

OPINION No. 1/1997 (IRAQ)

Communication addressed to the Government on 20 January 1997.

Concerning: Qadir Rasoul Ismail, Othamn Qarny Nury, Zahid Ahmad Nabi, Gharib Omar Marouf, Jamal As'ad Qadir, Kamal As'ad Qadir, Tahir Rahman, Kassim Biradud Hussein, Shakhwan Abdullah Qadir, Zahir Shafi' Qarani, Selim Sulaiman Hussein, Loqman Samad Mohammed, Abdulla Ahmad Karim, Idris Ismail Karim, Tawfiq Mohammad, Juma' Omar Khidhir, Khalil Najim Rustam, Hamad Hassan Basit, Farhad Sabir Omar, Abu Zeid Abdulrahman, Majid Abdulrahman, Hadi Abdulrahman Ismail, Sirwan Abdulrahman Ismail, Ziad As'ad Said, Mehdi Abdulrahman, Kamal Othman Qadir, Ahmad Nuri Mawlood, Khider Abubekir Khider, Faris Mohammad Mehdi and Ali Abduljabbar Mahammad.

The Republic of Iraq is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);
  - II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
  - III. When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (Category III).
4. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur prepared pursuant to resolution 1996/72 of the Commission on Human Rights (E/CN.4/1997/57).

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

6. According to the communication submitted by the source, a summary of which was forwarded to the Government, the 30 persons whose names are given below have been subjected to deprivation of liberty, as follows: Qadir Rasoul Ismail, student, born in 1972, arrested on 28 February 1991 in Arbil-Terawa, Othamn Qarny Nury, student, born in 1972, arrested on 1 April 1991 in Kurdistan, Zahid Ahmad Nabi, labourer, born in 1970, arrested on 3 April 1991 in Arbil-Sitaqan, Gharib Omar Marouf, labourer, born in 1952, arrested on 1 March 1991 in Arbil, Jamal As'ad Qadir, soldier, born in 1969, arrested on 21 March 1991 in Arbil, Kamal As'ad Qadir, soldier, born in 1966, arrested on 21 March 1991 in Arbil, Tahir Rahman, soldier, born in 1971, arrested on 3 April 1991 (place not reported), Kassim Biradud Hussein, soldier, born in 1968, arrested on 1 April 1991 in Arbil, Shakhwan Abdullah Qadir, soldier, born in 1968, arrested on 3 April 1991 in Arbil-Qoran, Zahir Shafi' Qarani, soldier, born in 1971, arrested on 3 April 1991 in Arbil, Selim Sulaiman Hussein, soldier, born in 1962, arrested on 3 April 1991 in Arbil, Loqman Samad Mohammed, soldier, born in 1972, arrested on 3 April 1991 in Arbil, Abdulla Ahmad Karim, soldier, born in 1968, arrested on 2 April in Arbil, Idris Ismail Karim, athlete, born in 1972, arrested on 21 February 1991 in Arbil, Tawfiq Mohammad, labourer, born in 1970, arrested on 2 April 1991 (place not reported), Juma' Omar Khidhir, labourer, born in 1970, arrested on 2 April 1991 in Arbil, Khalil Najim Rustam, labourer, born in 1957, arrested on 1 April 1991 in Arbil, Hamad Hassan Basit, male nurse, born in 1968, arrested on 2 April 1991 in Arbil, Farhad Sabir Omar, labourer, born in 1957, arrested on 2 April 1991 in Arbil-Shaqlawa, Abu Zeid Abdulrahman, student, born in 1973, arrested on 21 April 1991 in Arbil-Ainkawa, Majid Abdulrahman, soldier, born in 1971, arrested on 21 April in Arbil-Ainkawa, Hadi Abdulrahman Ismail, labourer, born in 1961, arrested on 3 March 1991 in Arbil, Sirwan Abdulrahman Ismail, teacher, born in 1968, arrested on 2 April 1991 in Arbil, Ziad As'ad Said, labourer, born in 1968, arrested on 2 April 1991 in Arbil, Mehdi Abdulrahman, labourer, born in 1965, arrested on 2 April 1991 in Arbil, Kamal Othman Qadir, labourer, born in 1979, arrested on 2 April 1991 in Arbil-Ainkawa, Ahmad Nuri Mawlood, labourer, born in 1969, arrested on 2 April 1991 in Arbil-Beni Slawa, Khider Abubekir Khider, soldier, born in 1971, arrested on 21 April 1991 in Arbil, Faris Mohammad Mehdi, soldier, born in 1970, arrested on 1 April 1991 in Kirkuk and Ali Abduljabbar Mahammad, soldier, born in 1970, arrested on 3 April 1991 in Zakho. According to the source, these persons, most of whom are residents of Arbil, were arrested after the uprising of March 1991 and are still being detained in the Abu Ghraib prison, allegedly without ever having been put on trial. It was further reported that the families of these prisoners had not had any news from them for many years and considered them as disappeared.

7. Although the Working Group has brought these allegations to the attention of the Government, the latter has neither challenged them nor expressed reservations about them; the Working Group accordingly considers them to be substantiated as they stand. It wishes to emphasize that one of

the young prisoners, Othmar Qadir, who was born in 1979, was 11 or 12 years old when he was arrested in April 1991, that Idris Ismail Karim, born in 1972, was in all likelihood a minor when arrested in February 1991, and that neither of them is receiving assistance from their parents.

8. As these persons have been detained for more than six years without trial, without the assistance of a lawyer and without their families being informed of their fate, these violations of the right to a fair trial are sufficiently serious for their detention to be classified as arbitrary on grounds of failure to comply with articles 9 and 10 of the Universal Declaration of Human Rights, articles 9.3, 9.4, 10.1 and 14 of the International Covenant on Civil and Political Rights, to which Iraq is a party, article 10.2 (b) of same Covenant guaranteeing the rights of detained juvenile persons, and principles 10, 16.3, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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

The deprivation of liberty of the 30 aforementioned persons is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9.3, 9.4, 10.1 and 10.2 (b) of the International Covenant on Civil and Political Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

The Working Group also transmits the present opinion to the Committee on the rights of the child, to which Iraq is a State party, as regards the cases of Kamal Othman Qadir and Idris Ismail Karim.

10. Consequent upon the opinion rendered, the Working Group requests the Iraqi Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 May 1997.