

OPINION No. 17/2000 (ISRAEL)

Communication addressed to the Government on 19 April 2000

Concerning Riad Kalakish, Samir Kassem, Taysser Shaaban, Ali Ahmad Srour, all of whom were released following the withdrawal of the Israeli Defence Forces (IDF) from southern Lebanon

The State 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 and reconfirmed by resolution 2000/36. 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, 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 complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. According to the source:
  - (a) Ali Ahmad Srour, a Lebanese citizen born in 1975, was arrested on 24 December 1999 at Aita Sheib in southern Lebanon by members of Israeli intelligence and the Southern Lebanon Army (SLA), allegedly for refusing to cooperate with Israeli forces. He was transferred to Al-Khiam, where he was held without charges. It is alleged that he has been subjected to torture;

(b) Tayssir Shaaban, a Lebanese citizen born in 1958, was arrested on 1 October 1986 at Beityahoum in southern Lebanon by members of Israeli intelligence and the SLA, apparently because he was suspected of being linked to the Lebanese resistance to the Israeli presence. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that he has been subjected to torture and that his state of health is deteriorating;

(c) Riad Kalakish, a Lebanese citizen born in 1967 and resident of Dibbin, was arrested on 1 February 1986 by members of Israeli intelligence and the SLA, apparently on suspicion of being linked to the Lebanese resistance. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that he was subjected to torture and that his state of health is critical;

(d) Samir Kassem, a Lebanese citizen born in 1968, was arrested on 1 April 1988 at Yuhmor in southern Lebanon by members of Israeli intelligence and the SLA, reportedly because he refused to cooperate with the Israeli forces. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that Mr. Kassem was subjected to torture, and that his eyesight is deteriorating.

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 relating to the cases in question for the following reasons:

(a) The facts and allegations contained in the communication have not been denied by the Government;

(b) The Working Group has already given its views on the arbitrary nature of the deprivation of liberty of persons held in detention at Al-Khiam (Opinion No. 9/1998, paragraphs 11, 12, 13 and 14, case of Suha Bechara);

(c) In its legal opinion of December 1999 entitled "Handling of communications concerning detention at the Al-Khiam Prison (southern Lebanon)", the Working Group clarified the legal aspects of the status of the Al-Khiam Prison.

6. The Working Group finds that all of the four persons to whom the communication addressed to the Group refers:

(a) Were subjected to administrative detention at Al-Khiam Prison without charge and without at any time during their detention being heard by a judicial authority or any other competent authority;

(b) Have been subjected de facto to measures of deprivation of liberty of indeterminate duration.

7. The Working Group therefore considers that the total absence of procedural guarantees constitutes a violation of the right of the above persons to a fair trial, which is protected by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, of such gravity that it confers on the deprivation of liberty of the above-mentioned persons an arbitrary character.

8. In view of the gravity of this violation, the Working Group has felt obliged to apply paragraph 17 (a) of its working methods and to render an opinion on the substance of the cases, even though the persons concerned have been released.

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

The deprivation of liberty of Riad Kalakish, Samir Kassem, Tayssir Shaaban and Ali Ahmad Srour is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Adopted on 13 September 2000