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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 38/2022 concerning José Sobrinho Vargas Junior (Brazil)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 7 June 2021 the Working Group transmitted to the Government of Brazil a communication concerning José Sobrinho Vargas Junior. The Government replied to the communication on 9 August 2021. 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).

* Miriam Estrada-Castillo and Elina Steinerte did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. José Sobrinho Vargas Junior, a Brazilian national born in 1982, is a lawyer and human rights defender who lives in Redenção, Pará.

a. Background and context

5. The source reports that Mr. Vargas works as a human rights defender, professor and lawyer. He represents the victims and witnesses of the Pau D'Arco massacre, an incident on 24 May 2017 during which 10 landless rural workers who were occupying a farm in the municipality of Pau D'Arco were allegedly killed by the police and military. The survivors, lawyers and public agents who were involved in the case have subsequently reported threats against them. The investigations have not yet found the perpetrators of the crime. The civil and military police officers who are suspects in the criminal process are at liberty, and some of them are working in Pau D'Arco and Redenção.

6. On 20 October 2020, a local leader, electoral candidate and president of a regional association of people with epilepsy in Redenção disappeared. On 1 December 2020, the lawyer with whom Mr. Vargas shared an office and three other people were arrested and/or placed under restrictive precautionary measures. On 10 December 2020, Mr. Vargas testified as a witness in the case of the local leader's disappearance. On 25 December 2020, a survivor and key eyewitness of the Pau D'Arco massacre claimed that he had received threats from police officers involved in the Pau D'Arco case.

b. Arrest and detention

7. According to the source, Mr. Vargas was arrested on 1 January 2021 at his house by police agents of the State of Pará, who at the time showed an arrest and search warrant issued by the Civil Police and the Public Prosecutor's Office. The arrest warrant included a charge of first degree murder under article 121 (2) of the Penal Code. However, the source claims that neither the warrant nor the indictment provided a description of Mr. Vargas' involvement in the crime. He was accused of participation in the crime that resulted in the disappearance since 20 October 2020 of the prominent figure and local candidate for the 2020 municipal elections. Mr. Vargas' cellular phone, computer and other assets were seized. The source claims that such a search and seizure should have been conducted in the presence of a member of the Brazilian Bar Association, under article 7 (II) of Law No. 8.906/1994. When Mr. Vargas asked about this requirement, the Chief of Police informed him that the Prosecutor had dismissed it.

8. The source reports that Mr. Vargas was taken to the Public Prosecutor's Office to give statements and then to the hospital for a medical examination. Afterwards, he was taken to the Redenção Prison, where he was kept until 25 January 2021.

9. Mr. Vargas participated in his custody hearing, held on 3 January 2021, by teleconference, which allegedly made it difficult for the judge to have a good understanding of his condition. In addition, Mr. Vargas did not have the right to meet with his lawyer before the hearing; he was only able to speak with his lawyer through the public teleconference link to the hearing itself, minutes before the hearing began. In accordance with article 318 (IV) of the Code of Criminal Procedure, Mr. Vargas requested that the pretrial detention be modified to house arrest under article 7 (V) of Law 8.906/94 because he was a lawyer, as well as the sole provider for his family. During the hearing, his lawyer requested access to the WhatsApp chat used as evidence, but the judge stated that it had not been included in the case file, suggesting that the defence should obtain this information from the police.

10. During the 3 January hearing, Mr. Vargas requested to be allowed to communicate with his family by letter and to be given the use of a blanket, a pillow and books and a waiver of the requirement for him to wear a prison uniform. However, these requests were denied. Nevertheless, in the following days, Mr. Vargas was able to obtain satisfaction of some of these requests through a submission to the prison administration.

11. In the days following his detention, images and videos of Mr. Vargas – taken out of context from his personal sites on social networks – were shared on different local groups. The images and conversations were leaked and arranged so as to portray Mr. Vargas as disrespectful of the law. Mr. Vargas is a lawyer and professor and his reputation is particularly important for his activities.

12. On 23 January 2021, the Prosecutor of Pará filed a criminal complaint against Mr. Vargas and four other individuals. On 25 January, the Court of Justice of Pará decided in favour of Mr. Vargas' petition for habeas corpus, and subsequently ordered his transfer to house arrest. That same day, the survivor and key eyewitness of the Pau D'Arco massacre, who had previously claimed to have received threats from police officers involved in the case, requested a meeting with Mr. Vargas for the next day. On 26 January, the survivor and key witness was killed.

13. On 29 January 2021, the judge accepted the criminal complaint against Mr. Vargas and scheduled an evidentiary hearing for 15 April 2021.

14. On 5 March 2021, Mr. Vargas' lawyer requested the Prosecutor and the police to add the evidence supporting the arrest to the case file. On 16 March 2021, the judge ordered full access to the evidence that was part of the investigation.

15. On 23 April 2021, the defence gained access to certain evidence used against Mr. Vargas. However, it could not yet access the other documents seized by the police, which only became available on 4 May 2021.

16. On 13 May 2021, the Brazilian Bar Association of the State of Pará filed a petition for habeas corpus, seeking closure of the criminal case based on the evidence of Mr. Vargas' innocence.

17. On 14 May 2021, the Federal Supreme Court recognized the right to access all of the evidence presented. It cancelled the hearing scheduled for 18 May and set a new deadline for the submission of pleas.

18. The evidentiary hearing scheduled for 18 May 2021 did not take place because the Federal Supreme Court decided that the hearing should be suspended until the evidence already produced by the police authority, but not yet made available to the defence, was included in the case file.

