

**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 36/2016 concerning Biram Dah Abeid, Brahim Bilal
Ramdane and Djibril Sow (Mauritania)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 16 March 2016 the Working Group transmitted to the Government of Mauritania a communication concerning Biram Dah Abeid, Brahim Bilal Ramdane and Djibril Sow. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);



(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Biram Dah Abeid, born in 1965, a member of the Haratine ethnic group, is a campaigner for the abolition of slavery. He is the founding president of the Initiative pour la résurgence du mouvement abolitionniste — Mauritanie (IRA-Mauritanie), an NGO that combats slavery, gender-based oppression and racism in Mauritania. IRA-Mauritanie has organized demonstrations, hunger strikes and marches throughout Mauritania and freed thousands of slaves. Before the events referred to in this communication, Mr. Abeid had been subjected to harassment, arbitrary detention and prosecution on several occasions in the context of his work against slavery in Mauritania.

5. Brahim Bilal Ramdane, born in 1966, a member of the Haratine ethnic group, is an abolitionist and himself a former slave. Mr. Ramdane is vice-president of IRA-Mauritanie and the author of several articles on slavery in Mauritania.

6. Djibril Sow, born in 1977, is an abolitionist and president of Agir pour l'éducation, le travail et le progrès des droits de l'homme, an NGO, better known as KAWTAL, which is active in the struggle to end slavery in Mauritania. KAWTAL works together with IRA-Mauritanie. The two organizations often join forces to peacefully protest the consequences of the police's failure to take action against slavery. Mr. Sow habitually resides in Nouakchott but, at the time of this complaint, was abroad for medical reasons.

7. On 7 November 2014, a group of activists from eight NGOs in Mauritania organized a "freedom caravan" for a journey designed to raise public awareness throughout Mauritania of issues connected to slavery and land rights.

8. On 10 November, when they were in Thiambène, the activists from the caravan were approached by police officers, who gave them a letter from the governor of Trarza Region. The letter prohibited the activists from entering Trarza Region and stated that any violation of this administrative decision would be punished. The activists decided to continue their journey towards Rosso to deliver to the governor a letter containing villagers' complaints of violations of their rights.

9. On the morning of 11 November, the activists were stopped on the outskirts of Rosso by approximately 600 heavily armed police officers, gendarmes and National Guard personnel, who prohibited them from entering the city. Although the activists stated that they wished to enter Rosso only to give the letter to the governor and that they would not hold demonstrations in the city, the law enforcement officers refused to let them in. Mr. Abeid was not travelling with the caravan but was in Rosso, on his way to Senegal, when the confrontation took place. He went to the site to attempt to negotiate a solution.

10. Shortly after the local prefect had ordered the activists to disperse, the law enforcement officers used force against the caravan. Mr. Abeid and Mr. Sow were arrested and taken to Rosso gendarmerie station. There, the gendarmes separated them and asked Mr. Sow to inform on Mr. Abeid and the other activists from the caravan, who were

members of the Haratine ethnic group. Mr. Sow refused. Mr. Ramdane was arrested by the police and beaten before being taken to Rosso police station. Seven other activists were arrested and taken to the station. All the arrested activists, with the exception of Mr. Sow, were of Haratine descent.

11. The law enforcement officers who made the arrests did not show a warrant. The activists appear to have been arrested on the orders of the governor of Trarza Region. During the arrest, the gendarmes, police officers and National Guard personnel used tear gas to stop the activists. Some were clubbed by the police.

12. For three days, Messrs. Abeid, Ramdane and Sow were held incommunicado in tiny, filthy cells in Rosso police station.

13. On 12 November, the day after the arrest of the three men, the police closed the headquarters of IRA-Mauritanie in Nouakchott.

14. On 14 November, Messrs. Abeid, Ramdane and Sow were brought before the criminal court in Rosso and questioned by a judge and the prosecutor. Their lawyers were present but had not been authorized to meet with them before this hearing. The judge informed the detainees of the charges against them: administration of an unrecognized organization, organization of an unauthorized public demonstration, assault on the forces of law and order and contempt of authority. Counsel for the accused requested the release of all the activists from the caravan who were being detained pending trial, but the judge only granted bail to Mr. Sow and to another activist, because of his advanced age and poor health. The judge did not explain why he refused to grant bail to the other activists, including Mr. Abeid and Mr. Ramdane.

15. On 28 November, the President of Mauritania made public comments on this subject in his speech to the nation on the fifty-fourth anniversary of the country's independence. "As long as I am in power", he apparently said, "Biram will not see the light of day". On 18 December, at a summit of several African Heads of State, the President of Mauritania, in front of the press, called the activists from the caravan "criminals who should be punished". These statements were broadcast on national television and radio.

