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Working Group on Arbitrary Detention

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Opinion No. 37/2023 concerning Olivier Vandecasteele (Islamic Republic of Iran)

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 19 May 2023 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Olivier Vandecasteele. 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,

¹ [A/HRC/36/38](#).

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Olivier Vandecasteele is a national of Belgium born on 19 January 1981. His permanent place of residence is in Belgium.

5. The source reports that Mr. Vandecasteele studied business management, international relations and conflict resolution in Belgium and, upon graduation, began working for non-governmental organizations.

6. From 2015 until 2020, Mr. Vandecasteele worked in the Islamic Republic of Iran as a country director for the Norwegian Refugee Council. He was mainly responsible for facilitating access to water, food, health care and education for members of the Afghan community living in the Islamic Republic of Iran.

7. Starting in 2020, Mr. Vandecasteele took up a new position as the country director for the Islamic Republic of Iran for the non-governmental organization Relief International. That contract ended in the second quarter of 2021 and Mr. Vandecasteele returned to Belgium. He then secured a temporary contract with the United Nations Development Programme in the Islamic Republic of Iran, but he was not granted a visa by the authorities.

8. Therefore, in December 2021, Mr. Vandecasteele decided to move back to Belgium permanently. Since he still had a rented appartement in Tehran, he organized a trip to the Islamic Republic of Iran in order to vacate the apartment and close his bank account. Carrying out these activities required him to be physically present. The trip was planned to last from 20 to 25 February 2022. The source adds that on that occasion, Mr. Vandecasteele travelled to the Islamic Republic of Iran on a valid tourist visa.

9. The source notes that Mr. Vandecasteele exercised his professional duties in the Islamic Republic of Iran prudently and never voiced any political opinion. Furthermore, his work was praised on various occasions by the country's Minister of Health and Education.

10. The source submits that, on the evening of 24 February 2022, the day before he was to return for good to Belgium, Mr. Vandecasteele was invited with 10 friends to a farewell dinner in an apartment located in Tehran's Qeitarieh district. Mr. Vandecasteele was the only foreigner present. The group ordered food to be delivered, and at around 11.30 p.m. the receptionist of the building called the apartment to say that a man was waiting to enter. People in the apartment thought it was the deliveryman and consequently opened the door.

11. When the owner of the apartment opened the door, six agents in plain clothes burst into the apartment. The six individuals did not identify themselves or show a warrant at any stage during the operation, which lasted for about an hour and a half. Two of the agents wore mobile cameras on their chests, and another was filming throughout the operation.

12. According to the source, agents separated the women and the men, placing them in two different rooms, and asked for their identity cards. The source notes that the agents knew who would be present, since they named the people before they had presented their identity cards.

13. Mr. Vandecasteele was put in a separate room and was placed on his knees. He was asked to surrender his passport, mobile devices and personal computer along with the associated passwords. These items were immediately checked by the officials. One hour later, a higher-ranking officer came in and interrogated Mr. Vandecasteele. When it became clear to Mr. Vandecasteele that he would be arrested, he did not resist the authorities but insisted on seeing a warrant. He also asked to call the Embassy of Belgium and his family, however both requests were denied.

14. The six agents proceeded to arrest Mr. Vandecasteele, put him in a car, and departed at 1.20 a.m. on 25 February 2022.

15. The source adds that while the department or group that arrested Mr. Vandecasteele is unknown, given the fact that his detention was politically motivated, it is most likely that he was arrested either by agents of the Ministry of Intelligence and Security or by the Islamic Revolutionary Guard Corps. The source links Mr. Vandecasteele's arrest and detention with the lengthy prison sentence handed down in Belgium in respect of an agent of the Ministry of Intelligence and Security.

16. The source also reports that the agents used force and constantly shouted at the people present. Given the level of noise, some neighbours called the municipal police, which arrived after the agents left.

17. The day after Mr. Vandecasteele's arrest, the authorities confirmed that he was being detained in Evin prison in Tehran. However, no further information was provided.

18. The source reiterates that no warrant was presented either during Mr. Vandecasteele's arrest or afterwards, despite Mr. Vandecasteele's repeated requests. At the time of his arrest and for nine months, up until his trial in November 2022, Mr. Vandecasteele was not informed of the legal basis for his arrest and detention. Belgian authorities also reportedly unsuccessfully requested Iranian authorities to provide such a warrant or at least to disclose the reasons for Mr. Vandecasteele's arrest.

