

---

# Advance Edited Version

Distr.: General  
28 September 2022

Original: English

---

**Human Rights Council**  
Working Group on Arbitrary Detention

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022**

### **Opinion No. 44/2022 concerning Saeed AbdulRahman Jabr Husain Saleh, Ramzi AbdulRahman Jabr Husain Saleh, Raed Fareed Hamdan Hasan al-Hajj Ahmad, Diyaa Zakaria Shaker al-Falooji, Naser Mohamed Yusuf al-Naji, Omar Ismail Omar Wadi and Bassem Mohamed Saleh Adib Khandakji (Israel)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,<sup>1</sup> on 13 May 2022 the Working Group transmitted to the Government of Israel a communication concerning Saeed AbdulRahman Jabr Husain Saleh, Ramzi AbdulRahman Jabr Husain Saleh, Raed Fareed Hamdan Hasan al-Hajj Ahmad, Diyaa Zakaria Shaker al-Falooji, Naser Mohamed Yusuf al-Naji, Omar Ismail Omar Wadi and Bassem Mohamed Saleh Adib Khandakji. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

---

<sup>1</sup> [A/HRC/36/38](#).

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## **Submissions**

### *Communication from the source*

Saeed AbdulRahman Jabr Husain Saleh

4. Saeed AbdulRahman Jabr Husain Saleh is a Palestinian national born in 1985. At the time of his arrest, Mr. Saleh was an 18-year-old secondary school graduate from Jabalia.

5. On 5 April 2004, Israeli occupation forces reportedly arrested Mr. Saleh at the Abou Hawly military checkpoint south of the Gaza Strip, as he was returning from Rafah along with some fellow workers. During the arrest, the Israeli authorities reportedly beat Mr. Saleh with their batons and gun frames; they provided no arrest warrant or reason for his arrest.

6. Upon his arrest, Mr. Saleh was allegedly forcibly disappeared for 30 days during which his parents were unaware of his fate or whereabouts. They were later informed by the Red Cross of his arrest.

7. The source reports that the investigation into Mr. Saleh's case lasted for four months, during which he was interrogated in Al-Naqab prison and was brought before the Public Prosecutor's Office without his lawyer. In fact, Mr. Saleh was reportedly only allowed to contact his lawyer after the investigation.

8. Throughout the investigation period, Israeli intelligence officers allegedly tortured Mr. Saleh in order to extract confessions to the charge held against him. They beat him and subjected him to suspension and falanga torture. The source adds that as a result of torture, Mr. Saleh suffered from a broken left hand, and he was only given painkillers to treat his injury.

9. Mr. Saleh was reportedly charged with resisting the Israeli occupation and was sentenced to 25 years of imprisonment. The source notes that Mr. Saleh could not adequately prepare for trial, could not present evidence and was not presented before a judge within 48 hours of his arrest. The coerced confession was reportedly used against him in trial.

10. The source reports that Mr. Saleh's judgment was not appealed. In this respect, the source notes that Palestinian prisoners and their families usually know from their experience that the Israeli judiciary is not fair or impartial, and they do not trust the trial and the court, especially if the victims received a harsh long sentence in the first instance. The source adds that after the first judgment was issued, the family of Mr. Saleh thus did not want to raise the case before the biased court.

11. According to the source, Mr. Saleh was not allowed to meet his parents throughout the detention period, and he was held in solitary confinement for three years during the first period of his detention. He is currently being held in Rimon prison, where he reportedly faces discrimination based on the fact that he is Palestinian. In this respect, the source alleges that Palestinian prisoners in Israeli prisons are treated as terrorists whose goal is to kill Israelis in the occupied territories, not as individuals who are resisting an occupation and defending an existential cause. The source adds that Palestinian prisoners, especially those originating from Gaza, are treated violently and receive none of the rights of prisoners, since Gaza is viewed as hostile territory.

Ramzi AbdulRahman Jabr Husain Saleh

12. Ramzi AbdulRahman Jabr Husain Saleh is a Palestinian national, born in 1983. He is the holder of national ID number [withheld].

13. According to the source, Mr. Saleh was a 22-year-old school student at the time of his arrest. He was reportedly the second member in his immediate family to be targeted and arrested by Israeli authorities, as his brother Saeed (see paras. 4–11 above) was arrested more than a year before him.

