
Advance Unedited Version

Distr.: General
11 May 2023

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March – 5 April 2023

Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam)

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 30 November 2022 the Working Group transmitted to the Government of Viet Nam a communication concerning Đặng Đình Bách. The Government did not reply to the communication. The State is 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. **Đặng Đình Bách**, born in September 1978 is a citizen of Socialist Republic of Vietnam. He usually resides in Hanoi.

5. According to the source, Mr. Bách led a non-profit organization in Hanoi, the Law and Policy of Sustainable Development Research Centre (LPSD), from 2011-2021. LPSD conducted legal advocacy on environmental, land use, and industrial pollution cases. Its primary activities relate to facilitating civil society participation and supporting the rights and responsibilities of stakeholders in the social and environmental fields. LPSD also played a role in monitoring the effectiveness and enforcement of the legal and policy framework of sustainable development in Vietnam and its clean energy transition. Mr. Bách is respected for his ability to inspire young people to volunteer for charitable projects such as helping victims of storms and disasters, especially those impacted by climate change and other environmental catastrophes.

6. The source notes that while Mr. Bách is not known for political activism, some of the cases and projects with which he has been involved are politically sensitive due in part to involvement of environmental organizations based in the United States and funding received from the U.S. State Department and the European Union. Reportedly, he may have been targeted for his work documenting complaints on behalf of people affected by the Son La Hydroelectric plant that displaced more than 91,000 people, mostly from ethnic minority groups. Mr. Bách has consistently maintained that he, and by extension LPSD, has worked hand-in-hand with the Government to advance Vietnam's environmental policies. However, his activities related to documentation and compliance may have been perceived as hostile to the State.

a. Arrest and trial proceedings

7. The source submits that on 24 June 2021, at approximately 7:00 a.m., six police officers entered Mr. Bách's home in Hanoi that he shared with his family. He was arrested and his laptop, bank cards, and personal and work phones were confiscated.² No warrant or information regarding the basis for his arrest was presented. Around 9:30 a.m. the same day, approximately ten police officers conducted a search of LPSD's office and confiscated several laptops. On 30 June 2021, the Security Investigation Agency related its decision to initiate a criminal case against Mr. Bách for the crimes related to tax evasion and avoidance.³ The reason for the charge imputed by authorities was failure to properly account for foreign funding. The indictment states that Bách "contacted foreign-based organizations and received their funding" to implement projects at LPSD without obtaining approval from "authorities in charge."⁴ Further, he was accused of evading more than 1.3 billion dong in taxes (U.S. \$57,300) between 2016 and 2020. He was formally charged on 2 July 2021, nine days after his arrest.

8. Mr. Bách was held *incommunicado* for the vast majority of his pre-trial detention between 24 June 2021, and his trial date on 24 January 2022. On 14 January 2022, his lawyer was finally allowed to visit him in prison. At this meeting, Mr. Bách informed his attorney that he had been on a hunger strike since 10 January 2022, in protest of his *incommunicado* detention and appeared to have lost a significant amount of weight. Throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. Authorities even prevented his family from giving him a photograph of their son who was only two weeks old when Mr. Bách was arrested. Other than his meeting on 14 January 2022, and a second visit on 1 July 2022, Mr. Bách was prevented from having contact with his lawyer. His ability to prepare a defence was further

² Decision approving the decision to prosecute the defendant No. 541/QĐ-VKS-P1, dated 2 July 2021. See also, Conclusion of investigation of criminal case proposed for prosecution, dated 19 November 2021.

³ Id. Mr. Bach was charged under clause 3, Article 200 of the 2015 Penal Code, which covers crimes related to tax evasion.

⁴ Id.

hindered by the fact that authorities strongly suggested that his trial date would be postponed, which appears to be an intentional misdirection. His lawyer received confirmation of his trial date with three days' notice.

9. The source submits that in addition to multiple fair trial violations leading up to Mr. Bách's trial, numerous violations occurred during the hearing itself. Despite requests, the prosecution did not share evidence with his lawyer, nor provide the lawyer an opportunity to question any witnesses for the prosecution. The trial was closed to observers, including Mr. Bách's family and representatives of the U.S. Embassy, who both made applications to attend. Moreover, the court refused to hear Mr. Bách's defence. This suggests that the court predetermined his guilt. His presumption of innocence was also undermined by the fact that he was surrounded by security agents entering and leaving the courtroom, which prevented his family from approaching him and conveyed the appearance that he was a threat. After short deliberation, the court sentenced Mr. Bách to five years – exceeding the prosecution's recommendation of three years – on the basis that he was being recalcitrant by refusing to plead guilty. Nonetheless, after his sentencing, State-run media misrepresented the proceedings and reported that Mr. Bách had confessed during the trial, when in fact he has steadfastly maintained his innocence.

10. On Friday 5 August 2022, Mr. Bách's lawyer received notice that his appeal hearing would take place on 11 August 2022, but was again not provided an opportunity to consult with him beforehand. After being notified by the lawyer of this development, Mr. Bách's family member requested permission to attend the appeal, as did representatives of the U.S. and German Embassies. While initially told that it will not be possible to attend, Mr. Bách's family member received a call from the court the night before the hearing informing that it will be possible to attend. Accordingly, the family went to the courthouse with Mr. Bách's child to attend the hearing but upon arrival, was denied entry by security personnel and told that there was no room inside. Similarly, the U.S. and German Embassies were told that there was not space for their representatives to attend. Mr. Bách's attorney was allowed entry but with a nominal presence; the attorney's laptop and phone were confiscated by security before entering the courtroom and in images of the hearing shared by State-run media, Mr. Bách is standing alone without counsel before the judge in a nearly empty courtroom. Accordingly, the Government's argument that there was not space for his family or other interested parties to attend appears disingenuous and is unsupported by the images and video circulated on national news.

