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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: TORTURE AND DETENTION

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its twenty-first session, held in May 1998, at its twenty-second session, held in September 1998. A table listing all the opinions adopted by the Working Group in 1998 and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/63).

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OPINION No. 1/1998 (CUBA)

Communication addressed to the Government on 11 December 1997

Concerning: Félix A. Bonne Carcasés; René Gómez Manzano; Vladimiro Roca Antunes; and María Beatriz Roque Cabello

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly forwarded the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights;

(iii) When the complete or partial non-observance of international standards relating to the right to a fair trial, as set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to confer on the deprivation of liberty, of whatever kind, a arbitrary character (Category III).

4. Guided by a spirit of cooperation and coordination, the Working Group has also taken account of the report prepared by the Special Rapporteur in accordance with Commission on Human Rights resolution 1997/62 (E/CN.4/1998/69).

5. In the light of the allegations made, the Working Group welcomes with satisfaction the Government's full and timely cooperation. The Working Group has transmitted the Government's reply to the source of the information and has received its comments. The Working Group believes that it is in a position to give an opinion on the facts and circumstances of the case, bearing in mind the allegations made and the Government's reply thereto, as well as the comments by the source.

6. According to the source, Félix A. Bonne Carcasés, René Gómez Manzano, Vladimiro Roca Antunes and María Beatriz Roque Cabello were arrested by the State Security Police in Havana on 16 July 1997. From the time of their arrest, they were held in the Villa Marista detention centre. The charges are

that they committed acts of political opposition, such as the preparation of reports criticizing the social, political and economic situation, and that they incited the population to abstain in an election. They also wrote a document entitled “The country belongs to everyone”, which challenges the official document intended for the Fifth Communist Party Congress held in October 1997.

7. In its full and detailed reply, the Government states that the four detainees' activities began prior to July 1997 and that they are “regarded as unlawful, according to the provisions of the national legislation in force”. The activities were designed to disrupt the election that was under way; and to promote support by various means for the blockade by the Government of the United States against Cuba. The detainees threatened foreign investors with reprisals and waged campaigns to influence Cuban émigrés to put conditions on the financial support they send to their families. In addition, “they used false or distorted data and information about the political situation in the country and the current economic situation and prospects for the future in order to discourage persons taking part in efforts to maintain economic independence and political sovereignty and paint a chaotic picture of the country to discredit it politically at the international level”.

8. Since they ignored the warnings, they were arrested on the date indicated, tried for “rebellion, enemy propaganda and other offences” and placed in pre-trial detention.

9. The Government also states that the Attorney-General's Office completed the indictment proceedings and brought the case before the competent court for a decision on the charges. It says that the detainees have defence counsel of their choosing (if they had not appointed counsel, one would have been made available by the court); that they have the right to produce evidence in their defence; that they have received visits; that those who are ill have received medical care; and that, for all these reasons, the detention is not arbitrary.

10. The Working Group considers that there is no difference of opinion between the source and the Government as far as the facts are concerned. Both agree on the date of the arrest; that the accused are on trial; and that they are being held in pre-trial detention in Villa Marista. It is also pointed out that, in its reply, the Government does not say that any of the persons on trial resorted to violence of any kind.

11. The grounds for the arrest are: producing political reports; inciting people to abstain in elections; and preparing documents which are alternatives to official documents. The Government adds others, such as supporting the foreign blockade and threatening investors with reprisals; using false or distorted data and information about the political situation, etc.

12. In the Working Group's opinion, such activities are no more than the lawful exercise of the human rights to freedom of expression, opinion and political participation, as provided for in articles 19 and 23 of the Universal Declaration of Human Rights. They are not being accused of any act of violence, but only of preparing documents and stating opinions. Even what the source calls “inciting people to abstain in elections” and what the Government calls “disrupting the electoral process” (the offence is closer to the latter) is no more than a personal option expressed peacefully and called for by the detainees.

13. The Government maintains that these offences are punishable under Cuban internal law. In this connection, the Working Group has two comments to make:

(a) The first is that the criminal offence of “enemy propaganda”, is extremely vague and may cover conduct which is lawful according to international human rights standards, as in the case of the preparation of documents clearly calling a political system into question. The Working Group has already made a statement to this effect in its reports (E/CN.4/1994/27 and E/CN.4/1993/24, paragraph 32) and, in the light of the consideration of the present case, it repeats its views;

(b) The second comment is that, although Cuban internal law penalizes acts of political opposition, the Working Group must, in accordance with its terms of reference, also be guided, as provided in Commission on Human Rights resolutions 1997/50 and 1998/41, by the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international legal instruments accepted by the States concerned. Thus, although the detention may be regarded as being in conformity with national legislation, it is not in keeping with the relevant standards set forth in the Universal Declaration of Human Rights.

14. On the basis of the foregoing, it must be concluded that the deprivation of liberty of the above-mentioned persons may be regarded as being in conformity with national legislation. However, the Working Group is of the opinion that the legislation is contrary to the provisions of articles 19 and 23 of the Universal Declaration of Human Rights.

15. In the light of the foregoing, the Working Group expresses the following opinion:

> The deprivation of liberty of Félix A. Bonne Carcasés, René Gómez Manzano, Vladimiro Rocas Antunes and María Beatriz Roque Cabello is arbitrary, since it is contrary to articles 19 and 23 of the Universal Declaration of Human Rights and falls within category II of the categories applicable in the consideration of the cases submitted to the Working Group.

16. Having stated this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights; and

(c) To consider the possibility of amending its legislation to bring it into line with the Universal Declaration and the other relevant international standards which it accepts.

Adopted on 15 May 1998.

OPINION No. 2/1998 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 11 July 1997

Concerning: Elie Dib Ghaled

The State is not 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 conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

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 and received its comments. 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, as well as the observations made by the source.

5. The communication, of which a summary was addressed to the Government, concerns Elie Dib Ghaled, a Christian Lebanese national. He was reportedly arrested and detained on 5 December 1995 by United Arab Emirates (UAE) law-enforcement officials at the Intercontinental Hotel in al-'Ain in Abu Dhabi, where he worked as a restaurant manager. The source reports that UAE law-enforcement officials took Elie Dib Ghaleb to his residence and searched for his marriage certificate. Reportedly, when they found it, they arrested him. He was then detained until 29 October 1996 when a *Shari'a* court in al-'Ain tried and sentenced him, allegedly because of his marriage, as a Christian, to a Muslim woman from the UAE. In fact, under *Shari'a* law, a Muslim woman is not allowed to marry a non-Muslim man unless he converts to Islam, therefore such marriage is considered null and void and Elie Dib Ghaleb was sentenced to 99 lashes and one year imprisonment for fornication.

6. In its reply dated 4 September 1997, the Government notes that the provisions of the *Shari'a*, the Constitution and the law apply to all offences committed in the territory of the UAE; no distinction is made between accused persons on the grounds of their religion or their nationality. In the present case, the Department of Public Prosecutions referred the two accused persons, Ms. Muna Salih Muhammed (a UAE national, 23 years old) and Mr. Elie Dib Ghaled (a Lebanese national, 28 years old), to the Shari'a Criminal Court at al-'Ain, pursuant to the provisions of Federal Act No.35 of 1992 promulgating the Code of Criminal Procedure, on the charge of committing the punishable offence of fornication. The Court examined the facts of the case, heard the statements and the representatives of the defendant and, after

carefully weighing the evidence, found him guilty as charged. However, the sentence was remitted by the Court in view of Elie Dib Ghaled's recent conversion to Islam. But for having contracted an invalid marriage, another punishable offence, he was sentenced to one year in prison and 99 lashes; moreover, the contract of marriage with the first defendant (Muna Salih Muhammed) was declared null and void. The proceedings against the latter were suspended until her arrest. According to the Government, Elie Dib Ghaled was also found guilty of having violated the personal rights of the guardian (the father) of the first defendant, by inciting his Muslim daughter to contract an invalid marriage. The Court annulled the marriage owing to Mr. Ghaled's failure to obtain the guardian's approval thereof.

7. The Government's reply does not indicate the date of conviction, whether the sentence was appealed, whether Ms. Muna Salih Muhammed was eventually arrested, whether Mr. Ghaled was released or whether corporal punishment was carried out on him. Nor does the Government's reply solve the contradiction between the imposition of a one-year prison term as of 5 December 1995 and his continued detention at the time of the Government's reply, dated 4 September 1997.

8. The comments of the source indicate that the judgment of the Shari'a Court at al-'Ain was pronounced on 28 October 1996 and that Elie Dib Ghaled was released on 31 July 1997. According to the source, the continued detention of Mr. Ghaled between 5 December 1996, the date on which he completed his year of detention, and 31 July 1997, the date of his eventual release, had no basis in law.

9. As Mr. Elie Dib Ghaled has been released and the Working Group does not have any information on the possible detention of Ms. Muna Salih Muhammed, it could, in accordance with working methods, file the case without pronouncing itself on the arbitrary character of the detention of the released individual. But the Working Group deems it appropriate to make a finding on the arbitrary or non-arbitrary character of Mr. Ghaled's detention.

10. The Government emphasizes that in the case of Mr. Elie Dib Ghaled and all other cases of individuals brought before the courts, the Shari'a, the Constitution and other applicable laws are applied on the territory of the UAE, without distinction as to religion or nationality of the accused. Article 2.1 of the Universal Declaration of Human Rights lays down that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind such as, inter alia, sex or religion. One of the rights guaranteed by the Declaration is the right of adult individuals, under article 16.1, to marry without any limitation as to race, nationality or religion. The judicial prosecution of an individual for fornication and for having contracted matrimony with another person of a different religion, and for having concluded a marriage deemed null and void under domestic law is, in the Working Group's opinion, contrary to the principles enshrined in articles 2.1 and 16.1 of the Declaration. It is also contrary to article 18 of the Declaration, to the extent that the spouses have invoked the religious character of their marriage.

11. In other words, the marriage concluded in the present case was based on the free will of the two spouses. The case of Elie Dib Ghaled is all the more serious given that he married in Lebanon, where the marriage of persons of different belief and faith is entirely compatible with domestic legislation.

12. Article 7 of the Declaration guarantees equality before the law without any discrimination, as well as equal protection before the law against any discrimination. In the present case, the differentiation between the legal status of individuals and the application of different standards of legal protection for adults of different religions who married of their own free will amounts to a violation of article 7.

13. Lastly, the Working Group considers that the indictment and prosecution of Elie Dib Ghaled and his spouse for fornication, independently of the charge that they contracted an illegal marriage, represents an arbitrary interference with the right to privacy of the individuals concerned, and amounts to a violation of article 12 of the Universal Declaration of Human Rights.

