

1-15 November 1999
Communication No. 48/90, 50/91, 52/91, 89/93

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-Sixth Ordinary Session
1-15 November 1999

**AMNESTY INTERNATIONAL, COMITÉ LOOSLI BACHELARD, LAWYERS
COMMITTEE FOR HUMAN RIGHTS, ASSOCIATION OF MEMBERS OF THE**

v.
SUDAN

DECISION

BEFORE: CHAIRMAN: Prof. E.V.O. Dankwa
VICE CHAIRPERSON: Mrs. Julienne Ondziel-Gnelenga
COMMISSIONERS: Professor Isaac Nguema, Dr. Ibrahim Ali Badawi
El-Sheikh, Dr. Hatem Ben Salem, Mr. Kamel Rezag-Bara, Dr.
Nyameko Barney Pityana, Mr. Andrew Ranganayi Chigovera, Mrs.
Florence Butegwa, Mrs. Vera Mlangazuwa Chirwa, Mrs. Jainaba Johm

Citation: Amnesty Int'l v. Sudan, Comm. 48/90, 50/91, 52/91, 89/93, 13th
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Commission On Human and Peoples' Rights Extracted from the
Commission's Activity Reports 1994-2001, at 335 (2002); Documents
of the African Commission on Human and Peoples' Rights, Vol. 2, at
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EPISCOPAL CONFERENCE OF EAST AFRICA

RAPPORTEUR

17th Session: Commissioner Kisanga

18th Session: Commissioner Kisanga

19th Session: Commissioner Kisanga

20th Session: Commissioner Kisanga

21st Session: Commissioner Rezag-Bara

22nd Session: Commissioner Rezag-Bara

23rd Session: Commissioner Rezag-Bara

24th Session: Commissioner Rezag-Bara

25th Session: Commissioner Rezag-Bara

26th Session: Commissioner Rezag-Bara

All of these communications pertain to the situation prevailing in Sudan between 1989 and 1993.

SUMMARY OF FACTS

1. Communication 48/90, submitted by Amnesty International, and communication 50/91, submitted by Comité Loosli Bachelard, deal with the arbitrary arrests and detentions that took place following the coup of 30 July 1989 in Sudan. It is alleged therein that hundreds of prisoners were detained without trial or charge.
2. Communication 50/91 alleges that since June 1990 members of opposition groups, among them Abdal-Qadir, Mohammed Salman and Babiker Yahya, have been arrested, detained, and subjected to torture. Other detainees include lawyers, members of opposition groups and human rights activists. The allegations are based on information from a wide variety of sources including interviews with eyewitnesses.
3. According to the plaintiff, Decree No. 2 of 1989 permits the detention of anyone "suspected of being a threat to political or economic security" under a state of emergency; the right to personal liberty and security was protected under the 1985 Transitional Constitution, Article 21, but the Constitution was suspended in 1989. Complainant further claims that the President can order the arrest of anyone without the

need to give reasons for such detention. No judicial challenge of such decisions is permissible. Decree No. 2 also provides for the creation of special courts to try those arrested under the state of emergency legislation. Section 9 of the Decree ousts the jurisdiction of the ordinary courts in cases arising from its enforcement. It is further alleged that the 1990 National Security Act created a National Security Council and Bureau. Under this Act, the security forces have powers of arrest, entry and search. Persons can be detained under this Act, without access to family, or lawyers for up to 72 hours, renewable for up to one month. Detention can be for up to three months if for the "maintenance of public security" and on approval of the Security Council and a magistrate. Appeal to a magistrate is permitted. In 1994 this Act was amended, enabling the National Security Council to renew a three-month order without reference to any persons. Further renewals require approval by a judge. There is no right to challenge detention under this Act and no reasons need be given for such detention.

