

# TABLE OF CONTENTS

Photographs

Introduction 1

1. Events leading to the arrests in January 1991 4

2. Preliminary incommunicado detention in police custody (garde à vue) 5

3. Torture 5

4. The preliminary judicial investigation 6

5. The trial by the State Security Tribunal in July 1992 9

6. Amnesty International's assessment of the fairness of the trial 14

7. Prisoners of conscience 17

8. Amnesty International's recommendations 19

APPENDIX 21

# £DJIBOUTI

## @Prisoners of conscience - unfair trial by security tribunal

### Introduction

Amnesty International is concerned about the imprisonment in Djibouti of Ali Aref Bourhan, a prisoner of conscience, and 13 other government opponents convicted with him after an unfair trial in July 1992, most of whom are also prisoners of conscience imprisoned for their non-violent political views. Much of the evidence against them in the trial was obtained by torture.

They were arrested in January 1991 in the capital, Djibouti, with at least 130 other members of the Afar ethnic group, which is noted for its opposition to the government. The majority were tortured to make statements incriminating Ali Aref Bourhan (known generally as Ali Aref) and themselves or others in a conspiracy to overthrow the government and in an attack on a military barracks in Tadjourah in the north of the country. Most of the prisoners were eventually released. However, Ali Aref, aged 58, who is a well-known political figure and former President of the Government (président du Conseil de gouvernement) before Djibouti's independence from France in 1977, and 10 others were kept in custody on charges of subversion and other offences which are punishable by death.

In July 1992, in a trial by the special State Security Tribunal (tribunal de sûreté de la République), Ali Aref and 13 others in court (including four who had been provisionally released) were convicted and sentenced to prison terms of 10 and five years, which they are now serving in Gabode prison in the capital. One defendant, Ali Aref's nephew Aref Mohamed Aref, a lawyer who had previously represented persons charged with political offences, was acquitted. The tribunal also convicted 15 others tried in absentia and sentenced them to five-year prison terms.

An Amnesty International representative, Diabira Maroufa, former President of the Bar Association of Mauritania, attended their trial. Amnesty International's conclusions are based on his observation of the judicial proceedings, together with information obtained during his meetings with officials, defence lawyers and others at the time of the trial, and other information available to the organization.

An Amnesty International delegation previously visited Djibouti in April 1991 to discuss the organization's concerns with the authorities: in particular, the pre-trial detention of Ali Aref and others, allegations of torture, and further political arrests. A medical doctor in the delegation examined many prisoners and former prisoners and found conclusive evidence of a pattern of torture of prisoners, and, in particular, of most of those arrested with Ali Aref. In a report submitted to the government and later published in November 1991, Djibouti - Torture et emprisonnement politique, (Djibouti: Torture and

Djibouti: Prisoners of conscience - unfair trial by security tribunal

Political Imprisonment), AI Index: AFR 23/07/91F, Amnesty International called for immediate measures to prevent torture and appealed for the unconditional release of everyone imprisoned solely for their non-violent opinions. Amnesty International also criticized detention and investigation procedures which facilitated torture and expressed concern about the serious shortcomings of the State Security Tribunal in relation to international standards of fair trial.

In response, the government denied that prisoners were routinely tortured but said it was studying some of the reforms which Amnesty International had recommended. The government subsequently, on 11 November 1991, ratified the African Charter on Human and Peoples' Rights and on 14 January 1992 it amended the structure of the State Security Tribunal to provide for a limited review of convictions in the form of an appeal on points of law (pourvoi en cassation) to the Supreme Court. However, most of Amnesty International's recommendations were not implemented. For example, there has been no inquiry into torture, no torturer has been brought to justice, no torture victim has been compensated, there has been no modification in detention procedures to prevent torture, and there has been no change to the structure of the State Security Tribunal to make it an independent court. Amnesty International continued to be concerned about the treatment of Ali Aref and other prisoners awaiting trial.

The trial took place over seven days in July 1992, after a six-month postponement, in an atmosphere of considerable political tension. As debate intensified during 1992 on a move from a one-party state to a multi-party political system, a new and mainly Afar armed opposition organization, Front pour la restauration de l'unité et de la démocratie, the Front for the Restoration of Unity and Democracy (FRUD), launched a series of attacks on government military posts from October 1991 until a ceasefire in late February 1992 following French government mediation. As the Ali Aref trial started in the Djiboutian capital in July, demonstrators from the Support Committee for the Release of Political Prisoners in Djibouti were attacked outside the court by police, with several demonstrators wounded and others detained for the period of the trial.

Amnesty International has also been concerned about a number of other major human rights violations during 1991 and 1992, including ill-treatment and deaths of prisoners, extrajudicial executions and the imprisonment of prisoners of conscience. In September 1991 at least 10 prisoners who had been arrested in a round-up of suspected criminals died of asphyxiation in a police cell in the capital. Following an inquiry headed by the Procurator General, three police officers were charged and disciplinary action against two of their superior officers was recommended; they are not known to have been brought to trial yet. On 18 December 1991 about 50 unarmed Afars were reportedly shot dead by the security forces in the course of a round-up in the Arhiba II quarter of the capital. A commission of inquiry was established into the incident but this consisted of police officers and lacked independence: its report was not published and no action appears to have been taken against the police officers responsible. There have also been serious human rights abuses by government forces in the areas of fighting with the FRUD forces in the north and southwest, including killings of scores of unarmed civilians in early February 1992.

