

OPINION NO. 3/2004 (ISRAEL)

Communication addressed to the Government on 26 May 2003

Concerning: 'Abla Sa'adat, Iman Abu Farah, Fatma Zayed and Asma Muhammad Suleiman Saba'neh

The State has ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which submitted comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information submitted to the Working Group by the source, 'Abla Sa'adat, a human rights defender, was arrested on 21 January 2003 when crossing the border between Israel and Jordan, when she was on her way to Brazil for the World Social Forum as a delegate representing the Palestinian human rights organization Addameer. She was taken to Beit El military detention centre where she was placed in an isolation cell without being questioned. She was not allowed to leave her cell until her lawyer visited her two days after her arrest.
6. Iman Abu Farah and Fatma Zayed, both university students in Jerusalem, were arrested on 20 January 2003 by the Israeli army in their apartment near Ramallah and also taken to Beit El military detention centre, which has no separate facilities for women, where they suffered harsh treatment amounting to cruel, inhuman and degrading treatment.
7. On 22 January 2003 the three women were served with four-month administrative detention orders. On 30 January 2003, after the judicial review of their detention orders, 'Abla Sa'adat and Iman Abu Farah were transferred to Neve Tirza, the women's section of Ramleh prison. On 26 January 2003, the administrative detention of Fatma Zayed was confirmed by judicial review by the 'Ofer Military Court and she was transferred to the Moskobiyye Interrogation Centre in Jerusalem.
8. Asma Muhammad Suleiman Saba'neh, 40 years old, the mother of six children and a resident of Jenin refugee camp, was arrested on 11 February 2003 in her home by some 50 members of the Israeli army and served, at an unspecified date, with a six-month administrative detention order.
9. According to the source, these four women were held in administrative detention without charge or trial. No criminal charges were filed against them and there was no intention of

bringing them to trial. The detainees or their lawyers could not challenge the reasons for their detention, since these reasons had not been communicated to them. They can be kept in detention on the basis of secret evidence which the military authorities claim cannot be revealed so as not to compromise the source.

10. It was further pointed out that the procedure known as judicial review is in fact only a routine confirmation of the administrative detention order. In most cases administrative detention orders are also confirmed by the military appeal tribunal. The appeal hearing, which the detainees have to initiate themselves, is the first and the only opportunity detainees have to find out why they are detained.

11. The source further considers that administrative detention is being used as a means of circumventing the criminal justice system and avoiding the due process safeguards it provides. Complaints concerning the conditions of detention were also raised by the source.

12. According to the Government, 'Abla Sa'adat was arrested on 21 January 2003 for activities endangering the security of the area and was detained at the Beit El military detention facility. The military commander issued an administrative detention order for her on 23 January 2003. Ms. Sa'adat was transferred to the Neve Tirzah detention facility for women on 29 January 2003. She was released on 6 March 2003 pursuant to an order reducing the period of her administrative detention.

13. Iman Abu Farah was arrested on 20 January 2003 for her involvement with Hamas, an organization responsible for numerous murderous attacks against Israeli citizens. On 23 January 2003 an administrative detention order was issued for her for a five-month period, and a military court approved the detention order on 28 January 2003. The court held that, having seen the evidence against Ms. Abu Farah, it was convinced that her early release would pose a real danger to the security of the area and the safety of civilians. On 29 January 2003 Ms. Abu Farah was transferred to Neve Tirzah detention facility for women. Ms. Abu Farah was indicted on 13 April 2003 and charged with three counts of providing services to an unlawful organization, seven counts of harbouring fugitives (in this case, senior members of Hamas) and illegal possession of weapons.

14. Fatma Zayed was arrested on 20 January 2003, on suspicion of involvement with Hamas. An administrative detention order was issued for her on 23 January 2003 for a period of four months, and she was transferred to the Russian Compound facility for interrogation. Ms. Zayed's meeting with her counsel was postponed by several days, due to compelling reasons of security, following which she has had access to the legal counsel of her choice.

15. The Government further reported that, on 2 February 2003, the administrative detention order against Ms. Zayed was cancelled and her case transferred to the security authorities to examine the possibility of submitting an indictment against her for the commission of security offences. Ms. Zayed was indicted on 6 March 2003 and charged with 17 counts of providing services to an unlawful organization, 10 counts of harbouring fugitives and possession of illegal weapons. Ms. Zayed is being held at Neve Tirzah detention facility for women pursuant to a 6 March 2003 order of a military court to keep her in custody during the course of legal proceedings against her.

