
Advance Edited Version

Distr.: General
4 March 2021

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020

Opinion No. 88/2020 concerning Christian James Michel (United Arab Emirates and India)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 9 May 2020, the Working Group transmitted to the Governments of the United Arab Emirates and India a communication concerning Christian James Michel. The Government of India replied to the communication on 26 June 2020 and the Government of the United Arab Emirates submitted a late response on 20 July 2020. India is a party to the International Covenant on Civil and Political Rights; the United Arab Emirates is not.

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,

* In accordance with paragraph 5 of the Working Group's methods of work, Elina Steinerte did not participate in the discussion of the case.

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

Submissions

Communication from the source

4. The source submits that Christian James Michel is a citizen of the United Kingdom of Great Britain and Northern Ireland born in 1961. Before his arrest, he was residing in Dubai, United Arab Emirates.

5. Mr. Michel was working in the United Arab Emirates as a middleman and as an external consultant for a subsidiary of AgustaWestland, a British-Italian company owned by Finmeccanica (now Leonardo) that trades in civilian and military helicopters.

6. In February 2010, the Ministry of Defence of India concluded a public procurement contract with AgustaWestland for the acquisition of 12 helicopters worth 556.2 million euros. In 2013, investigations were initiated in Italy against the Chairman of Finmeccanica and the Chief Executive Officer of AgustaWestland, who had allegedly been involved in fraudulent behaviour with regard to the conclusion of that contract. The alleged intermediaries, including Mr. Michel, were also named in the investigations.

7. In May 2019, the Chairman of Finmeccanica and the Chief Executive Officer of AgustaWestland were finally acquitted of charges of corruption. They had first been acquitted in October 2014 by the Court of Busto Arsizio. In April 2016, the Court of Appeal of Milan found them guilty of corruption and invoice forgery. That judgment was overturned in December 2016 by the Italian Court of Cassation. In January 2018, the Court of Appeal of Busto Arsizio acquitted the two individuals of international corruption and that judgment was confirmed on 22 May 2019 by the Court of Cassation.

8. In 2013, on the day after investigations started in Italy, the Minister of Defence of India ordered an investigation by the Central Bureau of Investigation. The allegations led to the suspension and subsequent termination of the contract with AgustaWestland in January 2014. The Enforcement Directorate filed a complaint on 24 November 2014 and the Indian judiciary took up the AgustaWestland case on 20 December 2014.

9. The Bharatiya Janata Party reportedly used the case in the run-up to the Indian parliamentary elections in May 2014. As the main party opposing the governing United Progressive Alliance, led by the Indian National Congress, before the elections, the Bharatiya Janata Party denounced the practices of the outgoing government and made the fight against corruption one of its main campaign commitments. After the Bharatiya Janata Party won the elections, the Prime Minister of India denounced the involvement of the Indian National Congress and the Gandhi family in the AgustaWestland affair, and the alleged close links between the United Progressive Alliance spokesperson and the “intermediary” Mr. Michel – links that the latter has always contested. The source adds that the arrest and extradition of Mr. Michel to India became the symbol of government anti-corruption efforts. In the run-up to the elections, the Prime Minister and his Bharatiya Janata Party repeatedly called for the extradition of Mr. Michel.

10. Despite the initial acquittal by the Court of Busto Arsizio, Mr. Michel was charged by the Indian authorities in September 2015, along with two others, with paying bribes to Indian officials in connection with the conclusion of the contract with AgustaWestland. On 24 September 2015, the Indian judiciary issued an arrest warrant for Mr. Michel, on the basis of which the International Criminal Police Organization (INTERPOL) issued a Red Notice on 25 November 2015. According to the source, Italy refused to extradite one of the other two individuals to India; the third individual was given a negotiated sentence of 22 months’ imprisonment for international corruption.

11. On 10 June 2016, the Enforcement Directorate of India filed a supplementary complaint against Mr. Michel, accusing him of organizing the payment of bribes to Indian politicians and officials with a view to favouring the conclusion of a contract for the supply of helicopters to India. In September 2016, Mr. Michel wrote to the Prime Minister of India

offering to answer questions about the case with the proviso that he would not be detained in India against his will. The Indian authorities did not respond.

a. Arrest and detention in the United Arab Emirates

12. Mr. Michel was arrested on 8 February 2017 in Dubai following an extradition request of the Indian authorities. He had been the subject of an INTERPOL Red Notice issued in November 2015 at the request of the Indian authorities. He was detained in the prison at the headquarters of the General Department of Criminal Investigations and released on bail on 13 February 2017.

13. Under the law on extradition, criminal evidence must be presented within 30 days. As no evidence was forthcoming, the court in Dubai extended that period by an additional 30 days. On 10 May 2017, as India was unable to provide evidence even after 90 days, the extradition request was rejected for lack of “seriousness”, particularly as the facts dated from 2006 to 2009 and were time-barred under the laws of the United Arab Emirates. INTERPOL reportedly refused to drop the Red Notice, however, stating that India could present documents at any time, and therefore Mr. Michel was unable to return to the United Kingdom.

14. Following the denial of the extradition request, the Indian authorities visited Mr. Michel in Dubai on several occasions, in the presence of local officials, and interrogated him for hours before getting him to sign statements implicating the Gandhi family, under threat of further prosecution. Two weeks after his arrest, Mr. Michel agreed to meet a delegation of local officials and representatives of the General Department of Criminal Investigations in Dubai, as well as a representative of the Indian authorities. During that meeting, he was urged to travel to India for his trial. He replied that he would go there on the condition that he would not be arrested upon arrival in India, a guarantee that he was not officially able to obtain from the Indian representative.

15. On 1 September 2017, an investigation report against Mr. Michel was produced and he was formally indicted, along with 11 other suspects. His case was formally referred to the courts on 11 October 2017.

