

**Mandates of the Working Group on Arbitrary Detention; 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 minority issues; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 36/6, 34/18, 34/6, 31/16 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the revision of the Xianjian Uyghur Autonomous Region Regulation on De-extremification, which targets Turkic Muslim ethnic, linguistic and religious minorities as well as Kazakh nationals.

According to the information received:

On 9 October 2018, the Standing Committee of the 13<sup>th</sup> People's Congress of the Xinjiang Uyghur Autonomous Region passed a decision to revise the Xinjian Uyghur Autonomous Region Regulation on De-extremification ("the Regulation").

The Regulation consists of 52 articles, divided into six chapters (General provisions; Primary Expressions of Extremification; Prevention, Control and Eradication of Extremification; Primary Duties of Government and Relevant Department; Responsibility that Shall be Performed by All Aspects of Society; and Legal Responsibility).

The stated aim of the Regulation is to "contain and eradicate extremism, prevent extremist violations, and bring about social stability and lasting peace and order" (article 1).

In addition to maintaining the existing provisions of the Regulation which banned a wide range of acts deemed "manifestations of extremism," the revised Regulation also legalizes the creation and existence of what have been termed "re-education" centres, but whose alleged closed and coercive nature, may result in their classification as detention centres where forced indoctrination is taking

place. It has been reported that the revision of the law is an attempt to legally justify the mass detention of Uyghurs and other minorities in Xinjiang, which has been taking place on a massive scale, in particular since 2016.

While this communication is focused on one particular Regulation, we note that this Regulation and its revision takes place within a broader context of severely limited space for and crackdown on the exercise of fundamental rights in Xinjiang some of which are detailed below. Furthermore, and in this connection, we would like to highlight that concerns at law and policy that criminalizes fundamental rights in various regions of China have been raised in several communications sent by various Special Procedures mandate holders, most recently in communications sent on 28 August 2018 (ref. no CHN 17/2018); on 22 August 2018 (ref. no CHN 15/2018); on 6 August 2018 (ref. no CHN 14/2018); on 11 July 2018 (ref. no CHN 13/2018); on 14 June 2018 (ref. no CHN 12/2018); on 6 April 2018 (ref. no CHN 7/2018); on 6 March 2018 (ref. no CHN 5/2018); on 16 February 2018 (ref. no CHN 4/2018), and on 12 January 2018 (ref. no CHN 1/2018).

Before explaining our concerns, we would like to reiterate your Excellency's Government's obligation to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. As established by the Vienna Convention on the Law of Treaties (VCLT), where the signature to a treaty is not subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty (VCLT, articles 10 and 18).

The right to freedom of opinion and expression is guaranteed under article 19 of the UDHR and article 19 of the ICCPR. The freedom to hold opinions without interference is an absolute right under article 19. An essential element of the right to hold an opinion is the right to form an opinion and to develop this by way of reasoning. The Human Rights Committee has concluded that this right requires freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions (CCPR/C/GC/34). Accordingly, forced neurological interventions, indoctrination programmes, such as "re-education camps", or threats of violence designed to compel individuals to form particular opinions or change their opinion violate article 19(1). The Human Rights Committee has also found that coercive "inducements of preferential treatment" may rise to a level of persuasion that interferes with the right to form and hold opinions.

Article 19 of the UDHR and article 19(2) of the ICCPR furthermore guarantees an expansive right to "seek, receive and impart information and ideas of all kinds", one which must be protected and respected regardless of frontiers or type of media. Enjoyment of the right to freedom of expression is intimately related to the exercise of

other rights and foundational to the effective functioning of democratic institutions, and accordingly the duties it entails include the promotion of media diversity and independence, and the protection of access to information.

Unlike the right to form and hold opinions, the rights to express and access information and ideas may be subject to restrictions under limited circumstances as prescribed by the UDHR and in article 19(3) of the ICCPR. Restrictions must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals (CCPR/C/GC/34). Although article 19(3) recognizes “national security” as a legitimate aim, national security considerations should be “limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group” (A/71/373). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373).

Article 20(2) of the ICCPR requires States to prohibit “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” but restrictions must still satisfy the cumulative conditions of legality, necessity and legitimacy as laid down by article 19(3) of the ICCPR (CCPR/C/GC/34).

The right to freedom of opinion and expression also includes religious opinion and expression. Furthermore, article 18 of the UDHR and article 18 of the ICCPR protect everyone’s right not only to freedom of thought, conscience and religion, but also freedom, either individually or in community with others, to manifest his religion or belief in worship, observance, practice and teaching (A/HRC/31/18). The ICCPR establishes narrow scope for permissible restrictions to the right to freedom of religion, providing in article 18(3) that the manifestation of one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Any such restriction must also meet the conditions identified above in regard to Article 19.