19. On 13 December 2022, it became known that Mr. Vandecasteele had been sentenced to 28 years of imprisonment. On 3 January 2023, Tasnim, an official Iranian press agency, announced that Mr. Vandecasteele had been sentenced to 40 years of prison and 74 lashes. It also reported that the charges against Mr. Vandecasteele were espionage against the Islamic Republic of Iran, collaborating with the Government of the United States of America, smuggling foreign currency and money laundering. The source notes, however, that no official confirmation of the sentence was provided to the Belgian authorities.

20. The source submits that since his arrest on 24 February 2022, Mr. Vandecasteele was detained in a cell measuring 3 metres by 2 metres, in full solitary confinement, without any contact, apart from the contact he may have had with his guards and the people interrogating him. His cell was reportedly located in the basement, and had no window but a constant source of artificial light. His diet reportedly lacked fruit and vegetables. Furthermore, Mr. Vandecasteele had insufficient access to medical care. He suffers from dental, gastrointestinal and psychological problems. He was allowed to see a dentist on one occasion but was denied a follow-up visit.

21. From 24 February 2022 to the beginning of August 2022, Mr. Vandecasteele was detained in Evin prison in Tehran Province. In August 2022, he was transferred to another place, the location of which has not been communicated. He was held there until April 2023. During that time, Mr. Vandecasteele was brought to Evin prison for meetings with the Ambassador of Belgium. He was also given the opportunity to make phone calls to his family. However, the lawyers chosen by Mr. Vandecasteele's family were able neither to have any contact with him nor to have any information about his case. It is reported that Mr. Vandecasteele has not met with a lawyer since his trial in November 2022.

22. In April 2023, Mr. Vandecasteele was moved back to Evin prison. Though he is no longer being held in solitary confinement, the conditions of his detention have reportedly deteriorated. He is detained in a cell for four people, measuring about 12 square metres. The cell is located in a basement, with the light constantly on, and there are no windows. There is no mattress. The quality of the food continues to be inadequate.

23. Apart from his aforementioned health issues, Mr. Vandecasteele suffers from significant leg and back problems, making it difficult for him to remain in an upright position. To date, he has been able to see a doctor twice, who was of the view that Mr. Vandecasteele may need back surgery and who provided him with painkillers. The painkillers are reportedly not sufficient. Moreover, Mr. Vandecasteele's psychological state has significantly deteriorated.

24. It is reported by the source that Mr. Vandecasteele has stated on several occasions that he does not accept the charges against him and his detention. However, no measures have been taken to enable him to protect his rights. According to the source, Mr. Vandecasteele has never had the possibility to challenge his detention.

25. The source submits that Mr. Vandecasteele is being used for diplomatic leverage to facilitate the return to the Islamic Republic of Iran of an agent of the Ministry of Intelligence and Security. It is therefore argued that his case falls into a pattern of targeting and arbitrary detention of foreign nationals and constitutes an international crime, as described in the International Convention against the Taking of Hostages. Mr. Vandecasteele's arrest and detention are also allegedly in violation of article 9 (1) and (2) of the International Covenant on Civil and Political Rights, which has been ratified by the Islamic Republic of Iran. On this basis, the source argues that Mr. Vandecasteele's detention is arbitrary and falls under the Working Group's categories I, III and V.

26. In relation to category I, the source argues that Mr. Vandecasteele's arrest on 24 February 2022 took place outside the established legal processes, in violation of international norms, and in contravention of article 9 (1) of the Covenant, which provides that no one is to be deprived of liberty except on such grounds and in accordance with such procedure as are established by law.

27. The source submits that Mr. Vandecasteele was arrested without an arrest warrant and that there were no circumstances to give reasonable cause for arrest in flagrante delicto. The source recalls that the right to be presented with an arrest warrant (to ensure the exercise of effective control by a competent, independent and impartial judiciary authority) is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

28. Moreover, the source recalls that Mr. Vandecasteele was arrested without being informed of the reasons for his arrest at the time of arrest, and of the charges against him promptly (these were only indicated to him during his trial held in November 2022). The failure of the authorities to do so violates article 9 of the Universal Declaration of Human Rights and articles 9 (2) and 14 (3) (a) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

29. Furthermore, Mr. Vandecasteele was only brought before a judge nine months after his arrest. The source recalls that according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. The Human Rights Committee considers that 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances. The source concludes that there has been a clear breach of article 9 (3) of the Covenant, as well as of articles 3 and 9 of the Universal Declaration of Human Rights and principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

30. The source also submits that Mr. Vandecasteele was not afforded the right to challenge the legality of his detention before a court, as is provided by article 9 (4) of the Covenant, article 8 of the Universal Declaration of Human Rights and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source also recalls that according to 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, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. This right was denied to Mr. Vandecasteele.