4. The communications additionally allege that political prisoners are kept in secret detention centres known as "ghost houses". One of these was closed in 1995 and prisoners transferred to the main civil prison in Khartoum.
5. The communications also allege widespread torture and ill treatment in the prisons and "ghost houses" in Sudan. These allegations are supported by doctor's testimonies, personal accounts of alleged victims and a report by the UN Special Rapporteur. A number of individual victims are named. Additionally, it is alleged that many individuals were tortured after being arrested at army checkpoints or in military or war zones. Acts of torture include forcing detainees to lie on the floor and being soaked with cold water; confining four groups of individuals in cells 1.8 metres wide and one metre deep, deliberately flooding cells to prevent detainees from lying down, forcing individuals to face mock executions, and prohibiting them from washing. Other accounts describe burning with cigarettes and the deliberate banging of doors at frequent intervals throughout the night to prevent sleeping. Individuals were bound with rope such that circulation was cut off to parts of their bodies, beaten severely with sticks, and had battery acid poured onto open wounds.
6. The communications allege extra-judicial executions. Thousands of civilians have been killed in southern Sudan in the course of the civil war, and the government is alleged to have executed suspected members of the SPLA without trial and there has been no investigation into or prosecution for such incidents. In the course of counter-insurgency attacks civilians in the Nuba Mountains area and northern Bahr al-Ghazal have been killed when their villages were destroyed. These occurred in 1987-1989 but events are still continuing to this day.
7. In addition, detainees suspected of being supporters of the SPLA were alleged to have been arrested and then immediately executed in areas in southern Sudan.
8. Executions are also alleged to have been carried out by militia groups which are believed to have close connections with and the support of the government. No independent inquiry has been conducted into their activities nor have any persons been prosecuted in connection with such killings. These allegations are supported by evidence collected by the UN Special Rapporteur.

9. According to the complainant, an investigation was conducted in December 1987 by Abdel Latif District magistrate, Osamn Suleiman, into executions. A Provincial Judge ordered the investigation and the resulting report was believed to have been sent to the High Court in December 1988. No conclusions were ever made public.
10. In 1987 Dr Abdel Nabi Ali Ahmed, the Governor of South Darfur, announced the creation of a Commission of enquiry into the massacres that occurred in the region in 1987. It was to be composed of the District Prosecutor and police and security officials. A Second Commission was also said to have been set up to look into the background of the disturbances. The Commission of Enquiry sent a report to the Prime Minister in September 1987 but this was never made public. A National Committee of Investigation was set up by the Prime Minister but it is unclear if this was ever convened.
11. The complainant also claims that the 1983 Penal Code permits the use of the death penalty for a number of offences: murder-where it is mandatory; mutiny by a member of the armed forces; political offences-such as subversion, war against the state, treason, espionage, upsetting the national economy. Death sentences for murder can be set aside if the victim's relatives agree and compensation is paid to them by the accused. Section 47 creates an offence of attempt, abatement, causing or conspiring with others to facilitate mutiny, with a maximum penalty of death. The penalty also applies to those present at a mutiny without doing their utmost to suppress it; having knowledge or information or intention to go on a mutiny and failure to report such state of affairs.
12. Communication 48/90 describes how calling and organising a strike, possession of undeclared foreign currency, illegal production of and trading in drugs can also result in the death sentence. Individuals sentenced to death were not allowed to appeal against their conviction to a high court, or permitted to have legal representation at new trials.
13. Communication 48/90 alleges that the 28 army officers executed on 24 April 1990 were allowed no legal representation. It adds that in July 1989, the Constitution of Special Tribunals Act was passed, dealing exclusively with the establishment of such tribunals. Under section 3 of that Act, the President, his deputies or senior army officers may appoint 3 military officers or "any other competent persons" as judges. All sentences were to be confirmed by the Head of State and appeal is only allowed against the death penalty or imprisonment terms of more than one year.
14. In September 1989 these special tribunals were abolished and replaced by the so-called Revolutionary Security Courts. The presiding judge and two others were to be chosen by the RCC for their competence and expertise. Appeal was to a Revolutionary Security High Court but only against sentences of death and for those of imprisonment for more than 30 years. The September Laws were required to be applied in these courts from December 1989.
15. In December 1989 the government created more special courts in which lawyers, while being permitted to consult the accused prior to trial, are not allowed to address the court. Appeal is to the Chief Justice alone, not to any higher court.

