

### **Opinion No. 38/2008 (The Sudan)**

**Communication addressed to the Government on 22 August 2008**

**Concerning Messrs. Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed**

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group regrets that the Government did not provide it with the requested information.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)

4. According to the source, Messrs. Ishag Al Sanosi Juma, more than 70 years of age, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, born on 17 December 1989, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed have all been found guilty and sentenced to death on 10 November 2007 by a court in the Bahri district in northern Khartoum for the murder of Mr. Mohamed Taha Mohamed Ahmed. They are currently detained on death row at Kober Prison in Khartoum.
5. All 10 defendants are of Darfurian origin and were arrested in and around Khartoum between 9 September and December 2006 by National Intelligence and Security Services (NISS) and police forces after the General Prosecutor, by decree, had established an investigation team of high-profile state representatives to handle the case. Mr. Mohamed Taha was found beheaded in the Kalakla area of Khartoum on 6 September 2006, after reportedly having been abducted by armed men the previous night. The Sudanese authorities declared that they would find the perpetrators.
6. The source informs that the arrests carried out in response to the murder of Mr. Mohamed Taha, who was the founder and editor-in-chief of the Sudanese daily newspaper *Al Wifaq*, formed part of a wider trend of arrests and detentions of men and women of primarily Darfurian origin, most of them ethnic Fur. According to information later provided by the police investigator in court, a total of 73 arrests had been carried out.
7. On 11 November 2006, defence lawyers presented a written request to the Prosecutor for Khartoum State who was heading the investigation team to meet with the defendants. In his response of 22 November 2006, the prosecutor rejected the request by the lawyers on the grounds that this might affect the investigation. Lawyers appealed to the General Prosecutor to overturn this decision. On 11 December 2006, the General Prosecutor issued a decision that the lawyers should be given access to the defendants. Defence counsels were first granted access to some but not all of the defendants in January 2007, when they had been transferred to the remand section in Kober Prison.
8. On 21 November 2006, the Minister of Justice officially presented the first findings of the investigation team, indicating that all 28 suspects had been identified and were being held in detention while 41 people were to be released for insufficient evidence. However, arrests of Darfurians continued, lending weight to concerns that the murder investigation may have been serving as a pretext to conduct politically motivated arrests among the Darfurian community in Khartoum.
9. On 10 February 2007, the Ministry of Justice announced that the investigation into the murder was complete. On 28 February 2007 the trial began for originally nineteen defendants, all but one of Darfurian origin (majority ethnic Fur). Nine of them, including two women, one of whom a minor, were acquitted and released on 27 August 2007. At least one of the acquitted was again detained incommunicado by the NISS between 21 October 2007 and 21 January 2008 for alleged links with the "Sudanese Liberation Army/Abdel Wahed" (SLA/AW), however, never charged or tried.
10. The prosecution's case relied almost exclusively on statements from the defendants obtained by the police during the pre-trial investigation. These statements were made during up to four months of incommunicado detention —without permission of access to defence counsel and family visits— in the police-run Forensic Evidence Department and Criminal Investigations Department, as well as in NISS detention facilities in Khartoum.
11. All 10 defendants revoked their confessions in court, stating that they had been threatened, intimidated and subjected to torture and ill-treatment as a means to compel them to make the incriminating statements that the investigators instructed them to make. There are multiple reports of detainees being beaten with hands, hoses, and plastic pipes. Five

detainees reported having been beaten while being bound or suspended from the ceiling, in some cases suspended by their feet and hung upside down. One detainee was reportedly tied by his genitals and another sodomized with a glass bottle. One defendant had been burnt with fire and electricity and that petrol was poured over him to threaten him that he would be killed; he then reportedly told the interrogators what he had been asked to say. Some of the acquitted also confirmed that they had been forced to confess the murder upon instructions by the police investigators. Two released suspects reported that they had been taken to the prosecutor's office after having been tortured or ill-treated. One stated that he went before the prosecutor with his clothing caked in blood. During the investigation he had reportedly been exposed to police dogs that assaulted and bit him and he did not receive any medical treatment for the wounds he had sustained.

12. When the trial proceedings began, many of the defendants still bore clearly visible physical traces of injuries and scars on their arms, hands, thigh, and shoulders as a result of the alleged torture. One of the defence lawyers reported that physical injuries sustained under torture had been seen by co-detainees who were later released, but these were unwilling to testify in court on behalf of the defendants out of fear for reprisals.

