

**OPINION No. 10/2002 (MAURITANIA)**

Communication addressed to the Government on 26 December 2001

Concerning: Mr. Sidi Fall

**The State is not a party to the International Covenant on Civil and Political Rights**

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question, in the light of the allegations made, the reply given by the Government and the source's comments.

5. The case below was reported to the Working Group on Arbitrary Detention as follows.

6. Mr. Sidi Fall, born on 12 December 1951, of Mauritanian nationality, a researcher in agronomy, was arrested on 24 January 1998 in Nouakchott by the judicial police under an arrest warrant issued by the prosecutor of Rosso (Mauritania) and imprisoned at the civilian prison of Rosso.

7. According to the source, Mr. Fall was arrested after an inquiry conducted by inspectors of the Court of Audit concerning the management of the farm of M'Pourié, which he had directed from 1992 to 1996. In a report, of which 7 pages out of 12 were missing, Mr. Fall was held liable for acts of bad management, which could give rise to either civil or criminal proceedings.
8. Mr. Fall, who had been a high official in the Rural Development Ministry at Nouakchott prior to his detention, was arrested on 24 January 1998 by the judicial police under an arrest warrant issued by the prosecutor and not by the investigating judge, which, according to the source, constitutes a procedural irregularity according to the Mauritanian Code of Penal Procedure.
9. The investigating judge, who intervened without a preliminary investigation (which, according to the source, constitutes another procedural irregularity) closed the pre-trial proceedings with a dismissal order dated 22 March 1998, in view of the fact that the only evidence against Mr. Fall was based on the truncated report of the Court of Audit. Nevertheless, because the prosecutor appealed against the decision of the investigating judge, Mr. Fall was kept in detention, which, according to the source, constitutes a violation of the Code of Penal Procedure. On 4 April 1998, the Court of Appeal of Nouakchott confirmed the order of dismissal of Mr. Fall's case.
10. The prosecutor then appealed for review before the Supreme Court against that ruling and Mr. Fall was still kept in detention. The Supreme Court, in a ruling on 13 April 1998, annulled the decision of the Appeal Court for procedural irregularities and sent the case back to that same Court with a different composition. On 3 May 1998, the Court of Appeal dismissed the case for a second time. For a second time the prosecutor called for a review by the Supreme Court, but it was the Council Chamber that issued a ruling, and not the Appeal Chamber of the Supreme Court. The former again annulled the decision and sent the case back to the Appeal Court, which declared itself competent to rule on the charges brought against Mr. Fall. On 10 April 1999, the Appeal Court issued a judgement on the merits recognizing that Mr. Fall was guilty of embezzlement when he was managing the farm of M'Pourié, and sentenced him to five years' non-suspensive imprisonment, a fine of UM 50,000 and reimbursement of the sum of UM 35,524,060.
11. According to the source, Mr. Fall is in poor health, having been imprisoned since 1998 in unhealthy conditions in the civil prison of Rosso. He adds that Mr. Fall's fundamental rights to a just and fair trial have not been respected, owing to the many procedural irregularities, and in particular to the fact that the only evidence against Mr. Fall is the report of the Court of Audit, the greater part of which has been removed.
12. In a detailed reply, the Government recalled the background of the case and replied to the source's allegations by referring to the relevant articles of Mauritania's Constitution, Penal Code and Code of Penal Procedure. The quotations from Mauritanian legislation are annexed to the reply. According to the Government, the proceedings against Mr. Fall were initiated as a result of an audit drawn up by the sponsors of the projects which he was in charge of managing. It

adds that the Court of Audit found that the sum of UM 44,299,912 had been misappropriated and ordered Mr. Fall either to return the missing public money or to justify the use he had made of it. As this order elicited no response, the Public Prosecutor had then been requested to undertake proceedings against Mr. Fall in accordance with the Penal Code (art. 164).

13. In its response, the Government rejects the allegation that seven pages of the Court of Audit's report, which had been used to bring charges, had been removed and maintained that the report, a copy of which was enclosed with the reply, had been added in full to the case file. As far as the Public Prosecutor's lack of competence for issuing an arrest warrant, it points out that he is authorized to do so under article 61 of the Code of Penal Procedure. It also justifies the absence of a preliminary inquiry in Mr. Fall's case with arguments based on extracts of the law.

14. With regard to the conduct of proceedings, the Government maintains that all the formalities provided in the Code of Penal Procedure were duly followed, that Mr. Fall enjoyed all the guarantees provided by law and that his case was heard by an independent and impartial tribunal, which sentenced him after a fair, public trial. According to the Government, the accused was therefore not entitled to the dismissal order, which had been annulled by the Supreme Court, the body responsible for supervising investigating judges. With regard to conditions of detention, the Government maintains that Mr. Fall has received the same treatment as all other prisoners and has not been subjected to any discrimination or ill-treatment.

15. In his comments in reply to the Government's response, the source mentions three grounds for extinction of the public proceedings: continued detention in violation of the law and the rules of procedure, the dismissal of proceedings confirmed on two occasions by the Court of Appeal and which had acquired the force of *res judicata*, and the statutory limitation on public proceedings, since no prosecution proceedings had been initiated since the sentence had been handed down and appealed against, as far back as 10 April 1999.

