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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

#### Opinion No. 72/2019 concerning Mark Swidan (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 (A/HRC/36/38), on 1 July 2019, the Working Group transmitted to the Government of China a communication concerning Mark Swidan. The Government replied to the communication on 23 August 2019. 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).



## Submissions

### *Communication from the source*

4. Mark Swidan is a citizen of the United States of America. He was 37 years old when he was detained, in 2012, in China. Mr. Swidan usually resides in Houston, Texas, United States.
5. According to the source, Mr. Swidan was in China on a business trip looking for flooring, fixtures and furniture for his business and a new home, both in Houston, Texas. He was also looking to purchase helium, on commission, for a company in Houston.
6. The source submits that Mr. Swidan was detained on 13 November 2012 at the Chang Ping Hui Hotel in Dongguan Municipality, Guangdong Province. He was detained by officers of the Public Security Bureau after having had dinner with his interpreter and his driver, to thank them for taking him to see flooring, fixtures and furniture.
7. The authorities reportedly burst into Mr. Swidan's room while he was talking to his family on the telephone without showing a warrant or other decision by a public authority. They reportedly took Mr. Swidan's photography equipment, wallet, tablet, passport and identity card.
8. According to the source, Mr. Swidan was taken to Jiangmen municipal detention centre, Guangdong Province, where he remains.
9. The source submits that Mr. Swidan was accused of being part of an organization consisting of 11 individuals involved in the manufacturing of drugs, in contravention to the Criminal Law of China, specifically the sections on the manufacture of and trafficking in drugs.
10. According to the source, Mr. Swidan was formally arrested on 21 December 2012, following the indictment issued by the Jiangmen Municipality Prosecutor's Office. In the indictment it is stated that Mr. Swidan played a secondary role and should receive a light or reduced sentence.
11. The source adds that the police told Mr. Swidan that he had only been detained because he was on his telephone and might have been a witness. The authorities allegedly tried to make Mr. Swidan sign a confession for possessing drugs, but he refused to do so.
12. The source states that the evidence against Mr. Swidan, as contained in the indictment, is weak and circumstantial and based almost entirely on hearsay. No drugs were found on Mr. Swidan, in his room or in his body. Furthermore, the prosecution produced neither forensic nor telecommunications evidence such as emails, information on telephone calls or letters.
13. The source submits that Mr. Swidan pled not guilty to all charges. Moreover, according to the records on Mr. Swidan's passport, he was not in China at the time of the alleged offence. Furthermore, none of the 11 individuals also accused of being involved in the manufacture of drugs could identify him.
14. The source notes that Mr. Swidan was tried in November 2013 and that the deadline for issuing the judgment was postponed 20 times on the authority of the Supreme People's Court and that consequently the trial was postponed by 63 months. The source specifies that the Criminal Procedure Law includes provisions for the indefinite delay of judgments. According to the source, the reason for the prolonged detention of Mr. Swidan is that the authorities allegedly stated that the case was complicated and that Mr. Swidan was the only one not to have pled guilty and to have refused to sign a confession. The source argues that the due process rights of Mr. Swidan to a fair and speedy trial have been seriously violated to the extent that his treatment constitutes arbitrary detention.
15. The source also submits that Mr. Swidan has been badly mistreated while in detention, exposed to poor sanitary conditions and denied medical treatment. Moreover, he has been subjected to low temperatures in winter and to excessive heat in summer. He has high blood pressure, a skin infection, asthma, his gums have receded and he has lost a significant amount of weight. The source alleges that the last time Mr. Swidan requested a blood test from a doctor, the latter hit him with a book in the face and sent him back to his

cell. Mr. Swidan has not slept in the dark for nearly seven years. The source claims that Mr. Swidan has been mistreated in detention because of his nationality.

16. According to the source, the first lawyer of Mr. Swidan, based in Guangzhou, was very ineffective. He refused to visit Mr. Swidan because the distance he would have had to travel was too great and he refused to send any information to Mr. Swidan's family despite the fact that Mr. Swidan had asked him to do so and that the family had power of attorney. Furthermore, the lawyer was not allowed to sit with Mr. Swidan in court.