16. In January 2018, the Indian authorities stated that they would continue with their investigation despite the fact that it was largely based on information derived from the Italian court proceedings, which had led to a judgment acquitting the Chairman of Finmeccanica and the Chief Executive Officer of AgustaWestland of corruption charges.

17. Also in January 2018, Mr. Michel was informed that the Ambassador of India to the United Arab Emirates wished to meet him and was assured that he would not be placed under any undue pressure. Mr. Michel and his lawyers met with representatives of the General Department of Criminal Investigations in Dubai, among other officials, and with the Deputy Director of the Central Bureau of Investigation of India. The latter allegedly attempted to coerce Mr. Michel into signing a 20-page previously drafted statement admitting to involvement in acts of corruption related to the AgustaWestland case and threatened him with prosecution if he refused to sign. Mr. Michel answered that he had already been shown the evidence before him during the first visit by the Indian authorities and that the offence with which he was being charged had already been rejected by the Italian courts twice. When he refused to sign the document, which was reportedly factually incorrect, he was told that he would be taken to New Delhi and detained. He was then given one week to reconsider his position.

18. Two weeks later, Mr. Michel was summoned again and subjected to similar pressure. He was asked to sign a document alleging that he had paid a representative of the Indian National Congress. He was told that, if he signed it, he would be made a witness to the proceedings, all charges against him would be dropped and the Red Notice would be retracted.

19. The source argues that, in retaliation for refusing to cooperate with the Central Bureau of Investigation, the Indian authorities issued a new arrest warrant against Mr. Michel and reinstated the extradition procedure against him. That procedure relied on the same documents that had been rejected at the first extradition hearing of February 2017 and had the same procedural and substantive irregularities as the first one.

20. Mr. Michel was arrested again, at his office, on 14 June 2018, by the authorities of the United Arab Emirates and taken to the prison at the headquarters of the General Department of Criminal Investigations. He was detained for 45 days without being charged or granted bail. During that time, the Indian authorities allegedly continued to press their counterparts in the United Arab Emirates for his extradition. Mr. Michel was granted bail after six weeks, on 29 July 2018, and was given three weeks to prepare his defence.

21. Despite a substantial defence having been submitted, the Dubai Court of Appeal gave its verdict after only two days and authorized the extradition request on 2 September 2018. The source argues that the authorities ignored the flaws and approved the request for political reasons. Mr. Michel was told that his extradition had been granted in exchange for the earlier seizure and return of a high-profile detainee to Dubai despite the detainee's plea for asylum. The detainee was extradited by the Indian forces, which had intercepted his yacht in international waters off the coast of Goa in March 2018, after the Prime Minister of India had made a personal telephone call to the Prime Minister of the United Arab Emirates and ruler of the Emirate of Dubai.

22. Three weeks after the hearing by the Dubai Court of Appeal, Mr. Michel was arrested again. He was detained in a Dubai police station from 22 September to 4 December 2018. He appealed the extradition decision to the Dubai Court of Cassation, pointing out the many irregularities in the proceedings. In particular, he argued that the decision was irreconcilable with the previous decision of the judiciary of the United Arab Emirates, which, a few months earlier, had refused his extradition for the same facts. Nevertheless, on 18 November 2018, the Dubai Court of Cassation rejected the appeal and granted the request for Mr. Michel's extradition to India.

b. Extradition and detention in India

23. On 4 December 2018, Mr. Michel was reportedly handcuffed, blindfolded and transported by private jet to India, in a hurried and unlawful manner that prevented him from challenging any decision. On 5 December 2018, Mr. Michel was brought before a judge who authorized his interrogation at the premises of the Central Bureau of Investigation. Mr. Michel was then placed in police detention again by the Bureau, from 4 to 19 December 2018, and by the Enforcement Directorate, from 22 December to 5 January 2019, during which time he was denied the full exercise of his rights and was allegedly subjected to physical and psychological pressure.

24. Mr. Michel was first detained and interrogated by the Central Bureau of Investigation for an initial period of 5 days, which was extended to 14 days. During that period, he was often not allowed to sleep and interrogated in sessions lasting 14 hours or more without breaks. The first interrogation lasted until 4 a.m. He was allegedly threatened with violence if he did not cooperate. That episode was raised by Mr. Michel in court and was not denied by the Bureau.

25. Mr. Michel was reportedly interrogated every day for up to 21 hours. He was placed under the continuous surveillance of three officers, depriving him of all privacy. Officers also severely disturbed his brief periods of sleep by talking loudly in the evening, incessantly slamming doors and switching the lights on and off. The investigators also kept him awake so that he could transcribe his answers in writing, which were then subjected to graphological analyses. He was thus allowed to sleep only three hours a night at the most.

26. On 19 December 2018, at the end of the first period of police detention by the Central Bureau of Investigation, Mr. Michel was transferred to Tihar Prison in New Delhi, where he shared a cell for three nights with about 40 detainees. His request for release was rejected on the grounds that investigations were ongoing. On 22 December 2018, Mr. Michel was transferred to the premises of the Enforcement Directorate to be questioned on money-laundering for 14 additional days, until 5 January 2019.

27. On 5 January 2019, after having been interrogated for 600 hours over a 30-day period, Mr. Michel was once again placed in custody in Tihar Prison. After several weeks spent in building No. 7, dedicated to those accused of white collar crimes, he was transferred on 18 February 2019 to high-security building No. 1 and placed in total isolation. Following a complaint filed by Mr. Michel on 26 February 2019 stating that he did not have the same

rights as the other prisoners, the tribunal ordered his transfer on 5 March 2019 to another building, to separate him from convicted prisoners. Since 7 March 2019, Mr. Michel has been detained in a cell in building No. 2.

