

Opinion No. 90/2017

concerning Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop (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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 18 September 2017, the Working Group transmitted to the Government of Mauritania a communication concerning Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop. 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 and 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. The cases described below involve 10 persons occupying positions of responsibility within the Initiative for the Resurgence of the Abolitionist Movement (IRA), several of whose members have already been harassed or arrested in the course of their work for the abolition of slavery. The 10 persons concerned are:

- (a) Amadou Tidjani Diop, arrested on 30 June 2016 at his home in Nouakchott;
- (b) Ahmed Hamar Vall, arrested on 3 July 2016 in Tensweile, on the outskirts of Nouakchott;
- (c) Hamady Lehbouss, arrested on 3 July 2016 in Tensweile, on the outskirts of Nouakchott;
- (d) Mohamed Daty, arrested on 8 July 2016 at his office in Nouakchott;
- (e) Balla Touré, arrested on 1 July 2016 in El Mina, on the outskirts of Nouakchott;

- (f) Moussa Biram, arrested on 30 June 2016 at his home in Nouakchott;
- (g) Khatry Rahel, arrested on 3 July 2016 while in a taxi in Nouakchott;
- (h) Mohamed Jaroulah, arrested on 3 July 2016 in Tensweile, on the outskirts of Nouakchott;
- (i) Abdallahi Matala Saleck, arrested on 30 June 2016 at his home in Nouakchott;
- (j) Abdallah Abou Diop, arrested on 9 July 2016 at his office in Nouakchott.

Background

5. According to the source, Mauritanian society remains divided according to a strict caste system based on ethnic origin. Discrimination against members of the Haratine ethnic group remains a significant problem. The source alleges that the Government has particularly oppressed members of IRA who campaign for the rights of the Haratines. The harassment of IRA members is part of a broader backdrop of repression of the rights to freedom of expression, peaceful assembly and association in Mauritania.¹ In addition to the restrictions of these fundamental rights, the Mauritanian justice system is characterized by a general failure to apply due process. According to the source, the judiciary is heavily influenced by the executive.

6. The source also notes that detainees' opportunities to challenge their detention are restricted and that access to lawyers during arrests is inadequate. The use of torture to obtain confessions is reported to be widespread. According to the source, all these procedural flaws are compounded by the level of corruption in the administration of justice and by discrimination against certain ethnic groups such as the Haratines. The source reports that detention conditions in Mauritania are notoriously harsh and that there are problems of violence, overcrowding, poor sanitation and lack of access to food and medical care.

7. According to the source, the Mauritanian police forcibly attempted to displace Haratine residents from a poor district of Ksar, which is a suburb of Nouakchott. The inhabitants protested against this forced relocation and riots broke out, during which demonstrators and police officers were injured. Almost immediately, the Government accused IRA of being behind the riots. The source alleges that the guilt of the above-mentioned persons was publicly declared by government officials and announced on State television. The police initiated a systematic search for IRA leaders and eventually arrested all of them except for three persons who were outside the country at the time. According to the source, IRA subsequently organized peaceful rallies to protest against the arbitrary detention, but they were forcibly broken up by the police.

8. According to the source, these arrests are said to have been carried out either as a form of reprisal against IRA leaders who had met a United Nations Special Rapporteur during a visit to Mauritania or because the Chair and Vice-Chair of IRA were given a distinction in recognition of their work against modern slavery in the annual Trafficking In Persons Report issued by the United States Department of State.

Arrest and detention

9. According to the source, the above-mentioned persons were arrested by the police between 30 June and 9 July 2016. The police officers were generally not in uniform and did not present arrest or search warrants. The police searched the personal property and effects of all the individuals and confiscated several documents relating to the work of IRA. The persons in question were then brought before the police commissioner, to a police station or to a prison reserved for terrorism suspects before being transferred to Dar Naim prison. Between their arrests and 12 July 2016, when the 10 persons appeared before a judge, they were held incommunicado, and as their families and lawyers were not informed of their place of detention, they were thus subjected to enforced disappearance.

