

OPINION No. 23/2007 (Eritrea)

Communication addressed to the Government on 16 February 2007.

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

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 14/2007.)

⁴ Opinion No. 21/2007 (Egypt), Opinion No. 24/2007 (Egypt) (both to be published in Addendum 1 of the Working Group on Arbitrary Detention's annual report for 2008), Opinion No. 5/2005 (Egypt), paragraph 19 (E/CN.4/2006/7/Add.1), Decision No. 45/1995 (Egypt), paragraph 6 (E/CN.4/1997/4/Add.1), and Decision No. 61/1993 (Egypt), paragraph 6 (E/CN.4/1995/31/Add.1). See also Opinion No. 3/2003 (Egypt) (E/CN.4/2004/3/Add.1).

2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
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 by the source.
5. According to the information submitted to the Working Group: Messrs. Petro Solomo, Ogbe Abraha, Haile Woldensae, Mahmoud Sherifo, Berhane Ghebregzabher, Slih Idris Kekya, Hamed Himed, Stefanos Syuom, Germano Nati, Berraki Ghebreslasse and Ms. Aster Feshazion are former Eritrean government officials and are part of a group of 15 senior officials of the ruling People's Front for Democracy and Justice (PFDJ). The Government indicts them for having been openly critical of the Government policies and for having committed a crime against State security and sovereignty. In May 2001, they wrote an open letter to ruling party members criticizing the Government for "acting in an illegal and unconstitutional manner" and calling all PFDJ members and Eritrean people in general, to express their opinions through legal and democratic means.
6. It has been alleged that these persons have not been given access to legal assistance or authorization to receive visits from their relatives. None of them has been brought before a judicial court or charged with any criminal offence. Moreover, a request for habeas corpus was made to the Minister of Justice on 26 November 2001 pursuant to article 17 of the Eritrean Constitution, asking, inter alia, to reveal the place of detention of these 11 persons; to either charge and bring them before a court or release them; to guarantee that none of them would be ill-treated and to ensure their immediate access to lawyers of their choice, their families and adequate medical care. No response was obtained from the Government.
7. On the same date, an urgent communication was submitted to the Special Rapporteur of the African Commission on Human and Peoples' Rights on Prisons and Conditions of Detention in Africa, asking him to request the Government to reveal the whereabouts of the 11 detainees and urging that none of them be ill-treated. However, this action has allegedly not produced any results, either.
8. According to the source, these 11 persons are being kept in incommunicado detention without specific charges laid against them since their arrest in September 2001. They have furthermore not been tried yet or convicted of any crime. The detainees have not had access to defence lawyers or to their families, either.
9. Consequently, the source argues that the detention of these 11 persons is arbitrary as applicable international norms relating to the right to a fair trial spelled out in the International Covenant on Civil and Political Rights, to which Eritrea is a party, are not observed.
10. The Government, in its comments of 29 August 2007 to the communication sent by the Working Group, notes that "the 11 persons are detained for conspiracy and attempt to overthrow the legal government in violation of relevant United

Nations resolutions and international law; for colluding with hostile foreign powers with a view to compromising the sovereignty of the country; and for undermining Eritrean national security and the general welfare of its people”, which constitute violations of the Transitional Penal Code of Eritrea. The Government invokes articles 259, 260 and 261 of the Code, which are related to crimes against the State.

11. Regarding the allegations that the 11 persons have been detained for “peaceful expression of their opinions”, the Government emphasizes that they are factually unfounded and perpetrated by involved groups to cover up “grave crimes committed against the national security of the country at war time”. The Government stresses that expressing one’s opinions or belief is not considered a crime in Eritrea.

12. The Government also refers to the discussion held by the National Assembly at its fourteenth session from 29 January to 2 February 2002, about the report concerning the nature of the acts committed by the persons concerned. It concluded that these people had perpetrated “serious crimes against the nation and its people” and “mandated the Government to handle the matter appropriately and bring it to its logical end”.