14. The source reports that on 19 December 2005, Mr. Saleh was arrested by the Israeli occupation forces while he was trying to cross the separation fence on the border of the Gaza Strip. The Israeli forces reportedly failed to present him with an arrest warrant.

15. Upon his arrest, Mr. Saleh was allegedly forcibly disappeared for 10 consecutive days during which his family was unaware of his fate or whereabouts. They were later informed by the Red Cross of his arrest.

16. According to the source, Mr. Saleh's investigation lasted for two months, during which he was interrogated in Al-Naqab prison and was presented to the Public Prosecutor's Office without his lawyer. Mr. Saleh was only allowed to contact his lawyer after the investigation.

17. Throughout the investigation period in Al-Naqab prison, Israeli intelligence officers allegedly tortured Mr. Saleh in order to extract confessions to the charges held against him. They severely beat him on different parts of his body and subjected him to suspension and falanga torture. The source notes that as a result of torture and ill-treatment, Mr. Saleh had bruises across his face, and swelling and redness in his eyes. The only treatment he received for his injuries were painkillers. The source adds that Mr. Saleh was first able to meet with his parents in Al-Naqab prison four months after his arrest.

18. Mr. Saleh was charged with crossing the border without a permit and with the aim of carrying out subversive operations against Israel. On 3 April 2008, he was sentenced to 18 years of imprisonment. His judgment was not appealed for the same reason highlighted in relation to his brother (see para. 10 above).

19. The source submits that the Israeli authorities have violated several of Mr. Saleh's due process and fair trial rights. Upon his arrest, he was not brought promptly before a judge. He was interrogated without his lawyer, and he did not have adequate time and facilities to prepare for trial. Furthermore, during trial, he was neither allowed to present any evidence, nor to challenge the evidence presented against him, including confessions allegedly extracted under torture and duress. Along with his brother, Mr. Saleh is currently being held in Rimon prison, where he reportedly faces discrimination based on the fact that he is Palestinian (see para. 11 above).

Raed Fareed Hamdan Hasan al-Hajj Ahmad

20. Raed Fareed Hamdan Hasan al-Hajj Ahmad is a Palestinian national, born in 1983. He is the holder of national ID number [withheld]. At the time of his arrest, he was a 21-year-old university student from Jabalia. He was enrolled at the Islamic University of Gaza, where he was studying in the education department.

21. The source reports that on 1 October 2004, Israeli occupation forces stationed at the Beit Hanoun "Erez" checkpoint arrested Mr. Ahmad, failing to provide an arrest warrant or a reason for the arrest. The source alleges that the Israeli forces violently beat Mr. Ahmad with their batons and gun frames.

22. Upon his arrest, Mr. Ahmad was allegedly forcibly disappeared for 25 days, during which his case was investigated, and he was interrogated and taken to the public prosecution several times without his lawyer. The source notes that during that period of time, his parents were unaware of his fate or whereabouts, and they were later informed by the Red Cross of his arrest. Mr. Ahmad was reportedly only allowed to contact his lawyer after the investigation.

23. During investigation and interrogation, Israeli intelligence forces allegedly tortured Mr. Ahmad in order to extract confessions to the charge against him. They severely beat him, electrocuted him and subjected him to suspension and falanga torture. He reportedly sustained bruises and marks all over his body as a result of torture, and he was only given painkillers to treat his injuries.

24. According to the source, Mr. Ahmad was charged with attempting to commit a terrorist attack against Israel by detonating himself using an explosive belt at the Beit Hanoun "Erez" checkpoint. On 5 March 2007, he was sentenced to 20 years of imprisonment. The source notes that the judgment was not appealed for the same reasons as highlighted above (see para. 10).

25. The source submits that the Israeli authorities have violated several of Mr. Ahmad's due process and fair trial rights. Upon his arrest, he was not brought promptly before a judge. He was interrogated without his lawyer, and he did not have adequate time and facilities to prepare for trial. Furthermore, during the trial, he was not allowed to present any evidence nor to challenge the evidence presented against him, including confessions allegedly extracted under torture and duress.

26. During the first four months after his arrest, Mr. Ahmad's parents were not allowed to visit him under the pretext of a security ban on them, and he was reportedly held in solitary confinement for long periods of time. The source notes that Mr. Ahmad was first able to meet with his father in Ashkelon prison four months into his detention.

