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SUDAN

Justice?

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Boma and 25 others

An update



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The trial of Father Hillary Boma and 25 others

An update

The unfair military trial in Khartoum of 26 men, including two Roman Catholic priests, on charges relating to alleged involvement with explosions in Khartoum in June 1998 remains suspended, apparently indefinitely.

However, this is nowhere near the end of the case. The trial is suspended pending a ruling by the Constitutional Circle of the Supreme Court on whether the military court has jurisdiction. It is not clear when this ruling will be made. On 24 January 1999 the court was scheduled to hear an appeal from defence lawyers about the constitutionality of the military court. However, on that day Mr Jalal Ali Lutfi, President of the Constitutional Circle of the Supreme Court, postponed the hearing for an indefinite period, for the stated reason that the composition of the Constitutional Court was incomplete.

If the court eventually rules that the military trial can continue, a final judgement is likely to follow quickly. This could involve the imposition of the death penalty.

Should the Constitutional Circle of the Supreme Court rule that the military court has no jurisdiction, there is every possibility that the case will be transferred to the jurisdiction of the civilian High Court. This means that the defendants will be subjected to a new trial.

Amnesty International is calling for guarantees that any trial conforms to international standards of fairness.

While in principle the suspension of the patently unfair military trial is a positive development, Amnesty International is concerned that no date has been set or made public for the Constitutional Circle of the Supreme Court's ruling on jurisdiction. Neither is there any certainty that the full range of issues that cause the trial in the military court to be unfair will be part of the court's deliberations. In the meantime, 20 of the defendants (six are being tried *in absentia*) remain in prison, effectively in limbo.

Amnesty International is calling on the Constitutional Circle of the Supreme Court to set and make public a firm date when it will deliver its ruling. It is urging the court to consider all aspects of the issue of fair trial as part of its deliberations on jurisdiction. The organization is calling on the Sudanese authorities to ensure that the prisoners be allowed access to their lawyers, families and any necessary medical attention.

There is still no sign of a thorough and impartial inquiry into reports that the accused were tortured or subjected to other forms of cruel inhuman or degrading treatment in advance of giving statements or making confessions (see below). Under international law, all allegations that statements have been extracted through torture or other cruel, inhuman or degrading treatment must be promptly and impartially examined by the competent authorities.¹ The importance of this international legal obligation is clear: the basis of the prosecution case rests on testimony and confessions alleged to have been extracted as a result of torture.

The remainder of this report is an updated version of *Sudan: Justice? The military trial of Father Hillary Boma and 25 others*, released on 18 December 1998.

The bombings

The events that led to this situation began in mid-1998 when the Sudan Government, which seized power in a military coup on 30 June 1989, held a referendum on proposals for a new constitution. On 24 June the electoral commission announced a 96% vote in favour of the constitution on a national turnout of 91.9%. The result was widely assumed to be rigged. The opposition boycotted the referendum and some observers reported a low turnout.

The government declared that the new constitution would guarantee greater civil and political freedoms, including the right to form political associations and trade unions, which have been banned since 1989. Despite their boycott of the vote, leaders of banned political parties reacted to the result by announcing that once the constitution was promulgated they intended to move immediately to re-establish political parties. They argued that since the new constitution superseded all previous presidential constitutional decrees, its effect was to lift the ban.

The government responded by declaring that all political activity would remain illegal until new laws interpreting the constitution had been passed. Immediate moves were made to arrest a number of prominent political opponents and trade unionists associated with groups whose members in exile have formed the opposition National Democratic Alliance (NDA). Most were released within 48 hours. Some, including al-Haj Abdelrahman Abdullah Nugdullah, a former Minister of Religious Affairs and member of the banned Umma Party, who was arrested on 29 June, were taken into incommunicado detention.

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Articles 13 and 16.

On 29 and 30 June -- the day before and the day President Omar Hassan Ahmad al-Bashir formally signed the new constitution -- six bombs exploded in Khartoum. Three others were reportedly discovered and defused. Sites included an oil depot, two power stations, electricity transformers and power lines. The authorities claimed that other devices, which apparently did not explode, were planted in public places such as outside a public hall, a cinema and a hospital. No-one is reported to have been injured in the attacks.