16. It appears from the above that the communication contains several allegations: that the prosecution and conviction were politically motivated; that the proceedings initiated by the Public Prosecutor were irregular; that part of the report of the Court of Audit had been removed; that the person had been detained arbitrarily; that conditions of detention were unsatisfactory; that the material evidence held against Sidi Fall and the appreciation of the charges held against him by domestic courts were contestable, and that the public proceedings should have been extinguished.

17. The Working Group finds that some of the allegations do not fall within its mandate or are not supported by verifiable information, such as to enable it to give an opinion as to their validity. It will consider only the legal aspects of the detention, which are the only aspects that fall within its mandate.

18. With regard to the legal aspects of the detention, the source refers to a violation of domestic legislation as the ground for maintaining that Sidi Fall's detention and conviction were arbitrary. The Working Group recalls in this respect that, according to its methods of work and established case law, when it receives individual communications, it may deem it necessary to examine domestic legislation in order to ensure that the country's law has been duly applied and, if so, to verify whether this legislation is in conformity with international norms. In verifying the

manner in which domestic legislation has been applied, the Working Group makes it clear that it does not wish to take the place of the judicial authorities of member States or to act as a kind of supranational tribunal. Its mandate is to inquire into cases where detention has been imposed arbitrarily or in any other manner incompatible with the relevant international norms. When it examines a communication, it prefers not to query the facts and the evidence of a case, just as in its decision it is concerned not with the judges and courts but to ascertain whether the domestic legislation is in conformity with the relevant international instruments.

19. In the case in hand and according to the source's allegations, the doubts concern not so much domestic legislation as the way it is applied. This being the case, the Working Group, in conformity with its methods of work, ascertains whether the way the law has been applied, if not in conformity with domestic legislation, may have given rise to a violation of such gravity as to confer on the deprivation of liberty an arbitrary character.

20. In the case submitted for its appreciation, the Working Group notes that Sidi Fall was arrested on 24 January 1998 and held in pre-trial detention under the terms of a judicial inquiry, conducted by an investigating judge, which ended on 22 March 1998 with an order of dismissal. Under Mauritanian law, if an investigating judge concludes his inquiry with an order of dismissal, the accused in pre-trial detention must be released, even if an appeal is brought against the order of dismissal, in application of article 161 of the Mauritanian Code of Penal Procedure, according to which: "If the investigating judge considers that the facts constitute neither a crime, nor an offence, nor a contravention, or if the perpetrator remains unknown, or there are not sufficient charges against the accused, he shall issue an order dismissing the proceedings. The accused held in pre-trial detention must then be released." This provision is in conformity with international norms, and in particular with articles 9 and 11 of the Universal Declaration of Human Rights and principles 36 and 37 of the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990, according to which the accused are presumed innocent and are detained only as an exception. Maintaining an accused in detention after his case has been dismissed or he has been acquitted constitutes a serious violation of the presumption of innocence.

21. In the event, Sidi Fall has been and is still being maintained in detention, although the Court of Appeal has twice confirmed the investigating judge's dismissal of proceedings and, until sentence was handed down on 10 April 1999, no ground for detention had been found against him, neither by the Criminal Chamber of the Supreme Court, which, on appeal by the prosecutor, had annulled the first judgement of the Court of Appeal for procedural irregularities, nor by the Council Chamber of the Supreme Court - whose competence is contested by the source - which after a second appeal annulled the order of dismissal and the two rulings by the Court of Appeal. With regard to the court that passed sentence upon him, the source maintains that the referral of the case to that court was irregular and that its decision, which was not final, was not enforceable. In fact, and in the opinion of the source, although the sentence passed on 10 April 1999 was appealed against, more than three years later the case has still not been settled by the Court. In its response, the Government did not comment on that allegation.

22. Thus, while from 24 January to 22 March 1998, regardless of the alleged irregularities, Sidi Fall was detained under a warrant issued in accordance with judicial procedure, from 22 March 1998 to 10 April 1999, he was kept in detention on no legal ground, so that his detention during that period was clearly legally unfounded and constitutes a violation of article 9 of the Universal Declaration of Human Rights.

23. From 10 April 1999, that is, after the judgement was handed down by the court which sentenced him to five years' firm imprisonment, and even if that decision may constitute a valid legal ground for detention, the Working Group points out that Sidi Fall, according to procedure, should have appeared as a free man before the court, and should have been able to appeal against that decision while free unless a judicial authority had decided otherwise. The Working Group also notes that apparently the referral of the case to the court which sentenced him was not in conformity with the procedure in force in Mauritania. These irregularities, however, though they undoubtedly constitute violations of internal rules of procedure, cannot, in the light of the Working Group's methods of work, constitute a violation of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

The deprivation of liberty of Mr. Sidi Fall during the period from 22 March 1998 to 10 April 1999 is arbitrary, as being in contravention of article 9 of the Universal Declaration of Human Rights. It clearly has no legal justification and falls within Category I of the applicable categories to the consideration of the cases submitted to the Working Group. As from 10 April 1999 onwards, Mr. Sidi Fall's detention is not arbitrary.

25. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate steps to ratify the International Covenant on Civil and Political Rights.

Adopted on 11 September 2002