11. Mr. Bách's hearing concluded with his appeal being denied, and his sentence of five years upheld. Before leaving the courtroom, he informed his attorney that he had begun a second hunger strike in protest of his ongoing *incommunicado* detention. He appeared seriously diminished and gaunt; footage of his appearance shared on national news and State-run media was a shock to his family.

b. Further context

12. The source further explains that Mr. Bách is one of several civil society members detained under the tax code in the last year, which seems by design and practice to be a tool for the Government to deprive people of their liberty that are perceived as working against State interests. Mr. Bách was deeply involved with the development of the EU-Vietnam Free Trade Agreement (EVFTA), which required Vietnam to establish a Domestic Advisory Group (DAG) composed of independent civil society representatives. The DAG's purpose is to monitor implementation of the Agreement and make concrete recommendations on worker rights, land rights, and the environment. Mr. Bách was also an Executive Board member of the VNGO-EVFTA Network, a group of seven development and environmental CSOs established to raise awareness about the EVFTA. It is suspected that his arrest and detention are directly related to his attempt to establish the DAG, which the State may have perceived as a threat based on the DAG's mandate to independently monitor Government compliance with EVFTA. Independent civil society oversight is a key condition of the agreement. The EU cancelled a scheduled Joint Forum between European and Vietnamese civil society members and the fate of the Agreement remains unclear.

13. At least three other environmental leaders have been arrested in Vietnam in the course of seven months on charges related to tax evasion. All have received heavy prison sentences.

Their arrest and investigation did not follow the normal process for tax evasion. Rather, State Security was responsible for the investigations and there was no notification or request for repayment preceding arrest. Three of the four environmental defenders were charged with corporate tax evasion even though Vietnamese legal professionals advise that tax law is silent on whether non-profit organizations are required to pay corporate tax.⁵

14. The incompatibility of Vietnam's tax laws with its obligations under the International Covenant on Civil and Political Rights (Covenant) has been articulated in the Human Rights Committee Concluding Observations, Vietnam's 2019 Universal Periodic Review and communications by the UN Special Procedures.⁶ Each has found that Vietnam's tax laws and rules related to foreign funding pose "undue restrictions by the Government on civil society in the exercise of their fundamental freedoms"⁷ and "impede the ability of associations to pursue their statutory activities."⁸

c. Analysis of violations

15. The source submits that Mr. Bách's deprivation of liberty is arbitrary under categories I, II, III, and V.

i. Category I

16. The source recalls that according to article 9(2) of the Covenant, the persons who are deprived of liberty must be informed at the time of their arrest of the reason for the arrest; and be promptly informed of any charges against them.⁹ The basis for the arrest and deprivation of liberty must be invoked and applied throughout the judicial process.¹⁰

17. Mr. Bách was arrested on the night of 24 June 2021, at his home that he shared with his family. Arresting officers provided no warrant, nor did they articulate the charges against him or basis for the removal of his belongings, which included personal papers, computers, and cellular phones. Not until 2 July 2021, did the Security Investigation Agency issue a decision to prosecute Mr. Bách for the crime of tax evasion. No charges were presented until that date.

18. While international law recognizes the exception of *in flagrante delicto* to the warrant requirement, there is no evidence and no allegation that Mr. Bách's warrantless arrest was based on this exception. Rather, he was charged on 2 July 2021, for crimes following the decision of State Security to prosecute. As such, for the nine days that Mr. Bách was held without a warrant and not informed of the charges against him, he was unable to challenge the basis for his detention and there was no legal basis for his deprivation of liberty.

19. Mr. Bách's arrest is also arbitrary because he was arrested without competent judicial authorization; was held *incommunicado*; was prosecuted under vague laws that violate the principle of legality; and prosecuted under laws used to target and silence Government critics. Domestic laws that violate norms of international law cannot form an adequate legal basis for arrest.¹¹ Any national law allowing deprivation of liberty must be made and implemented in compliance with the relevant international provisions set forth in the Universal Declaration of Human Rights (UDHR), the Covenant and other relevant international legal instruments.

20. From July 2021 to August 2022, Mr. Bách was held almost entirely *incommunicado*. Article 9(3) of the Covenant provides that pre-trial detention should be the exception rather than the norm. By holding Mr. Bách *incommunicado*, the Government failed to consider alternatives to pre-trial detention, such as home arrest, and violated his right to contest the

⁵ See AL VNM 2/2022, page 5 (noting that "There is also reason to believe that Mr. Bach was imprisoned for his activities, given the fact that according to Viet Nam's laws, all non-profit non-government organizations (NGOs) are not subject to tax").

⁶ See, e.g., CCPR/C/VNM/CO/3, para. 47; A/HRC/23/39, para. 8; OL VNM 7/2021; Opinion No. 81/2020.

⁷ CCPR/C/VNM/CO/3, para. 47.

⁸ A/HRC/23/39, para. 8.

⁹ Human Rights Committee's general comment No. 35 (2014), para. 24.

¹⁰ Opinion No. 75/2017, para. 35.

¹¹ Opinion No. 51/2017, para. 27.

legality of his detention. Consequently, Mr. Bách was placed outside the protection of the law (article 6 of the UDHR and article 16 of the Covenant) and his right to an effective remedy was violated (article 8 of the UDHR and article 2(3) of the Covenant).