31. Moreover, the source recalls that Mr. Vandecasteele did not have access to a lawyer from the moment of his arrest, contrary to the stipulation in 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. This access has been denied to Mr. Vandecasteele, which has seriously affected his ability to bring proceedings before a court, in violation of article 9 (4) of the Covenant. Given that Mr. Vandecasteele was unable to contact a lawyer and was not allowed to consult his case file, which are essential safeguards to ensure the ability of any detainee to personally challenge his or her detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article

2 (3) of the Covenant was also violated. Mr. Vandecasteele's trusted Iranian lawyers were never able to meet him or to defend him effectively.

32. The source recalls that Mr. Vandecasteele was convicted of cooperating with a hostile State against the Islamic Republic of Iran and spying. It submits that these crimes are so vague that it is impossible to invoke a legal basis for Mr. Vandecasteele's detention. In this context, the source also recalls that the Working Group has previously raised with the Government the issue of prosecution under vague penal laws, noting that the offences of cooperation with a hostile State and espionage are vague and overly broad. The principle of legality requires that laws be formulated with sufficient precision that individuals can access and understand the law and regulate their conduct accordingly. Mr. Vandecasteele could not have foreseen that travelling to rescind the rental contract for his apartment, to remove his furniture and to close his bank account would amount to cooperation with a hostile State or spying. His imprisonment under vague provisions is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and articles 9 (1) and 15 (1) of the Covenant, concludes the source.

33. In relation to category III, the source submits that there have been numerous violations of the most basic standards of due process throughout Mr. Vandecasteele's pretrial and post-trial detention.

34. In this context, the source argues that Mr. Vandecasteele's pretrial detention (which lasted nine months) violated article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. Mr. Vandecasteele was deprived of his liberty without an arrest warrant and without being informed of the reasons for his arrest or the charges against him. No charges were filed for nine months after his initial arrest, during which time Mr. Vandecasteele was held in detention, including in solitary confinement. Mr. Vandecasteele was not immediately brought before a judge nor afforded the right to bring proceedings before a court so as that it might decide on the lawfulness of his detention.

35. Mr. Vandecasteele was, at all times, denied access to his chosen legal counsel. Following his arrest, he was interrogated without the presence of a lawyer and he was never able to meet the lawyers chosen by his family. He had only access to a lawyer during his trial. However, this lawyer was appointed by the judge, despite Mr. Vandecasteele's request to be assisted by the lawyer chosen by his family. Moreover, this lawyer was prevented from speaking to Mr. Vandecasteele or on his behalf. The source thus argues that the failure to provide Mr. Vandecasteele with access to a lawyer from the outset has violated his right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing under article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant.

36. The denial of full access to the case file for Mr. Vandecasteele and his chosen lawyers was a further violation of Mr. Vandecasteele's rights under article 14 (1) and (3) (b) and (e) of the Covenant. Furthermore, Mr. Vandecasteele was not allowed to call witnesses, in violation of article 14 (3) (e) of the Covenant.

37. It is further argued that Mr. Vandecasteele only had the opportunity to talk to the Ambassador of Belgium for the first time two months after his arrest, on 28 April 2022. Throughout his detention, the consular visits he received were systematically filmed and were held in the presence of authorities to ensure that Mr. Vandecasteele did not complain about the conditions of his detention. Mr. Vandecasteele was therefore denied the right to communicate freely with a Belgian representative. Moreover, he was denied diplomatic or consular presence during his trial.

38. Furthermore, the source argues that the Iranian authorities have subjected Mr. Vandecasteele to conditions of detention which do not allow full realization of the purposes of communication and access for which the right of consular visit was established. These conditions allegedly amount to torture and degrade Mr. Vandecasteele's state of health to such an extent that they render the consular visit useless, as the detainee is no longer able to communicate effectively with the consul.

39. In this regard, the source recalls that the Working Group has highlighted in its earlier jurisprudence that consular assistance constitutes an important safeguard and is invaluable

for foreign nationals who are disadvantaged by lack of familiarity with the local law, customs and even language.

40. Furthermore, it is recalled that in its resolution 72/179, the General Assembly reaffirmed the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the right of all foreign nationals.

