatism or extremism. Several Uyghur education officials were sentenced to life imprisonment or suspended death penalties for separatism, inciting ethnic hatred and promoting religious extremism. In addition to criminal detention, other coercive measures reportedly used against intellectuals included being held in re-education centres.

14. The source believes that Mr. Mamut's work as an editor of a publication on Uyghur culture and social issues would therefore make him vulnerable to similar charges, with similar penalties. Other factors potentially contributing to the decision of the authorities to detain Mr. Mamut include his family connections abroad and his travels outside China, as a result of which Uyghur and other individuals from ethnic minorities have also reportedly been

detained since 2016. A member of Mr. Mamut's family works for Radio Free Asia and, prior to being detained, he travelled to the United States to visit him.

15. The source submits that Mr. Mamut's detention falls under categories I, II, III and V. Firstly, it is argued that his detention is not authorized under the Constitution of China nor under domestic law, as there is no basis under either for detaining persons based on Uyghur or other minority identity or for expressions of minority culture.

16. Nonetheless, it is recalled that the authorities have published security policies that prescribe detention in re-education centres and imprisonment for expressions of Uyghur and other minority group identities in Xinjiang. According to the source, the existence of such policies indicates that Mr. Mamut's detention is directly connected to his work as an editor of a prominent journal covering Uyghur culture and social issues. If the authorities have detained Mr. Mamut as part of the implementation of the security policy in the area, under which his past work as an editor would be considered evidence of his being a security threat, the authorities have violated his rights to free expression and religious belief, as well as his freedom to engage in scientific research, literary and artistic creation and other cultural pursuits guaranteed under articles 35, 36 and 47 of the Constitution.

17. The source further submits that the authorities have also violated article 33 of the Constitution, guaranteeing citizens equality before the law and respect for their rights. If the authorities have detained Mr. Mamut at a re-education centre, they will have done so in violation of the article 37 of the Constitution, which guarantees personal freedom and prohibits restriction of such freedom by any means other than by a decision of a people's procuratorate or by a decision of a people's court. Detentions in re-education centres also violate articles 8 (5) and 9 of the Law on Legislation (2015), under which restrictions of freedom of person must be authorized by statutes passed by the National People's Congress or its standing committee. The source submits that detention in re-education centres is not authorized by the Procuratorate or the People's Courts, nor is qualifying national legislation applied in the detention of persons for re-education.

18. Moreover, the source argues that it is possible that Mr. Mamut may have been criminally detained, prosecuted and sentenced on charges of separatism, inciting ethnic hatred and promoting religious extremism and for being involved in the publication of material concerning minority identity and history, given his work as the main editor of a prominent magazine on Uyghur culture. It submits that such charges would be too vague to qualify as *lex certa* and are too broadly applicable to regulate the conduct of individuals. The source concludes that the authorities have deprived Mr. Mamut of liberty without a specific legal basis and have thereby violated the due process of law upheld by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.

19. Furthermore, the source submits that Mr. Mamut's detention is a result of the exercise of his rights guaranteed by articles 7, 18, 19, and 20 of the Universal Declaration of Human Rights and, as such, falls under category II. The source states that the authorities have implemented a security policy of depriving persons of personal liberties for non-threatening expressions of minority culture in Xinjiang, in particular when such expressions involve collaboration with others and dissemination to a public audience.

20. Mr. Mamut was the founder and chief editor of a prominent journal of Uyghur culture and social issues, working with other Uyghur academic and cultural figures to publicize their work to a wider audience in the Uyghur language. Consequently, his detention is likely connected to his exercise of his rights under the Universal Declaration of Human Rights to freedom of thought (as guaranteed by article 18), opinion and expression (article 19) and association (article 20). Finally, given that the security policies in Xinjiang under which Mr. Qurban is likely to have been detained are known to explicitly target Uyghur and other individuals belonging to minority groups, the authorities have also violated article 7 of the Universal Declaration of Human Rights, guaranteeing equal protection of the law.

21. Moreover, it is argued that the authorities have not observed international norms relating to Mr. Mamut's right to a fair trial and that therefore his detention falls under category III. In this context, it is noted that the authorities have not shown that Mr. Mamut's due process rights have been respected since he has been taken into custody. Mr. Mamut's family has not been able to access any official documentation concerning his detention. There

is no publicly available evidence that Mr. Mamut or his family have been shown an arrest warrant, that he has had access to legal counsel while in custody, that he has been charged or tried in a timely manner under impartial conditions, including with a fair opportunity to mount a defence, or that his rights have been respected in any investigation the authorities may be pursuing in his case.