In December 1991 and throughout 1992, prominent government opponents, leaders of new human rights organizations and peaceful demonstrators were detained in the capital, most for only a few days, but some for periods up to three months on account of their criticisms of the government and security forces. Most were held on political charges such as publishing false reports or insulting the Head of State and were released without being tried but one received a three-month suspended prison sentence. Another

Amnesty International 3 December 1992AI Index: AFR 23/04/92

Djibouti: Prisoners of conscience - unfair trial by security tribunal

frequently-arrested government critic, Hassan Ali Mohamed (known as "Dalga"), was detained throughout the Ali Aref trial in July 1992 and redetained shortly afterwards and kept in custody on the charge of insulting the President of the Republic. He was tried on 26 October, convicted of publishing false reports and insulting the Head of State, and sentenced to three months' imprisonment, but was released immediately due to having already been detained for this period. Amnesty International considers that he was a prisoner of conscience.

Another concern of Amnesty International is the retention of the death penalty in Djibouti. Although there have been no executions since independence, one prisoner is under sentence of death.

During 1992 the government stated that it wanted to reach a reconciliation with the FRUD and to embark on constitutional reform. On 29 June it declared a partial amnesty for political prisoners and exiles who had committed offences since October 1991, but this did not apply to those arrested in the Ali Aref case. Soon after the Ali Aref trial, a referendum on allowing a restricted multi-party system led to a new constitution in September 1992, with parliamentary elections scheduled for November but postponed until 18 December. FRUD, however, resumed hostilities in late July 1992 and is currently estimated to obstruct government control in two-thirds of the country, in the north and southwest. It called for a boycott of the referendum and elections. Only three opposition parties are allowed by the new constitution to compete in the elections with Rassemblement populaire pour le progrès, the ruling Rally for Popular Progress (RPP) party, which had been the only permitted party since 1981.

Ali Aref and those convicted with him in July 1992, whose case was not connected by the authorities with the armed opposition by the FRUD which had developed after their arrests, have lodged an appeal with the Supreme Court. It is scheduled to hear their cases in a few months' time. Many observers had expected that President Hassan Gouled Aptidon would grant an amnesty to Ali Aref and his co-prisoners but appeals for their release by human rights groups, as well as by their defence counsel, have been rejected so far.

## 1. Events leading to the arrests in January 1991

On the night of 8 January 1991, 71 members of the Afar ethnic group were arrested in a cemetery at Ambouli in the capital, Djibouti, where they had apparently gone for a funeral. They were arrested, suspected of attending a meeting whose aim was to overthrow the government. After being questioned by the police they were released several days later without having been charged with any offence.

Later that same night, an attack by an unidentified rebel group of about 30 persons on the military camp at Tadjourah, 180 kilometres north of the capital across the bay, caused the death of one soldier and left four others wounded. No political group claimed responsibility for the attack.

On 9 January, over 60 other Afars, including Ali Aref, were arrested by the police. Three days later Aref Mohamed Aref, a lawyer and nephew of Ali Aref, and Mohamed Daoud Chehem, a director in the Ministry of Finance, whose passports had been seized after the first arrests, were also arrested in the same affair. The authorities publicly accused Ali Aref of responsibility for the Tadjourah attack and of masterminding a plot to assassinate several high-ranking political and military figures in order to seize power.

AI Index: AFR 23/04/92 Amnesty International 3 December 1992

Djibouti: Prisoners of conscience - unfair trial by security tribunal

On 15 January, there was a skirmish between a government patrol and a group of about 30 rebel fighters at Dittilou, near the Ethiopian border, during which the rebels killed one soldier and wounded two others while the patrol wounded and captured two fighters from an armed opposition group, l'Action pour la révision de l'ordre à Djibouti (AROD), (Action for Change of the Political Order in Djibouti), which was apparently formed by exiled government opponents in 1990. The police claimed that these two AROD fighters had taken part in the attack on the military camp at Tadjourah.

Amnesty International received reports that the detainees were being tortured by the security police and immediately appealed to the Djibouti authorities to take all steps to protect them from torture or ill-treatment.

## 2. Preliminary incommunicado detention in police custody (garde à vue)

The detainees were held incommunicado in police custody from the times of their arrests until 17 January 1991 (a total of eight days), when at the request of the Public Prosecutor (Commissaire de la nation), who is also the prosecutor for the State Security Tribunal, their files were passed to an investigating magistrate (juge d'instruction). Their preliminary period of police custody was extended from 48 hours to almost the 10-day maximum, at the request of the Public Prosecutor, although most of those charged were not informed of the extension.

During this period in custody the detainees were denied access to their families, lawyers or doctors, subjected to intense interrogation by the security police, and most were tortured. Legal safeguards against torture or ill-treatment of detainees were ignored. Amnesty International had observed the same pattern in recent years in relation to other detainees suspected of opposition to the government or of major criminal offences - a pattern of routine torture by the security police following arrests.

