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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019****Opinion No. 48/2019 concerning Abderrahmane Weddady and Cheikh Mohamed Jiddou (Mauritania)**

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate by 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 Working Group's mandate was most recently extended for a three-year period by Council resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 15 May 2019 the Working Group transmitted a communication to the Government of Mauritania concerning Abderrahmane Weddady and Cheikh Mohamed Jiddou. 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 Covenant (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. This case concerns Abderrahmane Weddady and Cheikh Mohamed Jiddou, both Mauritanian citizens whose principal place of residence is in Nouakchott, the capital city.

5. Abderrahmane Weddady was born on 17 April 1976. A building contractor, former journalist and former activist of the Rally of Democratic Forces party, he is also a well-known blogger.<sup>1</sup>

6. Cheikh Mohamed Jiddou was born on 2 April 1970. A legal consultant and former opposition party activist, he is also a well-known blogger, notably on Facebook and Twitter.

#### (a) Background

7. According to the source, since 2016 Mr. Weddady has been investigating and writing about a possible Ponzi-scheme real estate scam in Mauritania in which the first people to be involved in the scheme are paid with the money obtained from those scammed more recently. In this scheme, real estate is bought at above-market prices with the promise that part of the purchase price is to be paid several years after the actual sale. The person presumed to be running this scheme is a religious leader who has allegedly used his status to defraud more than 7,000 families.

8. The source indicates that, according to Mr. Weddady's investigation, relatives of the former Mauritanian President, Mohamed Ould Abdel Aziz, allegedly benefited from this fraudulent scheme. Mr. Weddady posted facsimiles on his Facebook page of documentation showing that these properties were later repurchased at low prices by members of the President's family. To date, the perpetrator of this scam has not been questioned or charged by law enforcement officers.

9. The source also reports that Mr. Weddady and Mr. Jiddou posted reports about the Dubai authorities having frozen an account allegedly belonging to the former Head of State of Mauritania containing a total of US\$ 2 billion.

10. According to the source, in early March 2019, the Mauritanian prosecutor's office reported that it had ordered an investigation concerning this foreign bank account following the filing of a complaint by organizations involved in the effort to combat money laundering and corruption.

#### (b) Arrest and detention

11. The source explains that, allegedly as part of the investigation into the two allegations (real estate fraud and the freezing of an account reportedly belonging to the former Mauritanian Head of State), Mr. Weddady was first arrested at his home on 7 March 2019 by plainclothes police from the Fraud Investigation Unit and released the same day. Mr. Jiddou was reportedly summoned on the same day by the Fraud Investigation Unit and subsequently arrested. The source indicates that these first two arrests were made without a warrant and that the two bloggers had to hand over their passports and identity cards to the authorities.

12. According to the source, on 22 March 2019, Mr. Weddady and Mr. Jiddou were summoned by the criminal investigation unit at the Moughataa police station in Tevragh Zeina, Nouakchott. When they arrived at the police station, they were arrested by officers of the financial crimes unit. On the same day, the public prosecutor's office issued a press release stating that the rumour that the account that had been frozen in Dubai belonged to

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<sup>1</sup> The source explains that Mr. Weddady's Facebook page is followed by nearly 30,000 people in a country of 4.4 million inhabitants where Internet access is still underdeveloped.

the Head of State was false and warned that charges would be brought against anyone who spread that rumour.<sup>2</sup> Approximately 11 hours after their arrest, Mr. Weddady and Mr. Jiddou were allowed to meet briefly with their lawyer. The source states that the lawyer was unable to obtain any information from the police or other authorities about the reasons for their arrest either before or after their meeting. The only information the police were willing to give him was that Mr. Weddady and Mr. Jiddou were being held “indefinitely” without “formal charges”. Later, Mr. Weddady’s family contacted the State Prosecutor, who reportedly stated that he had not been informed of any proceedings against Mr. Weddady.

13. The source states that Mr. Weddady is pre-diabetic and was unable to eat on the day of his arrest, which put his health at risk.

14. The source further reports that, on 23 March 2019, the police prevented a rally intended to show solidarity with the two bloggers from being held. At the same time, victims of the Ponzi scheme were demonstrating outside the Mauritanian National Television buildings, calling on the authorities to help them recover their lost money after the courts reportedly refused to allow victims of the scam to file complaints.

