

Opinion No. 9/2010 (Israel)

Communication addressed to the Government on 1 February 2010

Concerning Mr. Wa'ad al-Hidmy

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

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. According to its Methods of Work, the Working Group forwarded a communication to the Government on 29 May 2009. A reminder was also sent. The Government has not requested any extension of the time limit. The Working Group regrets that the Government has not replied within the 90-days deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)
4. The case was reported by the source to the Working Group on Arbitrary Detention as set out in the paragraphs below.
5. Mr Wa'ad al-Hidmy, born on 24 May 1991, is a pupil and a Palestinian resident at Surif Village, Hebron, West Bank, Occupied Palestinian Territory. He was arrested on 28

April 2008 by Israeli soldiers. The arrest took place at his family home in the village of Surif, near Hebron, West Bank.

6. According to the source, Israeli soldiers came to Mr. Al-Hidmy's home during the night and took him without informing him of the reasons for his arrest. Mr. Al-Hidmy was blindfolded, placed in a military vehicle, and told to "shut up."

7. Mr. Al-Hidmy was taken to the Israeli settlement of Karmi Zur in the West Bank, and later held at the Etzion Interrogation Centre, near Bethlehem in the West Bank, with other detainees in a room. Mr. Al-Hidmy was later interrogated for five minutes at Ofer Prison and accused of participation in demonstrations organized by "Islamic Jihad", an organization banned by the Israeli authorities, which he denied.

8. On 6 May 2008, still at Ofer Prison, Mr. Al-Hidmy received a document in Hebrew and was informed by the prison officer that it was an administrative detention order for a duration of six months. The source underlines that Mr. Al-Hidmy was taken back since he was expecting to be released as he had not confessed to any wrongdoing and was innocent. Two days later the Military Administrative Detention Court reduced the order from six months to four. The Military Administrative Detention Appeals Court rejected Mr. Al-Hidmy's appeal.

9. After this, Mr. Al-Hidmy has been served with a series of administrative orders extending his detention.

10. On 27 August 2008, three days before the expiry of the first order, Mr. Al-Hidmy received another order of four months, which upon review was reduced by the Military Administrative Detention Court to three months and upheld on appeal by the Military Administrative Detention Appeals Court.

11. On 26 November 2008, Mr. Al-Hidmy was issued with a third administrative detention order issued by the military commander for a duration of further four months, which was not reduced by the courts.

12. On 26 March 2009, after 11 months, Mr. Al-Hidmy received a fourth order which was reduced by the Military Administrative Detention Court to three months.

13. On 21 June 2009, Mr. Al-Hidmy was served with a fifth administrative detention order of three months.

14. On 24 September 2009, Mr. Al-Hidmy was issued with his sixth administrative detention order by an Israeli military commander in the West Bank. The order was reviewed and confirmed by an Israeli military court on the same day.

15. Finally, according to the source, Mr. Al-Hidmy was allowed to see his parents for the first time on 14 June 2009. Until this time only his younger siblings had been allowed to visit him. He has never been clearly informed about any accusations against him.

16. The Working Group wishes to express its regrets over the Government's failure to reply within the 90-day deadline, and to note that the Government did not use the opportunity to request an extension of the time limit under section 16 of the Working Group's Methods of Work. The Working Group stated in its two communications that it would appreciate the Government providing information about the current situation of Mr. Al-Hidmy and clarification about the legal provisions justifying his continued detention.

17. The Working Group is in a position to provide an Opinion, on the basis of all the information it has obtained on the detention of Mr Al-Hidmy.

18. The Working Group notes that Israel has ratified the International Covenant on Civil and Political Rights (ICCPR), and that it has derogated from its obligations under article 9. The Working Group wishes to stress that the right to a fair trial is a fundamental right and

that at its core is non-derogable. Any derogation must be subjected to the limitations that follow from the requirements of the principle of proportionality.

