

Decision No. 51/1993 (Yemen)

Communication addressed to the Government of Yemen on  
3 August 1993.

Concerning: Mansur Muhammad Ahmad Rajih, on the one hand, and the  
Republic of Yemen, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the 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 appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of decision No. 43/1993.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Yemen. The Working Group transmitted the reply of the Government to the source and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned Mansur Muhammad Ahmad Rajih, a 34 year old writer and poet, the former President of the Yemeni Student Association and a former Secretary General of the Organisation of Arab Students. In January 1983 he was reportedly arrested upon his return from Lebanon where he was a student, in the village of Tumayrin in the Province of Ta'iz, by the members of the al-Amn al-Watani (National Security Forces). He was allegedly held without charge or trial for six months, then released and eight days later re-arrested in his village Tumayrin. For nine months thereafter, he was held without charge. Thereafter he was tried for the murder of a man from his village and sentenced to death. The death sentence was imposed by the Court of First Instance in Ta'iz in 1986 but was pending ratification by the Presidential Council of the new Republic of Yemen. Presently, Mr. Rajih was reportedly being held in the Shabaka prison in Ta'iz. It was alleged that during his pre-trial detention he was blindfolded, in solitary confinement, and that he was subjected to beatings and electrical shocks.
6. During the course of trial, in which Mr. Rajih was convicted of murder and sentenced to death, two of the three prosecution "eye witnesses" reportedly failed to identify him in court. In addition, defence witnesses, among them relatives of the murdered victim, asserted that the three prosecution "eye witnesses" were not present at the scene of the crime. The judge ruled that the defence witnesses were "mentally ill" and hence their testimonies were deemed inadmissible.

7. According to the source Mr. Rajih was a member of the National Democratic Front (NDF) the principal opposition group in the former Yemen Republic. He, however, disassociated himself from the NDF before it carried out a series of violent political activities between 1979 and 1981.

8. The allegations as described above have not in substance been controverted by the Government in its response of 19 August 1993. The Government principally referred to the concept of due process and fairness enshrined in the Yemeni justice system as observed in the past 15 centuries by judges. The response further suggested that the imposition of the death sentence was never taken lightly in the administration of the justice system. In order to avoid the death sentence the accused was always granted the benefit of doubt, if the evidence so permitted. The Government asserted that the trial was fair, open, widely advertised and publicly attended.

9. The Government has also testified towards its efforts at persuading the blood heirs of the deceased to accept financial compensation. Lack of success, as in other cases, was attributed to efforts of Mr. Rajih's friends "to capitalize on this human tragedy for dubious publicity and elusive political gains".

10. The response of the Government as set out above does not controvert the allegations made and does not question the veracity of certain pertinent facts in relation to the conduct of the trial. That two of the three prosecution witnesses failed to identify the accused in court is not denied. The reason why the testimonies of certain defence witnesses, including the testimonies of the relatives of the deceased, were discarded on grounds of mental illness is not explained. Implicit in the right to a fair trial is the obligation of the State to place on record for consideration all relevant and pertinent evidence and the obligation of the court to consider all such evidence without declaring it as inadmissible on dubious grounds. The mala-fide intent of the trial gains support from the other allegations regarding pre-trial arrest as already adverted to. Allegations that the accused during his pre-trial detention was kept blindfolded, in solitary confinement and was subjected to lashings and electrical shocks, have also not been denied. The Government has not even attempted to respond to these allegations.

11. The inevitable conclusion reached in a consideration of all the facts and circumstances of the case is that the trial of Mr. Rajih was not conducted with the kind of objectivity and impartiality expected of domestic tribunals. The Working Group considers this as a violation of the right to a fair trial as embodied in article 14 of the International Covenant on Civil and Political Rights, and that the non-observance of the provisions of that article is such that it confers on the deprivation of freedom an arbitrary character. The Working Group further considers that the absence of the trappings of objectivity and impartiality renders the continued detention, upon conviction, of Mansur M.A. Rajih, as arbitrary.

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

(a) The detention of Mansur Muhammad Ahmad Rajih both before his trial and after his conviction is declared to be arbitrary being in contravention of article 14 of the International Covenant on Civil and Political Rights to which the Republic of Yemen is a Party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to the Special Rapporteur on the question of Torture.

13. Consequent upon the decision of the Working Group declaring the detention of Mansur Muhammad Ahmad Rajib to be arbitrary, the Working Group requests the Government of Yemen 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 7 December 1993.