Under Djiboutian law, "*Conditions in preliminary police custody (garde à vue) must be consistent with the physical and mental dignity of the individual*". Moreover, the law specifies that "*the detainee can ask for an examination by a doctor, or at least by medical personnel, during the first 48 hours in custody (i.e. the first 48 hours), followed by a second examination during the second period in custody (i.e. the extension up to 10 days). The detainee is to be informed of this right by the investigator at the beginning of the period in custody*". In reality, however, the investigators did not mention this or any other rights to those arrested and kept them in incommunicado detention. Moreover, the law effectively fails to guarantee that the detainees have access to independent medical attention.

## 3. Torture

Torture methods used against most of these detainees were essentially the same as those reported in previous years as having been used routinely by the security police against suspected government opponents. The most common method is known as "the swing" (la balançoire), whereby the victim is suspended from a fixed pole by his hands and feet which are tied together, a gag soaked in detergent placed in the mouth, and then beaten with metal cables, rubber hosing or sticks. In addition, some of the detainees were subjected to beatings or tortured with electric shocks or a bottle being forced in the anus.

Amnesty International 3 December 1992AI Index: AFR 23/04/92

Djibouti: Prisoners of conscience - unfair trial by security tribunal

Most of the 63 people arrested on or after 9 January 1992 were tortured. The torture occurred during their first eight days in custody, while they were kept incommunicado by the police. The three most prominent detainees, Ali Aref, Aref Mohamed Aref and Mohamed Daoud Chehem, were not tortured, although Ali Aref was reportedly threatened with torture and was subjected to some ill-treatment.

Amnesty International representatives who visited Djibouti in April 1991 included a medical doctor who examined several of these detainees and found numerous after-effects of torture. His report concluded as follows:

*"The credibility of the allegations made by the detainees whom I examined is beyond doubt. I examined all in private and, based on the information they gave me, their general attitude to me and the other members of the Amnesty International delegation, the consistency of their accounts and, in particular, the results of the medical examinations which I carried out, I found their testimonies of torture totally convincing. In cases where there were no visible signs of torture I did not find that this contradicted the account of torture, but was explained by the fact that certain torture methods do not leave marks except in extreme cases".*

The conclusions of the medical examinations which Amnesty International's medical representative carried out, and the numerous torture testimonies which Amnesty International was given during its mission to Djibouti in April 1991, indicate that the security officers heading the initial investigation of the Ali Aref case systematically used torture to make the accused incriminate themselves and others.

#### 4. The preliminary judicial investigation

The preliminary judicial investigation (known in French as instruction) for the 63 accused lasted from January until October 1991. As soon as the period of incommunicado police custody ended and the preliminary judicial investigation began before the investigating magistrate (juge d'instruction), Saad Ahmed Cheik, the detainees were transferred from the custody of the police to other prisons, mostly Gabode civil prison in the capital. This ended the period of incommunicado police custody (garde à vue) during which they were subjected to torture, and they were then allowed access to their families. Some weeks later they were also allowed access to lawyers and doctors and to representatives of the International Committee of the Red Cross.

During the preliminary hearing, several of the 63 accused were discharged, others were provisionally released, and 11 (including Ali Aref) were remanded in custody until the trial. The date of the trial was originally set for December 1991 but was postponed at the request of the defence and rescheduled for July 1992.

The preliminary judicial investigation of this case was marked by serious defects which undermined the rights of the accused to a fair trial. In particular their claims to have made confessions and other statements under torture or the threat of torture were not dealt with adequately. The following important defects were noted:

- i) In at least two cases where the Afar detainees did not speak French or Somali, the two languages used

Djibouti: Prisoners of conscience - unfair trial by security tribunal

by the judge, they were interrogated and made to sign statements without an interpreter being present. In two cases, detainees who were illiterate were made to sign statements which were not read out to them.

ii) In many of the cases, according to the accused, the judge refused to look at detailed information and only asked the accused to confirm the statements that they had made - which had been obtained through torture in police custody.

iii) During the journey from prison to the court the officers in charge of the initial police investigation threatened the detainees with further torture if they did not confirm the statements they had made under duress in police custody. In several cases the officers accused of torture were present during the preliminary judicial investigation at the time when the accused were raising complaints of torture: this obviously was intended to intimidate them and prevent any retraction of statements, and undermined the very purpose of the hearing - that is, to obtain an independent version of the facts rather than simply to repeat statements previously made to the police.

iv) Despite the credible allegations by defendants to the investigating magistrate that their confessions or statements were made as a result of torture whose after-effects were still visible or attested by official medical reports, he failed to investigate the complaints. Formal complaints signed by the victims were deposited with the examining magistrate who did not take any action. In particular, he did not query the statements, cross-examine the officers responsible for the initial investigation, or seek other evidence to establish whether or not the statements were made voluntarily. This apparent negligence on the part of the investigating magistrate had the effect of condoning the use of torture and the admissibility of statements made as a result of torture.

v) Although the law stipulates that defence counsel should be present during the preliminary judicial investigation by the investigating magistrate, they were mostly not present during the judicial investigation nor when the detainees signed statements of their interrogations.

vi) The defence did not have access to all the materials in the prosecution case before the trial began. Only during the trial was the defence lawyer able to study the two crucial documents on which the charges were based: the first was an intelligence report by the security police about Ali Aref and the second was an anonymous statement of accusation against Ali Aref, the source of which was never revealed.