28. Upon arrival at Tihar Prison, Mr. Michel was placed in solitary confinement for more than a month. He was continuously monitored and subjected to cell and body searches several times a day. Several officers were continuously present at his side. He was allowed to sleep for only a few hours a day during the first weeks of his detention. He was placed in a cell with only a mattress and a blanket and where the light was kept on day and night. He was prevented from leaving his cell and from obtaining adequate food supplies, which seriously jeopardized his health and physical integrity. Mr. Michel has lost more than seven kilograms and developed kidney stones, having been unable to drink for several days when temperatures exceeded 50°C. The prison authorities allegedly justified such treatment in an inconsistent manner, first claiming that he had been placed in solitary confinement because he had hidden a computer in his cell, which was never found, and then that it was for his safety, as he would have been in danger in his previous cell.

29. On 8 March 2019, Mr. Michel wrote a letter requesting a transfer to a normal cell, noting that he was the only defendant in the AgustaWestland case to have been placed in solitary confinement in a high-security prison. On 11 March 2019, his lawyers too requested that he be transferred, pointing out the discriminatory treatment that their client was suffering. Given Mr. Michel's deteriorating health, and faced with the inconsistent arguments justifying his treatment in prison, the judge ordered on 19 March 2019 an immediate end to his segregation. However, the source argues that Mr. Michel remains in de facto solitary confinement. He is still forced to ask other detainees to purchase food for him by providing them with his card through the bars of his cell.

c. Analysis of violations

30. The source submits that the detention of Mr. Michel is arbitrary under categories I, III and V and that the Governments of the United Arab Emirates and India are responsible for his ongoing arbitrary detention, the United Arab Emirates having authorized his extradition to India.

i. Category I

31. Mr. Michel's detention has reportedly not been carried out in accordance with any domestic or international law or any international standards. The source submits that deprivation of liberty is lawful if it is carried out in accordance with applicable laws and procedures and if it is reasonable, necessary and proportionate to the aim sought.

32. In the present case, the legal basis justifying Mr. Michel's detention is lacking. Mr. Michel has not been notified of the reasons for his detention or of the evidence being used to substantiate it. Furthermore, the extradition to India did not follow due process or the international protocols relating to extradition. The source submits that the Dubai courts made a politically motivated decision by allowing the extradition.

33. It is unlikely that there will be any form of trial, in the strict sense of a process that abides by the rule of law, as there is no proper legal basis for the detention and no offence has been committed. Mr. Michel is reportedly being detained with a view to coercing him to provide false evidence of unlawful conduct by members of the current Government's political opponents.

34. An essential safeguard against arbitrary detention is the reasonableness of the suspicion. The source argues that it is not possible to ascertain whether there exists reasonable suspicion in the present case, as the documents upon which India had based its extradition request were deficient and had in fact been reportedly rejected the previous year. The source adds that, according to the extradition treaty between the Governments of India and the United Arab Emirates, the alleged crime must have been committed in India. India has repeatedly stated, however, that Mr. Michel's crime is alleged to have been committed in the United Arab Emirates. Moreover, in accordance with the extradition treaty, if the person who is the subject of the extradition request has not yet been convicted, India must supply proof

of guilt that could stand in a court of the United Arab Emirates. India, the requesting State, has allegedly ignored that requirement.

35. Various procedural deficiencies also appear to be present in the papers submitted for the extradition hearing: the charge sheets were reportedly not attested by the Embassy of the United Arab Emirates in New Delhi and the extradition request was issued not by the competent authority in India, which is the Minister of Home Affairs, but by the Minister of External Affairs.

36. The source further submits that, in addition to the alleged deficiencies in the request itself, the charges Mr. Michel faces are politically motivated.

37. The source recalls that, in all circumstances, deprivation of liberty must remain consistent with the norms of international law. Even if domestic legislation might allow hearsay evidence, or evidence that is not capable of being challenged given the manner in which it is presented against the accused, doing so constitutes a violation of the prohibition of arbitrary deprivation of liberty under international law, as no person should be kept in detention solely on the basis of evidence to which the detainee does not have the ability to respond.

ii. Category III

38. The source submits that Mr. Michel has suffered serious and repeated violations of his right to a fair trial, enshrined in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. He has been subjected to unjustifiably prolonged detention, in harsh conditions, by authorities motivated by the search for forced confessions, while his right of defence and his right to be presumed innocent have been regularly violated.

39. According to the source, the unjustified length of Mr. Michel's detention and the undignified conditions in which it is being carried out seem to be geared towards obtaining a forced confession.

40. The source submits that provisions of international treaties duly ratified by India (in particular, article 9 (3) of the Covenant) indicate that pretrial detention is an exceptional measure, the rule being the maintenance of liberty. Therefore, a measure of pretrial detention must be necessary and reasonable. It must be subject to strict time limits, as specifically provided for in Indian law. In accordance with section 167 (2) (a) (ii) of the Code of Criminal Procedure, pretrial detention may not exceed 60 days in the case of offences punishable by less than 10 years of imprisonment (as in the present case). It may, however, be extended, if the judges consider it necessary, for a maximum of 15 days, in accordance with article 309 (2) of the Code of Criminal Procedure.

41. The source submits that Mr. Michel has been detained in India for two years without a trial date having been set. He was first placed in police detention from 4 December 2018 until 5 January 2019, in undignified conditions. During those 30 days, he was unable to fully exercise his rights and was subjected to physical and psychological pressure.