Arrests

The government immediately accused banned opposition parties of responsibility for the bombs. On 4 July the president announced that persons convicted of involvement would be sentenced to death by hanging and then crucified. Yet more members of banned political parties and trade unions were arrested. For example, on 6 July Abdelmahmud Abbo, a leading member of the Umma Party and the *Ansar* order of Islam, was detained. Others, for example Mahjoub al-Zubeir, Siddig Yahya and other trade unionists, were held briefly.

Meanwhile, workers at some of the places where the bombs had been planted were also arrested. For example, Baha al-Din Hassan Osman, an electrical engineer, Mahmud Khalil, Hamad al-Tahir and Rudwan -- employees at the Burri Power Station in Khartoum -- were taken to a secret detention centre where they were beaten. They were then transferred to Kober prison, the main civil prison in Khartoum, which contains a section run by the security services and is a common destination for political prisoners. After a short period there they were transferred to Dabak prison, a small prison north of Khartoum.

On 6 July three men appeared on state-owned television and confessed to the bombings. One, a man named Sharif Jabr al-Dar Wada'atallah, alleged that al-Haj Abdelrahman Abdullah Nugdullah and Abdelmahmud Abbo had incited them to take part in the plot. Banned opposition parties, including the Umma Party and the Democratic Unionist Party, were again accused of direct involvement.

Up to this point the authorities appear to have been using the explosions as a pretext to attack prominent political opponents within the country. For example, on 7 July the government announced that no "terrorist faction operating abroad" that has taken up arms against the government, in other words the NDA and its constituent political parties, would be allowed to form political associations inside Sudan. Opposition leaders have claimed that the government is using the bombings to prevent the re-establishment of a multi-party political system in the country.

However, during the latter part of July the authorities switched direction. On 29 July Father Lino Sebit, a young Roman Catholic priest working in the Archdiocese of Khartoum, was arrested and taken into incommunicado detention. He was reportedly beaten and tortured until he confessed to involvement in the bombings. He is one of those now on trial.

Three days later, on 1 August, Father Hillary Boma, the 57-year old Chancellor of the Archdiocese of Khartoum, was arrested at gunpoint in St Matthew's Catholic Cathedral in Khartoum. He is an outspoken critic of the government and has been questioned by the authorities on many previous occasions. He, too, was held incommunicado. In the days that followed he was also questioned about the explosions, reportedly on at least one occasion with a gun held to his head. His jailers are reported to have produced Father Lino Sebit in front of him, looking bruised and dishevelled. At that point Father Hillary Boma is reported to have made a confession to prevent his colleague from being beaten further. He stands accused of being the ringleader of the bombing plot.

When defence lawyers eventually got access to 19 of the defendants for the first time, on 6 October, each said that their alleged confessions had been made under torture or other forms of duress. Two of the three men who made televised confessions have since retracted these in court. Another who alleged he had been beaten was Joseph Adhiang Langlang, the only soldier among the accused.

Meanwhile, Baha al-Din Hassan Osman, Mahmud Khalil, Hamad al-Tahir and Rudwan were released without charge in mid-August. Sharif Jabr al-Dar Wada'atallah, who appeared on television implicating the political party activists, is not among the accused. He is widely believed to have been a security official planted by the authorities. al-Haj Abdelrahman Abdullah Nugdullah and Abdelmahmud Abbo were released on 12 October. Ali Mohamed Osman Yassin, the Minister of Justice, announced that neither would face charges.

The military trial

On 5 October 20 men appeared before a specially convened military court at the Air Defence Headquarters in Khartoum. Another six men are being tried in their absence. The majority of the defendants are from southern Sudan and all but one are civilians.

They are variously charged with offences under the 1991 Penal Code including: criminal conspiracy (articles 21 and 24), undermining the constitution and waging war against the state (articles 50 and 51), violent opposition and the forming of criminal organisations (articles 63 and 65). The maximum penalty that may be imposed for

offences under articles 50 and 51 is the death sentence. Nineteen of the 20 men in court have pleaded not guilty. One is reported to have initially pleaded guilty, allegedly in return for a pardon if he acted as a prosecution witness.²

Special military courts have been convened on previous occasions to try specific security cases. Each time the trial has been unfair.

