

OPINION No. 8/1998 (ISRAEL)

Communication addressed to the Government on 12 August 1997

Concerning: Abbas Hasan 'Abd al Husayin Surur, Abd al-Hasan Abd al Hasan Surur, Ahmad Hasan 'Abd al-Hasan Surur, Ahmad Hikmat Muhammad Ubayd, Ahmad Jallul, Ahmad Muhsen Ammar, Ahmad Taleb, Ali Husayin 'Ali Ammar, Bilal 'Abd al Husayn Dahrub, Ghassan al-Dirani, Hasan Sadr al Din Hijazi, Hashem Ahmad 'Ali Fahas, Husayn Hamad, Husayn Fahd 'Abd al-Karim Duqduq, Husayn Rumayti, Husayn Tlays, Kamal Muhammad Rizq, Muhammad Abd al Hadi Darfallah Yanis, Mustafa al-Dirani, Qasem Fares, Sheikh 'Abd al-Karim 'Ubayd and Yusuf Ya'qub Muhammad Surur

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.)
5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government.
6. Before examining the present cases, the Working Group recalls that, according to the information available to it, between 1986 and 1994, certain Lebanese nationals were allegedly arrested in Lebanon, either by soldiers of the South Lebanese Army (SLA) or by troops of the Israeli Defense Forces (IDF) and eventually transferred to Israel, where, allegedly, some of them have been held in incommunicado detention for long periods of time. Some are reportedly being held in administrative detention and have not been tried; others were tried and sentenced but, in many cases, the sentences they served have expired, but they nonetheless continue to be detained. The cases mentioned below were reported to the Working Group on Arbitrary Detention:
  - (a) Sheikh 'Abd al-Karim 'Ubayd, a Shi'a Muslim leader resident in the village of Jibshit in south Lebanon, was reportedly arrested with two of his guards (see below) on 28 July 1989, at his home, by Israeli Defense Forces (IDF) troops who, reportedly, arrived by helicopter, attacked his house killing a neighbour who intervened, and, without showing any warrant, took the three men to Israel, where they have remained in detention ever since. Sheikh 'Abd al-Karim 'Ubayd is accused by the Government of Israel of being a leading figure in the Islamist organization *Hizbullah*; of having organized guerrilla attacks against Israeli soldiers and of being involved in the kidnapping of Lieutenant Colonel Higgins, a United States national, and member

of the United Nations Interim Force in Lebanon (UNIFIL). The detainee, who is apparently held in administrative detention, has been held incommunicado in a secret detention centre without charge or trial since 1989;

(b) Hashem Ahmad 'Ali Fahas, born on 4 March 1967, and Ahmad Hikmat Muhammad Ubayd, born on 30 March 1968, both bodyguards of Sheikh 'Abd al-Karim 'Ubayd, were reportedly arrested during a raid on the home of Sheikh 'Abd al-Karim 'Ubayd, in Jibshit village in south Lebanon on 28 July 1989 by IDF soldiers who did not show any warrant. Since then, they have been detained for eight years, including five years in incommunicado detention without access to the International Committee of the Red Cross (ICRC). They are currently held in Ayalon prison, Ramla, under IDF custody. The Government of Israel accuses them of being leading figures in the Islamist organization *Hizbullah*, but neither has been charged with any offence;

(c) Mustafa al-Dirani, born in 1953, leader of the "Faithful Resistance" (*al-muqawameh al-mu'mineh*) group, resident in Qasarnaba, east Lebanon, was reportedly arrested by the IDF during a raid on his home in Qasarnaba, on 21 May 1994. Mustafa al-Dirani, who in 1988 was a senior security officer with the *Amal* organization, is accused by the Israeli authorities of being responsible for holding Ron Arad, a navigator in the Israeli Air Force who was kidnapped in October 1986 by *Amal* militia. Mr. al-Dirani was taken to Israel in order to obtain information on the fate and whereabouts of Ron Arad. Since 21 May 1994, he has been held in administrative detention, without charge or trial, and he continues to be held incommunicado in a secret detention centre;

(d) Twelve Lebanese nationals are reportedly being detained in Israel after the expiry of their sentences. They are believed to be detained under the 1979 Emergency Powers (Detention) Law, which permits administrative detention, renewable indefinitely every six months. The source fears that they may be being held as hostages against the release of or for information about Israelis missing in action believed to be held by Lebanese militia groups. Their names, dates of birth and the circumstances of their arrest and detention are reported as follows:

Bilal 'Abd al Husayn Dakrub (born on 22 July 1964) was reportedly arrested from a cave where he was hiding near the village of Tibnin, in south Lebanon, on 17 February 1986 by SLA and IDF soldiers who, allegedly, did not show any warrant. His village was reportedly destroyed and his house burnt. Reportedly he was kept with the army for four days, tied at times to the hoods of cars to deter suicide-bombers; he was then interrogated by an IDF officer at Bra'shit camp, during which time he was allegedly beaten and kicked by SLA soldiers. The detainee then spent 10 days in Centre 17 camp, near Bint Jebein, where he was allegedly tortured by SLA security services in the presence of IDF officers. He was then transferred to Sarafand prison in Israel where he reportedly spent three months in isolation under interrogation and he was allegedly again tortured. Later, he was transferred to Jemeleh prison and was tried by a military court in Lod, in 1986, for membership of an illegal organization (not specified but believed to be the Islamist organization *Hizbullah*) and sentenced to two and a half years' imprisonment. His sentence expired on 16 August 1989 and he

should normally then have been released. Instead, he continues to be detained in prison in Israel. In September 1992, he was reportedly issued with an administrative detention order.

Muhammad 'Abd al-Hadi Daifallah Yassin (born on 1 August 1963) was reportedly arrested in the village of Bra'shit, in south Lebanon, on 17 February 1986, by SLA and IDF soldiers who, allegedly, did not show any warrant. After being transferred to Israel, he has been held in Ayalon prison, in Ramla, by the IDF. He was tried before the Israeli Military Court in Lod and sentenced to 10 years' imprisonment, charged with membership of an illegal organization (the Islamist organization *Hizbullah*) and taking part in armed actions against the SLA militia. In February 1996, his sentence expired but he has not been released. Since then, he has apparently been held under administrative detention.

'Ali Husayn 'Ali Ammar (born on 8 November 1966), Ahmad Muhsen' Ammar (born on 5 May 1967), Kamal Muhammad Rizq (born on 9 January 1970), and Hasan Sadr al-Din Hijazi (born on 21 May 1970) were reportedly arrested on 1 September 1986, during a raid on the village of Mays al-Jabal, in south Lebanon, by SLA and IDF soldiers who, allegedly, did not show any warrant. After being detained in south Lebanon, they were first transferred to Khiam prison and, after five months, to Sarafand prison, in Israel. They were allegedly tortured in both Khiam and Safarand prisons. They are currently being held in Ayalon prison in Ramla, Israel. They were tried before the Israeli Military Court in Lod and charged with membership of, military training with and spying for an illegal organization (the Islamist organization *Hizbullah*); and possession of weapons. They were sentenced to four and a half, four, and three years' imprisonment, respectively. Their sentences have expired but they continue to be detained, apparently under administrative detention.

'Abd al-Hasan Hasan 'Abd al-Hasan Surur (born on 4 April 1969), 'Abbas Hasan 'Abd al-Husayn Surur (born in 1962), Ahmad Hasan 'Abd al-Hasan Surur (born on 21 August 1967), Yusuf Ya'qub Muhammad Surur (born on 22 July 1969), Husayn Fahd 'Abd al-Karim Duqduq (born on 11 September 1969), were reportedly arrested in April 1987, in the village of 'Ita al-Sha'b, in south Lebanon, by SLA soldiers who, allegedly, did not show any warrant. They were first taken to the Centre 17 camp (near Bint Jbeil, reportedly run jointly by the SLA and the IDF) and then transferred to Khiam prison where they were allegedly tortured. They were then transferred to Sarafand prison in Israel where they were allegedly again tortured and interrogated by the Israeli security. Later, they were transferred to Jemeleh and tried before the Israeli military court in Lod where they were charged with membership of, military training with, and carrying weapons for an illegal organization (the Islamist organization *Hizbullah*); getting organized in cells planning to carry out military operations against the IDF; recruiting members and organizing the cells; and taking photographs of Israeli security zones. They were sentenced to terms ranging from one and a half to three years' imprisonment. Their sentences expired between 1988 and 1990 but they are still detained in Ayalon prison, in Ramla, Israel, apparently under administrative detention.

