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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–22 November 2021

Opinion No. 70/2021 concerning Robert Pether and Khalid Radwan (Iraq)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 27 August 2021, the Working Group transmitted to the Government of Iraq a communication concerning Robert Pether and Khalid Radwan. 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,

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

¹ [A/HRC/36/38](#).

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. Robert Pether, born in 1975, is an Australian engineer who resides in Ireland.
5. Khalid Radwan, born in 1965, is an Egyptian engineer, who resides in the United Arab Emirates.
6. The source reports that Mr. Pether and Mr. Radwan are both employees of CME Consulting, an engineering company incorporated in the United Arab Emirates.

a. Background

7. According to the information received, CME Consulting has an International Federation of Consulting Engineers contract with the Central Bank of Iraq for the construction of its new headquarters. The role of CME Consulting is to ensure the orderly progress of the project. The project has an extremely high profile, as the Central Bank of Iraq is an institution of critical importance for the rebuilding of the country. Mr. Pether was the lead engineer working for CME Consulting and Mr. Radwan was his deputy. They were playing a critically important role in a key stage of the contract at the time of their detention.

8. The source reports that it appears that there has been some form of contractual dispute between CME Consulting and the Central Bank of Iraq concerning an alleged failure in executing some payments. This failure resulted in the possibility of CME Consulting ceasing its work on the project in early 2021. Messrs. Pether and Radwan were actively involved in resolving this dispute.

9. On 30 March, prior to traveling to Iraq, Mr. Pether called the Australian Embassy to inquire as to whether going to Iraq would pose a risk to his safety, considering the ongoing commercial dispute between his employer and the Central Bank. The Embassy did not indicate any cause for concern.

b. Arrest and detention

10. Messrs. Pether and Radwan arrived in Baghdad on 1 April 2021, at the request of the Governor of the Central Bank of Iraq. During the following six days, they attended meetings. On 7 April, one week after arriving in Baghdad, Messrs. Pether and Radwan were allegedly arrested on the premises of the Central Bank of Iraq.

11. According to the source, at 2 p.m. on 7 April, the Governor of the Central Bank of Iraq reportedly joined Messrs. Pether and Radwan for the first time since they had arrived in Iraq. A few minutes after meeting with the Governor, 12 Iraqi police officers allegedly barged in the room and arrested them. Mr Pether was forced to hand over his phone, laptop and hard drive. The detainees were not charged at that time, nor were they informed of the nature of the charges that were being brought against them. They were taken to an undisclosed location. Since then, they have remained deprived of their liberty.

12. The source claims that, after their arrest, the two men disappeared for three days. Inquiries were made but no one knew of their whereabouts. Neither their families nor the Embassies of Australia or Egypt were promptly made aware of their arrest.

13. Shortly after his arrest, Mr. Pether was interviewed by police officers without the assistance of a lawyer. Mr. Pether asked that the Australian Embassy be contacted but was told there should be no interference from the Embassy. Mr. Pether was interviewed again by the police on 7, 8, 10 and 11 April, without legal assistance.

14. Three days after their arrest, the Egyptian Embassy managed to locate Messrs. Pether and Radwan and informed their families that both men were being held at the D6 detention facility, which is believed to be operated by the Ministry of the Interior.

15. According to the information received, from approximately 7 to 19 April, Mr. Pether was held in solitary confinement at the D6 detention facility. He was put in a 2m² cell with only a carpet to sleep on and the lights constantly on. Reportedly, Mr. Pether refuses to speak about the treatment he endured while at D6, with the source suggesting that he was subjected to acts of torture and ill-treatment. It is suspected that he was shown torture rooms, blindfolded, insulted and screamed at. Reportedly, Mr. Pether had almost no access to water and suffered very severe dehydration. He was almost never allowed outside, only for two hours during the first 12 days of his detention. He was forced to remain in the suit he wore at the time of his arrest for 12 days. It is reported that Mr. Pether lost 15kg during the first 12 days of his detention.

16. Mr. Radwan was put in a separate prefabricated modular building. Every time a representative of the Egyptian Embassy visited, he was taken to nicer premises.

17. On 19 April, Messrs. Pether and Radwan were transferred to the Al Muthanna military detainment centre in Baghdad. There, they share an overcrowded cell with 22 other inmates.

18. Reportedly, Mr. Pether finally got access to water. However, due to his severe dehydration, he quickly suffered a serious kidney and bladder infection. He is also reported to have had blackouts, to be delirious and has started to forget basic facts. Mr. Pether was not provided with medical treatment. However, the source understands that, following consular visits, Mr. Pether now has access to medical assistance if needed.

19. The source stresses that the Australian Embassy was never notified of Mr. Pether's arrest and located him using its own contacts. As a result, Mr. Pether only received consular access on 3 May, which was the 26th day of his detention. On that occasion, he managed to speak on the phone to the Embassy. He reportedly broke down when asked about what he had endured during his first weeks of detention and showed signs of having suffered serious ill-treatment. He seemed to be terrified that he might be sent back to the D6 detention facility, where he had been previously held.

20. As for Mr. Radwan, representatives from the Egyptian Embassy reportedly managed to meet with him for the first time on approximately 12 April, which was the sixth day of his detention. In the meantime, Messrs. Pether and Radwan's employer appointed a lawyer in Bagdad to represent them both.