15. According to the source, on 25 March 2019, police prevented lawyers and family members of the two bloggers from seeing them and did so again on 28 March 2019. In addition, plainclothes police searched the two bloggers’ homes and confiscated Mr. Weddady’s computer.

16. The source explains that, on 27 March 2019, Mr. Weddady and Mr. Jiddou were charged with wilful defamation (*calomnie*) and placed under a remand order by an investigating judge. They were then transferred to Nouakchott Central Prison. In addition, the State Prosecutor and the investigating judge refused to show Mr. Weddady’s and Mr. Jiddou’s lawyers the evidence against them because, they said, the case file contained State secrets.

17. The source indicates that Mr. Weddady and Mr. Jiddou were first detained at the Moughataa police station in Tevragh Zeina and were then transferred to another police station on 26 March 2019. On 28 March 2019, the two men were transferred to Nouakchott Central Prison, located between the premises of the Gendarmerie headquarters and the headquarters of the General Directorate of Customs.

18. The source also points out that the bloggers were arrested at a time when political tensions were running high, as the end of the President’s term was approaching. The source explains that Mr. Weddady and Mr. Jiddou were prosecuted during that period, although their first articles on the Ponzi scheme dated from 2016, because they had begun to denounce the impunity being orchestrated by the authorities and to make the public aware of the profits being reaped by members of the then President’s entourage.

(c) Legal analysis

(i) Category I

19. According to the source, the length of time that Mr. Weddady and Mr. Jiddou were held in detention prior to the issuance of the remand order exceeded the maximum allowable duration of police custody under Mauritanian law. Mr. Weddady’s arrest took place on Friday, 22 March 2019 at 11 a.m., and Mr. Jiddou’s arrest took place shortly thereafter. Under article 56 of the Code of Criminal Procedure, a person may be held in police custody for a maximum of 48 hours and that time period may be extended once for the same length of time with the written authorization of the Public Prosecutor. However, after Mr. Weddady’s arrest, the Prosecutor told Mr. Weddady’s relatives that he had not been informed of any proceedings against him. The source therefore notes that the Prosecutor could not have signed an authorization to extend the duration of police custody

<sup>2</sup> Mauritanian News Agency, “Les ‘informations’ diffusées dans les médias au sujet de fonds mauritaniens d’origine illicite gelés ou saisis au Émirats Arabes Unis, sont dénuées de toute fondement”, 22 March 2019.

if he was unaware of the very existence of an investigation concerning Mr. Weddady and Mr. Jiddou. It was not until 27 March 2019 that they were formally charged and placed under a remand order by an investigating judge. Consequently, a portion of their time in detention took place outside the legal time limits applying to police custody.

20. In addition, the source argues that the conditions applicable to the prosecution of a person on the basis of article 348 of the Criminal Code, on defamation, have not been met. That article provides that a prior complaint or report must be made “to officers of the court or administrative or criminal investigation police officers, or to any authority having the power to act on it or to refer it to the competent authority, or to the hierarchical superiors or employers of the person named in the complaint”. However, in the present case, the investigating judge was unable to show that the two accused men had filed a complaint or reported defamatory acts to such authorities. The mere publication or posting of written documents does not constitute such a denunciation within the meaning of article 348 of the Criminal Code if it has not been done before an authority with the power to impose sanctions. According to the source, a person who publishes or posts written material could at most be prosecuted for misrepresentation (*diffamation*), an offence that was decriminalized by Mauritania in 2011 and is punishable by nothing more than a fine.

21. The source also reports that when the Mauritanian lawyer for the two bloggers was able to consult the file on the investigation on 1 April 2019, he found that it was empty and did not contain any of the publicly cited evidence that would serve as a basis for arrest or prosecution. In response to the lawyer’s questions, the investigating judge stated that the evidence had been “lost”. Even if the two accused persons had reported wrongdoing that could then be considered to constitute wilful defamation (*calomnie*) at the time of their first arrest on 7 March 2019, they would have done so at the prompting of the police authorities who arrested them, not on their own initiative. Moreover, as Mr. Weddady wrote on his Facebook page after his arrest on 7 March 2019, one of the officers asked them why they had not filed a report on the existence of a frozen bank account in Dubai containing embezzled public funds belonging to the then Mauritanian Head of State. They explained that they saw no point in doing so, given the impunity of the President’s entourage.