vii) It must be noted that the accused were represented by a lawyer from France, apparently because lawyers in Djibouti were unwilling to defend them. The President of the Bar Association of Djibouti, Alain Martinet, for example, declined to defend Ali Aref, on the grounds that he is not a Djiboutian national.

viii) The preliminary judicial investigation was overseen by the Public Prosecutor, who has also had the role of State Security Tribunal prosecutor since his nomination to the post by presidential decree in 1978. The powers of the Chambre des mises en accusation (the court which formally charges the accused), which would normally provide for scrutiny of the preliminary judicial investigation on points of law, were exercised solely by the president of the State Security Tribunal. The Public Prosecutor and the president of the Tribunal, who are responsible for these important procedures, can hardly be considered impartial and independent since they are, respectively, the Secretary General of the Government and the Director of

Djibouti: Prisoners of conscience - unfair trial by security tribunal

the Prime Minister's Office.

ix) Conditions of detention for Ali Aref and Aref Mohamed Aref were particularly harsh due to their being transferred from Gabode prison on 21 February 1991, three days after the visit by their lawyers from Paris, to the remote military prison of Ali-Addeh at Dikhil in the south of the country close to the border with Somalia. Ali-Addeh prison is not on the Ministry of Justice's list of authorized prisons as reported in the Djiboutian press in September 1991. There were particular difficulties as regards family communications and medical treatment in particular, and there were fears for their safety in this remote zone of armed conflict. On one occasion their regular food supply sent by their families was turned away. Another defendant in the case, Lieutenant Abdoukader Mohamed Abass, was held secretly at Damerjog military camp for 18 months.

Amnesty International's representative who observed the trial in July 1992, concluded:

*"Looking at the proceedings of the preliminary judicial investigation it is apparent that basic rules of procedure which were supposed to protect the rights of the defence were not observed. It would seem that the investigating magistrate was only concerned with getting the accused to confirm the statements they had made during the initial police investigation, at any cost. This frequently led the investigating magistrate to question the accused in the presence of the police officers whom they identified as their torturers. The preliminary judicial investigation reveals unusual haste in this matter, which was prejudicial to establishing the truth."*

When the preliminary judicial investigation closed in October 1991, a decree signed by the President of the Republic indicted 50 people, including Ali Aref and 10 other still held in custody, on four main charges, the most serious of which could be punished by the death penalty:

- plotting against the government;
- subversion (*attentat contre le gouvernement*);
- premeditated murder;
- attempted premeditated murder.

## 5. The trial by the State Security Tribunal in July 1992

The trial took place over seven days from 5 to 11 July 1992, having been postponed from December 1991. Observers attended from Amnesty International and three other international human rights organizations - the International Commission of Jurists, the International Federation of Human Rights, and Habeas Corpus jointly with the International Association of Young Lawyers. Amnesty International's observer was able to carry out his tasks without difficulty and received cooperation from officials concerned, except that he was unable to obtain a meeting with the Minister of Justice in order to discuss the case.

Fifteen defendants appeared before the tribunal, including 11 who had been kept in custody for 18 months. In addition, 15 other accused who had been provisionally released to await trial, and 19 accused who had not been arrested, were tried in absentia, making a final total of 49 defendants. The 15 defendants in court all pleaded not guilty. They were all represented by Seyni Loum, a lawyer from Paris.

AI Index: AFR 23/04/92 Amnesty International 3 December 1992

Djibouti: Prisoners of conscience - unfair trial by security tribunal

Civil complainants (parties civiles) who were demanding compensation for the deaths of the two government soldiers killed and injuries to the six wounded soldiers, were represented by François Serres Pais, another lawyer from Paris. The President of the Bar Association of Djibouti was not present during the trial, although a member of the association, Aref Mohamed Aref, was a defendant and had protested against many legal irregularities from the outset.

The prosecution was represented by the State Security Tribunal's prosecutor, Osman Bogoreh Bouh, who is also Secretary General of the Government. The prosecution did not ask for the death penalty, which was the maximum penalty for the most serious of the charges, but demanded life imprisonment for Ali Aref and imprisonment for 20 or 30 years for the other defendants.

The general public could not attend the trial but the families of the defendants were allowed to be present. Tension was increased by the arrest outside the court of people demonstrating against the trial, several of whom were injured by the police.

### **i) Creation of the State Security Tribunal**

This special court was established on 16 August 1978, one year after independence from France. The tribunal is a "political court", particularly responsible for hearing cases of "crimes and offences against the State, as defined by current legislation". The Ali Aref trial was the most important case before the tribunal since its creation, although it had dealt with a small number of other cases previously.

The State Security Tribunal was established by presidential decree, which contravenes Article 1 of the Penal Code and the Constitution, which states that only the legislature can create new courts. During the trial, the defence argument that since the National Assembly was never consulted on this, the creation of the State Security Tribunal was unlawful, was quickly dismissed by the judges.

### **ii) Structure of the tribunal**

Inasmuch as the prescribed panel of judges contained a majority of government officials, it failed to satisfy the requirements of judicial independence as set forth in the *Basic Principles on the Independence of the Judiciary* and Article 14 of the *International Covenant on Civil and Political Rights*. The presiding judge, Cheikh Hassan Abdallah, was a senior government official - Director of the President's Office - who reportedly has no judicial training. As far as the other judges are concerned, only half the bench consisted of professional judges, the other half of civil servants and officials. As regards the ethnic composition of the tribunal, only four of the 15-member jury were Afars (the same ethnic group as the accused), and the majority of the judges were of Somali ethnic origin, including those from the Issa ethnic group, which is more closely aligned with the government and ruling party.

