



Islamic Republic of Mauritania Shadow Report

Report submitted to the Human Rights Committee at its 109th session in the context of the review of Mauritania's initial report

13 September 2013

Table of content

TABLE OF CONTENT	2
INTRODUCTION	3
1 THE CURRENT SITUATION IN THE ISLAMIC REPUBLIC OF MAURITANIA	4
1.1 A POLITICAL HISTORY ROCKED BY COUPS	4
1.2 COUNTERING TERRORISM	5
2 APPLICATION OF THE COVENANT IN THE ISLAMIC REPUBLIC OF MAURITANIA.....	6
2.1 RIGHT TO LIFE (ARTICLE 6 OF THE COVENANT)	6
2.1.1 <i>The Status of the Right to Life in Mauritania and the Excessive Use of Force by Law-Enforcement Officials</i> 6	
2.1.2 <i>The Practice of Enforced Disappearances: a Threat to the Right to Life</i>	8
2.2 THE RIGHT TO PHYSICAL INTEGRITY (ARTICLES 7 AND 10 OF THE COVENANT)	9
2.2.1 <i>Mauritania's Legal Arsenal against Torture is Insufficient</i>	9
2.2.2 <i>Impairments to human dignity and the practice of torture in detention facilities</i>	11
2.3 THE PROHIBITION OF SLAVERY (ARTICLE 8 OF THE COVENANT)	14
2.3.1 <i>The denial of the practice of slavery: an unresolved legacy in Mauritania</i>	14
2.3.2 <i>Slavery: a theoretical abolition which persists in practice</i>	15
2.4 THE PROHIBITION OF ARBITRARY DETENTION AND THE RIGHT TO A FAIR TRIAL (ARTICLES 9 AND 14 OF THE COVENANT)..	16
2.4.1 <i>The prohibition of arbitrary detention</i>	16
2.4.2 <i>The right to a fair trial</i>	20
2.5 FREEDOM OF OPINION AND EXPRESSION, THE RIGHT TO ASSEMBLE, AND THE FREEDOM OF ASSOCIATION (ARTICLES 19, 21, 22 OF THE COVENANT)	24
2.5.1 <i>Legislative bidding for civil liberties</i>	24
2.5.2 <i>Systematic repression of any opposition movement</i>	26
2.6 THE RIGHT TO TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS, TO VOTE, AND TO BE ELECTED (ARTICLE 25 OF THE COVENANT)	28
2.6.1 <i>A discriminatory census practice: obstacles to the participation of all citizens in public affairs and access to public service positions (Articles 25(a) and (c))</i>	28
2.6.2 <i>The systematic delay of elections (Article 25(b))</i>	29
2.6.3 <i>The grip of the executive branch over all state structures</i>	30
3 CONCLUSION	31
4 RECOMMENDATIONS TO THE STATE PARTY	31

Introduction

Mauritania's initial report (CCPR/C/MRT/1) was provided to the Human Rights Committee in April 2012, seven years overdue. The Committee will examine this report during its 109th session in October 2013. In the context of this review, Alkarama provides the present report in which it seeks to evaluate the effective implementation of provisions of the International Covenant on Civil and Political Rights in Mauritania. The report also presents Alkarama's main concerns and makes recommendations to the State party.

This report is based on the documentation of the human rights situation in the country presented by Alkarama to United Nations (UN) special procedures with the cooperation and participation of local actors, including victims themselves, their families and lawyers as well as local non-governmental organisations (NGOs) working for the promotion and protection of human rights in the country.

We presented a request for an official visit to Mauritania to the Permanent Mission of the Islamic Republic of Mauritania in Geneva, which met with us on 30 July 2013. Unfortunately, to date, our request for a visit has remained without answer. We were therefore unable to take into account official positions as to the implementation of the Covenant in the country in the preparation of this report.

In order to review the human rights situation in a holistic manner, this report begins by providing an overview of the **current context of the Islamic Republic of Mauritania (1)**, particularly in light of its political history which has been rocked by coups, as well as the combat against terrorism.