21. Despite the Embassy's insistence, Mr. Pether was reportedly not allowed unhindered access to his lawyer. Since the first three months of his arrest, Mr. Pether has only met with his counsel on two occasions and Mr. Radwan has only met with his counsel three times.

22. The first time counsel visited them on 11 May, he was accompanied by the lawyer for the Central Bank of Iraq. The second time Mr. Pether met with his counsel on 12 May, the meeting took place before a court hearing and lasted 10 minutes.

23. The Australian Embassy and Mr. Pether's family have on numerous occasions tried to get in touch with his Iraqi counsel but without success. It has been reported that counsel has made several requests to the judge in charge of the case to meet with Mr. Pether, but these requests have been systematically denied.

c. Trial proceedings

24. According to the information received, Messrs. Pether and Radwan appeared before a court for the first time on 12 April, while still detained at the D6 detention facility, on a charge of impersonating a company (it was argued that CME Consulting was not a real entity). That allegation was quickly and easily disproved, and the charges were dropped. Other charges are allegedly under investigation, but they have not been notified of any such charges but remain in detention nonetheless.

25. Allegedly, there have also been three bail hearings. On all three occasions, bail was denied without any reason being provided.

26. More recently, the two men filed an application to have their case heard by the civil courts. However, this application was rejected in mid-July 2021.

27. The source reports that at a hearing on 25 August, after proceedings that were allegedly marred by due process violations, Mr. Pether and Mr. Radwan were each sentenced to 5 years in prison and a \$12 million fine was imposed. According to the source, the sentence was pronounced only 15 minutes after the trial hearing concluded. No copies of the decisions were made immediately available to the defence or to the consular or diplomatic authorities.

28. The charges have reportedly changed over time, making it extremely difficult to prepare a defence. The day of the hearing, lawyers for Messrs. Pether and Radwan thought that the charge was impersonating a company and pleaded the case accordingly. However, the judge interrupted their case to advise them that there was no charge that Messrs. Pether and Radwan had misrepresented themselves and that this charge had been dropped.

29. The charges that were read out later at the hearing were based on article 456/1 of the Iraqi Penal Code and consisted of entering into a contract with the Central Bank of Iraq by claiming to be representatives of third companies and fraudulently receiving funds totalling \$12 million.

30. It is reported that lawyers for Messrs. Pether and Radwan were repeatedly denied access to their clients ahead of the hearing. They did not have proper access to the case file, nor were they able to access some of Messrs. Pether and Radwan's belongings that had been confiscated and that contained exculpatory evidence.

31. In addition, the source claims that some of the written statements discussed in court were made under duress and without a lawyer present. The document signed by Mr. Pether in the early days of his detention was written in Arabic and no translation was provided prior to him signing it. During the hearing, the lawyers reiterated that they had made many requests and submissions to the investigation court regarding the use of tainted evidence (due to psychological torture and beatings), but that all their requests had been rejected.

32. The source states that an appeal within the misdemeanour court would go to cassation rather than appeal. The difference is that cassation is a written submission that focuses on the legal reasoning, rather than a full retrial. There are fears that the factual evidence will not be properly reviewed and that the factual findings of the misdemeanour court will be definitive.

33. The source claims to be extremely worried about the well-being of the two men, especially as it has learned that they are about to be transferred to a different detention facility. Their families, their lawyers and their respective embassies have not been informed of their new place of detention.

34. Based on the facts set out above, the source believes that the continuing detention of Messrs. Pether and Radwan constitutes a very serious threat to their physical integrity and psychological health. Since the beginning of his detention, Mr Pether has lost 15 kg and suffered severe health problems. He is still losing weight.

35. According to the source, there is a well-founded fear of reprisals against Mr. Pether. On the very rare occasions that he has spoken to his family, he has refused to provide details of what he endured during the first days of his detention and when he was in solitary confinement. On one occasion, when speaking to his family, he was delirious, unable to express himself clearly and had forgotten simple facts. While he has now gained consular access and been moved to a different detention facility, and while he acknowledges that there have been individual acts of decency, his condition is still cause for concern.

36. According to the source, the detention of the two men is being used to gain advantage in a high-stakes commercial dispute between CME Consulting and the Central Bank of Iraq.

d. Legal analysis

i. Category I

37. The source claims that there is no proper legal basis for the continued deprivation of liberty of Messrs. Pether and Radwan. The case is allegedly a violation of articles 3 and 9 of the Universal Declaration of Human Rights; principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; article 9 (1)

of the International Covenant on Civil and Political Rights; and article 14 (1) of the Arab Charter on Human Rights.

38. Messrs. Pether and Radwan were allegedly not presented with a warrant when they were arrested. They were lured into returning to Iraq and are detained under false pretences and on fabricated charges.

39. The two men were not given any reason for their arrest on 7 April 2021 and there were no circumstances that would give reasonable cause for an arrest in flagrante delicto. They never received a copy of the warrant that was issued, if indeed there ever was one. The source stresses that an arrest without warrant is arbitrary in and of itself, even if the person is later charged.²

40. Messrs. Pether and Radwan have been held in pretrial detention since their arrest, with the nature of the charges against them marred by confusion. Until August 2021, no formal charges were laid against them.