16. Communication 52/91 provides evidence that over one hundred judges have been dismissed in order to systematically dismantle the judiciary who were opposed to the formation of special courts and military tribunals.
17. Information contained in communications 48/90 and 52/91, presented by the Lawyers Committee for Human Rights, describes government efforts to undermine the independence of the judiciary and the rule of law. It is alleged, in particular, that the government established special tribunals, which are not independent. The ordinary courts are precluded from hearing cases that are of the exclusive competence of the special tribunals. It is further alleged that the right to defence before these special tribunals is restricted. The communications also indicate that people brought before these tribunals were denied the right to contest the grounds for their detention under emergency legislation.
18. Communication 89/93, submitted by the Association of Members of the Episcopal Conference of East Africa alleges oppression of Sudanese Christians and religious leaders, expulsion of all missionaries from Juba, arbitrary arrests and detention of priests, the closure and destruction of Church buildings, the constant harassment of religious figures, and prevention of non-Muslims from receiving aid.
19. The people of the southern part of Sudan are predominantly Christian or of traditional beliefs, whereas the religion in the north of the country and the regime imposed by the government are Islamic. Shari'a is the national law.
20. The said communication alleges that non-Muslims are persecuted in order to ensure their conversion to Islam. Non-Muslims are prevented from preaching or building churches, and the freedom of expression of the national press is restricted. Members of Christian clergy are harassed, and there are arbitrary arrests of Christians, expulsions and denial of access to work and food aid.

II - THE GOVERNMENT'S CONTENTION

21. The government confirms the situation claimed by the complainants in respect of the composition of the Special Courts. National legislation indeed permits the President, his deputies and senior military officers to constitute these courts to consist of "three military officers or any other persons of integrity and competence".
22. The Government states in its submission of 1 January 1991 that the Military Courts are not extraordinary because trial is preceded by enquiry; evidence is taken on oath; information obtained during inquiry is not considered as evidence; decisions are taken after listening to the prosecution and defence; right of appeal is ensured as provision is made for a Military Court of Appeal to be constituted by the assent of the head of state. It consists of three army officers whose ranks are not less than that of Colonel, and shall include an officer from the Judicial Branch of the military; the accused may be accompanied by an advocate or friend. The government further states that the law establishing these tribunals permits the accused to be assisted by an advocate or any other person of his choice, and that the accused has the right to be defended before the special tribunals by a friend agreed to by the court. As regards the military tribunals, the national legislation allows the accused to be accompanied by a friend or lawyer.

23. In the remarks on these communications submitted to the Commission by the Sudanese Ministry of External Relations, dated 25 April 1999, the Sudanese government attributes a number of the alleged facts to the existence of a rebellion in the southern part of the country and claims that over 90 per cent of the alleged violations took place in areas currently under the control of the Sudanese People's Liberation Army (SPLA), led by rebel John Garang. It also refers to significant progress achieved in the eradication of the harmful effects of the war since the signing on 10 April 1996 of the Peace Charter and of the Khartoum peace agreement of 21 April 1997. The Sudanese government indicates that all persons cited in communication 50/91 have been released. As regards the allegations in communication 89/93, the government reiterates its adherence to article 24 of the Sudanese constitution which guarantees freedom of faith and worship, and recalls Pope John Paul II's pastoral visit to Sudan on 10 February 1993, as well as the conduct in Khartoum of the International Conference on Religions in October 1994.