17. The source reports that Mr. Swidan was later assigned a different lawyer. This lawyer does not speak English and rarely answers the letters of the family members of Mr. Swidan. Mr. Swidan has received consular visits every month.

18. The source also reports that on 30 April 2019 the court sentenced Mr. Swidan to death. Representatives of the United States Consulate attended the sentencing. Mr. Swidan was not allowed to look at anyone or to speak to his lawyer. After the sentencing, he was escorted out of the courtroom.

19. The source notes that, according to the judgment, Mr. Swidan was aware that other defendants had been involved in producing drugs and that, based on the evidence disclosed in the judgment, it remains unclear what exact role Mr. Swidan played in the crime and how deeply he was implicated in it. Also according to the judgment, Mr. Swidan met other defendants several times in unclear circumstances. Despite such lack of clarity, the court found Mr. Swidan to be the principal criminal in the case, in other words the organizer and manager of a group of drug manufacturers. The court stated that Mr. Swidan avoided important facts, refused to admit guilt and demonstrated poor attitude to repentance.

20. The source adds that Mr. Swidan has appealed his sentence. He will remain detained during the appeal process, which is estimated to take between three and six months. The source is concerned that, because Mr. Swidan has received a death sentence, his treatment by the authorities will worsen.

21. The source reports that Mr. Swidan is not allowed to send his family members any mail or to call them, nor is he allowed to speak freely with representatives of the Consulate of the United States.

#### *Response from the Government*

22. On 1 July 2019, 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 30 August 2019, detailed information about the situation of Mr. Swidan and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Swidan's physical and mental integrity.

23. On 23 August 2019, the Government submitted a reply. In its reply, the Government notes that article 347 of the Criminal Law stipulates the following:

Whoever smuggles, traffics in, transports or manufactures narcotic drugs, regardless of the quantity involved, shall be investigated for criminal responsibility and given criminal punishment. Whoever smuggles, traffics in, transports or manufactures narcotic drugs and falls under any of the following categories, shall be sentenced to fixed-term imprisonment of 15 years, life imprisonment or death and also to confiscation of property: (1) persons who smuggle, traffic in, transport or manufacture opium of not less than 1,000 grams, heroin or methyl aniline of not less than 50 grams or other narcotic drugs of large quantities; (2) ringleaders of gangs engaged in smuggling, trafficking in, transporting or manufacturing narcotic drugs; ... (5) persons involved in organized international drug trafficking.

24. The Government states that the sentencing criteria for drug crimes in China are based on the approach of severely cracking down on drug crimes and punishing drug traffickers. Drug crimes are recognized as serious crimes throughout the world, and their social harm is extremely grave. Both the international community and the Chinese public universally demand that drug crimes be punished severely in accordance with the law.

25. Chinese law can impose the death penalty for serious drug crimes, including on foreign criminals who commit drug crimes in China. Article 4 of the Criminal Law of

China stipulates that: “The law shall be equally applied to anyone who commits a crime. No one shall have the privilege of transcending the law.” Chinese law applies to all defendants, irrespective of nationality, accused of committing crimes within the territory of China. All such persons are tried in accordance with the law.

26. According to the court judgment, although Mr. Swidan refused to make a confession during the trial, the evidence was sufficient to prove his involvement in the joint crimes of manufacturing and trafficking drugs, including contacting two groups of drug-manufacturing technicians, facilitating their arrival in China, providing assistance at the drug-manufacturing site and providing remuneration to them on behalf of others. A total of 63,833.92 grams of methamphetamine and 365.9 grams of dimethyl amphetamine were seized from the sites jointly selected by Mr. Swidan and his co-perpetrators and from the location where Mr. Swidan and his co-perpetrators subsequently sold drugs. Mr. Swidan’s participation in the manufacture of and trafficking in drugs made him the principal offender.

27. The Government claims that Mr. Swidan did not always deny his involvement in the crime. He had made a confession of guilt during the investigation stage of the case and had personally written an account of his involvement in the production of drugs and provided information about the crimes committed by his co-defendants. According to the Government’s case materials, the authorities informed Mr. Swidan of the reasons why coercive measures were being taken against him and his rights to mount a defence.