27. Mr. Ahmad is currently being held in Nafha prison. The source alleges that the treatment of prisoners in the prison, including Mr. Ahmad, is inhumane, racist and discriminatory, based on differences in religion, political opinion, language and race. In this respect, the source notes that prisoners originating from Gaza in particular do not enjoy basic rights, which is apparent through the discrimination they face, as they do not receive regular family visits like other prisoners do. This is also the case for Mr. Ahmad, who was last able to receive a visit from his mother in 2019. The source also asserts that individuals from the Gaza Strip are subjected to specific laws, which do not meet basic international standards of human rights.

#### Diyaa Zakaria Shaker al-Falooji

28. Diyaa Zakaria Shaker al-Falooji is a Palestinian national, born in 1975. He is the holder of national ID number [withheld]. At the time of his arrest, he was a 17-year-old secondary school student.

29. The source reports that on 10 October 1992, Mr. Al-Falooji was visiting his sister's house in Khan Yunis when Israeli occupation forces surrounded the house at 1 a.m. with tanks and violently beat and arrested him. The arresting forces failed to present an arrest warrant or a reason for Mr. Al-Falooji's arrest. The source believes he was targeted by the authorities for his active resistance against the Israeli occupation, since he was wanted by authorities despite his young age.

30. Upon his arrest, Mr. Al-Falooji was allegedly forcibly disappeared for more than five months, and as he was a minor at the time, he was sent to Hasharon prison for women. During that period, his family was reportedly not informed of his fate or whereabouts. They later found out about his location through their lawyer, who was visiting the special prison for women and was told by the female prisoners that a child was being detained there. After visiting the prisoner and finding out that it was Mr. Al-Falooji, she contacted his family and informed them of his arrest and detention at Hasharon prison. Mr. Al-Falooji was reportedly held in solitary confinement for long periods of time and was not treated as a juvenile.

31. According to the source, Mr. Al-Falooji's investigation lasted more than four months, during which he was interrogated and presented before the public prosecution several times without his lawyer. He was only allowed to contact his lawyer after the investigation. During the interrogation period in Hasharon prison, Israeli intelligence officers allegedly tortured Mr. Al-Falooji in order to extract confessions to the charges held against him. As a result, he reportedly sustained fractures to his rib cage and three broken ribs. He was only given painkillers to treat his injuries.

32. The source reports that Mr. Al-Falooji was charged with the killing of settlers in the Morag Settlement Road in Khan Yunis and with carrying out sabotage operations. On 9 November 1993, he was sentenced to life imprisonment.

33. The source submits that Israeli authorities have violated several of Mr. Al-Falooji's due process and fair trial rights. Upon his arrest, he was not brought promptly before a judge. He was interrogated without his lawyer, and he did not have adequate time and facilities to prepare for trial. During trial, he was not allowed to present any evidence nor to challenge the evidence presented against him, including confessions allegedly extracted under torture and duress. Moreover, his family was only first able to visit him eight months after his arrest.

34. Mr. Al-Falooji is currently being held in Nafha prison, where he reportedly faces discrimination based on the fact that he is Palestinian as in the above cases.

#### Naser Mohamed Yusuf al-Naji

35. Naser Mohamed Yusuf al-Naji is a Palestinian national, born in 1971. He is the holder of ID number [withheld]. At the time of his arrest, Mr. Al-Naji was a 31-year-old civil servant with the Palestinian National Authority, residing at Al-Amaari camp in Ramallah.

36. The source reports that in March 2002, Israeli occupation forces violently arrested Mr. Al-Naji and a close relative at the Qalandiya checkpoint in the West Bank, beating them severely. Both men had reportedly been wanted by the occupation forces for months prior, but no summons had been sent to them. After the arrest, Mr. Al-Naji was taken to an unknown location. Subsequently, he was allegedly forcibly disappeared for 20 days, and his family only learned of his whereabouts through the Prisoner's Commission and the Red Cross.

37. During the interrogation, which lasted three months, Mr. Al-Naji was allegedly tortured by the Israeli occupation forces in order to force him to confess. The source notes that he has not disclosed details of the torture. Mr. Al-Naji was not allowed to meet his family or his lawyer throughout this period. In fact, he reportedly met his mother for the first time five years after his arrest. When Mr. Al-Naji's lawyer saw him three months after his arrest, the lawyer reported that Mr. Al-Naji had bruises on his face and red eyes. As a result of torture, Mr. Al-Naji reportedly had bruises and suffered from broken bones and ribs. According to the source, he remained frail for a long time after that. He only received painkillers as treatment. The source reports that Mr. Al-Naji ended up confessing, and the coerced confession was used against him in the trial.