22. The source contends that, in order to provide a basis for prosecuting the bloggers for wilful defamation, the Mauritanian authorities placed a complaint lodged by eight Mauritanian non-governmental organizations (NGOs) in the file. However, according to the source, some of those NGOs are known to be pro-government organizations that have previously filed complaints against political opponents. The complaint was reportedly accompanied by a request for the authorities to investigate the potential existence of a bank account containing US\$ 2 billion in the United Arab Emirates.

23. The source goes on to assert that, in order to prove that Mr. Weddady and Mr. Jiddou had committed wilful defamation by allegedly making false accusations to the authorities, the latter should have conducted an investigation on the basis of those statements to show that they were wilfully defamatory. However, in the present case, the investigating judge did not provide any evidence that such an investigation had been carried out. Indeed, the source reports that the only information concerning such an investigation appears to be the information contained in the press release of 22 March 2019. According to the source, the Mauritanian authorities appear to be acting in bad faith, since the results of the inquiry allegedly conducted in Dubai in response to a request for mutual legal assistance were not included in the file on the investigation of Mr. Weddady and Mr. Jiddou, and it is therefore difficult to believe that such an inquiry was actually conducted at all. The source indicates that, in fact, no evidence of any such inquiry has been included in the file. Finally, it was at the insistence of Mr. Weddady’s and Mr. Jiddou’s lawyers that the investigating judge showed them a document allegedly issued by the authorities of the United Arab Emirates which indicated that no criminal or civil inquiry into the existence of such a bank account had been initiated. With regard to the authenticity of this document, the source notes that it was drafted and sent by the Ministry of Foreign Affairs, whereas, under Federal Act No. 39 on International Judicial Cooperation in Criminal Matters of the United Arab Emirates, the International Cooperation Department of the Ministry of Justice is responsible for dealing with requests for international mutual assistance. The source further indicates that this document is in fact a note verbale which has no legal value, rather

than an order or ruling stating that the inquiry had been discontinued, as provided for in the third paragraph of article 348 of the Criminal Code.

24. Therefore, the source concludes that none of the three necessary conditions – (a) a denunciation or report to the authorities; (b) a complaint filed by the person concerned; or (c) a completed criminal investigation into the offence of a wilfully defamatory statement – has been fulfilled in this case. The source argues that the prosecution of Mr. Weddady and Mr. Jiddou on the basis of article 348 of the Criminal Code amounts to an intimidatory abuse of criminal procedure whereby the offence of wilful defamation is being used to place them in pretrial detention and convict them for acts that, at the very worst, could amount to the offence of misrepresentation, which is not punishable by a term of imprisonment.

25. Consequently, the detention of Mr. Weddady and Mr. Jiddou has no legal basis and is therefore arbitrary under category I.

(ii) Category II

26. The source claims that Mr. Weddady and Mr. Jiddou are being prosecuted for having disseminated information previously published by foreign journalists.<sup>3</sup> Therefore, their arrest and detention are the result of nothing more than their exercise of their right under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and are therefore arbitrary under category II.

(iii) Category III

27. The source claims that Mr. Weddady and Mr. Jiddou were not informed of the acts of which they are accused at any time during their arrest. The source indicates that they thus spent the entire period during which they were in police custody, from 22 to 27 March 2019, without knowing the reasons for their arrest and detention. It was only when they were placed under a remand order on 27 March 2019 that they were informed of the reason for their arrest by the judicial authorities. The source therefore considers their arrest and detention to be arbitrary under category III.

(iv) Category V

28. According to the source, at the end of his second term of office, the Mauritanian President was facing significant opposition. The source also claims that, starting in 2017, the authorities began arresting and detaining an increasing number of people in order to intimidate the political opposition.<sup>4</sup>

29. The source recalls that Mr. Weddady is a former political activist and that he and Mr. Jiddou are well-known bloggers who regularly write pro-democracy articles and are particularly vigilant about cases of corruption. They are known for championing human rights and transparent governance.

30. The source indicates that Mr. Weddady and Mr. Jiddou are part of an opposition movement which demands that anyone guilty of corruption, including the highest authorities of the State, be treated just like anyone else and be subject to prosecution and judgment.

31. The source therefore argues that Mr. Weddady and Mr. Jiddou have been deprived of their liberty solely as a consequence of discrimination against them based on their political views. Their deprivation of liberty is therefore arbitrary under category V.