19. The source reports that Mr. Vargas has remained under house detention since 25 January 2021, being materially prevented from practising his profession since the judge prohibited him from activating his telephone line. Such restrictions reportedly also prevent him from exercising his right to defend himself, a situation that has allegedly been aggravated due to the COVID-19 pandemic. Mr. Vargas is also prevented from accessing his work email and performing professional duties, such as participating in hearings.

c. Legal analysis

20. The source alleges that Mr. Vargas' detention is arbitrary under categories I, II, III and V.

i. Category I

21. The source claims that there is no legal basis for the detention because, according to Brazilian law, Mr. Vargas meets all the requirements to answer the charges at liberty. He has also faced obstacles in challenging the legality of his detention without access to his telephone and computer, which were seized but are essential for his defence.

ii. Category II

22. The source also claims that Mr. Vargas' detention constitutes a punishment for the exercise of his rights under articles 7, 13, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25 and 26 of the Covenant.

23. According to the source, Mr. Vargas is well known for his work on important cases in defence of human rights, including on behalf of the Pau D'Arco massacre victims and indigenous people challenging the activities of mining companies.

24. It is reported that the State of Pará is one of the most dangerous regions in the country in terms of agrarian conflicts, and one of the states with the most killings in rural areas. Mr. Vargas was included in a local programme for the protection of human rights defenders due to constant threats in retaliation for his work. In the past, Mr. Vargas was forced to leave the city of Redenção with his family, due to threats on his life.

25. According to the source, Mr. Vargas was arrested based on a distorted chat with an office colleague. However, during one of the hearings, several messages that proved his innocence were omitted, misleading the judge.

26. A few days prior to Mr. Vargas' arrest, one of the survivors and the main witness of the Pau D'Arco massacre reportedly contacted Mr. Vargas to inform him that he was receiving death threats from the officers allegedly involved in the massacre. They agreed to report the threats. Mr. Vargas was arrested on 1 January 2021, and transferred to home detention on 25 January. The same day, he arranged to meet the witness on the afternoon of 26 January. However, at dawn on 26 January, the witness was killed by a shot to the back of the head. For the source, it is important to highlight that the arrest of Mr. Vargas was carried out by the Civil Police of the State of Pará, one of the same institutions involved in the Pau D'Arco events.

iii. Category III

27. The source questions the grounds for granting and maintaining Mr. Vargas' provisional detention in view of the weak evidence presented. His requests for release from detention were denied by the court, as was his petition for habeas corpus before the Court of Justice.

28. The source claims that, although Mr. Vargas has formal access to the case file, he has experienced difficulties accessing the evidence needed to defend himself. As an example, Mr. Vargas was only granted access to the cellular phone of the lawyer with whom he shared an office on 23 April 2021, 113 days after his arrest. Moreover, this evidence was obtained in violation of the technical guidelines safeguarding the chain of custody.

29. According to the source, Mr. Vargas has not been granted access to his own cellular phone and laptop, which were seized during his arrest. In addition, procedural guarantees under Brazilian law were not respected, such as the requirement that the search and seizure be undertaken in the presence of a member of the Bar Association.

30. The source also alleges that the messages used to incriminate Mr. Vargas were leaked to local media outlets before his defence could access them, in an attempt to defame him and jeopardize his human rights work.

iv. Category V

31. Since the arrest of Mr. Vargas, audio files and photos have also circulated on local networks and groups, some of them taken out of context, with the intention of casting doubt on his credibility as a lawyer.

32. Mr. Vargas was criminally charged on the basis of 12 WhatsApp messages taken from a context of 567 messages, by the same police under investigation for the Pau D'Arco massacre. It was very difficult for his defence to access these messages. Although access was requested as soon as Mr. Vargas was arrested, they were only made available on 23 April 2021, 113 days later.

33. Mr. Vargas' arrest is preventing him from practising his profession. After he was transferred to home detention, the main witness of the Pau D'Arco massacre was killed and the families occupying the farm were victims of an aerial attack with pesticides, poisoning the women and children living there. Lawsuits are progressing without Mr. Vargas being able to intervene, as he can no longer follow the judicial process diligently.

Response from the Government

34. On 7 June 2021, the Working Group transmitted the allegations from the source to the Government, requesting it to provide detailed information about the situation of Mr. Vargas by 6 August 2021. On 6 August, the Government requested an extension, which was granted. The Government submitted its reply on 9 August 2021.

a. Information provided by the Public Prosecutor's Office of the State of Pará

35. According to the Government, the Civil Police of Redenção instituted an inquiry into the disappearance of the president of the regional association of people with epilepsy, who was a candidate for the office of councillor for the municipality of Redenção at that time. The crime committed against him is linked to the succession of leadership in the regional association he presided over and the public resources that the association would receive.

36. During the inquiry, there was a hearing of several witnesses, overseen by the Public Prosecutor's Office. Technical evidence was produced, documents were seized, data confidentiality was lifted and precautionary measures were duly authorized by the federal judicial power.

37. Initially, there was a request for the temporary arrest of three other individuals. The local judicial power granted this request, which was carried out on 4 December 2020. Mr. Vargas' preventive detention was also subsequently requested and ordered.

38. During the investigation, the authorities determined the involvement or participation in the crime by Mr. Vargas and four other individuals. The police proposed their indictment. Subsequently, a criminal action was filed by the Prosecutor on 23 January 2021.

39. The Government emphasizes that, in the case of electronic judicial proceedings recently implemented in the Criminal Court of Redenção, it is possible for any individual with access to the system to download the full case file through an electronic address, provided that no judicial authority has determined the proceeding to be confidential.

40. The investigation, which was supervised by the Public Prosecutor's Office, was carried out by the Civil Police in a regular and impartial manner, with several steps being taken to ensure this impartiality, such as the inclusion of reports submitted by the defendants in the investigation procedure, at their request.

41. The Government further notes that Mr. Vargas' role as a human rights activist in the Pau D'Arco massacre is not related to the case that led to his imprisonment. Therefore, there is no reason to conclude that his deprivation of liberty amounts to a human rights violation. His detention does not aim to impair the exercise of his rights and freedoms.

42. The Government clarifies that during the preliminary investigations and the present phase of the procedural instruction, the Military Police did not participate. There is furthermore no evidence of the participation of Civil Police officers from the State of Pará in the Pau D'Arco massacre or in the investigation involving Mr. Vargas.

