

Decision No. 16/1994 (Israel)

Communication addressed to the Government of Israel on 18 July 1994.

Concerning: Sha'ban Rateb Jabarin, on the one hand, and the State of Israel, 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 in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. The Working Group welcomes the cooperation of the Government of Israel which forwarded its response to the allegations made concerning Sha'ban Rateb Jabarin. The Working Group transmitted the response of the Government to the source. The latter provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision in the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Certain pertinent facts may be stated. As far back as 7 July 1992 the Chairman of the Working Group had sent an urgent appeal to the Minister for Foreign Affairs of Israel following which Mr. Jabarin was released on 10 July 1992. Later, he was again arrested and detained without charge. On 4 May 1994 a letter was addressed by the Chairman of the Working Group to the Permanent Representative of Israel to the United Nations office at Geneva. The office of the Permanent Representative later informed the Working Group that Mr. Jabarin was released from administrative detention on 5 May 1994. Since he was again allegedly detained on 21 June 1994 yet another communication was addressed by the Chairman of the Working Group to the Minister for Foreign Affairs for information concerning his situation and the legal basis of his detention. In the said communication an appeal was also made to the Government of Israel, in a purely humanitarian spirit, to consider Mr. Jabarin's release from prison and for the Government to do its utmost to guarantee Jabarin's right to liberty and security.

6. The source describes Sha'ban Rateb Jabarin as a Palestinian para-legal and human rights activist. He was allegedly arrested without a warrant on 10 March 1994 by the IDF or the GSS. The arresting authorities allegedly searched the detainees' house for 40 minutes prior to his arrest, without informing him of the reasons for his arrest. Apparently pursuant to Military Order 378, six months' administrative detention was imposed on Mr. Jabarin. Date of the issuance of the order remains undisclosed. Without being charged with any offence Mr. Jabarin was initially, allegedly, detained at the Hebron Central Prison whereafter he was transferred to the Juneid Central prison in

Nablus. The source alleges that the reason for his detention was his alleged involvement in the writing of a publication dated December 1993 on violence by Jewish settlers in the Hebron area. The source also alleged that no judicial or other procedures exist to challenge the legality of the arrest or detention as military courts refuse to hear judicial proceedings in the nature of habeas corpus or amparo. Regarding a detainee making an appeal against the order to an Appeal's Committee, it was alleged that relevant rules of evidence and Procedure, and the restrictions on the powers of the Appeal's Committee it was difficult to effectively challenge the order. It was alleged that such orders were rarely set aside in appeal. The source maintained that Mr. Jabarin was detained for his non-violent activities in the exercise of his right to freedom of expression and opinion.

7. In response to the communication of the Working Group dated 4 May 1994, the Government on 26 May 1994 informed the Working Group that Mr. Jabarin stood already released. Apparently he had been released on 8 May 1994. As he was again detained on 21 June 1994, the Working Group sent its communication of 18 July 1994 to which the Government sent its response on 3 August 1994. In this response the Working Group was informed that Mr. Jabarin was held in administrative detention from 10 March 1994 until 8 May 1994. The Government strongly denied that Mr. Jabarin was an innocent man, devoting his efforts to al-Haq, an organization which is engaged in the field of human rights. The Government stated that Mr. Jabarin had never been detained for his work with al-Haq. According to the Government Mr. Jabarin has been for many years a senior member of the Popular Front for the Liberation of Palestine (PFLP), a terrorist organisation committed to using violence in order to bring about the destruction of the State of Israel. The Government also maintained that since the Israeli-Palestinian Declaration of Principles was signed in September 1993, PFLP's declared objective has been to derail the peace process by acts of terror. The Government is allegedly in possession of substantial evidence to the effect that, in his capacity as a senior operative of the PFLP Mr. Jabarin has been and continues to be connected with the violent activities of the PFLP.

8. Yet Mr. Jabarin has never been brought to trial. It is alleged that since 1979. Mr. Jabarin has been detained seven times for his alleged terrorist activities. Failure to bring him to trial on six of the seven occasions, the Government explains, is its concern for the lives and welfare of several of the material witnesses. For this reason Mr. Jabarin has been periodically and for a limited period of time been under administrative detention. In doing so, the Government seeks to exercise its legal rights under article 78 of the Fourth Geneva Convention and article 87 of the Security Provisions Order 1970. Once, however, in 1985, Mr. Jabarin was brought to trial without endangering witnesses. He was apparently convicted for recruiting new members for the PFLP and for arranging guerilla training outside of Israel. He was apparently sentenced to 24 months' imprisonment, 9 months of which were served and 15 months suspended.

9. The Government contended that Mr. Jabarin has not discontinued his terrorist involvement and maintains his position in the leadership of the PFLP. The Government admits that he was arrested on 21 June 1994 and was

placed in administrative detention for six months. He cannot be brought to trial as that would, the Government maintains, endanger the safety of material witnesses were they to give evidence.

10. The source was given an opportunity to respond to the Government's letter, which it did on 11 August 1994. The source took the position that Israel had chosen to criminalize membership of the PFLP, a Palestinian political party; that for charging Mr. Jabarin for criminal activities the Government is obliged to bring him to trial. The source also questions the applicability of Article 78 of the Fourth Geneva Convention as a means to justify Mr. Jabarin's administrative detention. Article 87 of the Security Provisions Order is also inapplicable according to the source, as it can be used only as a preventive measure and not for acts which constitute breaches of law.

11. From the above it clearly emerges that the Israeli Government has chosen to detain Mr. Jabarin only because it considers it inadvisable to bring him to trial for fear that the lives of material witnesses will in the process of giving evidence, be endangered. Individual liberty cannot be sacrificed for the Government's inability either to collect evidence or to present it in an appropriate form. On its own showing the Government had in the past as also on 21 June 1994, in placing Mr. Jabarin under administrative detention, did not do it as a preventive measure. Such exercise of power is colourable: not for the purpose intended.

12. The issue becomes all the more significant as the source has not traversed the allegation of the Government that the PFLP is a terrorist organisation, committed to using violence in order to bring about the destruction of the State of Israel. If that be so and if the Government is in possession of substantial evidence of Mr. Jabarin's involvement in terrorist activities, the Government is obliged to charge and bring Mr. Jabarin to trial in the event it chooses to arrest him. The Government cannot be allowed to use the power of administrative detention to achieve the purposes that it wishes to achieve, without a formal trial. In this fashion the exercise of the power of administrative detention is not preventive but punitive. Reliance by the Government on article 78 of the Fourth Geneva Convention and article 87 of the Security Provisions Order is also unjustified. The latter can only be used as a preventive measure, not for committing an offence for which a person can be charged and tried. As far as the provisions of the Fourth Geneva Convention are concerned, article 6 provides that in case of Occupied Territories, the applicability of many provisions of the Convention, including article 78, ceases one year after the general close of military operations. Thus article 78 cannot provide a justification for Mr. Jabarin's administrative detention.

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

The detention of Mr. Sha'ban Rateb Jabarin on all previous occasions when he was not brought to trial and since 21 June 1994 is declared to be arbitrary being in contravention of 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 and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequent upon the decision of the Working Group declaring the detention of Mr. Jabarin to be arbitrary, the Working Group requests the Government of Israel 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 28 September 1994.