19. The first issue to consider is whether the right to a court hearing apply in this case. International human rights law requires the revision by a judicial court of the legality and the lawfulness of the detention, and that this hearing must occur promptly (see art. 9 of the Universal Declaration of Human Rights; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11; and article 9 (3) of the ICCPR, which should be considered as customary international law and with a core which is non-derogable).

20. The Working Group recalls the statements and observations of the Human Rights Committee, including its General Comment No. 29 and its concluding observations on reports submitted by Israel (see CCPR/C/79/Add.93 of 1998 and CCPR/CO/78/ISR of 2003).

21. In the latter concluding observations, the Human Rights Committee establishes in sub-section D titled "Principal subjects of concern and recommendations", that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including its article 4 which covers situations of public emergency that threaten the life of the nation.

22. The Human Rights Committee states: "Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law".

23. In paragraph 12, the Human Rights Committee welcomes the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis. However, the Committee "remains concerned about the sweeping nature of measures during the state of emergency, that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. articles 12, paragraph 3; 19, paragraph 3 and; 21, paragraph 3). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4.

24. In the present case, the detention is a result of the exercise of the freedom to opinion and expression; of political free speech, and a prima facie violation of article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR. This requires a particularly vigilant review of the fair trial guarantees, and even more so, given the domestic system compliance with international human rights standards.

25. The Working Group will point out that the detention of a teenager for two years based simply on accusations of having participated in demonstrations by an organization banned by the Israeli authorities, seems to be disproportionate in relation to any public emergency.

26. International humanitarian law cannot be used to produce legal black holes where individuals are denied the protection of both international human rights law and international humanitarian law.

27. The Working Group has also reviewed the relevant obligations of Israel under the Convention of the Rights of the Child. Mr Wa'ad al-Hidmy was under 18 when he was detained.

28. The Committee on the Rights of the Child in its concluding observations on Israel (See CRC/C/15/Add.195, paras. 62 and 63 of 2002 and in the report CRC/C/OPAC/ISR/CO/1 on consideration of reports submitted by Israel under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, of 2010) states the following:

II. General measures of implementation

Non-discrimination

The Committee is concerned that Israeli legislation continues to discriminate in the definition of the child between Israeli children (18 years) and Palestinian children in the occupied Palestinian territory (16 years) according to Military Order No. 132.

The Committee reiterates its recommendation that the State party rescind the provision of Military Order No. 132 concerning the definition of the child and ensure that its legislation.

The Committee expresses concern that provisions in Military Orders (specifically no. 378 and 1591) continue to be in violation of international standards on the administration of juvenile justice and the right to a fair trial. The Committee furthermore notes with concern information regarding attempts to incorporate juvenile justice standards within military courts.

The Committee is gravely concerned over reports that more than 2 000 children, some as young as twelve, have been charged with security offenses between 2005 and 2009, held without charge for up to 8 days and prosecuted by military courts. The Committee is particularly concerned that children charged with security offences are subjected to prolonged period of solitary confinement and abuse in inhumane and degrading conditions, that legal representation and interpretation assistance is inadequate and that family visits are not possible as relatives are denied entry to Israel. The Committee is disturbed over information indicating that children have been subjected to administrative detention orders for renewable periods of up to six months. Finally, the Committee regrets the insufficient information provided by the State party on the above concerns.

Para 11 The Committee urges the State party to:

(a) Take prompt measures to comply with the fundamental principles of proportionality and distinction enshrined in humanitarian law, including the Fourth Geneva Convention of 1949, which set out the minimum standards for the protection of civilians in armed conflict.

29. Accordingly, the Working Group renders the following Opinion:

The detention of Mr Wa'ad al-Hidmy is arbitrary, being in violation of articles 9, 10, 11, and 19 of the Universal Declaration of Human Rights, and articles 14 and 19 of the International Covenant of Civil and Political Rights. His detention falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

30. The Working Group requests the Government to take the necessary steps to remedy the situation, which are the immediate release of, and adequate reparation to, Mr Wa'ad al-Hidmy.

Adopted on 7 May 2010