22. The source therefore concludes that the criminal detention and prosecution of Mr. Mamut is in violation of his rights to due process and a fair and public hearing, as guaranteed under article 10 of the Universal Declaration of Human Rights.

23. Finally, the source argues that the authorities have deprived Mr. Mamut of his liberty on discriminatory grounds based on his Uyghur ethnicity and his use of the Uyghur language. It is likely that he has been detained for his work establishing a magazine on Uyghur cultural and social issues.

Arrest and detention of Ekpar Asat

24. The source reports that Mr. Asat was arrested, possibly on 7 April 2016, in the city of Urumqi. Forces who are believed to have carried out the arrest are officials from the Public Security Bureau in the Xinjiang Uyghur Autonomous Region. Mr. Asat's family have never been provided with an arrest warrant, a decision by a public authority or any other legal documents pertaining to his arrest, despite requests for such documentation. The reasons and the legal basis for the arrest of Mr. Asat therefore remain unknown.

25. According to the source, Mr. Asat remains in detention. It is believed that he was held in various educational and vocational camps or detention centres until he was transferred to the Aksu Prefecture prison in January 2019 although it is still not known which authority ordered Mr. Asat's detention.

26. The source states that Mr. Asat's family has been unable to obtain any legal documents related to his case and that thus even the nominal official reason for his arrest is unknown. Nevertheless, the source recalls that Mr. Asat founded a popular social media application that featured news, history, literature, columns, entertainment, music and legal updates. Officials at the United States Embassy in Beijing encouraged Mr. Asat to apply for the State Department's International Visitor Leadership Programme, a professional exchange programme run by the State Department, after he met with the Ambassador of the United States to China in Xinjiang in 2014. The source therefore submits that Mr. Asat's arrest could be in connection with his application or related to his participation in the programme.

27. The source also recalls that the authorities monitor Uyghurs abroad, those who have been abroad and individuals with ties to individuals abroad. While it is possible that Mr. Asat may have been targeted owing to his participation in the International Visitor Leadership Programme, it is also possible that he was detained because he was Uyghur with experience overseas, with overseas connections and with a family member living abroad.

28. The authorities have claimed that Mr. Asat was sentenced to 15 years on the charge of inciting ethnic hatred and ethnic discrimination. His family has had no evidence that a lawyer was present at the trial, or indeed if there was a trial.

29. The source submits that Mr. Asat's detention is arbitrary falling under categories I, II, III and V of the Working Group.

30. Firstly, it submits that his detention is not authorized by the Constitution or domestic law. Given the lack of legal documentation, it is highly likely that the detention and subsequent arrest and indictment was not carried out with due respect for the provisions of the Criminal Procedure Law (2018).

31. Moreover, the source submits that Mr. Asat has been deprived of liberty as a result of the exercise of his rights and freedoms guaranteed by articles 7, 18 and 19 of the Universal Declaration of Human Rights and, as such, his detention falls under category II.

32. The source recalls that Mr. Asat founded a social media application, was an entrepreneur and, to some extent, was involved in promoting the Uyghur language. He also had a track record of engaging in charitable activities, such as helping children with disabilities and the elderly and providing children with access to education. Consequently,

his detention is likely to be connected to the exercise of his rights to freedom of thought, opinion and expression, as guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights. Moreover, the authorities have also violated provisions under the article 7 of the Universal Declaration of Human Rights guaranteeing equal protection of the law.

33. It is further submitted that the authorities have not observed international norms relating to Mr. Asat's right to a fair trial and that therefore his detention falls under category III. The source recalls that there is no evidence that the family of Mr. Asat received notice of his arrest, that he was brought before a court to challenge the legality of the arrest or that he ever had access to a lawyer of his choice.

34. Finally, the source argues that the authorities have deprived Mr. Asat of his liberty for discriminatory reasons based on his national and ethnic origin and his language, falling under category V.

35. In this context, the source states that it is likely that Mr. Asat was targeted as a Uyghur who took part in the International Visitor Leadership Programme, for being a Uyghur who had been abroad and who had overseas connections and/or for his prominence as a businessman promoting social connections within the Uyghur community in the Uyghur language.

Arrest and detention of Gulshan Abbas

36. The source states that Ms. Abbas was last heard from on 10 September 2018 and that her arrest is believed to have occurred on or around that date. The arrest is believed to have been carried out by officials of the Public Security Bureau officials in the Xinjiang Uyghur Autonomous Region, possibly from Ms. Abbas's city of residence, Urumqi.