42. Mr. Michel remained in pretrial detention after 5 January 2019. His repeated requests for release on bail pending a possible trial have all been rejected on the grounds that, owing to the complexity of the case, investigations are still ongoing and have, in fact, entered a "crucial" stage. The investigations in the AgustaWestland case were opened in 2013, however, and were sufficiently advanced in 2015 for the Indian justice system to issue arrest warrants for certain suspects, including Mr. Michel. In addition, an investigation report against him was produced on 1 September 2017 and the case was formally referred to a judge on 11 October 2017. The source thus submits that it is difficult to understand what justifies the continuation of "crucial" investigations, more than seven years after the genesis of the case, or the need to keep Mr. Michel in detention.

43. The source submits that the Indian judge justified his decision to reject Mr. Michel's requests for release on the grounds that Mr. Michel's release would entail a risk of pressure being placed on witnesses, of evidence being compromised and of flight, in the absence of any evidence to support such hypotheses. Already in September 2016, Mr. Michel had informed the Indian authorities of his willingness to cooperate in the investigation, but no action was taken. Moreover, when he was arrested in Dubai, first in February 2017 and then

in June 2018, he was questioned for hours by Central Bureau of Investigation investigators and he provided numerous documents in support of his defence. He has therefore amply demonstrated that he did not wish to escape justice.

44. The source adds, as evidence of the unjustified nature of Mr. Michel's continued detention, that three other suspects in the AgustaWestland case, including two Indian nationals, have been released on bail for the same facts.

45. According to the source, in these circumstances, Mr. Michel's prolonged detention in the absence of any prospect of a trial seems to be solely politically motivated and appears neither necessary nor reasonable.

46. The source recalls that, according to the Human Rights Committee, there are close links between articles 7, 9 and 10 of the Covenant. Conditions of detention may be taken into account in determining the arbitrary nature of a detention and isolation while in prison may constitute a violation of articles 7 and 10 of the Covenant.¹ The source also refers to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Since his extradition to India, Mr. Michel has reportedly been detained in conditions that seriously contravene those provisions.

47. The source recalls that, while in detention on the premises of the Central Bureau of Investigation and of the Enforcement Directorate, Mr. Michel was placed under the continuous surveillance of three officers, depriving him of all privacy and severely disturbing his sleep. Physical exhaustion was coupled with psychological exhaustion, as he was also subjected to particularly harsh interrogations conducted by agents of the Central Bureau of Investigation and of the Enforcement Directorate, sometimes for up to 21 hours a day. Such methods, which are derogatory, are incompatible with the exercise of the right of defence and the right to a fair trial, and have as their sole purpose the obtaining of forced confessions.

48. The source argues that the Indian authorities paid insufficient attention to the compatibility of Mr. Michel's deprivation of liberty with his state of health, which was seriously undermined by 130 days of detention in an overcrowded cell in Dubai. He was only subjected to a simple blood pressure check and, although his blood pressure was found to be high, his state of health was deemed compatible with continued detention.

49. The source recalls that, once transferred to Tihar Prison, prison officers placed Mr. Michel in solitary confinement for more than one month and prevented him from obtaining adequate food and contacting his family. He was continuously monitored, subjected to cell and body searches several times a day and severely disturbed in his sleep. Despite the judge's decision to end the isolation measures on 19 March 2019, after his health had deteriorated, Mr. Michel remains in de facto isolation.

50. According to the source, in view of Mr. Michel's conditions of detention, his deteriorating state of health and the refusal to provide adequate treatment, such ill-treatment may amount to torture. The source notes that the repeated and unreasonably lengthy interrogations must be considered oppressive and any evidence obtained through them must be considered inadmissible.

51. The source argues that Mr. Michel's most basic rights have been violated and that he was unable to prepare his defence effectively from 4 December 2018 to 5 January 2019, in violation of article 14 (3) (b) and (d) of the Covenant and principles 15 and 18 of the Body of Principles.

52. The source recalls that, according to the Human Rights Committee, the time and facilities necessary for the preparation of a defence are an important element of the guarantee of a fair trial and an application of the principle of equality of arms, and prompt and regular access to independent counsel must be ensured.

53. The source submits that Mr. Michel was subjected to excessively lengthy interrogations under the threat of violence in the event of non-cooperation, during which he was given only limited access to his lawyer. During the first 24 hours of police custody at the Central Bureau of Investigation, he was deprived of the presence of his lawyer. While his

¹ General comment No. 35 (2014).

lawyer was allowed to attend subsequent interrogations, Mr. Michel was allowed to meet with him only briefly in the morning and in the evening, thus compromising his right to have the time and facilities necessary for the preparation of his defence and to communicate effectively with counsel of his choice. In March 2019, the Indian courts allowed Mr. Michel's lawyer to be present for a limited period of 30 minutes in the morning and in the evening, while he was further questioned by Enforcement Directorate officers. That prevented Mr. Michel and his lawyer from effectively preparing a defence. On 24 February 2020, a judge refused to grant Mr. Michel access to his foreign lawyers, on the grounds that he was "already represented by three Indian lawyers".

54. The source reports that prison services have repeatedly restricted Mr. Michel's right to make international calls, even though these were justified by the needs of his defence. As a result, he has been prevented from talking to his foreign lawyers and to his bank – and thus from obtaining his bank statements. He has sometimes even been forbidden from making telephone calls within India, unjustifiably restricting his communication with his lawyer.

55. The source submits that Central Bureau of Investigation and Enforcement Directorate officers repeatedly interfered with Mr. Michel's visits from consular officials of the United Kingdom, in violation of the Vienna Convention on Consular Relations, ratified by India on 28 November 1977. The British High Commission sought access to Mr. Michel but was able to see him only one month after his arrival in India. Another consular visit, which took place on 22 October 2019, after five unsuccessful requests to the prison authorities, was reportedly interrupted by the presence of Central Bureau of Investigation and Enforcement Directorate agents, who carried out searches on the instructions of the Ministry of External Affairs. By a decision of 10 January 2020, the tribunal considered that the Ministry of External Affairs was competent to issue such instructions.