13. On 3 February 2007, after meeting with the defendants, the counsel for the defence submitted a request to the prosecutor heading the investigation for the defendants to be medically examined on the grounds that they were feared to have been subjected to severe torture. The prosecutor turned down the request, arguing that he no longer had jurisdiction over the request as the case had been transferred to court.

14. On 24 March 2007 defence lawyers submitted a request to the presiding judge that the defendants be granted medical examinations by doctors of their choice, citing specific examples of the severe torture alleged by defendants and the injuries that had been observed by the lawyers. The judge referred the request to the prosecutor overseeing the investigation who dismissed the allegations of torture, stating that the prison administration of Kober Prison, to which the defendants had since been moved, would not have accepted the defendants into custody if they had complained of any health problems at the time they were admitted in January 2007. The investigation team alleged that they have records proving that the defendants were in good health, but did not provide any documentation. While the prison administration routinely conducts basic examinations upon admission, the general purpose is to register a detainee's overall health in order to absolve the prison administration of any later claims of mistreatment. The judge eventually declined the defence's request for medical examinations on the grounds that it was made during the stage of the trial reserved for the prosecution to present its case. No written decision was issued by the court. The defence counsel made several further verbal requests for medical examinations into the allegations of torture, but the judge denied these requests each time, stating that they were not made at a suitable point in the trial. None of the defendants was ever examined by a doctor.

15. Several defendants also stated that they were unaware that they were confessing before a judge. Some defendants stated that the interrogators threatened them with further torture should they deviate from the statement they were told to make before the judge, or should they tell the judge that they had been tortured or ill-treated. Some defendants reported that they were forced into recording filmed statements, which the prosecution began to present to court from 17 March 2007 onwards.

16. Despite the fact that all defendants retracted the confessions allegedly given by them, testifying that they had given these statements under torture or ill-treatment while held incommunicado, these statements were introduced repeatedly during the trial proceedings, both by the police investigators and by the judge, and admitted as evidence. In addition, the prosecution presented filmed statements given by the defendants during the pretrial investigation, in which they reiterated the same facts about their participation in the

crime. The prosecution also presented a DVD containing a filmed re-enactment showing the defendants acting out the crime. The prosecution alleged that the defendants had voluntarily given their written and filmed statements and agreed to re-enact the crime. However, it could be observed that during the filmed statements and re-enactments in court and that the defendants often appeared weak and confused, even bloodied and beaten. In one case, a defendant turned around to an unseen interrogator to seek clarification on what he was supposed to say. It could also be noticed that the defendants were confined in leg shackles.

17. The main material evidence presented by the prosecution consisted of a bloodied knife found at the home of the first defendant, a bloodied garment worn by the victim, and some papers allegedly found during searches of several defendants' homes. An investigator testified in court that the blood on the knife was tested at a forensics laboratory and was conclusively not the blood of the victim. The prosecution did not produce any evidence of fingerprints on the knife, or other evidence which would link the alleged murder weapon to the defendants. The prosecution admitted that the blood found at the alleged crime scene also did not match the blood of the victim. No other evidence was found at the alleged crime scene to prove that the crime had in fact taken place there, and that it had been committed by the defendants. The investigation team attributed this absence of material evidence at the crime scene to the criminal shrewdness of the defendants who had allegedly removed all traces of the crime. This assertion would appear to presume the guilt of the defendants, rather than establish this through proof.

18. Among the papers seized in the searches of the defendants' homes were the issue of *Al Wifaq* containing the offensive article on Darfurian women, allegedly opened to the page containing the article, and other newspaper articles highlighting an execution method used in Iraq that resembled the way in which Mr. Mohamed Taha was beheaded. A further piece of evidence presented by the prosecution was a handwritten piece of paper found at the home of the first defendant that contained the words "murder group" and "arson group". Additionally, one prosecution witness testified that the vehicle that was allegedly used to abduct Mr. Mohamed Taha on the night of his murder had been in the possession of one of the defendants. No evidence was produced to establish that this defendant was actually seen participating in Mr. Mohamed Taha's abduction or murder.