37. The authorities have not shown an arrest warrant or other legal documents to the family of Ms. Abbas. The family, as of the present date, did not know her whereabouts or the conditions of her detention.

38. The source notes that the authorities have not provided any information regarding the circumstances, time or the legal basis of Ms. Abbas's initial detention, or which authorities detained her. It is believed that she was sent to a re-education centre. In December 2020, her family learned that she was sentenced to 20 years on a charge of taking part in organized terrorism, aiding terrorist activities and seriously disrupting social order.

39. The spokesperson for the Ministry of Foreign Affairs has confirmed that she was sentenced on the above charge. According to the statement issued by the Ministry, made on 31 December 2020, Ms. Abbas was imprisoned on charges of participating in terrorist activities, aiding a terrorist organization and disrupting public order.

40. The source submits that, as a retired physician, Ms. Abbas has never been involved in any activity connected to terrorism, nor has she been involved in any terrorist organization. It is therefore unclear to the source how the authorities determined this charge.

41. It is believed that Mr. Abbas was deprived of liberty just days after a member of her family, a Uyghur activist residing in the United States, made a speech alleging that Uyghurs were being detained in Xinjiang. The family member has since been criticized in the official media in China, which has accused her of being a separatist and spreading rumours.

42. According to the source, it is likely that the detention of Mr. Abbas was caused by her relative's speech about the situation of Uyghurs. The source reiterates that the authorities monitor Uyghurs abroad and target anyone who has ties to them. This, according to the source, is one reason why many Uyghurs in the diaspora have relatives who have been detained in China. Moreover, many Uyghur journalists and Uyghur activists have had family members detained in an attempt by the authorities to stop their journalistic activities and advocacy.

43. The source further recalls that articles of the Criminal Procedure Law stipulate that the authorities are required to notify the family of the reasons for detention and the place of custody of a family member within 24 hours of detention unless there is no way to contact them or it is a crime endangering national security or a crime related to terrorist activities where notification might obstruct the investigation. It submits that the authorities have not

carried out the detentions in Xinjiang in accordance with due process and that detainees are denied the right to legal counsel. Furthermore, trials and criminal processes in the Xinjiang Uyghur Autonomous Region lack transparency. In 2021, information pertaining to almost all cases related to ethnic minorities was removed from Government websites, making it more difficult to find information on cases like that of Ms. Abbas.

44. The source notes that although it is unknown whether Ms. Abbas has been sent to a re-education centre, this form of detention does not comply with China's domestic laws or with international law, since the deprivation of liberty in re-education centres is not specifically provided for by law.

45. The source submits that the deprivation of liberty of Ms. Abbas is arbitrary and falls under categories I, II, III and V.

46. It argued, in relation to category I, that Ms. Abbas's detention is not authorized by the Constitution nor by domestic law. Given the lack of legal documentation provided to Ms. Abbas's family and the lack of publicly available information on her case, including any criminal verdict, it is highly likely that the detention and subsequent arrest and indictment were not carried out in accordance with the provisions of the Criminal Procedure Law.

47. Moreover, it is submitted that Ms. Abbas has been deprived of liberty as a result of the exercise of her rights and freedoms guaranteed by article 7 of the Universal Declaration of Human Rights, which guarantees equal protection before the law. In this context, the source reiterates that the security policy in Xinjiang under which Ms. Abbas has likely been detained are known to target Uyghur and other minority individuals.

48. Moreover, the source argues that the authorities have not observed international norms relating to Ms. Abbas's right to a fair trial. There is no evidence that the family received notice of her arrest, that she was brought before a court to challenge the legality of the arrest or that she ever had access to a lawyer of her choice.

49. Finally, it is submitted that the authorities have deprived Ms. Abbas of her liberty for discrimination based on her Uyghur ethnic origin and Uyghur language. Her detention is therefore arbitrary, falling under category V.

Response from the Government

50. On 29 June 2022 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 29 August 2022, detailed information about the current situation of Mr. Mamut, Mr. Asat and Ms. Abbas and to clarify the legal provisions justifying their continued detention, as well as its compatibility with its obligations under international human rights law. Moreover, the Working Group called upon the Government to ensure their physical and mental integrity.

51. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of Working Group's methods of work.

Discussion

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

53. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

54. The Working Group notes that the allegations in the present case concern three individuals from China, all belonging to the Uyghur minority in the Xinjiang Uyghur

² A/HRC/19/57, para. 68.

