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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 has not replied 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. Đặng Đình Bách was born in September 1978 and is a citizen of Viet Nam. 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, from 2011 to 2021. The Centre conducted legal advocacy on environmental, land use and industrial pollution cases. Its primary activities concerned facilitating civil society participation and supporting the rights and responsibilities of stakeholders in the social and environmental fields. It also played a role in monitoring the effectiveness and enforcement of the legal and policy framework of sustainable development in Viet Nam 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 affected 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, owing in part to the involvement of environmental organizations based in the United States of America and their funding by the United States State Department and the European Union. Reportedly, he might have been targeted for his work documenting complaints on behalf of people affected by the Son La hydroelectric plant, which displaced more than 91,000 people, most of whom were members of ethnic minority groups. Mr. Bách has consistently maintained that he – and by extension the Law and Policy of Sustainable Development Research Centre – has worked hand-in-hand with the Government to advance the environmental policies of Viet Nam. However, his activities relating 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 a.m., six police officers entered Mr. Bách's home in Hanoi, where he lived with his family. He was arrested and his laptop, bank cards and personal and work phones were confiscated. No warrant or information regarding the basis for his arrest were presented. Around 9.30 a.m. the same day, about 10 police officers conducted a search of the Law and Policy of Sustainable Development Research Centre office and confiscated several laptops. On 30 June 2021, the State Security Agency reported its decision to initiate a criminal case against Mr. Bách for crimes relating to tax evasion.² The reason for the charge imputed by the authorities was the failure to properly account for foreign funding. The indictment states that Mr. Bách contacted foreign-based organizations and received their funding to implement projects at the Law and Policy of Sustainable Development Research Centre without obtaining approval from the relevant authorities. Furthermore, he was accused of evading more than 1.3 billion dong (\$57,300) in taxes 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 pretrial detention between 24 June 2021 and his trial on 24 January 2022. On 14 January 2022, his lawyer was finally allowed to visit him in prison. At that meeting, Mr. Bách informed his lawyer that he had been on hunger strike since 10 January 2022, in protest against his incommunicado detention. He reportedly 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. The authorities even prevented his family from giving him a photograph of his 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 also prevented from having contact with his lawyer. His ability to prepare a defence was further hindered by the fact that the authorities strongly suggested that

² Mr. Bach was charged under article 200 of the Criminal Code (2015), which covers crimes relating to tax evasion.

his trial date would be postponed, which appears to have been 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 to do so, the prosecution did not share evidence with Mr. Bách's lawyer or give 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 United States Embassy, despite the fact that both parties had made applications to attend. Moreover, the court refused to hear Mr. Bách's defence, which suggests that the court predetermined his guilt. His presumption of innocence was also undermined by the fact that he was surrounded by security agents as he entered and left the courtroom, which prevented his family from approaching him and conveyed the impression that he posed a threat. After a short deliberation, the court sentenced Mr. Bách to imprisonment for 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 5 August 2022, Mr. Bách's lawyer received notice that his appeal hearing would take place on 11 August, but was again not given an opportunity to consult with Mr. Bách beforehand. After being notified of that development by the lawyer, Mr. Bách's family member requested permission to attend the appeal, as did representatives of the Embassies of Germany and the United States. Having initially been told that it would not be possible to attend, Mr. Bách's family member received a telephone call from the court the night before the hearing to say that it would indeed be possible to attend. Accordingly, the family member went to the courthouse with Mr. Bách's child to attend the hearing, but upon arrival, they were denied entry by security personnel and told that there was no room inside. Similarly, the Embassy representatives were told that there was not enough space for them to attend. Mr. Bách's attorney was allowed entry, albeit with a nominal presence; the attorney's laptop and phone were confiscated by security personnel before she was allowed to enter the courtroom, and in images of the hearing shared by State-run media, Mr. Bách is seen standing alone without counsel before the judge in an almost empty courtroom. The Government's argument that there was not enough space for his family or other interested parties to attend therefore appears disingenuous and is unsupported by the photographic and video images circulated on national news.