38. On 5 April 2003, Mr. Al-Naji was reportedly sentenced to seven life sentences and 50 years in prison on charges related to terrorism, for resisting the Israeli occupation. The source notes that his sentence was not appealed due to its severity and length. During the first period after his arrest, Mr. Al-Naji was reportedly not allowed to contact his lawyer, and he was not allowed to present evidence during the trial, nor was he presented before a judge within 48 hours of his arrest.

39. According to the source, Mr. Al-Naji is currently being held in Asqalan prison.

#### Omar Ismail Omar Wadi

40. Omar Ismail Omar Wadi is a Palestinian national, born in 1992. He is the holder of national ID number [withheld]. At the time of his arrest, he was a 21-year-old plumber from Jabalia.

41. The source reports that on 26 November 2013, Mr. Wadi was arrested without a warrant by Israeli occupation forces in Kafr Aza. The authorities did not state the reason for his arrest, and Mr. Wadi had not received any summons. He had allegedly been forcibly disappeared for 22 days before the Red Cross informed the family that he had been arrested and was being held in Eshel prison.

42. According to the source, Mr. Wadi was interrogated during the 22-day period of his disappearance. Israeli intelligence forces allegedly beat him, placed him in solitary confinement, and subjected him to suspension and falanga torture, forcing him to produce a confession which was used against him in trial. He was reportedly not even allowed to contact his lawyer until the end of interrogations.

43. The source reports that on 12 June 2015, the military court sentenced Mr. Wadi to 28 years in prison on charges of resisting the Israeli occupation by detonating himself in the Kafr Aza settlement. On 2 May 2018, the Appeals Court reduced the sentence to 18 years. The source notes that Mr. Wadi's family did not raise the case to the Court of Cassation out of fear that his sentence would be increased. Mr. Wadi was reportedly unable to present evidence during the trial, and he was not brought before a judge within 48 hours of his arrest. The source adds that he was tried in military court due to his political opinion.

44. The source also reports that due to the mistreatment to which Mr. Wadi was subjected, he suffered from kidney laceration, heart pain and hepatitis. While he received treatment for the kidney lacerations, he was only provided painkillers for the other conditions. Additionally, Mr. Wadi was only able to meet with his mother for the first time two years after his arrest. He is currently being held in Eshel prison.

Bassem Mohamed Saleh Adib Khandakji

45. Bassem Mohamed Saleh Adib Khandakji is a Palestinian national, born in 1983. He is the holder of national ID number [withheld]. He was a 20-year-old university student and poet from Nablus at the time of his arrest.

46. The source reports that on the night of 2 November 2004, Israeli occupation forces surrounded Mr. Khandakji's home and arrested him after physically assaulting him. They did not present an arrest warrant or state the reason for the arrest. The source notes that Mr. Khandakji was not wanted or previously summoned by the occupation authorities.

47. The source alleges that Mr. Khandakji was forcibly disappeared for two months after his arrest. During this period, he was interrogated at Asaqlan prison by Israeli intelligence forces, who allegedly subjected him to different forms of torture. As a result, he suffered bruising all over his body as well as swollen and red eyes. He was only given painkillers as treatment. The source adds that Mr. Khandakji confessed to the charges under torture, and that this confession was used against him at trial. His lawyer was reportedly not present during the interrogation, as Mr. Khandakji was only able to meet with him after the interrogation had ended. Mr. Khandakji was allegedly also placed in solitary confinement for over 10 years.

48. On 7 September 2005, Mr. Khandakji was sentenced to three terms of life imprisonment on terrorism-related charges for resisting the Israeli occupation by participating in the Carmel market explosion, which killed three settlers. He was reportedly tried by the military court because of his political opinion. The source notes that his sentence was not appealed because of its severity and length. The source submits that Mr. Khandakji was unable to prepare for the trial with his lawyer as he was denied visits and placed in solitary confinement, and he was unable to present evidence. He was also not presented before a judge within 48 hours of his arrest.