41. According to the source, it is extremely difficult to understand which provisions of Iraqi criminal law are being relied on to detain Messrs. Pether and Radwan, if any. In that regard, the source claims that an act is only punishable by law if it is the object of a “valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached”.³

42. The source claims that this not the case here. Reportedly, Messrs. Pether and Radwan were first told they were to assist with an investigation, then that they faced charges of impersonating a company. The charge was disproven and quickly dropped, and then they were told that an investigation was under way in relation to different charges, which were never clarified.

43. The detention of Messrs. Pether and Radwan is allegedly used by the Central Bank of Iraq to exercise leverage over their employer and obtain substantial payments. A representative of the Central Bank allegedly stated at one stage that this would “all go away” if CME Consulting made large financial concessions and if Messrs. Pether and Radwan agreed to stay in Iraq and finish working on the project for free. That offer was then removed from the possible options for resolving the matter.

44. The source claims that the abuse of State authority, including judicial authority, to arbitrarily arrest, detain or sentence individuals in order to exercise leverage in commercial dealings violates international law. The abuse is allegedly more flagrant as the investigating judge was not able to put forward any consistent legal basis to justify the detention of Messrs. Pether and Radwan.

45. Even if the two men’s employer had not fulfilled its contractual obligation, their detention would be contrary to international law. Not only should Messrs. Pether and Radwan not be held liable for the acts of their employer, but under article 11 of the Covenant: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation”.

46. The source further argues that the pretrial detention of Messrs. Pether and Radwan was neither reasonable nor necessary and no reasons were provided to justify it. Had they been considered a flight risk, less invasive non-custodial measures could have been imposed.⁴

47. In the light of the foregoing, the source alleges that the deprivation of liberty of Mr. Pether and Mr. Radwan is without a legal basis and arbitrary under category I.

ii. Category III

48. The source submits that the detention of Messrs. Pether and Radwan is arbitrary under category III, owing to several gross violations of their right to a fair trial. At the time of their arrest, they were not informed of the nature of or the reasons for the criminal charge against them. They were first led to believe that they were to assist with an investigation.

² Opinion No. 37/2000, paras. 10–11.

³ Opinion No. 10/2018, para. 50.

⁴ Human Rights Committee, general comment No. 35 (2014), para. 38.

49. After several days in the D6 detention facility, at the hearing of 12 April they were told they had been detained on the ground of impersonating a company. That charge was without merit and therefore hastily dropped. However, that did not lead to their release, as they were immediately remanded into custody.

50. They were then told that another investigation was under way in relation to different charges. However, until August 2021 no charges were brought against them.

51. The source claims that the authorities did not bring Messrs. Pether and Radwan promptly before a judge, as required by article 9 (3) of the Covenant, nor did they inform them of their right to challenge the lawfulness of their detention, pursuant to article 9 (4) of the Covenant and in violation of principle 32 of the Body of Principles.

52. Messrs. Pether and Radwan first appeared in court on 12 April. Mr. Pether was allegedly made to sign two documents in Arabic. He understood that these were his statements but was unable to verify this without a translator. Neither man benefited from the assistance of a lawyer.

53. There have been three bail hearings and bail has been systematically rejected without any reason being given. For the source, there are serious concerns about due process, as the lawyer for the Central Bank is allegedly sitting with the judge to ensure that bail is rejected and that both men remain in detention.

54. The source claims that Messrs. Pether and Radwan are therefore being denied a proper opportunity to challenge the legality of their detention.

55. In addition, the source claims denial of the right to the assistance of legal counsel. All persons have the right to representation by competent and independent legal counsel of their choosing, or to self-representation. The right to representation by legal counsel applies to all stages of a criminal process, including the pretrial phase. The right to legal assistance should be afforded “immediately after the moment of deprivation of liberty and at the latest prior to any questioning by an authority”.⁵

56. In the present case, that right was allegedly impaired on several grounds: Messrs. Pether and Radwan were interviewed without the assistance of legal counsel; they were brought to court on April 12 but were not given the opportunity to be represented by counsel; and they were allegedly denied unhindered communication with the lawyer appointed for them by CME.

57. The source fears that the Central Bank of Iraq is trying to interfere and/or pressurize the legal counsel. The first time he visited Mr. Pether in prison, he attended the meeting with the lawyer of the Central Bank of Iraq. The second time, their meeting lasted 10 minutes and took place just before a court hearing on 12 May. Mr. Pether was reportedly told that the reason that his legal counsel not meeting with him was that the judge in charge of the case refused to allow such visits.

58. Fair trial includes the right to present and prepare a defence (article 14 (3), (b) and (d) of the Covenant). Messrs. Pether and Radwan have allegedly been deprived of that right.

59. Messrs. Pether and Radwan were denied the possibility of acquainting themselves with the charges against them and the supporting documentary evidence. They have also been denied access to documents that could easily prove that some of the accusations that have been levelled against them during police interviews are groundless.

60. Mr. Pether’s right to legal representation and access to justice is also seriously impaired, since he does not benefit from the assistance of a competent, impartial, interpreter during his court appearances. Allegedly, Mr Pether’s statements were purposely mistranslated to suggest guilt.

61. The source claims that there are reasons to fear that the criminal proceedings against the two men are based on evidence improperly obtained, contrary to article 14 (3) (g) of the Covenant, which provides that everyone shall be entitled “Not to be compelled to testify

⁵ See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 8.

against himself or to confess guilt.” Allegedly, Mr. Pether was forced to sign a statement in Arabic, which he does not speak or read. That statement is now part of the case file and could have been used as evidence in his trial.