The **implementation of the Covenant in Mauritania (2)** is then evaluated, in particular as it concerns the **right to life** (Article 6) and **physical integrity** (Articles 7 and 10). The report then focuses on Mauritania's implementation of the ban on **slavery** (Article 8), **arbitrary detention** and the **right to a fair trial** (Articles 9 and 14). **Freedom of opinion and expression**, the **right to assembly** and **freedom of association** (Article 19, 21 and 22) is examined next, as well as the right to **take part in the conduct of political affairs** (Article 25), which is essential in light of the internal political situation and the successive postponement of legislative elections over the past two years.

After the **conclusion (3)** on the human rights situation in the country, Alkarama sets out several **recommendations to the State party (4)** so that it may be encouraged to implement its obligations under the Covenant.

1 The Current Situation in the Islamic Republic of Mauritania

1.1 A Political History Rocked by Coups

The political history of the Islamic Republic of Mauritania is marked by a succession of coups and the rapid succession of civilian and military authorities of authoritarian character. Several decades of human rights violations have also impacted the country. Following its independence in 1960, the president, Moktar Ould Daddah, adopted a constitution that established an authoritarian presidential regime dominated by a single party.¹ He was overthrown in 1978 by a group of superior officers who created the Military Committee for National Salvation, which governed the country until 1992. In 1992, political reforms were undertaken, with the adoption of a new, "democratic", constitution promulgated after a popular referendum held in 1991. The introduction of a multi-party system and the legalisation of political parties led to pluralist elections held in 1992, 1997 and 2003 which were won by Colonel Maaouya Ould Taya, who had already been in power since 1984. The electoral process was strongly contested by the opposition and in practice, public liberties were strongly restrained. The opposition continued to be prosecuted, imprisoned, and in some cases, even killed. While the regime cooperated with the United States of America to combat terrorism, internal criticism grew and became widespread.

On 3 August 2005, a new military coup overthrew Ould Taya's government, which had been in power for two decades. Led by the "Military Council for Justice and Democracy", under the direction of Ely Ould Mohamed Vall, the Director General of State Security, the new regime declared that it aimed to "end the totalitarian practices of the old regime". It sought to establish a democratic transition towards the rule of law based on institutional and political reforms over a period of two years. This process began with a constitutional referendum in June 2006, which was followed by municipal and legislative elections that same year. Senatorial elections were then held in 2007. Despite this progress, power plays between clans and a number of political clashes demonstrated the limits of the democratic transition.

These reforms led to the election² of Sidi Mohamed Ould Cheikh Abdallahi in March 2007. The new president was the first head of state elected democratically since the country's independence. He introduced reforms, particularly in terms of human rights. Freedom of expression grew and new political organizations were allowed. A law criminalizing slavery was also adopted. However, the conflict between the military (particularly the generals who had been part of the junta) and the traditional political class led to an open clash between the president and part of the parliamentarians who blocked his attempts for political reform.

On 6 August 2008, the head of state and his prime minister were arrested by the military and placed under house arrest. The new coup, carried out by the head of the presidential guard, General Mohamed Ould Abdel Aziz, was considered by political observers as being in response to the General's dismissal, as well as that of the Chief of Staff of the Army announced that very morning by presidential decree on national radio. The conspirators, organised into a "State Council", promised to hold free elections which were set to be held on 6 June 2009. In order to stand for election, General Mohamed Ould Abdel Aziz left the military. In face of the opposition's threatened boycott, the "Dakar Agreement" was signed between the country's most important political forces, and elections were postponed to 18 July 2009. General Mohamed Ould Abdel Aziz won in the first round, carrying more than 52% of the votes.

The 2009 elections were heavily criticised by the opposition, and appear, given the context, to have been aimed at the legalisation of a military coup rather than the holding of genuinely free elections. The Working Group on Arbitrary Detention noted the progress achieved through the strengthening of the rule of law during the country's democratic period from 2005 to 2008 during its visit in February 2008. However, it regretted that this progress had been abruptly interrupted by the 6 August 2008

¹ Mauritanian People's party.