43. The Government emphasizes that arguments relating to the evidence against Mr. Vargas are a matter for his defence, which will be considered during the criminal proceedings. The authorities consider that there are sufficient grounds to include Mr. Vargas as a defendant in the proceedings.

b. Information provided by the Court of Justice of the State of Pará

44. The Government indicates that the criminal injunction procedure included a request for the preventive detention of Mr. Vargas and others, as well as the search and seizure of their cellular phones.

45. On 31 December 2020, a judicial decision was issued ordering the preventive detention of Mr. Vargas and three of his co-defendants. According to the judge, the requirements under the Code of Criminal Procedure were met: that is, proof of the existence of a crime and sufficient evidence of authorship, and a need, given the seriousness of the conduct attributed to the accused and the danger resulting from his liberty, to safeguard public order, the economic order, the procedural instruction and the application of criminal law.

46. The Government highlights that precautionary measures other than deprivation of liberty were applied in the case of one of the other accused individuals. According to the Government, this demonstrates the cautious conduct of the judicial authorities in this case and that the preventive detention of Mr. Vargas was exceptional and ordered out of strict necessity due to the seriousness of the facts. At that time, the victim's body had not yet been found.

47. On 31 December 2020, the Criminal Court of Redenção concluded that there was proof of a crime, since the victim had been missing for two months without contacting family, friends or any other person. The victim's body was later located in an advanced state of decomposition.

48. According to the Government, the evidence shows that the victim went to Mr. Vargas' office and disappeared soon after he was recorded by security cameras leaving the premises and entering a vehicle registered in the name of one of the co-defendants.

49. The Government states that the initial disappearance and subsequent homicide of the victim is related to his desire to enter into a legal transaction with the defendants for the sale of the leadership of the regional association of which he was president. This change in the presidency of the association would have been carried out in a fraudulent way. The organization was about to receive a large sum of money. This underscores the need to arrest the accused to maintain public and economic order.

50. In addition, once the search and seizure warrant was executed and access to data was possible, the police found that Mr. Vargas had possibly deleted WhatsApp messages until 20 October 2020, the date of the victim's disappearance.

51. The Government provides an account of conversations purportedly held between Mr. Vargas and his co-defendants, indicating that there is evidence of his criminal conduct. Mr. Vargas is understood to have been involved with a co-defendant in the disappearance of the victim and the receipt of a large sum of money in favour of the organization. Finally, the victim was seen for the last time as he left Mr. Vargas' office. Images obtained from security cameras showed the vehicle leaving Redenção in the direction of the city of Santana do Araguaia. The car returned about two hours later, but there was no sign of the victim.

52. As a result, the preventive detention of Mr. Vargas was ordered based on evidence suggesting his involvement in a criminal act. The full audio evidence obtained by police authorities from the mobile telephones, including conversations with Mr. Vargas, can be found in the criminal records, which were shared with the defendants and their lawyers.

c. Treatment of Mr. Vargas

53. The Government indicates that the treatment afforded to Mr. Vargas since his detention is consistent with Brazilian law and international standards for the protection of human rights, and does not constitute arbitrary deprivation of liberty.

54. After being arrested, Mr. Vargas was taken to the Public Prosecutor's Office to provide a statement and to a hospital for a medical examination. In the first stage of the police interrogation, he was accompanied by two lawyers. In the second stage, another lawyer was present.

55. On 2 January 2021, a lawyer acting for Mr. Vargas submitted a petition seeking access to the entirety of the case documents. On the same day, a decision was issued granting this access and lifting the confidentiality of the documents.

56. Mr. Vargas' right to challenge the lawfulness of the detention was promptly guaranteed through a custody hearing held on 3 January 2021 before the Criminal Court of Redenção. This right was exercised in accordance with guideline 7 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, which establishes that "no substantial waiting period shall exist before a detainee can bring a first challenge to the arbitrariness and lawfulness of detention".

57. The hearing took place by teleconference because of the restrictions imposed by the coronavirus disease (COVID-19) pandemic. The National Council of Justice has issued

guidelines to guarantee that no right is jeopardized because of the use of virtual tools during judicial proceedings. Courts have been prioritizing videoconference hearings and online assistance to avoid the gathering of people in courthouses, while still ensuring the continuity of judicial services.

58. During the custody hearing, Mr. Vargas was accompanied by his lawyer. A representative of the Public Prosecutor's Office was also present. Mr. Vargas was interviewed after prior contact with his lawyer. There is no record of objections arising from a denial of a prior and private interview with the appointed lawyer. Mr. Vargas' lawyer requested revocation of the arrest, and alternatively, an order for house arrest. The Prosecutor objected to these requests.

59. According to the Government, the Court decided to maintain Mr. Vargas' precautionary custody because no new facts were presented. Furthermore, the Court concluded that, since his children were being cared for by their mother, the presence of Mr. Vargas at his house was not required. The judge also notified the administrative authority responsible for the institution where Mr. Vargas was being held to observe the legal requirements regarding the conditions of detention.

60. The Government emphasizes that Mr. Vargas has been receiving adequate treatment, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in particular with respect to principle 37.

61. On 23 January 2021, the Prosecutor filed a criminal complaint against Mr. Vargas and his four co-defendants. On 29 January 2021, the Criminal Court of Redenção received the complaint. The judge maintained the preventive detention, stating that there were no new circumstances to justify a re-evaluation of the detention. The judge also scheduled an evidentiary hearing for 15 April 2021.

62. On 25 January 2021, the Court of Justice of the State of Pará ruled on a habeas corpus petition in favour of Mr. Vargas. Under the statute of the Brazilian Bar Association, Mr. Vargas was entitled, as a lawyer, to be detained at the General Staff Room. However, since such a room does not exist in Redenção, the judge ordered him to be placed under house arrest. On the same day, the Criminal Court of Redenção issued a decision to enable this change.