10. According to the source, they all reported that they were tortured during their arrest and questioning. They were shackled and held in stress positions for long periods, beaten, robbed, sexually assaulted, threatened with death, publicly humiliated and deprived of toilet facilities, sleep, food and all medical treatment. The persons who questioned them issued threats to the effect that the Beidane upper class would have no qualms about killing all Haratine and black Mauritians when the authorities allowed them to do so. The source reports that several individuals subsequently indicated that they had suffered lasting physical and psychological trauma.

11. The source reports that at the hearing on 12 July 2016, a request to release the 10 detainees pending trial was refused. The judge gave no reason for his refusal to release them on bail. The trial on the merits started on 3 August 2016, when the above-mentioned persons were tried alongside 10 inhabitants of Ksar and three other IRA leaders. All the human rights defenders were held in a cage in the courtroom. Initially, the police refused to allow any person affiliated with IRA to enter the courtroom but, after the defence lawyers protested (and after the defenders refused to participate in the trial, on 9 August 2016), supporters of IRA were allowed to enter. Throughout the trial, the court had full access to the police report on the investigation. However, the defence was never given access to it, and it was thus unable to challenge its content.

12. According to the source, the defence lawyers put forward five main arguments, which can be summarized as follows: (a) the exclusion of IRA supporters from the courtroom was unjust; (b) the investigation was deeply flawed, as the defendants had been tortured to extract confessions from them; (c) the claim that the defenders had been caught in flagrante delicto (which reduced the burden of proof that the prosecution had to meet) was false, as none of them had been present or arrested in Ksar during the riots; (d) there were political reasons for targeting the defenders; and (e) the police unit that investigated the crimes allegedly committed by the defenders was the same unit that had filed the complaints against them. According to the defence, there was a conflict of interest, and the investigation should have been referred to the gendarmerie.

13. The source reports that the prosecutor responded to these points by arguing that the trial was indeed open to the public; that there was no evidence to support the allegations of torture made by the defenders; that it was not necessary for the defenders to be present or arrested during the riots for the offence to be classified as being in flagrante delicto; and that there was no precedent for the transferral of the investigation to the gendarmerie.

14. According to the source, the prosecution's evidence included a video of the riot (which did not show any of the defenders), a statement made by a property owner in the Ksar area during the riots (who denied making the statement that the police attributed to him and said that he did not recognize any of the defenders), voice messages from unidentified persons discussing the riots and telephone records indicating that some of the defenders had called each other during or after the riots.

15. According to the source, the defenders testified that none of them had been in Ksar during the riots or had provoked violence, and that the confessions indicating otherwise had been obtained through torture.

16. The source states that the decision issued by the court is controversial: firstly, the court accepted that the defenders had been caught in flagrante delicto, which reduced the burden of proof on the prosecution. Secondly, it refused to address the allegations of torture, ruling that they fell outside its jurisdiction. Lastly, it admitted the above-mentioned video as evidence, despite the fact that, under a provision in the Criminal Code, no media could be used as evidence in court. Thus, on 18 August 2016, the court announced that all the defenders had been convicted of various charges relating to incitement to riot and belonging to an unregistered organization, and it sentenced them to imprisonment.

17. According to the source, Mr. Biram, Mr. Abdallah Diop, Mr. Amadou Diop and Mr. Saleck (along with another leader of IRA) were sentenced to 15 years' imprisonment for the crimes of illegal armed assembly and incitement to armed assembly, under articles 101–105 of the Criminal Code; violence against the police, under articles 213–214 of the Criminal Code; violent revolt against a government authority, under article 191 of the Criminal Code; and belonging to an unregistered organization, under articles 3 and 8 of the Association Act of 1964. Mr. Lehbouss and Mr. Touré were sentenced to 5 years' imprisonment for the crimes of incitement to armed assembly and membership of an unregistered organization. Mr. Dady, Mr. Jaroulah, Mr. Rahel and Mr. Vall (and two other leaders of IRA) were sentenced to 3 years' imprisonment for the crime of belonging to an unregistered organization.