41. The source submits that the failure to respect Mr. Vandecasteele's right to consular protection under customary international law, which is codified in article 36 of the Vienna Convention on Consular Relations and was ratified by the Islamic Republic of Iran on 5 June 1975, during his arrest and detention, is a violation of articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the Covenant, principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 62 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

42. Furthermore, the source submits that the conditions of Mr. Vandecasteele's detention have also hindered his ability to participate in and prepare his defence. Until August 2022, Mr. Vandecasteele was held incommunicado (for more than two months after his arrest and for periods of one to two months thereafter) and in solitary confinement in Evin prison. He was then transferred to an unknown place of detention, where his incommunicado detention and solitary confinement were maintained. The source submits that this prolonged incommunicado detention and solitary confinement violates rules 43 to 45 of the Nelson Mandela Rules and article 10 (1) of the Covenant.

43. Moreover, the source argues that the treatment of Mr. Vandecasteele by the authorities (psychological abuse including solitary confinement and incommunicado detention) and the inhumane conditions (constant artificial light, extremely long interrogation sessions without legal assistance, poor diet, restricted access to health care, and exposure to extreme cold without appropriate clothing) in which he is detained violate the absolute prohibition of torture as a peremptory norm of international law, article 5 of the Universal Declaration of Human Rights, rule 1 of the Nelson Mandela Rules, articles 7 and 10 (1) of the Covenant and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

44. The source recalls that Mr. Vandecasteele's trial consisted of one hearing which lasted for a maximum of 30 minutes, despite the serious charges and the heavy sentence ultimately imposed. The source recalls the Working Group's earlier findings that a short trial for a serious criminal offence suggests that the defendant's guilt has been determined prior to the proceedings. The brief duration of the trial, together with the lack of access to the evidence and the denial of the right of Mr. Vandecasteele to be represented by the legal counsel of his choice, constitutes a breach of Mr. Vandecasteele's right to the presumption of innocence under article 14 (2) of the Covenant.

45. The source further recalls that Branch 15 of the Islamic Revolutionary Court, which tried, convicted and sentenced Mr. Vandecasteele, is a court that does not meet the minimum standards of an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. The judge presiding over the trial is also reportedly known for his unfair treatment of foreign and dual nationals.

46. Finally, in relation to category V, the source submits that Mr. Vandecasteele's detention was motivated by his status as a Belgian national. His detention allegedly took place as part of a pattern of targeting and detaining foreign nationals on grounds of State security. The source recalls that both the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran have recognized this pattern.

47. The source submits that there is no evidence that Mr. Vandecasteele was in the Islamic Republic of Iran for any reason other than to recover personal belongings before his definitive departure. He had previously lived in the Islamic Republic of Iran between 2015 and 2021 for work without any incident. He has been, on different occasions, praised by the Minister of Health and Education for his good work. Furthermore, Mr. Vandecasteele's sentence

appears to be disproportionate, as there is no evidence that he had a criminal record, or that he had cooperated with the Government of the United States of America, to which he has no attachment, or that he had engaged in spying, smuggled foreign currency, or laundered any money.

48. The source concludes that Mr. Vandecasteele was detained on a discriminatory basis, namely his nationality, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

(b) Response from the Government

49. On 19 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 18 July 2023, detailed information about the current situation of Mr. Vandecasteele and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of the Islamic Republic of Iran under international human rights law, and in particular with regard to the treaties ratified by the State.

50. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of Working Group's methods of work.

2. Discussion

51. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

52. In determining whether Mr. Vandecasteele'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 established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

53. As a preliminary matter, the Working Group notes that Mr. Vandecasteele was released on 26 May 2023. He is therefore no longer detained. There is no provision in the Working Group's methods of work that precludes consideration of a case in such circumstances. Indeed, the Working Group considers it necessary to render an opinion, given the serious allegations relating to Mr. Vandecasteele's deprivation of liberty.³

(a) Category I

54. The Working Group finds that the source has provided credible information, which was not rebutted by the Government, that on 24 February 2022, Mr. Vandecasteele was arrested without an arrest warrant. These circumstances give rise to a violation of article 9 (1) of the Covenant, articles 3 and 9 of the Universal Declaration of Human Rights and principles 2 and 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁴ The Working Group observes that the factual circumstances of Mr. Vandecasteele's arrest serve to strengthen the conclusion that his arrest was without legal basis.

55. The Working Group also finds credible the source's un rebutted submissions that Mr. Vandecasteele was not informed about the reasons for the arrest nor about the charges against him until his trial in November 2022, nine months after his arrest. It therefore finds that Mr. Vandecasteele's rights deriving from article 9 (2) of the Covenant, article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the

² A/HRC/19/57, para. 68.