PROCEDURE:

24. The Commission undertook an antipodal examination of the four communications. Communication 48/90, filed by Amnesty International, was received by the Secretariat in October 1990. On 20 October 1990, at its 8th Ordinary Session, was seized of the communication, and the decision on admissibility was passed on 12 October 1991 at the 10th Ordinary Session. Communication 50/91 was received on 30 November 1991. The Commission was seized of it at its 12th Session, held in October 1992. At the 13th Session, held in March 1993, the Commission (after declaring it admissible) decided to combine its procedure with that of communication 48/90. As for communication 52/91, it was received on 19 March 1991, the Commission was seized of it on 22 October 1991, and at the 13th Session held in March 1993, the communication was declared admissible and its procedure combined with that of communication 48/90. Communication 89/93 was received on 27 August 1992. The Commission was seized of it at the 13th Ordinary Session in March 1993, and its procedure was combined with that of the three preceding communications.

25. The parties were regularly notified of all the submissions and had the opportunity to present their conclusions and material evidence at all stages of the procedure.

26. The Commission deployed a mission to Sudan, comprising three Commissioners (E.V.O. Dankwa, Robert H. Kisanga and Mohamed Kamel Rezag-Bara) from 1 - 7 December 1996. The mission was able to verify on the ground elements of the four communications under consideration. The mission report was presented to the Commission, which adopted it and decided to publish it.

27. The Communication ruled on the merit of the four communications at its 26th Ordinary Session.

LAW

ADMISSIBILITY:

28. Admissibility of communications under the African Charter is governed by Article 56, which sets out conditions that all communications must meet before they can be decided upon. These criteria must be applied bearing in mind the character of each communication. The case at hand is a combination of four different communications, which the Commission decided to consider together, in accordance with its jurisprudence. (Cf. communications 16/88, 17/88, 18/88, 25/89, *Legal Assistance Group vs/ Zaire* and 27/89, 46/91, 49/91, 99/93 *World Organisation Against Torture, International Association of Democratic Lawyers, International Commission of Jurists and Inter-African Human Rights Union vs/ Rwanda*). This decision was based on the similarity of the allegations presented, on the one hand, and the human rights situation prevailing in Sudan during the period covered by these allegations of violations, on the other. The communications were submitted by NGOs and allege many overlapping and inter-related details.
29. Article 56.5 of the African Charter requires, as a condition for admissibility, that communications must be:
- "...submitted after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".
30. In applying this provision, the Commission has elaborated through its jurisprudence criteria on which to base its conviction as to the exhaustion of internal remedies, if any. The Commission has drawn a distinction between cases in which the complaint deals with violations against victims identified or named and those cases of serious and massive violations in which it may be impossible for the complainants to identify all the victims.
31. In a case of violations against identified victims, the Commission demands the exhaustion of all internal remedies, if any, if they are of a judicial nature, are effective and are not subordinated to the discretionary power of public authorities. The Commission is of the view that this provision must be applied concomitantly with article 7, which establishes and protects the right to fair trial.
32. The Commission has stated that one of the justifications for this requirement is that a government should be aware of a human rights violation in order to have the chance to remedy such violation, thus protecting its reputation which would inevitably be tarnished by being called to plead its case before an international body. This condition also precludes the African Commission from becoming a tribunal of first instance, a function that it cannot, either as a legal or practical matter, fulfil (See ACHPR/25/89: 53-54).
33. In the cases under consideration, the government of Sudan has not been unaware of the serious human rights situation existing in that country. For nearly a decade the domestic situation has focused national and international attention on Sudan. Many of the alleged violations are directly connected to the new national laws in force in the country in the period covered by these communications. Even where no domestic legal action has been brought by the alleged victims, the Government has been sufficiently aware to the extent that it can be presumed to know the situation prevailing within its own territory as well as the content of its international obligations.