63. On 5 March 2021, Mr. Vargas' lawyer requested the authorities to add evidence to the case file. On 16 March 2021, the judge ordered full access to the evidence. The judge also authorized Mr. Vargas to practise his profession as a lawyer from his home. According to the Government, Mr. Vargas informed the court of the activation of another telephone line on a different mobile telephone. As a result, the Government claims that allegations about Mr. Vargas being prevented from carrying out his professional activities are not accurate. The evidentiary hearing was rescheduled to 18 May 2021.

64. On 29 April 2021, scientific evidence and a report on the location of the crime were added to the case file. On 14 May 2021, Mr. Vargas' lawyers filed his response to the accusation. On 17 May 2021, the judicial authority postponed the evidentiary hearing.

65. On 9 June 2021, the court issued another decision, after analysing the proportionality requirements, to maintain the deprivation of liberty of the defendants. Several habeas corpus motions were duly considered. It also reiterated that the evidentiary hearing had not occurred because of the intense procedural activity of the parties.

66. On 28 June 2021, access to the entirety of the evidence produced and documented by the police was granted, including the lawful interception of private communications.

67. The Government emphasizes that Mr. Vargas' detention cannot be considered arbitrary. The judicial authorities have continually reviewed the lawfulness, necessity and proportionality of his deprivation of liberty, considering his individual circumstances, and have concluded that house arrest remains justified.

68. Mr. Vargas is still included in a protection programme for human rights defenders in Pará. Safety measures, such as periodic police patrolling near his home and a mapping of risks in the area, are being implemented.

69. In summary, the Government notes that the criminal records demonstrate that Mr. Vargas' fundamental rights were guaranteed, such as legal assistance throughout the proceedings and the right to petition, including applications for habeas corpus and appeals.

70. Mr. Vargas' deprivation of liberty has no connection with his work as a human rights defender or with the Pau D'Arco massacre. The seriousness of the criminal offence with which he is charged justifies the imposition of precautionary measures by the judicial authorities, including deprivation of liberty, as a measure of last resort, to preserve the proper functioning of the judicial system.

71. Finally, the Government notes that Brazil recognizes that the prohibition of arbitrary deprivation of liberty is a general practice accepted as law, constituting customary international law and a peremptory norm of international law (*jus cogens*).

Further comments from the source

72. The source highlights certain allegations that were not addressed by the Government, such as the connection between Mr. Vargas' work as a human rights lawyer and his deprivation of liberty. The source points to the death threats received by a key witness to the Pau D'Arco massacre and his murder on the day when the witness and Mr. Vargas had agreed to meet. The Prosecutor has not filed any response to the inquiry in relation to this murder.

73. The source claims that the Government has not addressed the lack of evidence of Mr. Vargas' alleged involvement in the murder of the president of the regional association of persons with epilepsy and how he would benefit from it. The Government does not explain how Mr. Vargas' conduct was related to the victim and to the other defendants, since he was not a lawyer for the regional association and only shared an office with one of the co-defendants.

74. On the separation between the Civil and Military Police, the source notes that officers from the Civil Police are among the defendants in the Pau D'Arco case, and that the Civil Police is the state agency responsible for the criminal investigation initiated against Mr. Vargas.

75. The source further alleges that Mr. Vargas' detention is not proportionate because one of his co-defendants, who allegedly had greater involvement in the crime, was not placed in preventive detention.

76. In addition, the Government downplays the delay in giving Mr. Vargas' defence access to the evidence, which only happened after intervention from the Federal Supreme Court. It also does not acknowledge that the defence has not had access to all the evidence, including crucial pieces of evidence, such as the victim's telephone, which had not yet been placed in the file.

77. The source notes that Mr. Vargas has also not yet had access to the mobile telephone of another co-defendant, despite its seizure on 1 January 2021. It is thus impossible to confirm whether Mr. Vargas deleted any messages, as the Government alleges.

78. Mr. Vargas has not had full access to the evidence of his alleged involvement in the crime, in violation of article 14 of the Covenant. Furthermore, the judge who ordered his detention also ordered that this decision be communicated to the Brazilian Bar Association for the supervision of its enforcement. However, this order was ignored by the police, which claimed that the Prosecutor had determined that the judicial decision should be disregarded.

79. The source claims that the procedure taken against Mr. Vargas did not comply with the law, such as the decision to schedule the evidentiary and adjudication hearing before all the suspects had filed their defence statements.

80. Moreover, according to the source, there are other messages from Mr. Vargas showing concern for the victim's disappearance, and informing his former office colleague that he had asked the authorities to supervise the inquiry into the murder, as he suspected it would be poorly conducted. The authorities failed to explain why these messages were omitted from the proceedings.

81. The source stresses that the Government's claim that Mr. Vargas is not prevented from carrying out his professional activities is groundless, since he is not allowed to leave his home and is unable to perform most of his work.

Request for further information from the Government

82. The Working Group requested the Government to clarify the following matters:

(a) Whether the search of Mr. Vargas' apartment and his arrest on 1 January 2021 followed the stipulations of national law, which required that the search be carried out in the presence of a member of the Brazilian Bar Association, and whether there was a judicial order requiring this, which was not followed by the arresting authorities;

(b) The nature of the statements given by Mr. Vargas when he was arrested and taken to the Prosecutor's Office;

(c) Whether Mr. Vargas was presented before a judge after more than two days (that is, more than 48 hours) had elapsed since his arrest, in violation of his right to be brought promptly before a judge to challenge the legality of his detention;

(d) Whether, when deciding to place Mr. Vargas in pretrial detention, the judge failed to consider alternative and non-custodial measures, applying deprivation of liberty as a rule and not as an exception, contrary to the right to the presumption of innocence;

(e) What was meant by the Government's statement that "there is no record of objections arising from a denial of a prior and private interview with the appointed lawyer", and whether any steps were taken to ensure that a private interview could take place;

(f) The nature of Mr. Vargas' house arrest and any restrictions imposed upon him;

(g) Whether any material was seized during the search of Mr. Vargas' house, and its relevance to the proceedings against him;

(h) Whether the messages used to incriminate Mr. Vargas were leaked to local media outlets before his defence could access them and, if so, whether any investigation has been undertaken to reveal the source of the leak, and whether any measures have been taken to prevent or address any impact on the proceedings;

(i) Whether Mr. Vargas was granted access to key evidence only 113 days after his arrest, and what steps were taken to ensure that Mr. Vargas had timely access to evidence against him following his arrest and throughout his pretrial detention.