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

b. Further context

12. The source indicates that Mr. Bách is one of several civil society members who have been detained under the tax laws in the past year, which seems by design and practice to be a tool for the Government to deprive of their liberty people who are perceived as working against State interests. Mr. Bách was extremely involved in the development of the Free Trade Agreement between the European Union and Viet Nam, which required Viet Nam to establish a domestic advisory group composed of independent civil society representatives. The purpose of the domestic advisory group is to monitor implementation of the Agreement and make concrete recommendations on workers' rights, land rights and the environment. Mr. Bách was also an executive board member of a network of seven development and environmental civil society organizations set up to raise awareness about the Free Trade Agreement. It is suspected that his arrest and detention are directly related to his attempt to establish the domestic advisory group, which the State may have perceived as a threat based on the group's mandate to independently monitor government compliance with the Free Trade Agreement. Independent civil society oversight is a key condition of the Agreement. The European Union cancelled a joint forum of European and Vietnamese civil society members that had been scheduled to be held and the fate of the Agreement remains unclear.

13. At least three other environmental leaders were arrested in Viet Nam in the course of seven months on charges relating to tax evasion. They have all received heavy prison sentences. Their arrest and investigation did not follow the normal process for cases involving tax evasion. Rather, the State security authorities were 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.³

14. According to the source, the incompatibility of the tax laws of Viet Nam with its obligations under the Covenant has been highlighted by the Human Rights Committee in its concluding observations, in the 2019 universal periodic review of Viet Nam and in communications sent by the special procedure mandate holders of the Council.

c. Analysis of violations

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

Category I

16. The source recalls that, according to article 9 (2) of the Covenant, persons who are arrested must be informed, at the time of their arrest, of the reason for the arrest and must be promptly informed of any charges against them.⁴ The basis for the arrest and deprivation of liberty must be invoked and applied throughout the judicial process.⁵

17. Mr. Bách was arrested on the night of 24 June 2021 at his home, which he shared with his family. The arresting officers provided no warrant, nor did they inform him of the charges against him or the basis for the removal of his belongings, which included personal papers, computers and cell phones. Not until 2 July 2021 did the State Security 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 that crimes committed in flagrante delicto are an exception to the warrant requirement, there is no evidence and no allegation that Mr. Bách's warrantless arrest was based on that exception. Rather, he was charged on 2 July 2021, following the decision of the State security authorities to prosecute him. As such, for the nine days that Mr. Bách was held without a warrant and without being 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: (a) arrested without competent judicial authorization; (b) held incommunicado; (c) prosecuted under vague laws that violate the principle of legality; and (d) 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. 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, the Covenant and other relevant international legal instruments.⁶

20. From July 2021 to August 2022, Mr. Bách was held almost entirely incommunicado. Article 9 (3) of the Covenant provides that pretrial detention should be the exception rather than the general rule. By holding Mr. Bách incommunicado, the Government failed to

³ See communication VNM 2/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27089>, in which it is noted that there was reason to believe that Mr. Bách had been imprisoned for his activities, given the fact that according to the State's laws, all non-profit non-government organizations were not subject to tax (p. 5).

⁴ Human Rights Committee, general comment No. 35 (2014), para. 24.

⁵ Opinion No. 75/2017, para. 35.

⁶ Opinion No. 51/2017, para. 27.

consider alternatives to pretrial detention, such as home arrest, and violated his right to contest the legality of his detention. Consequently, Mr. Bách was placed outside the protection of the law (Universal Declaration of Human Rights, art. 6, and Covenant, art. 16) and his right to an effective remedy was violated (Universal Declaration of Human Rights, art. 8, and Covenant, art. 2 (3)).

21. The source recalls that the Working Group has established that the Procuracy of Viet Nam does not satisfy the criteria in article 9 of the Covenant because it is not an independent judicial authority and is in fact controlled by the executive branch.⁷ Detention ordered by a body other than a competent, independent and impartial authority lacks legal basis. The investigation and decision to prosecute Mr. Bách were led by the State Security Agency, which is part of the executive branch, and he was prosecuted by the Procuracy, which is also considered to be under the control of the executive.⁸ 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 those rights.⁹ 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 to regulate their conduct accordingly.¹⁰ The decrees on which Mr. Bách's deprivation of liberty is based are insufficiently clear and imprecise, which violates the principle of legality.¹¹ Accordingly, they cannot form a lawful basis for his deprivation of liberty.