13. Referring to the absence of a speedy and fair trial, the Government explains that the persons are accused of “conspiracy with hostile foreign powers at a time of war” and that the evidence gathered so far cannot be made public and forwarded to judicial proceedings since the war situation is not yet over. In the view of the Government, taking the persons to court under the circumstances, which does not allow for the declassification of crucial evidence, could seriously compromise a fair trial. In addition, there exist co-offenders who are not yet apprehended due to the situation. The Government also considers that the concern about legal representation is premature since the charges have not yet been defined and submitted to the accused.

14. Concerning the detention conditions, the Government stresses that making the place of detention public and allowing relatives to visit detainees is not possible because of the “particular time”. The vulnerability of the country, whose sovereign territory is considered by the Government to be still under occupation, justifies the “non-fulfilment of some elements of due process of law for the detainees”. Nevertheless, the Government states that they are being treated humanely and have access to medical treatment.

15. On 11 September 2007, the source has commented on the reply of the Government. It notes that the allegations of conspiracy are not founded and already used before the African Commission on Human and Peoples’ Rights (ACHPR) on 20 May 2002. It also adds that the letter to the members of the PFDJ was a reaction to the efforts to convene a meeting of the Central and National Council and its content is public and well known.

16. Concerning the report of 2002 which led the National Assembly to the conclusion that the detainees have committed crimes, the source notes that State’s political organs are not competent to establish guilt. It also invokes a letter of 6 February 2003 to ACHPR in which the Government recognized the separation of powers in the country and the exclusive competence of the judiciary regarding issues like habeas corpus. However, the detainees have never been brought before a judge and no formal charges have been formulated against them.

17. For the source, the reference to a wartime situation to justify the lack of trial and other judicial guarantees is not relevant. It adds that even the Government, in its communication to ACHPR, has never invoked the state of war as a justification for the prolonged incommunicado detention. Furthermore, a peace agreement was signed between Eritrea and Ethiopia in June 2000 and the sporadic border disputes are not considered as an armed conflict, an assessment which is also supported by the United Nations (Security Council resolution 1767 (2007)).

18. Regarding the state of public emergency and the conditions imposed by article 4 of the International Covenant on Civil and Political Rights upon countries which proclaim such state, the source notes that Eritrean Government has “declined both to officially proclaim a state of public emergency and to inform the other States parties that it derogated from its human rights obligations. Furthermore, a “derogative measure leading to incommunicado detention for six years can impossibly be seen as strictly required”, and infringements of the detainees’ human rights are not justified by the need for confidentiality or the existence of other co-offenders in the country.

19. The source notes that the detainees have been held incommunicado since September 2001 at an unknown place and without any contact. However, incommunicado detention is considered by the Human Rights Committee as an inhuman treatment and a six year incommunicado detention cannot be justified in any case. Concerning the charges, the source considers that the fact that they have not yet been formulated amounts to a flagrant human rights violation as much as the denial of access to a lawyer.

20. The source also considers that, despite the pledge made by the Government in 2002, the detainees’ human rights have been violated during the past six years. The Government also disregarded the findings of ACHPR in November 2003, which held that the Government has violated human rights and asked for the immediate release of and compensation for the 11 detainees.

21. Regarding the government statement that the detainees are being humanely treated and have access to medical treatment, the source concludes that the main issue in this case is to ascertain that the detainees are still alive and well.

22. On 9 April 2002, a communication was sent to the ACHPR concerning these 11 detainees. The African Commission, at its 34th ordinary session from 6 to 20 November 2003 in Banjul, examined the communication and found the State of Eritrea in violation of articles 2, 6, 7, paragraph 1, and 9, paragraph 2, of the African Charter on Human and Peoples’ Rights, but also of international human rights standards and norms. ACHPR also notes that the incommunicado detention is a “gross human rights violation that can lead to other violations” and the “prolonged incommunicado detention and/or solitary confinement could be held to be a form of cruel, inhuman or degrading punishment and treatment” and considers that “all detentions must be subject to basic human rights standards”. The whereabouts of detainees should be known and they must have prompt access to a lawyer and their families, as well as been promptly brought before a judge, and have proper detention conditions. ACHPR has also urged the State of Eritrea to order the immediate release of the 11 detainees and recommended the compensation of these persons.