² The elections were considered by international observers as free and transparent.

coup.³ On the contrary, the Mauritanian authorities heralded the “return to a normal constitutional order” that the elections represented, seeking to legitimise their takeover which had occurred in such a questionable manner.⁴

The country remains heavily centralised around the executive branch. The President has excessively large powers, and the political and judicial controls that would normally, under the constitution, be exercised by the legislative and judicial branches appear weak.⁵ Legislative elections, which were initially scheduled for November 2011, have been regularly postponed. Despite this, the National Assembly and the Senate continue to sit and adopt laws. The authorities justify the necessity to postpone the elections in order to ensure they are free and transparent, to ensure the technical safety of the vote and most importantly, to finish the census of electors – the modalities of which are very controversial.⁶ In the context of the “dialogue” with the opposition which began in 2011, certain recommendations have been implemented, such as the initiation of constitutional reform and the establishment of an Independent National Electoral Commission (INEC) in May 2012. However, the main opposition figures boycotted this process, and the initiative was rejected by the members of the Coordination for a Democratic Opposition (CDO).⁷ The INEC, created despite the opposition, announced that legislative and municipal elections would be held on Saturday 23 November 2013. The opposition boycotted these elections on the basis that the date had been decided unilaterally without discussion with all political actors, following two years of postponement. In addition, the CDO denounced the fact that the elections will *de facto* exclude those who had not been taken into account by the census or who did not have identity cards, which constitutes a large part of the electorate.⁸

It is in the context of a military coup in 2008, contested presidential elections in 2009 and the regular postponement of legislative and municipal elections – now scheduled for November 2013 – that the human rights situation in Mauritania must be understood.

1.2 Countering Terrorism

The 11 September 2001 attacks and the launch of the international combat against terrorism allowed Ould Taya’s regime, like other repressive Arab regimes, to justify its repression of the opposition, particularly the Islamists, whether organised politically or not. In May 2003, a first wave of arrests by the police targeted several dozen Mauritanian figures, including the political representatives of the Nouhoud party.⁹ The authorities mounted accusations of “belonging to terrorist Islamic networks working on behalf of foreign forces”. In April 2005, a second wave of arrests happened, following the “discovery of a terrorist cell on Mauritanian territory”.¹⁰ Dozens of people were arrested arbitrarily, detained incommunicado and gravely tortured.

Following an attack on military barracks in Lemgheity on 4 June 2005 attributed to the Algerian Salafist Group for Preaching and Combat,¹¹ a law on combating terrorism was promulgated on 26 July

³ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.7.

⁴ Committee against torture, *Consideration of reports submitted by States parties under Article 19 of the Convention – Initial reports of State parties due in 2005 – Mauritania*, 13 March 2012, CAT/C/MRT/1, para.7.

⁵ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué*, November 2012, p.6.

⁶ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué*, November 2012, p.7.

⁷ Mauriweb, *Mauritanie – L’opposition décline ses conditions de participation aux prochaines élections*, 13 March 2013, <http://www.mauriweb.info/fr/?p=14> (accessed on 27 March 2013).

⁸ Alakhbar, *Mauritanie : l’opposition dénonce la décision « unilatérale » de la date des élections*, 4 August 2013, <http://www.fr.alakhbar.info/7336-0-Mauritanie-lopposition-denonce-la-decision-unilaterale-de-la-date-des-elections.html> (accessed on 16 August 2013).

⁹ Fédération internationale des ligues des droits de l’Homme (FIDH), *Mauritanie – L’affaire des « islamistes » : la torture au nom de la lutte « antiterroriste » - Mission internationale d’enquête*, September 2007, n°479, p.5.

¹⁰ Fédération internationale des ligues des droits de l’Homme (FIDH), *Mauritanie – L’affaire des « islamistes » : la torture au nom de la lutte « antiterroriste » - Mission internationale d’enquête*, September 2007, n°479, p.16.

¹¹ Which will become Al Qaeda in the Islamic Maghreb (AQIM) in 2007.

2005.¹² It modifies the 1983 Mauritanian criminal code, providing a vague, overly broad and imprecise definition of the crime of terrorism.