21. The source further recalls that the Working Group has established that the Procurate of Vietnam does not satisfy the criteria of article 9 of the Covenant because it is not an independent judicial authority and is in fact controlled by the executive branch.¹² Detention ordered by a body other than a competent, independent, and impartial authority lacks legal basis. The investigation and decision to prosecute Mr. Bách was led by the State Security Agency, which is part of the executive branch, and he was prosecuted by the Procurate, which is also considered under the control of the executive.¹³ Accordingly, his deprivation of liberty is arbitrary under category I because his arrest and detention were not authorized by a competent judicial authority.

22. Furthermore, international law requires that laws which restrict fundamental rights must be “sufficiently precise” so as not to unnecessarily limit the right or be overly broad.¹⁴ The principle of legality requires that laws must be framed with sufficient precision to allow persons to understand the scope and requirements of the law and regulate their conduct accordingly.¹⁵ The Decrees¹⁶ forming the basis of Mr. Bách’s deprivation of liberty are insufficiently clear and imprecise, which violates the principle of legality. Accordingly, they cannot form a lawful basis for his deprivation of liberty.

ii. Category II

23. The source notes that right to freedom of expression includes the right to hold an opinion and the freedom to seek, impart, and receive information and ideas of all kinds in any form. Article 19(3) of the Covenant provides that any restriction to this right be proportional, necessary, and the least restrictive means possible to achieve a legitimate State interest. For a restriction to qualify as the least intrusive option available, it must be both narrowly tailored in terms of the conduct punished and able to distinguish between those acting illegally and those acting peacefully. Accordingly, overbroad restrictions cannot be the least intrusive option and, therefore, cannot be considered proportional. If a criminal penalty is imposed on individuals in cases where a civil penalty would suffice, the restriction is not the least intrusive option available. The Working Group has found that laws, which

¹² E.g., Opinion No. 50/2018.

¹³ Opinion No. 81/2020, fn 3 (noting that “while prolonged pre-trial detention may be permitted under the Vietnamese Criminal Procedure Code 2003 and other legislative provisions such as Procurate allowing approval of arrest warrants, these do not substitute the right to judicial review of a detention and are consequently inconsistent with international human rights law.”).

¹⁴ A/HRC/31/66, para. 30.

¹⁵ Human Rights Committee, general comment No. 35, para. 22; Opinions No. 41/2017, paras. 98–101 and 62/2018, paras. 57–59;

¹⁶ Decree 93/2009/ND-CP dated 22 October 2009, of the Government promulgating the Regulation on management and use of foreign nongovernmental aid, which expired on 17 September 2020, and was replaced by Decree 80/2020/ND - CP dated 8 July 2020. See also Decree 218/2013/ND-CP detailing and guiding the implementation of the Law on corporate income tax and Circular 78/2014/TT-BTC dated 18/06/2014 on guiding Decree 218/2013/ND-CP. This Decree provides that “[t]he grants received are used for educational activities, scientific research, culture, art, charity, humanity and other social activities in Vietnam” (art. 4.7) are exempt income. However, there is no further guidance on conditions, criteria, or procedures to warrant the exemption of corporate income tax for these grants. The Circular 78/2014/TTBTC guiding this decree repeats the same text, which has left its application open to the discretion of the Government. According to the State Security Investigation, the revenue of LPSD is “foreign nongovernmental aid” under Decree 80/2020/ND and that “in the process of receiving grants from abroad, the LPSD Centre does not carry out the approval procedures and is not approved by the competent authorities in accordance with law.” However, Vietnam’s Tax Law and Criminal Code does not regulate this law’s violation as a criminal matter. Further, per article 4, clause 7 of the decree No. 218/2013/ND-CP and article 8, clause 15 of the Circular 78/2014/TT-BTC dated 18 June 2014 on guiding decree 2018/2013/ND-CP, LPSD’s total tax revenue deemed “foreign non-governmental aid” is “exempted tax” and “not payable.” Mr. Bách maintains that all the grants received by LPSD were used for proper purposes, as confirmed by its foreign grant sponsors, and therefore properly categorized as exempt from corporate tax income.

criminalize critical speech encourage self-censorship and suppress important debates on matters of public interest, putting in jeopardy the right to freedom of opinion and expression.¹⁷

24. The source also recalls that the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have found that Vietnam's tax laws do not comport with article 19(3) of the Covenant.¹⁸ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has warned that the threat of a long prison sentence and vagueness about what kinds of expression constitute a violation encourage self-censorship and stifle important debates on matters of public interest.¹⁹

25. The Rapporteurs have also noted that Vietnam's amended regulations have "imposed additional burdensome requirements" for the creation and operation of human rights organizations, in violation of articles 21 and 22 of the Covenant, which relate to freedom of assembly and association. The Rapporteurs expressed "particular cause for concern" regarding article 2 of Decree 93, under which Mr. Bách was charged, which prohibits foreign non-governmental aid that affects "political security, social order and safety or infringing upon interests of the State." The imprecise nature of the Decree and absence of a clear definition that leaves it "open to a wide range of interpretations... impedes the ability of associations to pursue their statutory activities and violates article 22 of the ICCPR."²⁰

26. The source also submits that Mr. Bách was also charged under Decree 80, which restricts access to foreign aid. The Rapporteurs likewise noted that most of the legal justifications for this Decree "do not comply with Article 22 para. 2 of the ICCPR," which stipulates that any limitation on a fundamental right "must pursue a legitimate interest and be necessary for a democratic society."²¹ Accordingly, the Rapporteurs have advised the Government to revise this Decree, warning that it "cannot be misused to hinder the work and endanger the safety of civil society organizations."²²