49. The source notes that Mr. Khandakji was first able to meet with his family in 2006, in Asqalan prison, and he is currently being held in Jalbou prison.

a. Summary of allegations

50. The source reiterates that all seven individuals referred to above are Palestinian and were arrested by the Israeli occupation forces without any arrest warrant having been presented to them. The source notes that five of the seven individuals reported having been subjected to beatings and violent treatment upon arrest by the Israeli forces. Moreover, all seven defendants were young at the time of their arrests, with one of them having been a minor (Mr. Al-Falooji). All seven individuals were allegedly forcibly disappeared; following their arrests, they were not allowed to contact their families and/or their families did not know their whereabouts or fate for periods of time ranging from 10 days to five months.

51. During that period, all seven individuals were reportedly interrogated without a lawyer and were allegedly subjected to torture and ill-treatment at the hands of Israeli intelligence forces, such as severe beatings, suspension and falanga torture, as a result of which they suffered several injuries. In fact, they were reportedly only allowed to contact their lawyers after the interrogation period had ended. Finally, all seven individuals reported

having been subjected to some form of discrimination based on political opinion, religion or ethnicity.

b. Analysis of violations

52. The source submits that all seven individuals were subjected to enforced disappearance by the Israeli forces following their arrest because they were deprived of their liberty against their will by government officials who failed to disclose their whereabouts or fate.<sup>2</sup>

53. The source also submits that in order to extract confessions, all seven individuals were allegedly subjected to torture and ill-treatment, including falanga torture, a recurrent method of torture reported by four of the individuals. The source notes that none of these torture claims were investigated by the authorities, and that the victims obtained neither redress nor fair and adequate compensation. Consequently, Israeli authorities have reportedly violated their obligations under articles 12, 13, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under articles 7 and 10 of the International Covenant on Civil and Political Rights.

54. The source asserts that since all arrests reportedly occurred without presenting a warrant or indicating the reason for the arrest, and since none of the individuals were promptly presented before a judge, all seven cases constitute a category I deprivation of liberty, where authorities failed to invoke a legal basis for the arrest.

55. Additionally, considering the severe violations of fair trial rights, whereby all individuals were reportedly denied access to their legal representative, prevented from preparing for trial or presenting evidence, and allegedly tortured to produce confessions which were used against them in trial, their detention is considered a category III deprivation of liberty.

56. Finally, these individuals have been convicted based on their resistance of the Israeli occupation. Two of the cases (Mr. R. Saleh and Mr. S. Saleh) reported experiencing discrimination on the basis of their political identity. Two others (Mr. Wadi and Mr. Khandakji) reported being tried by the military court due to their political opinion. For the above-mentioned reasons, the detention in all seven cases may amount to a category V deprivation of liberty.

57. In this context, the source submits that the Palestinian people, being under colonial domination, have an inalienable right to self-determination, independence, national sovereignty and territorial integrity, enshrined in the Charter of the United Nations and in the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>3</sup> Furthermore, the source notes that under international law, the right of occupied people to resist and fight for their independence and liberation from colonial domination, including armed struggle, is enshrined in the Additional Protocol I to the Geneva Conventions of 1949 and General Assembly resolution 37/43.

*Response from the Government*

58. On 13 May 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 12 July 2022, detailed information about the current situation of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji, and to clarify the legal provisions justifying their continued detention, as well as their compatibility with the obligations of Israel under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Israel to ensure their physical and mental integrity.

<sup>2</sup> The source refers to [A/HRC/16/48/Add.3](#), para. 21.

<sup>3</sup> The source refers to General Assembly resolution 1514 (XV).

59. The Working Group regrets that it did not receive a response from the Government to this communication, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

60. The Working Group notes with concern the silence of the Government in not availing itself of the opportunity to respond to the allegations made in the present case and in other communications.<sup>4</sup> Indeed, the Government has not provided a substantive response to the Working Group's communications since 2007, nearly 15 years.<sup>5</sup> The Working Group urges the Government to engage constructively with it on all allegations relating to the arbitrary deprivation of liberty.

### Discussion

61. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

62. In determining whether the detention of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>6</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

### Category I

63. The Working Group notes the uncontested allegations that all seven individuals were arrested, at different dates, without presentation of an arrest warrant or reasons for the arrest explained, by Israeli authorities. While the source has argued specifically that some of the individuals were not presented before a judicial authority within 48 hours of their arrest,<sup>7</sup> it is clear to the Working Group that this requirement was not met in relation to any of them as all were forcibly disappeared for different time periods following their respective arrests, ranging from 10 days (Mr. R. Saleh) to five months (Mr. Al-Falooji).

64. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>8</sup>

65. Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>9</sup> Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the

<sup>4</sup> Opinions No. 36/1992, No. 17/1993, No. 18/1993, No. 26/1993, No. 16/1996, No. 17/1996, No. 18/1996, No. 24/1996, No. 8/1998, No. 9/1998, No. 10/1998, No. 11/1998, No. 4/1999, No. 16/2000, No. 17/2000, No. 18/2000, No. 31/2000, No. 23/2001, No. 5/2010, No. 9/2010, No. 3/2012, No. 20/2012, No. 58/2012, No. 43/2014, No. 13/2016, No. 15/2016, No. 24/2016, No. 3/2017, No. 31/2017, No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018, No. 84/2019, No. 12/2020, No. 8/2021, No. 60/2021, No. 61/2021 and No. 4/2022. The Government submitted responses to the Working Group's communications in relation to opinions No. 16/1994, No. 24/2003, No. 3/2004 and No. 26/2007.

<sup>5</sup> In relation to opinion No. 86/2017, the Government requested and received an extension of time in which to respond to the Working Group's communication but did not submit a substantive response.

<sup>6</sup> [A/HRC/19/57](#), para. 68.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 33.

<sup>8</sup> See e.g. opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018, No. 89/2020 and No. 72/2021.

<sup>9</sup> See opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.



law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This was not satisfied in the cases of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji. The Working Group therefore finds a breach of article 9 (1) of the Covenant.

66. Moreover, article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for arrest but also promptly informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35, this right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.<sup>10</sup> This was also not satisfied in the cases of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji. The Working Group therefore finds a breach of article 9 (2) of the Covenant.

67. Furthermore, noting the uncontested allegations that all seven individuals were subjected to enforced disappearance following their respective arrests, the Working Group recalls that enforced disappearances are prohibited by international law and constitutes a particularly aggravated form of arbitrary detention.<sup>11</sup> This clearly violated their right to challenge the lawfulness of detention before a court under article 9 (3)<sup>12</sup> and (4) of the Covenant.<sup>13</sup> Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>14</sup> and is essential in ensuring that detention has a legal basis. Given that all seven individuals were unable to challenge their detention before a court, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has also been violated. The Working Group refers the case to the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

68. Noting all of the above, the Working Group concludes that the arrest and subsequent detention of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji violated article 9 of the Covenant as lacking legal basis and therefore falls under category I.

### *Category III*

69. The source has alleged that after their respective arrests, all seven individuals were interrogated without their lawyers and severely ill-treated and tortured with the aim of extracting confessions, which they provided. These confessions were subsequently used in the court proceedings against them, and all seven individuals received very heavy prison sentences, ranging from 18 years (Mr. R. Saleh) to seven life sentences (Mr. Al-Naji). All these allegations were put to the Government, which chose not to address any of them.

70. The Working Group is appalled at the treatment inflicted upon all seven individuals. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law; the Convention against Torture; principle 6 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group shall refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

<sup>10</sup> Human Rights Committee, general comment No. 35, para. 29.

<sup>11</sup> See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020. See also Human Rights Committee, general comment No. 35, para. 17.

<sup>12</sup> Human Rights Committee, general comment No. 35, para. 35.

<sup>13</sup> Opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

<sup>14</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, para. 3); and CAT/C/VNM/CO/1, para. 24.

71. Further, as it has stated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>15</sup> Equally, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceeding unfair, regardless of whether other evidence was available to support the verdict.<sup>16</sup> The burden is on the Government to prove that statements were given freely,<sup>17</sup> but in this case, it has not done so. All seven individuals had the right to be presumed innocent under article 14 (2) of the Covenant, which was clearly violated, as was their right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant. The Working Group also finds a breach of article 14 (1) as the failure of the court to halt the proceedings when allegations of ill-treatment were made means that the court failed to act in a fair and impartial manner. The Working Group also calls upon the Government to adhere to the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles).<sup>18</sup>