Following the 3 August 2005 coup, the government's position towards Islamists appeared to have evolved. Ould Mohamed Vall launched a series of democratic reforms and Islamist detainees were judged and acquitted by the criminal court of Nouakchott. However, at the end of 2007, the assassination of four French tourists and three Mauritanian soldiers in the military base of Al Ghallaouia was claimed by Al Qaida in the Islamic Maghreb (AQIM). As soon as he took office in 2008, Ould Abdel Aziz targeted Mauritanian Islamists under the pretext of combating terrorism. Finally, following the abduction of European nationals in 2009, the parliament adopted a new anti-terrorism law on 5 January 2010, repealing and replacing the 2005 law in an aim to end terrorism. The new law is contested by the opposition, given it is even more draconian than the law it replaced.

Following a request by 32 members of the 95-member parliament for the law to be examined by the Constitutional Council, the latter did so. Ten provisions were declared contrary to the constitution, for example that featuring a non-limitative enumeration of the acts which constitute the crime of terrorism, the fact that provisions also apply to minors, or the broad powers granted to the judicial police which can listen in on anyone suspected of terrorism, and can search his or her domicile at any time.

The law was finally amended in view of the Constitutional Council's modifications on 21 July 2010,¹³ but it still contains vague and imprecise provisions. For example, Article 3 stipulates that a crime of terrorism has occurred if it aims at "perverting society's fundamental values and destabilizing national structures and/or institutions of a constitutional, political, economic or social nature".

"Attacks on the State's internal or external safety" is a particularly vague notion, as is that of "information technology crimes", both of which are considered as acts of terrorism. This terminology is dangerous as it contains several infractions which would not normally be considered as terrorism, and can also lead to the criminalisation of activities carried out by legitimate opposition figures or human rights defenders.

Finally, there are fears that the current conflict in Mali will aggravate the situation in Mauritania should Mauritanian security forces become involved in the conflict.¹⁴ Furthermore, terrorism accusations often lead to human rights violations as they create a context that makes it easy to justify arrests, secret detention and even acts of torture.

2 Application of the Covenant in the Islamic Republic of Mauritania

2.1 Right to Life (Article 6 of the Covenant)

2.1.1 The Status of the Right to Life in Mauritania and the Excessive Use of Force by Law-Enforcement Officials

Alkarama remains preoccupied by the fact that the Mauritanian authorities do not abide by their obligations to respect the right to life of those placed under their control and authority. The right to life contains both positive and negative obligations. The law must therefore strictly limit and define the conditions under which state authorities can place the right to life at risk.¹⁵

¹² Law n°2005-047 of 26 July 2005.

¹³ Law n°2010-035 of 21 July 2010.

¹⁴ Magharebia, *La Mauritanie touchée par la menace terroriste au Mali*, <http://www.magharebia.com/cocoon/awi/xhtml1/fr/features/awi/features/2013/01/24/feature-01> (accessed on 27 March 2013).

¹⁵ Human Rights Committee, 16th session, *General Comment No. 6 : The right to life*(art. 6), 30 April 1982, para.3.

In their initial report, the Mauritanian authorities do not understand the right to life in its distinctiveness. In fact, the State party simply refers to Title II of the Criminal Code relating to “crimes and offences against individuals”, as well as Article 13 of the Constitution which sets out that “all forms of moral and physical violence are banned”.¹⁶ This overlooks the fact that the distinctiveness of the right to life as set out in the Covenant is that this obligation is addressed to state authorities, not individuals.

Article 303 of the Criminal Code stipulates that “homicide, injuries and blows that are *ordered by the law and carried out by the legitimate authority* shall not be considered as crimes or offences”.¹⁷ This provision is in clear contradiction with the obligation contained in the Covenant as it means that the right to life is not absolute and may be violated legally by security forces.

Arbitrary killings are therefore not only unsanctioned, but cannot be prevented.¹⁸ However, during the Universal Periodic Review of Mauritania in 2011, the authorities promised to “ensure that the security forces receive clear guidance and, if needed, training, so that they can act at all times in conformity with international standards in the area of respect for the rights of peoples, in particular with regard to the right to life [...]”.¹⁹

Despite this, Mauritanian security forces often use force in an excessive manner during peaceful demonstrations. Several people have been killed during protests these last few years.