Amnesty International believes that a fair trial is not possible before the military court that has been convened. Like its predecessors, the way the court is constituted, its place within a wider system of military justice and its procedures all undermine the possibility of a trial that meets international standards of fairness. This has been borne out by the manner in which the investigation has been conducted and the manner in which the court has conducted itself.

Under international standards, everyone has the right to trial by a competent, independent and impartial tribunal.³ This requires that the court has jurisdiction to try the case. However, it is not clear that this military court has jurisdiction. Only one of the accused is a member of the armed forces. All the rest are civilians. On 13 October defence lawyers petitioned the court about its competence to try the case. Their submission that the trial should take place in a civilian court was rejected.

However, on 10 December the Constitutional Circle of the Supreme Court announced a temporary halt to the trial whilst it considered a new petition for the case to be heard before a civilian court. On 28 December the court announced that an appeal would be heard from the defence on 24 January 1999. However, on that day the President of the Constitutional Circle of the Supreme Court postponed the hearing indefinitely. It is not clear when a ruling is to be expected.

² In the event, this witness is reported to have changed his testimony and retracted his confession on 21 November 1998.

³ Article 10 of the *Universal Declaration of Human Rights*; Article 14 (1) of the *International Covenant on Civil and Political Rights (ICCPR)*; Article 7 read in conjunction with Article 26 of the *African Charter on Human and People's Rights (ACHPR)*.

In its General Comment on Article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*, the UN Human Rights Committee has stated: “while the Covenant does not prohibit such categories of courts [ie military or special courts], nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14”. The African Commission on Human and People’s Rights has stated that the creation of a tribunal comprising members of the armed forces belonging largely to the executive branch of government creates the appearance of, if not actual lack of impartiality and thus violates Article 7 (1)(d) of the *African Charter on Human and People’s Rights (ACHPR)*.⁴

Under international standards, persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.⁵ Only one of the three judges hearing this case is legally qualified. For example, the chair of the panel, Colonel ‘Abd al-Mona’im Mohamed Mohamed Zein, is an engineer.

Under international standards, everyone has the right to a defence and to the defence counsel of their own choice.⁶ This right is also enshrined in Article 32 of the very constitution the men are accused of seeking to undermine.⁷ This is not simply an issue of defence representation at the trial itself. The UN Human Rights Committee has stated that “all persons arrested must have immediate access to counsel”.⁸ In addition, everyone has the right to adequate time and facilities to prepare his or her defence.⁹

⁴ Constitutional Rights Project, CRP (in respect of Zamani Lakwot and six others) vs Nigeria (87/93); CRP vs Nigeria in respect of Wahab Akamu, G. Adege and others (59/91) in the 8th Annual Activity Report of the ACHPR 1994-1995, ACHPR/Rpt/8th/Rev.1.

⁵ Principle 10 of the *UN Basic Principles on the Independence of the Judiciary*.

⁶ Principle 1 of the *UN Basic Principles on the Role of Lawyers*; Article 14 (3)(d) of the *International Covenant on Civil and Political Rights (ICCPR)*; Article 7(1)(c) of the *African Charter on Human and People’s Rights (ACHPR)*.

⁷ Article 32 (in a translation provided by the official Sudan News Agency, SUNA) states: “No person shall be incriminated or punished for an act save in accordance with a prior law incriminating the act and punishing therefor. A person accused of an act shall be innocent until his conviction is judicially proved and he shall have the right to a prompt and fair trial and to defend himself and to choose whoever may represent him in defence”.

⁸ Concluding observations of the Human Right Committee: Georgia, UN Doc CCPR/C/79/Add. 74, 9 April 1997, para. 28.

⁹ Article 14 (3)(b) of the *ICCPR*.

The men on trial in Khartoum were held incommunicado while being interrogated. They had no legal assistance while the security services extracted statements from them. Lawyers wishing to represent the defendants were only informed of the date of the trial the day before it was due to begin. The accused were only granted lawyers on 5 October, the actual day the legal proceedings opened in court. On the same day a list of proposed defence lawyers was presented to the judges. Five were rejected by the court, including Ghazi Suleiman, a lawyer who has defended other persons arraigned on political charges with some success. Such a decision by the court is in clear violation of the *ICCPR* and the *ACHPR*.