72. The Working Group also recalls the uncontested allegations that Mr. S. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Wadi and Mr. Khandakji were held in solitary confinement for prolonged periods of time, of varying duration, with Mr. Khandakji spending 10 years in solitary confinement. It is clear that such treatment had severe adverse impacts upon their ability to challenge their detention and to defend themselves. The Working Group recalls that according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement exceeding 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules. Solitary confinement may amount to torture or other cruel, inhuman or degrading treatment or punishment.<sup>19</sup>

73. Moreover, noting that all seven individuals were denied legal assistance until after their respective interrogations, the Working Group finds that their right to equality of arms encapsulated in article 14 (1) of the Covenant was violated, as was their right to legal assistance under article 14 (3) (d) of the Covenant. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>20</sup> The right to legal assistance is an essential element of the right to fair trial as it serves to ensure the principle of equality of arms is duly observed.<sup>21</sup>

74. Additionally, the source has submitted that Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji and Mr. Wadi were not allowed access to their case files and evidence against them, allegations that were put to the Government, which chose not to address them. The Working Group recalls that, in principle, access to the case file must be provided from the outset.<sup>22</sup> Noting this and in the absence of a rebuttal from the Government, the Working Group finds that the rights of Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji and Mr. Wadi under article 14 (1) and (3) (b) and (e) were further violated.

75. Finally, the source has argued, and the Government does not contest that Mr. Wadi and Mr. Khandakji were tried before a military court although they are both civilians. The Working Group in its practice has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law and that under

<sup>15</sup> [A/HRC/45/16](#), para. 53. See also opinions [E/CN.4/2003/68](#), para. 26 (e); No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91.

<sup>16</sup> Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

<sup>17</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>18</sup> [A/HRC/51/29](#), paras. 50–55.

<sup>19</sup> General Assembly resolution 68/156. See also [A/66/268](#), para. 71.

<sup>20</sup> [A/HRC/45/16](#), paras. 51–52; and [A/HRC/30/37](#), annex, principle 9 and guideline 8. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

<sup>21</sup> See, for example, opinion No. 35/2019.

<sup>22</sup> See opinions No. 78/2019, No. 29/2020, No. 67/2020 and No. 77/2020.

international law, military tribunals can only be competent to try military personnel for military offences.<sup>23</sup> The Working Group therefore finds a further breach of article 14 (1) of the Covenant in relation to Mr. Wadi and Mr. Khandakji.

76. Noting all of the above, the Working Group concludes that the detention of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji is arbitrary and falls under category III.

#### *Category V*

77. The source has argued that all seven individuals in this case have been detained due to their Palestinian nationality (see paras. 56–57), an allegation which the Government has chosen not to address.

78. In its jurisprudence, the Working Group has noted a pattern by the Israeli authorities to detain Palestinians<sup>24</sup> and indeed, the present case in itself is an example of such pattern as while the seven individuals were detained at different dates and on different charges, the similarities between their cases are striking as evidenced by the discussion above. The Working Group also notes that it is striking that several of the individuals and their families chose not to appeal their sentences out of fear that a harsher punishment would be imposed due to their Palestinian nationality.

79. In the absence of an explanation from the Government, the Working Group concludes that Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji, who are all Palestinian, were detained on a discriminatory basis, namely their national, ethnic and social origin<sup>25</sup> in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

80. The Working Group considers that they were also detained on the basis of their gender, as there is a clear pattern of targeting young males for detention.<sup>26</sup> In these circumstances, the Working Group finds that the Government has further violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

81. Consequently, the deprivation of liberty of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji was arbitrary under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, for appropriate action.

#### *Further discussion concerning Mr. Al-Falooji*

82. The Working Group is particularly disturbed that among the seven individuals in the present opinion is Mr. Al-Falooji, who was a mere 17 years of age at the time of his arrest. As such, he was entitled to be treated as a child, in accordance with the provisions of the Convention on the Rights of the Child. However, as evidenced by the discussion above, he was arrested without a warrant, disappeared for five months, held in solitary confinement, tortured with the aim of extracting a confession and finally sentenced to life imprisonment. Such treatment of a child is appalling.

83. The Working Group recalls that any detention of children should be used as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.<sup>27</sup> Moreover, the Working Group has consistently required that children arrested should be brought before the judicial authority within 24 hours of their arrest to enable them to challenge the legality of such detention.<sup>28</sup> While the Convention on the Rights of the Child

<sup>23</sup> [A/HRC/27/48](#), paras. 67–70. See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019.