14. In the case of Elie Dib Ghaled, who was sentenced to a one-year prison term, the violation of articles 7 and 12 of the Declaration entails a further violation of article 9 thereof, pursuant to which no one shall be subjected to arbitrary arrest or detention.

15. Elie Dib Ghaled was released on 31 July 1997. His detention after 5 December 1996, date on which his prison term of one year was fully served, until 31 July 1997 was clearly devoid of any legal basis. The Government itself concedes that the pre-trial detention of Elie Dib Ghaled was set off against the prison term to which he was sentenced on 28 October 1996.

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

> The deprivation of the liberty of Elie Dib Ghaled from 5 December 1995 to 5 December 1996 is arbitrary, as it contravenes articles 2(1), 5, 7, 9, 12, 16 and 18 of the Universal Declaration of Human Rights, and falls within Category II of the categories applicable to the consideration of cases submitted to the Working Group.
>
> The deprivation of the liberty of Elie Dib Ghaled from 5 December 1996 to 31 July 1997 is arbitrary because it is in violation of article 9 of the Universal Declaration of Human Rights, manifestly cannot be justified on any legal basis and falls within Category I of the categories applicable to the consideration of cases submitted to the Working Group.
>
> Insofar as the corporal punishment to which Mr. Ghaled was sentenced is concerned, the Working Group refers the matter to the Special Rapporteur on Torture of the Commission on Human Rights.

17. As a consequence of the above opinion, the Working Group requests the Government of the United Arab Emirates to take the necessary steps to remedy the situation of Elie Dib Ghaled and his wife, to study the possibility of amending its legislation so as to bring it into line with the provisions of the Universal Declaration and to take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 13 May 1998.

OPINION No. 3/1998 (ERITREA)

Communication addressed to the Government on 1 October 1997

Concerning: Ruth Simon

The State is not 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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Ruth Simon, born on 16 February 1962, a journalist and correspondent of Agence France Press in Eritrea, on whose behalf the Working Group addressed an “urgent appeal” to the Government of Eritrea on 28 July 1997, was arrested on 25 April 1997. She was detained for three months at the prison of Asmara, and has, reportedly been kept under house arrest since August 1997. Her detention was reportedly ordered by the President of the Republic following the alleged publication of “false news” regarding a statement made by the President of the Republic confirming the support given by Eritrean soldiers to the rebellion in southern Sudan. She is allegedly being held without charge or trial.

6. In the absence of a reply from the Government and taking into account the allegations as submitted, the Working Group notes that the above-mentioned person was held in custody for three months without charges or trial, and that she has since then been under house arrest. For the Working Group her detention at Asmara prison and her subsequent house arrest are in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. For the Working Group, these are violations of international norms relating to the right to a fair trial of such gravity as to confer an arbitrary character upon the deprivation of the liberty of Ruth Simon.

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

The deprivation of the liberty of Ruth Simon is arbitrary because it is in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation of Ruth Simon and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 13 May 1998.

OPINION No. 4/1998 (MALDIVES)

Communication addressed to the Government on 1 October 1997

Concerning: Wu Mei De

The State is not 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 to the Government the above-mentioned communication.

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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Wu Mei De, a Chinese national, was arrested at the beginning of November 1993 and has since been detained at Gaamadhoo prison without charge or trial. The source reports that his arrest might be linked to a court case in the Maldives in which Wu Mei De was suing a Maldivian national on grounds of alleged irregularities in a business partnership. Although taking no position with regard to the above-mentioned civil case, the source fears that, since the case reportedly started in September 1993, Wu Mei De's arrest about a month later and his reported prolonged detention without charge might imply the potential for official connivance in attempts by his business partner to prevent him from pursuing the court case.

6. In the absence of a reply from the Government and taking into account the allegations as submitted, the Working Groups notes that the above-mentioned person was arrested in early November 1993 and has been held in custody ever since, without charges or trial. For the Working Group his detention is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of principles 2, 4, 9, 10, 11 and 13 of the Body of Principles; for the Working Group, these are violations of international norms relating to the right to a fair trial of such gravity as to confer an arbitrary character upon the deprivation of the liberty of Wu Mei De.

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

The deprivation of the liberty of Wu Mei De is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of principles 2, 4, 9, 10, 11 and 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) 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;

(b) To take appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 14 May 1998.

OPINION No. 5/1998 (ETHIOPIA)

Communication addressed to the Government on 1 October 1997

Concerning: Abdellah “Mazagaja” Ahmed Teso

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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Abdella “Mazagaja” Ahmed Teso, aged 57, a government employee with the Dire-Dawa municipality, and a resident of Dire-Dawa, Harar (Hararge) province, Ethiopia, was reportedly arrested at his home on 3 July 1997, by uniformed government soldiers. The source reports that Abdella Ahmed Teso had previously been detained in Dire-Dawa from 19 February 1996 to 26 June 1997 without any legal process. He was then rearrested and transferred to another region, further from his residence. He is currently detained in a prison centre in Grawa, Gaara Mulata, Harar (Hararge) province, about 100 km from Dire-Dawa. Allegedly, no warrant nor any other decision by a public authority was shown to uphold the arrest. His family was neither informed of his arrest nor provided with details about his detention. The source believes that the arrest is politically motivated because of the ethnic origin of Abdella Ahmend Teso (Oromo) and because of his sympathizing with and his support for the Oromo Liberation Front (OLF).

6. In the absence of a reply from the Government and taking into account the allegations as submitted, the Working Group notes that Abdella “Mazagaja” Ahmed Teso is detained without any warrant or decision by a public authority justifying his arrest and detention having been produced. No information concerning his detention has been provided to his family. The Working Group therefore considers that, as alleged by the source, the arrest of the above-named person is essentially politically motivated, because of his Oromo ethnic origin and his sympathies with the Oromo Liberation Front. The Working Group is of the opinion that his detention is in contravention of

articles 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights.

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

> The deprivation of the liberty of Abdella “Mazagaja” Ahmed Teso is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within Category II of the categories applicable to the consideration of the cases submitted to the Working Group.

8. 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 and in the International Covenant on Civil and Political Rights.

Adopted on 14 May 1998.

OPINION No. 6/1998 (BAHRAIN)

Communication addressed to the Government on 14 July 1997

Concerning: Jaffer Haj Mansur Al Ekry, Ali Mohamed Ali Al-Ekry, Mahdi Mohamed Ali al-Ekry and Hussain Mohamed Ali al-Ekry

The State is not 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 conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

4. According to the source, Mr. Jaffer Haj Mansur Al-Ekry, aged 30, a businessman and religious preacher, was arrested on 23 June 1996 for distributing anti-government pamphlets. Ali Mohamed Ali Al-Ekry, aged 42, an electrician and religious activist, was arrested on 26 January 1996, during dawn raids by the riot police, for opening Al-Anwai mosque and calling people to prayer, when security forces had ordered the closure of the mosque. He had previously been detained from 1983 to 1990 for belonging to the Islamic Enlightenment Society. His two brothers, Mahdi Mohamed Al-Ekry, aged 25,a correspondent, and Hussain Mohamed Ali Al-Ekry, aged 28, an electrician, were both arrested on 20 August 1996 in the village of Al-Daih, allegedly for causing damage to the cars of some neighbours. Their arrest is said to be linked to their father's leading role in the local pro-democracy movement. Reportedly, the police did not produce a warrant for their arrest; the arrests were allegedly ordered by the Ministry of the Interior (SIS), in application of the State Security Law of 1974, which empowers SIS to arrest and detain for a period of up to three years, without charge or trial, any person who may pose a threat to State security. All four detainees, after being locked up at Al-Khamees police station, were then transferred to one of the following prisons: Jao, Dry-Dockyard or the Al-Kalla prison in Manama, Bahrain. The authorities reportedly have not revealed the places of detention of the above-named persons. According to the source, all of the above persons were denied the right to communicate with the outside world, nor were they entitled to consult with legal counsel.

5. In its observations dated 19 September 1997, the Government dismisses the allegations as a product of foreign propaganda and invokes its submissions to a number of United Nations bodies on the subject. It states that Jaffer Haj Mansur Al-Ekry (the correct name, Jaffer Mansoor Mohamed Al-Akri, according to the Government) was arrested on 23 June 1996 and lawfully detained for damaging public property. He was released on 11 December 1996. Ali Mohamed Ali Al-Ekry (correct name Ali-Mohamed Ali Mansoor Al-Akri, according to the Government) was arrested for rioting on 31 January 1996 and

is being held in custody in accordance with the applicable law. He is able to receive visitors and is afforded all amenities. He is visited regularly by family members, most recently on 16 July 1997, the next visit being scheduled for 1 September 1997. Mahdi Mohamed Ali Al-Ekry (Mohamed Mehdi Mohamed Al-Ekri) was arrested for planting bombs on 2 September 1996 and is held in custody in accordance with the applicable law. He is not being detained arbitrarily nor incommunicado, is able to receive visitors and is afforded all amenities. He is visited regularly by family members, most recently on 16 July 1997, the next visit being scheduled for 31 August 1997. As to Hussain Mohamed Ali Al-Ekry, the Government contends that no one of this or similar name at present in custody or serving a sentence or was arrested on or about 28 August 1996 or released since then.

6. The two persons whose detention the Government admits are not, in its view, detained arbitrarily. Their arrests were conducted by the regular police, in accordance with the laws of the country and in the proper execution of their duties: the Government invokes article 1 of the 1982 Police Law and article 11 of the 1966 Code of Criminal Procedure governing lawful powers of arrest. The Government notes that the police have lawful authority to detain a suspect for investigation for up to 48 hours after arrest (article 25 of the Code of Criminal Procedure). Detention beyond 48-hours must be authorized by a court order (article 79 of the Code of Criminal Procedure) or authorized by order of the Minister of the Interior under article 1 of the 1974 State Security Law. The Government does not specify where the two Al-Ekry brothers are detained; nor does it deny the allegation that they are denied the right to consult with counsel of their own choice. The Government affirms that no one may be detained solely for his beliefs and that all individuals who have been detained in relation with the social unrest since 1994 were so on the basis of the following provisions of the Criminal Code: articles 178 to 184 (rioting); 277 to 278 (arson); 279 to 281 (use of explosives); 219 to 222 and 333 to 343 (assault, murder and use of weapons); and 156 to 157, 160 and 168 to 170 (incitement/conspiracy/publication to commit violence). All detentions are compatible with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, although Bahrain is not a party to the latter. Lastly, the Government states that it cooperates with the International Committee of the Red Cross, which conducts visits to detainees in Bahraini prisons. The Government affirms that it will not tolerate human rights abuses and fully recognizes its responsibility to uphold fundamental rights and freedoms.