A complaint by the defence that the presiding judge (the president of the tribunal) and the Public Prosecutor were not legally appointed was also swiftly dismissed. The two were retroactively reconfirmed in their positions by a presidential decree of 10 February 1991 after the accused had already been charged on 17 January 1991. Their earlier appointments for a one-year period had previously expired without being renewed.

### **iii) Tribunal procedures**

The entire trial was marred by unusual decisions and procedural defects. Violations of the right to defence included the following:

- The tribunal would not allow Aref Mohamed Aref to be the defence lawyer either for himself or his co-accused, although he maintained that since he had not been struck off, the law still allowed him to exercise his profession. He was obliged to remain seated with the other defendants, wearing his lawyer's gown.
- When the defence insisted that its witnesses testify, the presiding judge accused the defence of putting forward false witnesses at every opportunity, and he closed the case for the defence and passed immediately to the pleas. Similarly, an assessor complained that the defence had no right to do just what it liked and that it was taking advantage of the court's patience.
- One defence witness was arrested in court to prevent him testifying. After defence witnesses were called and were heading towards the witnesses' chamber at the presiding judge's request, one of the witnesses, Hassan Ali Mohamed Mohamed ("Dalga"), president of the Support Committee for the Release of Political Prisoners in Djibouti, was once more arrested and detained until the end of the trial (see page 3).
- Not all the witnesses called by the defence received a regular summons to testify. Witnesses from the army, police and national security forces requested by the defence did not testify although summons were sent by the court authorities. The tribunal also refused to use legal procedures to ensure that these witnesses testified.

Procedural irregularities included the following:

- At the beginning of the trial the defence's request that certain members of the tribunal should withdraw from the case was rejected after only brief consideration. The State Security Tribunal does not even have the authority to rule on such a matter, this being the responsibility of the Supreme Court.
- The tribunal refused to examine the torture allegations, although, in addition to testimonies given to official doctors, physical evidence of torture was shown to the court. This evidence was ignored by the court which, however, admitted as evidence the statements which had allegedly been extracted under torture. Not only has there been no inquiry or legal investigation into the torture allegations but also the court did not invoke its legal powers to order the appearance of the alleged torturers for questioning as requested by the accused. The prosecutor simply stated that torture had never been used in Djibouti. The lawyer for the civil complainants claimed that the fact that the International Committee of the Red Cross (ICRC) had never published a report after visiting the accused indicated that they had not been tortured. In fact, it is not the normal practice of the ICRC to publish reports of its prison visits: it submits its observations confidentially to the government concerned.
- Despite a request by the defence, the tribunal refused to summon for cross-examination the person who

Djibouti: Prisoners of conscience - unfair trial by security tribunal

wrote the anonymous statement about Ali Aref. The tribunal seemed to have placed considerable reliance on this document and an intelligence report of the security police, which was also barred from cross-examination by the defence, in establishing the whole case for the prosecution.

It must be noted, however, that in the case of Aref Mohamed Aref, although he was not allowed to conduct his defence, the tribunal exceptionally allowed all his witnesses to testify in respect of the accusations against him. This is especially significant as he was the only one of the accused to be acquitted.

#### **iv) Verdict and judgement**

At 2.30 am on 12 July 1992 the State Security Tribunal passed the following sentences:

- 10-year prison terms for Ali Aref and eight other defendants (see Appendix for list of prisoners);
- five-year prison terms for Mohamed Daoud Chehem and four others;
- acquittal of Aref Mohamed Aref on grounds of "benefit of doubt";
- five-year prison terms for 15 others who had failed to appear;
- a declaration that the arrest warrants of 19 others tried in absentia who had failed to appear were defective.

The judgement revealed few details of the reasons for the decisions.

#### **v) The right to appeal**

In its November 1991 report, Amnesty International had criticized the procedure of the State Security Tribunal for allowing no right of appeal to a higher court. In January 1992 President Hassan Gouled Aptidon introduced a new article by presidential decree which allowed those sentenced by the Tribunal to appeal to the Supreme Court on points of law (pourvoi en cassation) within two months of being sentenced. After looking at the case, the Supreme Court can reject the appeal, reverse the sentence or re-sentence the defendants, but it does not have the authority to re-examine the facts of the case or hear witnesses.

Amnesty International welcomed this reform but considers that this is not sufficient to conform to international standards concerning the right of appeal. An appeal on points of law, in contrast to ordinary appeals, is limited to legal errors and does not include questions of fact. Article 14 of the *International Covenant on Civil and Political Rights* states that:

*"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law".*

Ali Aref and the 13 others appearing in court and convicted with him have all applied for the tribunal's judgment to be quashed and the Supreme Court is due to examine the case within a few months. Whether the Supreme Court can display the judicial independence evidently lacking at earlier stages in this case remains to be seen.

Djibouti: Prisoners of conscience - unfair trial by security tribunal

Amnesty International is concerned that the Public Prosecutor has lodged an appeal with the Supreme Court to have the acquittal of Aref Mohamed Aref overturned and to have him re-imprisoned.