³ Opinions No. 50/2017, para. 53 (c); and No. 55/2018, para. 59.

⁴ Opinions No. 46/2017; No. 66/2017; No. 75/2017; No. 35/2018; No. 79/2018; and No. 15/2021, para. 50.

Protection of All Persons under Any Form of Detention or Imprisonment were violated. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be informed promptly of the charges against them.

56. The Working Group finds credible the source's unrefuted submission that Mr. Vandecasteele only saw a judge nine months after his arrest. As the Working Group has reiterated in its jurisprudence, and the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁵ In the present case, the Working Group therefore finds a clear violation of article 9 (3) of the Covenant, as Mr. Vandecasteele was not brought promptly before a judge.

57. Furthermore, as Mr. Vandecasteele first saw a judge nine months after his arrest, he was not able to challenge the legality of his detention, in violation of article 9 (4) of the Covenant, articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.⁶ Mr. Vandecasteele's detention also violated his rights under article 2 (3) of the Covenant and article 8 of the Universal Declaration of Human Rights, as he was denied his right to an effective remedy.

58. The source has submitted that Mr. Vandecasteele spent nine months in pretrial detention following his arrest. Article 9 (3) of the Covenant states that it is not to be the general rule that persons awaiting trial are to be detained in custody. The Working Group recalls the view of the Human Rights Committee, as well as its own recurrent findings, that pretrial detention must be the exception and not the rule, should be ordered for as short a time as possible,⁷ 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, electronic bracelets or other conditions, would render detention unnecessary in the case in question.⁸ In the present case, the Working Group concludes that an individualized determination of his circumstances did not take place and, as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant. In reaching this conclusion, the Working Group notes that the Government did not submit any information to suggest that such a determination took place or to rebut the source's submissions.

59. The source further submits that until August 2022, Mr. Vandecasteele was held incommunicado (for over two months after his arrest and for periods of one to two months thereafter). In this regard, the Working Group recalls that prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential safeguard for the prevention of torture as well as for protection against arbitrary detention.⁹ The Working Group therefore finds a contravention of Mr. Vandecasteele's right to contact with the outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15, 16 (1) and (2) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group recalls that holding persons incommunicado prevents prompt presentation before a judge and violates the right to

⁵ Opinions No. 6/2017, No. 30/2017, No. 49/2019, No. 60/2020 and No. 66/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 33.

⁶ Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

⁷ Opinions No. 57/2014, para. 26; No. 8/2020, para. 54; No. 5/2021, para. 43; and No. 6/2021, para. 50. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

⁸ [A/HRC/19/57](#), paras. 48–58.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 58; and opinions No. 34/2021, para. 77; and No. 5/2022, para. 72.

challenge the lawfulness of their detention before a court, contrary to article 9 (3)¹⁰ and (4) of the Covenant.¹¹

60. Finally, the source asserts that the charges later brought against Mr. Vandecasteele were overly broad. According to the source, Mr. Vandecasteele was denied information regarding the legal basis and the specific factual circumstances of his arrest and detention before the trial date, which was not until nine months after his arrest. In the absence of any government response, the Working Group finds this un rebutted submission credible.

61. The Working Group has raised the issue of prosecution under vague and overly broad penal laws on several occasions – including the offences of cooperation with a hostile State¹² and espionage.¹³ As the use of vague laws can undermine the principle of legality, the Working Group has stated previously that the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.¹⁴ In the case of Mr. Vandecasteele, the Working Group considers that he could not have foreseen that travelling to rescind the rental contract for his apartment, to remove his furniture and to close his bank account would amount to cooperation with a hostile State or spying. Thus, his detention and prosecution under these vague provisions are incompatible with article 11 (2) of the Universal Declaration of Human Rights and articles 9 (1) and 15 (1) of the Covenant. Vague laws may have a deterrent effect on the exercise of fundamental freedoms as they have the potential for abuse, including the arbitrary deprivation of liberty.¹⁵

62. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Vandecasteele lacks legal basis and is thus arbitrary, falling under category I.

(b) Category III

63. The source submits that Mr. Vandecasteele was, at all times, denied access to his chosen legal counsel. After his arrest, he was interrogated without the presence of a lawyer and was never able to meet the lawyers chosen by his family. During trial, he only had access to a lawyer appointed by the judge, despite his request to be assisted by the lawyer chosen by his family. The lawyer chosen by his family was prevented from speaking to Mr. Vandecasteele or on his behalf.