18. According to the source, after the conviction had been handed down, the Supreme Court granted a request for jurisdiction to be transferred from the Court of Appeal of Nouakchott to the Court of Appeal of Nouadhibou, despite the fact that Nouakchott was the duly constituted jurisdiction for the case. On 28 September 2016, all the above-mentioned persons were transferred to a prison in the

city of Zouerate, in the north of Mauritania, to await their hearings. According to the source, they endured unbearable conditions of detention and had serious medical problems, many of which have still not been adequately treated.

19. On 18 November 2016, the Court of Appeal of Nouadhibou issued its decision, which upheld the conviction but reduced the sentences of all the defenders. It reduced the sentences of Messrs. Amadou Diop, Touré, Lehbouss, Vall, Rahel, Daty and Jaroulah to 1 year with a suspended sentence of 8 months, and released those men, as they had already served the non-suspended part of their sentences. The court also reduced Mr. Abdallah Diop's sentence to 1 year with a suspended sentence of 6 months, and Mr. Biram's and Mr. Saleck's sentences to 3 years with a suspended sentence of 1 year. According to the source, three other leaders of IRA who had been arrested, detained and convicted along with Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop were fully acquitted by the Court of Appeal.

20. According to the source, Mr. Abdallah Diop was released as announced, in January 2017. Mr. Biram and Mr. Saleck remain in prison. Both are in a fragile state of health because of the torture that they endured at the time of their arrest and are currently not allowed to receive visits from either their lawyers or their families. The source notes that the other leaders of IRA who had initially been imprisoned but were released on appeal remain free, as the Supreme Court has not yet issued a final decision on the case.

21. The source considers that the detention of Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop constitutes arbitrary detention under categories II and III as defined in the methods of work applicable to the consideration of cases submitted to the Working Group.

Category II

22. According to the source, the detention of Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop was arbitrary under category II, as they were arrested, detained and sentenced for exercising their freedom of opinion and expression and their right to peaceful assembly and freedom of association. These rights and freedoms are protected under article 19 (2), 21 and 22 (1) of the International Covenant on Civil and Political Rights, articles 19 and 20 (1) of the Universal Declaration of Human Rights and articles 9, 10 and 11 of the African Charter on Human and Peoples' Rights and can be restricted only when necessary to respect the rights or reputations of others or to protect national security, public order or public health or morals (one of the purposes listed).

23. The source notes that the permissible restrictions are extremely narrow and are not applicable in the present case, as the restrictions on the freedom of expression, freedom of association and peaceful assembly of the above-mentioned persons were not necessary for, or proportionate to, the protection of one of the purposes listed. In addition, the imprisonment of human rights defenders for reasons related to freedom of expression, assembly or association calls for a thorough review.

24. In view of the history of government harassment of IRA activists, and taking into account the fact that, when the police conducted searches without a warrant, they confiscated equipment related to the activists' work, the source submits that the Government chose to use the activists as scapegoats when tensions broke out between the Haratine community and the police, as the leaders of IRA are well known in Mauritania for expressing critical opinions in defence of the Haratines' rights. The fact that many of the arrests occurred while the defenders were leaving IRA demonstrations reveals that the Government targeted the IRA leaders because they had assembled in public and because of the speeches they made. Lastly, the Government's decision to arrest the entire leadership of IRA in the country, the insults directed against IRA by those who conducted the questioning, and the sentencing of the defenders for belonging to an unregistered organization demonstrate that they were targeted because of their links to IRA.

Category III

25. According to the source, the detention of Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop is also arbitrary under category III of the Working Group's methods of work, as the Government denied them their due rights under international law.