Further comments from the Government

83. The Government reiterates the arguments presented in its first response. In addition, the Government reports that, on 25 January 2022, the Court of Justice of Pará substituted the house arrest order against Mr. Vargas with less restrictive measures, such as the duty to present himself before the Court each month, to refrain from contacting witnesses and co-defendants, and to remain within the jurisdiction while the criminal proceedings against him are ongoing. He was immediately released from house arrest as of that date. His evidentiary hearing was rescheduled for 25 March 2022.

84. The Government notes that Mr. Vargas' lawyer alleged that the evidence gathered was illegally obtained and that there was no evidence of Mr. Vargas' involvement in the crime. The Criminal Court of Redenção rendered a decision on Mr. Vargas' preliminary allegations on 13 December 2021, noting that there were no illegalities or abuse of power during the investigation and evidence had not been improperly obtained.

85. Furthermore, the competent judicial authority determined that, according to the evidence, the defendant's apartment did not qualify as the place where he primarily practised his profession as a lawyer. According to article 7 of Law No. 8.906/1994, a lawyer's workplace, instruments and written, electronic and telephone communications are inviolable if they relate to the practice of law. During the search of Mr. Vargas' apartment, all the legal requirements were observed. The safeguards related to the practice of the legal profession were not applicable, as the venue searched was Mr. Vargas' home and not his workplace.

86. In addition, the Government states that Mr. Vargas had access to “adequate legal assistance throughout the proceedings” and his right to petition the courts was respected.

87. Finally, the Government reiterates that the proceedings against Mr. Vargas have no connection with his work as a human rights defender or with the Pau D’Arco events.

Discussion

88. The Working Group thanks the source and the Government for their submissions.

89. As a preliminary matter, the Working Group welcomes the release of Mr. Vargas from house arrest. According to the submissions, Mr. Vargas was arrested at his residence on 1 January 2021 and detained at Redenção Prison until 25 January 2021, when he was placed under house arrest. The Government was requested to clarify the nature of this house arrest, but did not do so. However, it appears from the unchallenged information provided by the source that the house arrest amounted to deprivation of liberty, as Mr. Vargas was unable to leave his residence (see para. 81 above).² In its further comments, the Government confirmed that on 25 January 2022, the Court of Justice of Pará ruled on a habeas corpus motion, substituting the house arrest order with less restrictive measures. These include reporting obligations and requirements that Mr. Vargas refrain from contacting persons involved in the case and remain within the State of Pará. Accordingly, the Working Group considers that Mr. Vargas was deprived of his liberty for over a year, from 1 January 2021 until his release from house arrest on 25 January 2022.

90. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. Mr. Vargas was allegedly subject to serious human rights violations, including being detained for the exercise of his rights through his work as a human rights defender, and as a result of the failure by the authorities to uphold due process guarantees. Moreover, the criminal proceedings against Mr. Vargas are ongoing. In these circumstances, the Working Group has decided to render an opinion.

91. In determining whether the detention of Mr. Vargas was 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 for breach of the international law constituting arbitrary deprivation of liberty, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.³ In making this determination, the Working Group applies a heightened standard of review in cases in which the freedom of expression is allegedly restricted or in cases involving human rights defenders.⁴

92. It is not contested that Mr. Vargas was arrested on 1 January 2021 pursuant to an arrest and search warrant. While the source submits that the arrest warrant did not provide a precise description of Mr. Vargas’ involvement in the alleged homicide, it did specify the charges, including that of first degree murder. While at the time of the arrest the victim’s body was missing and the case was considered to be a disappearance, on 31 December 2020 the Criminal Court of Redenção determined that there was proof of a crime as the victim had not contacted his family and friends. The Working Group accepts this explanation, noting that it is not competent to determine the appropriate charges under national law.

93. The source submits that Mr. Vargas’ cellular phone, computer and other assets were seized during the arrest, in violation of the requirement under article 7 (II) of Law No. 8.906/1994 that the search be conducted in the presence of a member of the Brazilian Bar Association. According to the source, the judge who authorized Mr. Vargas’ detention also ordered that this decision be communicated to the Brazilian Bar Association for the

² Opinions No. 13/2007, para. 24, and No. 37/2018, para. 25; A/HRC/36/37, para. 56; and deliberation No. 1 (E/CN.4/1993/24, sect. II).

³ A/HRC/19/57, para. 68.

⁴ Opinions No. 64/2011, para. 20, No. 39/2012, para. 45, No. 54/2012, para. 29, No. 62/2012, para. 39, No. 41/2017, para. 95, and No. 57/2017, para. 46. See also General Assembly resolution 53/144, annex, art. 9 (3).

supervision of its enforcement. However, the Chief of Police did not comply with this order and, when confronted by Mr. Vargas at the moment of detention, stated that a representative from the Public Prosecutor's Office had determined that the judicial decision could be disregarded. In order to ensure that the Government had the opportunity to fully address this issue, the Working Group requested it to provide further information, including on the specific allegation that there was a duly issued judicial order that was not followed by the Prosecutor and the Civil Police.

94. In its further comments, the Government noted that, pursuant to article 7 of Law No. 8.906/1994, a lawyer's workplace, instruments and written, electronic and telephone communications are inviolable if they relate to the practice of law. During the search of Mr. Vargas' apartment, all legal requirements for conducting a search of a residence were observed. The additional legal requirement that provides a guarantee for lawyers' activities that are related to the practice of their profession was not applicable as the venue searched was not Mr. Vargas' work premises. The Government adds that the competent judicial authority found, in accordance with the evidence, that Mr. Vargas' apartment did not qualify as the place where he primarily practised his profession as a lawyer.