28. In the Government’s account, Mr. Swidan was involved in the crimes of transnational drug manufacturing and trafficking. His 11 co-defendants were from Canada, China, Mexico and the United States. In order to accurately determine the nationality, identity and involvement of each defendant and to render equitable judgments, the Chinese judicial organs conducted a deliberate trial, with postponements in accordance with the provisions of the Criminal Procedure Law.

29. The Government states that drug-related crimes are regarded as serious offences all over the world and that the large amount of drugs involved in the present case meant that, under the provisions of the Criminal Procedure Law, Mr. Swidan had to be detained while awaiting trial. According to the Jiangmen municipal detention centre, Mr. Swidan’s right to timely medical treatment was respected in accordance with the law and he never faced abuse.

30. The Government adds that the judicial organs ensured Mr. Swidan’s right to meet and communicate with his consul in accordance with the law. Mr. Swidan’s contacts with the consul and other staff of the United States Consulate in China, as well as his meetings and written communications with his relatives, had to abide by the laws, which do not allow the discussion of case-related facts that could obstruct the trial. Consequently, judicial officers had to be present at his consular meetings. Letters, if unrelated to the case, were forwarded to the United States Embassy and Consulate through the Foreign Affairs Office of the High People’s Court of Guangdong Province or transmitted to Mr. Swidan through the Jiangmen municipal detention centre.

31. The Government claims that the judiciary ensured Mr. Swidan’s right to a defence in accordance with the law. He had the right to hire lawyers and, had he not been able to afford to do so, the People’s Court would have provided him with legal assistance free of charge. Mr. Swidan did in fact retain a lawyer to defend him during the trial of first instance. The trial was conducted in accordance with the law and, to avoid undue influence during the trial, no one could communicate casually without the permission of the presiding judge. The defendant could cross-examine and raise arguments during a specific segment of the trial.

32. The Government concludes that the judicial organs tried Mr. Swidan’s case in strict accordance with the national laws and regulations, without violating international human rights law.

*Further comments from the source*

33. On 26 August 2019, the Working Group transmitted the Government’s response to the source and requested the source to provide, by 26 September 2019, comments or observations on the Government’s response.

34. In its reply of 29 August 2019, the source notes that Mr. Swidan has been held in the Jiangmen municipal detention centre since November 2012, that he only learned of his sentence at the end of April 2019 and that repeated delays by the judicial authorities in reaching a decision are the cause of this situation. The source compares the indictment and the judgment resulting from the trial of first instance. Whereas Mr. Swidan was described in the former as having played a secondary role in the alleged crime, making him liable for a lenient or reduced penalty, in the latter, which was issued six years later, after Mr. Swidan claims to have undergone severe psychological torture for the purpose of extracting a confession, he was described as a principal offender in the manufacture of and trafficking in drugs.

35. The source adds that, although the Government claims that everyone is equal before the law in China, Mr. Swidan, as a foreigner, did not have a fixed residence and therefore, unlike Chinese nationals, was excluded from the benefit of bail, which he deserves. The source also reports on the ill-treatment to which Mr. Swidan was subjected and the resulting grave illness.

### Discussion

36. The Working Group thanks the source and the Government for their submissions in relation to Mr. Swidan's deprivation of liberty and appreciates the cooperation and engagement of both parties in this matter.

37. 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68).

### *Category I*

38. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

39. The source submits, and the Government does not contest, that Mr. Swidan was not presented with an arrest warrant at the time of his arrest and was not promptly informed of the charges against him.

40. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. This was not done in Mr. Swidan's case.<sup>1</sup>

41. The Working Group finds that, in order to invoke a legal basis for the deprivation of liberty, the authorities should have informed Mr. Swidan of the reasons for his arrest at the time of arrest and of the charges against him promptly.<sup>2</sup> Their failure to inform him of the charges against him for over a month, from 13 November 2012 to 21 December 2012, violated articles 3 and 9 of the Universal Declaration of Human Rights, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>3</sup> and thus renders his arrest and detention devoid of any legal basis.

