

OPINION No. 14/1999 (PALESTINE)

Communication addressed to the Palestinian Authority on 23 October 1998

Concerning Youssef Al-Rai and Ashaher Al-Rai

Palestine is not 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, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government of the Palestinian Authority.
2. The Working Group regrets that the Government of the Palestinian Authority has not replied to the request for information.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it is clearly impossible to invoke any legal basis constituting justification for the situation (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (ii) When the deprivation of liberty results from prosecution or from a conviction in connection with the exercise of the rights or freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) 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 character of arbitrariness to the deprivation of liberty, whatever form the latter takes (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Palestinian Authority. In the absence of any information from the Palestinian Authority, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged.
5. According to the source, two Palestinian cousins, Youssef Al-Rai and Ashaher Al-Rai, were arrested on 3 September 1995 on suspicion of having killed two villagers in Wadi Qalt on 18 July 1995. On 13 September 1995, they were sentenced to seven years' imprisonment for

murder. Their trial allegedly lasted no more than half an hour. It was held in the State Security Court, which was composed of three military judges who appointed a soldier as the legal representative of the accused. The two cousins could not speak with their lawyer, who was unable to defend them during the trial. They have been detained in the Jericho Detention Centre since their arrest.

6. According to the source, the only evidence justifying the two men's sentence was the deposition by Jamal Amin Al-Hindi, another prisoner, who was questioned by the Israeli authorities on 2 September 1995. They transmitted his deposition to the Palestinian security services. After his release in 1995 and again during a press conference on 17 September 1998, Jamal Amin Al-Hindi said that he had lied; in fact, he had never met the two cousins. On 24 September, he publicly admitted that he had been forced to give false evidence against the cousins, under torture.

7. According to the source, the two accused were deprived of their right to a fair trial, contrary to articles 9 and 10 of the Universal Declaration of Human Rights.

8. The allegations by the source have not been refuted by the Palestinian Authority, which had had an opportunity to do so. In accordance with its methods of work, the Working Group is able to consider whether the right to a fair trial provided for in article 10 of the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by the United Nations General Assembly in resolution 43/173 of 9 December 1988, has been violated in the present case.

9. The Working Group considers that the Al-Rai cousins' sentence was based on a deposition which had been obtained by force. Article 5 of the Universal Declaration of Human Rights provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In admitting a deposition obtained by force as evidence, the Palestinian judicial authorities violated that provision, as well as articles 9 and 10 of the Universal Declaration guaranteeing the right to a fair trial and principles 21 and 27 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. They also violated principle 17 of the Body of Principles, which provides that "A detained person shall be entitled to have the assistance of a legal counsel", as well as principle 36. This violation is of such gravity as to confer an arbitrary character on the detention of Youssef and Ashaher Al-Rai.

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

The deprivation of the liberty of Youssef Al-Rai and Ashaher Al-Rai is arbitrary because it is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of principles 17, 21, 27 and 36 of the Body of Principles for the Protection of

All Persons under Any Form of Detention or Imprisonment and comes within category III of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequently, the Working Group requests the Palestinian Authority to take the necessary steps to remedy the situation in order to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 September 1999