26. The source considers that, in violation of article 9 (1) of the Covenant, article 9 of the Universal Declaration of Human Rights, article 6 of the African Charter on Human and Peoples' Rights and principle 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Government violated the above-mentioned persons' right not to be subjected to arbitrary arrest. According to the source, the police did not comply with Mauritanian law, as they did not obtain arrest and search warrants and did not provide the detainees with prompt access to a lawyer.

27. The source also notes that the Government of Mauritania has violated article 9 (3) and (4) of the Covenant and principles 11, 15, 18 (2), 19, 32, 37 and 39 of the Body of Principles. The above-mentioned persons disappeared for several days and were not allowed to challenge their detention or speak to their families or lawyers until 12 July 2016.² By refusing to release these persons on bail without first having determined, for each person, whether the detention continued to be reasonable and necessary, the court also violated their right to be released pending trial, as set out in articles 38 and 39 of the Body of Principles.

28. The source considers that, in violation of articles 7, 10 (1) and 14 (3) (g) of the Covenant, articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 5 of the Universal Declaration of Human Rights, article 5 of the African Charter on Human and Peoples' Rights and principles 6 and 21 (2) of the Body of Principles,³ all the persons concerned were severely tortured and ill-treated during questioning, deprived of the necessary medical care and detained in harsh conditions.⁴

29. The source notes that the Government of Mauritania denied the above-mentioned persons their right to an independent and impartial trial and to equality before the courts, in violation of articles 14 (1) and 26 of the Covenant, articles 7 and 10 of the Universal Declaration of Human Rights, articles 2, 3 and 7 (1) (d) of the African Charter on Human and Peoples' Rights and principles 5 and 36 of the Body of Principles. According to the source, these rights were violated because the President of Mauritania has the power to appoint and remove judges at the highest level, which prevents the courts from operating independently of the executive. Many of the court's decisions reflect its bias in favour of the prosecution, including: (a) its refusal to investigate the allegations of torture; (b) its acceptance of the claim that the individuals concerned had been caught in flagrante delicto despite the fact that they were not in Ksar during the riots; (c) its refusal to consider the possibility that the alleged use by the police of violence that was disproportionate could trigger spontaneous riots; (d) its disregard for the conflict of interest arising from the fact that the police unit that investigated the alleged crimes was the same one that claimed to be victimized by the human rights defenders; (e) its failure to request the admission as evidence of the police file that it had at its disposal, which prevented the defenders from challenging it; and (f) the fact that the individuals were convicted despite the lack of evidence linking them to the riots.

30. The source also notes that the Government of Mauritania violated the right to the presumption of innocence, in violation of article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights, article 7 (1) (b) of the African Charter on Human and Peoples' Rights, and principle 36 (1) of the Body of Principles. In this case, civil servants and State television broadcasters expressed their certainty about the defenders' guilt well before their trial or conviction. The defenders also appeared in court in a cage, and the claim that they had been caught in flagrante delicto was accepted, thus reducing the standard of proof that the prosecution had to meet.

31. According to the source, the Government of Mauritania also violated the right of persons to communicate with their lawyers, which is provided for in article 14 (3) (b) of the Covenant and principle 18 (1) and (3) of the Body of Principles. The above-mentioned persons were held incommunicado without access to their lawyers for periods ranging from 3 to 12 days.

32. The source further notes that in violation of article 14 (3) (b) of the Covenant, article 7 (1) (c) of the African Charter on Human and Peoples' Rights and principles 11 (1) and 18 (2) of the Body of Principles, the Government deprived the defenders of the right to have adequate time to prepare their defence. According to the source, the individuals were only able to confer with their lawyers from 12 July 2016, and the trial started less than four weeks later, on 8 August 2016. The source notes that it was not possible in just four weeks for the lawyers to prepare a full defence for all the

defenders, who were facing five different charges carrying sentences of up to 15 years' imprisonment. For example, the defence was unable to view the video supposedly incriminating the defenders and that constituted one of the prosecution's key pieces of evidence, before it was shown during the trial.

33. On 2 August 2016 and 11 October 2016, several special-procedure mandate holders of the Human Rights Council jointly sent urgent appeals to the Government of Mauritania concerning the cases of Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop.