On 15 July 2012, a unit from the National Guard repressed a sit-in of strikers from the Bronze Mines of Mauritania in Akjoujt. The sit-in followed one year of failed negotiations between the administration and employees who were seeking to improve their working conditions.²⁰ Mr **Mohamed Ould Mechdhoufi**, a 36-year old labourer died in obscure circumstances. Witnesses reported that he had died from the injuries inflicted on him by members of the National Guard. The Nouakchott prosecution ordered an investigation, but in the end the autopsy, the results of which were controversial “was not conclusive as to determine the cause of death”.²¹

On 9 June 2012, during a protest calling for the release of the president of IRA-Mauritania (Initiative for the Resurgence of the Abolitionist Movement), Sheikh **Ould Rajel Ould Mouallah**, a merchant in his thirties suffocated to death following the Mauritania police’s excessive use of tear gas.²² The death was not investigated and those responsible were not identified.

On 27 September 2011, security forces dispersed a protest organised by the group “Don’t Touch my Nationality” in Maghama in the wilaya (province) of Gorgol against a census they considered as discriminating against black Mauritians.²³ Mr **Lamine Mangane**, aged 21, was killed by a police bullet. No investigation was opened into the circumstances surrounding his death. The authorities simply reassigned the Police Director of Gorgol to Nouakchott, in a sign

¹⁶ Human Rights Committee, *Review of the reports presented by the state parties on the implementation of Article 40 of the Covenant, Initial reports of state parties, Mauritania*, 13 April 2012, CCPR/C/MRT/1, para.94-95.

¹⁷ Emphasis added.

¹⁸ Human Rights Committee, 16th session, *General Comment No. 6 : The right to life(art. 6)*, 30 April 1982, para.3.

¹⁹ Human Rights Council, 16th session, *Report of the Working Group on the Universal Periodic Review : Mauritania*, 4 January 2011, A/HRC/16/17, para.91.13.

²⁰ Alakhbar, *Mauritanie : Manifestations, morts et blessés ces trois dernières années*, 15 August 2012, <http://fr.alkhbar.info/4596-0-Mauritanie-Manifestations-morts-et-blessees-ces-trois-dernieres-annees.html> (accessed on 22 July 2013).

²¹ RFI, *Mauritanie : Grève à la société MCM suivie d'affrontements*, 19 July 2012, <http://atelier.rfi.fr/profiles/blogs/mauritanie-greve-la-soci-t-mcm-suivie-d-affrontement> (accessed on 22 July 2013).

²² Alakhbar, *Mauritanie : Un commerçant meurt lors de la manifestation de l'IRA*, 10 June 2012, <http://www.fr.alkhbar.info/3963-0-Mauritanie-Un-mort-lors-de-la-manifestation-de-IRA.html> (accessed on 22 July 2013).

²³ ODH Mauritania, *Mauritanie : un mort lors d'une manifestation contre un recensement controversé*, 27 September 2011, <http://odh-mauritanie.com/actualite-7513-mauritanie-un-mort-lors-d-une-manifestation-contre-un-recensement-controverse.html?m=3&a=2013> (accessed on 22 July 2013).

of appeasement.²⁴ The father of the victim, Mr Moussa Abdoul Mangan submitted a complaint about his son's death to the court of Kaedi, but it was not given any follow up.²⁵

In fact, it is fundamental that when a breach to the right to life has been identified, real sanctions are given. Administrative or disciplinary sanctions such as reassignments or transfers of agents responsible for such breaches are not enough.

All extrajudicial executions or breach of the right to life must imperatively be subjected to an investigation and the results of inquiries must be made public. Victims' families must also receive compensation. Unfortunately, in many cases where inquiries are opened, the lack of an independent justice systems means that outcomes of inquiries are manipulated.