56. According to the source, Mr. Michel's right to be presumed innocent, enshrined in article 14 (2) of the Covenant and in the Body of Principles, was also violated.

57. The source adds that, since his extradition by the United Arab Emirates, Mr. Michel has continuously suffered violations of his right to be presumed innocent. On 4 December 2018, he was taken to India in a private plane of the Ministry of External Affairs of India, handcuffed and blindfolded. Upon arrival, he was allegedly treated as if he were a dangerous criminal. During his transfer from the Central Bureau of Investigation premises to the court in New Delhi, he was surrounded by journalists – allegedly notified in advance – who reported on the case extensively in the press. He was then escorted to the court by a group of about 50 police officers.

58. The source submits that, since the beginning of the affair, the Prime Minister of India has, in interviews and television speeches, presented Mr. Michel as the key man in the AgustaWestland affair, thus portraying him as guilty. The Prime Minister also suggested that Mr. Michel was involved in another corruption case and implied that Mr. Michel was informed about all the internal political affairs of the country because of his alleged links with members of the Gandhi family.

59. The source reports that the investigating authorities (the Central Bureau of Investigation and the Enforcement Directorate) have on several occasions transmitted to the press false statements attributed to Mr. Michel according to which he had confessed or implicated members of the Indian National Congress. In particular, the press had access to an alleged indictment from the Enforcement Directorate stating that Mr. Michel had admitted to paying bribes to politicians and officials. That document was published on 4 April 2019. Such practices were reportedly acknowledged by the Indian judge on 3 May 2019, who invited the Director of the Enforcement Directorate to take the measures necessary to ensure that such incidents did not happen again.

60. The source argues that the above-mentioned actions of the Indian authorities are unjustifiable and that, beyond the violation of the presumption of innocence, they reflect the use of the criminal justice system for political purposes to the detriment of Mr. Michel.

61. According to the source, Mr. Michel's detention cannot be challenged before an appropriate court or tribunal in accordance with article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.

62. The source submits that the extradition process cannot be seen as having been based on a judicial decision taken independently of the executive. The alleged level of political interference in the case is such as to undermine any claim that an independent judicial process took place. Moreover, the extradition process amounts to an unlawful transfer from one State to another and is reminiscent of rendition. The source argues that the political interest in the outcome of the case is affecting the process and that the courts are not permitted to act with the independence or impartiality required to rule fairly and on the basis of the evidence. Given the political motivation behind the case, it is impossible to challenge the accusations before a truly independent and unbiased judiciary.

63. In view of the above, the source submits that Mr. Michel's detention is politically motivated and not in accordance with the law, thus arbitrary.

iii. Category V

64. The source recalls that article 2 (1) of the Covenant prohibits any difference of treatment between individuals based, inter alia, on political opinion.²

65. According to the source, the action taken against Mr. Michel can be explained by the links that the Government of India claim exist between him and the opposition Indian National Congress party. This is reportedly evidenced by numerous public statements by the Prime Minister of India and members of his government. The source argues that the extradition, the continued detention and the future sentencing of Mr. Michel reflect a political imperative that seems to justify the derogations from State obligations and the violations of his rights.

66. The source recalls that Mr. Michel's rights have been regularly violated, starting with the right to receive consular visits. More generally, the treatment Mr. Michel has received in prison, which undermines his dignity, contrasts with that of some of the other accused in the AgustaWestland case. In particular, he is the only one to have been placed in solitary confinement in a high-security prison. Moreover, while Mr. Michel remains in pretrial detention, other suspects accused of the same acts, including two Indian nationals, have been released on bail.

67. The source thus argues that Mr. Michel has been subjected to discriminatory treatment by the Indian authorities on political grounds and that he is being sanctioned for his alleged links with the Indian National Congress. The source states that such discriminatory treatment is commonplace in India.³

68. The source also states that this breach of the principle of equality before the law did not only mar the Indian proceedings but also tainted the extradition proceedings against him in the United Arab Emirates. The source recalls that Mr. Michel was arrested on 14 June 2018 in the United Arab Emirates, following the alleged rendition by India of a high-profile detainee (see para. 21 above). In that context, the authorities of the United Arab Emirates had to disregard the numerous irregularities in the proceedings that were raised by Mr. Michel's lawyers during an appeal before the Court of Cassation in Dubai.

69. In view of the above, the source submits that Mr. Michel's right to equality before the law has been violated by the authorities of both India and the United Arab Emirates and that his detention since 11 June 2018 is thus arbitrary.

Responses from the Governments

70. On 8 May 2020, the Working Group transmitted the allegations made by the source to the Governments of the United Arab Emirates and India through its regular communications procedure. The Working Group requested the Governments to provide, by 7 July 2020, detailed information about the situation of Mr. Michel and any comments on the source's allegations. Moreover, the Working Group called upon the Government of India to ensure Mr. Michel's physical and mental integrity.

² Ibid. See also opinion No. 42/2018 and principle 5 of the Body of Principles.

³ See, e.g., opinion No. 88/2017.

Response from the Government of the United Arab Emirates

71. The Government of the United Arab Emirates submitted its response on 20 July 2020, that is, after the deadline given by the Working Group. The response is therefore considered late and the Working Group cannot accept the response as if it had been presented within the time limit. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the methods of work of the Working Group.

Response from the Government of India

72. In its response of 26 June 2020, the Government of India refers to the various rights guaranteed by the Constitution, including the right to life and liberty and the right not to be subjected to arbitrary arrest. Persons whose fundamental rights have been violated can directly approach the Supreme Court and the high courts, which are empowered to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, for the enforcement of their fundamental rights as constitutional remedies under articles 32 and 226 of the Constitution of India.

73. The Government states that India has an independent and vibrant judiciary that has substantively expanded the concept of human rights through its judicial pronouncements over the years. Mr. Michel's arrest and subsequent custody is in accordance with the judicial process established by law.