Autonomous Region. The source has alleged that Mr. Mamut was arrested sometime in March or April 2017 and that, in June 2020, the authorities of the Xinjiang Uyghur Autonomous Region stated that he had been classified as a detained person. In relation to Mr. Asat, it is submitted that he was detained at some time in April 2016 and that the authorities subsequently claimed that he had been sentenced to 15 years in prison. Ms. Abbas was allegedly detained in September 2018 and, in 2020, the authorities stated that she had been sentenced to 20 years in prison. The source has been unable to provide any further details concerning the circumstances of their respective arrests, the charges brought against them, the trial proceedings or their current whereabouts.

55. These allegations were all transmitted to the Government, which has chosen not to address them.

56. The Working Group regrets the failure of the Government to engage with it constructively in providing responses to allegations concerning the detention of individuals in the Xinjiang Uyghur Autonomous Region.³ The details of the detention of Mr. Mamut, Mr. Asat and Ms. Abbas provided by the source are exceptionally scarce. Nevertheless, it is alleged that the authorities confirmed that they have custody of these three individuals and the Government has chosen not to address the submissions. In this regard, the Working Group recalls the assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region of China issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2022, which documents the persistent failure of the authorities to provide any information concerning the detention of individuals belonging to the Uyghur minority and the near impossibility for their family members or others to ascertain the fate of the detainees:

“While some interviewees seemed to know or suspect that family members had been taken to a 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”⁴

57. Furthermore, in the 2022 follow-up report⁵ on the joint study on global practices in relation to secret detention in the context of countering terrorism, which was carried out in 2010,⁶ the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted “[T]he ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention” of Uyghurs in the Xinjiang Uyghur Autonomous Region.⁷ The Working Group has also experienced similarly scarce information concerning the detention of Uyghurs in the Xinjiang Uyghur Autonomous Region.⁸

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

i. Category I

59. The Working Group observes that Mr. Mamut was detained sometime in March or April 2017; Mr. Asat sometime in April 2016; and Ms. Abbas in September 2018. The source argues that there is no publicly available information regarding the reasons for their detention though the authorities have acknowledged, at different times, having custody of the three

³ See, for example, opinion No. 6/2022.

⁴ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region*, para. 132, available at <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

⁵ A/HRC/49/45.

⁶ A/HRC/13/42.

⁷ A/HRC/49/45, para. 33.

⁸ See opinion No. 6/2022.

named individuals. However, to date, their exact whereabouts remains unclear. These allegations were put to the Government, which chose not to contest them.

60. Under these circumstances, the Working Group considers that Mr. Mamut, Mr. Asat and Ms. Abbas have all been subjected to enforced disappearance insofar as they were detained by agents of the State and their fate and whereabouts have been concealed since then, thus placing them outside the protection of the law. The Working Group recalls that, according to article 1 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance, enforced disappearance “constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment”. In particular, as the Working Group has affirmed on numerous occasions, enforced disappearances are absolutely prohibited by international law and constitute a particularly aggravated form of arbitrary detention.⁹

61. Consequently, the Working Group finds that the detention of Mr. Mamut, Mr. Asat and Ms. Abbas lacks legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights. The Working Group further considers that the enforced disappearance of Mr. Mamut, Mr. Asat and Ms. Abbas placed them outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. Their detention is therefore arbitrary under category I. The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

ii. Category III

62. The Working Group notes that while there is very little detail concerning the circumstances surrounding the detention of Mr. Mamut, Mr. Asat and Ms. Abbas, even less is known about the trial proceedings against them. In fact, the source has only been able to submit with some certainty that Mr. Asat has been sentenced to 15 years and Ms. Abbas to 20 years. It appears that nothing is known about the sentencing of Mr. Mamut. The Government had an opportunity to clarify this matter but has chosen not to do so.

63. In these circumstances, noting the opacity of the proceedings against the three individuals and the failure of the Government to provide any clarifications, the Working Group considers that the right to a fair and public trial of the three individuals has been violated. The Working Group recalls that even in cases where the trial of a person is connected to issues of national security, it has rejected trial proceedings shrouded by secrecy and opacity whereby absolutely no information concerning the charges and trial proceedings is provided to the family, let alone made public, insisting that even in such cases, trials must not only be impartial but must also appear impartial to a reasonable observer.¹⁰ In the present case, the absence of any information concerning the trials of Mr. Mamut, Mr. Asat and Ms. Abbas, who were all arrested well over five years ago, cannot be reconciled with the most basic guarantees of a fair trial. In fact, it is unclear if they have indeed stood trial at all.