The lawyers who were deemed eligible by the court, a team of 10 men led by Abel Alier, a former Vice President of Sudan, met the majority of the defendants for the first time on 6 October. Despite repeated requests, they were refused permission to see Father Hillary Boma until 12 October -- 24 hours before the second day of trial.

Between then and the suspension of the military trial in December, the defence team is reported to have been granted access to the defendants each of the three times they asked. However, they have not been allowed to see their clients in conditions that allow privacy. This compromises the ability of the lawyers and the defendants to communicate freely with each other and is a restriction on the right to adequate facilities to prepare a defence.¹⁰

Once in court all but one of the defendants have retracted their statements, which include alleged confessions, some saying they did not make them at all, and others that they were tortured into making them. Under international law, confessions of guilt extracted under torture or other forms of duress are inadmissible as evidence.¹¹ On 13 October medical reports that the prosecution claimed had been taken before the men signed the alleged confessions were read out in court. These said that the men showed no signs of ill-treatment. However, there is concern that these medical reports may not be genuine. Three, including those of the two priests, were not dated. The identity of the person who signed as examining doctor is not known. The court continues to regard evidence from the alleged confessions as genuine. They form the main basis of the prosecution case.

¹⁰ Human Rights Committee General Comment 13, para 9.

¹¹ *CAT* Article 15: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against the person accused of torture as evidence that the statement was made". Although the Sudan has yet to ratify *CAT*, its signing of *CAT* on 4 June 1986 obligates it not to take any action that would defeat the objective or purpose of the treaty.

The prosecution has also been allowed to make use of videotaped “reconstructions” in court. In these videotapes, some filmed at the sites of the explosions, the defendants were obliged to act out physically their alleged role in the bombings, again reportedly after being coerced. The obtaining of evidence as a result of torture or coercion and the acceptance of such evidence by the court -- including the acceptance of the bizarre procedure of video-taping the accused reconstructing their alleged participation in the crimes -- is in direct contradiction of the right not to be compelled to testify against oneself or to confess guilt enshrined in the *ICCPR*.¹² This prohibition is in line with the presumption of innocence, which places the burden of proof on the prosecution.¹³ The presumption of innocence is enshrined Article 32 of the Sudan’s new constitution.

Under international standards everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher tribunal.¹⁴ This is to ensure that there will be at least two levels of judicial scrutiny of a case, the second of which is a higher authority than the first. It has to be more than the confirmation of a judgement by the original trial judge and more than just a formal verification that procedural requirements were met. It should include the rights to a fair and public trial. In the case of trial before the special military court there is no right to an appeal.

The absence of the right to appeal is in itself an infringement of the right to a fair trial. In this case the consequences could be extreme. The African Commission on Human and People’s Rights has stated that: “...to foreclose any avenue of appeal to competent national organs in criminal cases...clearly violates Article 7 (1)(a) of the *ACHPR*, and increases the risk that severe violations may go unredressed”.¹⁵ Two of the charges carry the death penalty. Amnesty International is opposed to the death penalty in all situations, regarding it as a cruel, inhuman and degrading punishment that violates the fundamental right to life. Should the accused be executed pursuant to a decision of the military court after an unfair trial, such an execution would amount to the arbitrary deprivation of the right to life, in violation of Article 6 of the *ICCPR* and Article 4 of the *ACHPR*.

Conclusion

¹² *ICCPR*, Article 14 (3)(g).

¹³ *The Universal Declaration of Human Rights*, Article 11.

¹⁴ *ICCPR*, Article 14 (5).

¹⁵ *CRP vs Nigeria*, *ibid*.

In Amnesty International's opinion the military court in which the defendants have so far been tried does not meet international standards for fair trial.

The case raises serious concerns about the Sudan Government's genuine commitment to constitutionality and the rule of law. For the past nine years the government has regularly detained political opponents, especially outspoken men like Father Hillary Boma, without charge or trial. More recently, the government has claimed that there are few political detainees and has made greater use of the courts. However, cases such as this undermine the claim that the government is committed to respecting human rights.

