

OPINION No. 29/1999 (SUDAN)

Communication addressed to the Government on 31 May 1999; urgent appeal sent to the Government on 26 April 1999

Concerning Father Hillary Boma Awul, Father Lino Sebit and 24 others

The State is 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 thanks the Government for the information it provided in reply to its urgent appeal of 26 April 1999, but regrets that the Government has not replied to its request for information of 31 May 1999.
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 and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial 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, an arbitrary character (category III).
4. The source notes that the communication concerns the following individuals:

Father Hillary Boma Awul; Father Lino Sebit; Patrick Celestino Morajan; Leoboldo Odira Rahmatallah; Joseph Adhiang Langlang; Faustino Awol Aduroc; Hassan Abdallah Kenya Adam; Nyok Awar Palak Abu Zinc; Rizig Ambrose Angoya; Faustino Awol Odong; Charles Oling Dommic; Gabriel Marong Deng; Babiker Fadlallah Abdalla; Kual Boi Beda; Lual Lual Aciek; Mustafa Shamsoun Idris; Babikir Mohamed Idris; Karkoun Nawek Daoul; Francis Mabjor; Abdallah Col; Peter Kong; Hassan Abu Adhan; Louis Ojori; Joe Awet Dominic; Khalid Yang; and Garang Malek Bak.

5. Father Lino Sebit was arrested on 29 July 1998, at a military command station near Khartoum. Father Hillary Boma was arrested on 1 August 1998. The Working Group had previously addressed an urgent appeal to the Government of the Sudan on behalf of these two individuals on 4 September 1998; on 26 April 1999, another urgent appeal was sent on behalf of all the above individuals by the Working Group and the Special Rapporteurs on the independence of judges and lawyers and on extrajudicial, summary or arbitrary executions.
6. The other above-mentioned individuals were reportedly arrested in August or September 1998, in connection with bomb explosions at several civilian installations near Khartoum on 30 June 1998; no one is said to have been killed or injured in those explosions. It is believed that no arrest warrant was shown to the individuals. All of them reportedly were subsequently charged with various offences under the Sudanese Penal Code of 1961, including, under articles 21 and 24, criminal conspiracy; under articles 50 and 51, undermining the Constitution and waging war against the State; and under articles 63 and 65, violent opposition and creation of criminal organizations. Individuals charged with these offences risk the death penalty under articles 50 and 51 of the Penal Code. It is contended that the President of the Sudan has stated that anyone convicted of the crimes would be hanged and subsequently crucified.
7. According to the source, the above-mentioned individuals have been held in incommunicado detention since their arrest, at a military detention facility in or near Khartoum. Access to their families, doctors and friends is said to have been denied altogether and access to their legal representatives is said to have been extremely limited. It is contended that the authorities obtained confessions under duress from each of the individuals of their involvement in the bombings. The tribunal is said to have heard testimony from the defendants to the effect that their confessions were in fact obtained under duress.
8. The three military judges trying the case are said to report through the chain of command to the very authorities prosecuting the case, thereby gravely compromising the independence and impartiality of the tribunal. The source alleges that the above-mentioned individuals had no access to legal counsel during their interrogation by the security forces and that they were not allowed to obtain legal advice until 5 October 1998, the day their trial began. Allegedly, lawyers wishing to represent the individuals were not informed of the trial date until 24 hours before its start. The tribunal selected a team of lawyers from a proposed list. It is said that five of the proposed lawyers were rejected by the tribunal. Moreover, it is said that only 20 of the 26 individuals were produced in court and that the other 6 were tried in absentia.
9. During the trial, the lawyers had no opportunity to meet with their clients under conditions that would have ensured confidential communication. The trial is being conducted in secrecy; members of the public, observers and journalists are allegedly not permitted to attend.
10. The source alleges that the tribunal consists of three military officers and a civilian representing the Ministry of Justice. All of the accused, except one, are of the Christian faith and the majority of them come from southern Sudan and do not speak or understand Arabic, the language used in the court proceedings.

11. The prosecution reportedly has introduced at the trial confessions which were reportedly obtained under duress and pressure; the source finds it improbable that all of the accused confessed voluntarily. The prosecution has undertaken to re-enact the crime scenarios, as alleged in the charge sheet before the tribunal. The individuals re-enact their respective roles as “confessed” by them in the commission of offences statement. The source also reports that the prosecution’s case relies entirely on the confessions.