62. The source emphasizes that “when someone is forced to confess to a crime, and that confession is then used to convict him or her, then the trial becomes totally flawed and should be annulled”.⁶

63. Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. That is a non-derogable right under article 4. It is also embodied in article 5 of the Universal Declaration of Human Rights.

64. Torture is defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” to obtain a confession, as a form of punishment, to intimidate or coerce, or based on discrimination. Article 16 of the Convention provides that any act that does not amount to torture, but is cruel, inhuman or degrading, is a violation of international law when instigated by a public official. Torture and ill-treatment are also expressly prohibited by article 8 of the Arab Charter on Human Rights. Article 7 of the Covenant extends its protection to acts that cause mental suffering, according to the Human Rights Committee in its general comment No. 20 (1992).

65. Messrs. Pether and Radwan were held at the D6 detention facility from 7 to 19 April. Mr Pether was detained in a 2m² cell with the lights permanently on. He was reportedly blindfolded, interrogated, screamed at, threatened, insulted and shown torture rooms. In the first 12 days of detention, Mr. Pether lost 15 kgs and became severely dehydrated. He was barred from any contact with the outside world for the first 19 days of his detention and was permitted to go outside for only two hours.

66. When he finally managed to speak with his family, Mr. Pether broke down when asked about the conditions of his detention. He would not disclose the details for fear of reprisals. However, there are indications that he was exposed to extreme cold, threats of death, humiliation and various forms of psychological abuse.

67. There is allegedly no reason to believe that Mr. Radwan received significantly better treatment, although he seems to have been detained in a separate prefabricated modular building and to have had visits from officials of the Egyptian Embassy.

68. Due to lack of medical assistance, when Mr. Pether finally had access to water, after he had been removed from the D6 detention facility, he reportedly contracted a serious kidney and bladder infection. He suffered blackouts and was delirious on occasions. He tried to self-medicate using vitamin C pills that were not provided by the prison authorities. The source states that Mr. Pether seems to be “mentally broken”. He has been “delirious”, forgetting basic facts and crying on occasion. He is still reluctant to talk about the conditions of the early days of his detention. He is scared, confused and refuses to talk about plans for the future after his release. The source fears that he may be subject to threats or intimidation.

69. Messrs. Pether and Radwan were detained in an overcrowded cell with 22 other inmates. Their continued detention allegedly constitutes a very serious danger to their physical and mental integrity and a clear violation of the international prohibition of torture and inhuman or degrading treatment. It has caused demonstrable pain and suffering.

70. From approximately 7 to 19 April 2021, Messrs. Pether and Radwan were detained, with only limited opportunities to communicate with the outside world. The source stresses the link between incommunicado detention and instances of torture and ill-treatment.⁷ Periods of prolonged incommunicado detention can “facilitate the practice of torture”.⁸ Incommunicado detention also offends principles 12 (1) (d), 12 (2) and 19 of the Body of Principles.

⁶ Opinion No. 42/2016, para. 23.

⁷ A/HRC/39/45, paras. 59–60.

⁸ Committee against Torture, communication No. 63/1997, para. 11.4.

71. Messrs. Pether and Radwan were later allowed access to water, but not nearly enough, given the conditions. Their treatment appears to have fallen short of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including the rules on the basic provision of food, water and the right to exercise.⁹

72. The failure of the Iraqi authorities to attend to Mr Pether's condition is allegedly in contravention of the right to health, which is recognized under article 12 of the International Covenant on Economic, Social and Cultural Rights¹⁰ and extends to detainees.¹¹

73. The authorities allegedly intend to punish, intimidate and/or coerce Messrs. Pether and Radwan in order for the Central Bank of Iraq to prevail in its commercial dispute against CME Consulting. Iraqi officials will only release them if CME Consulting makes large financial concessions.

74. The source claims that Messrs Pether and Radwan have not only been subjected to serious ill-treatment, they have also been threatened with being forced to perform their duties under the contract without pay or access to their passports, which would constitute forced labour.¹²

75. In addition, article 36 of the Vienna Convention on Consular Relations provides that a State shall, without delay, inform the consular post of the sending State if a national of that State is arrested or is detained in any manner. The right to consular assistance is reiterated in rule 62 of the Nelson Mandela Rules, which states that prisoners who are foreign nationals shall be allowed reasonable facilities for communicating with their diplomatic and consular representatives. Principle 16 (2) of the Body of Principles reinforces this right.

76. Article 14 (3) of the Arab Charter on Human Rights states that anyone who is arrested has a right to contact his relatives. Consular protection entails a duty to inform not only State officials of an arrest or detention, but also family members.¹³ Mr Pether has experienced significant delays in accessing consular assistance from Australia. Australian consular officials did not have access to Mr Pether until 3 May, 26 days after his arrest. The first time Mr. Radwan received consular assistance was on April 12, 6 days after his arrest. Allegedly, the fact that Mr. Pether was intentionally placed in solitary confinement and that the Australian Embassy was not duly notified of his arrest is further evidence of arbitrary detention.

