

OPINION No. 9/1998 (ISRAEL)

Communication addressed to the Government on 1 October 1997

Concerning: Hasan Fataftah, Samir Shallaldah, Usama Barham,  
Nasser Jarrar and Suha Bechara

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.)
4. 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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. Hasan Fataftah, aged 35, a social worker, married with a son aged 6 and two daughters aged 4 and 3, resident of the city of Al-Bireh, Ramallah district, West Bank, was reportedly arrested on 30 May 1994. Reportedly, on the same day, several Palestinians were arrested and subsequently put into administrative detention, all on suspicion of being Popular Front for the Liberation of Palestine (PFLP) activists. Fataftah's administrative detention order was issued on 30 May 1994. Subsequently, this order has been continuously renewed. He is currently serving his eighth consecutive detention order in Tel Mond (Sharon) prison, Israel. The source reports that Fataftah has not been charged, which makes it impossible for him to prove his innocence. Until August 1996, Fataftah appealed all his detention orders before a military judge. Reportedly, all orders were upheld on the basis of secret information.
6. Samir Shallaldah, aged 37, a social worker, resident of East Jerusalem living in Al-Bireh, Ramallah district, West Bank, married with two children aged 7 and 5, was reportedly arrested on 30 May 1994. The administrative detention order was issued on 29 May 1994. Subsequently, this order has been continuously renewed. He is now serving his eighth detention order. The source reports that the only reason given for detention was his being a senior PFLP activist. Shallaldah has not been released and is currently held in Tel Mond (Sharon) prison, Israel. Until August 1996, Shallaldah appealed all his detention orders before a military judge. Reportedly, all the appeals were kept classified.
7. Usama Barham, aged 34, unmarried, a journalism student, resident of Ramin in Tulkarem district, West Bank, was reportedly arrested on 18 September 1994. The administrative detention order was issued

on 18 September 1994. Subsequently, this order has been continuously renewed. He had previously been held in administrative detention from November 1993 until September 1994. Reportedly, he was detained again 16 days later and given a six months' administrative detention order. He has therefore been in administrative detention for 32 months out of the past four years and he is currently serving his eighth consecutive detention order in Tel Mond (Sharon) prison, Israel. The source reports that the only reason given for detention was his being a Hamas activist. Barham has not been charged, which makes it impossible for him to prove his innocence. Until August 1996, Barham appealed all his detention orders before a military judge. Reportedly, all the orders were upheld on the basis of secret information. The source further reports that Barham suffers from kidney problems and ulcers. Moreover, in June 1995, his father died and, reportedly, he was denied permission to attend the funeral.

8. Nasser Jarrar, aged 38, a social worker, resident of Barqin, Jenin district, West Bank, was reportedly arrested on 22 April 1994. The administrative detention order was issued on 22 April 1994. Subsequently, this order has been continuously renewed. His current place of detention is Damun prison, Israel. The source reports that the only reason given for detention was his being a Hamas activist. Jarrar has not been charged, which makes it impossible for him to prove his innocence. Until August 1996, Jarrar appealed all his detention orders before a military judge. Reportedly, all the orders were upheld on the basis of secret information. Nasser Jarrar is married with two sons both under 10 years of age. His elderly mother and his mentally retarded sister live with the family and are dependant on him for support.

9. It is reported that since August 1996 all administrative detainees have maintained a boycott on appeals, to protest against their lack of due process.

10. According to the source, the above-mentioned cases of administrative detention are arbitrary for the following reasons:

(a) Information used against the detainees is being kept from them and their lawyers. This makes it impossible for the detainees to challenge the allegations;

(b) The wide use of extensions suggests that detention orders may be extended indefinitely.

11. Suha Bechara, aged 29, a Lebanese student, was reportedly arrested on 7 November 1988 by soldiers of the South Lebanese Army (SLA), on charges of attempted murder of the head of SLA, Antoine Lahad. The source reports that Suha Bechara has been detained for almost nine years in Khiam camp, South Lebanon. No charge has been formulated against her, nor has she had the opportunity to be heard by a judicial or other authority, so as to be able to challenge the allegations.

12. From the allegations made it is clear that Hasan Fataftah's detention since 30 May 1994 has been continuously renewed without a charge having been made to date. He is apparently serving his eighth consecutive detention order. Fataftah has no effective remedy to prove his innocence, the appeal to a military judge having been upheld on the basis of secret information. Similarly, Samir Shallaldah detained on 30 May 1994 is also serving his eighth detention without being tried. His appeal to a military judge was also

rejected. Both Hasan Fataftah and Samir Shallaldah are said to be Popular Front for the Liberation of Palestine (PLP) activists. In the case of Usama Barham, the facts reveal that he is currently serving his eighth successive detention order and that he has been in administrative detention for 32 months out of the past four years. He has not been charged. The source suggests that the only reason for Usama's detention is his being a Hamar activist. All his appeals against the various detention orders were rejected and the detention orders upheld on the basis of secret information. Nasser Jamar is also detained for being a Hamas activist. Jamar was detained on 22 April 1994 and the order of detention has been continuously renewed. He too has not been charged for the commission of any offence. His detention, though appealed against, was also upheld by a military judge, reportedly on the basis of secret information. In the case of Suha Bechara, she was reportedly arrested on 7 November 1988 on charges of attempted murder of the head of SLA, Antoine Lahad. Though detained for nine years, no charges have been formulated against her to date, she has not had a hearing before a judicial or other authority.

13. In the case of Hasan Fataftah, Samil Shallaldah, Usama Barham and Nasser Jarrar, there is a consistent pattern of conduct directed at ensuring their continued detention without recourse to an effective legal remedy. Prolonged periods of administrative detention, without remedy, would render the detention illegal. The detainees have a right to be tried without undue delay. Such a course of conduct on the part of the State violates the rights guaranteed under 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. In the case of Suha Bechara, the fact that no charge has been formulated against her in nine long years, apart from suggesting that the allegations may not be substantiated, amounts to denial of opportunity to establish her innocence before a judicial or other appropriate authority. The violation is of such gravity that it confers an arbitrary character on the deprivation of liberty. Her rights under 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 been violated along with principles 10, 11, 12 and 23 of the Body of Principles.

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

The deprivation of the liberty of Hasan Fataftah, Samir Shallaldah, Usama Barham, Nasser Jarrar and Suha Bechara is arbitrary, as being in contravention of 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, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 May 1998.