7. The Working Group forwarded the Government’s reply to the source, which commented on it in a submission dated 31 December 1997. It concedes that Hussain Mohamed Ali Al-Ekry was released, after having spent “some days” in prison. However, the source does not confirm the release of Jaffer Haj Mansur Al-Ekri. The source does not refute the Government’s observations concerning the granting of visiting rights to the two Al-Ekry brothers, but seeks to refute them in general terms. It reaffirms that the three Al-Ekry brothers remain in detention, without trial or legal assistance and that the charges against them are fabricated.

8. The Working Group notes with regret that while the Government explains the legislative provisions which could be applied in the case of the above-mentioned persons, it does not specify the legislation which was in

fact applied in the case of the two brothers, Ali and Mahdi, whose detention since 31 January 1996 and 2 September 1996 respectively is beyond question, although the parties differ as to the dates of arrest. The Government does not provide any specific information about the charges against the above-mentioned persons, nor does it specify whether they were indeed charged under any of the provisions of the Criminal Code referred to by the Government. Its response does not contain any information about the current legal status/situation of the two brothers. In particular, the Government has not reacted to the allegation that the above-mentioned individuals may, pursuant to the State Security Law of 1974, be detained for up to three years without charges or trial. In respect of the application of the State Security Law of 1974, the Working Group refers to its previous Opinion No. 1995/35, especially paragraphs 5, 9 and 12 to 17 thereof, in which the Group concluded that the application of the Law may result in serious violations of the right to a fair trial guaranteed by articles 9 and 10 of the Universal Declaration. Its application is also contrary to principles 10 to 13, 15 to 19 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

9. The Government has stated that Jaffer Haj Mansur Al-Ekry was released on 11 December 1996, after nearly six months of detention. The source affirms that he was still in custody at the end of 1997. Faced with this contradictory information, the Working Group cannot conclude either that Jaffer Haj Mansur Al-Ekry is detained or that he has been released. Accordingly, it cannot formulate an opinion on his case.

10. It transpires from the facts as submitted, which as such are not contested by the Government, that the two brothers, Ali and Mahdi, are detained pursuant to the State Security Law of 1974. For 27 and 22 months respectively, they have been detained without any possibility of challenging their detention before a court and without legal assistance. These facts constitute violations of articles 5, 9 and 10 of the Universal Declaration of Human Rights and of articles 9 to 13, 15 to 18, 33 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of such gravity that they confer upon the deprivation of liberty an arbitrary character.

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

(a) The deprivation of the liberty of Ali Mohamed Ali Al-Ekry and of Mahdi Mohamed Ali Al-Ekry is arbitrary, as being in violation of articles 5, 9 and 10 of the Universal Declaration of Human Rights, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group;

(b) The case of Jaffer Haj Mansur Al-Ekry is kept under review, pending the receipt of supplementary information, pursuant to paragraph 17 (c) of the methods of work of the Working Group;

(c) The case of Hussain Mohamed Ali Al-Ekry is filed in accordance with paragraph 17 (a) of the methods of work of the Working Group, without prejudging the arbitrary or non-arbitrary nature of his detention.

12. Further to the opinion adopted in respect of Ali Mohamed Ali Al-Ekry and of Mahdi Mohamed Ali Al-Ekry, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation and to bring it into conformity with the principles and standards set forth in the Universal Declaration of Human Rights.

(b) To take appropriate initiatives with a view to acceding to the International Covenant on Civil and Political Rights.

Adopted on 14 May 1998.

OPINION No. 7/1998 (VIET NAM)

Communication addressed to the Government on 12 August 1997

Concerning: Ngoc An Phan (religious name: Thich Khong Tanh) and Buu Hoa Ho (religious name: Thich Nhat Ban)

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not transmitted its observations, even after the 90-day deadline.

3. (Same text as paragraph 3 of Opinion No. 1/1998.)

4. In the light of the allegations made, the Working Group would have welcomed the Government's cooperation. In the absence of any information from the Government, the Working Group believes that it is in a position to give an opinion on the facts and circumstances of the cases in question.

5. The following information collected by the Working Group was transmitted to the Government:

(a) Ngoc An Phan (religious name: Thich Khong Tanh), born on 9 August 1943, bonze of the Unified Buddhist Church of Viet Nam, resident of Lien Tri Pagoda, 153 Luong Dinh Cua, An Khanh-Thu Duc, Ho Chi Minh City, was arrested on 6 November 1994 on the way to Lien Tri Pagoda, Ho Chi Minh City, by the Thu Duc (Cong An) Security Police, which showed no warrant or any other order by a Government authority. After having been detained at the Security Interrogation Centre at 3C Ton Duc Than Street, District No. 1, Ho Chi Minh City, he was transferred to re-education camp Z30A K3, Xuan Loc, Dong Nai province, where he is currently being detained. He is accused of having established the Buddhist Sangha Movement for the Propagation of the Faith in March 1993 and of having set up the Cultural and Humanitarian Affairs Office in August 1994; of having turned over to a group of experts visiting Viet Nam a copy of comments made by Thich Quang Do on the errors committed by the Vietnamese Communist Party against the nation in general and against Buddhism in particular; of having organized a humanitarian assistance mission of the Unified Buddhist Church of Viet Nam for victims of the flooding in the Mekong Delta (October 1994, 300 dead, 500,000 homeless) and of having requested foreign funding for that purpose; of having certain documents and reviews in his possession (article 81, paragraph 1, of the Penal Code on attempts to undermine national unity); and of inciting division between believers and non-believers (article 205 (a) of the Penal Code on abuse of democratic rights to harm the interests of the State, social organizations or

citizens). He was tried in first instance on 15 August 1995 and sentenced to five years' rigorous imprisonment; his trial on appeal, which was held on 28 October 1995, upheld the sentence in first instance;

(b) Buu Hoa Ho (religious name: Thich Nhat Ban), born on 15 March 1937, bonze of the Unified Buddhist Church of Viet Nam, residing at Hill Area 47, Long Khanh, Tam Phuoc, Long Thanh, Dong Nai province, was arrested on 6 November 1994 on the way to Lien Tri Pagoda, Ho Chi Minh City, by the Thu Duc (Cong An) Security Police, which showed no warrant or any other order by a Government authority. After having been detained at the Security Interrogation Centre at 3C Ton Duc Thang Street, District No. 1, Ho Chi Minh City, he was transferred to re-education camp Z30A K3, Xuan Loc, Dong Nai province, where he is now being detained. He was accused of having actively assisted Thich Khong Tanh to write, copy and distribute documents since 1994, of denouncing religious repression and of criticizing dignitaries of the Buddhist Church of Viet Nam (EBV, State church); of having joined the Sangha Buddhist Movement for the Propagation of the Faith in April 1994 and the Cultural and Humanitarian Affairs Office in August 1994; of having organized a humanitarian assistance mission of the Unified Buddhist Church of Viet Nam for victims of flooding in the Mekong Delta (article 81, paragraph 1, of the Penal Code on attempts to undermine national unity; article 205 (a) of the Penal Code on abuses of democratic rights to harm the interests of the State, social organizations or citizens). He was tried in first instance on 15 August 1995 and sentenced to four years' rigorous imprisonment. His trial on appeal, which was held on 28 October 1995, upheld the sentence in first instance.

6. In the light of this information collected by the Working Group, which was not challenged by the Government, the Working Group notes that the offences of which Buu Hoa Ho (religious name: Thich Nhat Ban) and Ngoc An Phan (religious name: Thich Khong Tanh) are accused are manifestations of freedom of opinion, conscience and, in particular, religion which, as fundamental freedoms, are expressly guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The deprivation of liberty of Buu Hoa Ho and Ngoc An Phan is thus arbitrary because it is contrary to articles 18 and 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and comes under Category II of the categories applicable to the consideration of cases submitted to the Working Group.

7. Having stated this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights;

(b) To study the possibility of amending its legislation in order to bring it into line with the Universal Declaration and the other relevant international standards it has accepted.

Adopted on 15 May 1998.

OPINION No. 8/1998 (ISRAEL)

Communication addressed to the Government on 12 August 1997

Concerning: Abbas Hasan 'Abd al Husayin Surur, Abd al-Hasan Abd al Hasan Surur, Ahmad Hasan 'Abd al-Hasan Surur, Ahmad Hikmat Muhammad Ubayd, Ahmad Jallul, Ahmad Muhsen Ammar, Ahmad Taleb, Ali Husayin 'Ali Ammar, Bilal 'Abd al Husayn Dahrub, Ghassan al-Dirani, Hasan Sadr al Din Hijazi, Hashem Ahmad 'Ali Fahas, Husayn Hamad, Husayn Fahd 'Abd al-Karim Duqduq, Husayn Rumayti, Husayn Tlays, Kamal Muhammad Rizq, Muhammad Abd al Hadi Darfallah Yanis, Mustafa al-Dirani, Qasem Fares, Sheikh 'Abd al-Karim 'Ubayd and Yusuf Ya'qub Muhammad Surur

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.)

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government.