2.1.2 The Practice of Enforced Disappearances: a Threat to the Right to Life

The practice of enforced disappearances "constitutes a violation of [...] the right to liberty and security of the person [...] It also violates or constitutes a grave threat to the right to life."²⁶ The State party is also bound to prevent enforced disappearances which in many cases lead to arbitrary deprivation of the right to life. The State must also ensure the possibility of an investigation in the case of an enforced disappearance which might implicate the violation of the right to life,²⁷ and provide compensation to victims' beneficiaries.

Even though Mauritania ratified the International Convention against Enforced Disappearances in October 2012, disappearances continue to occur. The State party has still not integrated the definition of the crime of enforced disappearance into its national legislation. This was in fact one of the recommendations made by the Committee against Torture during its review of Mauritania's initial report May 2013, affirming that Mauritania should "promptly incorporate"²⁸ a definition of enforced disappearance into its national law.

In December 2011, Alkarama submitted the case of the disappearances of Mssrs **Mohamed Mahmoud Ould Sebti** and **Mohamed Abdellah Ould Hmednah**, both of whom had disappeared since 23 May 2011 to the Working Group on Enforced Disappearances.²⁹ Mr Sebti was arrested on 5 July 2008 and was sentenced to ten years' imprisonment. While he was serving his sentence at the civil prison of Nouakchott, he was abducted by the military along with a group of 13 other detainees including Mr Ould Hmednah, who had been sentenced to death. On the night of his abduction, the group was taken to an unknown location. The victims' families and lawyers attempted to identify where they had been taken by seeking information from the prison administration and the authorities to no avail. On 8 June 2011, their belongings were returned to their families without any explanation.

These individuals, who had been tried and placed under the responsibility of the State, were illegally abducted from inside the civil prison of Nouakchott, an official institution, by agents of the State. On 28 January 2013, the Working Group had set out in its annual report to the U.N.

²⁴ ODH Mauritanie, Mauritania : un mort lors d'une manifestation contre un recensement controversé, 27 September 2011, <http://odh-mauritanie.com/actualite-7513-mauritanie-un-mort-lors-d-une-manifestation-contre-un-recensementcontroversé.html?m=3&a=2013> (accessed on 22 July 2013).

²⁵ Alakhbar, *Mauritanie : neuf mois après le meurtre de Mangane, le père se dit meurtri*, <http://fr.alakhbar.info/3905-0-Mauritanie-9-mois-apres-le-meurtre-de-Mangane-le-pere-se-dit-meurtri.html> (accessed on 23 July 2013).

²⁶ Human Rights Committee, *Communication n°992/2001, Saker v. Algérie*, 24 April 2006, CCPR/C/86/D/992/2001, para. 9.2.

²⁷ Human Rights Committee, 16th session, *General Comment No. 6 : The right to life(art. 6)*, 30 April 1982, para. 4.

²⁸ Committee against Torture, *Concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session (6-31 May 2013)*, 27 May 2013, CAT/C/MRT/CO/1, para. 11.

²⁹ Alkarama, *Mauritanie : Quatorze détenus enlevés il y a six mois de la prison de Nouakchott sont toujours disparus*, 2 December 2011, http://fr.alkarama.org/index.php?option=com_content&view=Article&id=1076:mauritanie-quatorze-detenus-enlevés-il-y-a-six-mois-de-la-prison-de-nouakchott-sont-toujours-disparus-&catid=31:communiqués&Itemid=18 (accessed on 5 April 2013).

Human Rights Council that as no information had been provided by the State, their disappearances remained unresolved.³⁰

During the Committee against Torture's review of the initial report of Mauritania, a member of the Committee questioned the State delegation about these 14 detainees. Mauritania responded³¹ that they had been sentenced and had exhausted all remedies. They had been temporarily transferred from the civil prison of Nouakchott to the prison of Wadane by decision of the Minister of Justice. The State party representative also confirmed that this transfer was a temporary measure for security reasons. However, according to sources, the prisoners are in fact detained in secret in the military base of Salah Dine.³²

The Committee's jurisprudence has established that if the State party does not communicate any information or proof indicating that the victim is no longer detained, the State party is breaching its obligation to protect the life of the victim, and therefore violates Article 6.1 of the Covenant.³³ In this case, while information has been provided by the Mauritanian authorities, this is not enough to clarify these cases of disappearance.