19. There were additional factors that impacted on the defendants' right to a fair trial. Defence lawyers were subject to anonymous threats, and in one instance a defence lawyer was himself arrested, apparently in a deliberate effort to weaken the case of the defence. On 2 September 2007, Mr. Kamal Omar, head of the defence counsel and legal advisor to the Popular Congress Party (PCP), was arrested at his home on allegations of defamation. He was held in solitary confinement for one night on the accusation that he had defamed the police through detailing the torture of the ten defendants in the Mr. Mohamed Taha case in an article he had published in the PCP's newspaper the previous week. Mr. Kamal Omar was released from police custody without charge at 5 pm on 3 September 2007, after the day's court hearing in the Mohamed Taha trial had concluded.

20. Interrogators allegedly also threatened arresting and sexually assaulting some of the defendants' wives and daughters. Female relatives of several defendants were in fact arrested and detained for up to several weeks, among them the pregnant wife of one of the defendants. One defendant's mother was reportedly detained and undressed in front of her son in order to force the accused into confessing. Investigators denied that this event had occurred and stated that the defendant's mother had been summoned to try to convince the defendant, who was allegedly on a hunger strike, to eat.

21. In addition, there was also a lack of public scrutiny and discussion about the investigation and trial. From the beginning of the investigation, the authorities imposed a ban on newspapers and media reporting on the investigation, in a stated effort to prevent

influencing the course of justice. Direct censorship of privately owned print media by the NISS, a practice used to restrict independent reporting on politically sensitive issues, was reinstated systematically from 6 September 2006, the day the body of Mr. Mohamed Taha was found. On 1 February 2007, three weeks before the start of the trial, the Minister of Justice imposed a new ban on publishing stories related to the trial, which applied to all media outlets except the state-run SUNA (Sudan News Agency). Papers that published articles on the murder trial were temporarily suspended. On 21 February 2007, the presiding judge met privately with journalists in order to inform them of a decision by the court to forbid photography or any news reporting inside the courtroom by any other outlet than SUNA. This measure was in accordance with article 133 of the Criminal Procedure Act of 1991, which allows the court to exclude “the public generally or any person of those attending” at its discretion. On 12 March 2007 journalists from four Arabic-language newspapers —*Al Sudani*, *Akhbar Alyoum*, *Al Dar*, and *Al Adwa*— were barred entry to the courthouse by the police and were informed that they would be forbidden to attend the court session unless they provided a written apology for having published commentary on the trial. On 27 March 2007, after protests from numerous dailies, the presiding judge granted newspapers the right to factually report on the trial without any independent commentary or analysis. However, because the gagging order was never definitively retracted and because NISS censorship of newspaper contents has continued, journalists have remained uncertain about the extent to which they could comment on the trial and have generally erred on the side of caution, rather than risk problems with the authorities.

22. On 10 November 2007, the 10 remaining defendants mentioned above were sentenced to death. In its judgment of November 2007 the court described the evidence presented by the prosecution as sound. The verdict relied heavily on the statements made by the defendants. It did not establish that any other evidence presented by the prosecution had independently established the defendants’ guilt or the veracity of the statements. The court implicitly accepted that the statements corresponded to the truth, but it did not explain how it had reached this conclusion. The judge gave no justification for not investigating the allegations of torture and ill-treatment made by the defendants.

23. In its ruling of 10 March 2008 the Court of Appeal upheld the verdict of the first instance court. It based its decision on a judicial precedent from 1975 in which a retracted confession was ruled to be acceptable as strong evidence. The defence lawyers proceed with further appeals, but have raised concern that these may not lead to a genuine review of the judgment in light of the political nature of the case.

24. Mr. Mohamed Taha generated much political controversy as editor of *Al Wifaq*, an Arabic-language newspaper with an Islamist tendency critical of the Government. In 2005 “Ansar al Sunna”, an Islamist group, filed a complaint against the paper for an article published in April 2005 that questioned the lineage of the Prophet Mohamed. Mr. Mohamed Taha was subsequently charged with apostasy, detained, tried, and eventually acquitted. However, the court imposed a fine on him and suspended *Al Wifaq* for three months. In response to the publication of the article, Islamist groups held demonstrations outside the court and called for Mr. Mohamed Taha to be condemned to death. The article had angered Muslims of diverse sects, and after protests had called for his execution, Mr. Mohamed Taha apologized publicly, stating it was not his intention to insult the prophet. Other *Al Wifaq* articles also stirred up protests from several other groups, including the opposition Popular Congress Party (PCP) party and Darfurian groups. In January 2006 *Al Wifaq* published an article questioning the morality of Darfurian women in the context of widespread reports of rape in Darfur. This article prompted a lawsuit for defamation by a group of Darfurians, among them several of the defendants in the trial of Mr. Mohamed Taha trial, which was dismissed by the Minister of Justice.