Category II

23. The source notes that the 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. The Human Rights Committee has indicated that, pursuant to article 19 (3) of the Covenant, any restriction on that right must be proportional, necessary and the least intrusive means possible to achieve a legitimate State interest.¹² 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 persons who are acting illegally and those who are

⁷ E.g., opinion No. 81/2020, para. 56.

⁸ Opinion No. 81/2020, para. 56, footnote 3, in which the Working Group reiterated that, although prolonged pretrial detention may be permitted under the Criminal Procedure Code 2003 of Viet Nam and through other legislative provisions, such as the Procuracy allowing the approval of arrest warrants, they are not a substitute for the right to judicial review of a detention and are consequently inconsistent with international human rights law.

⁹ A/HRC/31/66, para. 30.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 22; and opinions No. 41/2017, paras. 98–101; and No. 62/2018, paras. 57–59.

¹¹ Government Decree No. 93 of 22 October 2009 on the management and use of foreign non-governmental aid expired on 17 September 2020 and was replaced by Decree No. 80 of 8 July 2020. See also Decree No. 218 of 26 December 2013 on the law on corporate income tax and Circular No. 78 of 18 June 2014 on Decree No. 218. That Decree provides that grants received and used for educational activities, scientific research, culture, art, charity, humanity and other social activities in Viet Nam (art. 4.7) are exempt from taxation. However, there is no further guidance on the conditions, criteria or procedures to warrant exemption from corporate income tax for those grants. Circular No. 78 providing guidance on that decree repeats the same text, which has left its application open to the discretion of the Government. According to the State Security Agency, the revenue of the Law and Policy of Sustainable Development Research Centre is foreign non-governmental aid, which falls under the purview of Decree No. 80, and “in the process of receiving grants from abroad, the Centre does not carry out the approval procedures and is not approved by the competent authorities in accordance with law”. However, the tax law and the Criminal Code of Viet Nam do not regulate such violations as a criminal matter. Furthermore, pursuant to Decree No. 218 (art. 4.7) and Circular No. 78 (art. 8), the Centre's total tax revenue deemed “foreign non-governmental aid” is “exempted tax” and is “not payable”. Mr. Bách maintains that all the grants received by the Centre were used for the proper purposes, as confirmed by its foreign grant sponsors, and were therefore correctly categorized as exempt from corporate tax income.

¹² Human Rights Committee, general comment No. 34 (2011), paras. 22 and 34.

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 that criminalize critical speech encourage self-censorship and suppress important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression.¹³

24. The source 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 raised serious concerns about the decrees on which Mr. Bách's deprivation of liberty is based.¹⁴ 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.¹⁵

25. 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 also noted that the amended regulations had "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 of association. They noted that there was "particular cause for concern" regarding article 2 of Decree No. 93, under which Mr. Bách was charged, which prohibits foreign non-governmental aid that affects political security or social order and safety or infringes upon the interests of the State. The imprecise nature of that article of the Decree and the absence of clear definitions left it "open to a wide range of interpretations", thus impeding "the ability of associations to pursue their statutory activities" and violating article 22 of the Covenant.¹⁶

26. The source submits that Mr. Bách was also charged under Decree No. 80, which restricts access to foreign aid. The above-mentioned Special Rapporteurs have noted that most of the legal justifications for restrictions on access to foreign aid put forward in article 5 of that Decree do not comply with article 22 (2) of the Covenant. That article of the Covenant stipulates that any restrictions placed on the exercise of the fundamental right to freedom of association must be necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Accordingly, they advised the Government that restrictive measures must not "be misused to hinder the work and endanger the safety of civil society organizations".¹⁷

27. While Mr. Bách's detention is ostensibly based on tax violations, the laws forming the basis of his arrest and detention relate directly to his exercise of freedom of expression and association. His organization took part in monitoring the Government's compliance with environmental agreements, which constitutes a form of expression. While the rights to freedom of expression and of association may be restricted in limited circumstances, the Government has not articulated a legitimate State interest in restricting them. Its application of criminal penalties for their exercise is not proportional and does not constitute the least intrusive means. Decrees No. 80 and No. 93 vaguely criminalize an overly broad assortment of speech and information-sharing acts and hinder the ability of non-governmental entities to operate freely. Mr. Bách was deprived of his liberty specifically because of his public interest work, meaning that his right to freedom of expression was violated both *de jure* and *de facto*. Furthermore, he 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.