23. The Working Group observes at the outset that in its reply, the Government confirms the facts alleged by the source, facts which constitute a serious violation of human rights entrenched in the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples' Rights as it has been established by the African Commission on Human and Peoples' Rights in its decision 250/2002 taken during its 34th session, held from 6 to 20 November 2003. Furthermore, the Working Group has already adopted Opinion No. 3/2002 regarding the same case and the same individuals, in which it considered the deprivation of liberty of these 11 persons as being arbitrary.⁵

24. The Working Group notes that no new elements have been received regarding this case since then except for the decision of the African Commission on Human and Peoples' Rights to which it has already referred to above. Consequently upon the above-mentioned Opinion rendered on 17 June 2002, the Working Group has requested the Government of Eritrea to take the necessary steps to remedy the situation of these 11 individuals and to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights. However, the Government, in its reply, does not make any reference to the recommendations issued in Opinion No. 3/2002 and clearly confirms that it has not taken any measures to remedy the situation of Messrs. Petro Solomo, Ogbe Abraha, Haile Woldensae, Mahmoud Sherifo, Berhane Ghebregzabher, Slih Idris Kekya, Hamed Himed, Stefanos Syuom, Germano Nati, Berraki Ghebreslasse and Ms. Aster Feshazion.

25. The Working Group further notes that the Government has neither formally proclaimed a state of emergency nor informed the other States parties of the International Covenant on Civil and Political Rights of any provisions from which it has derogated as required by article 4 of the Covenant. Even if the Government had, any person deprived of his liberty would still have to be presented before a competent judicial authority and informed in detail about the charges against him.⁶

26. The deprivation of liberty suffered by these 11 individuals since September 2001 at a secret location, during which they have had no access to legal counsel or contact with their families, have not been presented before a judicial authority, and have not been formally charged, seriously contravenes article 9 of the International Covenant on Civil and Political Rights.

27. The Government still attributes to these 11 persons the commission of crimes against the sovereignty, the safety and the well-being of the State of Eritrea. However, it does not define exact criminal charges against them that relate to actions, which have been described by the source of consisting of written declarations urging the population of Eritrea to express criticism in a democratic manner against the performance of the Government. Their detention solely on these grounds, therefore, constitutes a clear violation of the rights of these 11 persons to exercise their right to freedom of opinion and expression as recognized by article 19 of the International Covenant of Civil and Political Rights.

28. The Working Group notes that the obvious unwillingness of the Government to comply with the Working Group's Opinion No. 3/2002 and recommendations to put

⁵ E/CN.4/2003/8/Add.1, p. 54.

⁶ See Human Rights Committee, general comment No. 29 (2001), paragraph 16.

an end to the detention of Mr. Petros Solomon and the ten others is particularly worrying.

29. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Messrs. Petro Solomo, Ogbe Abraha, Haile Woldensae, Mahmoud Sherifo, Berhane Ghebregzabher, Slih Idris Kekya, Hamed Himed, Stefanos Syuom, Germano Nati, Berraki Ghebreslasse and Ms. Aster Feshazion is arbitrary, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which Eritrea is a party, and falls within categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.

30. Consequent upon the Opinion rendered the Working Group repeatedly requests the Government to remedy the situation and to bring it into conformity with the provisions of the International Covenant on Civil and Political Rights. The Working Group believes that under the circumstances the adequate remedy would be the immediate release of Mr. Petro Solomo and the ten others.

Adopted on 27 November 2007