## 6. Amnesty International's assessment of the fairness of the trial

Amnesty International's conclusion, based on the observations set out above, is that the trial of Ali Aref and his co-defendants was grossly unfair and fell seriously short of international standards. These shortcomings were evident throughout the proceedings - in the critical phase of incommunicado police custody after arrest, in the conduct of the preliminary judicial investigation before the investigating magistrate, and in the trial itself. Moreover, the post-trial review procedures available to defendants do not guarantee them the full right to appeal or much chance of reversal of a blatantly unfair verdict.

Amnesty International's conclusions and its recommendations below are based on international fair trial standards recognized as appropriate by all states. These include:

- the *Universal Declaration of Human Rights* (Universal Declaration);
- the *African Charter on Human and Peoples' Rights* (African Charter), to which Djibouti became a party in December 1991;
- the *International Covenant on Civil and Political Rights* (ICCPR), in particular articles 6,9 and 14;
- the *Declaration on the Protection of all Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Declaration against Torture);
- the United Nations' *Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment* (UN Body of Principles);
- the *Standard Minimum Rules for the Treatment of Prisoners*;
- the *Basic Principles on the Independence of the Judiciary*;
- the *Basic Principles on the Role of Lawyers*;
- the *Guidelines on the Role of Prosecutors*.

Although Djibouti has not yet adhered to the ICCPR, the fair trial guarantees contained in it are universally recognized as reflecting an international consensus on the minimum standards required for a trial to be fair and the United Nations has urged in particular that they be respected in all cases where accused face capital charges. In addition, Articles 60 and 61 of the African Charter direct the African Commission on Human and Peoples' Rights, the expert body which monitors implementation of the African Charter, to look to international human rights standards such as the ICCPR when interpreting the African Charter.

Amnesty International found that the court failed to satisfy the requirements set forth in article 14(1) of the ICCPR that it be "*a competent, independent and impartial tribunal established by law*". A similar requirement is found in article 10 of the Universal Declaration and article 7 of the African Charter. The composition of the tribunal virtually ensured that it would not be impartial, with a majority of civil servants and others selected from a list drawn up by the government.

Significant obstacles to receiving a fair trial related to the eight-day period of preliminary incommunicado detention in police custody between the arrests of the defendants and the beginning of the proceedings

Djibouti: Prisoners of conscience - unfair trial by security tribunal

before the investigating magistrate. The denial of access to the outside world during the preliminary period of incommunicado detention facilitated the torture and ill-treatment of many of the prisoners, who were forced to make statements which eventually became the basis of the prosecution at the trial.

The preliminary judicial investigation which lasted for nine months during which the principal defendants were kept in custody, often in poor conditions, was further prejudicial to their receiving a fair trial. Despite the credible allegations by many of the accused to the investigating magistrate that their confessions or statements were induced by torture or the threat of torture, in many cases documented by medical reports or evidenced by visible bruises or other after-effects, the investigating magistrate, either on his own authority or under orders from his superiors, failed to investigate the complaints. Indeed, in a number of cases, the very officers accused of torture were allowed to remain in the courtroom when the defendants were complaining that they had been tortured.

In a number of other respects cited above, the hearings before the investigating magistrate were unfairly conducted. For example, defendants' lawyers were not summoned to appear during questioning, thus effectively denying them their fundamental right to counsel, recognized by all international standards for fair trial, including article 7(1)(c) of the African Charter.

It might be asked why, with such an accumulation of abuses which were publicly known and internationally criticized by Amnesty International and others, the proceedings were allowed to pass beyond the stage of the preliminary judicial investigation, when almost half of the accused were discharged from the case. Nevertheless, the cases did proceed to a trial, which was postponed for six months, during which time many of the accused remained in custody.

The State Security Tribunal heard the cases 18 months after the arrests. Like the investigating magistrate, the State Security Tribunal's presiding judge, in summarily dismissing the complaints of torture and accepting all the statements as admissible, seriously contravened international standards of fair trial. The tribunal did next to nothing to establish the circumstances in which statements were made to the police officers heading the initial inquiry. This contravened the requirements of articles 8 and 9 of the Declaration against Torture that an investigation by impartial and independent bodies into the allegations of torture should be initiated as soon as possible and that details of the methodology used and conclusions reached should be made public. Furthermore, article 12 of the Declaration against Torture states:

*"Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings".*

Yet the tribunal admitted such evidence. The prosecution case was based principally on statements made by defendants as a result of torture or the threat of torture or other duress or inducements. No reliable independent evidence to support the charges was presented in court. Defendants' retractions of their statements were rejected by the tribunal.

An essential element of the right of a defendant to a fair trial, as recognized by article 14 (3)(e) of the ICCPR is *"to obtain the attendance and examination of witnesses on his behalf under the same conditions as the witnesses against him"*. Yet witnesses which the defence had requested did not appear and the

Djibouti: Prisoners of conscience - unfair trial by security tribunal

tribunal did not take effective steps to secure their attendance. One defence witness was imprisoned before he could testify. The defendants also suffered prejudice because the tribunal refused to exclude certain prosecution evidence or to permit cross-examination of it. The judges, furthermore, frequently did not behave in an impartial manner.