27. While Mr. Bách's detention is ostensibly on the basis of tax violations, the laws forming the basis of his arrest and detention are directly related to his exercise of freedom of expression and association. His organization took part in monitoring the Government's compliance with environmental agreements, which constitute forms of speech. While these rights may be restricted in limited circumstances, the Government has not articulated a legitimate State interest in restricting them, and its application of criminal penalties for their exercise is not proportional or the least restrictive means. Decree 93 and Decree 80 vaguely criminalize an overly broad swath of speech and information-sharing acts and hinder the ability of nongovernmental entities to operate freely. Moreover, Mr. Bách was deprived of his liberty specifically because of his public interest work, meaning his right to freedom of expression was violated both *de jure* and *de facto*. Further, Mr. Bách was deprived of his liberty under laws that are being used as a pretext to silence independent voices, which is incompatible with the right to freedom of expression. Accordingly, his detention is arbitrary under category II.

iii. Category III

28. The source argues that Mr. Bách's right to a fair and impartial trial has been violated on several fronts. These include his right to challenge the basis of his arrest (article 9 of the Covenant, article 9 of the UDHR); his right to prepare an adequate defence (article 14 (1) and (3) (b) of the Covenant; art. 10 of UDHR); his right to meaningfully consult counsel (art. 14 (3) (b) and (d) of the Covenant; art. 10 and 11 of the UDHR);²³ his right to the presumption

¹⁷ Opinion No. 44/2016, paras. 24 and 25.

¹⁸ OL VNM 7/2021, page 4.

¹⁹ A/HRC/20/17, para. 20.

²⁰ OL VNM 7/2021, pages 5-7.

²¹ *Id.*, page 7.

²² A/HRC/RES/27/31.

²³ See principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

of innocence (article 14(2) of the Covenant; article 11 of the UDHR);²⁴ and his right to be free from ill treatment, which has undermined his ability to prepare a defence.

29. Mr. Bách was subjected to a warrantless arrest and not presented with the basis for his detention for nine days. Without knowing the reason for his arrest or the charges against him, neither Mr. Bách nor his attorney were able to challenge the basis for his detention. This delay also violated his right to be brought promptly before a judicial authority.²⁵

30. Even after he learned of the charges against him, Mr. Bách was held incommunicado for nearly eight months before his trial date, which placed him outside the protection of the law and violated his right to regular review of the necessity of his pre-trial detention.

31. By holding Mr. Bách incommunicado, the Government also violated his right to prepare an adequate defence. He was not able to meet with his lawyer consistently, despite multiple requests. His lawyer only saw Mr. Bách twice before his trial on 24 January 2022, and these meetings were not confidential. The Government also hindered Mr. Bách's ability to prepare a defence by not sharing evidence with his lawyer and denying her the right to question witnesses for the prosecution. In fact, the court refused to hear his defence entirely, which indicates it had already pre-judged his guilt. This is further supported by the court's nearly automatic determination that he was guilty during his initial hearing, and decision to uphold his sentence at his appeal hearing on 11 August 2022.

32. Mr. Bách's closed trial and appeal hearing also violate essential principles of the right to a fair trial. Neither his family or interested parties, including representatives of the U.S. and German embassies, were allowed to enter the courtroom. The Government's explanation for denying their requests was that there was no room, which is unsupported by the images taken from inside the courtroom. Article 14(1) of the Covenant provides that "everyone shall be entitled to a fair and public hearing." States may limit press and the public for reasons of public order or national security, but the Government has never articulated any argument as to why Mr. Bách's case would fit an exception to the right of a public trial.

33. Prosecuting Mr. Bách in a closed trial also undermined his presumption of innocence. The Government effectively prevented public scrutiny of his trial and appeal hearing and was able to control the narrative of what occurred via State-run media. Articles following his trial reported that he had confessed to the charges against him and suggested that further charges may be pending, which effectively tried him in the court of public opinion. In both his initial trial and appeal hearing, Mr. Bách was escorted by security, which conveyed the appearance of guilt. His prolonged incommunicado detention both before and after his trial likewise undermines the presumption by suggesting that he is dangerous or a security threat.

34. Mr. Bách's right to be tried by a competent tribunal was not upheld. The source recalls that the Working Group has concluded that the Procurate is not an independent judicial authority because it is not protected from political influence, and is therefore incompatible with the right to be tried by a fair and impartial tribunal.²⁶ The source further submits that: nearly all the judges are members of the Communist Party of Vietnam (CPV) and are screened by the CPV to determine their suitability for the bench; the CPV's oversight and control over the judiciary is further reinforced by their reappointment process, which happens every five years following review of their conduct by party officials; a lack of legislative and other safeguards protecting judicial independence has led to judges, as well as prosecutors, to be seen as tools of repression and injustice. The Human Rights Committee has interpreted the obligation to ensure a fair and impartial trial before an independent and impartial court as requiring States to "take specific measures guaranteeing the independence of the judiciary" and to protect judges "from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them."²⁷

²⁴ See also principle 36.

²⁵ Human Rights Committee, general comment No. 35, para. 32.

²⁶ E.g., Opinion Nos. 50/2018, 37/2018, 20/2018, 1/2018, 79/2017.

²⁷ General comment No. 32, para. 19.

35. The impact of Mr. Bách's incommunicado detention is also relevant to his right to be free from torture and other ill treatment, and the extent to which these violations adversely affect his ability to prepare a defence. The source recalls that credible allegations of torture and ill treatment "significantly decrease the probability" that a detainee has received a fair trial.²⁸ Similarly, "any instance of torture during pretrial detention constitutes a visceral risk for the trial that follows, making it impossible for such a trial to be fair."²⁹

36. Vietnam is bound by the obligations under the UN Convention against Torture. Denying family visitation and correspondence is considered punitive and can increase suffering.