Qasem Fares (date of birth or age not known) was reportedly arrested in June or July 1988 in Ba'lbek, Lebanon, by SLA and IDF soldiers who, allegedly, did not show any warrant. After his arrest, he was taken to Israel, where he was tried and transferred to an unknown prison. He was sentenced to five years' imprisonment on unspecified charges. His sentence expired in 1992, but since then he has continued to be detained, apparently under administrative detention.

7. Two Lebanese nationals were reportedly arrested on 16 November 1987 at a checkpoint in the area of Monte Verde on the outskirts of Beirut, Lebanon, and another four were reportedly arrested on 18 December 1987 on board a ship, the *Gardenia*, moored in Beirut harbour and due to sail to Cyprus, by the Lebanese Forces Militia, who did not show any warrant. Their names, identities, professions and/or activities as well as the circumstances of their arrest are reported as follows:

Husayn Rumayti, born on 5 May 1963, 24 years old at the time of detention, worker in a glass shop; Husayn Ahmad, born on 8 January 1967, 20 years old at the time of detention; Ghassan al-Dirani, born in 1969, 18 years old at the time of detention, bank employee; Ahmad Jallul, born on 6 September 1965, 22 years old at the time of detention, sailor; Ahmad Taleb, born on 18 December 1966, 21 years old at the time of detention, sailor; and Husayn Tlays, born on 30 March 1959, were all arrested and detained by the Lebanese Forces Militia and held in the Lebanese Force detention centre in Adonis, in central Lebanon. Their families were able to see them for two years. In May 1990, they were all, allegedly, secretly transferred to Israel. Only in 1992 did the families learn officially that they had been taken to Israel, where they had been held in incommunicado detention without being able to communicate with neither their families nor ICRC. During this period, they were moved to several prisons in Israel. Since April 1997, apart from Ghassan al-Dirani, who has been transferred to Ramla prison hospital, owing to his suffering from serious mental illness, all the others have reportedly been held in Ayalon prison. Apparently, none of them have been charged with a recognizably criminal offence, but all are believed to be suspected of membership of, or association with, *Hizbullah*. They have all been detained for a total of nine years, the last six in Israel in incommunicado detention without any charge or trial. It is alleged that they have also been subjected to torture during their detention. Currently they are held under administrative detention.

8. After examination of the cases described above, the detainees may be divided into two groups:

(a) Lebanese nationals transferred to Israel and detained after expiry of their sentences:

Abbas Hasan 'Abd al Husayin Surur, arrested on 17 February 1986 and sentenced to three years' imprisonment;

Abd al-Hasan 'Abd al Hasan Surur, arrested on 4 April 1987 and sentenced to three years' imprisonment;

Ahmad Hasan 'Abd al-Hasan Surur (born on 21 August 1967), arrested in April 1987;

Ahmad Muhsen Ammar, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Ali Husayin 'Ali Ammar, arrested on 1 September 1986 and sentenced to four years' imprisonment;

Bilal 'Abd al Husayin Dakrub, arrested on 17 February 1986 and sentenced to two and a half years' imprisonment;

Hasan Sadr al Din Hijazi, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Husayin Fahd 'Abd al-Karim Duqduq, arrested on 15 April 1987 and sentenced to one and a half years' imprisonment;

Kamal Muhammad Rizq, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Muhammad 'Abd al-Hadi Dafallah Yassin, arrested on 17 February 1986 and sentenced to 10 years' imprisonment;

Qasem Fares, arrested in June/July 1988 and sentenced to five years' imprisonment;

Yusuf Ya'qub Muhammad Surur, arrested on 15 April 1987 and sentenced to three years' imprisonment.

9. According to the source, these 12 persons were arrested in Lebanon without a warrant, either by the Israeli Defense Forces (IDF) or by soldiers of the South Lebanese Army (SLA), transferred to Israeli prisons between 1986 and 1988 and tried. They were tried by military tribunals for membership of a banned organization, *Hezbollah*, or for involvement in armed operations against Israel and its allies, in accordance with the procedural provisions described below, which, under domestic law, permit any person who commits an offence against the State of Israel, regardless of nationality, to be prosecuted in the Israeli courts:

"The jurisdiction of the Israeli courts with respect to offences extends to the territory of the State and its territorial waters and, by law, also beyond that territory" (1977 Penal Code, article 2).

The "Israeli courts are competent to try under Israeli law any person who commits an act abroad which would have been deemed an offence had it been committed in Israel, and which injures the State of Israel, its security, its property, its economy or its means of transport or communication with other countries" (1977 Penal Code, article 5 (a)).