34. Furthermore, the Commission is of the view that the internal remedies that could have been available to the complainants do not fulfil its conditions or are simply non-existent. In these communications, section 9 of decree no. 2, promulgated in 1989, suspends the jurisdiction of the regular courts in favour of the special tribunals as regards any action undertaken in application of the said decree. In addition, it outlaws any legal action taken against any action undertaken in application of the same decree. Further, the remedies provided for under the 1990 national security law do not conform to the demands of protection of the right to a good administration of justice, to the extent that the appeals provided for in this law cannot be brought before a judge. It is evident that this appeal procedure, as provided for in the 1990 national security law, cannot be considered as fulfilling the criteria of effectiveness.
35. The 1994 law, which repeals and replaces that of 1990, brings up the principle of the inexistence of remedies, as well as the retroactivity of its provisions. Indeed, under the 1990 law, accused persons could always file an appeal before a judge. This new law stipulates that "no legal action, no appeal is provided for against any decision issued under this law". This manifestly makes the procedure less protective of the accused and is tantamount to inexistence of appeal procedure.
36. The Commission also holds the view that the appeal before the High Court, as provided for, against verdicts passed by the revolutionary security courts (which replaced the special tribunals) does not fulfil the demands of effectiveness and existence contained in the African Charter. Indeed, appeals to this court are only permissible in the event of a death penalty or prison terms over thirty years. This implies that no other sentence can be appealed before the High Court, which consequently renders the appeal procedure inexistent for the complainants.
37. In the Commission's view, the right to appeal, being a general and non-derogable principle of international law must, where it exists, satisfy the conditions of effectiveness.
- An effective appeal is one that, subsequent to the hearing by the competent tribunal of first instance, may reasonably lead to a reconsideration of the case by a superior jurisdiction, which requires that the latter should, in this regard, provide all necessary guarantees of good administration of justice.
38. In cases of serious and massive, the Commission reads Article 56.5 in the light of its duty to protect human and peoples' rights as provided for by the Charter. Consequently, the Commission does not hold the requirement of exhaustion of local remedies to apply literally, especially in cases where it is "impractical or undesirable" for the complainants or victims to seize the domestic courts.
39. The seriousness of the human rights situation in Sudan and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be "unduly prolonged".

For these reasons, the Commission declared the communications admissible.

MERITS

40. Sudan ratified the African Charter on Human and Peoples' Rights on 18 February 1986. Prior to that, though Sudan had other obligations under international law, it was not bound by the Africa Charter, to the extent that the Charter only came into force there on 21 October 1986. It follows that the Commission can only take up violations that occurred after 21 October 1986. Continuing violations, as in the case of a law adopted prior to 1986, but that remains in force, fall within the competence of the Commission. This is because the effect of such laws extends beyond that date. Furthermore, ratification obliges a State to diligently undertake the harmonisation of its legislation to the provisions of the ratified instrument.
41. This decision does not encompass all human rights violations that may have occurred in Sudan after the period covered by the communications. In general, the Commission takes up only violations that are brought before it by complainants. Other violations can be discussed in the Commission's report on its mission to Sudan, which is not confined to the subjects of the communications.
42. Article 1 of the Charter confirms that the government has bound itself legally to respect the rights and freedoms enshrined in the Charter and to adopt legislation to give effect to them. Whilst the Commission is aware that states may face difficult situations the Charter does not contain a general provision permitting states to derogate from their responsibilities in times of emergency, especially for what is generally referred to as non-derogable rights.
43. The Commission is faced with the difficulty of deciding upon multifaceted allegations, some involving legal provisions that have changed over time. Since the communications were submitted, the situation in Sudan has not been static. And, as the government states, it has evolved in a direction that is more protective of human rights.
44. Confirming its willingness to cooperate with the Commission, the government replied in writing to the communications on 1 January 1991, 10 July 1997, 14 September 1997 and 25 April 1999, and received a mission of the Commission from 1-7 December 1996.
45. The Commission would like to commend and encourage the Sudanese government for its efforts to improve the human rights situation, with the adoption of a new constitution and the repeal of the emergency laws which seriously jeopardised the rights guaranteed in the Charter. It however maintains that these new changes have no effect on the past violations, which it is required, by virtue of its mandate to protect and promote human rights, to rule upon.
46. The Commission indeed undertook a mission to Sudan; but this mission must be considered as part of its human-rights promotion activities and does not constitute a part of the procedure of the communications, even if it did enable it to obtain information on the human rights situation in that country. Consequently, this decision is essentially based on the allegations presented in the communications and analysed by the African Commission.