37. Authorities held Mr. Bách incommunicado throughout his pretrial detention and after his sentencing. They have repeatedly denied his family member's requests to visit him, blocked written communications, and even prevented the family from sharing a photograph of Mr. Bách infant child. The State has made clear that it considers Mr. Bach "recalcitrant" and "stubborn" for maintaining his innocence, and its denial of family visits appears punitive and designed to compel a confession of guilt by subjecting him to an ongoing environment of distress that constitutes ill treatment and may rise to the level of torture. Mr. Bách has undergone a hunger strike on two occasions to protest his ongoing incommunicado detention. He appeared gaunt and unwell at his appeal hearing, and his family and friends believe his inability to see or communicate with loved ones is severely impacting his well-being. This, in turn, has impaired his ability to prepare a defence and his equality of arms before the law, in violation of his right to a fair trial.

38. The Government thus has failed to observe the international norms related to a fair trial and has indicated on numerous fronts that it has predetermined Mr. Bách's guilt as a means of depriving him of liberty. Accordingly, his detention is arbitrary under category III.

iv. Category V

39. The source submits that deprivation of liberty is arbitrary under category V if the individual has been deprived of his or her liberty for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status which aims towards or can result in ignoring the equality of human rights.

40. Where authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude – for instance where a detainee is held in worse conditions or for a longer period than other detainees in similar circumstances – there is strong evidence of discrimination on the basis of a protected status.³⁰ Likewise, if the facts of the case indicate the individual was detained to prevent him or her from exercising his or her fundamental rights, the detention is likely discriminatory.³¹

41. The Government's treatment and attitude towards Mr. Bách can only be characterized as discriminatory and has negatively impacted his right to equality before the law. It appears that Mr. Bách was targeted based on his activities related to environmental activism and monitoring of the State's compliance with international and domestic regulations related to environmental law. While he does not consider himself a human rights defender, his professional activities are directly related to advocating for the rights of others, including the right to a clean environment and to land. For instance, it is believed that he was targeted because of his work documenting complaints on behalf of people affected by the Son La Hydroelectric plant. All records of his involvement with the Son La victims were taken by the Investigation Security Agency and have not been returned. Accordingly, his differential treatment may constitute discrimination on his perceived status as a human rights defender.

42. The Government has not afforded Mr. Bách the same level of process or fairness as other environmental advocates detained under the same charges. Those who plead guilty have been able to receive family visits, whereas his right to visitation has consistently been denied.

²⁸ Opinion No. 53/2018, para. 77.

²⁹ Opinion No. 85/2017, para. 50.

³⁰ A/HRC/33/50, para. 48.

³¹ Id.

It also appears that the Government is punishing Mr. Bách for steadfastly maintaining his innocence; the court implemented a sentence that exceeded the recommendation of the prosecutor, noting that it found him stubborn and recalcitrant for not pleading guilty. This differential treatment speaks to the Government's discriminatory attitude towards his case and failure to ensure his equality of arms before the law. His deprivation of liberty is arbitrary under category V.

Government response

43. On 30 November 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting a reply by 30 January 2023. The Working Group also called upon the Government to ensure Mr. Mr. Bách physical and mental integrity.

44. On 26 January 2023, the Government requested an extension in accordance with paragraph 16 of the methods of work, which was granted with a new deadline of 28 February 2023.

45. While the Government requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work, the Working Group regrets that it did not receive a response from the Government to this communication.

Discussion

46. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 16 of its methods of work.

47. In determining whether the detention of Mr. Bách is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case of breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.³² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

i. Category I

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

49. The source submits that on 24 June 2021, six police officers entered Mr. Bach's family home. He was arrested without a warrant and not provided with information regarding the basis of his arrest. The police officers also did not provide any basis for confiscating his personal belonging such as documents, computers, and cellular phones. Mr. Bach's was not brought before a judge to determine the legality of his arrest and pretrial detention. The source further submits that Mr. Bách was not presented with the basis for his detention for nine days. Without knowing the reason for his arrest or the charges against him, neither Mr. Bách nor his attorney were able to challenge the basis for his detention. This delay also violated his right to be brought promptly before a judicial authority.³³

50. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges.³⁴ Noting the source's submissions, and absent the Government's response, the Working Group finds that Mr. Bách was not shown an arrest warrant (or equivalent) nor was he informed immediately of the reasons for his arrest nor promptly informed of the charges against him, in violation of articles 9(1) and (2) of the Covenant. While it is unclear if any material seized during the illegal search was used against Mr. Bách in the course of the legal proceedings, such conduct further demonstrates the authorities' failure to follow proper procedures to ensure that Mr. Bách's

³² A/HRC/19/57, para. 68.

³³ Human Rights Committee, general comment No. 35, para. 32.

³⁴ *Ibid.*, para. 24.

detention had a legal basis and compounds the arbitrary nature of his detention. The Working Group recalls the right to be brought promptly before a judicial authority to challenge detention, within 48 hours of the arrest barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.³⁵ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of the detention is protected by article 9 of the UDHR, article 9 (3) of the Covenant and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds that this right was violated as Mr. Bách was not brought promptly before a judicial authority.

51. Article 9 (3) of the Covenant provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group recalls the Human Rights Committee's view that pretrial detention should be an exception and be as short as possible and must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.³⁶ In the present case, without any response from the Government, the Working Group concludes that an individualized determination of Mr. Bách's circumstances was absent, and as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

52. Moreover, the source submits that from July 2021 to August 2022, Mr. Bách was held almost entirely incommunicado. The Working Group recalls that holding persons incommunicado prevents prompt presentation before a judge as provided in article 9 (3) of the Covenant³⁷ and violates the right under article 9 (4) to challenge the lawfulness of the detention before a court.³⁸ Judicial oversight of detention is a fundamental safeguard of personal liberty³⁹ and is essential in ensuring that detention has a legal basis. Given that Mr. Bách was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the UDHR and article 2 (3) of the Covenant was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the UDHR and article 16 of the Covenant.