64. The Working Group recalls that 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 the moment of apprehension, and that such access must be provided without delay.¹⁶ The Working Group considers that the failure to provide Mr. Vandecasteele with access to his lawyer from the outset, including during interrogation, seriously affected his ability to prepare a defence. The fact that Mr. Vandecasteele was facing serious charges relating to cooperation with a hostile State and espionage made these violations of due process all the more egregious.

65. In these circumstances, the Working Group finds that Mr. Vandecasteele's right to adequate time and facilities to prepare his defence and to communicate with counsel of his choosing, under article 14 (3) (b) of the Covenant and principles 17 (1) and 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, was violated, as was his right to present an effective defence through counsel of his choosing under article 14 (3) (d) of the Covenant. With regard to the source's

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 35.

¹¹ Opinions No. 45/2017, No. 46/2017, No. 69/2017, No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019 and No. 25/2021.

¹² Opinion No. 52/2018, para. 78.

¹³ Opinions No. 7/2017, para. 41 (a); and No. 9/2017, para. 23.

¹⁴ See, for example, opinion No. 41/2017, paras. 98–101. See also opinions No. 62/2018, paras. 57–59; and No. 33/2019, para. 51; and Human Rights Committee, general comment No. 35 (2014), para. 22.

¹⁵ Opinions No. 10/2018, para. 55; and No. 15/2021, para. 65.

¹⁶ 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, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. See also General Assembly resolution 73/181; [CCPR/C/IRN/CO/3](#), para. 21; and [A/HRC/45/16](#), para. 51.

unrebutted claim relating to the denial of full access to the case file to Mr. Vandecasteele and his chosen lawyers, the Working Group finds a violation of Mr. Vandecasteele's rights under article 14 (1) and (3) (b) of the Covenant. The Working Group notes that the present case is another example of instances where legal representation was denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in the Islamic Republic of Iran, especially where foreign and dual nationals are concerned.¹⁷

66. The source submits that Mr. Vandecasteele only had the opportunity to talk to the Ambassador of Belgium for the first time on 28 April 2022, two months after his arrest. Mr. Vandecasteele was therefore denied the right to communicate freely with a Belgian representative and was also denied diplomatic or consular presence during his trial. The Working Group recalls that consular assistance provides detainees and consular officials of the detainee's nationality with certain rights, including for the latter to communicate freely with and have access to their detained nationals and to be informed about an arrest without delay.¹⁸ The Working Group considers that the Government's failure to respect these rights as embodied in article 36 of the Vienna Convention on Consular Relations, to which the Islamic Republic of Iran is a party, is in violation of article 9 of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the Covenant, rule 62 (1) of the Nelson Mandela Rules and principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁹

67. Moreover, the source argues that the authorities have subjected Mr. Vandecasteele to conditions of detention which do not allow full realization of the purposes of communication and access for which the right of consular visit was established. The source further submits that that conditions of Mr. Vandecasteele's detention have also hindered his ability to participate in and to prepare his defence. Until August 2022, Mr. Vandecasteele was held incommunicado in solitary confinement in Evin prison.

68. The Working Group notes that according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, and must be subject to independent review and authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Nelson Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, at which point some of the harmful psychological effects of isolation can become irreversible, may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁰

69. Moreover, the source argues that the treatment of Mr. Vandecasteele by the authorities (psychological abuse including solitary confinement and incommunicado detention) and the inhumane conditions (constant artificial light, extremely long interrogation sessions without legal assistance, poor diet, restricted access to health care, and exposure to extreme cold without appropriate clothing) in which he was detained violate the absolute prohibition of torture as a peremptory norm of international law. Referring to the source's submission, the Working Group recalls that denial of medical care can constitute a form of torture.²¹ The Working Group notes with grave concern Mr. Vandecasteele's health issues, some of which were exacerbated or caused by his conditions of detention. According to article 10 (1) of the

¹⁷ [A/HRC/40/24](#), para. 13; and opinions No. 54/2022, para. 87; and No. 27/2022, para. 65.

¹⁸ Opinions No. 51/2019, para. 72; No. 54/2022, para. 88; and No. 27/2022, para. 67. See also General Assembly resolution 72/179, para. 4 (k), which reaffirms the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the rights of all foreign nationals.

¹⁹ Opinions No. 30/2018, paras. 52–56; No. 51/2019, paras. 68–73; and No. 81/2021, para. 107. See also General Assembly resolution 72/179, para. 4 (k); and [A/HRC/48/55](#), paras. 57–63.

