

OPINION No. 11/1998 (ISRAEL)

Communication addressed to the Government on 5 October 1997

Concerning: Bassam 'Abu Aqr, 'Abd Al-Rahman 'Abd Al-Ahmar and Khaled Deleisheh

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended pursuant to resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. 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.
5. According to the communication, Bassam 'Abu Aqr, aged 35, resident at the 'Aida refugee camp, in Bethlehem, West Bank, was reportedly arrested on 22 February 1996 near his home. 'Abu Aqr's administrative detention order was issued on 26 February 1996. The order was issued for one year, only 20 days after he had been released from a previous one-year detention term. The detention order has subsequently been renewed. His current place of detention is Ashkelon-Shikma prison, Israel.
6. 'Abd Al-Rahman 'Abd Al-Ahmar, a student, aged 30, resident of Deheishe refugee camp, Bethlehem, West Bank, was reportedly arrested on 19 November 1995. An administrative detention order was issued on 19 November 1995. It was issued for nine months, but subsequently cancelled after three months when the detainee was transferred to interrogation for 47 days and, reportedly, subjected to torture. At the end of the interrogation period, 'Abd Al-Ahmar was issued a one year administrative detention order, which was subsequently renewed. 'Abd Al-Ahmar is currently held in Megiddo prison, Israel.
7. Khaled Deleisheh, an engineer, aged 38, resident of Al-Bireh, Ramallah district, West Bank, was reportedly arrested on 16 April 1994 at his home. An administrative detention order was issued on 17 April 1994. It was subsequently renewed. Prior to this, he was in administrative detention from January 1992 until October 1993. He was released and placed under house arrest until he was detained again in April 1994. He has therefore been in administrative detention for 60 months of the past five and a half years and

he is now serving his seventh consecutive detention order. His current place of detention is Tel Mond (Sharon) prison, Israel. In October 1995, he petitioned the High Court of Justice, but his petition was rejected.

8. It is reported that none of the above-mentioned detainees has been charged yet, nor have they been provided with detailed information on the reason for their detention, which makes it impossible for them to prove their innocence. The source further reports that the only reason given for detention was their being Islamic Jihad (as in the case of Bassam 'Abu Aqr) or PFLP activists. Until August 1996, they appealed all their detention orders before a military judge. Reportedly, all orders were upheld on the basis of secret information. Since August 1996, all administrative detainees have maintained a boycott on appeals, to protest against their lack of due process.

9. According to the source, the above-mentioned cases of administrative detention are arbitrary for the following reasons:

(a) Information used against the detainees is being kept from them and their lawyers. This makes it impossible for the detainees to challenge the allegations;

(b) The wide use of extensions suggests that detention orders may be extended indefinitely.

10. From the allegations, it is clear that Bassam Abu Aqr's detention since 22 February 1996 has been renewed without a charge having been brought to date. He has no effective remedy to prove his innocence and has merely been informed that he is suspected of belonging to the Islamic Jihad. Similarly, Abd Al-Rahman 'Abd Al-Ahmar, detained on 19 November 1995, is under administrative detention orders which have been renewed without his having been brought to trial. He is said to be an activist of the Popular Front for the Liberation of Palestine (PFLP). In the case of Khaled Deleisheh, the facts reveal that he is serving his seventh successive detention order and that he has been in administrative detention for over 60 months out of the past five and a half years. He has not been charged until now. The source suggests that one reason for the detention is his being a PFLP activist. His appeal to the High Court of Justice was rejected.

11. In the case of the three above-mentioned individuals, there is a consistent pattern of conduct directed at ensuring their continued detention without recourse to an effective legal remedy. Prolonged periods of administrative detention, without remedy, would render the detention illegal. The detainees have a right to be tried without undue delay. Such a course of conduct on the part of the State violates the rights guaranteed under 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, as well as of principles 10, 11, 12 and 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The violation of the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

The deprivation of the liberty of Bassam 'Abu Aqr, 'Abd Al-Rahman 'Abd Al-Ahmar and Khaled Deleisheh is arbitrary, as 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 falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 May 1998.