<sup>3</sup> For example, the source indicates that they referred to the article published on 4 March 2019 by *Al-Quds Al-Arabi*, a British newspaper, which referred to a request sent by Mauritanian bloggers to the Emir of the United Arab Emirates to freeze the account in question.

<sup>4</sup> See, for example, opinion No. 33/2018.

*Further information from the source*

32. On 30 July 2019, the source informed the Working Group of the provisional release of Mr. Weddady and Mr. Jiddou on 3 June 2019.

*Government reply*

33. On 15 May 2019, the Working Group transmitted a communication to the Government of Mauritania concerning Mr. Weddady and Mr. Jiddou in which it requested a reply by 15 July 2019.

34. As of the opening of the eighty-fifth session of the Working Group on 12 August 2019, the Government had neither replied nor requested an extension of the deadline.

**Discussion**

35. In view of Mr. Weddady's and Mr. Jiddou's provisional release on 3 June 2019, the Working Group has the option of closing the case or rendering an opinion as to the arbitrary nature of the detention, in accordance with paragraph 17 (a) of its methods of work. In the present case, given the circumstances and inasmuch as their release does not put an end to the proceedings, the Working Group considers that it is appropriate for it to assess their situation and to determine whether their arrest and detention were arbitrary. In accordance with paragraph 15 of its methods of work, the Working Group has decided to issue this opinion, the lack of a response from the Government notwithstanding.

36. The Working Group has established the ways in which it deals with evidentiary issues in its jurisprudence. 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 disprove the allegations (see 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. The source claims violations in relation to categories I, II, III and V.

38. Under category I, the source asserts that, at the time of Mr. Weddady's and Mr. Jiddou's arrest, the police did not show them a warrant and did not inform them of the reasons for their arrest. The source adds that they were not brought before a judge for arraignment until five days after their arrest. The Government, although given the opportunity, has chosen not to contest this allegation, and the Working Group has no reason to doubt the truth of the account of events that it has been given.

39. Pursuant to article 9 (1) of the International Covenant on Civil and Political Rights, no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law. A first safeguard against arbitrary detention is provided by article 9 (2) of the Covenant, which states that any person who is arrested must be informed, at the time of his or her arrest, of the reasons for the arrest. In the light of the events related by the source, the Working Group finds that Mr. Weddady and Mr. Jiddou were arrested without a warrant and without being informed of the reasons for their arrest, in violation of article 9 (1) and (2) of the Covenant. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient simply for there to be a law pursuant to which the arrest might be made. The authorities must invoke that legal basis and apply it to the circumstances of the case on the basis of an arrest warrant.<sup>5</sup>

40. The Working Group recalls that the obligation to bring a person before a judge or other authority empowered by law to exercise judicial functions without delay is a second level of protection against arbitrary detention and is set forth in article 9 (3) of the International Covenant on Civil and Political Rights. It is presupposed that the manner in which a person is held in detention until the time that this obligation is fulfilled will be in keeping with the established legal framework. In the present case, the source explains that

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<sup>5</sup> See, for example, opinions Nos. 46/2018, para. 48; 36/2018, para. 40; 10/2018, para. 45; and 38/2013, para. 23.

the persons concerned were held in police custody for more than 48 hours and that the allowable duration of police custody was not extended by the State Prosecutor, who had not yet been informed of this instance of deprivation of liberty. It was only after Mr. Weddady and Mr. Jiddou had been in police custody for five days that they were brought before a judge. The Working Group considers that these actions constitute a violation of article 9 (3) of the Covenant and that the deprivation of liberty of Mr. Weddady and Mr. Jiddou during this period had no legal basis.<sup>6</sup>

41. The Working Group also considers that the principle of legality has not been effectively observed in this case. Indeed, the source has challenged the legality of the proceedings brought against Mr. Weddady and Mr. Jiddou and has proffered an internal analysis of Mauritanian law in support of that challenge. However, the Working Group recalls that it is not a supranational court whose task it is to assess the conformity of proceedings with domestic law. It has been given a mandate to rule on the conformity of national practices with international human rights law, even if the practices in question have been approved by one or another branch of the State. The Working Group has been given this mandate by the Human Rights Council and, therefore, by the General Assembly of the United Nations, and the Charter of the United Nations of 1945 is thus its overarching legal framework. Therefore, the Working Group recalls that the relevant analysis for its assessment is an analysis of whether or not the national practices in question are compatible with international law.