47. Article 4 of the Charter reads:

"...Every individual shall be entitled to respect for his life... No one may be arbitrarily deprived of this right".

48. It is alleged that prisoners were executed after summary and arbitrary trials and that unarmed civilians were also victims of extra-judicial executions. These allegations are upheld by evidence taken from the report of the United Nations Special Rapporteur.

49. The government provides copies of the laws governing the executions alleged in the communications, but provides no specific information on the said executions. Neither was the Commission's delegation able to obtain this information.

50. In addition to the individuals named in the communications, there are thousands of other executions in Sudan. Even if these are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction (See ACHPR/74/91: 93, Union des Jeunes Avocats vs/Chad). Even if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law.

51. The investigations undertaken by the Government are a positive step, but their scope and depth fall short of what is required to prevent and punish extra-judicial executions. Investigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered. Constituting a commission of the District Prosecutor and police and security officials, as was the case in the 1987 Commission of Enquiry set up by the Governor of South Darfur, overlooks the possibility that police and security forces may be implicated in the very massacres they are charged to investigate. This commission of enquiry, in the Commission's view, by its very composition, does not provide the required guarantees of impartiality and independence.

52. According to the Commission's long-standing practice, in cases of human rights violations, the burden of proof rests on the government (See, ACHPR/59/91, ACHPR/60/91, ACHPR/64/91, ACHPR/87/93 ACHPR/101/93). If the government provides no evidence contradict an allegation of human rights allegation made against it, the Commission will take it as proven, or at the least probable or plausible. On the information available the Commission considers that there was a violation of Article 4 of the African Charter on Human and Peoples' Rights.

53. Article 5 of the Charter reads:

"Every individual shall have the right to the respect and dignity inherent in a human being...All forms of...degradation of man particularly...torture, cruel, inhuman or degrading treatment and punishment, shall be prohibited".

54. There is substantial evidence produced by the complainants to the effect that torture is practised. All of the alleged acts of physical abuses, if they occurred, constitute violations of Article 5. Additionally, holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.
55. Torture is prohibited by the Sudanese Penal Code and perpetrators punishable with up to 3 months imprisonment or a fine.
56. The government does not deal with these allegations in its report. The Commission appreciates the fact that the government's has brought some officials to trial for torture, but the scale of the government's measures is not commensurate with the magnitude of the abuses. Punishment of torturers is important, but so also are preventive measures such as halting of incommunicado detention, effective remedies under a transparent, independent and efficient legal system, and ongoing investigations into allegations of torture.
57. Since the acts of torture alleged have not been refuted or explained by the government, the Commission finds that such acts illustrate, jointly and severally, government responsibility for violations of the provisions of article 5 of the African Charter.
58. Article 6 of the Charter reads:
- "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained".
59. In its written submission to the Commission on 1 January 1991, in reply to the allegations of arbitrary arrests made by the complainants, the government described the powers given to President of the Revolutionary Command Council to issue orders and take measures in a state of emergency. Simply because an arrest is carried out under a written provision in force does not amount to a violation of Article 6. This article must be interpreted in such a way as to permit arrests only in the exercise of powers normally granted to the security forces in a democratic society. In these cases, the wording of this decree allows for individuals to be arrested for vague reasons, and upon suspicion, not proven acts, which conditions are not in conformity with the spirit of the African Charter.
60. Furthermore, appeal in the case of arrest lies to the body whose president orders the arrests. Such a remedy provides no guarantee of good administration of justice and is more akin to an appeal for clemency than a judicial appeal. Additionally, numerous arrests have been effected in disregard of this decree. The Commission is constrained to find that in Sudan there have been serious and continuing violations of Article 6 during the period under consideration.
61. Article 7.1 of the Charter reads:

"Every individual shall have the right to have his case heard. This comprises:

- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
- (b) the right to be presumed innocent until proved guilty by a competent court of tribunal;
- (c) the right to defence, including the right to be defended by counsel of his choice;
- (d) the right to be tried within a reasonable time by an impartial court or tribunal".