¹³ Opinion No. 44/2016, paras. 24 and 25.

¹⁴ See communication VNM 7/2021.

¹⁵ A/HRC/20/17, para. 20.

¹⁶ Communication VNM 7/2021, pp. 5–7.

¹⁷ *Ibid.*, p. 8.

Category III

28. The source argues that Mr. Bách's right to a fair and impartial trial has been violated on several fronts, including: (a) his right to challenge the basis of his arrest (art. 9 of the Covenant and art. 9 of the Universal Declaration of Human Rights); (b) his right to prepare an adequate defence (art. 14 (1) and (3) (b) of the Covenant and art. 10 of the Universal Declaration of Human Rights); (c) his right to meaningfully consult counsel (art. 14 (3) (b) and (d) of the Covenant and arts. 10 and 11 of the Universal Declaration of Human Rights);¹⁸ (d) his right to the presumption of innocence (art. 14 (2) of the Covenant and art. 11 of the Universal Declaration of Human Rights);¹⁹ and (e) 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 was not provided 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. That delay also violated his right to be brought promptly before a judicial authority.²⁰

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 pretrial 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 saw Mr. Bách only twice before his trial on 24 January 2022, and those 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. That is further supported by the court's almost automatic determination that he was guilty during his initial hearing and the 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 Embassies of Germany and the United States, were allowed to enter the courtroom. The Government's explanation for denying their requests was that there was no space in the courtroom, 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 the press and the public for reasons of public order or national security, but the Government has never provided any argument as to why Mr. Bách's case would fit an exception to the right to 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 through State-run media. Media articles published following his trial reported that he had confessed to the charges against him and suggested that further charges might be pending, which effectively tried him in the court of public opinion. In both his initial trial and his appeal hearing, Mr. Bách was escorted by security agents, which conveyed the appearance of guilt. His prolonged incommunicado detention both before and after his trial likewise undermines the presumption of innocence by suggesting that he is dangerous or poses a security threat.

34. According to the source, Mr. Bách's right to be tried by a competent tribunal was not upheld. The Procuracy 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. Furthermore, the source submits that: (a) nearly all the judges are members of the Communist Party of Viet Nam and are screened by the Party to determine their suitability for the bench; (b) the Party's oversight and control over the judiciary is further

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

¹⁹ Ibid., principle 36.

²⁰ Human Rights Committee, general comment No. 35 (2014), para. 32.

reinforced by the reappointment process, which takes place every five years following review of their conduct by Party officials; and (c) a lack of legislative and other safeguards protecting judicial independence has led to both judges and prosecutors being 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.²¹

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 violations of that right adversely affect his ability to prepare a defence. The source recalls that credible allegations of torture and ill-treatment "significantly decrease the likelihood" that a detainee has received a fair trial.²² 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".²³

36. Viet Nam is bound by the obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Denying family visitation and correspondence is considered punitive and can increase suffering.

37. The authorities kept 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 member from sharing a photograph of his child with him. The State has made clear that it considers Mr. Bách "recalcitrant" and "stubborn" for maintaining his innocence, and its denial of family visits appears to be punitive and designed to compel a confession of guilt by subjecting him to an ongoing environment of distress, which constitutes ill-treatment and may rise to the level of torture. Mr. Bách has gone on hunger strike on two occasions to protest against his ongoing incommunicado detention. He appeared gaunt and unwell at his appeal hearing, and his family and friends believe that his inability to see or communicate with loved ones is severely affecting his well-being. That, 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 has thus failed to observe the international norms relating 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.

Category V

39. The source submits that Mr. Bách's deprivation of liberty is arbitrary under category V.

40. According to the source, where the authorities have made statements to, or conducted themselves towards, 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. Likewise, if the facts of the case indicate that the individual was detained to prevent him or her from exercising his or her fundamental rights, the detention is likely to be discriminatory.