16. Asma Muhammad Suleiman Saba'neh was arrested on 11 February 2003 for her involvement in Hamas. An administrative detention order was issued for her on 12 February 2003 for a period of six months. The military court upheld Ms. Saba'neh's administrative detention order pursuant to judicial review proceedings.
17. The Government states that administrative detention is resorted to only in cases where there is corroborating evidence that an individual is engaged in illegal acts that endanger the security of the State and the lives of civilians. It is only used in circumstances where the usual judicial procedures are inadequate because of a danger to sources of information or a need to safeguard classified information that cannot be revealed in open court.
18. With regard to Israel's derogation from the provisions of article 9 of the International Covenant on Civil and Political Rights, the Government states that, in spite of the derogation, Israel has adhered to all of the Covenant's provisions, ensuring that no one is subjected to arbitrary detention.
19. The Government adds that before a detention order is issued, military legal counsel must confirm that the information on which it is based has been corroborated by reliable sources. A military commander may issue a detention order for a period of no more than six months. This order can be renewed, but it is subject to appeal.
20. All recipients of detention orders are granted the right to legal representation of their choice, as well as the opportunity to appeal their detention order at two judicial levels. As part of the appeals process, the court may hear evidence presented by security personnel out of the presence of the detainee or his attorney. However, the detainee is always informed of the general reasons for the order against him. At the appeal hearing, the detainee and his attorney may respond to the allegations, call witnesses and ask questions regarding the security information.
21. The source confirmed that 'Abla Sa'adat was released from detention on 7 March 2003 pursuant to an order reducing the period of her administrative detention. It informed the Working Group that it was not able either to confirm or to contest the information of the Government that Iman Abu Farah and Fatma Zayed have been charged with criminal offences.
22. The source reported that Asma Muhammad Suleiman Saba'neh's administrative detention order was renewed on 11 August 2003 for four months. The source states that despite the Government's affirmation that Asma Muhammad Suleiman Saba'neh was arrested for her involvement with the Palestinian group Hamas, no concrete information concerning any specific activities was provided. The source later confirmed that she was released in November 2003.
23. The source contests the reference made by the Government to Hamas as merely a terrorist organization. It states that Hamas is a political party, with tens of thousands of supporters in the West Bank and Gaza Strip, a network of charitable associations which provide assistance with medical care, education and food/basic subsistence, and which also has an armed wing.
24. The source further comments that over the last years the Government of Israel has placed thousands of Palestinians from the occupied territories in administrative detention from periods

varying from a few months to several years. Most of them were never interrogated nor asked about their possible participation in specific illegal activities during the entire period of their administrative detention. In other cases, individuals have been interrogated for prolonged periods, ill-treated and threatened before being placed under administrative detention orders.

25. According to the source, administrative detention has been used by the Government to detain people without presenting any evidence that they had committed any offence. It has been used as a measure of collective punishment and intimidation and in order to put pressure on relatives.

26. According to the information submitted to the Working Group, 'Abla Sa'adat was released on 7 March 2003; this information was provided by the Government and confirmed by the source. The Working Group also took note of the release of Asma Muhammad Suleiman Saba'neh in November 2003.

27. Iman Abu Farah and Fatma Zayed were charged with criminal offences by a military court. They are said to have the right to appeal before a military court and to the High Court.

28. In this regard, it should be said that the Working Group has strong reservations about military jurisdiction. It had stated that "if some form of military justice is to continue to exist, it should observe four rules: (a) it should be incompetent to try civilians; (b) it should be incompetent to try military personnel if the victims include civilians; (c) it should be incompetent to try civilians and military personnel in the event of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime; and (d) it should be prohibited [from] imposing the death penalty under any circumstances" (E/CN.4/1999/63, para. 80).

29. Ms. Farah and Ms. Fayed are both civilians. They had been in administrative detention first without access to their lawyers and hampered in the exercise of their defence. They were charged later by a military court and could only defend themselves under military jurisdiction. This process is not contested by the Government, which has explained the system of administrative detention. Even though detainees might have access to the High Court of Justice, if all the cases follow the same pattern the process could severely undermine their ability to challenge the deprivation of liberty.

30. It should be recalled that the Working Group does not have a mandate to render an opinion about the fairness of the charges made against detainees.

31. In respect of the situation that the Government has described about the state of emergency in the country and its reservation to article 9 of the International Covenant on Civil and Political Rights, the Working Group - without taking any position as to the validity of the

reservation or its extent, or which other United Nations organ may be competent¹ - believes that, even were the State not a party to ICCPR, international human rights standards on protecting the right of liberty would still apply in its territory.

32. In this respect, the right to personal liberty and security gives rise to varying requirements as to when a person may be detained, for how long, and subject to what supervisory mechanisms. In all circumstances, however, such requirements must conform to and be continuously evaluated in accordance with the fundamental principles of necessity, proportionality, humanity and non-discrimination.

33. Should a terrorist situation within a State's jurisdiction be of such nature or degree as to give rise to an emergency that threatens a State's independence or security, that State is nevertheless precluded from suspending certain fundamental aspects of the right to liberty which are considered necessary for the protection of non-derogable rights or which are non-derogable under the State's other international obligations. These include the requirements that the grounds and procedures for the detention be prescribed by law, the right to be informed of the reasons of the detention, prompt access to legal counsel and family, an impartial trial by an independent tribunal, and prescribed limits upon the length of prolonged detention. These protections are also considered to include appropriate and effective judicial review mechanisms to supervise detentions promptly upon arrest or detention and at reasonable intervals when detention is extended.

34. In the cases of Iman Abu Farah and Fatma Zayed, most of these requirements were not met. Judicial review, where it occurred, was not by an independent tribunal. Their defence could not be exercised. A military court in itself is not independent from the executive branch. They had to confront legal counsel difficulties and a total lack of information about the nature of the charges against them.

¹ ["T]he [Human Rights] Committee remains concerned about the sweeping nature of measures during the state of emergency, [which] 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 [that] 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 ... "(concluding observations of the Human Rights Committee on the second periodic report of Israel, CCPR/CO/78/ISR, paragraph 12).

35. In the light of the above, the Working Group renders the following opinion:

With regard to 'Abla Sa'adat and Asma Muhammad Suleiman Saba'neh, in view of their release from administrative detention, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file these cases.

With regard to Iman Abu Farah and Fatma Zayed, the Working Group considers that their deprivation of liberty is arbitrary, being in contravention with article 10 of the Universal Declaration of Human Rights and article 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.

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

Adopted on 25 May 2004