95. While the Working Group determines whether detention has taken place in accordance with international standards, it does not assess the compliance of the authorities with national laws.⁵ It is therefore not in a position to determine whether the requirement under Brazilian law for a member of the Bar Association to be present at the search was applicable in this case, as this is a question for the national courts. Nevertheless, the Working Group notes that, despite being requested to do so, the Government did not address the specific allegation that the search was undertaken by the police and prosecution in disregard of a judicial order requiring that the Bar Association be notified. While the Government states that the "competent judicial authority" found that the requirement of the presence of the Bar Association was not applicable to the search of Mr. Vargas' residence, it is unclear when this finding was made. It may be that this decision was made during the determination by the Criminal Court of Redenção on 13 December 2021, which the Government refers to as having found that there were no illegalities or abuse of power during the investigative proceedings and evidence was not improperly obtained. If so, that determination was made almost one year after the search was undertaken on 1 January 2021 and could not have been the basis of the alleged decision by the authorities to proceed in conducting the search without following the terms of the judicial order.

96. The Working Group does not accept that the police and prosecutorial authorities are free to disregard a judicial order, even if it was subsequently determined that the requirement to notify the Bar Association specified in that order was not necessary under national law. Detention that results from a search undertaken contrary to a judicial order cannot have a legal basis. If there was doubt about the applicability of Law No. 8.906/1994, the remedy for the authorities was to seek judicial review of the judicial order, rather than determining the matter themselves. Undertaking an arrest and search in violation of a judicial order is manifestly contrary to the text and spirit of article 9 (1) of the Covenant, which states that deprivation of liberty may only take place in accordance with procedures established by law,⁶ as well as the standards set out in principles 2, 4, 7 and 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, requiring that arrest and detention remain under the control of a judicial authority.

97. In addition, the source alleges that Mr. Vargas was not presented before a judge until after 48 hours had elapsed following his arrest on 1 January 2021, in violation of his right to be brought promptly before a judge to challenge the legality of his detention. In its initial response, the Government confirmed that Mr. Vargas was arrested on 1 January 2021 and that his custody hearing was held on 3 January 2021 before the Criminal Court of Redenção, noting that this was in compliance with the requirement that no substantial waiting period shall exist before a detainee can challenge the legality of the detention.⁷ While this is the standard applicable to challenges to the legality of detention brought by a person deprived of

⁵ Opinions No. 1/2020, para. 51, and No. 46/2020, para. 62.

⁶ Human Rights Committee, general comment No. 35 (2014), para. 23.

⁷ *Ibid.*, para. 42; and [A/HRC/30/37](#), annex, guideline 7.

liberty under article 9 (4) of the Covenant, the source's allegation refers to a violation of the requirement that an accused person be brought "promptly" by the authorities before a court under article 9 (3) of the Covenant.

98. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judicial authority following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁸ Given that Mr. Vargas' custody hearing was held on 3 January 2021, it does not appear that the delay in bringing him before a court was extensive. However, as the Human Rights Committee stated, any delay must be "absolutely exceptional" and justified by the authorities. The Government did not acknowledge or address the alleged delay, nor did it offer any justification for it, despite the opportunity provided by the Working Group to address this allegation in its further comments. The Working Group finds that the authorities violated Mr. Vargas' right to be brought promptly before a judge under article 9 (3) of the Covenant to establish the legal basis of his detention.

99. Furthermore, the source alleges that, when deciding to order the pretrial detention of Mr. Vargas, the judge failed to consider other alternatives and non-custodial measures that were available, reportedly applying deprivation of liberty as a rule and not as an exception, in violation of the presumption of innocence.

100. Under article 9 (3) of the Covenant, pretrial detention must be the exception and not the rule, and should be ordered for as short a time as possible.⁹ Detention pending trial must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹⁰ Courts must also examine whether alternatives to pretrial detention, such as bail, would render detention unnecessary.¹¹ In considering whether pretrial detention is properly constituted, the Working Group examines whether the national courts have conducted an individualized review of the detainee's specific circumstances, but does not review whether the detainee poses any of the risks that would require detention.¹²

101. In Mr. Vargas' case, the appropriate factors appear to have been taken into account by the courts in initially ordering his pretrial detention and house arrest and in keeping his deprivation of liberty under periodic review. The Government has demonstrated that the courts provided an individualized review of Mr. Vargas' deprivation of liberty. While the source argues that Mr. Vargas' house arrest was disproportionate because one of his four co-defendants who reportedly had a greater connection to the alleged crime was not detained, the Working Group considers that this confirms that the court took an individualized approach to the circumstances of each of the accused.¹³

102. However, it is not clear from the Government's submissions whether the courts considered alternatives to detention. While the Government indicated in its initial response that the court considered the grant of house arrest at Mr. Vargas' custody hearing on 3 January 2021 at the request of defence counsel, as noted earlier, house arrest resulted in Mr. Vargas being deprived of his liberty and was not an alternative to detention. Despite being invited to provide further information on this issue, the Government made no reference to judicial consideration of non-custodial options (such as bail, reporting obligations and electronic bracelets) and whether and how those alternatives were considered by the courts when deciding to detain Mr. Vargas and to maintain his detention. Alternatives to detention were ultimately ordered on 25 January 2022 when Mr. Vargas was released from house arrest. Notably, the Government provided no explanation of what changes in Mr. Vargas'

⁸ Human Rights Committee, general comment No. 35 (2014), para. 33.

⁹ [A/HRC/19/57](#), paras. 48–58; and opinions No. 62/2019, paras. 28–29, and No. 64/2020, para. 58.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 38; and opinion No. 45/2016, para. 51.

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 38; [CCPR/C/BRA/CO/2](#), para. 16; [A/HRC/27/48/Add.3](#), paras. 95 and 149; and [A/HRC/36/11](#), para. 136.107.

¹² Opinion No. 37/2021, para. 72.