6. Before examining the present cases, the Working Group recalls that, according to the information available to it, between 1986 and 1994, certain Lebanese nationals were allegedly arrested in Lebanon, either by soldiers of the South Lebanese Army (SLA) or by troops of the Israeli Defense Forces (IDF) and eventually transferred to Israel, where, allegedly, some of them have been held in incommunicado detention for long periods of time. Some are reportedly being held in administrative detention and have not been tried; others were tried and sentenced but, in many cases, the sentences they served have expired, but they nonetheless continue to be detained. The cases mentioned below were reported to the Working Group on Arbitrary Detention:

(a) Sheikh 'Abd al-Karim 'Ubayd, a Shi'a Muslim leader resident in the village of Jibshit in south Lebanon, was reportedly arrested with two of his guards (see below) on 28 July 1989, at his home, by Israeli Defense Forces (IDF) troops who, reportedly, arrived by helicopter, attacked his house killing a neighbour who intervened, and, without showing any warrant, took the three men to Israel, where they have remained in detention ever since. Sheikh 'Abd al-Karim 'Ubayd is accused by the Government of Israel of being a leading figure in the Islamist organization *Hizbullah*; of having organized guerrilla attacks against Israeli soldiers and of being involved in the kidnapping of Lieutenant Colonel Higgins, a United States national, and member

of the United Nations Interim Force in Lebanon (UNIFIL). The detainee, who is apparently held in administrative detention, has been held incommunicado in a secret detention centre without charge or trial since 1989;

(b) Hashem Ahmad 'Ali Fahas, born on 4 March 1967, and Ahmad Hikmat Muhammad Ubayd, born on 30 March 1968, both bodyguards of Sheikh 'Abd al-Karim 'Ubayd, were reportedly arrested during a raid on the home of Sheikh 'Abd al-Karim 'Ubayd, in Jibshit village in south Lebanon on 28 July 1989 by IDF soldiers who did not show any warrant. Since then, they have been detained for eight years, including five years in incommunicado detention without access to the International Committee of the Red Cross (ICRC). They are currently held in Ayalon prison, Ramla, under IDF custody. The Government of Israel accuses them of being leading figures in the Islamist organization *Hizbullah*, but neither has been charged with any offence;

(c) Mustafa al-Dirani, born in 1953, leader of the “Faithful Resistance” (*al-muqawameh al-mu'mineh*) group, resident in Qasarnaba, east Lebanon, was reportedly arrested by the IDF during a raid on his home in Qasarnaba, on 21 May 1994. Mustafa al-Dirani, who in 1988 was a senior security officer with the *Amal* organization, is accused by the Israeli authorities of being responsible for holding Ron Arad, a navigator in the Israeli Air Force who was kidnapped in October 1986 by *Amal* militia. Mr. al-Dirani was taken to Israel in order to obtain information on the fate and whereabouts of Ron Arad. Since 21 May 1994, he has been held in administrative detention, without charge or trial, and he continues to be held incommunicado in a secret detention centre;

(d) Twelve Lebanese nationals are reportedly being detained in Israel after the expiry of their sentences. They are believed to be detained under the 1979 Emergency Powers (Detention) Law, which permits administrative detention, renewable indefinitely every six months. The source fears that they may be being held as hostages against the release of or for information about Israelis missing in action believed to be held by Lebanese militia groups. Their names, dates of birth and the circumstances of their arrest and detention are reported as follows:

> Bilal 'Abd al Husayn Dakrub (born on 22 July 1964) was reportedly arrested from a cave where he was hiding near the village of Tibnin, in south Lebanon, on 17 February 1986 by SLA and IDF soldiers who, allegedly, did not show any warrant. His village was reportedly destroyed and his house burnt. Reportedly he was kept with the army for four days, tied at times to the hoods of cars to deter suicide-bombers; he was then interrogated by an IDF officer at Bra'shit camp, during which time he was allegedly beaten and kicked by SLA soldiers. The detainee then spent 10 days in Centre 17 camp, near Bint Jebein, where he was allegedly tortured by SLA security services in the presence of IDF officers. He was then transferred to Sarafand prison in Israel where he reportedly spent three months in isolation under interrogation and he was allegedly again tortured. Later, he was transferred to Jemeleh prison and was tried by a military court in Lod, in 1986, for membership of an illegal organization (not specified but believed to be the Islamist organization *Hizbullah*) and sentenced to two and a half years' imprisonment. His sentence expired on 16 August 1989 and he

should normally then have been released. Instead, he continues to be detained in prison in Israel. In September 1992, he was reportedly issued with an administrative detention order.

Muhammad 'Abd al-Hadi Daifallah Yassin (born on 1 August 1963) was reportedly arrested in the village of Bra'shit, in south Lebanon, on 17 February 1986, by SLA and IDF soldiers who, allegedly, did not show any warrant. After being transferred to Israel, he has been held in Ayalon prison, in Ramla, by the IDF. He was tried before the Israeli Military Court in Lod and sentenced to 10 years' imprisonment, charged with membership of an illegal organization (the Islamist organization *Hizbullah*) and taking part in armed actions against the SLA militia. In February 1996, his sentence expired but he has not been released. Since then, he has apparently been held under administrative detention.

'Ali Husayn 'Ali Ammar (born on 8 November 1966), Ahmad Muhsen' Ammar (born on 5 May 1967), Kamal Muhammad Rizq (born on 9 January 1970), and Hasan Sadr al-Din Hijazi (born on 21 May 1970) were reportedly arrested on 1 September 1986, during a raid on the village of Mays al-Jabal, in south Lebanon, by SLA and IDF soldiers who, allegedly, did not show any warrant. After being detained in south Lebanon, they were first transferred to Khiam prison and, after five months, to Sarafand prison, in Israel. They were allegedly tortured in both Khiam and Safarand prisons. They are currently being held in Ayalon prison in Ramla, Israel. They were tried before the Israeli Military Court in Lod and charged with membership of, military training with and spying for an illegal organization (the Islamist organization *Hizbullah*); and possession of weapons. They were sentenced to four and a half, four, and three years' imprisonment, respectively. Their sentences have expired but they continue to be detained, apparently under administrative detention.

'Abd al-Hasan Hasan 'Abd al-Hasan Surur (born on 4 April 1969), 'Abbas Hasan 'Abd al-Husayn Surur (born in 1962), Ahmad Hasan 'Abd al-Hasan Surur (born on 21 August 1967), Yusuf Ya'qub Muhammad Surur (born on 22 July 1969), Husayn Fahd 'Abd al-Karim Duqduq (born on 11 September 1969), were reportedly arrested in April 1987, in the village of 'Ita al-Sha'b, in south Lebanon, by SLA soldiers who, allegedly, did not show any warrant. They were first taken to the Centre 17 camp (near Bint Jebeil, reportedly run jointly by the SLA and the IDF) and then transferred to Khiam prison where they were allegedly tortured. They were then transferred to Sarafand prison in Israel where they were allegedly again tortured and interrogated by the Israeli security. Later, they were transferred to Jemeleh and tried before the Israeli military court in Lod where they were charged with membership of, military training with, and carrying weapons for an illegal organization (the Islamist organization *Hizbullah*); getting organized in cells planning to carry out military operations against the IDF; recruiting members and organizing the cells; and taking photographs of Israeli security zones. They were sentenced to terms ranging from one and a half to three years' imprisonment. Their sentences expired between 1988 and 1990 but they are still detained in Ayalon prison, in Ramla, Israel, apparently under administrative detention.

Qasem Fares (date of birth or age not known) was reportedly arrested in June or July 1988 in Ba'lbek, Lebanon, by SLA and IDF soldiers who, allegedly, did not show any warrant. After his arrest, he was taken to Israel, where he was tried and transferred to an unknown prison. He was sentenced to five years' imprisonment on unspecified charges. His sentence expired in 1992, but since then he has continued to be detained, apparently under administrative detention.

7. Two Lebanese nationals were reportedly arrested on 16 November 1987 at a checkpoint in the area of Monte Verde on the outskirts of Beirut, Lebanon, and another four were reportedly arrested on 18 December 1987 on board a ship, the *Gardenia*, moored in Beirut harbour and due to sail to Cyprus, by the Lebanese Forces Militia, who did not show any warrant. Their names, identities, professions and/or activities as well as the circumstances of their arrest are reported as follows:

Husayn Rumayti, born on 5 May 1963, 24 years old at the time of detention, worker in a glass shop; Husayn Ahmad, born on 8 January 1967, 20 years old at the time of detention; Ghassan al-Dirani, born in 1969, 18 years old at the time of detention, bank employee; Ahmad Jallul, born on 6 September 1965, 22 years old at the time of detention, sailor; Ahmad Taleb, born on 18 December 1966, 21 years old at the time of detention, sailor; and Husayn Tlays, born on 30 March 1959, were all arrested and detained by the Lebanese Forces Militia and held in the Lebanese Force detention centre in Adonis, in central Lebanon. Their families were able to see them for two years. In May 1990, they were all, allegedly, secretly transferred to Israel. Only in 1992 did the families learn officially that they had been taken to Israel, where they had been held in incommunicado detention without being able to communicate with neither their families nor ICRC. During this period, they were moved to several prisons in Israel. Since April 1997, apart from Ghassan al-Dirani, who has been transferred to Ramla prison hospital, owing to his suffering from serious mental illness, all the others have reportedly been held in Ayalon prison. Apparently, none of them have been charged with a recognizably criminal offence, but all are believed to be suspected of membership of, or association with, *Hizbullah*. They have all been detained for a total of nine years, the last six in Israel in incommunicado detention without any charge or trial. It is alleged that they have also been subjected to torture during their detention. Currently they are held under administrative detention.

8. After examination of the cases described above, the detainees may be divided into two groups:

(a) Lebanese nationals transferred to Israel and detained after expiry of their sentences:

Abbas Hasan 'Abd al Husayin Surur, arrested on 17 February 1986 and sentenced to three years' imprisonment;

Abd al-Hasan 'Abd al Hasan Surur, arrested on 4 April 1987 and sentenced to three years' imprisonment;

Ahmad Hasan 'Abd al-Hasan Surur (born on 21 August 1967), arrested in April 1987;

Ahmad Muhsen Ammar, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Ali Husayin 'Ali Ammar, arrested on 1 September 1986 and sentenced to four years' imprisonment;

Bilal 'Abd al Husayin Dakrub, arrested on 17 February 1986 and sentenced to two and a half years' imprisonment;

Hasan Sadr al Din Hijazi, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Husayin Fahd 'Abd al-Karim Duqduq, arrested on 15 April 1987 and sentenced to one and a half years' imprisonment;

Kamal Muhammad Rizq, arrested on 1 September 1986 and sentenced to three years' imprisonment;

Muhammad 'Abd al-Hadi Dafallah Yassin, arrested on 17 February 1986 and sentenced to 10 years' imprisonment;

Qasem Fares, arrested in June/July 1988 and sentenced to five years' imprisonment;

Yusuf Ya'qub Muhammad Surur, arrested on 15 April 1987 and sentenced to three years' imprisonment.

9. According to the source, these 12 persons were arrested in Lebanon without a warrant, either by the Israeli Defense Forces (IDF) or by soldiers of the South Lebanese Army (SLA), transferred to Israeli prisons between 1986 and 1988 and tried. They were tried by military tribunals for membership of a banned organization, *Hezbollah*, or for involvement in armed operations against Israel and its allies, in accordance with the procedural provisions described below, which, under domestic law, permit any person who commits an offence against the State of Israel, regardless of nationality, to be prosecuted in the Israeli courts:

> “The jurisdiction of the Israeli courts with respect to offences extends to the territory of the State and its territorial waters and, by law, also beyond that territory” (1977 Penal Code, article 2).
>
> The “Israeli courts are competent to try under Israeli law any person who commits an act abroad which would have been deemed an offence had it been committed in Israel, and which injures the State of Israel, its security, its property, its economy or its means of transport or communication with other countries” (1977 Penal Code, article 5 (a)).