As regards the main prosecution case, there were enough gaps and inconsistencies in it to throw substantial doubt on the "facts" it purported to present. Evidence linking Ali Aref to a conspiracy of violence to overthrow the government or to violent incidents was totally lacking. No weapons or military materials were found with the defendants or connected with them in any way.

To sum up, the legal and procedural irregularities of the tribunal, as cited in the previous chapter and summarised above, might alone have justified an independent court in declaring the proceedings null and void. Furthermore, it is clear to Amnesty International that the tribunal was not independent and impartial. In addition, and of equal importance in the question of fair trial, it is obvious to Amnesty International that the evidence presented by the prosecution was so tainted by torture that it could not be regarded as sufficient proof to justify the court, in accordance with international human rights standards, in overcoming the presumption of innocence and finding each accused to be guilty beyond reasonable doubt.

Amnesty International's finding, based on its observer's conclusions, is that the whole judicial proceedings, and particularly the trial and convictions, were grossly unfair. Ali Aref and his co-defendants were wrongfully detained and should not have been convicted and given prison sentences.

## 7. Prisoners of conscience

Amnesty International believes that Ali Aref and 11 of the other defendants are prisoners of conscience - that is, people who are imprisoned on account of their beliefs or because of their ethnic origin, sex, colour or language, who have not used or advocated violence.

Ali Aref was leader of the pre-independence political party, Union nationale pour l'indépendance - (UNI), the National Union for Independence party and President of the Government of the French Territory of the Afars and Issas until he resigned in 1976, a year before the territory attained independence as the Republic of Djibouti. Since then he has been a businessman in Djibouti. He has not been a member of any political party and has not been active in politics. Nevertheless it is common knowledge that he is not a supporter of the government of President Hassan Gouled Aptidon nor of his party, the RPP, which was the sole permitted political party from 1981 until September 1992. He has never been imprisoned before.

In late 1990, when there was increasing pressure among government opponents, as well as some members of the RPP, for a move to a multi-party political system, Ali Aref was reportedly approached by certain political figures to join them in organizing opposition to the RPP. He made no public statement and joined no political grouping, but the government seems to have feared that as a prominent member of the increasingly disaffected Afar ethnic group he might become a political threat to its continuing power. He is known to have consistently opposed violence as a political method, and indeed he was not accused in the trial of having links with any known Afar-based or other armed opposition group such as AROD or FRUD (whose supporters, ironically, benefited from a partial amnesty in June 1992, which did not cover the prisoners in the Ali Aref case).

AI Index: AFR 23/04/92 Amnesty International 3 December 1992

Djibouti: Prisoners of conscience - unfair trial by security tribunal

The other accused were all members of the Afar ethnic group and most have some family or other connection with Ali Aref, though they did not constitute an identified or named political group.

Amnesty International's conclusion after examining all the circumstances of the arrests is that there is no evidence that Ali Aref advocated or planned violence, as alleged by the authorities and in the prosecution case. The court charges, in Amnesty International's view, were unsupported by any valid evidence and should have been dismissed at an early stage of the proceedings, even before they reached the stage of a trial, if the relevant judicial officials had been sufficiently determined to adhere to international recognized standards concerning the independence of the judiciary.

Amnesty International considers that Ali Aref is innocent of the charges on which he has been convicted and which have resulted in his imprisonment for most of the past two years.

Believing that Ali Aref is innocent of the charges against him and that he is in prison for other political reasons, Amnesty International has reached the conclusion that he is a prisoner of conscience imprisoned on account of his non-violent political views, namely his opposition to the government. The case against him appears to have been a fabrication.

As regards the 13 others who were sentenced to prison terms, the charges against them are not sustainable either, for the same reasons. Amnesty International has concluded that they were imprisoned in connection with the attempt by the authorities to silence potential political opposition developing around Ali Aref, with whom they all had or were believed to have some sort of connection. This motivation appeared clear with regard to Mohamed Daoud Chehem, for example, a friend of Ali Aref who was associated with preliminary discussions which might have later led to their becoming openly politically active, especially as events moved during 1991 and 1992 towards the open formation of opposition parties.

Aref Mohamed Aref, who was acquitted by the tribunal "with the benefit of doubt", appears to have been arrested because he is a nephew of Ali Aref, though apparently not a close political associate. Although regarded as a government opponent, he had not joined any political group, but was known for his professional legal activities in defending prisoners of conscience and other political prisoners. This appears to have given additional motivation to the authorities to imprison him and charge him in this case. Amnesty International welcomes the fact that he had the opportunity to call witnesses to testify in his defence and establish his innocence, although it must be noted that he was denied the right to conduct his own defence and that his series of formal complaints to the judicial authorities throughout his imprisonment were ignored. Perhaps the pressure on the Djibouti authorities on his behalf by international legal associations helped to ensure that he - alone of all the defendants - was spared the extreme unfairness manifested in virtually all other respects during the trial. As a prominent advocate of the bar of Djibouti, the way he was treated by judicial officers and the court was extraordinary, as was the virtual absence of protest from the Bar Association of Djibouti.