74. The Government of India disputes the allegation that due process was not followed in Mr. Michel's extradition. The Government refers to articles 1 and 4 of the extradition treaty between the Government of India and the Government of the United Arab Emirates. Mr. Michel was accused in the territory of India and was found in the territory of the United Arab Emirates and was therefore liable to be extradited. The extradition request was duly supported by evidence, as required under the extradition treaty, which was considered by the United Arab Emirates.

75. According to the Government of India, the extradition request for Mr. Michel was submitted to the United Arab Emirates authorities early in 2017 and subsequently reinstated in January 2018, while criminal cases were pending against him in the Indian courts. The Indian courts took cognizance and issued a warrant for his arrest. An INTERPOL Red Notice was also issued. The Dubai courts examined the extradition request, heard Mr. Michel's appeals and approved his extradition.

76. The Government denies any procedural deficiencies in the presentation of the extradition request. The extradition dossier was countersigned by a competent court in India. The Ministry of External Affairs is the central authority for extradition matters and the extradition request was signed by the competent authority. It is a sovereign decision to designate the delegate who signs a treaty on behalf of the Government, and this does not vitiate the validity of the extradition treaty.

77. According to the Government, in April 2020, the Supreme Court of India dismissed a petition filed by Mr. Michel seeking interim bail after his interim bail application was dismissed by the High Court of New Delhi. The Government adds that Indian courts have addressed his custody issue in the light of the prevalent coronavirus disease (COVID-19) pandemic situation.

Additional comments from the source

78. In its further comments of 17 July 2020, the source acknowledges that the Constitution of India provides for equality before law, the rights to life and liberty and the prohibition of arbitrary arrest but notes that the observance of these rights remains questionable at best. While direct appeals to the Supreme Court and the high courts are possible under articles 32 and 226 of the Constitution, the Government's implementation of the decisions of the Supreme Court cannot be guaranteed. The source recalls that it remains unclear how Mr. Michel came into the custody of India and, furthermore, that the means employed were not subject to judicial supervision. The source adds that, if India is content to subvert due process in order to detain Mr. Michel, no confidence can be had that such process will be adhered to during his detention. For those reasons, the assurances provided by the Government of India

in its response that the fundamental rights of Mr. Michel will be protected cannot be relied upon.

79. On 3 August 2020, the source submitted a reply to the late response by the Government of the United Arab Emirates.

Discussion

80. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues, which establishes the evidentiary position for claims to succeed in human rights cases. 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

81. The Working Group notes that Mr. Michel was reportedly arrested on several occasions by the United Arab Emirates prior to his extradition to India. Noting that allegations have been made against the Government of the United Arab Emirates and the Government of India, the Working Group shall proceed to examine these separately.

a. Allegations against the United Arab Emirates

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

83. According to the source, on 8 February 2017, Mr. Michel was arrested by the authorities of the United Arab Emirates on the basis of a warrant following an extradition request from India and subsequently released on bail on 13 February 2017. He was arrested again on 14 June 2018 and held in detention for 45 days without being charged or released on bail; he was eventually released on bail on 29 July 2018. His third arrest occurred on 22 September 2018, after which he was detained in a Dubai police station until 4 December 2018, when he was extradited to India. The Government of the United Arab Emirates, in its late response, confirms that Mr. Michel was arrested in Dubai and states that the subsequent extradition process followed the applicable laws and procedures.

i. Category I

84. It appears from the facts presented by the source, which have not been refuted by the Government, that Mr. Michel was not brought promptly before a judge, within 48 hours of his arrest, barring absolutely exceptional circumstances, in accordance with the international standard.⁴ In addition, he was reportedly not promptly informed of the charges against him. The Government of the United Arab Emirates has thus violated article 9 of the Universal Declaration of Human Rights and principles 11, 37 and 38 of the Body of Principles.

85. The Working Group further observes that Mr. Michel was not afforded the right to take proceedings before a court in the United Arab Emirates so that it may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles. In accordance with 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, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society. That right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.⁵ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.⁶

⁴ Human Rights Committee, general comment No. 35 (2014), para. 33.

⁵ See also opinion No. 39/2018, para. 35.

⁶ See, e.g., opinions No. 59/2019, para. 51; and No. 65/2019, para. 64.

86. Furthermore, the Working Group notes with concern the submission by the source, which has not been disputed by either Government, that the approval by the United Arab Emirates of the extradition request made by India was a de facto swap for the capture and return to Dubai by India of a high-profile detainee, a swap reportedly authorized by the Prime Minister of India in March 2018 (see para. 21 above). The Working Group also notes with concern the allegations, not contested by either Government, that Mr. Michel was repeatedly questioned and pressured by the Indian authorities in the presence of officials of the United Arab Emirates, that he was forced to sign various documents and subjected to lengthy interrogations, and that he was handcuffed, blindfolded and transported by private jet to India in a hurried and unlawful manner that prevented him from challenging any decision.

87. In the light of the foregoing, the Working Group considers that there was no legal basis for the arrest and detention of Mr. Michel in the United Arab Emirates or for his subsequent forced transfer to India. The Working Group concludes that his deprivation of liberty lacks a legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights. His deprivation of liberty is thus arbitrary under category I.⁷

ii. Category III

88. At the outset, the Working Group notes that it is incumbent upon Governments and authorities to respect, protect and fulfil the right to personal liberty by exercising due diligence to prevent expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of liberty, and by taking into account all relevant considerations.⁸ As the Working Group has previously observed, international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country in order to ensure that their right to a fair trial is protected.⁹

89. According to the source, following his second release on bail on 29 July 2018, Mr. Michel was given only three weeks to prepare his defence in relation to the extradition hearing before the Dubai Court of Appeal. The source also submits that, despite a substantial defence having been submitted, the Dubai Court of Appeal gave its verdict after only two days and authorized the extradition on 2 September 2018. However, the Government submits that the extradition file was submitted to the court on 8 July 2018 and the verdict given on 2 September 2018, 53 days later. The Working Group is not in a position to reach any conclusions on this point.