16. On 24 December, the court heard the arguments of the two sides. The lawyers for Messrs. Abeid, Ramdane and Sow were able to meet with their clients, but the prison guards were present throughout the meetings, which could not therefore be confidential. The trial was public, and the detainees were represented by their lawyers. The prosecution maintained that the detainees had made speeches against the Government and acted violently during the incident of 11 November 2014 but did not present any witnesses or evidence. The judge rejected the motion by the defence to investigate the ill-treatment of Mr. Ramdane and two other activists. During the trial, the prosecutor described the detainees as agitators who were trying to start a civil war in Mauritania.

17. The trial came to a close on 30 December 2014. The judge, yet again, and without explanation, rejected the defence's motion for the release on bail of all the activists from the caravan pending the reading of the verdict.

18. On 15 January 2015, Messrs. Abeid, Ramdane and Sow were sentenced by the court to 2 years' imprisonment for the crimes of unarmed rebellion and contempt of authority under article 193 (2) of the Mauritanian Criminal Code. Immediately after the reading of the verdict, on the night of 15 January, the three men were transferred from Rosso to a prison in Aleg, some 210 kilometres distant. The prison in Aleg is not under the jurisdiction of the Nouakchott Court of Appeal, to which the defence had appealed. Moreover, this transfer separated the detainees from their families, their friends and their supporters in Rosso.

19. In response to the motion by the defence for the return of the three men to Rosso prison, the Supreme Court of Mauritania indicated that jurisdiction over the three cases had been transferred to Aleg.

20. According to the source, the conditions in Aleg prison were extremely harsh. Messrs. Abeid, Ramdane and Sow were held in a cell of approximately 6 square metres, with only a small vent at the top of the walls. They were not allowed to leave their cell, which was infested with vermin and mosquitoes. They had no mattresses, no mosquito net and no food, and at first they were not allowed to receive visits. As a result of these conditions, Mr. Sow and Mr. Abeid's health deteriorated. Mr. Sow developed gastrointestinal problems, kidney stones and a skin ailment. Mr. Abeid suffered from back pain that became so acute it was hard for him even to remain on his feet. On numerous occasions, Mr. Sow and Mr. Abeid asked to see a doctor to receive medical treatment. On 22 February, as a result of the worsening of Mr. Sow's skin condition, the authorities transferred him to Nouakchott, where he was allowed to see a doctor. On 29 June, Mr. Sow was temporarily released on medical grounds. On 10 August, Mr. Sow left Mauritania for medical treatment. Since his release was temporary, Mr. Sow could be imprisoned again if he returned to Mauritania.

21. On 20 August, the Aleg Court of Appeal upheld the judgment of the lower court. Mr. Abeid and Mr. Ramdane and their lawyers boycotted the appeal because it was heard at the Aleg Court of Appeal rather than at the Nouakchott Court of Appeal, which had jurisdiction over these cases. Although no representative of the accused was in the courtroom, the judgment delivered by the court stated that they had been present. This judgment upheld the conviction on the basis of articles 101 and 191 of the Criminal Code of Mauritania, although the lower court had found only a violation of article 193 (2).

22. On 13 November, Mr. Abeid and Mr. Ramdane were transferred to a prison in Nouakchott.

23. The source submits that the deprivation of liberty of Messrs. Abeid, Ramdane and Sow is arbitrary and falls within categories II and III of the categories referred to by the Working Group when considering cases submitted to it. In addition, the arrest and continued detention of Mr. Abeid and Mr. Ramdane are arbitrary and fall within category V.

24. In the source's view, the three individuals were arrested, detained and prosecuted on account of their work as abolitionists and their peaceful exercise of their rights to freedom of expression, association and peaceful assembly. The aim of the letter from the governor of Trarza and the warning subsequently issued by the local prefect was to prevent the activists from entering Rosso, with a view to putting an end to their campaign to raise public awareness and their efforts to document abuses linked to slavery and land rights. In the course of the hearings at the Rosso Criminal Court, the prosecutor even argued that the speeches allegedly made by the accused men criticizing the Government were evidence of their guilt. Indeed, in its judgment, the court stated in particular that any act of disobedience, whether in word, gesture or deed, was considered to fall within the definition of contempt of authority. Before the 2014 arrests, the activists from both IRA-Mauritanie and KAWTAL had been harassed, beaten, arrested and detained by the police during peaceful protests against slavery.