Amnesty International welcomes Aref Mohamed Aref's acquittal by the court, although the reservations expressed by the verdict seem unacceptable. In Amnesty International's view, there was no case against him from start to finish. Amnesty International considers that he was a prisoner of conscience and deplores that fact that, like his co-accused, he was wrongfully imprisoned for one-and-a-half years. Amnesty International is concerned at the latest move by the Public Prosecutor to challenge his acquittal

Djibouti: Prisoners of conscience - unfair trial by security tribunal

and have him re-imprisoned.

Amnesty International thus regards all the convicted prisoners as prisoners of conscience with the exception of the special situations of Moussa Daoud Balatou and Mohamed Ahmed Youssef. The main charges against them relating to the Tadjourah attack cannot be regarded as proved. However, during the trial - where they denied the charges relating to the Tadjourah attack - they affirmed that they belonged to AROD, an organization engaged in armed opposition to the government, and admitted involvement in the separate incident at Dittilou, where they were wounded and captured. Amnesty International cannot, therefore, adopt them as prisoners of conscience, because of their advocacy and apparent use of violence.

Since their conviction, the 14 prisoners have all been held in Gabode prison in the capital, six to a small cell, which contains no furniture except beds. Their families and lawyers can visit them, and they have access to medical treatment. Ali Aref is reported to suffer from a prostate gland condition. They are allowed writing materials (but no table and chair to enable them to write) and restricted reading material.

## **8. Amnesty International's recommendations**

### **8.1 Release of prisoners of conscience**

Amnesty International is appealing to the government to release Ali Aref and the other 11 prisoners of conscience imprisoned with him immediately and unconditionally and to declare their convictions and sentences invalid. These prisoners of conscience are named in the Appendix.

### **8.2 Two other prisoners convicted by the tribunal**

Amnesty International considers that Moussa Daoud Balatou and Mohamed Ahmed Youssef did not receive a fair trial and therefore they should be either released or retried on specific charges by a court which will ensure they receive a fair trial.

### **8.3 Torture**

Amnesty International regards it as an unacceptable failing of the tribunal that it did not investigate the well-attested allegations of torture by most of the defendants. Amnesty International is repeating again its appeal, originally made more than a year ago, for an independent and impartial inquiry to be established into their torture with a view to bringing their torturers to justice and establishing permanent safeguards against torture. In accordance with international standards, the torture victims should be compensated for any torture injuries.

### **8.4 Fair trial**

Amnesty International recommends that the State Security Tribunal should either be abolished, or be thoroughly reformed to make its structure and procedures compatible with internationally recognized standards of fair trial.

Djibouti: Prisoners of conscience - unfair trial by security tribunal

### **8.5 Prison conditions**

Amnesty International recommends that an independent and impartial inquiry be established into the treatment of the prisoners in custody, with a view to recommending improvements so as to make prison conditions compatible with international standards, including those set forth in the *Standard Minimum Rules for the Treatment of All Prisoners*. In particular, prisoners should, following their arrest, be allowed immediate and regular access to their families, legal representatives and independent medical doctors, and be kept in humane and hygienic conditions. They should be held only in lawfully established prisons.

**APPENDIX**  
**Identities and sentences of the prisoners convicted in July 1992**

Sentenced to 10 years' imprisonment

1. Ali Aref, 58, businessman, former President of the Government (1968-1976)
2. Mohamed Hassanleh Abakari<sup>1</sup>, army lieutenant
3. Abdoukader Mohamed Abass, army lieutenant
4. Mohamed Bouha Ali, port employee, ex-soldier
5. Orbisso Mohamed Ali<sup>1</sup>, soldier
6. Moussa Daoud Balatou<sup>2</sup>, ex-soldier
7. Mohamed Ali Moumin ("Isseytou"), police lieutenant
8. Ahmed Dini Moyale<sup>1</sup>, police officer
9. Mohamed Ahmed Youssouf ("Amigo")<sup>2</sup>, ex-soldier

Sentenced to five years' imprisonment

10. Mohamed Daoud Chehem, director in the Ministry of Finance
11. Mohamed Aden Aboubaker<sup>1</sup>, insurance agent and brother-in-law of Aref Mohamed Aref
12. Mohamed Ahmed Adrouh ("Mengistou"), police corporal
13. Bahloul Abdallah Issa, businessman, tribal chief, uncle of no.11
14. Abdallah Ali Mohamed, US embassy employee, ex-soldier.

<sup>1</sup>released provisionally before the trial and re-imprisoned since July 1992

<sup>2</sup> admitted belonging to a rebel force, so not adopted by Amnesty International as a prisoner of conscience

**Notes:**

- i) Amnesty International has adopted 12 of the prisoners as prisoners of conscience, i.e. all the above except Moussa Daoud Balatou and Mohamed Ahmed Youssouf.
- ii) A total of 63 people were initially accused, with 33 later discharged and 19 others provisionally released. By the time of the trial, only 11 remained in custody. The court convicted 14 defendants who were in court and 19 others in absentia, and acquitted only one defendant - Aref Mohamed Aref, 39, a lawyer and a nephew of Ali Aref, who had been detained since January 1991.
- iii) All those convicted, including the 14 listed above and the 15 others sentenced in absentia, were also ordered jointly to pay compensation totalling 22 million Djibouti Francs (approximately US\$ 132,000 equivalent) to the families of the two government soldiers killed and the six soldiers wounded, as well as the unspecified costs of the court case.