

DECISION No. 24/1996 (ISRAEL)

Communication addressed to the Government of Israel on
20 February 1996.

Concerning: Othman Irsan al-Qadi Abdul-Mahdi, on the one hand and
the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect (of each of the cases) of alleged arbitrary detention brought to its knowledge.
3. (Same text as para. 3 of Decision No. 35/1995.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.
5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. H. Halinen, pursuant to Commission resolution 1993/2 A.
6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned Othman Irsan al-Qadi Abdul-Mahdi, aged 28, a Palestinian sociology student at Birzeit University. Mr. Abdul-Mahdi was reportedly arrested at his home in Beit Liqya, on 12 March 1995, by Israeli soldiers and undercover agents. Following his arrest, Mr. Abdul-Mahdi was issued a six-month administrative detention order for the period 28 February-30 August 1995. He was first detained at Ramallah prison, then transferred to al-Fara'a military detention centre and again transferred to the Ketsiot military detention centre in the Negev, in southern Israel. At the termination of the first six-month order in August 1995, a second six-month administrative detention order (7 September 1995-6 March 1996) was issued against Mr. Abdul-Mahdi, at which time he was transferred to the Meggido prison in Israel where he was held at the time the communication was received. He has not been charged with any offence. The source feared that the second administrative detention order could be once again renewed since the Military order legislation authorizes a

Military Commander to issue an order of administrative detention for a period of up to 12 months, and permits their renewal for indefinite lengths of time. Mr. Abdul-Mahdi was, at the time the communication was received, appealing against the second administrative detention order to an appeals committee consisting of a military judge who is a qualified lawyer, but according to the source, the relevant rules of evidence and procedure made it extremely difficult to effectively challenge orders of administrative detention. Furthermore, the appeals are always held in camera, the committee examines evidence in the absence of the detainee and his lawyer and it does not disclose the evidence to them if it is satisfied that such disclosure could endanger State security or public safety.

7. It appears from the facts as described above that Othman Irsan al-Qadi Abdul-Mahdi, irrespective of the nature and the motives of the accusations against him, has been denied his right to a fair trial, and in particular of the rights that any person deprived of his freedom must have, to be promptly informed of the reasons for his arrest and of any charges against him, to be brought promptly before a judge or other judicial authority, to take proceedings before a court so that the latter may decide on the lawfulness of his detention, and the right to be tried within a reasonable time or be released. These rights are guaranteed by articles 10 and 11.1 of the Universal Declaration of Human Rights and by articles 9.2, 9.3, 9.4 and 14.3 (a), (c) and (d) of the International Covenant on Civil and Political Rights to which Israel is a party. As regards administrative detention, it appears that the authority given to the Executive power, by law, to place a person in an administrative detention for a six-month period which may be renewed indefinitely, constitutes in itself an abuse of power conferring on the detention an arbitrary character. The possibility given to the detained person to appeal against this measure cannot attenuate its arbitrary character, since the appeals are heard by a military judge sitting in camera, who examines evidence in the absence of the detainee or his lawyer. This constitutes a violation of the right to a fair trial of such gravity that it confers on the detention, once again, an arbitrary character.

8. In the light of the above the Working Group decides:

The detention of Othman Irsan al-Qadi Abdul-Mahdi is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights and articles 9.2, 9.3, 9.4 and 14.3 (a), (c) and (d) of the International Covenant on Civil and Political Rights to which the State of Israel is a party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Othman Irsan al-Qadi Abdul-Mahdi to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 September 1996.