¹³ Opinion No. 24/2015, para. 44, footnote 10.

circumstances occurred that resulted in non-custodial measures being considered appropriate at that point, after he had been detained for a year under house arrest, and why such measures were not ordered at an earlier stage in the proceedings, including during the consideration of several habeas corpus petitions submitted on Mr. Vargas' behalf. The Working Group considers that the Government has not established that alternatives to detention were considered throughout Mr. Vargas' detention. As a result, his pretrial detention in prison and under house arrest was not properly constituted under article 9 (3) of the Covenant and had no legal basis.¹⁴

103. For these reasons, the Working Group considers that the Government did not establish the legal basis for Mr. Vargas' arrest and detention, which was arbitrary under category I.

104. In addition, the source alleges that Mr. Vargas was arrested and detained for the exercise of his rights under international human rights law and because he is a human rights defender, and that his detention was thus arbitrary under categories II and V. The source notes that Mr. Vargas is a well-known human rights defender who has previously received threats against his life for his work in support of landless workers, indigenous people and traditional communities. According to the source, there was no evidence of Mr. Vargas' involvement in the alleged homicide, suggesting that he was being targeted to prevent him from carrying out his work, particularly as the lawyer for the victims and witnesses of the Pau D'Arco massacre on 24 May 2017. The Government strictly denies these claims and provides a detailed explanation of the grounds for the arrest and detention of Mr. Vargas as a suspect in the alleged homicide, as well as examples of evidence allegedly implicating him. In its further comments, the Government reiterates that the proceedings against Mr. Vargas have no connection with his work as a human rights defender or with the Pau D'Arco events.

105. Having carefully considered the conflicting versions of events submitted by the source and the Government, the Working Group is unable to conclude that Mr. Vargas' detention was arbitrary under categories II and V. Nevertheless, the Working Group is deeply disturbed by the alleged events in this case. A few days prior to Mr. Vargas' arrest, one of the survivors and the main witness of the Pau D'Arco massacre reportedly informed him that he was receiving death threats from the same officers involved in the massacre. They agreed to report the threats. Mr. Vargas was arrested on 1 January 2021 and transferred to house arrest on 25 January 2021. The same day, he arranged to meet the witness the following day. However, at dawn on 26 January 2021, the witness was killed by a shot to the back of the head. The Working Group urges the Government to ensure that a thorough, effective, transparent and independent investigation of the Pau D'Arco massacre and the murder of the main witness is conducted as a matter of urgency,¹⁵ and that the findings are widely publicized.

106. Accordingly, the Working Group refers this case to the Special Rapporteur on extrajudicial, summary or arbitrary executions. Given Mr. Vargas' work in relation to the Pau D'Arco massacre, the Working Group also refers this case to the Special Rapporteur on the situation of human rights defenders.

107. Additionally, the source has raised a number of alleged violations of due process guarantees, as well as other issues that may fall within category III.

108. While not specifically raised by the source as a violation of due process, the Working Group takes note of the source's submission that, following his arrest, Mr. Vargas was taken to the Public Prosecutor's Office to "give statements" and then to the hospital for a medical examination. The source did not explain the nature of these statements, but given that they were taken immediately after Mr. Vargas' arrest and prior to his detention at Redenção Prison, it is possible that they related to the charges against him, including first degree murder. In its initial response, the Government confirmed that after his arrest, Mr. Vargas was taken to the Public Prosecutor's Office to provide a statement and then to the hospital. The Government noted that during the first stage of the police interrogation, Mr. Vargas was accompanied by two lawyers and during the second stage, one lawyer was present. It is

¹⁴ Opinions No. 3/2019, para. 57, No. 36/2020, para. 51, and No. 64/2020, para. 58.

¹⁵ Human Rights Committee, general comment No. 36 (2018), para. 27 (reiterating the obligation of States parties to the Covenant to investigate unlawful deprivations of life and to prosecute the perpetrators).

unclear whether these two stages of interrogation included the giving of a statement by Mr. Vargas at the Public Prosecutor's Office. The Government was requested to clarify the nature of these statements in its further comments, but did not do so.

109. The source has not argued that any statements given by Mr. Vargas were confessions to the charges against him, and there is no suggestion that the statements were forced or coerced. While noting that Mr. Vargas is a lawyer and would likely have been familiar with the interrogation process, the Working Group takes this opportunity to reiterate the importance of the presence of legal counsel during interrogations and when statements are given.¹⁶ In the present case, there is nothing to indicate that Mr. Vargas' rights were violated when giving the statements.

110. In addition, Mr. Vargas' custody hearing was held on 3 January 2021 by teleconference. According to the source, Mr. Vargas did not have the right to meet with his lawyer before the hearing, and only had access to him by means of the public link to the hearing was a few minutes before it began. In its initial response, the Government explained that the custody hearing took place by teleconference due to COVID-19 restrictions in place at the time, and noted that Mr. Vargas was accompanied by his lawyer and interviewed after prior contact with his lawyer. The Government added that "there is no record of objections arising from a denial of a prior and private interview with the appointed lawyer". The Working Group requested the Government to clarify what was meant by this statement, and whether any steps were taken to ensure that a private interview could take place. The Government did not directly address this issue, but stated in its further comments that Mr. Vargas had access to "adequate legal assistance throughout the proceedings".

111. The Working Group commends the use of teleconferencing by the Brazilian judiciary to ensure the continuity of judicial services during the COVID-19 pandemic.¹⁷ Nevertheless, 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 must be provided without delay.¹⁸ Moreover, all communications with legal counsel must remain confidential.¹⁹

112. The Working Group considers that Mr. Vargas did not have access to his lawyer prior to the custody hearing, and only had a short time to meet with him over a public link, without the requisite privacy for confidential legal communications, before the hearing began. This amounted to a violation of his right to adequate time and facilities for the preparation of his defence and to communicate with a lawyer of his choice in accordance with article 14 (3) (b) of the Covenant. However, according to the Government, Mr. Vargas' lawyers were present during the police interrogations, and Mr. Vargas appears to have had regular contact with his lawyers who filed petitions before the courts on his behalf throughout the remainder of the proceedings to date. Accordingly, the Working Group does not consider, in the specific circumstances of this case, that the failure to provide Mr. Vargas with access to his lawyer prior to the custody hearing, and the limited communication between them through a publicly accessible link prior to the hearing, was of such gravity as to render his detention arbitrary.