42. In the Working Group's view, the two safeguards provided for in article 9 (1), (2) and (3) of the International Covenant on Civil and Political Rights have not been respected. Accordingly, the arrest and detention of Mr. Weddady and Mr. Jiddou had no legal basis and were therefore arbitrary under category I.

43. With regard to category II, the source affirms that the basis for the deprivation of liberty in this case is the fact that Mr. Weddady and Mr. Jiddou shared information that was already available online. The Government has, here again, chosen not to contest this allegation, and the facts presented by the source are sufficiently consistent that the Working Group has no doubt about their veracity.

44. The right to freedom of expression enshrined in article 19 of the International Covenant on Civil and Political Rights protects this type of information sharing. This freedom may be limited only in the specific situations provided for in paragraph 3 of that article. However, the Government has not referred to any of these situations, and the Working Group finds none of them to be relevant in this case. Accordingly, the Working Group considers that it was the exercise of a protected freedom that led to the arrest and detention of Mr. Weddady and Mr. Jiddou, which were therefore arbitrary under category II.

45. Under these circumstances, putting Mr. Weddady and Mr. Jiddou on trial would be unjustified. The source presents arguments concerning the right to a fair trial, but these arguments are the same as those advanced during the discussion regarding a category I violation, which the Working Group has found to have occurred. Under these circumstances, and in the absence of further information, the Working Group cannot assess possible violations of the right to a fair trial.

46. Finally, the source presents arguments relating to a category V violation. It explains that, in the context of the upcoming elections, a series of actions were taken in an effort to intimidate the political opposition. It is, in the source's view, this type of persecution or discriminatory rationale that led to the arrest and detention of the two persons in question. The source points out that Mr. Weddady is a political activist who is well-known in social networks and engages in a pro-democracy discourse that is rather critical of the government that is in office. Mr. Jiddou is in a similar situation. Their popularity in social networks and their political positions are thought to be at the root of their current situation. Accordingly, they have been discriminated against on a basis not specifically set out in article 26 of the International Covenant on Civil and Political Rights but nonetheless covered by it.

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<sup>6</sup> Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 33.

47. Here again, the Government has chosen not to respond to this allegation, despite the ample body of evidence that accompanies it. The Working Group therefore has no reason to doubt its veracity.

48. The Working Group considers that the arrest and detention of Mr. Weddady and Mr. Jiddou was therefore discriminatory and in violation of article 26 of the International Covenant on Civil and Political Rights and that their detention was consequently arbitrary under category V.

### **Disposition**

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

The deprivation of liberty of Abderrahmane Weddady and Cheikh Mohamed Jiddou, being in contravention of articles 9, 19 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II and V.

50. The Working Group requests the Government of Mauritania to take the necessary steps to remedy the situation of Mr. Weddady and Mr. Jiddou without delay and to bring it into conformity with the applicable international standards, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

51. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to make the release of Mr. Weddady and Mr. Jiddou unconditional, close the case against them, provide guarantees of non-repetition and afford them the right to compensation and other forms of redress in accordance with international law.

52. The Working Group urges the Government to undertake a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Weddady and Mr. Jiddou and to take appropriate measures in respect of the persons responsible for the violation of their rights.

53. The Working Group requests that the Government use all the means at its disposal to disseminate the present opinion as widely as possible.

### **Follow-up procedure**

54. 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 all the steps taken pursuant to the recommendations made herein and, in particular, to advise the Working Group of the following:

(a) Whether Mr. Weddady and Mr. Jiddou have been released unconditionally and, if so, on what date;

(b) Whether Mr. Weddady and Mr. Jiddou have received compensation and other forms of redress;

(c) Whether an investigation has been conducted into the violation of Mr. Weddady's and Mr. Jiddou's rights and, if so, what the outcome of the investigation has been;

(d) Whether the Government of Mauritania has amended its legislation or modified its practices 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 pursuant to the present opinion.

55. The Government is invited to inform the Working Group of any difficulties it may encounter in acting upon the recommendations made in the present opinion and to advise it if any further technical assistance should be provided by means, for example, of a visit by the Working Group.

56. 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. The



Working Group nonetheless 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 acting upon its recommendations or of any failure to take such action.

57. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group, has requested them to take account of its opinions 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.<sup>7</sup>

*[Adopted on 15 August 2019]*

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<sup>7</sup> Human Rights Council resolution 33/30, paras. 3 and 7.