42. In the present case, the Working Group is convinced by the information provided by the source, which was not rebutted by the authorities of China, that no legal basis was invoked by the Government to justify the deprivation of liberty of Mr. Swidan. The Working Group therefore concludes that the detention of Mr. Swidan lacks a legal basis and is arbitrary, being in violation of articles 3, 9 and 10 of the Universal Declaration of Human Rights, and falls within category I.

<sup>1</sup> See, for example, opinions No. 46/2019, No. 33/2019, No. 9/2019, No. 46/2018, No. 36/2018, No. 10/2018 and No. 38/2013.

<sup>2</sup> See, for example, opinion No. 10/2015, para. 34. See also opinion No. 46/2019, para. 51.

<sup>3</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

*Category III*

43. The Working Group will now consider whether the alleged due process violations of the right to a fair trial were grave enough to give Mr. Swidan's deprivation of liberty an arbitrary character under category III.

44. The Working Group cannot consider that Mr. Swidan has enjoyed full and complete access to legal counsel and consular assistance before and during the trial. As the Government readily admits, the authorities disallowed discussion of the facts of the case that could obstruct the trial during meetings and in written communications. Such a restriction negates the essence of the right to legal and consular assistance, the right to have adequate time and facilities for the preparation of a defence and the right to free communication as the minimum guarantees in any criminal procedure. The Government therefore violated Mr. Swidan's due process rights to a fair trial under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles.

45. Moreover, the Working Group notes that article 36 (1) (a) and (c) of the Vienna Convention on Consular Relations, to which China acceded on 2 July 1979, stipulates that consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him or her and to arrange for his or her legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.

46. The Working Group further expresses its concern at the extraordinary length of Mr. Swidan's trial, which lasted five years and three months, during which time Mr. Swidan remained in detention. The 20 postponements of the deadline for the issuance of his judgment, with the official sanction of the Supreme People's Court, were, as the Government points out, in accordance with the Criminal Procedure Law. However, it is difficult to find justification under international human rights law for such prolonged pre-conviction detention, even when permissible under domestic law. The Government has offered no explanation for Mr. Swidan's 63-month detention, during which he still enjoyed the presumption of innocence, other than to vaguely assert that drug-related crimes are serious offences and that a large amount of drugs were involved.

47. The Working Group has determined in its jurisprudence that pretrial detention without an individualized determination of the risk of flight, of the risk of interference with the evidence or the risk of recurrence of the crime, as well as consideration of less intrusive alternatives, such as bail, electronic bracelets or other conditions in accordance with the principle of necessity and proportionality, is devoid of legal basis.<sup>4</sup>

48. The Working Group recalls that, according to principle 11 of the Body of Principles, a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. In the Working Group's view, while complicated cases may require longer consideration of facts and law by a court, the defendant's ability to mount his or her legal defence suffers as memories fade and evidence disappears unless he or she is not tried without undue delay. In this particular case, the Working Group notes that Mr. Swidan has for years been subjected to coercion with the purpose of extracting a confession. In the view of the Working Group, the procedural defects outlined above severely compromised his due process right to a fair trial from the beginning of the detention.

49. The Working Group concludes that the due process violations of the right to a fair trial are of such gravity as to give Mr. Swidan's deprivation of liberty an arbitrary character within category III.

50. The Working Group expresses concern about Mr. Swidan's conditions of detention and his deteriorating health. Specifically, the source alleges that Mr. Swidan has not slept in the dark for nearly seven years and that he has been denied medical tests, allegations that

<sup>4</sup> Opinions No. 61/2018, para. 50, and No. 24/2015, para. 37.

have been summarily dismissed by the Government. The Working Group is obliged to remind the Government that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity and that denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular, rules 24, 25, 27 and 30. In this regard, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

51. The Working Group also expresses its grave concern about the severity of the sentence to which Mr. Swidan has been subjected. Capital punishment allows for no chance to rectify a possible miscarriage of justice. In the present case, it is evident that Mr. Swidan has been unable to defend himself properly, as he has been subjected to a detention of extraordinary length, to ill-treatment and to coercion with the purpose of extracting a confession and as he has received ineffective legal assistance. The Working Group is also concerned about the discrepancy between the original indictment and the decision of the court of first instance, in which Mr. Swidan appears, after 63 months of pretrial detention, as the principal criminal in the case. Given the above-mentioned serious irregularities, the Working Group sees no reason for the application of the death sentence against Mr. Swidan, as such a sentence does not, in the present case, meet the principle of proportionality.