²⁰ [A/63/175](#), para. 56; [A/66/268](#), para. 61; General Assembly resolution 68/156; [A/56/156](#), paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35 (2014), para. 35.

²¹ [A/HRC/38/36](#), para. 18; and opinions No. 21/2023, para. 98; No. 54/2022, para. 91; No. 20/2022, para. 104; and No. 46/2022, para. 83.

Covenant, all persons deprived of their liberty must be treated with humanity and dignity, which includes receiving appropriate medical care.²² The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

70. The Working Group considers that the aforementioned violations substantially undermined Mr. Vandecasteele's capacity to defend himself in the judicial proceedings.²³ The right to freedom from torture is set out in article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant.²⁴ The Working Group has previously concluded that when it is not possible for a person who is subjected to torture to prepare an adequate defence for a trial that respects the equality of both parties, the right to a fair trial is violated.²⁵ In the present case, the Working Group finds that such treatment and conditions of detention violated rules 1, 13, 21, 22 (1) and 23 (1) of the Nelson Mandela Rules, affected Mr. Vandecasteele's ability to prepare a defence, jeopardized the principle of equality of both parties and violated Mr. Vandecasteele's right to a fair trial.²⁶ The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

71. Noting the source's credible claim that Mr. Vandecasteele was not allowed witnesses during his trial, the Working Group also finds violations of his right to equality before courts and tribunals and to a fair trial, contrary to article 14 (3) (e) of the Covenant.²⁷ The right to equality before courts and tribunals and to a fair trial entails a strict obligation to respect the right of accused persons to have witnesses admitted who are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage during the proceedings.²⁸ The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

72. The source submits that Mr. Vandecasteele's trial consisted of one hearing that lasted for a maximum of 30 minutes. As the Working Group has previously noted, a short trial for a serious criminal offence, with a heavy sentence, indicates that guilt had been determined prior to the trial.²⁹ The brief duration of the trial, along with the lack of access to the evidence and the denial of access to legal counsel of Mr. Vandecasteele's choosing, resulted in the denial of Mr. Vandecasteele's right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.³⁰

73. Finally, the source submits that Branch 15 of the Islamic Revolutionary Court, which tried, convicted and sentenced Mr. Vandecasteele, is a court that does not meet the minimum standards of an independent and impartial tribunal.³¹ The judge presiding over the trial is also reportedly known for his unfair treatment of foreign and dual nationals.³² As the Working Group has previously stated, the revolutionary courts do not meet international standards of independence or impartiality.³³ The Working Group therefore finds a violation of article 10

²² Opinion No. 26/2017, para. 66.

²³ 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, paras. 12, 15, 67 and 71.

²⁴ See also rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), art. 10 (1) of the Covenant and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

²⁵ Opinions No. 32/2019, para. 42; and No. 20/2022, para. 104.

²⁶ Opinions No. 92/2017, para. 56; and No. 32/2019, para. 42. See also opinions No. 47/2017, para. 28; No. 52/2018, para. 79 (j); and No. 53/2018, para. 77 (c); and [E/CN.4/2004/3/Add.3](#), para. 33.

²⁷ Opinion No. 4/2021, para. 101.

²⁸ Human Rights Committee, general comment No. 32 (2007), para. 39.

²⁹ Opinions No. 85/2021, para. 88; and No. 83/2018, para. 61. See also opinions No. 75/2017, para. 53; and No. 36/2018, para. 55.

³⁰ Opinion No. 85/2021, para. 88.

³¹ Opinions No. 19/2018, para. 34; No. 52/2018, para. 79 (f); No. 51/2019, para. 65; and No. 85/2021, para. 87. See also [E/CN.4/2004/3/Add.2](#), para. 65; and [CCPR/C/IRN/CO/3](#), paras. 21 and 22.

³² Opinion No. 85/2021, paras. 86 and 87.

³³ [E/CN.4/2004/3/Add.2](#), para. 65 (1). The Working Group considers that this finding remains current: see opinions No. 19/2018, para. 34; No. 52/2018, para. 79 (f); No. 32/2019, para. 44; No. 33/2019,

of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, as any person facing criminal charges has a right to a hearing before a competent, independent and impartial tribunal established by law.