10. In the absence of any information from the Government, the Working Group believes that it is in a position to give an opinion on the facts and circumstances of the cases.

11. In the light of the detainees' membership of *Hezbollah* - a point the source does not appear to dispute - whose aim is to resist the presence of the Israeli armed forces in the area known as the "security zone", including by force of arms, the Working Group is not in a position to judge whether some of them might nevertheless fall within Category II of its working methods.

12. On the other hand, without regard to whether or not, at the time of their trial, these persons suffered violations of the right to fair trial of such gravity that they conferred on the deprivation of their liberty an arbitrary character, the Working Group, noting that the detainees have continued to be held in detention despite having served their full sentences - a point not disputed by the Government - considers these to be clear cases of arbitrary detention falling within Category I of its working methods.

(b) Lebanese nationals transferred to Israel and detained without charge or trial (administrative detention):

Ahmad Hikmat Muhammad Ubayd, detained since 28 July 1987;

Ahmad Jallul, detained since 18 December 1987;

Ahmad Taleb, detained since 18 December 1987;

Sheikh 'Abd 'al-Karim Ubayd, detained since 28 July 1989;

Ghassan al-Dirani, detained since 18 December 1987;

Hasheim Ahmad 'Ali Fahas, detained since 28 July 1989;

Husayin Hamad, detained since 16 November 1987;

Husayin Rumayti, detained since 16 November 1987;

Husayin Tlays, detained since 18 December 1987;

Mustafa al-Dirani, detained since 20 May 1994.

13. According to the evidence and testimony gathered by the Working Group, these 10 persons are being detained in Israel, where they were transferred, and continue to be deprived of their liberty without charge or trial, after having been held incommunicado for long periods.

14. According to the source, the Government justifies this deprivation of liberty with reference to the 1979 Emergency Powers (Detention) Law, which permits administrative detention. Under this law, such a procedure, which falls within the jurisdiction of the Ministry of Defence, is subject to review every six months and, as has happened in this case, may be renewed indefinitely. The Working Group notes in this regard that, when cases are reviewed, the persons concerned can never find out the charges against them, which are deemed to be classified information.

15. The Working Group therefore considers that, even though this form of deprivation of liberty may appear to comply with domestic legislation, the provisions of that legislation seriously contravene international rules governing the right to a fair trial, insofar as they disregard almost all the guarantees regarding the right to a fair trial provided for under article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. This absence of guarantees therefore constitutes a violation of the right to a fair trial of such gravity that it confers on the deprivation of liberty an arbitrary character.

16. In the light of the above, the Working Group is of the following opinion:

> With regard to the first group (Lebanese nationals transferred to Israel and held in detention after expiry of their sentences): the deprivation of the liberty of Abbas Hasan 'Abd al Husayin Surur, Abd al-Hasan Abd al Hasan Surur, Ahmad Hasan ‹Abd-al Hasan Surur, Ahmad Muhsen Ammar, Ali Husayin 'Ali Ammar, Bilal 'Abd al Husayin Dakrub, Hasan Sadr al Din Hijazi, Husayin Fahd 'Abd al-Karim Duqduq, Kamal Muhammad Rizq, Muhammad Abd al-Hadi Dafallah Yassin, Qasem Fares and Yusuf Ya'qub Muhammad Surur is arbitrary in the terms of Category I of the Working Group's working methods, insofar as it manifestly cannot be justified on any legal basis.
>
> With regard to the second group (Lebanese nationals transferred to Israel and placed under administrative detention without charge or trial): the deprivation of the liberty of Ahmad Hikmat Muhammad Ubayd (alias Ahmad Hikmet Obeid), Ahmad Jallul (alias Ahmad Bahij Jalloul), Ahmad Taleb (alias Ahmad Mohamed Taleb), Sheikh 'Abd al-Karim Ubayd (alias Cheikh Abdel Karim Obeid), Ghassan al-Dirani (alias Ghassan Fares Dirani), Hasheim Ahmad 'Ali Fahas (alias Hachem Ahmed Fahas), Husayin Hamad (alias Hussein Bahij Ahmed), Husayin Rumayti (alias Hussein Ahmed Rumayti), Husayin Tlays (alias Hussein Mohamed Tlays) and Mustafa al-Dirani (alias Mustafa Dirani) is arbitrary, as being in contravention of articles 9 and 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.

17. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To study the possibility of amending its legislation in order to bring it into line with the Declaration and the other relevant international standards accepted by that State.

Adopted on 15 May 1998.

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.

OPINION No. 10/1998 (ISRAEL)

Communication addressed to the Government on 1 October 1997

Concerning: Ribhi Qattamesh, Imad Sabi and Derar Al Aza

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. Ribhi Qattamesh, aged 41, a journalist and lawyer, resident of the city of El-Bireh, West Bank, was reportedly arrested at his home on 28 March 1994. After being interrogated for a month and a half, a military commander issued a six months' administrative detention order, from 11 May until 26 September 1994. This was then extended several times: to 25 February, 24 August and 23 November 1995, and 22 February and 21 June 1996. The source reports that Qattamesh has still not been released and is still in administrative detention, serving his seventh consecutive detention order. Until August 1996, Qattamesh appealed all his detention orders before a military judge. Reportedly, all the orders were upheld on the basis of secret information. The source submits that Qattamesh is currently suffering from heart disease and ulcers and had to be hospitalized at the Ramle hospital.

6. Imad Sabi, aged 35, Executive Director of Bisan Research and Development Center and a member of Palestinian Housing Rights Movement (PHRM), resident in Ramallah, West Bank, was reportedly arrested near the entrance of Am'ary refugee camp on the Ramallah-Jerusalem Road, on 20 December 1995. He was brought to Beit El military camp and then transferred to Megiddo prison where he is currently being held. Before being arrested, on 12 December 1995, Sabi served without trial or charges a six months' administrative detention order issued by the General Commander of the West Bank. The reason for his detention is unknown, although it is believed to be political in nature. In June 1996, the order was renewed, first until October 1996 and then until April 1997. The source reports that Sabi has not been charged, which makes it impossible for him to prove his innocence.

7. Derar al Aza, aged 31, from Anza refugee camp, Bethlehem district (area A), was reportedly arrested at his home on 31 May 1995. A first administrative detention order was issued for six months, until 30 November 1995. This was then extended several times: until 29 March 1996, 28 September 1996 and 27 March 1997. The source reports that in all of these orders the only reason given for detention was his being a senior PFLP (Popular Front for the Liberation of Palestine) activist. Al Aza has not been released yet and is currently held in Megiddo military detention centre. Until August 1996, Al Aza appealed all his detention orders before a military judge. Reportedly, all the appeals were rejected.

8. Since August 1996, all administrative detainees have maintained a boycott on appeals, to protest against lack of due process.

9. 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.

10. From the allegations, it is clear that Mr. Qattamesh's detention since 28 March 1994 has been continuously renewed without a charge having been brought to date. He is apparently serving his seventh consecutive detention order. Qattamesh has no effective remedy to prove his innocence, the appeal to a military judge having been upheld on the basis of secret information. Similarly, Imad Sabi detained on 20 December 1995, is also serving his third detention without being brought to trial. In the case of Derar-Al Aza, the facts reveal that he is serving his fifth successive detention order and that he has been in administrative detention for over two years. The source suggests that the only reason for Al Aza's detention is his being a senior PFLP activist. All his appeals against the various detention orders were rejected and the orders upheld.

11. In the case of the above three individuals, 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 and articles 9 and 14 of the International Covenant on Civil and Political Rights, as well as of principles 10, 11, 12 and 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The violation of the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

The deprivation of the liberty of Ribhi Qattamesh, Imad Sabi and Derar Al Aza 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 the cases submitted to the Working Group.

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

Adopted on 15 May 1998.

OPINION No. 11/1998 (ISRAEL)

Communication addressed to the Government on 5 October 1997

Concerning: Bassam 'Abu Aqr, 'Abd Al-Rahman 'Abd Al-Ahmar and Khaled Deleisheh

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. According to the communication, Bassam 'Abu Aqr, aged 35, resident at the 'Aida refugee camp, in Bethlehem, West Bank, was reportedly arrested on 22 February 1996 near his home. 'Abu Aqr's administrative detention order was issued on 26 February 1996. The order was issued for one year, only 20 days after he had been released from a previous one-year detention term. The detention order has subsequently been renewed. His current place of detention is Ashkelon-Shikma prison, Israel.

6. 'Abd Al-Rahman 'Abd Al-Ahmar, a student, aged 30, resident of Deheishe refugee camp, Bethlehem, West Bank, was reportedly arrested on 19 November 1995. An administrative detention order was issued on 19 November 1995. It was issued for nine months, but subsequently cancelled after three months when the detainee was transferred to interrogation for 47 days and, reportedly, subjected to torture. At the end of the interrogation period, 'Abd Al-Ahmar was issued a one year administrative detention order, which was subsequently renewed. 'Abd Al-Ahmar is currently held in Megiddo prison, Israel.

7. Khaled Deleisheh, an engineer, aged 38, resident of Al-Bireh, Ramallah district, West Bank, was reportedly arrested on 16 April 1994 at his home. An administrative detention order was issued on 17 April 1994. It was subsequently renewed. Prior to this, he was in administrative detention from January 1992 until October 1993. He was released and placed under house arrest until he was detained again in April 1994. He has therefore been in administrative detention for 60 months of the past five and a half years and

he is now serving his seventh consecutive detention order. His current place of detention is Tel Mond (Sharon) prison, Israel. In October 1995, he petitioned the High Court of Justice, but his petition was rejected.

8. It is reported that none of the above-mentioned detainees has been charged yet, nor have they been provided with detailed information on the reason for their detention, which makes it impossible for them to prove their innocence. The source further reports that the only reason given for detention was their being Islamic Jihad (as in the case of Bassam 'Abu Aqr) or PFLP activists. Until August 1996, they appealed all their detention orders before a military judge. Reportedly, all orders were upheld on the basis of secret information. Since August 1996, all administrative detainees have maintained a boycott on appeals, to protest against their lack of due process.

9. 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.