62. All of these provisions are mutually dependent, and where the right to be heard is infringed, other violations may occur, such as detentions being rendered arbitrary. Especially sensitive is the definition of "competent," which encompasses facets such as the expertise of the judges and the inherent justice of the laws under which they operate.

63. At the level of procedure, the complaints allege extensive interference with due process, including the institution of numerous special courts and trial of individuals who were denied the assistance of counsel. Some individuals were denied the right to challenge the legal grounds for their detention.

64. The government's submission is only in respect of Decree no. 2, which establishes the right of individuals to appeal to the Revolutionary Command Council. However, the government does not present evidence that this right was afforded to the persons in these cases. It is also unclear if accused persons have in all cases been permitted to select their own advocates without interference, or if the tribunal reserves the right to bar certain advocates from court. The right to freely choose one's counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable infringement of this right. There should be an objective system for licensing advocates, so that qualified advocates cannot be barred from appearing in particular cases. It is essential that the national bar be an independent body which regulates legal practitioners, and that the tribunals themselves not adopt this role, which will infringe the right to defence.

65. The communications allege that the 28 army officers executed on 24 April 1990 were allowed no legal representation. The government states that its national legislation permits the accused to be assisted in his defence during the trial by a legal advisor or any other of his choice. Before the Special Courts the accused have the right to be defended by a friend to be approved by the Court. The government argues that the court procedures were strictly followed in the case of these officers.

66. While there is a simple contradiction of testimony between the government and the complainant, the Commission must admit that in the case of the 28 executed army officers basic standards of fair trial have not been met. Indeed, the Sudanese government has not given the Commission any convincing reply as to the fair nature of the cases that resulted in the execution of 28 officers. It is not sufficient for the government to state that

these executions were carried out in conformity with its legislation. The government should provide proof that its laws are in accordance with the provisions of the African Charter, and that in the conduct of the trials the accused's right to defence was scrupulously respected. In this case, the very fact that the accused's choice is subject to the assent of the Court before which he is to appear constitutes a violation of the right to be represented by counsel of one's choice, as provided for in article 7 of the African Charter, cited above.

67. Article 7 is closely related to Article 26 of the Charter, which provides that:

"States parties to the present Charter shall have the duty to guarantee the independence of the courts..."

68. The government confirms the situation alleged by the complainants in respect of the composition of the Special Courts. National legislation permits the President, his deputies and senior military officers to appoint these courts to consist of "three military officers or any other persons of integrity and competence". The composition alone creates the impression, if not the reality, of lack of impartiality and as a consequence, violates Article 7.1(d). The government has a duty to provide the structures necessary for the exercise of this right. By providing for courts whose impartiality is not guaranteed, it has violated Article 26.

69. The dismissal of over one hundred judges who were opposed to the formation of special courts and military tribunals is not contested by the government. To deprive courts of the personnel qualified to ensure that they operate impartially thus denies the right to individuals to have their case heard by such bodies. Such actions by the government against the judiciary constitute violations of Articles 7.1(d) and 26 of the Charter.

70. The government provided no contrary element in refutation of the allegations made against it, and the laws that it cites are deficient. Accordingly the Commission holds a violation of Article 7.1(c).

71. Article 8 of the Charter reads:

"Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms".

72. These issues should be considered in relation to article 2 of the Charter, which provides for equal protection under the laws, and Article 8, on religious freedom, which will be treated below. While fully respecting the religious freedom of Muslims in Sudan, the Commission cannot countenance the application of law in such a way as to cause discrimination and distress to others.