90. The Working Group notes, however, the allegations by the source in relation to the political dimension of the present case, including in respect of the alleged exchange of detainees and the extensive pressure exerted on and the intimidation of Mr. Michel (see para. 86 above), as well as the reliance, in the reinstated extradition procedure, on the same documents with the same procedural and substantive irregularities that had reportedly tainted in the first extradition hearing, in February 2017. Although the Government states that the extradition request was not politically motivated and it also provides some clarifications in relation to the procedures followed, the Working Group reiterates that mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations. In the light of the serious allegations by the source, the Working Group is not convinced that Mr. Michel's right to a fair and public hearing by an independent and impartial tribunal, as guaranteed by article 10 of the Universal Declaration of Human Rights, would have been protected under such circumstances.

91. In addition, the Working Group notes with concern that Mr. Michel was held in an overcrowded cell in a Dubai police station from 22 September to 4 December 2018. The Working Group underlines that a detainee should not be kept in a police station beyond a couple of days, as it is not suitable for long-term detention.

⁷ See also articles 14 (1) and 26 of the Arab Charter on Human Rights.

⁸ See opinions No. 53/2016, paras. 59–63; No. 56/2016, paras. 55–60; and No. 68/2018, para. 59. See also A/HRC/4/40, paras. 44–45.

⁹ See, e.g., opinions No. 11/2018, para. 53; and No. 33/2020, para. 63.

92. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Michel's deprivation of liberty an arbitrary character, falling within category III.

iii. Category V

93. The Working Group notes that the source has also argued that the deprivation of liberty of Mr. Michel falls within category V. The Working Group did not find sufficient elements to support this submission by the source and is of the view that the allegations made in this respect are better treated as part of the fair trial requirements under category III and have already been treated as such.

94. The Working Group considers that the Government of the United Arab Emirates is responsible for its own actions in the arrest, detention and forced transfer of Mr. Michel, as well as the subsequent violations of his rights in India (see below). The Working Group calls upon the Government of the United Arab Emirates to take all steps necessary to secure the immediate and unconditional release of Mr. Michel.

b. Allegations against India

95. The Working Group thanks the source and the Government of India for their timely submissions.

96. The source notes that, upon arrival in India, Mr. Michel was brought before a judge on 5 December 2018 who authorized his interrogation at the premises of the Central Bureau of Investigation. Mr. Michel was then placed twice in police detention and has since been held in pretrial detention. In its response, the Government asserts that due process was followed in Mr. Michel's extradition and that his arrest and subsequent custody is in accordance with the judicial process established by law.

i. Category I

97. According to the source, Mr. Michel remains in unjustifiably prolonged pretrial detention. His repeated requests for release on bail, pending a possible trial, have allegedly all been rejected on the grounds that, owing to the complexity of the facts, the investigations are still ongoing and that they have, in fact, entered a "crucial" stage (see para. 42 above).

98. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and should be entitled to trial within a reasonable time or to release. Pretrial detention should thus be the exception rather than the rule, and it should be based on an individualized determination that it is reasonable and necessary to detain an individual, taking into account all the circumstances.¹⁰

99. The Government stated in its response that Mr. Michel is being held in custody in accordance with the judicial process established by law, without providing further details. According to the source, the Indian judge justified his decision to reject Mr. Michel's requests for release on the grounds that Mr. Michel's release would entail a risk of pressure being placed on witnesses, of evidence being compromised and of flight (see para. 43 above). The Working Group thus notes that the decision to keep Mr. Michel in pretrial detention appears to have been based on an individualized assessment of his case and does not find a violation of category I.¹¹

ii. Category III

100. The Working Group will now consider whether the deprivation of liberty of Mr. Michel is arbitrary under category III.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 38. See also A/HRC/19/57, paras. 48–58.

¹¹ See also articles 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

101. In accordance with article 14 (3) (c) of the Covenant, everyone charged with a criminal offence shall have the right to be tried without undue delay. The reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities.¹² The Working Group also recalls that extremely prolonged pretrial detention may also jeopardize the presumption of innocence under article 14 (2), that persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence, and that, when delays become necessary, the judge must reconsider alternatives to pretrial detention.¹³

102. In the present case, the Working Group notes that the investigation into the AgustaWestland affair was opened in 2013 and was deemed sufficiently advanced by 2015 for the Indian judiciary to issue arrest warrants against Mr. Michel, and that these factors suggest that the length of his pretrial detention is unreasonable. The Working Group thus finds that the Government of India has violated Mr. Michel's right to be tried within a reasonable time and without undue delay under articles 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (1) and (3) (c) of the Covenant.

103. The source also submits, and the Government of India has not substantiated its claim to the contrary, that Mr. Michel had limited or no access to legal counsel of his choice during the daily interrogations to which he was subjected, lasting up to 21 hours each day, from 4 December 2018 to 5 January 2019. In March 2019, the courts allowed the presence of Mr. Michel's lawyer for 30-minute periods in the morning and in the evening, while Mr. Michel was further questioned by the Enforcement Directorate. The judge has also denied access to his foreign lawyers on the ground that he was "already represented by three Indian lawyers", despite the international nature of his case.

