

OPINION No. 23/2001 (ISRAEL)

Communication addressed to the Government on 27 August 2001

Concerning: Khaled Jaradat

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. The case summarized hereafter has been reported to the Working Group as follows.
5. Khaled Jaradat was born in 1960, has a West Bank residence identity card issued by the military authorities and lives in Silat-El-Kharthiye, Jenin district. It was reported that Mr. Jaradat was arrested without a warrant on 13 February 1997 at his home by members of the Israeli army. His arrest was reportedly ordered by the military commander of the West Bank on charges of being an activist of the illegal organization Palestinian Islamic Jihad.
6. The source reports that Mr. Jaradat was arrested under Military Order No. 1229 of 1988 on Administrative Detention, Temporary Provision, and on the basis of secret evidence never revealed to him. Although there was judicial review, the secret evidence remained privileged

information and the military judges only received one-sided information. Supposed informers were not asked to appear before the judges and, in fact, they never appeared during the judicial proceedings.

7. Mr. Jaradat's case was brought to Israel's High Court of Justice twice, but his appeals were rejected on both occasions by judges relying on secret evidence. Mr. Jaradat had no access to the information used against him. This made it impossible for him to challenge the accusation. According to the source, although Mr. Jaradat may again appeal against his detention, he is unable to present a meaningful defence. Since almost all information presented to the Court is classified, he is unable to contest its veracity. He cannot confront or cross-examine the primary witnesses.

8. Mr. Jaradat is being held in detention in Megiddo Military Prison. He has been detained for a total of four years and six months.

9. The source adds that Military Order No. 1229 of 1988 allows military commanders in the West Bank to detain a person for up to six months if they have reasonable grounds to presume that the security of the area or public security requires his or her detention. Military commanders can extend detention for additional periods of up to six months if, on the eve of the expiration of a detention order, they have reasonable grounds to believe that the security of the area or public security still requires the holding of the detainee in detention. The terms "security of the area" and "public security" are not defined and their interpretation is left to the military commanders. Given that the detention order does not specify a maximum cumulative period of administrative detention, extensions can be indefinite.

10. 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 case, especially since the facts and allegations which seriously contravene the right to a fair trial, 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, have not been challenged by the Government.

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

The deprivation of liberty of Mr. Khaled Jaradat 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.

12. Consequent upon the opinion rendered, the Working Group requests the Government 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.

Adopted on 29 November 2001