Government reply

34. On 18 September 2017, the Working Group addressed a communication to the Government of Mauritania, which had until 17 November 2017 to respond. To date, the Government has neither responded nor requested an extension of the deadline.

Discussion

35. Given that, to date, the Government has cooperated with the Working Group, the fact that it is now failing to respond is surprising. Despite the lack of response from the Government, the Working Group has decided to issue this opinion in accordance with paragraph 15 of its methods of work.

36. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

37. Firstly, it is important to note that a significant amount of background information is available, particularly in relation to the practice of slavery in Mauritania. Several special rapporteurs and the Human Rights Committee⁵ have established that the Haratines continue to be subjected to discrimination and that extreme poverty persists in Mauritania. In addition, acts similar to those reported in the present case, concerning the arrest of IRA members, were the subject of an earlier opinion issued by the Working Group.⁶ The Working Group recalls that on 2 August 2016 and 11 October 2016, several special procedure mandate holders of the Human Rights Council jointly sent urgent appeals to the Government of Mauritania concerning the situations of Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop. For this reason, the source and the information that it has provided can be considered to be reliable and credible.

38. Messrs. Amadou Diop, Vall, Lehbouss, Daty, Touré, Biram, Rahel, Jaroulah, Saleck and Abdallah Diop were arrested, separately and without a warrant, between 30 June and 9 July 2016 in Nouakchott. These arrests took place after the riots related to the forced displacement of Haratine people by the police in a suburb of Nouakchott. The Government publicly accused IRA of being responsible for the riots. During the arrests, the police carried out searches of some of the applicants' homes and offices, also without a warrant. Moreover, the source indicates that all the applicants were subjected to ill-treatment and torture, sometimes including sexual assault, during their detention. The criminal proceedings against them were tainted by various flaws that affected their rights.⁷

39. On 18 August 2016, Messrs. Biram, Abdallah Diop, Amadou Diop and Saleck were sentenced to 15 years' imprisonment, Messrs. Lehbouss and Touré were sentenced to 5 years' imprisonment and Messrs. Daty, Jaroulah, Rahel and Vall were sentenced to 3 years' imprisonment. After these convictions had been handed down, the Supreme Court granted a request for jurisdiction to be transferred from the Court of Appeal of Nouakchott to the Court of Appeal of Nouadhibou, despite the fact that Nouakchott was the duly constituted jurisdiction for the case.

40. On 28 September 2016, all the above-mentioned persons were transferred to a prison in Zouerate, in the north of Mauritania, to await their hearings. In this prison, they endured unbearable conditions of detention and had serious medical problems. On 18 November 2016, the Court of Appeal upheld the convictions but reduced each of the sentences, as outlined above.

41. The source has argued that the situation falls within categories II, III and V as defined in the methods of work. The Working Group will consider each of these categories.

42. First, with regard to the proceedings undertaken in respect of an offence that was allegedly flagrant in nature, the Working Group notes that the source disputes the characterization of the offence as flagrant, advancing the many arguments outlined above in support of its position. The Government has not contested these claims, even though the burden of proving the contrary rested with it.⁸ Complete confidence in the source's account is therefore warranted. In view of the fact that the evidence submitted by the source indicates that the arrests did not take place during the acts for which the 10 persons were allegedly responsible, the situation cannot be classed as flagrant. Thus, the absence of an arrest warrant renders the arrest, and the subsequent detention, arbitrary under category I.