104. In the Working Group's view, the Government failed to respect Mr. Michel's right to legal assistance, which is inherent in the right to liberty and security of person, and his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 14 (1) and (3) (b) and (d) of the Covenant, as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.¹⁴

105. The Working Group considers that this violation substantially undermined and compromised Mr. Michel's capacity to defend himself in any subsequent judicial proceedings. As stated in principle 9 and guideline 8 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, 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 must be promptly informed of this right upon apprehension; nor should access to legal counsel be unlawfully or unreasonably restricted.¹⁵ The Working Group notes the denial of Mr. Michel's due process right to communicate with his foreign lawyers, which is a violation of his right to have adequate time and facilities for the preparation of his defence under article 14 (3) (b) of the Covenant.¹⁶

106. According to the source, the Central Bureau of Investigation and Enforcement Directorate officers repeatedly interfered with or interrupted Mr. Michel's visits from consular officials of the United Kingdom, in violation of the Vienna Convention on Consular Relations, to which India is a party. Moreover, it would appear from the facts presented by the source, and not disputed by the Government, that consular officials of the United Kingdom have not had access to Mr. Michel for more than a year. The Working Group reiterates the importance for foreign nationals of receiving consular assistance in the

¹² Human Rights Committee, general comment No. 35 (2014), para. 39.

¹³ *Ibid.*, para. 37.

¹⁴ See also articles 12, 13 (1), 14 (1) and 16 (2)–(3) of the Arab Charter on Human Rights.

¹⁵ See also Human Rights Committee, general comment No. 32 (2007), para. 34.

¹⁶ Opinion No. 59/2020, para. 78.

preparation of a defence and is of the view that denial of or interference with such assistance constitutes a violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) of the Covenant.¹⁷

107. According to the source, the Government has also violated Mr. Michel's right to the presumption of innocence. The Working Group notes with concern that Mr. Michel was reportedly transferred to India while handcuffed and blindfolded, and that he was allegedly treated as a dangerous criminal upon arrival. The Working Group also notes with preoccupation the large police presence awaiting Mr. Michel during his first transfer to the court, the apparent leak of information to the media by the investigative authorities and the repeated incriminating public statements proclaiming his guilt (see paras. 57–60 above).

108. The Working Group reminds the Government of India that, according to the Human Rights Committee, it is a duty for all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.¹⁸ The Working Group finds that the Government has violated Mr. Michel's right to the presumption of innocence guaranteed under article 11(1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant, as well as principle 36 (1) of the Body of Principles.¹⁹

109. According to the source, Mr. Michel was initially held in police detention for about a month where he was, *inter alia*, subjected to prolonged interrogations while deprived of sleep and under threat of violence, and he continues to be held in unjustifiably prolonged pretrial detention, in harsh conditions and in a high-security prison. Mr. Michel was held in solitary confinement for more than one month without adequate food or water, in a cell where temperatures have exceeded 50°C. He reportedly continues to be held in *de facto* solitary confinement. The source alleges, and the Government does not contest, that the detention regime inflicted on Mr. Michel is aimed at forcing him to confess²⁰ and has seriously jeopardized his health and physical integrity. The Working Group thus considers that the source has presented a credible *prima facie* case that Mr. Michel is being detained in circumstances in which he is effectively forced to provide statements relating to the allegations against him, in violation of his right to the presumption of innocence under article 14 (2) of the Covenant and of his right not to be compelled to testify against himself or to confess guilt under article 14 (3) (g) of the Covenant.

110. With respect to Mr. Michel's month-long solitary confinement and his ongoing *de facto* solitary confinement, the Working Group recalls that conditions of detention can be taken into account in determining the arbitrary nature of a detention and that solitary confinement may constitute a violation of articles 7 and 10 of the Covenant. The Working Group regrets that the Government has failed to adequately respond to the allegations. The Working Group also 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, whereby some of the harmful psychological effects of isolation can become irreversible,²¹ may amount to torture as described in article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment. The Working Group notes that Mr. Michel's conditions of detention are also contrary to principles 15 and 19 of the Body of Principles, which provide for the right of the detainee to maintain communication with the outside world. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

111. The Working Group also recalls that all persons under any form of detention or imprisonment should be treated in a humane manner and with respect for the inherent dignity

¹⁷ See deliberation No. 11 (A/HRC/45/16, annex II), paras. 20–21.

¹⁸ General comment No. 32 (2007), para. 30.

¹⁹ See also article 16 of the Arab Charter on Human Rights; and opinion No. 59/2020, paras. 79–81.

²⁰ See also opinion No. 59/2020.

²¹ A/56/156, para. 14; A/63/175, para. 56; and A/66/268, para. 61. See also rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

of the human person, in accordance with article 10 (1) of the Covenant and principle 1 of the Body of Principles.

112. In light of the allegations put forward by the source in relation to Mr. Michel's conditions of detention, his deteriorating state of health and the refusal to provide adequate treatment, and in accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

113. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Michel's deprivation of liberty an arbitrary character, falling within category III.

iii. Category V

114. With regard to the submission by the source in relation to category V, the Working Group refers to its finding in paragraph 93 above.

Disposition

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

Regarding the United Arab Emirates:

The deprivation of liberty of Christian James Michel by the Government of the United Arab Emirates, being in contravention of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

Regarding India:

The deprivation of liberty of Christian James Michel by the Government of India, being in contravention of articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (3); 10 (1); and 14 (1)–(2) and (3) (b)–(d) and (g) of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

116. The Working Group requests the Governments of the United Arab Emirates and India to take the steps necessary to remedy the situation of Mr. Michel 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 Covenant.

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

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

119. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

120. The Working Group requests both Governments to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

121. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and both Governments to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Michel has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Michel;
- (c) Whether an investigation has been conducted into the violation of Mr. Michel's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the United Arab Emirates and India with their international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

122. Both Governments are invited to inform the Working Group of any difficulties they 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.

123. The Working Group requests the source and both Governments to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

124. 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 27 November 2020]

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