25. The prosecution argued during the trial that the murder was well-organized and had been planned for several months before it was carried out. The alleged motive to murder Mr. Mohamed Taha stemmed from the defendants' indignation over an article that was published in *Al Wifaq* on 6 January 2006. The article had downplayed the widespread reports of rape and sexual violence taking place in the course of the conflict in Darfur and instead questioned the morality of Darfurian women and girls. After the publication of the article, some of the defendants and other incensed Darfurians filed a lawsuit for defamation against Mr. Mohamed Taha, but the case was later dismissed by the Minister of Justice. The prosecution cited the frustration over the failed defamation case as one of the motives that led the defendants to murder Mr. Mohamed Taha. The chief investigator testified in court that the defendants believed that Mr. Mohamed Taha had lobbied the Minister of Justice to dismiss the defamation case and that he had sought the intervention of the Vice-President of Sudan, after which the defendants allegedly resolved to hold Mr. Mohamed Taha responsible for interfering in their case. The prosecution alleged that the defendants consequently began holding meetings at which they meticulously planned to kill Mr. Mohamed Taha. It was alleged that they established and participated in a secret cell to carry out the plan and that they planned to carry out the murder in a particularly brutal way, inspired by assassinations of alleged infidels by radical Islamist movements in Iraq.

26. The source alleges that the detention of the above-mentioned persons is arbitrary, since their arrest, detention, trial and conviction violated articles 6, 7, 9, 10, and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Sudan is a State party and which form an integral part of the Sudanese national Bill of Rights. Article 27(3) of the Interim National Constitution of the Republic of the Sudan (2005) states that "all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill [of Rights]", as well as several provisions of the Sudanese Criminal Procedure Act.

27. In particular, article 79 of the Sudanese Criminal Procedure Act allows the police to keep an individual detained in custody for a period of 24 hours for investigation purposes, but the person has to be presented to a prosecution attorney thereafter. The prosecution attorney can extend the detention for a maximum of three days if the investigation is still ongoing. If more time for investigation is needed a magistrate may no more than twice renew the detention for one week at a time, stating the reasons for the extension. In cases where an individual is charged, the superior magistrate may order further extensions of detention for the purposes of inquiry every week. The period of detention shall not in total exceed six months (except with the approval of a competent head of the judicial organ).

28. According to the above provisions, the defendants should have been presented to a prosecutor within the first days of their detention. In addition, they should have been presented to a judge after a maximum of 18 days following their arrest, but the defendants reportedly first saw a judge after up to several months, and even then were only taken before the judge in order to register the confessions that had been coerced through torture or other forms of ill-treatment.

29. It is alleged that the prosecutor inspected the defendants in custody on a daily basis, in accordance with article 81 of the Criminal Procedure Act, however, a number of the defendants rejected that assertion. If in fact the prosecutor was visiting the defendants daily, it seems he did not clarify his role as a prosecutor and the purpose of his visits, which casts doubt on his role of overseeing the investigation and the conditions of detention.

30. Furthermore, the Criminal Procedure Act defines some basic rights of arrested persons. Article 83, paragraph 3, of the Criminal Procedure Act states that "an arrested person shall have the right to contact his advocate, and the right to meet the prosecution attorney, or the magistrate", though no specified timeline or purpose is stipulated. However, the majority of the provisions of the Criminal Procedure Act ascribe powers to the police,

investigators, and the judiciary, with few rights conferred upon the suspect or detainee. The investigation team stated that it had abided by the Criminal Procedure Act and presumed the innocence of the defendants.

31. The legal protections for detainees are very weak in the Sudanese legal system. The Criminal Procedure Act does not make any provisions for the presence of legal counsel in interrogations or the right of the detainee to receive legal advice during questioning or when recording so-called “judicial confessions”, i.e. statements recorded by a judge during a police investigation. While article 83, paragraph 3, of the Criminal Procedure Act grants the arrested person the general right to contact his advocate, there are no provisions that state how frequently the detainee may meet with legal counsel or guarantee the detainee the right to meet with legal counsel confidentially. Moreover, there is no provision to protect detainees from incriminating themselves. However, article 60, paragraph 2, of the Criminal Procedure Act does require the magistrate, before whom the accused confesses, to confirm that the accused is admitting his guilt voluntarily and to read the confession back to the accused.