Response from the Government

77. On 27 August 2021, the Working Group transmitted the allegations from the source to the Government of Iraq under its regular communications procedure. The Working Group requested the Government to provide, by 26 October 2021, detailed information about the current situation of Mr. Pether and Mr. Radwan and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Iraq under international human rights law and in particular with regard to the treaties ratified by the State.

78. The Working Group called upon the Government to ensure Messrs. Pether and Radwan's physical and mental integrity. In the current context of a global pandemic, and in accordance with the World Health Organization (WHO) recommendations of 15 March 2020 concerning the response to COVID-19 in places of detention,¹⁴ the Working Group urges the Government to prioritize the use of non-custodial measures at all stages of criminal proceedings, including during the pretrial phase, during the trial and sentencing, and after sentencing.

⁹ See rules 22 and 23.

¹⁰ This includes, at article 12 (d), creating conditions that assure medical service and medical attention to all in the event of sickness.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 34.

¹² See article 1 of the Forced Labour Convention, 1930 (No. 29).

¹³ [A/HRC/39/45](#), para. 54.

¹⁴ WHO, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention".

Discussion

79. The Working Group thanks the source for its submission. The Working Group regrets that it did not receive a response from the Government. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work. 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.

80. In determining whether the deprivation of liberty of Mr. Pether and Mr Radwan is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹⁵

Category I

81. The source submits that neither man was presented with an arrest warrant when arrested, nor were they informed of the nature of charges against them or given any reason for their arrest.

82. An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest.¹⁶ The authorities must invoke the legal basis for the arrest and apply it through an arrest warrant.¹⁷ In the present case, the arresting officers did not present an arrest warrant at the time of arrest,¹⁸ in violation of articles 3 and 9 of the Universal Declaration of Human Rights,¹⁹ and article 9 (1) of the Covenant.²⁰ The authorities did not therefore establish a legal basis for their arrest.²¹ Messrs. Pether and Radwan were not informed of the reasons for their arrest at the time of arrest, nor were they promptly informed of the charges, in violation of article 9 (2) of the Covenant, which provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges. The failure to do so violated principles 2, 4 and 10 of the Body of Principles. Further, this lack of clarity over the charges against them has remained an issue throughout their detention and at trial as will be discussed below.

83. The Working Group finds that during the three-day period after their arrest, when no one knew their whereabouts, Messrs. Pether and Radwan were held in a situation of de facto enforced disappearance. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 9 of the Universal Declaration of Human Rights.²² It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Declaration²³ and principle 16 of the Body of Principles.

84. The source submits that Messrs. Pether and Radwan first appeared in court on 12 April 2021, five days after their arrest on 7 April 2021. They were not therefore brought promptly

¹⁵ A/HRC/19/57, para. 68.

¹⁶ Opinions No. 10/2015, para. 34; No. 46/2019, para. 51 and CAT/C/VNM/CO/1, para. 16.

¹⁷ Opinions; No. 10/2018, para. 45; No. 36/2018, para. 40; No. 46/2018, para. 48; and No. 46/2019, para. 51.

¹⁸ Opinions No. 45/2019, para. 50, and No. 71/2019, para. 70.

¹⁹ See, for example, opinions No. 69/2018, para. 39; No. 82/2018, para. 29; No. 31/2020, para. 41; No. 33/2020, para. 54; and No. 37/2020, para. 52.

²⁰ See, for example, opinions No. 10/2018, para. 45; No. 36/2018, paras. 39–40; No. 46/2018, para. 48; No. 44/2019, para. 52; and No. 46/2019, para. 51.

²¹ See, for example, opinions No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; and No. 46/2019, para. 51.

²² See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

²³ Opinion No. 15/2019, para. 44, and A/HRC/16/48/Add.3, para. 21. See also E/CN.4/1996/38, para. 55.

before a judge during their pretrial detention, namely within 48 hours of arrest, barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.²⁴ Thus, they were not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of their detention.

85. 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 affirms that 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 preserving legality in a democratic society.²⁵ That right, which is in fact a preemptory norm of international law, applies to all forms and situations of deprivation of liberty.²⁶ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential to ensuring that detention has a legal basis.²⁷ On this basis, the Working Group finds that the Government has violated articles 3, 8 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 11, 37 and 38 of the Body of Principles.

86. The source also argues that the pretrial detention of Messrs. Pether and Radwan and the court's refusal to grant them bail is a violation of article 9 (3) of the Covenant, which states that: "It shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group notes with concern that three requests for bail were denied with no reason given and that the lawyer for the Central Bank was allegedly sitting with the judge to ensure that bail was rejected. Bearing in mind that pretrial detention should be the exception rather than the rule, the Working Group finds that the detention of Messrs. Pether and Radwan lacked a legal basis, as it was not based on an individualized determination that it was reasonable and necessary, taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by the consideration of alternatives, such as bail, electronic bracelets or other conditions, rendering detention unnecessary in the present case.²⁸ The Working Group recalls general comment No. 35 (2014) of the Human Rights Committee, in which it stated that pretrial detention should be an exception and as short as possible.

87. The source submits that the charges against the men reportedly changed over time, making it extremely difficult to prepare a defence, and that formal charges against them were only laid in August 2021, four months after their arrest, during a hearing. It further submits that on the day of the hearing, lawyers for the two men thought that the charge was impersonating a company and pleaded the case accordingly. However, the judge interrupted the lawyers to advise them that this charge had been dropped. Instead, the charges that were read out later at the hearing were based on article 456/1 of the Iraqi Penal Code and consisted in entering into a contract with the Central Bank of Iraq by claiming to be representatives of third companies and fraudulently receiving funds totalling \$12 million.