Furthermore, article 12 of the UDHR and article 17 of the ICCPR protect individuals against “arbitrary or unlawful interference with his or her privacy, family, home or correspondence”, and provides that “everyone has the right to the protection of the law against such interference or attacks”.

Article 26 of the ICCPR contains a general right to equality without discrimination on grounds such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination

to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

Moreover, Article 27 of the ICCPR protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves.

We would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the State has been a party since 1981. In particular, we would like to recall article 1 on the prohibition of racial discrimination; article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; article 5 on the right of everyone, without any distinction, to equality before the law in the enjoyment of human rights and fundamental freedoms; and article 6 on the right of everyone to effective protection and remedy against any acts of racial discrimination.

We also take this opportunity to remind you of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1.1 of the UN Declaration requires that States protect the existence and the national or ethnic, linguistic or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

In light of the above-mentioned standards, we are concerned that the Regulation is incompatible with China's obligations under international human rights law, and we would like to highlight the following particular concerns:

*The definition of "Extremification" and related actions*

The Regulation defines "extremification" as "*speech and actions under the influence of extremism, that spread radical religious ideology, and reject and interfere with normal production and livelihood*", and "*propositions and conduct using distortion of religious teachings or other means to incite hatred or discrimination and advocate violence*" (article 3).

Article 9 provides a list of words and actions that are deemed to be under influence of extremism, thus considered as “extremification” and that are to be prohibited. Among these is “*advocating or spreading extremist thinking*”, and a wide range of activities and forms of expression. Article 9(5) defines extremification as “*interfering with normal cultural and recreational activities, rejecting or refusing public goods and services such as radio and television*”. Article 9(8) defines extremification as the “*spreading of religious fanaticism through irregular beards or name selection*”, and article 9(13) defines extremification as the “*publishing, printing, distributing, selling, producing, downloading, storing, reproducing, accessing, copying, or possessing articles, publications, audio or video with extremification content*”. Article 9(15) defines extremification as “*other speech and acts of extremification*”.

#### *The aim of the Regulation*

While the name of the Regulation suggests that it is aimed to counter extremism, the Regulation’s stated aim is to make “*religion more Chinese and under law, and actively guide religions to become compatible with socialist society*” (article 4).

In addition, article 12 states that “*De-extremification shall persist in the correct political orientation and direction of public opinion to carry forward the main themes and transmit positive energy; strengthening resistance to penetration and the struggle against separatism in the ideological sphere, and prohibiting the use of all kinds of media to promote extremification, disrupting the social order. All institutions and individuals are prohibited from dissemination or promotion of extremification through research projects, social investigation, academic forums and the like*”.

#### *The criminalization of the legitimate exercise of fundamental rights*

The Regulation states in article 49 that the autonomous region “*will prevent, contain and eradicate extremification, and prevent and punish extremist criminal activity*”; Violation of the Regulation to be punished in accordance with the “*Anti-Terrorism Law of the People’s Republic of China*”; the “*Public security administrative punishments law of the People’s Republic of China*”, as well as the “*Xinjiang Uyghur autonomous region implementation measures for the above-mentioned laws*”.

#### *“Re-education camps”*

Article 14 states that de-extremification involves “*implementation of a combination of individualized education and education in occupational skills education and training centers, combining legal education and mentoring activities, and combining ideological education, psychological counselling, behavioural corrections, and study of the national language, study of law, and study of skills; to strengthen the actual effect of education and transformation*”.

Moreover, article 33 provides that “*Occupational skills education and training centers and other education and transformation bodies shall carry out education and*

*training efforts on the national spoken and written language, laws and regulation, and occupational skills; shall organize and carry out de-extremification ideological education, psychological rehabilitation, and behavioural correction to promote ideological conversion of those receiving education and training, returning them to society and to their families”.*

We express concern at the overbroad definition of “extremification”, which encompasses a wide range of actions whose exercise is guaranteed under international human rights law, in particular the rights to freedom of opinion and expression, the right to freedom of religion or belief, as well as to the rights of ethnic, linguistic and religious minorities.

With respect to the aim of the Regulation, we would like to highlight that the homogenization of society and the aim to make “religion more Chinese” are not considered legitimate aims under international human rights law and that restrictions to fundamental freedoms under such aims are considered as unlawful.

With respect to the “re-education centres”, sometimes termed “vocational training centres” we are particularly concerned that despite the name, these centers, due to their coercive character, amount to detention centres. It is alleged that up to 1 million ethnic Uyghurs and other minorities in Xinjiang, potentially up to 10 per cent of the population, may have been forced into these camps, where there have been allegations of deaths in custody, physical and psychological abuse and torture, as well as lack of access to medical care. Children, elderly persons, and persons with disabilities, as well as pregnant and lactating women, are reportedly also sent to these centres. Scant information about those detained is available, and in some cases, persons taken to the camps are effectively disappeared. It is alleged that persons taken to these centres are subject to specific ‘reeducation and vocational training programmes’, which may amount to indoctrination, for unspecified periods of time.