10. From the allegations, it is clear that Bassam Abu Aqr's detention since 22 February 1996 has been renewed without a charge having been brought to date. He has no effective remedy to prove his innocence and has merely been informed that he is suspected of belonging to the Islamic Jihad. Similarly, Abd Al-Rahman 'Abd Al-Ahmar, detained on 19 November 1995, is under administrative detention orders which have been renewed without his having been brought to trial. He is said to be an activist of the Popular Front for the Liberation of Palestine (PFLP). In the case of Khaled Deleisheh, the facts reveal that he is serving his seventh successive detention order and that he has been in administrative detention for over 60 months out of the past five and a half years. He has not been charged until now. The source suggests that one reason for the detention is his being a PFLP activist. His appeal to the High Court of Justice was rejected.

11. In the case of the three above-mentioned individuals, 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, as well as of principles 10, 11, 12 and 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The violation of the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

> The deprivation of the liberty of Bassam 'Abu Aqr, 'Abd Al-Rahman 'Abd Al-Ahmar and Khaled Deleisheh 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.

13. 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.

OPINION No. 12/1998 (INDONESIA)

Communication addressed to the Government on 14 July 1997

Concerning: Adnan Beuransyah

The State is not 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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Adnan Beuransyah, aged 39 and a journalist by profession, was arrested on 16 August 1990 in Aceh, western Sumatra by the Indonesian military intelligence services. The district court of Banda Aceh, which ordered the detention, accused him of supporting the armed opposition group, Aceh Merdeka, by attending meetings and distributing illegal pamphlets. The source alleges that Adnan Beuransyah was held in pre-trial incommunicado military detention for nearly eight months after his arrest. During this period he was allegedly tortured. He is alleged to have confessed to the charges of involvement in Aceh Merdeka after torture. When he testified in court, he sought to retract his confession which, according to him, was extracted under torture. The Court reportedly refused to accept the retraction. He was consequently convicted under the Anti-Subversion Law (Presidential Decree 11/1969) and sentenced to eight years' imprisonment. On appeal, in 1992, the High Court increased the sentence to nine years.

6. Though the Government of Indonesia did not respond to the communication of 14 July 1997 by which the Working Group transmitted the case of Adnan Beuransyah, on 11 August 1998 the source informed the Working Group that Beuransyah had been set free in April 1998, by which time he had probably completed his sentence. His release in these circumstances, after almost eight years, does not in any manner affect the nature of his detention, which the Group considers arbitrary.

7. There is nothing to show that Adnan Beuransyah was convicted for indulging in violence or for having given any logistical or other active support to violent activities. He is alleged to have attended meetings and

distributed illegal pamphlets. At those meetings, the opposition group Aceh Merdeka's goals and methods were allegedly discussed. He was not even accused of being a member of Aceh Merdeka. Being a journalist, his attending such meetings could even be otherwise justified. Such an association, if punishable under the Anti-Subversion Law (Presidential Decree 11/1983), would make such a law suspect.

8. Adnan Beuransyah's conviction was based on his confession, which was allegedly extracted. The source gives details of the extent of torture by quoting part of his testimony:

> "As soon as we got to Lampooning (the local headquarters of the internal security agency), I was stripped to my underwear and my hands were handcuffed behind me. Then I was shown into a room where I was treated inhumanely. I was kicked and punched about the chest and legs until I fell to the floor. I was forced into consciousness, only to be kicked and punched all over my body. I collapsed again and had difficulty breathing."

In these circumstances, in the absence of independent unimpeachable evidence, it was unsafe to have convicted Adnan Beuransyah under the Anti-Subversion (Presidential Decree 11/1983).

9. The Working Group is of the opinion that the detention of Adnan Beuranyah is arbitrary. Article 5 of the Universal Declaration of Human Rights stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 11 of the Universal Declaration of Human Rights stipulates that no one shall be held guilty of any penal offence on account of any act or omission which does not constitute an offence. The Working Group believes that the participation of Adnan Beuransyah in a meeting of an opposition group cannot be an activity punishable under a penal statute. Since the conviction based on a confession, which was apparently extracted, is suspect, the Working Group believes that the detention is clearly arbitrary and violates articles 5 and 11 of the Universal Declaration of Human Rights.

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

> The deprivation of the liberty of Adnan Beuransyah is arbitrary, as being in contravention of articles 5 and 11 of the Universal Declaration of Human Rights, and falls within Category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon the opinion rendered, the Working Group requests the Government: to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 17 September 1998.

OPINION No. 13/1998 (BHUTAN)

Communication addressed to the Government on 14 July 1997

Concerning: Taw Tshering, Samten Lhendup, Tshampa Wangchuk and Shampa Ngawang Tenzin

The State is not 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 conveys its appreciation to the Government for having provided the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

4. According to the source of the communication, a summary of which was transmitted to the Government, the above-named individuals were arrested by the Royal Bhutan Police (RBP) during the first week of February 1997 in Gangkha village, Tashi Yangshe district. The RBP allegedly had caught Taw Tshering's son reading illegal literature which Taw Shering had received from political activists during a stay in India. Upon the arrest of Taw Tshering, the other three above-named individuals became involved. Their presence at political meetings was disclosed and all were arrested. They were detained at Tashi Yangtshe police station until 7 March 1997. Thereafter they were allegedly held incommunicado. The authorities had reportedly arrested them for attending political meetings and possessing documents circulated by the Druk National Congress, a political group in exile. It is submitted that when arresting the above-mentioned individuals, the RBP did not produce an arrest warrant nor any other decision issued by a public authority. It is further submitted that at the time of submission of the communication (April 1997), the relevant legislative provisions had not been applied to their cases.

5. It is alleged that in the above-mentioned cases, several provisions contained in the international legal instruments taken into account by the Working Group on Arbitrary Detention in order to determine the arbitrary character or otherwise of situations of deprivation of liberty have not been respected. This applies in particular to articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and principles 11, 15, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

6. In its reply of 4 September 1997, the Government indicates that the four above-named individuals were arrested for their involvement in seditious activities. Wangchuk and Ngawang Tenzin were arrested on 4 February 1997, Samten Lhendup on 5 and Taw Tshering on 6 February 1997. All of them were arrested on the basis of warrants issued by the Royal Court of Justice. The

Government adds that the village headman and some members of the public had reported the activities of the above-named persons to the district authorities.

7. The Government notes that the four individuals were brought before the Trashi Yangtse district court on 24 March 1997 and subsequently charged under the Trimzhung Chhenpo with involvement in seditious activities. The court held a first hearing in Taw Tshering's case on 22 April 1997 and in the three other cases on 25 April 1997. All the cases were concluded on 27 June 1997. The court found Taw Tshering guilty of taking part in a seditious meeting with subversive elements in the Indian city of Siliguri, with intent to defame the Government and to assist these elements in carrying out their activities. He was sentenced to five years' imprisonment. Samten Lhendup was convicted on charges similar to those against Taw Tshering and of collaborating with the subversive elements in Siliguri and for having accepted payment from them. He was sentenced to five years and six months' imprisonment. Wangchuk was found guilty of meeting subversive elements in India and assisting them by bringing seditious literature into Bhutan and distributing it on the pretext that the books were prayer books. He was sentenced to five years' imprisonment. Ngawang Tenzin was found guilty on the same grounds as Wangchuk and also sentenced to five years' imprisonment.

8. The Government emphasizes that the above-named individuals were properly detained and tried, and that their trials were concluded within four months after their arrest. The trials were open to the public and the accused had ample opportunity to prepare their defence and were given access to legal counsel. However, they told the court that they preferred to defend themselves. The Government reiterates that the proceedings were conducted in strict accordance with Bhutanese laws. All of the above-named persons are currently serving their prison sentences at Trashigang district prison.

9. The Working Group has taken due note of the Government's observations of 4 September 1997, according to which the four above-named individuals were properly charged and tried, in accordance with the provisions of the Thrimzhung Chhenpo. The Group considers, however, that on the basis of the information made available to it, their arrest, trial and detention were essentially politically motivated, because of their links to and sympathy with the Druk National Congress, a political opposition group in exile. Firstly, the Group observes that Samten Lhendup, who, according to the Government, was convicted under Na 1-1, Ma 1-1, 1-2 and 1-3 of the Trimzhung Chhenpo, received a sentence which is heavier than that provided for under Na 1-1 (three years). This is also true for Taw Tshering. Furthermore, while the Government notes that Wangchuk and Ngawang Tenzin were convicted on the basis of Na 1-2, Ma 1-1-, 1-3 and 1-5, it remains the case that Na 1-2 addresses the issue of forgery of documents or seals and the defrauding of others and practice of deceit for personal gain. This, in the Group's view, would have little to do with a conviction for meeting with subversive elements and assisting them by bringing "seditious literature" from a foreign country into Bhutan. In the circumstances, the Working Group considers that the above-named persons were detained and convicted primarily for the exercise of activities related to their political beliefs, and that their detention is in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

10. In the light of the above, the Working Group adopts the following opinion:

> The deprivation of the liberty of Taw Tshering, Samten Lhendup, Tshampa Wangshuk and Shampa Ngawang Tenzin is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and falls within Category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Pursuant to the above Opinion, 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. It further urges the Government to take the appropriate measures with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 15 May 1998.

OPINION No. 14/1998 (REPUBLIC OF KOREA)

Communication addressed to the Government on 11 December 1997

Concerning: Kim Yong and Suh Joon-Shik

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 expresses its appreciation to the Government for having provided the information required in a timely manner.

3. The Working Group also notes that the Government has informed it that the above-mentioned persons are no longer in detention. According to the source, Kim Yong was released on 13 March 1998 following an amnesty by the President of the Republic. According to the Government, Suh Joon-Shik was released on bail on 5 February 1998. His release was also confirmed by the source.

4. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the cases of Kim Yong and Suh Joon-Shik under the terms of paragraph 17 (a) of its methods of work.

Adopted on 16 September 1998.

OPINION No. 15/1998 (FEDERAL REPUBLIC OF YUGOSLAVIA)

Communication addressed to the Government on 17 July 1997

Concerning: Avni Klinaku, Mujë Prekupi, Libur Aliu, Dylber Beka, Gani Baliu, Nebi Tahiri, Shaban Beka, Hajzer Bejtullahu, Enver Dogolli, Emin Sallahu, Shukrie Rexha (f), Naser Tahiri, Dullah Sallahu, Ragib Berisha, Burhan Hasani, Majlinda Sinani (f), Arsim Retkoceri and Beton Retkoceri

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 in 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 conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

4. According to the source of the communication, a summary of which was transmitted to the Government, the above-mentioned 18 individuals, all ethnic Albanians of the province of Kosovo, were tried and convicted on 30 May 1997 to sentences of from 2 to 10 years' imprisonment, allegedly for having founded a clandestine organization called the National Movement for the Liberation of Kosovo, whose aim was to have Kosovo secede from the Federal Republic of Yougoslavia and to unify it with Albania. The above-mentioned individuals were also found guilty of having disseminated the journal of their organization (Clirimi - Liberation) and of having planned terrorist acts. Two other Kosovo Albanians, Fatmir Humoli and Agim Kuleta, were convicted in absentia. Out of the 18, 9 individuals whose prison sentences were under five years were released on bail pending determination of their appeal. The source does not indicate the length of time the 18 persons were held in pre-trial detention before 30 May 1997.

