

No. 22/2009 (Palestinian Authority)

Communication addressed to the Palestinian Authority on 29 May 2009

Concerning: Mr. Mohammad Abu Alkhair

1. (Same text as paragraph 1 of Opinion N° 18/2009)
2. The Working Group regrets that the Palestinian Authority has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion N° 18/2009)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Palestinian Authority.
5. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made, notwithstanding that the Palestinian Authority has not offered its version of facts and explanations on the circumstances of the case.

6. The case summarized below was reported to the Working Group on Arbitrary Detention as set out in the paragraphs below.
7. Mr. Mohammad Abu Alkhair (hereafter Mr. Abu Alkhair), a Palestinian, born on 11 May 1971, residing at Nour Shams Camp – Tulkarm, West Bank, and a social assistant at Al-Zakat hospital in Tulkarm, is reportedly suffering from diabetes and has different cardiac perturbations, being in need of special nutrition and continuous medical treatment.
8. As a social assistant at Al-Zakat Hospital in Tulkarm, Mr. Abu Alkhair handled health dossiers for patients with financial difficulties. He was also a member of a charity association named Zakat Association, as well as a member of the Electricity committee in the Nour Shams Camp – Tulkarm. Those jobs have reportedly given to Mr. Abu Alkhair a wide popularity among the camp’s inhabitants.
9. According to the source, on 23 April 2009, Mr. Abu Alkhair was arrested at his home in Nour Shams Camp by agents of two different security bodies; the Palestinian Preventive Security Service (PSS) and the General Intelligence Forces as well as by other armed men, who did not shown any arrest warrant or judicial order. Mr. Abu Alkhair was taken to the Preventive Security Service’s local compound.
10. No reasons were communicated to Mr. Abu Alkhair for his arrest and detention. According to the source, the motive of his detention may be related to his functions as a social assistant at Al-Zakat Hospital and to his popularity as a member of several associations and committees.
11. The source expresses its fears that Mr. Abu Alkhair may be subjected to physical or psychological torture or other forms of ill-treatment, with serious consequences on his deteriorated health. The source mentions different methods of torture allegedly used by the security services against prisoners, particularly political prisoners and supporters of Islamist movements in the West Bank, including that known as the “Shabh”: the prisoner’s legs are tied to a small stool and his hands are tied behind his back with a bag covering his head; sometimes during more than 20 hours and depriving him from sleeping.
12. The source adds that Mr. Abu Alkhair has been put in a cold, rotting and narrow cell. He has been prevented from meeting his relatives and to contact a defence lawyer. Some lawyers were asked to defend Mr. Abu Alkhair; however they did not have any possibility to contact him and to ensure his defence. His case was reported to the Palestinian Parliament; to the International Committee of the Red Cross (ICRC) as well as to two different human rights organizations in Ramallah.
13. The source adds that Mr. Abu Alkhair’s detention is contrary to articles 10, 11.1, 12, 13, 14, 19, 26, 75 and 103 of the 2002 Palestinian Basic Law. It provided to the Working Group the order of the Palestinian court declaring the detention of Mr. Abu Alkhair as without any legal basis and his arrest by the military authorities as outside their competence. This order is dated 12 July 2009 but Mr. Abu Alkhair was not released immediately after this ruling, as required by law.
14. The Working Group transmitted the above stated information to the Palestinian Authority requesting detailed information about the current situation of the above-mentioned person and to clarify the legal provisions justifying his continued detention.
15. The source informed the Working Group that Mr. Abu Alkhair was released by the authorities on 29 July 2009
16. Having examined the information received and in the absence of a reply from the Palestinian Authority, the Working Group considers that Mr. Abu Alkhair was detained without having been brought before a judicial authority, without a hearing and without the perspective of a trial. Consequently, the Working group considers that:

(a) The deprivation of liberty of Mr. Abu Alkhair during the period 23 April 2009-29 July 2009 was arbitrary; being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falls under category I and III of the categories applicable to the consideration of cases submitted to the Working Group;

(b) Considering that Mr. Abu Alkhair was released on 29 July 2009, the Working Group, according with paragraph 17 (a) of its methods of work, decided to file the case.

17. The Working Group, bearing in mind the release of Mr. Abu Alkhair, requests the Palestinian Authority to take all necessary steps to provide him immediate compensation for the harm and damages he has suffered during the period of his arbitrary detention.

Adopted on 20 November 2009