88. The source argues that even if the employer of Messrs. Pether and Radwan had not fulfilled its contractual obligation towards the Central Bank of Iraq, they should not be held vicariously liable for the acts of their employer and that under article 11 of the Covenant: "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." In the absence of any explanation from the Government, the Working Group concludes that the detention of Messrs. Pether and Radwan is being used to exercise leverage in a commercial transaction, in violation of international law. The Working Group observes that the two men were lured into returning to Iraq on the pretext of assisting in an investigation and have been arbitrarily detained, without any legal basis.

²⁴ See, for example, opinions No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; and No. 78/2020, para. 49.

²⁵ [A/HRC/30/37](#), paras. 2–3.

²⁶ *Ibid.*, para. 11, and guideline 1 of the Body of Principles, para. 47 (a). See also opinion No. 39/2018, para. 35.

²⁷ See, for example, opinions 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.

²⁸ [A/HRC/19/57](#), paras. 48–58.

89. For the reasons set out above the Working Group concludes that the arrest and detention of was arbitrary and falls under category I as lacking legal basis.

Category III

90. Messrs. Pether and Radwan were tried on 25 August 2021. On 14 October 2021, their appeal to the Baghdad Central Appeal Court was denied.

91. The source submits that Mr. Pether was repeatedly interviewed without the assistance of legal counsel. During their court appearance on 12 April 2021, Messrs. Pether and Radwan were not given the opportunity to be represented by counsel. They were denied unhindered communication with their lawyer, allegedly under the instruction of the judge handling their case. They were also denied the possibility of acquainting themselves with the charges and documentary evidence against them and denied access to documents that would demonstrate their innocence. The source alleges that their mobile phones and computers were confiscated (without a warrant) during their arrest. The source fears that the Central Bank of Iraq is trying to interfere with or pressurize Mr. Pether's legal representative, noting that when he visited Mr Pether in prison for the first time, the lawyer for the Central Bank of Iraq also attended. In addition, the source also reports that the charges have changed over time, making it extremely difficult to prepare a defence.

92. The facts demonstrate severe restrictions on the right of Messrs. Pether and Radwan to legal assistance to prepare their defence. The right to legal assistance is inherent in the right to liberty and security of person, as well as in the 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 principles 15, 17 and 18 of the Body of Principles.

93. As the Working Group has stated in principle 9 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; such access is to be provided without delay; upon apprehension, all persons should be promptly informed of that right; and that right entitles persons deprived of their liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information. In addition, the Working Group recalls paragraph 21 of the Basic Principles on the Role of Lawyers, which requires the authorities to ensure access to information, files and documents to enable lawyers to provide effective legal assistance to their clients, and provide such access at the earliest appropriate time.

94. Furthermore, legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.²⁹

95. In the Working Group's view, the Government of Iraq failed to respect the right of Messrs. Pether and Radwan to legal assistance at all times, which is inherent in the right to liberty and security of person and the 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 principles 15, 17 and 18 of the Body of Principles.

96. The Working Group considers that these violations substantially undermined and compromised the capacity of Messrs. Pether and Radwan to defend themselves in any subsequent judicial proceedings.³⁰

²⁹ Basic Principles on the Role of Lawyers, para. 16. See also [A/HRC/45/16](#), para. 54, and opinions, No. 29/2017, No. 32/2017, No. 34/2017, No. 36/2017, No. 70/2017 and No. 66/2019.

³⁰ [A/HRC/30/37](#), paras. 12 and 15, and guideline 9 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, paras. 67 and 71.

97. The source submits that neither the Australian nor Egyptian Embassies were duly notified of the arrests of their respective nationals. Three days after their arrest, the Egyptian Embassy managed to locate Messrs. Pether and Radwan and informed their families as to where both men were held. The source submits that upon arrest, Mr Pether was placed in solitary confinement and that Mr. Pether experienced significant delays in accessing consular assistance from Australia, namely for 26 days after his arrest. Mr Radwan received consular assistance on April 12, six days after his arrest.

98. The Working Group recall that article 36 (1) (b) of the Vienna Convention on Consular Relations provides that a foreign national arrested or committed to prison or custody pending trial, or detained in any other manner, should be informed without delay of his or her rights to inform consular officers about his or her detention and to have any communication addressed to them forwarded without delay. That is in addition to the right of consular officers to be informed of the detention and to maintain communication (art. 36 (1) (a)) and their right to arrange for legal representation and to visit in person (art. 36 (1) (c)).

99. The Working Group notes that the General Assembly has 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, regardless of their migration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention.³¹

100. Furthermore, the importance of consular assistance for a detained or imprisoned foreign national is recognized in principle 16 (2) of the Body of Principles, which specifically mentions the right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he or she is a national. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) also provide, in rule 62 (1), that prisoners who are foreign nationals are to be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

101. Given the limited availability of remedies for individuals in the international sphere, consular protection is invaluable for foreign nationals who are disadvantaged by the lack of familiarity with the local law, customs and even language. Furthermore, it should be noted that the institution of consular protection not only serves the interests of the detained foreign individual and of the State that espouses such interests, but also furthers the interests of the international community as a whole by facilitating international exchange and reducing the potential for friction between States over the treatment of their nationals.³²

102. As such, the Working Group notes that consular assistance constitutes an important safeguard for individuals who are arrested and detained in a foreign State to ensure that international standards are being complied with. It provides such detainees with certain consular rights and the consular officials of the detainee's nationality with rights that include, inter alia, the right to freely communicate with and have access to their nationals who have been detained and to be informed about an arrest without delay.