41. The Government's treatment and attitude towards Mr. Bách can only be characterized as discriminatory, and they have negatively affected his right to equality before the law. It appears that Mr. Bách was targeted based on his activities relating to environmental activism and monitoring of the State's compliance with international and domestic regulations relating to environmental law. While he does not consider himself to be a human rights defender, his professional activities relate directly to advocating for the rights of others, including the right

²¹ Human Rights Committee, general comment No. 32 (2007), para. 19.

²² Opinion No. 53/2018, para. 77.

²³ Opinion No. 85/2017, para. 50.

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 State Security Agency and have not been returned. Accordingly, his differential treatment may constitute discrimination on the basis of his perceived status as a human rights defender.

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

Response from the Government

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. Bách's physical and mental integrity.

44. On 26 January 2023, the Government requested an extension in accordance with paragraph 16 of the Working Group's 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 that 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 Mr. Bách's detention 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.²⁴ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

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. They arrested him without a warrant and did not provide him with any information regarding the basis for his arrest. Neither did they provide him with any basis for confiscating his personal belongings such as documents, computers and cell phones. Mr. Bach was not brought before a judge to determine the legality of his arrest and pretrial detention. The source also submits that Mr. Bách was not given any explanation 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. That delay also violated his right to be brought promptly before a judicial authority.²⁵

²⁴ A/HRC/19/57, para. 68.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 32.

50. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of his or her 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 his or her arrest and shall be promptly informed of any charges against him or her.²⁶ Noting the source's submissions, and absent a response from the Government, the Working Group finds that Mr. Bách was not shown an arrest warrant (or equivalent), informed immediately of the reasons for his arrest or promptly informed of the charges against him, in violation of article 9 (1) and (2) of the Covenant. While it is unclear if any of the 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 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.²⁷ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of the detention is protected under article 9 of the Universal Declaration of Human Rights, 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, 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.²⁸ In the present case, absent a response from the Government, the Working Group concludes that there was no individualized determination of Mr. Bách's circumstances, 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 for in article 9 (3) of the Covenant,²⁹ and violates the right under article 9 (4) to challenge the lawfulness of the detention before a court.³⁰ Judicial oversight of detention is a fundamental safeguard of personal liberty³¹ 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 Universal Declaration of Human Rights 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 Universal Declaration of Human Rights and article 16 of the Covenant.

53. The source also submits that Mr. Bách's right to family visits and contact with the outside world was violated. Throughout his detention, Mr. Bách has not been permitted to receive visits, phone calls or written communications from his family, despite numerous requests. A detainee must be allowed to communicate with and receive visits from family members, and any restrictions and conditions with regard to such contact must be reasonable. As the Human Rights Committee has observed, giving prompt and regular access to family

²⁶ *Ibid.*, para. 24.

²⁷ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

²⁸ Human Rights Committee, general comment No. 35 (2014), paras. 37 and 38.

²⁹ *Ibid.*, para. 35.

³⁰ Opinions No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019 and 25/2021.

³¹ [A/HRC/30/37](#), para. 3, and [CAT/C/VNM/CO/1](#), para. 24.

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.³² The Working Group finds that Mr. Bách's right to communicate with the outside world was denied, contrary to rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)³³ and principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

54. For those 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.

Category II

55. The source submits that while Mr. Bách's detention is ostensibly based on tax violations, the laws forming the basis of his arrest and detention relate directly 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 constitutes a form of expression. 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 that are not in line with government policy.³⁴ 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.³⁵ It has emphasized that this form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, certain types of expression, such as discussion of government policies and political activities, including for peace or democracy, should never be subject to restrictions.³⁶ The Council has called upon States to refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant.³⁷

57. While those rights may be restricted in limited circumstances, in the present case, 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 intrusive means. The permitted restrictions to that 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 under 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.³⁸ The Government did not present any argument to invoke any of those 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 that article of the Covenant, nor that Mr. Bách's arrest and detention are 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 No. 93 of 22 October 2009, which was replaced by Decree No. 80 of 8 July 2020, both vaguely criminalize an overly broad swath of speech and information-sharing acts, thus hindering the ability of non-governmental entities to operate

³² Human Rights Committee, general comment No. 35 (2014), para. 58; and opinion No. 84/2020, para. 69.

³³ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

³⁴ Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

³⁵ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

³⁶ A/HRC/14/23, para. 81 (i).