The suspension of the trial is a positive development. However, Amnesty International is concerned that the Constitutional Court may not engage in a fundamental review of trial procedures and the conduct of the trial as part of its deliberations on whether the military court has jurisdiction. The fact that there are several grounds for declaring the trial unfair should all be considered. A ruling on jurisdiction that does this could have the effect of preventing future trials being conducted before courts that conduct themselves like this one, that use similar procedures and that are formed within a similar institutional framework. This might have the effect of putting an end to an institutional process that violates human rights.

Amnesty International is also concerned that the Constitutional Circle of the Supreme Court has not given a date on which it will deliver its ruling. As a result the defendants are in prison effectively in limbo for an apparently indefinite period.

Amnesty International is calling on the Sudan Government to ensure that the trial of all 26 men involves full respect for human rights. This means fulfilling the requirements for justice and fairness outlined in the international standards set out in universal instruments such as the *International Covenant on Civil and Political Rights* and regional treaties such as the *African Charter on Human and People's Rights*.

Further, if this case is transferred to another tribunal or jurisdiction, it is incumbent on the State to ensure that it too meets all the relevant international standards guaranteeing respect for human rights.

The organization is reiterating its call for a thorough and impartial inquiry into reports that the accused were tortured or subjected to other forms of cruel inhuman or degrading treatment.

Finally, the organization is urging that the death penalty not be applied, in the event of a conviction in any tribunal, fair or otherwise.

The accused

- | | |
|--------------------------------|-------------------------------|
| 1) Father Hillary Boma Awul | 6) Faustino Awol Aduroc |
| 2) Father Lino Sebit | 7) Hassan Abdallah Kenya Adam |
| 3) Patrick Celestino Morajan | 8) Nyok Awar Palak Abu Zinc |
| 4) Leoboldo Odira Rahamatallah | 9) Rizig Ambrose Angoya |
| 5) Joseph Adhiang Langlang | 10) Garang Malek Bak |
| 11) Faustino Awol Odong | 19) Karkoun Nawek Daoul |
| 12) Charles Oling Dominic | 20) Francis Mabior |
| 13) Gabriel Matong Deng | 21) Abdallah Col |
| 14) Babiker Fadlallah Abdalla | 22) Peter Kong |
| 15) Kual Bol Beda | 23) Hassan Abu Adhan |
| 16) Lual Lual Aciek | 24) Louis Ojori |
| 17) Mustafa Shamsoon Anoka | 25) Joe Awet Dominic |
| 18) Babikir Mohamed Idris | 26) Khalid Yang |

Express your concern to:

1) His Excellency Lieutenant General Omar Hassan al-Bashir
President of the Republic of the Sudan
People's Palace
PO Box 281, Khartoum, Sudan

Telegrams: Lt Gen Omar Hassan al-Bashir, Khartoum, Sudan

Salutation: Your Excellency

2) Mr Ali Mohamed Osman Yassin
Minister of Justice and Attorney General
Ministry of Justice
Khartoum, Sudan

Telegrams: Minister of Justice Ali Mohamed Osman Yassin, Khartoum, Sudan

Telexes: c/o 22411 KAID SD or 22604 IPOL SD

Salutation: Dear Minister

3) Mr Mustafa Osman Ismail
Minister of Foreign Affairs
Ministry of Foreign Affairs
PO Box 873
Khartoum, Sudan

Telegrams: Foreign Minister Mustafa Osman Ismail, Khartoum, Sudan

Salutation: Dear Minister

4) Mr Jalal Ali Lutfi
Chairman of the Constitutional Court
Supreme Court
Khartoum, Sudan

Copies to: Mr Hafez al Sheikh al Zaki, Chief Justice, Supreme Court, Khartoum, Sudan.

KEYWORDS: MILITARY TRIBUNALS¹ / RELIGIOUS OFFICIALS (ROMAN CATHOLIC)¹ / CONSTITUTIONAL CHANGE¹ / CONFESSIONS / POLITICAL VIOLENCE / INCOMMUNICADO DETENTION / HUMAN RIGHTS INSTRUMENTS