

OPINION No. 3/2000 (RWANDA)

Communication addressed to the Government on 5 October 1999

Concerning Monseigneur Augustin Misago

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 and reconfirmed it in resolution 2000/36. 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 provided 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 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. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group has transmitted the Government's reply to the source, which has not provided its comments to date.
5. According to the source of the communication transmitted to the Government, Mgr. Augustin Misago, born in 1943, former bishop of Gikongoro (Rwanda), was arrested on 14 April 1999 on the Kigali road. He is accused of participating in the murder of 150,000 Tutsis in his diocese, in particular of responsibility for the murder of 30 female students who allegedly asked him for protection.

6. Mgr. Misago was admitted to the Kigali central prison on 14 April 1999. A detention order was issued by the President of the Specialized Chamber of the Kigali Court of First Instance, apparently dated 20 April 1999. According to the source, the order was valid for two months beginning on 20 April 1999. However, Mgr. Misago is still being detained in the Kigali central prison.
7. According to the source, when arrested Mgr. Misago asked to be placed under house arrest for health reasons, as he suffers from hypertension. The request was refused, and the archbishop who visited him in prison on 8 June 1999 learned that he was suffering from serious respiratory problems.
8. The Specialized Chamber of the Court of First Instance opened proceedings against Mgr. Misago on 20 August 1999. The President of the Chamber read out the charges against him. Mgr. Misago argued that the copy of the entire file had been given to him late, that he had not had sufficient time to prepare his defence and that he was consequently requesting a postponement of his trial. His lawyers (two Rwandans and one Beninese) requested that he be released on bail in order to be able to appear of his own free will, and because his detention at that point was tainted with illegality. The President of the Chamber decided to render judgement in respect of both requests on 25 August 1999.
9. On 25 August 1999, at the second hearing, the court declared the request for postponement admissible and decided that Mgr. Misago's trial would begin on 14 September 1999. The court also found Mgr. Misago's application for release admissible, acknowledging that the detention order against him had ceased to be valid after 19 June 1999 and that the prosecution was doubly at fault, in that:
  - (a) It had not filed its case within the two-month time limit stipulated in the order;
  - (b) It had not requested an extension of the detention order to continue the investigation.
10. Nevertheless, despite the illegality of Mgr. Misago's detention, the President of the Specialized Chamber of the Kigali Court of First Instance decided to keep Mgr. Misago in detention.
11. In its reply, the Government acknowledges that Mgr. Misago's imprisonment from 20 June 1999 to 25 August 1999 was not based on a judicial warrant. It also acknowledges that that circumstance represents an irregularity, but stresses that it was raised before the Specialized Chamber, which also acknowledged that it was an irregularity. The Government points out that the Court decided the same day to extend Mgr. Misago's detention. To justify Mgr. Misago's detention from 20 June 1999 to 25 August 1999, the Government cites the gravity of the charge and the fear that Mgr. Misago's release might pose a threat to public security or that he might flee.
12. The Working Group notes the Court's acknowledgement that the detention of Mgr. Misago from 20 June to 25 August 1999 was illegal and considers that that detention represents a violation of the right to a fair trial, guaranteed, in particular, by article 10 of the

Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 11, paragraphs 1 and 3, and 13 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted on 9 December 1988. Having examined all the circumstances of the case, the Working Group is of the opinion that the violation of the above-mentioned norms relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty of Mgr. Misago from 20 June 1999 to 25 August 1999 an arbitrary character.

13. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Mgr. Misago from 14 April to 19 June 1999 was not arbitrary. Without prejudice to the question whether his detention for the period following 25 August 1999 was arbitrary, the Working Group declares his deprivation of liberty from 20 June to 25 August 1999 to be arbitrary as being contrary to article 10 of the Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 11, paragraphs 1 and 3, and 13 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted on 9 December 1988, and falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequently, 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 the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000