53. The source also submits that Mr. Bách right to family visits and contact with the outside world was violated. Throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. A detainee must also be allowed to communicate with and receive visits from family members. Restrictions and conditions in regard to such contact must be reasonable. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.⁴⁰ The Working Group finds that the right of Mr. Bách to communicate with the outside world was denied, contrary to rule 58 of the Nelson Mandela Rules⁴¹ and principles 15 and 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

54. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Bách's arrest and detention. His detention is arbitrary under category I.

³⁵ Opinions Nos. 57/2016, paras. 110–111; 2/2018, para. 49; 83/2018, para. 47; 11/2019, para. 63 and 30/2019, para. 30.

³⁶ Human Rights Committee, general comment No. 35, para. 38.

³⁷ *Ibid.*, para. 35.

³⁸ Opinions Nos. 25/2021, 45/2019, 44/2019, 9/2019 and 35/2018.

³⁹ A/HRC/30/37, para. 3; CAT/C/VNM/CO/1, para. 24.

⁴⁰ See the Committee's general comment No. 35, para. 58; opinion No. 84/2020, para. 69.

⁴¹ Opinions Nos. 35/2018, para. 39; 44/2019, paras. 74–75 and 45/2019, para. 76.

ii. Category II

55. The source submits that while Mr. Bách's detention is ostensibly on the basis of tax violations, the laws forming the basis of his arrest and detention are directly related to his exercise of freedom of expression and association. According to the source, his organization took part in monitoring the Government's compliance with environmental agreements, which constitute forms of speech. Mr. Bách was deprived of his liberty under laws that are being used as a pretext to silence independent voices, which is incompatible with the right to freedom of expression.

56. Article 19 (2) of the Covenant protects the holding and expression of opinions, including those which are not in line with government policy.⁴² The Human Rights Committee has specifically recognized that article 19 (2) of the Covenant protects the work of journalists and includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.⁴³ It has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, certain types of expression should never be subject to restrictions – such as discussion of government policies, and political activities, including for peace or democracy.⁴⁴ The Council has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.⁴⁵

57. While these rights may be restricted in limited circumstances, the Government has not articulated a legitimate State interest in restricting them, and its application of criminal penalties for their exercise is not proportional or the least restrictive means. The permitted restrictions to this right may relate either to respect for the rights or reputations of others or to the protection of national security, public order (*ordre public*) or public health or morals. As the Human Rights Committee has stipulated: "Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."⁴⁶ The Government did not present any argument to invoke any of these limitations, nor has it demonstrated why bringing charges against Mr. Bách was a legitimate, necessary, and proportionate response to his online activities. The Working Group is not convinced that prosecuting Mr. Bách is necessary to protect a legitimate interest under this article of the Covenant, nor that Mr. Bách's arrest and detention is a necessary or proportionate response to his activities. Importantly, there is no indication that his activities were intended or had the potential to incite violent behaviour.

58. The source submits that Decree 93 and Decree 80 vaguely criminalize an overly broad swath of speech and information-sharing acts thus hindering the ability of nongovernmental entities to operate freely. The Working Group recalls that the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have stated that Vietnam's tax laws do not comport with article 19(3) of the Covenant.⁴⁷ Similarly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has warned that the threat of a long prison sentence and vagueness about what kinds of expression constitute a violation encourage self-censorship and stifle important debates on matters of public interest.⁴⁸

59. The Rapporteurs have also noted that Vietnam's amended regulations have "imposed additional burdensome requirements" for the creation and operation of human rights organizations, in violation of articles 21 and 22 of the Covenant, which relate to freedom of assembly and association. Notably, they expressed "particular cause for concern" regarding article 2 of Decree 93, under which Mr. Bách was charged, which prohibits foreign non-

⁴² Opinions Nos. 8/2019, para. 55 and 79/2017, para. 55.

⁴³ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

⁴⁴ A/HRC/14/23, para. 81 (i).

⁴⁵ Human Rights Council resolution, para. 5 (p).

⁴⁶ Committee's general comment No. 34, para. 22.

⁴⁷ OL VNM 7/2021, page 4.

⁴⁸ A/HRC/20/17, para. 20.

governmental aid that affects “political security, social order and safety or infringing upon interests of the State.” The imprecise nature of the Decree and absence of a clear definition that leaves it “open to a wide range of interpretations... impedes the ability of associations to pursue their statutory activities and violates article 22 of the ICCPR.”⁴⁹

60. The source also submits that Mr. Bách was also charged under Decree 80, which restricts access to foreign aid. The Rapporteurs likewise found that most of the legal justifications for this Decree “do not comply with Article 22 para. 2 of the ICCPR,” which stipulates that any limitation on a fundamental right “must pursue a legitimate interest and be necessary for a democratic society.”⁵⁰ Accordingly, the Rapporteurs have advised the Government to revise this Decree, warning that it “cannot be misused to hinder the work and endanger the safety of civil society organizations.”⁵¹

61. The Working Group recalls that the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.⁵² In the Working Group’s view, Decree 93 and Decree 80 do not meet this standard. These decrees are thus incompatible with article 11 (2) of the UDHR and article 15 (1) of the Covenant and cannot be considered “prescribed by law” and as “defined with sufficient precision” due to its vague and overly broad language.⁵³ Prosecutions under these decrees are likely to have a chilling effect upon the peaceful exercise of these rights and freedoms. For these reasons, the Working Group concludes that Mr. Bách’s detention resulted from his exercise of his right to freedom of opinion, and expression contrary to articles 19 of the UDHR and article 19 of the Covenant.