³⁷ Human Rights Council resolution 12/16, para. 5 (p).

³⁸ Human Rights Committee, general comment No. 34 (2011), para. 22.

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 raised serious concerns about the decrees on which Mr. Bách's deprivation of liberty is based.³⁹ 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.⁴⁰

59. 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 also noted that the amended regulations had "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. They noted that there was "particular cause for concern" regarding article 2 of Decree No. 93, under which Mr. Bách was charged, which prohibits foreign non-governmental aid that affects political security or social order and safety or infringes upon the interests of the State. The imprecise nature of that article of the Decree and the absence of clear definitions left it "open to a wide range of interpretations", thus impeding "the ability of associations to pursue their statutory activities" and violating article 22 of the Covenant.⁴¹

60. The source submits that Mr. Bách was also charged under Decree No. 80, which restricts access to foreign aid. The above-mentioned Special Rapporteurs found that most of the legal justifications for restrictions on access to foreign aid put forward in article 5 of that Decree did not comply with article 22 (2) of the Covenant, which article stipulates that any restriction placed on the exercise of the fundamental right to freedom of association must be necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Special Rapporteurs advised the Government that restrictive measures must not "be misused to hinder the work and endanger the safety of civil society organizations".⁴²

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.⁴³ In the Working Group's view, Decree No. 93 and Decree No. 80 do not meet that standard. They are thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and the acts they describe cannot be considered "prescribed by law" or "defined with sufficient precision" owing to the vague and overly broad language they contain.⁴⁴ Prosecutions under those decrees are likely to have a chilling effect upon the peaceful exercise of the right to freedom of opinion and of expression. For those reasons, the Working Group concludes that Mr. Bách's detention resulted from his exercise of the right to freedom of opinion and of expression, contrary to article 19 of the Universal Declaration of Human Rights 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.

³⁹ See communication VNM 7/2021.

⁴⁰ A/HRC/20/17, para. 20.

⁴¹ Communication VNM 7/2021, pp. 5–7.

⁴² *Ibid.*, p. 8.

⁴³ Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59, and Human Rights Committee, general comment No. 35 (2014), para. 22.

⁴⁴ Human Rights Committee, general comment No. 34 (2011), para. 25.

Category III

64. Given its finding that Mr. Bách's deprivation of liberty 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 violated his right to prepare an adequate defence. He was not able to meet with his lawyer consistently, despite multiple requests. Mr. Bách only saw his lawyer twice before his trial on 24 January 2022, and those 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.⁴⁵ The Working Group finds that the extremely limited access to legal assistance granted to Mr. Bách violates his right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.⁴⁶ Moreover, Mr. Bách was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate with counsel, as guaranteed under article 14 (3) (b) of the Covenant. That 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 the present 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.⁴⁷

67. The source submits that Mr. Bách's counsel was denied the right to question witnesses for the prosecution and the court refused to hear his defence in its entirety. 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.⁴⁸ 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 article 14 (1) and (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.⁴⁹ 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 Universal Declaration of Human Rights 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 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 through State-run

⁴⁵ [A/HRC/30/37](#), annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35; [A/HRC/48/55](#), para. 56; and [A/HRC/45/16](#), paras. 50–55. See also [A/HRC/27/47](#), para. 13.

⁴⁶ Opinions No. 18/2018, para. 53; No. 78/2018, paras. 78–79; and No. 43/2022, para. 105.

⁴⁷ See opinions No. 35/2018, No. 46/2018, No. 9/2019, No. 44/2019, No. 45/2019 and No. 43/2022; and [CAT/C/VNM/CO/1](#), paras. 16 and 17.

⁴⁸ Human Rights Committee, general comment No. 32 (2007), para. 39.

⁴⁹ *Ibid.*, para. 29.