103. In the present case, the Working Group finds that the Government of Australia clearly did assert its rights of consular assistance in relation to Mr. Pether and therefore the denial of such consular assistance constitutes a further breach of international law by Iraq.

104. In the light of the considerations noted above, the Working Group considers that the failure of the Government to respect the right of Messrs. Pether and Radwan to consular protection under customary international law, as codified in article 36 of the Vienna Convention on Consular Relations, during their initial arrest and detention, is in violation of

³¹ General Assembly resolution 72/179, para. 4 (k). See also General Assembly resolutions 72/149, para. 32, and 73/180, para. 16 (g); and Human Rights Council resolution 40/20, para. 2 (j).

³² Opinions No. 58/2017, para. 64, and No. 30/2018, para. 56.

articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the Covenant and principle 16 (2) of the Body of Principles.³³

105. The Working Group notes that between 7 and 19 April 2021, Messrs. Pether and Radwan had limited opportunity for contact with the outside world, with Mr. Pether being held in solitary confinement. The Working Group finds this to be in violation of their right to contact with the outside world under rules 43 (3) and 58 (1) of the the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles. Giving prompt and regular access to family members and to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.

106. The Working Group finds credible the source's allegations that Mr. Pether was subjected to abusive and coercive interrogations during his detention in the D6 detention facility, where he was held in solitary confinement for 12 days. 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, whereby some of the harmful psychological effects of isolation can become irreversible,³⁴ or incommunicado detention in a secret place, may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁵ The Working Group expresses its gravest concern at the allegations of torture and ill-treatment, which constitute a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law.³⁶ The Working Group therefore refers the present case to the Special Rapporteur on torture for appropriate action.

107. The Working Groups finds credible the source's submission that Mr. Pether was forced to sign a statement in Arabic, which he does not speak, and that that there are reasons to fear that the criminal proceedings against Mr. Pether and Mr. Radwan are based on evidence improperly obtained. The Working Group finds that being forced to sign a statement without any legal or consular assistance, in a language one does not understand is a breach of article 14 (3) (f) of the Covenant and principle 14 of the Body of Principles. Mr. Pether was entitled to the assistance of an interpreter as he could not understand the language of the document.³⁷

108. Turning to the credible allegations about improperly obtained evidence, the Working Group recalls article 15 of the Convention against Torture, whereby "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings".³⁸ The use of a confession extracted through ill-treatment also constitutes a violation of principle 21 of the Body of Principles,³⁹ Moreover, the extraction of forced confessions violates rule 1 of the Nelson Mandela Rules, principle 6 of the Body of Principles and article 5 of the Universal Declaration on Human Rights and the jus cogens norm that it enshrines.

109. The Working Group has consistently concluded in its opinions that when it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial that respects the equality of both parties before the judicial proceedings, that amounts to a fair trial violation.⁴⁰ In the Working Group's view, torture or ill-treatment of detainees is not only a grave violation of human rights, but it also seriously undermines the fundamental principles of a fair trial as it can compromise the ability to defend oneself, especially in the light of the right not to be compelled to testify against

³³ [A/HRC48/55](#) paras. 55–63.

³⁴ [A/63/175](#), para. 56, and [A/66/268](#), para. 61. Likewise, rule 44 of the Nelson Mandela Rules refers to solitary confinement for a time period in excess of 15 consecutive days as being prolonged solitary confinement.

³⁵ [A/56/156](#), para. 14.

³⁶ Opinion No. 39/2018, para. 42.

³⁷ See, for example, opinions No. 34/2018 and No. 84/2018.

³⁸ See also, Principles on Effective Interviewing for Investigations and Information Gathering.

³⁹ Opinions No. 48/2016, para. 52; No. 3/2017, para. 33; No. 6/2017, para. 43; No. 29/2017, para. 64; and No. 39/2018, para. 42.

⁴⁰ Opinion No. 32/2019, para. 42.

oneself or to confess guilt.⁴¹ The Working Group considers that confessions made in the absence of legal counsel are inadmissible as evidence in criminal proceedings,⁴² and are contrary to article 14 (3) (g) of the Covenant, which provides that everyone shall be entitled “not to be compelled to testify against himself or to confess guilt”. The Working Group therefore finds violations of article 10 of the Universal Declaration of Human Rights and article 14 (3) (g) of the Covenant.

110. The Working Group must raise further concerns with the conduct of the trial. It notes with concern the source’s submission that during the trial, Mr. Pether’s statements were purposely mistranslated to indicate guilt.

111. The Working Group notes with grave concern that even during the trial hearing, Messrs. Pether and Radwan did not have clarity around their charges. The charges they had prepared to defend themselves against were dropped during the hearing and replaced with another charge. Along with the failure to provide copies of the decisions immediately to the defence or the consular or diplomatic authorities, that demonstrates a trial replete with grave due process violations.