25. The source submits that Messrs. Abeid, Ramdane and Sow were denied the protection afforded by the international norms regarding the rights to due process and to a fair trial while they were deprived of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. In particular, the source states that, in breach of article 14 (2) of the Covenant, the Government, at the highest level, violated the right of the accused to

the presumption of innocence by stating publicly that they were guilty. The source also submits that, given the President's power to appoint and dismiss judges at the highest levels, as well as the favouritism prevailing at the Ministry of Justice, the country's courts do not operate independently and without political interference. This influence is reflected in the present case by the inability of the Rosso Criminal Court to act impartially and deliver a duly reasoned judgment. The court disregarded the fact that the prosecution was unable to offer any evidence for the charges. The source adds that Messrs. Abeid, Ramdane and Sow were not allowed to speak to their lawyers in private. Moreover, the source indicates that the appeal was not heard in accordance with the law: the Aleg Court of Appeal did not consider the case thoroughly; it did not take into account the prosecution's failure to provide evidence to support the charges against the activists; and it upheld the lower court's judgment under articles 101 and 191 of the Criminal Code, although the Rosso Criminal Court had convicted the activists under article 193 (2), thereby changing, without explanation, the legal basis for the conviction of the accused. The source therefore concludes that the appellants' right of appeal was not fully respected, in breach of article 14 (5) of the Covenant.

26. The source also contends that the arrest and continued detention of Mr. Abeid and Mr. Ramdane are arbitrary and fall within category V of the Working Group's categories of arbitrary detention, since they were targeted by the Government in part because of their Haratine ethnicity, an action constituting discrimination based on ethnic origin. The source reports that of the 10 activists from the caravan who were prosecuted for their involvement in the incident of 11 November 2014, only Mr. Sow does not belong to the Haratine community. During the trial and while in detention, Mr. Sow was treated better by the authorities than were the other activists, who are all from the Haratine ethnic group. The preferential treatment given to Mr. Sow in comparison with the other accused is indicative of discriminatory treatment on the part of the court and the Government.

Response from the Government

27. On 16 March 2016, the Working Group sent a communication to Mauritania containing the allegations set out above. The Government then had 60 days to respond, and the Working Group specified that this response was expected no later than 15 May 2016 but that the Government could request an extension of 30 days if circumstances allowed. As of this writing — 25 August 2016 — Mauritania has neither responded nor requested an extension. The Working Group deplores this lack of cooperation and will continue its consideration of the merits, as permitted by its methods of work.

Discussion

28. The ongoing practice of slavery in Mauritania is no secret. It is being discussed by any number of institutions.¹ The events reported by the source in the case in question are

¹ See the report of the Special Rapporteur on minority issues (A/HRC/31/56), paras. 39 and 78; the compilation on Mauritania prepared by the Office of the United Nations High Commissioner for Human Rights (A/HRC/WG.6/23/MRT/2), para. 34 in particular for a specific reference to the Haratine people; Anti-Slavery International, Minority Rights Group International & SOS-Eslaves, "Joint submission for the Universal Periodic Review of Mauritania, 23rd Session, October-November 2015", 23 March 2015, available from www.antislavery.org/includes/documents/cm_docs/2016/u/1_upr_submission_on_mauritania_2015.pdf; Walk Free Foundation, "L'Indice mondial de l'esclavage", 2013, available from www.haiti-now.org/wp-content/uploads/2013/01/2013-Global-Slavery-Index-French.pdf; see also the report of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, on her mission to Mauritania (A/HRC/15/20/Add.2); African Commission on Human and Peoples' Rights, communications Nos. 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98, *Malawi Africa Association, Amnesty International*,

also a matter of common knowledge, and the source submitted administrative and judicial documents in support of the account provided to the Working Group. The reliability and credibility of the source and the information provided are therefore not in question. The silence of the Government, which has chosen not to counter the credible allegations against it, only strengthens the Working Group's initial impression. Complete confidence in the source's account is therefore warranted.

29. Messrs. Abeid, Ramdane and Sow were arrested on 11 November 2014 during a demonstration to raise awareness of slavery in Mauritania, without there having been produced any evidence of a breach of the peace that would justify restricting their exercise of the freedoms of association, assembly and expression. Two of them were subjected to various forms of ill-treatment during their arrest, and all three were subjected to ill-treatment during their detention. The criminal proceedings against them were tainted by various irregularities affecting their rights. In addition, Mr. Abeid and Mr. Ramdane were, in some ways, treated differently from Mr. Sow, and the only reason for the difference seems to be that the former are members of the Haratine ethnic group, or black Moors. The practice of discrimination against this ethnic group is also a matter of common knowledge in Mauritania, and the Government's silence leaves the Working Group no other choice but to believe the source.²