52. In its 28-year history, the Working Group has found China in violation of its international human rights obligations in about 90 cases.<sup>5</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in China, which amounts to a serious violation of international law. The Working Group recalls that, under certain 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>6</sup>

53. 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 request for a country visit dated 15 April 2015.

### Disposition

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

The deprivation of liberty of Mark Swidan, being in contravention of articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

<sup>5</sup> See opinions No. 43/1993, No. 44/1993, No. 53/1993, No. 63/1993, No. 65/1993, No. 65/1993, No. 66/1993, No. 46/1995, No. 19/1996, No. 30/1998, No. 1/1999, No. 2/1999, No. 16/1999, No. 17/1999, No. 19/1999, No. 21/1999, No. 8/2000, No. 14/2000, No. 19/2000, No. 28/2000, No. 30/2000, No. 35/2000, No. 36/2000, No. 7/2001, No. 8/2001, No. 20/2001, No. 1/2002, No. 5/2002, No. 15/2002, No. 2/2003, No. 7/2003, No. 10/2003, No. 12/2003, No. 13/2003, No. 21/2003, No. 23/2003, No. 25/2003, No. 26/2003, No. 14/2004, No. 15/2004, No. 24/2004, No. 17/2005, No. 20/2005, No. 32/2005, No. 33/2005, No. 38/2005, No. 43/2005, No. 11/2006, No. 27/2006, No. 41/2006, No. 47/2006, No. 32/2007, No. 33/2007, No. 36/2007, No. 21/2008, No. 29/2008, No. 26/2010, No. 29/2010, No. 15/2011, No. 16/2011, No. 23/2011, No. 29/2011, No. 7/2012, No. 29/2012, No. 36/2012, No. 51/2012, No. 59/2012, No. 2/2014, No. 3/2014, No. 4/2014, No. 8/2014, No. 21/2014, No. 49/2014, No. 55/2014, No. 3/2015, No. 39/2015, No. 11/2016, No. 12/2016, No. 30/2016, No. 43/2016, No. 46/2016, No. 4/2017, No. 5/2017, No. 59/2017, No. 69/2017, No. 81/2017, No. 22/2018, No. 54/2018, No. 62/2018 and No. 15/2019.

<sup>6</sup> See A/HRC/13/42, para. 30, and opinions No. 1/2011, para. 21, No. 37/2011, para. 15, No. 38/2011, para. 16, No. 39/2011, para. 17, No. 4/2012, para. 26, No. 38/2012, para. 33, No. 47/2012, paras. 19 and 22, No. 50/2012, para. 27, No. 60/2012, para. 21, No. 9/2013, para. 40, No. 34/2013, paras. 31, 33 and 35, No. 35/2013, paras. 33, 35 and 37, No. 36/2013, paras. 32, 34 and 36, No. 48/2013, para. 14, No. 22/2014, para. 25, No. 27/2014, para. 32, No. 35/2014, para. 19, No. 34/2014, para. 34, No. 36/2014, para. 21, No. 44/2016, para. 37, No. 60/2016, para. 27, No. 32/2017, para. 40, No. 33/2017, para. 102, No. 36/2017, para. 110, No. 51/2017, para. 57, and No. 56/2017, para. 72.

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

56. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Swidan immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

58. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

59. The Working Group recommends that the Government ratify or accede to the International Covenant on Civil and Political Rights and its Optional Protocols.

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

#### **Follow-up procedure**

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

62. 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.

63. 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.

64. 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>7</sup>

*[Adopted on 21 November 2019]*

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