32. There are some provisions under Sudanese law that would allow the admissibility of evidence obtained under torture or other ill-treatment in judicial proceedings. However, officials who commit torture or other ill-treatment may be punished in accordance with the Criminal Act. Article 89 of the Criminal Act, which governs the conduct of public servants, states that intention “to cause injury to any person” shall be punishable by either imprisonment of up to two years or a fine, or by both. Article 90, which governs the conduct of public servants, authorized by law “to commit persons for trial or to confinement”, states that any public servant who commits acts “knowing that in so doing he is acting contrary to law” may be punished with imprisonment of up to three years or with a fine.

33. Article 81 of the Criminal Procedure Act provides for the daily inspection of detainees by the prosecution attorney, who is tasked with verifying “the validity of procedure and abidance by treatment of the arrested persons in accordance with the law”. A special prosecutor from the Criminal Investigation Bureau had been appointed to “ensure that the human rights of the detainees held as part of the Mohamed Taha murder investigation are respected, that they are treated with dignity and kept in good conditions”; they should facilitate medical care, if needed. However, the source submits that the allegations above cast serious doubts on the role of the prosecutor in overseeing detention procedures.

34. The source reports that there is some ambiguity in Sudanese legislation about the legality of the use of torture and ill-treatment in generating evidence. Article 10, paragraph 1, of the 1993 Evidence Act explicitly allows for evidence which has been “obtained through an improper procedure” to be admitted in judicial proceedings. However, article 19, paragraph 1, stipulates that “a person who makes an admission [of responsibility] must be of sound mind [and] capable of choice”. The Criminal Procedure Act does not explicitly rule out the use of torture in interrogations, but article 43, paragraph 2, stipulates that “No inquiry authorities... shall influence any party to the inquiry by... coercion or hurt to force him to deliver... any statements or information”. Article 20, paragraph 1, further provides that “in criminal matters a confession shall not be proper when it comes as a result of inducement or coercion” and article 21, paragraph 3, provides further that “a confession shall not constitute conclusive evidence if... there is doubt as to its truth”. According to Sudanese lawyers, this provision allows judges to attribute less weight to confessions obtained under torture, and should preclude that defendants are sentenced on the basis of such confessions in the absence of other strong evidence.

35. According to the source, the death penalty is not prohibited under international law and is legal in Sudan in the cases of “retribution, *Hudud*, or punishment for extremely

serious offences” (art. 36, para. 1, Interim National Constitution), but its application of the death penalty in the present case would amount to a violation of the right to life given the serious irregularities of the trial described.

36. The imposition of the death penalty also has implications for the conditions in which the prisoners are held: death row prisoners in Sudan are held in a separate section of the prison and are obliged to continuously wear iron leg shackles. They are detained together with prisoners whose death sentences have been confirmed on final appeal and may witness them being taken away for execution, resulting in heightened anxiety about their own fate.

37. In addition to the general restrictions on the imposition of the death penalty, international law also prohibits the use of the death penalty against persons under the age of 18 (art. 6, ICCPR). Article 10 promotes the separation of juveniles from adults in legal proceedings, and article 14, paragraph 4, of the International Covenant on Civil and Political Rights states that a case against a juvenile shall take the defendant’s age into account and be conducted in a way that promotes his rehabilitation. The Sudan is also a State party to the Convention on the Rights of the Child which prohibits arbitrary detention and torture of persons under the age of 18 and stipulates that the treatment of the child shall take into account “the needs of persons of his or her age” (art. 37, CRC).

38. Sudanese law limits the use of the death penalty to persons below the age of 18 and above the age of 70. The Sudanese Interim National Constitution provides that capital punishment “shall not be imposed on a person under the age of 18 or a person who has attained the age of 70” (art. 36, paras. 1 and 2). Article 47 of the Criminal Act provides for the possibility of alternative sentencing for “an elderly who has attained seventy years of age” subject to the opinion of the court. Article 193 of the Criminal Procedure Act provides for the same. The 2004 Child Act prohibits the application of the death penalty on children (art. 62, lit (d)). Article 74, paragraph 1, of the Child Act provides that a criminal court should refer a juvenile to a “competent child court”, which would then rule on what is suitable for the juvenile. According to article 59, paragraph 1, of this Act, “the criminal court shall not pass any penalty or measures against the child where he is convicted and shall send the record to the competent Children’s Court to decide such”.