<sup>24</sup> See, for example, opinions No. 24/2016, No. 31/2017, No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018, No. 12/2020, No. 60/2021, No. 61/2021 and No. 4/2022. See also [A/HRC/38/15](#), paras. 118.159, 118.162, 118.164–165 and 119.4.

<sup>25</sup> See e.g. opinion No. 4/2022.

<sup>26</sup> See opinions No. 12/2020, No. 60/2021 and No. 4/2022.

<sup>27</sup> Committee on the Rights of the Child, general comment No. 24 (2019), para. 11.

<sup>28</sup> See e.g. opinion No. 2019/29, para. 55.

does not set a specific limit, the Committee on the Rights of the Child in its general comment No. 24 requires that every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation.<sup>29</sup> This has been repeated in a model law on juvenile justice drawn up by the Centre for International Crime Prevention (now known as the United Nations Office on Drugs and Crime).<sup>30</sup> Furthermore, the Working Group emphasizes that solitary confinement must not be used in cases involving a child.<sup>31</sup>

84. All of these standards have been blatantly ignored in respect of Mr. Al-Falooji. The Working Group therefore considers that the treatment of Mr. Al-Falooji, as a mere 17-year-old at the time of arrest, also constituted a breach of articles 37 and 40 of the Convention on the Rights of the Child.

#### *Concluding remarks*

85. The Working Group is disturbed at the uncontested allegations that all seven individuals were denied family contact following their arrests. It also notes that the Government is not contesting the allegations that all seven individuals were also subjected to discriminatory attitudes while in prison, being subjected to harsher treatment and having various privileges removed on the basis of their Palestinian nationality.

86. The Working Group is obliged to remind the Government that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person. Equally, the Nelson Mandela Rules require all prisoners to be treated with the respect due to their inherent dignity and value as human beings (rule 1) and specify that there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status (rule 2).

87. The present case is one of several cases brought before the Working Group in recent years concerning the deprivation of liberty of Palestinians by Israel. The Working Group notes that many of the cases follow a familiar pattern and indeed, the seven individuals in the present case, although arrested at different times and charged and tried for different offences, all follow the same pattern. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>32</sup>

88. Finally, the Working Group would welcome the opportunity to work constructively with the Government in addressing the arbitrary deprivation of liberty. On 7 August 2017, the Working Group sent a request to the Government to undertake a country visit, including to the Occupied Palestinian Territory, and awaits a positive response. In this context, the Working Group recalls the invitation dated 12 September 2014 extended to it by the Permanent Observer Mission of the State of Palestine to the United Nations Office and other international organizations in Geneva to conduct an official visit to the Occupied Palestinian Territory.

#### **Disposition**

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

The deprivation of liberty of Saeed AbdulRahman Jabr Husain Saleh, Ramzi AbdulRahman Jabr Husain Saleh, Raed Fareed Hamdan Hasan al-Hajj Ahmad, Diyaa Zakaria Shaker al-Falooji, Naser Mohamed Yusuf al-Naji, Omar Ismail Omar Wadi and Bassem Mohamed Saleh Adib Khandakji, being in contravention of articles 8 and 9 of the Universal Declaration of Human Rights and articles 2 (3), 9 and 14 of the

<sup>29</sup> Committee on the Rights of the Child, general comment No. 24, para. 90.

<sup>30</sup> United Nations Office on Drugs and Crime, *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary* (Vienna, 2013), p. 24.

<sup>31</sup> The Nelson Mandela Rules, rule 45 (2); and Committee on the Rights of the Child, general comment No. 24, para. 95 (h). See also opinion No. 2/2021.

<sup>32</sup> Opinion No. 47/2012, para. 22.

International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

90. The Working Group requests the Government of Israel to take the steps necessary to remedy the situation of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji.

92. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji and to take appropriate measures against those responsible for the violation of their rights.

93. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearance and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, for appropriate action.

94. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

95. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji have been released and, if so, on what date(s);

(b) Whether compensation or other reparations have been made to Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. S. Saleh, Mr. R. Saleh, Mr. Ahmad, Mr. Al-Falooji, Mr. Al-Naji, Mr. Wadi and Mr. Khandakji and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Israel with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

96. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

97. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

98. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>33</sup>

*[Adopted on 29 August 2022]*

---

---

<sup>33</sup> Human Rights Council resolution 42/22, paras. 3 and 7.