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 might be dangerous criminals.⁵⁰ In that regard, the Working Group notes the source's submission that Mr. Bách was surrounded by security agents when he entered and left 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 Mr. Bách might be a dangerous criminal warranting heavy security, thus undermining the presumption of innocence.⁵¹ 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. In its general comment No. 32 (2007), the Human Rights Committee specified that the media should avoid news coverage undermining the presumption of innocence (para. 30). In the present case, the Working Group considers that the news coverage undermined Mr. Bách's right to be presumed innocent during the appeal proceedings. The Working Group therefore finds that Mr. Bách's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights 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 argues that: (a) nearly all the judges are members of the Communist Party of Viet Nam and are screened by the Party to determine their suitability for the bench; (b) the Party's oversight and control over the judiciary is further reinforced by their reappointment process, which takes place every five years following review of their conduct by party officials; and (c) a lack of legislative and other safeguards protecting judicial independence has led to both judges and prosecutors being seen as tools of repression and injustice. Indeed, in its concluding observations on Viet Nam, the Human Rights Committee expressed concern 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, exposed them to political pressure and jeopardized their independence and impartiality.⁵² 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. Bách'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 those factors, and absent a response from the Government, the Working Group concludes that Mr. Bách's right to be tried by a competent, independent and impartial tribunal under article 14 (1) of the Covenant was violated. That is supported by the court's almost automatic determination that he was guilty during his initial hearing, without allowing him an opportunity to present his defence.

72. Lastly, the Working Group notes the source's submission that Mr. Bách's lawyer received notice on 5 August 2022 that his appeal hearing would take place on 11 August. The lawyer was not allowed to meet with Mr. Bách before the hearing and her presence at the hearing was nominal; her laptop and phone were confiscated before she was allowed to enter the courtroom, and in images of the hearing shared by State-run media, Mr. Bách is seen standing alone without counsel before the judge in an almost empty courtroom. The State-run media also allegedly misrepresented the trial proceedings, reporting that Mr. Bách had confessed, whereas he has maintained his innocence. Based on the foregoing, the Working Group finds a violation of article 14 (5) of the Covenant which imposes on States a duty to review conviction and sentence, both as to sufficiency of the evidence and of the law.⁵³

⁵⁰ *Ibid.*, para. 30.

⁵¹ Opinions No. 40/2016, para. 41; No. 9/2017, para. 62; No. 36/2018, para. 55; No. 83/2019, para. 73; and No. 36/2020, para. 68.

⁵² [CCPR/CO/75/VNM](#), para. 10.

⁵³ *Bandajevsky v. Belarus* ([CCPR/C/86/D/1100/2002](#)), para. 10.13.

73. The Working Group thus concludes that the 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.

Category V

74. According to the source, Mr. Bách appears to have been targeted based on his activities relating to environmental activism and monitoring of the State's compliance with international and domestic regulations on environmental law. While he does not consider himself to be a human rights defender, his professional activities relate directly 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 were arrested in Viet Nam in the course of seven months on charges relating to tax evasion and that they all received heavy prison sentences. Their arrest and investigation reportedly did not follow the normal process for tax evasion.

76. In the absence of a reply from the Government, *prima facie* the Working Group finds the source's allegations that Mr. Bách was targeted based on his activities relating to environmental activism to be credible. The Working Group recalls that it has issued several opinions pertaining to Vietnamese activists who have been involved in environmental activism.⁵⁴ In this context, the Working Group finds that Mr. Bách's arrest, conviction and sentence and the 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 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.⁵⁵

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, relating to his environmental work. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights 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.

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 the 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 against 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,⁵⁶ 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

⁵⁴ See opinions No. 44/2019, No. 45/2019, No. 81/2020, No. 81/2021, No. 43/2022 and No. 86/2022. See also [A/71/281](#), paras. 35 and 39.

⁵⁵ Opinions No. 82/2021, para. 84; No. 40/2021, para. 90; No.11/2021, para. 87; No. 59/2019, para. 79; and No. 13/2018, para. 34.

⁵⁶ Opinions No. 45/2019, para. 76; No. 44/2019, paras. 74–75; and No. 35/2018, para. 39.

rights defenders, in Viet Nam.⁵⁷ 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.⁵⁸

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 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 Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and 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;

⁵⁷ For example, opinions No. 81/2020, No. 36/2021, No. 82/2021, No. 43/2022 and No. 86/2022.

⁵⁸ Opinion No. 47/2012, para. 22.

(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.⁵⁹

[Adopted on 31 March 2023]

⁵⁹ Human Rights Council resolution 51/8, paras. 6 and 9.