5. The source contends that the accused were deprived of their right to a fair trial. First, the judgment of first instance was based almost exclusively on self-incriminating evidence of the accused, alleged to have been made by the accused during the preliminary inquiry. The source maintains that very few other elements could have sustained a conviction. Secondly, several of the accused claimed to have given self-incriminating evidence as a result of ill-treatment and, according to the source, in at least one case medical evidence corroborates the claim of ill-treatment. Thirdly, during the preliminary inquiry, access of the accused to their legal representatives and access of their lawyers to the prosecution's files were severely limited.

6. The source recalls that the allegations have never been refuted by the Government, which had a chance to do so.

7. The Working Group notes that it was ready, in accordance with its methods of work, to examine whether the right to a fair trial as spelled out in articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 9, paragraphs 3 and 4, and 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights, and principles 1, 6 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, was violated in the present cases.

8. The Working Group is however of the opinion that in order to assess whether there was a violation of the above-mentioned provisions of such gravity as to confer to the detention an arbitrary character, it would require more detailed information in respect of the allegations formulated in paragraph 5 above. Before pronouncing itself on the arbitrary or non-arbitrary character of the detention, the Working Group would require additonal information about the outcome of the appeal proceedings and the release on bail of several of the above-named individuals.

9. Given that the source has not provided further clarification in respect of these issues, although requested by the Group to do so, the Working Group considers that it does not dispose of sufficiently precise information to formulate an Opinion on the present case. In the circumstances of the case, the Working Group further considers that it is not in a position to obtain additional clarification on the cases of the above-named individuals.

10. In the light of the above, and subject to the subsequent receipt of pertinent information or clarifications, the Working Group considers that it cannot adopt an Opinion on the arbitrary or non-arbitrary nature of the detention of the above-mentioned individuals and decides, in accordance with rule 17 (d) of its methods of work, to file the case provisionally.

Adopted on 16 September 1998.

OPINION No. 16/1998 (PALESTINE)

Communication addressed to the Government of Palestine on 26 June 1998

Concerning: Shafiq Abd Al-Wahab

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group took note of the reply of the Palestinian Authority that no trace had been found of Mr. Shafiq Abd Al-Wahab's presence in any place of detention. According to the source, he was arrested at his workplace on 21 June 1997.

3. In its reply, the Palestinian Authority explains that this is a case of disappearance.

4. Having checked, the Working Group found that the Working Group on Enforced or Involuntary Disappearances was considering the case.

5. In view of the foregoing, the Working Group therefore decides to refer the case to the Working Group on Enforced or Involuntary Disappearances.

Adopted on 16 September 1998.

OPINION No. 17/1998 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 23 December 1997

Concerning: George Atkinson

The State is not 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 in resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Governments.

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. Given that the Government had an opportunity but did not comment on the allegations, the Working Group had no choice but to contact the source to obtain additional clarifications. In the Working Group’s opinion, the source's further clarifications do not change the Group’s findings in the present case.

6. According to the source, George Atkinson, a British citizen, businessman and landscape engineer, born on 16 May 1951, was reportedly arrested in Dubai on 1 March 1997. Mr. Atkinson had lived in Dubai from 1982 until 1993 and was involved in the building of three golf courses and other landscaping activities. He left Dubai after his company’s contract had been terminated by the authorities. In January 1994 he was informed that unless he transferred his company and assets to the Government of Dubai, he would face criminal and civil proceedings for having paid unlawful commission to a Mr. Stephen Trutch, who at the time was acting as engineer to Sheikh Mohammed. As a result, Mr. Atkinson, together with other local and expatriate businessmen, agreed to sign, on 17 January 1994, a settlement agreement providing that in return for handing over his company’s assets, no further action would be taken against him. The agreement provided, inter alia, that “The Government and Sheikh Mohammed waive and release the transferers and the employees of the businesses from all claims which they have or may have against them in respect of their conduct and activities in connection with the businesses prior to the effective date.”

7. Mr. Atkinson returned to Dubai on 26 February 1997 in order to watch a golf tournament and was arrested shortly before he was due to return to the United Kingdom. Reportedly, the Attorney-General indicated that no charge sheet would be issued until the investigations were completed, but, in fact, no investigations were taking place. All requests for release on bail have been refused and the detention has already been extended several times. It is further alleged that all the accusations referred to in the detention order (articles 45 and 47 (sections 2 and 3) of the United Arab Emirates Criminal Law and articles 227, 228 and 230 of the United Arab Emirates Criminal Code) fall under a three-year time limitation, which had already expired.

8. In a further submission, the source notes that Mr. Atkinson was charged on 5 April 1998, and that he denied all charges of having paid unlawful commissions. On 12 July 1998, after hearing the motions, the Court ordered Mr. Atkinson released on bail. On 14 July 1998, Mr. Atkinson had fulfilled the conditions attached to the bail order and his guarantor was informed that he would be released; this reportedly was confirmed by the Attorney-General himself the next day. On 18 July 1998, however, the Public Prosecutor and the Acting Attorney-General changed their minds and sought to add to the bail conditions terms which had not been included in the court order, namely that the guarantor should have assets worth 17 million dirhams.

9. On 19 July 1998, another court hearing took place and the Judge ordered the release on bail of Mr. Atkinson on the same conditions as those stipulated in the order issued a week earlier. On 16 August 1998, Mr. Atkinson's lawyer filed a petition on his behalf. In yet another court hearing on 6 September 1998, the judge confirmed the terms of the initial order for release on bail. On the same day, Mr. Atkinson handed a personal letter to the judge. His lawyer, however, suggested to him that since the judge had already made his decision on the matter, it would now be better to deal with the bail issue directly with the public prosecutor.

10. According to Mr. Atkinson's lawyer, the Public Prosecutor had the right to appeal the court order; he did not do so and let the deadline for the appeal pass. Instead, he continues to obstruct the enforcement of the court order and the judge is unwilling to force its compliance and implementation.

11. Given that the State party's Government had an opportunity to comment on the allegations but did not do so, the Working Group had no choice but to contact the source to obtain additional clarifications. In the Group's opinion, these clarifications (see paragraphs 7 to 9 above) do not change its findings in the present case.

12. The Working Group notes that Mr. Atkinson has been detained since 26 February 1997 and was only charged on 5 April 1998, that he has not been judged and that a judge has ordered his release on bail, an order which has not been implemented. His detention was extended on several occasions although it should not have been more than three times in the light of the relevant legal provisions which would have been applicable to his case.

13. In the opinion of the Working Group, the deprivation of the liberty of Mr. George Atkinson is contrary to articles 9 and 10 of the Universal Declaration of Human Rights and to principles 36 to 39 of the Body of

Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The violation is of such gravity as to confer an arbitrary character to his continued detention.

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

> The deprivation of the liberty of George Atkinson is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and principles 36 to 39 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and falls into Category III of the categories applicable to cases submitted to the Working Group.

15. In accordance with the above Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 17 September 1998.

OPINION No. 18/1998 (CUBA)

Communication addressed to the Government of Cuba on 12 August 1997

Concerning: Lorenzo Páez Núñez

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly forwarded the information requested.

3. (Same text as paragraph 3 of Opinion No. 1/1998.)

4. Bearing in mind the complaints filed, the Working Group welcomes with satisfaction the cooperation by the Government. The Working Group has transmitted the Government's reply to the source of the information, but still has not received its comments.

5. The Working Group believes that it is in a position to give an opinion on the facts and circumstances of the case based on the allegations made and the Government's reply thereto.

6. According to the complaint, Lorenzo Páez Núñez is an independent journalist who was arrested on 10 July 1997 in the town of Artemisa. He was tried the following day by the Artemisa Municipal Court, which sentenced him that day to 18 months' deprivation of liberty for insulting and slandering the national police.

7. The Government informed the Working Group that, since Páez has received a final sentence, his case is not within the Working Group's terms of reference, since resolution 1997/50 instructs it to investigate cases of deprivation of liberty imposed arbitrarily, provided that the national courts have not adopted a final decision in accordance with national legislation, the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned.

8. The Government also states that, in any event, Páez was arrested on the basis of a complaint filed on 27 June by the citizen Florencio Jesús Tabares for the offence of slander via Radio Voz de la Fundación, which broadcasts from the United States. The court concluded that the statements Páez made on that radio station (accusing Tabares of armed assault) were false and constituted contempt and slander. Following a trial in which all procedural guarantees provided for in national legislation were ensured, Páez was sentenced on 11 July to one year and six months of deprivation of liberty for each of the offences of slander and contempt and, as an additional single

penalty, to one year of deprivation of liberty. This sentence was upheld by the Third Criminal Chamber of the Havana People's Provincial Court on 22 July 1997.

9. The facts are thus incontrovertible: (a) on 27 June 1997, a complaint of slander and contempt was filed against Lorenzo Páez NúÁez; (b) Páez was arrested on 10 July; (c) he was tried the following day and, according to the Government, sentenced for the offences of slander and contempt to "one year and six months of deprivation of liberty for each of the offences of slander and contempt and, as additional single penalty, to one year of deprivation of liberty", a sentence which has now been served.

10. According to Cuban law, the indictment must be notified to the accused who is at liberty, as in the case of Páez, and the oral proceedings may not take place for five days following the appointment of defence counsel, whether chosen or court-appointed. This is the deadline by which defence counsel has to submit his provisional conclusions, i.e. the defence as such (article 283 of Act No. 5 of 1977 on Criminal Proceedings, as amended by Decree Law No. 151 of 1994).

11. From 27 June (filing of the complaint) until the day of the trial and sentencing (11 June), i.e. 14 consecutive days, the following took place: (a) the preparatory phase of the oral proceedings, which may last for up to 60 days (art. 107); (b) the submission of the prosecutor's provisional conclusions (art. 278); (c) summons by the court ordering the appearing of the accused, to whom it must have assigned defence counsel within five days if he did not already have one (art. 282); (d) the submission of the defence counsel's provisional conclusions; (e) the setting of the date for the oral proceedings, which must be held within 20 days of the indictment and the submission of provisional conclusions by the parties (art. 287); (f) oral proceedings (art. 305); (g) trial and sentencing (art. 45).

