

Decision No. 55/1993 (Ethiopia)

Communications addressed to the Government of Ethiopia on 3 August and 20 September 1993.

Concerning: Hagos Atsbeha (communication of 3 August 1993); Geremew Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo (communication of 20 September 1993), on the one hand, and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned (except for the case of Hagos Atsbeha), in respect of the cases within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Ethiopia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communications from the sources, summaries of which were transmitted to the Government, that:

(a) Hagos Atsbeha, aged 58, a merchant living as a refugee in the Sudan since 1979, was reportedly kidnapped from Gedaref, Sudan, on 25 April 1988 by three members of the Tigray People's Liberation Front (TPLF), led by Gebre-Hiwet (Abu-Wonber), and taken across the border into Tigray. He was first detained in Degena, then transferred to Wori and was reportedly at present being held in a prison in Mekele. Allegedly, he has been held incommunicado since 1988, with neither his family nor his legal counsel being allowed to visit him. It was also alleged that he has never been given the opportunity to challenge his detention before a judicial or other authority. The reasons given by the authorities for his detention without trial were not clear: while at first he was reportedly accused of "conspiring with a rival political organization", he was later accused of an unspecified criminal offence. According to the source, the real reason for his detention since 1988 was his family relationship with Pregawi Berhe (Berihu) - his brother-in-law - who was a former Politbureau member and a military commander, for over 10 years, of the TPLF, and who left the organization in early 1988 for political reasons.

(b) Geremew Debele, aged 47, former Minister of Agriculture and former Ambassador of Ethiopia to Italy and to Bulgaria; detained on 30 May 1991 by order of the Transitional Government, and since that date held in the

"Alem Bekage" prison in Addis Ababa, without charge or trial. According to the source, Dr. Debele gave a statement to the Special Prosecutor only after two years of detention. He was reportedly interrogated about his involvement, as a member of the Council of Ministers, in making various policy decisions which were made while Dr. Debele was reportedly out of the country in discharge of his ambassadorial assignments.

(c) Admasu Tesfaye, aged 41, former District (Woreda) Administrator, detained on 28 July 1991 by order of the Transitional Government and held at the "Alem Bekage" prison in Addis Ababa, without charge or trial.

(d) Maj. Gen. Alemayehou Agonafer Negfwo, aged 58, mechanical engineer, commanding officer of the Ethiopian Air Force at the time of detention. Was detained in May 1991 and was currently being held in the central Penitentiary in Addis Ababa. He has not been charged or tried.

(e) According to the source the three persons mentioned above ((b), (c) and (d)), like other former government officials and high ranking military officers, reported to the new authorities in Ethiopia, and were detained. In August 1992 a decree was promulgated establishing the office of the Special Prosecutor who was to be responsible for prosecuting officials of the former regime found to have misused their authority, but even after the Prosecutor concluded his investigations, no charges were brought against these persons, and they continued to be detained. Reportedly, at the time the law establishing the office of Special Prosecutor was promulgated, in August 1992, the writ of habeas corpus was also suspended for a period of six months. After this six-month period expired, in February 1993, a petition was filed with the High Court for the release of these persons on the grounds of illegal detention, but it was rejected, as the Special Prosecutor stated that he had asked a district court to grant him additional time for further investigation. The source alleged that the detention of the above-mentioned persons ((b), (c) and (d)) for over two years without being brought to trial, nor released, was arbitrary, being in violation of the international provisions relating to the right to a fair trial.

6. The Government, which has not replied concerning the case of Hagos Atsbeha, asserts, through the Office of the Special Prosecutor, with reference to the cases of Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo, that these persons are being detained because they are implicated in serious violations of human rights committed under the Mengistu regime. According to the Special Prosecutor, it would not be possible to determine the charges against them and their degree of responsibility until his services had concluded the investigations that were under way. It will thus be seen that the Special Prosecutor does not deny that the detention of the persons in question is due solely to the fact that they were officials of the former regime. He likewise recognizes that they have not so far been charged with any specific offence, still less tried, although they have been detained for more than two years, and even five years in the case of Hagos Atsbeha. It should also be noted that, according to the source, which has not been contradicted by the Special Prosecutor on this point either, the persons concerned were not able to contest their detention by invoking the habeas corpus procedure at the time of their arrest because the procedure had been suspended for a period of six months. At the end of

that period, their request was rejected by the High Court because the Special Prosecutor stated that he had been granted additional time for further investigation by a district court (it was not made clear whether that also implied an extension of the suspension of habeas corpus). Accordingly, the Working Group, while recognizing the difficulties being encountered by the new authorities in Ethiopia, cannot but find that various recognized international rules relating to the right to a fair trial have been violated and that the non-observance of those rules is such that it confers an arbitrary character on the deprivation of freedom suffered by Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo.

7. In the light of the above the Working Group decides:

(a) The detention of Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 (3), paragraphs (a) and (c) of the International Covenant on Civil and Political Rights as well as principles 2, 10, 11 and 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo to be arbitrary, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 8 December 1993.