30. On 15 January 2015, Messrs. Abeid, Ramdane and Sow were sentenced to 2 years' imprisonment and transferred to Aleg prison, where they began to suffer from health problems as a result of even harsher conditions of detention. For Mr. Sow, these problems were such that he was temporarily released on 29 June and was able to leave the country for medical treatment on 10 August. On 20 August, the Aleg Court of Appeal upheld the conviction and the sentence, but it referred to provisions of the Criminal Code other than those drawn on by the lower court judge. Mr. Abeid and Mr. Ramdane were freed on 17 May 2016 after the Supreme Court reclassified the crime of which they had been convicted as a crime for which the maximum sentence was imprisonment for 1 year, whereas they had already spent more than a year in detention.

31. The Working Group notes that, in early July 2016, several members of IRA-Mauritanie were reportedly arrested and detained without reason, so there is reason to believe that the persecution experienced by the persons involved in the present case remains an ongoing reality. Accordingly, and in accordance with paragraph 17 of its methods of work, it is still important to consider this case on the merits, in particular as the release occurred once the sentence had been served.

32. The source contended that the situation falls within categories II, III and V as they are defined in the methods of work. The Working Group will consider each of these categories in order to render an opinion.

33. According to the methods of work, category II is applicable "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights". The persons protected under this category therefore include human rights defenders, a status clearly enjoyed by the three victims in

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² See, for example, the aforementioned reports of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences (A/HRC/15/20/Add.2), and the Special Rapporteur on minority issues (A/HRC/31/56).

the present case. They campaign for the abolition of slavery and for respect for the rights of the victims of slavery. Their role is essential, and international law protects them in their commitment. The charges against them show that they are hounded for no reason other than this role, which they have chosen to play in their society. The Working Group is therefore persuaded that their detention is arbitrary under category II.

34. The right to a fair hearing is protected under category III. There have been multiple violations of that right in the present case. First, the complainants' right to legal assistance was unduly limited, as their lawyers were unable to meet with them before the first hearing, and the discussions they later had with these lawyers took place in the presence of guards. Second, there was considerable interference by the country's President, with his various statements about the accused, especially Mr. Abeid, before the opening of the trial and the subsequent conviction. This interference violates the presumption of innocence under article 11 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant, while also constituting undue influence that undermines the independence and impartiality of the court (article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant). In addition, the incommunicado detention of the first three days could not but affect the victims' mental state. This violation is sufficiently serious to make the trial unfair and the subsequent detention arbitrary under category III.

35. Lastly, category V of the categories of arbitrary detention affords protection from detention that is a violation of international law for reasons having to do with discrimination. In the present case, two major forms of discrimination occurred. First, there was discrimination targeting abolitionists in Mauritania. As these abolitionists are human rights defenders, category II is more appropriate, since it applies more specifically to such persons. Second, discrimination against the Haratine people affected Mr. Abeid and Mr. Ramdane. This discrimination is typical in Mauritania, despite attempts to eradicate it. It led to longer detention and different conditions for these two persons. It should be penalized by recognizing that the detention of Mr. Abeid and Mr. Ramdane also falls within category V of the categories of arbitrary detention.

36. In addition, a number of the rights violated in the present case are a matter for other special procedures, to which the case should be referred.

Disposition

37. In the light of the foregoing, the Working Group renders the following opinion:

The arrest and detention of Biram Dah Abeid, Brahim Bilal Ramdane and Djibril Sow are arbitrary and fall within categories II and III as defined in paragraph 8 of the methods of work, and the detention of Mr. Abeid and Mr. Ramdane is also arbitrary, falling within category V. The Working Group welcomes the fact that the detention has ceased and recalls that the Government of Mauritania has an obligation to provide the victims with appropriate reparation.

38. The Working Group therefore requests that each of the three victims be given appropriate reparation, including a guarantee of non-repetition, which is of particular interest in the present case, in view of the recent information gathered by the Office of the United Nations High Commissioner for Human Rights on the ongoing persecution of abolitionists in Mauritania.

39. Lastly, and in accordance with paragraph 33 (a) of its methods of work, the Working Group will refer the above allegations to the Special Rapporteur on minority issues, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, and the Special Rapporteur on the situation of human rights defenders.

Follow-up procedure

40. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Messrs. Abeid, Ramdane and Sow;

(b) Whether an investigation has been conducted into the violation of the rights of Messrs. Abeid, Ramdane and Sow and if so, what the outcome of the investigation was;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mauritania with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

41. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

42. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

43. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³

[Adopted on 25 August 2016]

³ See Human Rights Council resolution 24/7, paras. 3 and 7.