64. In the present case, irrespective of the substance of the charges against Mr. Mamut, Mr. Asat and Ms. Abbas, the failure of the authorities to provide any information whatsoever concerning the proceedings against and trial of the three individuals leads the Working Group to conclude that the rights of Mr. Mamut, Mr. Asat and Ms. Abbas under article 10 of the Universal Declaration of Human Rights have been violated.

65. Noting all the above, the Working Group concludes that the detention of the three individuals was thus arbitrary and falls under category III. In making these findings the Working Group emphasizes, in particular, the absence of any reply from the Government in the present case and is mindful of its conclusions related specifically to re-education centres following its 2004 follow-up mission to China:

“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

⁹ See opinions No. 5/2020; No. 6/2020; No. 11/2020; No. 13/2020, No. 77/2020, No. 38/2021 and No.25/2022.

¹⁰ Opinion No. 78/2021, para. 97.

governed by criminal law, does not affect China's obligation to ensure judicial control over this form of deprivation of liberty".¹¹

iii. Category V

66. The Working Group notes that it is not disputed that Mr. Mamut, Mr. Asat and Ms. Abbas all belong to the Uyghur minority in the Xinjiang Uyghur Autonomous Region. The source has submitted, and the Government has chosen not to contest, that they were arrested and remain detained due their belonging to the Uyghur minority and being of the Muslim faith.

67. 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.¹² In that report the Special Rapporteur detailed "[P]ractices of arbitrary mass and secret detention with other serious violations of international law directed at the Uyghurs" and recorded the "ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention".¹³ The Working Group also recalls its own jurisprudence on the same subject.¹⁴

68. In the absence of any explanation by the Government as to the reasons for the arrest and detention of Mr. Mamut, Mr. Asat and Ms. Abbas or any rebuttal of the very serious allegations presented by the source, the Working Group concludes that the arrest and detention of the three individuals was discriminatory on the basis of their belonging to the Uyghur minority and being of the Muslim faith, in violation of articles 2 and 7 of the Universal Declaration of Human Rights.

69. The Working Group therefore finds the detention of Mr. Mamut, Mr. Asat and Ms. Abbas arbitrary under category V and refers the present case to the Special Rapporteur on minority issues and to the Special Rapporteur on freedom of religion or belief for further consideration.

iv. Concluding remarks

70. The Working Group is concerned about the total secrecy that appears to surround the fate and whereabouts of Mr. Mamut, Mr. Asat and Ms. Abbas. Their families have been unable to establish the exact details of their arrests, of the proceedings and/or trials against them and of their current whereabouts. In its resolution 37/3, the Human Rights Council stressed that no one shall be held in secret detention and called upon States to investigate all alleged cases of secret detention, including under the pretext of countering terrorism.¹⁵ The Working Group also recalls that it is the duty of all Governments to treat their detainees with humanity and respect for their inherent dignity as a human being, in accordance with rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

71. In its 30-year history, the Working Group has found China in violation of its international human rights obligations in over 100 cases.¹⁶ The Working Group is concerned

¹¹ E/CN.4/2005/6/Add.4, para. 54.

¹² A/HRC/49/45.

¹³ *Ibid.*, para. 33.

¹⁴ See, for example, opinion No. 6/2022.

¹⁵ Human Rights Council resolution 37/3, paras. 8–9; A/HRC/13/42, paras. 18–23.

¹⁶ 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; see also 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.

that this indicates a systemic problem with arbitrary detention in China, which amounts to a serious violation of international law. It 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.¹⁷

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

Disposition

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

The deprivation of liberty of Mr. Qurban Mamut, Mr. Ekpar Asat and Ms. Gulshan Abbas, being in contravention of articles 2, 3, 6, 7, 9 and 10 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

74. The Working Group requests the Government of China to take the steps necessary to remedy the situations of Mr. Mamut, Mr. Asat and Ms. Abbas without delay and to bring their situations into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

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

77. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the 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.

78. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.

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

Follow-up procedure

80. 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. Mamut, Mr. Asat and Ms. Abbas have been released and, if so, on what date.

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.

¹⁷ See 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.

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- (b) Whether compensation or other reparations have been made to Mr. Mamut, Mr. Asat and Ms. Abbas;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Mamut, Mr. Asat and Ms. Abbas 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.

81. 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.

82. 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.

83. 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.¹⁸

[Adopted on 18 November 2022]

¹⁸ Human Rights Council resolution 51/8, paras. 6 and 9.