113. Similarly, the source alleges that Mr. Vargas' cellular phone and laptop were seized during his arrest on 1 January 2021. According to the source, this equipment was essential for Mr. Vargas' defence and his lack of access to it has hindered his ability to challenge his detention. In its initial response, the Government noted that Mr. Vargas had informed the court of the activation of another line on a different mobile telephone. Moreover, given that Mr. Vargas' lawyers have continued to regularly represent him throughout his detention, the Working Group is not convinced that the seizure of his electronic devices had any material impact on his ability to prepare a defence or on the fairness of the proceedings against him. The Working Group acknowledges that Mr. Vargas' equipment likely contained sensitive

¹⁶ Opinion No. 41/2020, para. 70; [A/HRC/45/16](#), para. 53; and [A/HRC/39/45/Add.2](#), paras. 32–33.

¹⁷ Deliberation No. 11 ([A/HRC/45/16](#), annex II), paras. 20–21.

¹⁸ [A/HRC/30/37](#), annex, principle 9 and guideline 8; and [A/HRC/45/16](#), para. 51.

¹⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18 (3); [A/HRC/30/37](#), annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 32 (2007), para. 34; and opinion No. 31/2021, para. 60.

and privileged material relating to his work, including for clients with no connection to the current proceedings, and urges the Government to maintain the confidentiality of that information.

114. Furthermore, the source claims that there has been delay in affording the defence access to the evidence against Mr. Vargas, as well as procedural irregularities in obtaining evidence. On 5 March 2021, Mr. Vargas' lawyers requested the prosecution and police to add the evidence to the case file, and the judge ordered full access to the evidence on 16 March 2021. However, the source alleges that, although Mr. Vargas had formal access to the case file, he was only granted access to the cellular phone of the lawyer with whom he shared an office on 23 April 2021, 113 days after his arrest. The source claims that this evidence was obtained by the police in violation of the technical guidelines that safeguard the chain of custody. An evidentiary hearing set to take place on 18 May 2021 was rescheduled so that evidence could be included in the case file. Key evidence had still not been filed at the time of the source's further response in August 2021. Finally, the source alleges that, during one of the hearings, evidence proving Mr. Vargas' innocence was withheld, thus misleading the judge. The source also claims that Mr. Vargas is being prosecuted on the basis of only 12 out of 567 text messages sent in relation to this case.

115. In its initial response, the Government acknowledges that access to the entire evidence produced by the police was granted on 28 June 2021, and does not appear to directly contest the source's other allegations in relation to the evidence. The Government also indicates that the evidentiary hearing was rescheduled for 25 March 2022. The Working Group invited the Government to clarify what steps were taken to ensure that Mr. Vargas had timely access to the evidence, but it did not do so.

116. While the source's allegations are serious, the Working Group is not convinced that delays in affording access to the evidence against Mr. Vargas negatively impacted his right to a fair trial. As noted above, the evidentiary hearing was postponed so that the evidence could be made available to the defence. In addition, the Working Group considers that the claims in relation to the number of texts made available during the proceedings and the withholding of certain evidence are matters to be determined by the Brazilian courts. While the Working Group determines whether proceedings meet international fair trial standards, it does not assess the sufficiency of the evidence presented against a defendant.²⁰

117. However, the delays in providing key evidence to the defence were likely to have made challenges to the legality of Mr. Vargas' detention throughout the period of his house arrest more difficult, strengthening the Working Group's conclusion that the legal basis of his detention could not be established and that his detention was arbitrary under category I.

118. Finally, the source claims that following Mr. Vargas' detention, images and videos of him were shared on social media to portray him as a person who was disrespectful of legal processes. In addition, the messages used to incriminate Mr. Vargas were reportedly leaked to local media outlets before his defence counsel could access them. The Working Group requested the Government to comment upon the allegation that materials were leaked to the media, and whether any measures have been taken to investigate and to prevent or address any impact on the proceedings. However, the Government did not provide any information on this matter. It is unclear whether these alleged incidents have influenced the proceedings against Mr. Vargas. The Working Group is concerned that they may affect his rights to the presumption of innocence and to a fair trial, and urges the Government to undertake an investigation, particularly into the alleged leak of incriminating messages, as these would appear to be material pertaining to the trial that should only be available to the authorities.

119. In summary, the Working Group does not consider that the allegations under category III are of such gravity as to render Mr. Vargas' detention arbitrary. However, given its finding that his detention lacked a legal basis and was arbitrary under category I, and its concern in relation to the possibility that leaked material may result in an unfair trial, the Working Group calls upon the Government to immediately and unconditionally release Mr. Vargas.

²⁰ Opinions No. 57/2016, para. 115, No. 53/2018, para. 79, No. 75/2018, para. 73, No. 64/2019, para. 89, and No. 37/2021, para. 86.

120. The Working Group wishes to emphasize that this opinion should not be understood as in any way minimizing the gravity of the disappearance and death of the president of the regional association of persons with epilepsy. This opinion is adopted without prejudice to Mr. Vargas' guilt or otherwise or that of anyone else. However, States parties to the Covenant must uphold its provisions, violations of which have been identified in the present case.²¹

Disposition

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

The deprivation of liberty of José Sobrinho Vargas Junior, being in contravention of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the International Covenant on Civil and Political Rights, was arbitrary under category I.

122. The Working Group requests the Government of Brazil to take the steps necessary to remedy the situation of Mr. Vargas 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.

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

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

125. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

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

128. 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.

129. 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

²¹ Opinions No. 59/2020, para. 52, and No. 62/2020, para. 77.

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.

130. 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.²²

[Adopted on 8 April 2022]

²² Human Rights Council resolution 42/22, paras. 3 and 7.