43. Category II protects human rights defenders, among others. In the present case, the 10 persons deprived of their liberty do indeed have this status, as they campaign to end slavery and to ensure that the rights of victims of slavery are respected. It is important to note that their work is peaceful, as they have never called for violence. Their role is essential, and international law protects them in their commitment. The charges against them show that they are being hounded simply because they carry out 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.⁹

44. The right to a fair trial is protected under category III. In the present case, that right was infringed in a number of ways. Firstly, the defenders' right to legal assistance was unduly restricted because their lawyers were unable to meet them prior to the first hearing, the interviews with these lawyers were conducted in the presence of guards, and no defence lawyers were present during the appeal proceedings. Furthermore, the accused were held in incommunicado detention¹⁰ for a period of between 3 and 12 days, which undoubtedly had an adverse effect on their mental health.¹¹ This interference violated their right to defend themselves through legal assistance of their choosing, their right to have adequate time and facilities for the preparation of their defence and their right to communicate with counsel of their own choosing, as set out in article 14 (3) (b) and (d) of the Covenant, article 7 (1) (c) of the African Charter on Human and Peoples' Rights and principles 11 (1) and 18 (1), (2) and (3).

45. Secondly, some members of the Government and broadcasters on Mauritanian State television interfered in the case by publicly condemning the accused before the trial had started. This interference violates the presumption of innocence provided for under article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant, article 1 (2) (b) of the African Charter on Human and Peoples' Rights and principle 36 (1) of the Body of Principles, 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).

46. Furthermore, as mentioned above (para. 42), and as the source reports, it is surprising that in a case in which the persons concerned had supposedly been caught in flagrante delicto, none of them were arrested during or on the day of the riots. Moreover, the source reports that the video used as evidence for the claim that the persons concerned had been caught in flagrante delicto is not admissible under domestic law. The Government has not contested these claims, even though the burden of proving the contrary rested with it.¹² Complete confidence in the source's account is therefore warranted. In addition, the judges decided not to investigate the allegations of torture made by the defence, on the grounds that they did not fall within their remit. The Working Group notes that this decision is consistent with a statement made by the Special Rapporteur on torture in 2016 to the effect that the judiciary of Mauritania generally lacks the will to investigate persons suspected of acts of torture and ill-treatment.¹³ The source also reported that evidence had been obtained through torture. Article 6 of the law against torture (Act No. 2015-033),¹⁴ in accordance with international law, provides that no evidence obtained through torture may be invoked as relevant evidence in proceedings.¹⁵

47. The Working Group notes that the above-mentioned violations of the rights of the IRA members to obtain legal assistance, to have adequate time for the preparation of their defence, to be presumed innocent, to obtain due process in accordance with the rules on the burden of proof and

not to be subjected to inhuman and degrading treatment are sufficiently serious as to render the trial unfair and the detention arbitrary under category III.

48. Lastly, category V affords all persons protection from detention that is a violation of international law for reasons having to do with discrimination. In the present case, abolitionists in Mauritania have been the target of discrimination. According to the source, some of these abolitionists are Haratines. However, the source did not report that Haratine persons were subjected to differentiated treatment during their arrest and detention. If the detainees had been subjected to differentiated treatment on the grounds of their ethnic affiliation, it would be necessary to deal with their detention under category V.¹⁶ Given that no such allegation has been made in this case, and despite the fact that the Working Group recognizes that the targeted arrest and detention of these IRA members is discriminatory in that they are also human rights defenders, it is more appropriate to apply category II to the case, as it applies more specifically to the status of the persons concerned.

49. To conclude the analysis, the source alleges that all the persons concerned were severely tortured and ill-treated during interrogation, deprived of the necessary medical care and held in harsh conditions that did not allow their humanity and dignity to be respected. In view of the facts of the case, the Working Group will refer it to the Special Rapporteur on torture.

50. Lastly, the Working Group considers it appropriate to refer the present situation to the following special procedures: the Working Group of Experts on People of African Descent; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on minority issues.

Disposition

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

The arrest and detention of Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abu Diop are in violation of articles 7, 9, 10 (1), 11 (1), 19 and 20 (1) of the Universal Declaration of Human Rights and articles 5, 9 (1), (3) and (4), 14 (1), (2) and (3) (b) and (g), 19 (2), 21 and 22 (1) of the Covenant.¹⁷ Their detention is therefore arbitrary under categories I, II and III as defined in paragraph 8 of the Working Group's methods of work.