12. The above-mentioned individuals filed a petition in the Supreme Court of the Sudan questioning the jurisdiction of a military tribunal over the case and requesting its transfer to a civilian court. The Supreme Court has reportedly entertained the petition, and on 10 December 1998 stayed the proceedings. The petition is said to be pending for final hearing and disposal before the Supreme Court.

13. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the situation of human rights in the Sudan, whose mandate was established by resolution 1993/60 and renewed by resolution 1999/15 of the Commission on Human Rights (E/CN.4/1999/38 and Add.1).

14. In the light of the allegations that have been made, the Working Group welcomes the cooperation of the Government in respect of the urgent appeal of 26 April 1999. The Working Group has transmitted this reply to the source, which has communicated supplementary observations to the Working Group.

15. In its reply to the urgent appeal, dated 6 May 1999, the Government of the Sudan maintains that:

(a) Father Lino Sebit and Father Hillary Boma were arrested and charged in connection with the bombings in Khartoum on 30 June 1998;

(b) The bombings targeted vital civilian installations, including electric power stations and a theatre/movie house;

(c) The testimonies revealed that Father Lino Sebit and Father Hillary Boma and others were supervising the plot and financing it. Therefore, they were accused under sections 50 and 51 of the Criminal Law Act 1991 and are being tried before a military court under the Armed Forces Act 1986. Hence, they were arrested in accordance with the law;

(d) They are being treated in accordance with the law, which guarantees their right to physical integrity and not to be subjected to any inhuman or other forms of degrading treatment. The accused persons have been given due access to legal defence of their own choice of nine lawyers led by Abel Alier, ex-Deputy President of the Republic. They also have been given access to adequate medical care;

(e) The Constitutional Court has recently stayed the proceedings in the trial court in order to take decision as to the constitutional objection raised by the defence lawyers to the effect that civilians should not be tried before a military court.

16. In its supplementary detailed observations, the source observes that in its reply, the Government of the Sudan does not deny a substantial number of the allegations. The Government's statements regarding the remaining charges are disputed in the report of the Special Rapporteur of the Commission and by other reputable independent observers. Thus, the Government has not denied that:

(a) Six petitioners are being tried in absentia and that the Government has not investigated their disappearance, even though all six had been taken into custody by the security services. More disturbingly, the Government continues to refuse to investigate the disappearance of the six men even though there is credible evidence that some or all of them have been killed as a result of torture;

(b) The alleged victims' coerced confessions were used as evidence against them. The Government does not deny that it repeatedly interrogated and obtained "confessions" from some of the victims prior to the Government's appointing counsel, and that the Government continues to use these confessions as "evidence" against the detainees in violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur, in his report, confirmed that the above-mentioned individuals "were brought to trial before the military court on the basis of confessions made under duress and video evidence extracted from them at gunpoint" (E/CN.4/1999/38/Add. 1, para. 127), notwithstanding article 14 (3) (g) of the International Covenant on Civil and Political Rights, whereby no one shall be compelled to testify against himself or to confess guilt, and article 15 of the Convention against Torture;

(c) The alleged victims were denied the right to be treated by doctors of their choice. Thus, the Government does not deny that it refused to allow the petitioners to be visited and treated by their own doctors. As pointed out by the Special Rapporteur, the Government does not provide medical treatment to the petitioners;

(d) The alleged victims may be subject to execution by hanging or crucifixion.

17. As to the other, remaining charges, the source notes that the Government's claim that "the accused were treated in accordance with law, which guarantees their right to physical integrity ..." has been contradicted by the Special Rapporteur who, in his report, observed that all "the detainees interviewed ... bore marks of severe torture of which the Special Rapporteur has taken photographic evidence" (ibid.). Additional support for the victims' claim that they had been tortured is said to come from the military tribunal itself, which: (a) has refused to investigate their multiple claims of torture; (b) has prevented them from gaining access to independent physicians or witnesses; (c) has accepted undated and unauthenticated medical "reports" issued at the military's request; and (d) has shown no intention in investigating the disappearance of six of the victims who were last seen in the custody of security forces on a military base. These actions and inactions of the military tribunal are said to lend credence to the allegations that government security forces tortured the petitioners. Contrary to the Government's claim that the victims were "given due access to legal defence of their own choice", the source reaffirms that the Government selected counsel for the defendants and that their first access to defence counsel was more than two months after arrest and one day after the trial itself had started. Furthermore, it remains uncontested that the defendants were denied the right to communicate confidentially with their counsel.