73. Another matter is the application of Shari'a law. There is no controversy as to Shari'a being based upon the interpretation of the Muslim religion. When Sudanese tribunals apply Shari'a, they must do so in accordance with the other obligations undertaken by the

State of Sudan. Trials must always accord with international fair-trial standards. Also, it is fundamentally unjust that religious laws should be applied against non-adherents of the religion. Tribunals that apply only Shari'a are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they wish.

74. It is alleged that non-Muslims were persecuted in order to cause their conversion to Islam. They do not have the right to preach or build their Churches; there are restrictions on freedom of expression in the national press. Members of the Christian clergy are harassed; Christians are subjected to arbitrary arrests, expulsions and denial of access to work and food aid.
75. In its various oral and written submissions to the African Commission, the government has not responded in any convincing manner to all the allegations of human made against it. The Commission reiterates the principle that in such cases where the government does not respect its obligation to provide the Commission with a response on the allegations of which it is notified, it shall consider the facts probable.
76. Other allegations refer to the oppression of Christian civilians and religious leaders and the expulsion of missionaries. It is alleged that non-Muslims suffer persecution in the form of denial of work, food aid and education. A serious allegation is that of unequal food distribution in prisons, subjecting Christian prisoners to blackmail in order obtain food. These attacks on individuals on account of their religious persuasion considerably restrict their ability to practice freely the religion to which they subscribe. The government provides no evidence or justifications that would mitigate this conclusion. Accordingly, the Commission holds a violation of Article 8.
77. Article 9 of the Charter reads:

"2. Every individual shall have the right to express and disseminate his opinions within the law".
78. The communications under consideration allege that persons were detained for belonging to opposition parties or trade unions. The government confirmed that the "Decree on Process and Transitional Powers Act 1989", promulgated on 30 June 1989, stipulates in section 7 that during a state of emergency any form of political opposition by any means to the regime of the Revolution for National Salvation is prohibited where there is "imminent and grave threat to the security of the country, public safety, independence of the State or territorial integrity and economic stability.
79. As stated above, the Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.
80. The Commission has established the principle that where it is necessary to restrict rights, the restriction should be as minimal as possible and not undermine fundamental rights

guaranteed under international law (ACHPR/101/93: 25, Civil Liberties Organisation vs/Nigeria). Any restrictions on rights should be the exception. The Government here has imposed a blanket restriction on the freedom of expression. This constitutes a violation of the spirit of article 9.2.

81. Article 10 of the Charter reads:

"Every individual shall have the right to free association provided he abides by the law".

82. The Process and Transitional Powers Act 1989 prohibits, in section 7, effecting, without special permission, any assembly for a political purpose in a public or private place. This general prohibition on the right to associate in all places is disproportionate to the measures required by the Government to maintain public order, security and safety. In addition, there is evidence from the complainants, which is not contested by the government, that the powers were abused. In the absence of information from the government the Commission must give weight to the facts submitted by the complainant. Accordingly, the Commission holds a violation of Article 10(1).

83. The Commission is cognisant of the fact that it has found many violations of the Charter on the part of the Government. In concrete terms, this shows that the citizens of Sudan have endured a lot of suffering. To change so many laws, policies and practices will of course not be a simple matter. However, the Commission must emphasise that the people of Sudan deserve no less. The government is bound by its international obligations and the Commission's findings are specific enough to permit their implementation. This decision does not constitute the Commission's viewpoint on the overall human rights situation in Sudan. It is based on the allegations of violations committed by Sudan after its ratification of the African Charter on Human and Peoples' Rights and on verifications carried out in this regard, while not failing to note that the situation has improved significantly.

FOR THE ABOVE REASONS, THE COMMISSION:

- Declares that there has been a violation of Articles 2, 4, 5, 6, 7.1(a), (c), (d), 8, 9, 10 and 26;
- Recommends strongly to the Government of Sudan to put an end to these violations in order to abide by its obligations under the African Charter on Human and Peoples' Rights.