52. The Working Group welcomes the fact that Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Khatry Rahel, Mohamed Jaroulah and Abdallah Abu Diop are no longer in detention, but it remains concerned pending the decision of the Supreme Court. In addition, the Group wishes to remind the Government of Mauritania that it is obliged to provide the victims with appropriate reparation.

53. Accordingly, the Working Group requests the Government of Mauritania to take the steps necessary to remedy without delay the situation of Moussa Biram and Abdallahi Matala Saleck, who are still in detention, and to remedy the violations suffered by Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Khatry Rahel, Mohamed Jaroulah and Abdallah Abu Diop in order to bring their situation into conformity with applicable international norms, including those set out in the Covenant and the Universal Declaration of Human Rights.

54. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to immediately release Moussa Biram and Abdallahi Matala Saleck, providing them with appropriate medical care, and to accord Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abu Diop an enforceable right to reparation, including compensation and guarantees of non-repetition, in accordance with international law.

55. In accordance with paragraph 33 (a) of its methods of work, the Working Group is referring the present case to the Working Group of Experts on People of African Descent; the Special Rapporteur on torture; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on minority issues, so that each of these special procedures may take further appropriate action on the basis of its mandate.

Follow-up procedure

56. 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 Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop have been released and, if so, on what date(s);
- (b) Whether Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop have obtained reparation, specifically in the form of compensation;
- (c) Whether an investigation has been carried out into the violation of the rights of Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop and, if so, the outcome of the investigation;
- (d) Whether the Government of Mauritania has amended its legislation or practice to bring them into conformity with its obligations under international law, in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

57. 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.

58. 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. Such action would 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.

59. 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.¹⁸

[Adopted on 24 November 2017]

¹At the thirty-fourth session of the Human Rights Council, the Special Rapporteur on the situation of human rights defenders expressed concern about the ongoing judicial harassment of the NGO known as the Initiative for the Resurgence of the Abolitionist Movement (IRA), which appears to be directly linked to the legitimate activities of its human rights defenders and their exercise of the rights to freedom of expression, peaceful assembly and association. The Special Rapporteur also expressed concern about allegations of serious abuses and violations of legal procedures, including allegations of torture of 13 members of IRA after they were arrested, arbitrarily detained, convicted and imprisoned (A/HRC/34/52/Add.1, para. 711). At the thirty-fifth session of the Human Rights Council, after noting that members of IRA had been arrested in 2016, the Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasized that unregistered associations too are protected by the right to freedom of association. Members of unregistered associations should have the right to carry out any activities, including the right to organize and participate in peaceful assemblies, without being subjected to criminal sanctions (A/HRC/35/28/Add.3, para. 120). He expressed continued concern about measures taken against IRA members and the refusal to register the organization. He noted that the organization and its members had been the subject of numerous communications by special rapporteurs drawing attention to the judicial harassment and allegations of torture and ill-treatment to which its members had reportedly been subjected (para. 121). At the thirty-fourth session of the Human Rights Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in relation to the arrest and detention of the 10 IRA members that there was substance to the allegations set out in the initial communication. He requested the Government to investigate all

cases of torture, to prosecute and punish those responsible, providing full reparation for victims, including fair and adequate compensation, and to prevent the recurrence of such practices (A/HRC/34/54/Add.3, paras. 353 and 354).

²In its mission report (A/HRC/10/21/Add.2, para. 8), the Working Group on Arbitrary Detention expressed concern about the fact that individuals were subjected to incommunicado detention and were not allowed to contact their families or lawyers.

³Such acts are also in violation of article 13 of the Mauritanian Constitution.

