

OPINION No. 16/2000 (ISRAEL)

Communication addressed to the Government on 24 February 2000

Concerning Rabah Abou Faour, De Gaulle Abou-Tas, Ali Alsaghir, Shamlakan Assaf, Hussein Atami, Samira Atteh, Ghandy Ayoub, Metme Dakdout, Cosette Ibrahim, Abbas Khanafir, Sulaiman Ramadan, Ahamed Samhat, Hosein Samhat, Ghassan Seied, Najwa Simhat, 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) Mr. Abbas Khanafir, a Lebanese citizen born in 1970, was arrested on 28 December 1999 at Aynata; it is alleged that he was arrested without a warrant by members of the Southern Lebanese Army (SLA) and the Israeli Defence Forces (IDF) when he visited his family in Aynata, and refused to cooperate with the Israeli forces. He was detained at Al-Khiam detention centre and allegedly was not charged with any criminal offence;

(b) Ms. Samira Atteh, a Lebanese citizen born in 1977, was arrested on 23 November 1999 in Arnoun, southern Lebanon; she allegedly was arrested without a warrant by members of the SLA and the IDF, as she refused to cooperate with them. She was detained at Al-Khiam detention centre and was not charged;

(c) Mr. Ghassan Seied, a Lebanese born in 1965, was arrested on 16 August 1998; he was allegedly arrested without a warrant by members of the IDF, on suspicion of having participated in an attack on an IDF patrol in southern Lebanon. It is alleged that he was subjected to torture after his arrest. He was detained at Al-Khiam detention centre;

(d) Mr. Sulaiman Ramadan, a Lebanese agricultural labourer born in 1965, was allegedly arrested on 16 September 1985 in southern Lebanon; he is said to have been arrested without a warrant by members of the IDF and SLA, as he was suspected of links to the Lebanese resistance to the SLA and Israeli forces operating in southern Lebanon. According to the source, he was never charged with an offence and was held at Al-Khiam detention centre, where his health condition is said to be deteriorating, partly as a result of torture to which he was subjected;

(e) Mr. De Gaulle Abou-Tas, a Lebanese born in March 1959, was arrested on 26 August 1999 in Rmeish; he is said to have been arrested without a warrant by members of the IDF and the SLA because he refused to cooperate with either of them. He apparently was not charged and was held at Al-Khiam detention centre;

(f) Mr. Hosein Samhat, a Lebanese born in 1962, was arrested on 29 September 1999 in Aynata, southern Lebanon; he reportedly was arrested without a warrant, together with his wife and his child, by members of the SLA and the IDF, while working in his restaurant, for failure to cooperate with the Israeli forces. He was held at Al-Khiam detention centre;

(g) Mr. Ahamed Samhat, a Lebanese born in 1984, was arrested on 29 September 1999 in Aynata, southern Lebanon; he is said to have been arrested without warrant by members of the IDF, as he refused to cooperate with them. It is alleged that he was arrested together with his father and his mother, and was transferred to Al-Khiam detention centre;

(h) Mr. Hussein Atami, a Lebanese born in 1962 and at the time of arrest a cook for the United Nations Interim Force in Lebanon (UNIFIL), was arrested on 25 January 2000 at Nagura in southern Lebanon; it is said that he was arrested without a warrant by members of the IDF and the SLA. The reasons for his arrest are not known. He was held at Al-Khiam detention centre;

(i) Ms. Shamlakan Assaf, a Lebanese born in 1975 and a nurse in Nabatiah, was arrested on 23 November 1999 at Arnoun in southern Lebanon; she was allegedly arrested without a warrant by members of the SLA and the IDF, for refusing to cooperate with them. She was held at Al-Khiam detention centre;

(j) Mr. Ali Alsaghir, a Lebanese born in 1969, was allegedly arrested on 1 November 1986 at Bintjbeil in southern Lebanon; he is said to have been arrested without a warrant by members of the IDF and the SLA, because he was suspected of links to

the Lebanese resistance against the IDF operations in the area. It is alleged that he was never charged with an offence and that he was subjected to torture after arrest. He was held at Al-Khiam detention centre;

(k) Mr. Nehme Dakdout, a Lebanese born in 1957, was allegedly arrested in 1993 and was detained at Al-Khiam detention centre; he allegedly was arrested without a warrant by members of the SLA and the IDF. The reasons for his arrest are not known. He is said to have been subjected to torture after his arrest;

(l) Ms. Najwa Simhat, a Lebanese born in March 1962, was arrested on 29 September 1999 and was detained at Al-Khiam; she is said to have been arrested without a warrant by members of the IDF and the SLA. The reasons for her arrest are not known. The source indicates that she was arrested together with her husband and that she was subjected to torture in spite of her pregnancy;

(m) Mr. Ghandy Ayoub, a Lebanese born in February 1968, was allegedly arrested on 17 July 1997 and was detained at Al-Khiam detention centre; he is said to have been arrested without a warrant by members of the SLA and the IDF. The reasons for his arrest are not specified, but the source claims that he was not charged and that he has been subjected to torture;

(n) Mr. Rabah Abou Faour, a Lebanese born in April 1982, was allegedly arrested on 2 March 1998 at Zoumariah while visiting relatives, and was said to be detained at Al-Khiam detention centre. He apparently was arrested without a warrant by members of the IDF and subsequently subjected to torture;

(o) Ms. Cosette Ibrahim, a Lebanese citizen born in May 1975 and a journalist, was arrested on 2 September 1999 at Rmeish in southern Lebanon at the home of her parents. She was initially said to be detained at Al-Khiam detention centre. A previous urgent appeal was sent on her behalf by the Working Group on 22 September 1999. She reportedly was arrested without a warrant by members of the SLA and the IDF. She reportedly is accused of having written critical reports about the Israeli and SLA practices in the occupied zone of southern Lebanon.

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 prison (e.g. 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 15 persons to whom the present communication relates:

(a) Were arrested without warrants;

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

(c) 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 guarantees constitutes a violation of their right 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 following the withdrawal of the IDF from southern Lebanon.

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

The deprivation of liberty of Rabah Abou Faour, De Gaulle Abou-Tas, Ali Alsaghir, Shamlakan Assaf, Hussein Atami, Samira Atteh, Ghandy Ayoub, Metme Dakdout, Cosette Ibrahim, Abbas Khanafir, Sulaiman Ramadan, Ahamed Samhat, Hosein Samhat, Ghassan Seied and Najwa Simhat 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 the cases submitted to the Working Group.

Adopted on 13 September 2000