Furthermore, it is alleged that no formal charges are laid against detainees, who are also not provided access to legal remedies, are denied contact outside the centres, and are held for unspecified periods of time which tantamount to enforced disappearance and arbitrary detention. These concerns were previously raised by Working Group on enforced and involuntary disappearances (see A/HRC/WGEID/115, annex I and A/HRC/39/46 para. 88). It is regrettable that to date no response has been received.

We wish to remind your Excellency’s Government that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances recognizes the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention. The same Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10). The Declaration also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons

(article 12) and provides that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7).

We would furthermore like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of the detainees not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and article 14 of the ICCPR.

Information gathered from satellite imagery analysis appears to indicate that at least 28 so-called camps have expanded rapidly since 2017, with significant further expansions detected since September 2018, further suggesting the large-scale, and ongoing nature of the policy.

The detention of a significant proportion of the Uyghur and Kazakh minorities in particular would seem to prevent many of them from enjoying their own culture, using their own language, or practicing their own religion since sections of the Regulation on De-extremification indicate the "national language" is to be used and taught exclusively, certain minority names are to be prohibited, and the aim of the Regulation itself is to make "religion more Chinese".

In view of the definition in Article 9(5) of extremification as the "interfering with normal cultural and recreational activities", it is alleged that many cultural, linguistic or religious activities could fall afoul of this overbroad definition in Article 9(5) of extremification, leaving open the possibility that the mere use of the Uyghur language, holding of Uyghur cultural activities, or even habitual Islamic practices may be deemed as falling outside of "normal" activities – defined variously as involving only the national language or needing to be "more Chinese". The reference to "irregular beards" or selecting a child's name as an act of religious fanaticism raises also concerns.

In this connection we refer to the 2018 Concluding Observations of the Committee on the Elimination of Racial Discrimination following the review of China, in which the Committee raised concern at the "lack of official data on how many people are in long-term detention or who have been forced to spend varying periods in political "re-education camps" for even non-threatening expressions of Muslim ethno-religious culture, such as daily greetings". The Committee further estimated that the number of people detained range from tens of thousands to over a million.

We further note that the adoption of this regulation in October 2018 has taken place following an increasing repressive policies adopted progressively since late 2016, and most notably since the adoption of in May 2014 of the "Strike Hard Campaign Against Violent Terrorism", in Xinjiang, which has had a particular impact on ethnic Uyghurs, Kazakhs, and other minorities.

Of particular note in this regard, is the reported expansion of police presence and security checkpoints throughout Xinjiang, as well as extreme high-tech surveillance measures for minorities, including the reported use of facial recognition technology, collection of biometric data and use of artificial intelligence and other systems to track people through big data analysis.

Unlike the unlawfulness of the aim to “make religion more Chinese”, national security and counter-extremism are considered legitimate objectives for the restriction of rights. We are aware of the many security challenges that China faces and of the duty of the State to ensure the safety and security of its people, including through preventive approaches. However, we are gravely concerned that the Regulation’s measures to address this objective are neither necessary nor proportionate. While cognizant of the security situation that China may face, we are deeply concerned that the approaches taken in the Regulation not only violate fundamental rights but also may contribute to further radicalization of persons belonging to the targeted minorities, creating major and growing pockets of fear, resentment and alienation. The disproportionate emphasis placed by the authorities on the repression of rights of minorities risks worsening any security risk.

We are particularly disturbed by the recurrent referral to extremism, not only in Xianjiang but across the country, to justify numerous measures limiting freedom of expression and belief, and inhibiting political dissent, especially due to the overbroad definitions of what constitutes “extremism”, and that the measures prescribed may have the opposite effect of the stated aim and only increase radicalization and extremism. As such, the repression of freedom of expression, religion, the rights of minorities and other rights through the Regulation and other laws and policies may be undermining the very security and public order goals that the authorities purport to be pursuing.

Finally, we are concerned that the revision of the Regulation takes place in a context of increasing pressure and repression of fundamental rights in China. Despite China’s legal obligations and commitments, multiple laws, decrees and policies, in particular those concerning national security and terrorism, deeply erode the foundations for the viable social, economic and political development of the society.

We recall the fundamental importance of ensuring that every restriction imposed on rights are fully compatible with international human rights law. We call upon the authorities to recognize, both in law and practice, freedom of expression, including religious belief, as an individual rights, subject only to those restrictions that are permitted under international human rights law.

In light of these concerns and without prejudice to any other potential considerations related to the Regulation, we call on the authorities to repeal the Regulation. We reiterate the interest of the undersigned mandate holders to undertake an official visit to China.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government



will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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