

OPINION No. 3/2002 (ERITREA)

Communication addressed to the Government on 5 March 2002

Concerning: Mahmoud Sherifo, Petro Solomo, Haile Woldensae, Ogbe Abraha, Berraki Ghebreslasse, Berhane Ghebregzabher, Stefanos Syuom, Slih Idris Kekya, Hamed Himed, Germano Nati and Mrs. Aster Feshazion

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. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

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 transmitted the reply provided by the Government to the source, which has given its comments thereon. 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, the response of the Government thereto and the observations by the source.

5. The cases summarized hereafter concerning 11 government officials have been reported to the Working Group as follows:

(a) Mahmud Sherifo, born in 1948, is a founding member of the Eritrean Liberation Front (EPLF) in 1970 and has been, since the independence of Eritrea (1991), a member of the Central Council of the ruling People's Front for Democracy and Justice (PFDJ), a member of the National Assembly, Minister of Foreign Affairs and Minister of Zonal Administration, and has replaced the President of the State in his absence;

(b) Petros Solomon, born in 1948, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Minister of Defence, Minister of Foreign Affairs and Minister of Fisheries;

(c) Haile Woldensae, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of the Economic Commission and International Cooperation, Minister of Finance and Development, Minister of Foreign Affairs and Minister of Trade and Industry. He is reported to be a diabetic;

(d) Ogbe Abraha, born in 1948, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Council, Secretary and then Minister of Trade and Industry, Minister of Labour and Social Welfare, Chief of Logistics, Administration and Health in the Ministry of Defence, Chief of Staff of the Eritrean Defence Forces. Mr. Abraha was dismissed from his post and stripped of his military rank by the President in February 2000. He is reported to be suffering from asthma;

(e) Beraki Ghebreslasse, born in 1946, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Education, Minister of Information, Ambassador to Germany, the Vatican, Poland, Hungary and Australia;

(f) Berhane Ghebregzabher, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Industry, Administrator of Hasmasien Province, Commander of the Ground Forces in the Eritrean Defence Forces as Major General, and Commander of the reserve army. Mr. Berhane Ghebregzabher was dismissed from his post and stripped of his military rank by the President of the Republic in 2000;

(g) Stefanos Syuom, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Finance, Head of Finance in the Eritrean Defence Forces as Brigadier General and Director-General of Inland Revenue;

(h) Salih Idris Kekya, born in 1950, joined EPLF in 1976 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Director of the Office of the President, Ambassador to Sudan, Vice-Minister of Foreign Affairs, Minister of Transport and Communication and Mayor of the town of Assab in 2000;

(i) Aster Feshazion, born in 1951, joined EPLF in 1974 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Head of Social Affairs in the Ministry of Social Welfare and Head of Personnel in the Anseba Zone. She is reported to be suffering from a stomach ulcer;

(j) Hamed Himed, born around 1955, has held, since independence, the following positions: member of the Central Council of PFDJ, member of the National Assembly, Head of the Middle East Department in the Ministry of Foreign Affairs, Administrator of the Senhit Province, Ambassador to Saudi Arabia, and Head of the Middle East and North Africa Department and of the Political Department in the Ministry of Foreign Affairs;

(k) Germano Nati, born in 1946, joined EPLF in 1977 and, since independence, has held the following positions: member of the Central Council and Executive Committee of PFDJ, member of the National Assembly, Administrator of the Gash-Setit Province and Head of Social Affairs in the Southern Red Sea Zone.

6. According to the source, the 11 senior officials mentioned above were arrested on 18 September 2001 in Asmara by members of the Eritrean Defence Forces after having written in May 2001 an open letter criticizing the concentration of powers in the hands of the President of the Republic and calling for reforms and for meetings of the National Assembly and the Central Council of PFDJ.

7. The source further states that these persons are being held in incommunicado detention, and their families have not been formally advised of the reasons for their arrest and continued detention, nor have they been informed about their whereabouts. Apparently, these persons have not been formally charged with any recognizable criminal offence or brought before a court. It is reported that the conditions of their detention are extremely harsh and that they may not be receiving essential medication. The source considers that these persons have been detained solely for the peaceful expression of their political concerns and that their detention violates their rights and freedoms guaranteed by articles 9, 10, 14, 19 and 20 of the Universal Declaration of Human Rights.

8. In its reply, the Government of Eritrea maintained that the detention of the persons mentioned in the communication was made in consonance with the existing Criminal Code of the country and other relevant national and international instruments. The Government explained that they were detained, inter alia, for conspiring to overthrow the legitimate Government of the country in violation of the relevant resolutions of the Organization of African Unity (OAU), colluding with hostile foreign powers with a view to compromising the sovereignty of the State, undermining Eritrean national security and endangering Eritrean society and the general welfare of the people.

9. Responding to the Government's reply, the source maintained that the answer provided by the Minister is wrong, in law as well as in fact. Legally, according to the Transitional Criminal Procedure Code (art. 29) and the Constitution (art. 17), any person accused of a crime has the right to be brought before a regular court in 48 hours, the right to be represented by legal

counsel and the other habeas corpus-related rights. As for the facts, the source stated that the accused had not been brought before a judicial body with the legally required assistance of counsel to answer the charges because the Government could not prove the serious allegations of collusion with a foreign hostile power. The truth of the matter, according to the source, is that the detainees are political prisoners imprisoned for airing their views on the governance of the country. The source adds that the persons mentioned in the communication are still detained in unknown places, and their family members and lawyers are not allowed to visit them.

10. It appears from the above that the 11 individuals mentioned in the communication are high-ranking political figures and leading officials of the ruling party, the People's Front for Democracy and Justice. According to the source, these individuals have been held in solitary confinement for over nine months without being formally notified of any charges against them and without being able to communicate with the outside world, including their families and lawyers. In its reply, the Government ignored these allegations.

11. The source alleges that the arrest and detention of the above-mentioned individuals are therefore a consequence of the publication of an open letter in which they criticized the concentration of power in the hands of the President of the Republic and called for power to be exercised democratically. A copy of this letter was attached to the communication and its contents reveal that it does indeed consist of political demands expressed in a peaceful manner. From the Government's viewpoint, these individuals were arrested for conspiring with enemy forces to overthrow the lawful Government.

12. From the contradictory statements of the source and the Government, it seems to the Working Group that the detention of these leading political figures is related to the ongoing political debate about the way the country is governed by the President.

13. The argument put forward by the Government to justify detention, namely that the opponents conspired to overthrow the regime led by the President, did not convince the Working Group because it lacked concrete evidence to substantiate its claims.

14. Therefore, the Working Group concludes that the political leaders in question were arrested and are being detained for having expressed their political opinions and convictions and that they are victims of having exercised their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights.

15. Moreover, the Working Group notes that the deprivation of liberty suffered by those individuals for over nine months is demonstrated by their isolation in one or more secret locations where they have had no contact whatsoever with lawyers or their families. In addition, there was no court ruling on the legality of their detention. All this constitutes a series of violations of such gravity as to confer on their deprivation of liberty an arbitrary character, which contravenes articles 9 and 10 of the Universal Declaration of Human Rights and principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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

The deprivation of liberty of Mahmoud Sherifo, Petro Solomo, Haile Woldensae, Ogbe Abraha, Berraki Ghebreslasse, Berhane Ghebregzabher, Stefanos Syuom, Slih Idris Kekya, Hamed Himed, Germano Nati and Mrs. Aster Feshazion is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within categories II and 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 to take the necessary steps to remedy the situation of those individuals by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 17 June 2002