74. For the reasons above, the Working Group concludes that the breaches of the fair trial and due process rights of Mr. Vandecasteele are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

(c) Category V

75. Finally, in relation to category V, the source submits that Mr. Vandecasteele's detention was motivated by his status as a Belgian national. His detention allegedly took place as part of a pattern of targeting and detaining foreign nationals on grounds of State security. In its jurisprudence, the Working Group has identified a practice in the Islamic Republic of Iran of arbitrarily detaining persons who are foreign nationals,³⁴ dual nationals³⁵ or Iranian nationals with permanent residence in another country.³⁶ The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has also recognized this pattern, noting that recent estimates have suggested that at least 30 foreign and dual nationals, as well as Iranians with permanent residency in another country, have been imprisoned since 2015.³⁷ The present case is consistent with this pattern.

76. In his 2023 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran specifically mentioned the detention of Mr. Vandecasteele since February 2022 and was "extremely concerned at the arbitrary arrest, detention and harsh sentencing of foreign and dual nationals by the Iranian authorities, apparently to put pressure on foreign Governments for prisoner swaps or other returns".³⁸ In this regard, the Working Group recalls the Declaration against Arbitrary Detention in State-to-State Relations, which stipulates that "the arbitrary arrest or detention of foreign nationals to compel action or to exercise leverage over a foreign government is contrary to international law".³⁹

77. The Working Group finds to be credible the source's un rebutted claim that there is no information that Mr. Vandecasteele was in the Islamic Republic of Iran for any reason other than to recover personal belongings before his definitive departure. He had previously lived in the Islamic Republic of Iran between 2015 and 2021 for work without any incident. He has been, on different occasions, commended by the Minister of Health and Education for his good work. The Working Group received no information indicating that he had cooperated with any Government, engaged in spying, smuggled foreign currency or laundered any money.

78. Based on the foregoing, the Working Group concludes that Mr. Vandecasteele was deprived of his liberty on discriminatory grounds, on the basis of being a foreign national,⁴⁰ in violation of his rights under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His deprivation of liberty is arbitrary, falling within category V.⁴¹

para. 67; No. 51/2019, para. 65; No. 85/2021, para. 87; No. 54/2022, para. 58; and No. 21/2023, para. 89. See also CCPR/C/IRN/CO/3, paras. 21 and 22.

³⁴ Opinions No. 28/2013, No. 50/2016, No. 52/2018 and No. 51/2019.

³⁵ Opinions No. 18/2013, No. 44/2015, No. 28/2016, No. 7/2017, No. 49/2017, No. 27/2021 and No. 85/2021.

³⁶ Opinions No. 92/2017, No. 32/2019 and No. 29/2021.

³⁷ [A/HRC/37/68](#), paras. 51–57; [A/HRC/40/24](#), para. 13; and [A/HRC/43/61](#), para. 27. See also [A/HRC/37/24](#), paras. 56–57.

³⁸ [A/HRC/52/67](#), para. 70.

³⁹ [A/HRC/48/55](#), paras. 61–63. See also the Declaration against Arbitrary Detention in State-to-State Relations, available at www.international.gc.ca/news-nouvelles/assets/pdfs/arbitrary_detention-detention_arbitraire-declaration-en.pdf.

⁴⁰ Opinions No. 28/2016, paras. 47–49; No. 9/2017; No. 33/2019; and No. 83/2020.

⁴¹ Opinions No. 75/2017, No. 79/2017, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

(d) Concluding remarks

79. The present case is one of a number of cases brought before the Working Group in recent years concerning arbitrary deprivation of liberty in the Islamic Republic of Iran.⁴² The Working Group is concerned that this indicates widespread or systemic arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁴³ The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

80. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent country visit to the Islamic Republic of Iran, in February 2003, the Working Group considers that it is now an appropriate time to conduct another visit. The Working Group made a request to the Government on 19 July 2019 to conduct a country visit. The Working Group recalls that the Government issued a standing invitation on 24 July 2002 to all thematic special procedure mandate holders, and it awaits a positive response to its request to visit.

3. Disposition

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

The deprivation of liberty of Olivier Vandecasteele, being in contravention of articles 2, 3, 5, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 7, 9, 10, 14, 15 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

82. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Vandecasteele 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.

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

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

85. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

⁴² Opinions No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018, No. 83/2018, No. 32/2019 and No. 33/2019.

⁴³ A/HRC/13/42, para. 30. See also opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

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

4. Follow-up procedure

87. 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 compensation or other reparations have been made to Mr. Vandecasteele;

(b) Whether an investigation has been conducted into the violation of Mr. Vandecasteele's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

88. 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.

89. 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 of any failure to take action.

90. 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.⁴⁴

[Adopted on 28 August 2023]

⁴⁴ Human Rights Council resolution 51/8, paras. 6 and 9.