⁴With regard to the allegations of torture set out in its report (A/HRC/10/21/Add.2), the Working Group on Arbitrary Detention highlighted the recurring problem of the use of torture by the police to obtain confessions in Mauritania. In 2013, the Human Rights Committee stated that it was “concerned by allegations that torture is used to extract confessions that are then accepted by the courts to establish the guilt of the prisoner” (A/69/40 (vol. I), para. 129 (15)). In its 2013 annual report (A/68/44), the Committee against Torture noted that “detainees are being tortured and ill-treated” (para. 73 (8)) and encouraged the Government of Mauritania to release all prisoners who had been arbitrarily detained (para. 73 (10)) and to “put an end to torture and to inhuman and degrading treatment, and ensure that allegations of torture, ill-treatment or excessive use of force by police or security forces are promptly investigated” (para. 73 (18)). Lastly, the report issued by the Human Rights Council (A/HRC/31/6, para. 126 (37)) recommended that Mauritania should “investigate all allegations of torture and ill-treatment in prisons and places of detention and prosecute persons responsible”. With regard to the allegations concerning the conditions of detention, the Human Rights Committee stated that it was “concerned by the inadequate conditions of detention in prisons in the State party, particularly the prison in Dar Naim” (A/69/40 (Vol. I), para. 129 (19)). The Committee against Torture said that it was “concerned by reports that conditions in all ... detention centres are below international standards” (A/68/44, para. 73 (22)).

⁵See 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), paragraph 34 of which contains a specific reference to the Haratines; 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); and the annual report of the Human Rights Committee (A/69/40 (vol. I), para. 129 (7)).

⁶See opinion No. 36/2016.

⁷The treatment inflicted on them is in breach of articles 7, 10 (1) and 14 (3) (g) of the Covenant, articles 1 and 4 of the Convention against Torture, article 5 of the Universal Declaration of Human Rights, article 5 of the African Charter on Human and Peoples’ Rights and principles 6 and 21 (2) of the Body of Principles. The implementation of due process relates to articles 14 (1) and 26 of the Covenant, articles 7 and 10 of the Universal Declaration of Human Rights, articles 2, 3 and 7 (1) (d) of the African Charter on Human and Peoples’ Rights and principles 5 and 36 of the Body of Principles.

⁸See *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2005, para. 7.3).

⁹In 2013, the Human Rights Committee stated that, “during rallies and demonstrations in the State party, human rights defenders and the demonstrators are threatened, intimidated and harassed by members of the security forces or the police. The Committee is also concerned by the obstacles that exist to the creation and registration of some NGOs or associations” (A/69/40 (Vol. I), 129 (22)). In the report issued by the Human Rights Council (A/HRC/31/6, para. 113), one delegation expressed concern about “harassment, intimidation and arbitrary detention of human rights defenders”. On 19 October 2016, the Office of the United Nations High Commissioner for Human Rights in Mauritania published a report drawn up by a number of United Nations special rapporteurs expressing concern at the hostility of the Government of Mauritania to IRA members.

¹⁰The law against torture adopted in 2015 provides for criminal penalties to be imposed on any public official who detains an arrested or sentenced person in an unregistered place of detention (art. 13).

¹¹Twelve days for Amadou Tidjani Diop, Moussa Biram and Abdallahi Matala Saleck, 11 days for Balla Touré, 9 days for Khatry Rahel, Hamady Lehbouss, Ahmed Hamar Vall and Mohamed Jaroulah Hamar and 3 days for Abdallah Abu Diop.

¹²See *Butovenko v. Ukraine*, para. 7.3.

¹³See A/HRC/34/54/Add.1, paras. 84–93 and 115.

¹⁴Article 6 of the 2015 law against torture provides that any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except as evidence against a person accused of committing torture.

¹⁵See A/HRC/34/54/Add.1, para. 84.

¹⁶See opinion No. 36/2016, para. 35.

¹⁷Interpretative declaration issued by the Government of Mauritania concerning articles 18 and 23 (4) of the Covenant: “The Government of Mauritania, while endorsing the provisions set out in article 18 ... (and in article 23 (4)), said that they would be applied without prejudice to the Islamic shariah.”

¹⁸See Human Rights Council resolution 33/30, paras. 3 and 7.