62. The Working Group thus finds that his arrest and detention is arbitrary under category II.

63. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

iii. Category III

64. Given its finding that the deprivation of liberty of Mr. Bách is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Bách has been tried and convicted. In the light of the above, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Bách’s deprivation of liberty an arbitrary character, such that it falls within category III.

65. The source argues that by holding Mr. Bách incommunicado, the Government also violated his right to prepare an adequate defence. He was not able to meet with his lawyer consistently, despite multiple requests. His lawyer only saw Mr. Bách twice before his trial on 24 January 2022, and these meetings were not confidential. The Government also hindered Mr. Bách’s ability to prepare a defence by not sharing evidence with his lawyer.

66. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.⁵⁴ The Working Group finds that the extremely limited access to legal assistance granted to Mr. Bách violate his right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.⁵⁵ Moreover, Mr. Bách was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate

⁴⁹ OL VNM 7/2021, pages 5-7.

⁵⁰ *Id.*, page 7.

⁵¹ A/HRC/RES/27/31.

⁵² Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35, para. 22.

⁵³ Human Rights Committee, general comment No. 34, para. 25.

⁵⁴ A/HRC/30/37, annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35, para. 35; A/HRC/48/55, para. 56; and A/HRC/45/16, paras. 50–55. See also A/HRC/27/47, para. 13.

⁵⁵ Opinions Nos. 43/2020, para. 105, 18/2018, para. 53 and 78/2018, paras. 78–79.

with counsel, as guaranteed under article 14 (3) (b) of the Covenant. This includes the failure to provide Mr. Bách with prompt and confidential access to a lawyer. The source further submits that his lawyer received confirmation of his trial date with three days' notice despite the authorities' strong indication that his trial date would be postponed. The Working Group notes that this case is another example of the denial or limitation of legal representation, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁵⁶

67. The source also submits that Mr. Bách's counsel was denied the right to question witnesses for the prosecution and the court refused to hear his defence entirely. On the principle of equality of arms, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁵⁷ In the present case, that right was denied to Mr. Bách and such a refusal to allow any defence bears the hallmarks of serious denial of equality of arms in the proceedings. The Working Group thus finds a violation of articles 14(1) and 14(3) (e) of the Covenant.

68. In addition, the source submits that Mr. Bách's trial and appeal hearing were closed to the public. As the Human Rights Committee has stated, criminal trials are to be conducted in public unless one of the exceptional circumstances outlined in article 14 (1) justifies the closure of a trial, that is for reasons of morals, public order or national security, to warrant the exceptional step of holding a closed trial. In the present case, the Government has not provided any information to justify the exceptional step of holding a closed trial. Accordingly, the Working Group finds that Mr. Bách did not have a public hearing, in violation of article 10 of the UDHR and article 14 (1) of the Covenant, which provides that "everyone shall be entitled to a fair and public hearing."

69. The source also submits that prosecuting Mr. Bách in a closed trial also undermined his presumption of innocence. The Government effectively prevented public scrutiny of his trial and appeal hearing and was able to control the narrative of what occurred via State-run media. Article 14(2) of the Covenant guarantees that everyone charged with a criminal offence shall have the right to be presumed innocent according to law. The Human Rights Committee has stated that it is a duty for all public authorities to refrain from prejudging the outcome of a trial. Defendants should normally not be presented to the court in a manner indicating that they may be dangerous criminals.⁵⁸ In this regard, the Working Group notes the source's submission that, Mr. Bách was surrounded by security agents entering and leaving the courtroom, which prevented his family from approaching him and conveyed the appearance that he was a threat and guilty.

70. Noting the lack of submissions from the Government, the Working Group concurs with the source that such a presence of security agents could give the impression that he may be a dangerous criminal warranting heavy security thus undermining the presumption of innocence.⁵⁹ In addition, the source submits that after his sentencing, State-run media misrepresented the proceedings and reported that Mr. Bách had confessed during the trial, when in fact he has steadfastly maintained his innocence. General Comment No. 32 specifies that the media should avoid news coverage undermining the presumption of innocence.⁶⁰ In these circumstances, the Working Group considers that such news coverage undermined his presumption of innocence during the appeal proceedings discussed below. As such, the Working Group finds that Mr. Bách's right to the presumption of innocence guaranteed under article 14(2) of the Covenant and article 11 of the UDHR has been undermined.

71. Furthermore, the source submits that Mr. Bách's right to be tried by a competent tribunal was not upheld. The source further submits that: nearly all the judges are members of the Communist Party of Vietnam (CPV) and are screened by the CPV to determine their

⁵⁶ Opinions Nos. 43/2022, 45/2019, 44/2019, 9/2019, 46/2018, 35/2018; CAT/C/VNM/CO/1, paras. 16-17.

⁵⁷ Human Rights Committee, general comment No. 32, para. 39.

⁵⁸ Ibid., para.30.

⁵⁹ Opinions Nos. para. 68; 36/2020, 83/2019, para. 73; 36/2018, para. 55; 9/2017, para. 62 and 40/2016, para. 41.

⁶⁰ General Comment No. 32, para.30.

suitability for the bench; the CPV's oversight and control over the judiciary is further reinforced by their reappointment process, which happens every five years following review of their conduct by party officials; a lack of legislative and other safeguards protecting judicial independence has led to judges, as well as prosecutors, to be seen as tools of repression and injustice. In its concluding observations on Vietnam, the Human Rights Committee has expressed concern on this matter, stating that the procedures for the selection of judges as well as their lack of security of tenure, combined with the possibility of taking far-reaching disciplinary measures against judges, exposes them to political pressure and jeopardises their independence and impartiality.⁶¹ Moreover, according to the source, other environmental advocates detained under the same charges who pleaded guilty have been able to receive family visits, whereas Mr Bach's visitation rights have consistently been denied, with the court implementing a sentence that exceeded the Prosecutor's recommendation, noting that it found him stubborn and recalcitrant for maintaining his innocence. Based on these factors, and absent a Government response, the Working Group concludes that his right to be tried by a competent, independent and impartial tribunal under article 14(1) of the Covenant was violated. This is supported by the court's nearly automatic determination that he was guilty during his initial hearing, without allowing him an opportunity to present his defence.