112. The Working Group also finds credible the numerous allegations of collusion between the judge and the lawyer for the applicants, the Central Bank of Iraq. The Working Group recalls that the Human Rights Committee has noted that the requirement of competence, independence and impartiality of a tribunal under article 14 (1) of the Covenant is an absolute right that is not subject to any exception.⁴³ The Committee has further observed that the tribunal must also appear to a reasonable observer to be impartial.⁴⁴

113. The Working Group finds that these factors constitute a denial of the right to equality of arms of Messrs. Pether and Radwan in the proceedings, in violation of article 14 (1) of the Covenant and the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights. The brevity of their trial strengthens this conclusion. The two men were sentenced only 15 minutes after their trial hearing concluded. As the Working Group has previously noted, a short trial for a criminal offence indicates that guilt has been determined prior to the trial.⁴⁵

114. In the light of 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 the deprivation of liberty of Messrs. Pether and Radwan is arbitrary and falls within category III.

Category V

115. Messrs. Pether and Radwan returned to Iraq on the understanding that they were to assist in an investigation. Instead, they have been arbitrarily detained, charged and convicted. The Working Group finds credible the source’s submission that their detention is allegedly being used to exercise leverage over their employer, CME Consulting.

116. Notably, the Government has not addressed any of these submissions. In the absence of an alternative explanation from the Government, the Working Group considers that the source has established a credible prima facie case that Messrs. Pether and Radwan were discriminated against based on their “other status”, that is their employment status as employees of CME Consulting.⁴⁶

117. The Working Group concludes that Messrs. Pether and Radwan are arbitrarily detained on discriminatory grounds, based on their employment with CME Consulting. Their deprivation of liberty is arbitrary and is in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and thus falls within category V.

⁴¹ Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

⁴² [A/HRC/45/16](#), para. 53.

⁴³ General comment No. 32 (2007), para. 19.

⁴⁴ *Ibid.* and opinion No.12/1994.

⁴⁵ See, for example, opinions No. 75/2017 and No. 36/2018.

⁴⁶ Opinion No. 51/2019, para. 79.

Concluding remarks

118. The Working Group expresses grave concern about Mr. Pether's deteriorating health since his arrest and detention in April 2021, including suffering blackouts, being delirious on occasions, and severe weight loss. The source expresses the fear that he is subjected to threats or intimidation.

119. The Working Group finds credible the source's submission that the continued detention of Messrs. Pether and Radwan constitutes a very serious danger to their physical and mental integrity. The source submits that this constitutes a clear violation of the international prohibition of torture and inhuman or degrading treatment. The Working Group therefore refers the case to the Special Rapporteur on torture to investigate whether article 7 of the Covenant has been violated.

120. The Working Group considers that treatment to which Messrs. Pether and Radwan have been subjected violates article 10 (1) of the Covenant. It also falls significantly short of provisions set out in rules 1, 24, 27 and 118 of the Nelson Mandela Rules, which state that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity as human beings, including enjoying the same standards of health care that are available in the community.

121. In particular, rule 27 (1) of the Nelson Mandela Rules requires that all prisons ensure prompt access to medical attention in urgent cases and that prisoners who need specialized treatment or surgery be transferred to specialized institutions or civil hospitals. The Working Group notes with concern Mr. Pether's serious kidney and bladder infections caused by severe dehydration during his period of solitary confinement and the fact that he might continue to be deprived of sufficient access to drinking water. The Working Group calls on the Government of Iraq to release both men immediately so that they can access medical treatment.

122. The Working Group wishes to highlight the conditions in which Messrs. Pether and Radwan are serving their sentence - in an overcrowded cell with 22 other inmates, as reported by the source. In light of their poor health, caused by their detention, the Working Group notes that the risks of their situation are greatly exacerbated as a result of being detained in an overcrowded cell during the COVID-19 pandemic. The Working Group calls on the Government to immediately and unconditionally release them, and ensure that they receive the necessary medical treatment as soon as possible.

123. The Working Group would welcome the opportunity to conduct a country visit to Iraq, noting the Government's standing invitation to all special procedures since 16 February 2010. As the Working Group has yet to conduct an official visit to Iraq, the Working Group considers that it is an appropriate time to engage constructively with the State authorities on issues relating to the arbitrary deprivation of liberty.

Disposition

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

The deprivation of liberty of Robert Pether and Khalid Radwan, being in contravention of articles 2, 7, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 10, 11, 14 and 26 of the International Covenant on Civil and Political Rights is arbitrary and falls within categories, I, III and V.

125. The Working Group requests the Government of Iraq to take the steps necessary to remedy the situation of Messrs. Pether and Radwan without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

127. The Working Group urges the Government to ensure that a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Pether and Radwan is undertaken and appropriate measures taken against those responsible for the violation of their rights.

128. 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 for appropriate action.

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

Follow-up procedure

130. 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 Messrs. Pether and Radwan have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Messrs. Pether and Radwan;

(c) Whether an investigation has been conducted into the violation of the rights of Messrs. Pether and Radwan 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 Iraq with its international obligations in line with the present opinion;

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

131. 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.

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

133. 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.⁴⁷

[Adopted on 18 November 2021]

⁴⁷ See Human Rights Council resolution 42/22, paras. 3 and 7.