39. Despite these safeguards under national and international law, the court imposed the death penalty on two defendants who should have been exempt; one man over the age of 70 and a minor believed to be 17 years old (16 at the time of the crime). The juvenile defendant did not have documentation to prove his age, but his family has stated that he was born on 17 December 1989 and that his birth certificate was lost in a fire at the family’s home. The police investigator claimed that the defendant was 18 years of age at the time of the crime. Neither the prosecutor who brought the case nor the judge is known to have made efforts to determine the actual age of the defendant and to apply the provisions concerning minors, should he be found to have been under the age of 18. Instead, the defendant was tried and sentenced in the same case and court as the other defendants.

40. By note verbale dated 18 November 2008, the Government of the Sudan requested from the Working Group an extension of the 90 days time limit for responding to the allegations of the source. The Working Group decided not to grant this request, not only because it was not motivated in conformity with its methods of work, but mainly because of the urgency of resolving this case, as the persons involved have been sentenced to death. Paragraph 16 of the Working Group’s methods of work provides it with discretionary powers to grant a further period of a maximum of two months in which to reply, if the Government so desires and informs the Group of the reasons for requesting an extension. The Government of the Sudan, in its request, indicated that the investigations were still ongoing. Notwithstanding this, the Working Group considers that the 90 days deadline for the Government to respond provides for sufficient time as it did not find substantial



grounds in the Government's request justifying the delay in the response to the allegations of the source as transmitted to the Government, particularly when the lives of the ten defendants are at stake as is the case here.

41. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made, notwithstanding that the Government has failed to offer its version of facts and explanations on the circumstances of the case within the 90 days deadline.

42. The Working Group considers that all persons to whom the source refers above have not had a fair and public hearing as established in article 14 of the International Covenant on Civil and Political Rights.

43. All 10 defendants (Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed) accused of murdering Mr. Mohamed Taha, revoked their confessions in court, stating that they had been threatened, intimidated and subjected to torture and ill-treatment as a means to compel them to make the incriminating statements that the investigators instructed them to make. These statements were made during up to four months of incommunicado detention —without permission of access to defence counsel and family visits— in the police-run Forensic Evidence Department and Criminal Investigations Department, as well as in NISS detention facilities in Khartoum.

44. A request was made to the prosecutor heading the investigation for the defendants to be medically examined on the grounds that they were feared to have been subjected to severe torture. However, the prosecutor and the judge turned down the request despite the fact that when the trial proceedings began, many of the defendants still bore clearly visible physical traces of injuries and scars on their arms, hands, thighs, and shoulders as a result of the alleged torture.

45. The sentence that condemns the defendants to death is exclusively based on their confessions during their incommunicado detention as explained above. The court did not consider: (a) that the defendants had revoked their confessions and (b) that the prosecutor and the judge turned down the request on the medical examination.

46. The sentence has not considered objective evidences in favour of the defendants, such as the fact that the blood on the knife was conclusively not the blood of the victim, according to a forensics laboratory.

47. Therefore, the violation of article 14 of the International Covenant on Civil and Political Rights confirms the arbitrariness of the defendants' deprivation of liberty. The court has not respected the right "not to be compelled to testify against himself or to confess guilt" as established in article 14, paragraph 3, lit (g), of the International Covenant on Civil and Political Rights. Generating evidence under torture not only violates article 7 of the International Covenant on Civil and Political Rights, but it also constitutes one of the most serious human rights violations. For this reason, the Working Group does not need to consider the background information provided by the source on the Sudanese legislation on the legality of the use of torture and ill-treatment in generating evidence in the form of confessions, which were later on even revoked before a court.

48. Therefore, neither the verdict of the court that tried the defendants nor its confirmation by the Court of Appeal can be maintained. No judicial system, and in particular, the judicial system of a country that ratified the International Covenant on Civil and Political Rights on 18 March 1986, can consider as valid a confession obtained under torture and revoked before a court, and a sentence based on such confession.

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

The detention of Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed is arbitrary, being in contravention of articles 7 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.

50. Consequent upon this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation in order to immediately stay the execution of the sentence against Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed. The Working Group further requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles enshrined in the International Covenant on Civil and Political Rights.

Adopted on 24 November 2008