72. Finally, the Working Group notes the source's submission that Mr. Bach's lawyer received notice on 4 August 2022 that his appeal hearing would take place on 11 August. The lawyer was not allowed to meet with him before the hearing and her presence at the hearing was nominal; her laptop and phone were confiscated before entering the courtroom and in images of the hearing shared by State-run media, Mr. Bách is standing alone without counsel before the judge in a nearly empty courtroom. The state-run media had also allegedly misrepresented the trial proceedings, reporting that Mr. Bách had confessed while he had maintained his innocence. Based on the foregoing, the Working Group thus finds a violation of article 14 (5) of the Covenant which imposes on States a duty substantially to review conviction and sentence both as to sufficiency of the evidence and of the law."⁶²

73. The Working Group thus concludes that these numerous violations of Mr. Bách's right to a fair trial and due process are of such gravity as to render his deprivation of liberty arbitrary under category III.

iv. Category V

74. According to the source, it appears that Mr. Bách was targeted based on his activities related to environmental activism and monitoring of the State's compliance with international and domestic regulations related to environmental law. While he does not consider himself a human rights defender, his professional activities are directly related to advocating for the rights of others, including the right to a clean environment and to land.

75. The source notes that at least three other environmental leaders have been arrested in Vietnam in the course of seven months on charges related to tax evasion who have all received heavy prison sentences. The arrest and investigation of these respected civil society members did not follow the normal process for tax evasion.

76. In the absence of a Government reply, the Working Group find to be *prima facie* credible the source's allegations that Mr. Bách was targeted based on his activities related to environmental activism. The Working Group recalls that it has issued several opinions pertaining to Vietnamese activists who have been involved in environmental activism.⁶³ In this context, the Working Group finds that Mr. Bách arrest, conviction and sentence and denial of family visits seek to punish him for activities that are expressly protected by international law. As such, in the discussion above concerning category II, the Working Group established that Mr. Bách's detention had resulted from the peaceful exercise of his fundamental freedoms. When detention has resulted from the active exercise of civil and

⁶¹ CCPR/CO/75/VNM.

⁶² Communication 1100/02 *Bandejesky v Belarus*, para 10.13.

⁶³ Opinion Nos. 44/2019, 45/2019, 81/2020, 81/2021, 43/2022, 86/2022. See also A/71/281, paras, 35 and 39.

political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁶⁴

77. The Working Group thus finds that Mr. Bách's deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other opinion, related to his environmental work. His detention violates articles 2 and 7 of the UDHR and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

78. The Working Group refers the case to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

v. Concluding remarks

79. According to the source, throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. The Working Group is alarmed by the allegations that authorities prevented his family from giving him a photograph of his son who was only two weeks old when Mr. Bách was arrested. Mr. Bách has informed his attorney that he had been on a hunger strike since 10 January 2022, in protest of his incommunicado detention and appears to have lost a significant amount of weight. Recalling Rule 58 of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles,⁶⁵ the Working Group strongly urges the Government to ensure that Mr. Bách's right to contact with the outside world, in particular his family, is respected. The Working Group is compelled to remind the Government that according to article 10 (1) of the Covenant and rule 1 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and dignity.

80. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons, particularly human rights defenders, in Viet Nam.⁶⁶ Many of these cases follow a familiar pattern of arrest that does not comply with international norms, lengthy detention pending trial with no access to judicial review, denial of access to legal counsel, incommunicado detention, prosecution under vaguely worded criminal offences for the peaceful exercise of human rights, a brief closed trial at which due process is not observed, disproportionate sentencing, and denial of access to the outside world. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam which, if it continues, may amount to a serious violation of international law.⁶⁷

81. The Working Group would welcome the opportunity to work constructively with the Government of Viet Nam to address arbitrary detention. A significant period has passed since its last visit to Viet Nam in October 1994, and the Working Group considers that it is now an appropriate time to conduct another visit. On 11 June 2018, the Working Group reiterated earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

Disposition

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

The deprivation of liberty of **Đặng Đình Bách**, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 16, 19 and 26 of the International Covenant on Civil and Political Rights is arbitrary and falls within categories I, II, III and V.

83. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Bách without delay and bring it into conformity with the

⁶⁴ Opinions Nos. 59/2019, para. 79; 13/2018, para. 34; 40/2021, para. 90; 11/2021, para. 87 and 82/2021, para. 84.

⁶⁵ Opinions Nos. 35/2018, para. 39; 44/2019, paras. 74–75 and 45/2019, para. 76.

⁶⁶ For example, opinions Nos. 81/2020, 36/2021, 82/2021, 43/2022 and 86/2022.

⁶⁷ Opinion No. 47/2012, para. 22.

relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

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

86. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteurs on the right to freedom of opinion and expression; and on sustainable environment, for appropriate action.

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

Follow-up procedure

88. 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. Bách has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Bách;
- (c) Whether an investigation has been conducted into the violation of Mr. Bách'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 Viet Nam with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

89. 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.

90. 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.

91. 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.⁶⁸

[Adopted on 31 March 2023]

⁶⁸ Human Rights Council resolution 51/8, paras. 6 and 9.