18. Also, contrary to the Government's assertion that the tribunal allowed journalists and the media to attend the trial, it is reaffirmed that the trial has been conducted in almost total secrecy. Thus, the source notes that the defendants are unaware of any independent journalists or international media representatives having attended the trial. The secrecy of the trial is said to contravene article 14 (1) of the International Covenant on Civil and Political Rights.

19. The source recalls that despite the Government's assertion that the victims were tried for their alleged participation in bombings of civilian targets, the Special Rapporteur concluded differently, arguing that the case "bears all the features of a political trial. The accused are southerners, mostly Christian, and the best known, Father Hillary Boma, a priest, is an outspoken opponent of the regime" (*ibid.*, para. 126).

20. Finally, the source notes that it does not suffice for the Government to say that the accused were allowed to meet with their families while the court was in session. Even if this assertion were true, the Government's refusal to allow the defendants to receive visitors outside the court sessions would be a violation of international law, as the right of the accused is not limited exclusively to periods when the court is in session.

21. The Working Group notes that the Special Rapporteur on the situation of human rights in the Sudan made a number of specific observations concerning the trial of the above-mentioned 26 persons before the military court in his report to the Commission on Human Rights dated 9 April 1999 (E/CN.4/1999/38/Add.1). The Working Group notes that in its reply, the Government of the Sudan does not deny many of the charges levelled against it by the source, namely (a) that six of the accused were tried in absentia, and there are even fears that they have disappeared; (b) that the confessions obtained from some of the accused under duress have been used as evidence against them, in violation of article 15 of the Convention against Torture (this is confirmed by the Special Rapporteur in paragraph 127 of his report); and (c) that the accused have been denied the right to be treated by doctors of their choice. According to the Special Rapporteur, the Government of the Sudan has reportedly denied the accused medical treatment.

22. On the other hand, the Government denies that the accused have been tortured. Again in paragraph 127 of his report, however, the Special Rapporteur alleges that all the detainees he interviewed had been subjected to ill-treatment and that some of them bore marks of severe torture, of which he had taken photographic evidence. Likewise, the Government's claim that the accused had access to counsel of their choice was refuted by the Special Rapporteur, who noted that the first time such access had been granted was in early October 1988, more than two months after their arrest and one day after the trial had begun.

23. According to the Government, the accused are being prosecuted for causing explosions in Khartoum on 30 June 1998. The source contends that the trial is basically political in nature, a view shared by the Special Rapporteur, who notes that the accused are from southern Sudan, most are Christian and the best known of them, Father Boma, is a prominent opponent of the regime.

24. The source also reports that the accused are civilians, but that they have been tried before a special military court. It also recalls that, in the past, the Working Group has on several occasions stated that military courts are principally to blame in cases of arbitrary detention. Moreover, the proceedings against the above-mentioned individuals have been stayed by a decision of the Supreme Court of 10 December 1998 pending a ruling on the appeal lodged by the accused, who are challenging the competence of the special military court.

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

(a) The deprivation of liberty of Hillary Boma, Lino Sebit and the other 24 accused persons contravenes articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and is of such gravity as to give the character of arbitrariness to the deprivation of liberty (category III);

(b) The deprivation of liberty of the above-mentioned persons is arbitrary because it is apparently based on their political activities, thereby violating their freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights (category II);

(c) The Working Group on Enforced or Involuntary Disappearances should be seized of the matter of the apparent disappearance of six of the accused.

26. In the light of the foregoing, the Working Group requests the Government:

(a) To take all necessary steps to ensure the right of the above-mentioned persons to a fair trial;

(b) To set the accused free if it has no evidence other than confessions obtained under duress;

(c) To take appropriate measures to align procedures with international obligations arising from the international instruments to which the Sudan is a party.

Adopted on 30 November 1999