12. Neither the source nor the Government has provided the Working Group with specific information on these matters. It is also not known whether there was an authorization for the trial against Páez by means of the shortened procedure provided for in Book Six, Title XI, of the Criminal Proceedings Act or by means of the special procedure for the trial of the offences of libel and insult (the trial in this case is for slander) provided for in Book Six, Title V, for the offences of libel and insult. On the basis of the evidence produced, it is thus impossible for the Working Group to give an opinion on the provisions of Cuban legislation relating to due process and, as appropriate, to determine whether or not they are in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by Cuba.

13. In view of the foregoing, the Working Group decides to keep the case pending until new information is supplied to enable it to adopt a final opinion.

Adopted on 17 September 1998.

OPINION No. 19/1998 (MEXICO)

Communication addressed to the Government of Mexico on 3 October 1997

Concerning: Dante Alfonso Delgado Rannauro

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its method of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group notes with concern that the Government has so far not transmitted any information on the cases in question. As it has been over 90 days since the Working Group transmitted its letter, it has no other option than to give an opinion on the case.

3. The Working Group also notes that, although the Government has not challenged the complaints, it has been informed of the release of the detainee, whose case was dismissed by the ordinary Mexican courts.

4. In the context of the information received and having considered the available information, the Working Group is of the opinion that there are no special circumstances warranting its consideration of the nature of the detention of the persons released.

5. Without prejudging the nature of the detention, the Working Group decides to file the case of Dante Alfonso Delgado Rannauro, in accordance with paragraph 14 (a) of its methods of work.

Adopted on 17 September 1998.

OPINION No. 20/1998 (TURKEY)

Communication addressed to the Government on 12 January 1998

Concerning: Nurdan Baysahan, Elif Kahyaoglu, Deniz Kartal, Mahmut Yilmaz, Bulent Karakas, Ahmet Askin Dogan, Metin Murat Kalyoncugil and Ozgur Tufekçi

The State is not 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 conveys its appreciation to the Government for having provided the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

4. In view of the allegations made, the Working Group welcomes the Government's cooperation. The Working Group has transmitted the Government's reply to the source, which has to date not provided it with its comments.

5. According to the communication, Nurdan Baysahan, Elif Kahyaoglu, Deniz Kartal, Mahmut Yilmaz, Bulent Karakas, Ahmet Askin Dogan, Metin Murat Kalyoncugil and Ozgur Tufekçi, all students, were arrested on 1 May 1996 for having protested to the Turkish Grand National Assembly against the tuition fees for higher education establishments and against the policy of privatizing the universities. The source indicates that the students were expelled from their universities for having refused to pay their tuition fees. After their arrest, they were placed together in Ankara central prison. Their trial in the State Security Court began on 10 June 1996. According to the source, they told the court that they were students and not members of an illegal group and that their aim had been to obtain better conditions for studying. They also said, according to the source, that they had been subjected to pressure and torture, by means of which police officers had forced them to sign statements prepared by the police. The verdicts were made public on 6 December 1996: Bulent Karakas, Ahmet Askin Dogan, Metin Murat Kalyoncugil and Ozgur Tufekçi were each sentenced to 18 years and 20 days; Mahmut Yilmaz was sentenced to 12 years and 6 months; and Nurdan Baysahan, Elif Kahyaoglu and Deniz Kartel were each sentenced to 3 years and 9 months.

6. According to the source, the detention of the above-mentioned persons is arbitrary because the legal proceedings are contrary to articles 5, 9, 19 and 26 of the Universal Declaration of Human Rights and to principles 6, 11 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

7. In its reply of 9 April 1998 (supplemented on 19 May 1998), the Government says that Ahmet Askin Dogan, Metin Murat Kalyoncugil and

Ozgur Tufekçi used explosives during an illegal demonstration, and that they were members, along with Mahmut Yilmaz and Bulent Karakas, of Dev-Genç, an illegal organization, and took part in the illegal meetings and demonstrations of this organization. The three girls, Deniz Kartal, Elif Kahyaoglu and Nurdan Baysahan, are said by the Government to have assisted and sheltered armed groups. The Government confirms the above-mentioned sentences, pronounced by the State Security Court on 6 December 1996. In another letter, it informs the Working Group that, on 11 March 1998, the Court of Appeal annulled the judgement of the court of first instance, since the latter had taken its decisions "on the basis of inadequate evidence".

8. The source supplemented its original allegations with detailed descriptions both of the alleged torture of the detainees and of the trial in the State Security Court. According to the source, Deniz Kartal, Elif Kahyaoglu and Nurdam Baysahan were released in 1996. According to other information received by the Working Group, the trial in the State Security Court, to which the matter was referred back by the Court of Appeal, is taking place at the present time.

9. The Working Group considers that it does not currently have sufficiently precise and concordant information to render an opinion on the cases of the above-mentioned persons. While awaiting the outcome of the trial in the State Security Court, written comments by the source on the Government's reply and other information from the source, it transmits the additional allegations by the source as summarized in paragraph 8, to the Government and requests it to convey its response, if any, to the Working Group.

10. In the light of the above the Working Group decides, in accordance with paragraph 17 (c) of its methods of work, to keep the cases of the above-mentioned persons pending.

Adopted on 17 September 1998.

OPINION No. 21/1998 (INDONESIA)

Communication addressed to the Government on 5 May 1998

Concerning: Ratna Sarumpaet, Fathom Saulina, Ging Ginanjar, Bonar Tigor Naipospos, Alexius Suria Tjakaja Tomm, Wira, Joel Thaher and Aspar Paturusi

The State is not 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 in 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 conveys its appreciation to the Government for having provided the requisite information in good time.

3. (Same text as paragraph 3 of Opinion 1/1998.)

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 and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations of the source.

5. The facts as disclosed by the source reveal that Ratna Sarumpaet, a playwrite, actress and pro-democracy activist, was reportedly arrested on 10 March 1998 at the Horison Hotel in North Jakarta where she had called a meeting to discuss the consequences of the Indonesian economic crisis. She was allegedly arrested by the local chief of police, along with eight other persons attending the meeting, most of them either journalists or human rights activists. Those arrested were Fathom Saulina, Ging Ginanjar, a journalist and correspondent for an Australian radio station, Adi Hermawan, a journalist and former correspondent for Merdeka, Bonar Tigor Naipospos, a human rights activist who had been imprisoned in the past for distributing the works of a banned novelist, as well as Alexius Suria Tjakaja Tomm, Wira, Joel Thaher and Aspar Paturusi.

6. The source alleged that all the persons arrested were to be tried under Law No. 5 (PNPS/1963), which provides for up to five years' imprisonment for “public expression of feelings of hostility, hatred or contempt towards the Government”. On 31 March 1998, a legal challenge against the detention of Ms. Sarumpaet and the other seven persons named above was allegedly rejected by the District Court in north Jakarta. The source asserts that Ms. Sarumpaet and the five others had engaged in no violent or criminal activity and that they were merely exercising their right to freedom of expression.

7. The Government, in its response dated 24 June 1998, provided a clarification concerning the persons arrested on 10 March 1998.

8. According to the Government, on 9 March 1998, Ms. Sarumpaet organized a political meeting at Putrei Dnyung cottage in Jaya Ancol park, north Jakarta, without authorization from the local police office. In the absence of an authorization the meeting could not take place and Ms. Sarumpaet, instead, invited the audience to sing the national anthem and another national song. Thereafter, they prayed and observed silence for some time. The police apparently arrived on the scene and ordered the meeting to disperse. Upon Ms. Sarumpaet's refusing to accompany the police for questioning, and following a fight that ensued she, along with eight others, was arrested. Thereafter, the Government states, on 11 March 1998, the persons arrested were officially charged with violating Law No. 5 (PNPS/1963) on political activities and under articles 154 and 160 of the Indonesian Penal Code, under which any person who publicly gives expression to feelings of hostility, hatred or contempt towards the Government of Indonesia shall be punished by a maximum imprisonment of seven years. Article 160 of the Code stipulates that any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either with regard to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum term of imprisonment of six years.

9. Those arrested were also charged with violating articles 55 (1) and 218 of the Penal Code. Article 55 stipulates that those who perpetrate or take a direct part in or provoke others to perpetrate punishable acts shall be punished by law. Article 218 states that any person who, with deliberate intent, on the occasion of a rally or public meeting, does not immediately move away after three summons to do so by or on behalf of the competent authorities shall be punished with a maximum term of imprisonment of four months.

10. The Government informs us that on 17 March 1998 two of those arrested were released on bail. On 21 April 1998, Ms. Sarumpaet was apparently hospitalized at the Metropolitan medical centre. On 29 April 1998 an ICRC delegation visited all those detained at the Jakarta Police Headquarters detention unit and Ms. Sarumpaet at the medical centre. On 20 May 1998, the Government informs us that the prosecutor dropped charges against those arrested for violating Law No. 5 (PNPS/1963) and articles 154 and 160 of the Indonesian Penal Code, on the basis of insufficient evidence. However, charges of violating articles 55 and 218 of the Indonesian Penal Code were pressed and the panel of judges considered the time already spent in jail as sufficient punishment.

11. In its reply, the Government alludes to a new environment of more political freedom and reform emerging from nationwide demonstrations. It refers to the peaceful transfer of power and the establishment of a more democratic government. In its response, the Government recognizes the new political environment and acknowledges that the peaceful expression of views critical of the Government could not be considered a breach of the law. It is in this context that the Prosecutor dropped the charges for which prosecution

was initially sought. The Government has also placed on record its desire and resolve to undertake further reforms and is considering the release of those who were jailed for political reasons.

12. The Working Group is of the opinion that, in the light of the response of the Government and of its having placed its resolve on record, together with its acknowledgement that peaceful expression of political views and criticism of the Government cannot be considered a breach of the law, there is no necessity to render a decision, especially since those detained have already been released. The Working Group would have considered the case on its merits had the Government not recognized the need for reforms. The Working Group believes that appropriate legal reforms will take place to ensure that the peaceful expression of political views and criticism of the Government is not regarded as a penal offence.

13. In the circumstances set out above, the Working Group resolves to file the case and urges the Government to take further steps to reform the Penal Code to make its provisions consistent with the principles set out in the Universal Declaration of Human Rights.

Adopted on 17 September 1998.