10. In the absence of any information from the Government, the Working Group believes that it is in a position to give an opinion on the facts and circumstances of the cases.

11. In the light of the detainees' membership of *Hezbollah* - a point the source does not appear to dispute - whose aim is to resist the presence of the Israeli armed forces in the area known as the "security zone", including by force of arms, the Working Group is not in a position to judge whether some of them might nevertheless fall within Category II of its working methods.

12. On the other hand, without regard to whether or not, at the time of their trial, these persons suffered violations of the right to fair trial of such gravity that they conferred on the deprivation of their liberty an arbitrary character, the Working Group, noting that the detainees have continued to be held in detention despite having served their full sentences - a point not disputed by the Government - considers these to be clear cases of arbitrary detention falling within Category I of its working methods.

(b) Lebanese nationals transferred to Israel and detained without charge or trial (administrative detention):

Ahmad Hikmat Muhammad Ubayd, detained since 28 July 1987;

Ahmad Jallul, detained since 18 December 1987;

Ahmad Taleb, detained since 18 December 1987;

Sheikh 'Abd 'al-Karim Ubayd, detained since 28 July 1989;

Ghassan al-Dirani, detained since 18 December 1987;

Hasheim Ahmad 'Ali Fahas, detained since 28 July 1989;

Husayin Hamad, detained since 16 November 1987;

Husayin Rumayti, detained since 16 November 1987;

Husayin Tlays, detained since 18 December 1987;

Mustafa al-Dirani, detained since 20 May 1994.

13. According to the evidence and testimony gathered by the Working Group, these 10 persons are being detained in Israel, where they were transferred, and continue to be deprived of their liberty without charge or trial, after having been held incommunicado for long periods.

14. According to the source, the Government justifies this deprivation of liberty with reference to the 1979 Emergency Powers (Detention) Law, which permits administrative detention. Under this law, such a procedure, which falls within the jurisdiction of the Ministry of Defence, is subject to review every six months and, as has happened in this case, may be renewed indefinitely. The Working Group notes in this regard that, when cases are reviewed, the persons concerned can never find out the charges against them, which are deemed to be classified information.

15. The Working Group therefore considers that, even though this form of deprivation of liberty may appear to comply with domestic legislation, the provisions of that legislation seriously contravene international rules governing the right to a fair trial, insofar as they disregard almost all the guarantees regarding the right to a fair trial provided for under article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. This absence of guarantees therefore constitutes a violation of the right to a fair trial of such gravity that it confers on the deprivation of liberty an arbitrary character.

16. In the light of the above, the Working Group is of the following opinion:

With regard to the first group (Lebanese nationals transferred to Israel and held in detention after expiry of their sentences): the deprivation of the liberty of Abbas Hasan 'Abd al Husayin Surur, Abd al-Hasan Abd al Hasan Surur, Ahmad Hasan (Abd-al Hasan Surur, Ahmad Muhsen Ammar, Ali Husayin 'Ali Ammar, Bilal 'Abd al Husayin Dakrub, Hasan Sadr al Din Hijazi, Husayin Fahd 'Abd al-Karim Duqduq, Kamal Muhammad Rizq, Muhammad Abd al-Hadi Dafallah Yassin, Qasem Fares and Yusuf Ya'qub Muhammad Surur is arbitrary in the terms of Category I of the Working Group's working methods, insofar as it manifestly cannot be justified on any legal basis.

With regard to the second group (Lebanese nationals transferred to Israel and placed under administrative detention without charge or trial): the deprivation of the liberty of Ahmad Hikmat Muhammad Ubayd (alias Ahmad Hikmet Obeid), Ahmad Jallul (alias Ahmad Bahij Jalloul), Ahmad Taleb (alias Ahmad Mohamed Taleb), Sheikh 'Abd al-Karim Ubayd (alias Cheikh Abdel Karim Obeid), Ghassan al-Dirani (alias Ghassan Fares Dirani), Hasheim Ahmad 'Ali Fahas (alias Hachem Ahmed Fahas), Husayin Hamad (alias Hussein Bahij Ahmed), Husayin Rumayti (alias Hussein Ahmed Rumayti), Husayin Tlays (alias Hussein Mohamed Tlays) and Mustafa al-Dirani (alias Mustafa Dirani) is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights (and article 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.

17. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To study the possibility of amending its legislation in order to bring it into line with the Declaration and the other relevant international standards accepted by that State.

Adopted on 15 May 1998.