2.2 The Right to Physical Integrity (Articles 7 and 10 of the Covenant)

2.2.1 Mauritania's Legal Arsenal against Torture is Insufficient

The right to physical integrity is protected under article 7 and 10 of ICCPR which forbid the practice of torture or any other cruel, inhuman or degrading treatments. The State party is bound to guarantee the protection of every person against torture through legislative or other means, regardless of whether the acts have been perpetrated in their private capacity or within the scope of their official duties.³⁴ Article 10.1 widens the State party obligation to treat people under their jurisdiction humanely to persons deprived of their liberty. This is a fundamental and universal rule, which cannot depend upon the material resources of the State.³⁵

The Mauritanian authorities recognised in their initial report the absence of a formal prohibition of torture in their legislation³⁶, despite the country accession to the Convention against Torture on 17 November 2004, which creates a legal vacuum pre-empting the eradication of this practice in Mauritania. Domestic law primarily uses the euphemism of "violence" instead of torture.

In addition, the State party has an obligation to criminalize torture.³⁷ In Mauritania, torture is not under a specific legal framework which would make it an autonomous criminal offense. The term "torture" is only mentioned as such in a preliminary article of the Code of Criminal Procedure³⁸ and Article 13 of the Constitution, as amended in 2012, which provides that "[n]o one can be reduced to slavery, or any form of enslavement of human beings, or subjected to torture and other cruel, inhuman or degrading treatment. These practices constitute crimes against humanity and punished as such by the law."

³⁰ Human Rights Council, 22nd session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 28 January 2013, A/HRC/22/45, para.238-239.

³¹ Islamic Republic of Mauritania, Reply to the questions of the Committee against Torture's experts, May 2013, CAT/C/MRT/Q/1/Add.1, p.16.

³² L'Authentique, *Prison secrète Salah Dine : Le Guantanamo mauritanien sous le collimateur*, 1st July 2013, <http://www.lauthentic.info/spip.php?Article4814> (accessed on 25 July 2013).

³³ Human Rights Committee, *Communication n°992/2001, Saker v. Algérie*, 24 April 2006, CCPR/C/86/D/992/2001, para. 9.11.

³⁴ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.2.

³⁵ Human Rights Committee, 44th session, *General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (art. 10)*, 10 April 1992, para.4.

³⁶ Human Rights Committee, *Review of the reports presented by the state parties on the implementation of Article 40 of the Covenant, Initial reports of state parties, Mauritania*, 13 April 2012, CCPR/C/MRT/1, para.100.

³⁷ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.13.

³⁸ This preliminary article states that: "confessions obtained under torture, violence or coercion is not admissible."

The Mauritanian authorities have repeatedly stated that a law criminalising torture and defining it as “crime against humanity” was adopted: however, to date, this law has not been made public. Thus, in his statement made on 27 February 2013 during the 22nd session of the Human Rights Council, Mr Mohamed Abdallahi Ould Khattrra stressed that “torture was now criminalised”.³⁹ During the consideration of the initial report of Mauritania by the Committee against Torture in May 2013, the delegation stated that “since the adoption of the Law of 15 March 2013, the separate offense of torture exists in Mauritanian law and now takes the definition enshrined in the Convention against torture ratified by Mauritania and punished in accordance with the so-cited Law.”⁴⁰

According to the Covenant, the State party should also specify the penalties applicable in cases of torture.⁴¹ However, in the Mauritanian legislation, torture can be punished only as intentional assault or manslaughter, offenses defined and punishable under Articles 279, 285 and 286 of the Criminal Code.⁴² According to Articles 222 and 340 of the Code of Criminal Procedure, correctional and criminal courts are theoretically competent to hear torture cases that would be classified as torts or crimes,⁴³ but it remains unlikely that those acts are effectively prosecuted as such because of the lack of a specific legal framework and a definition of torture.

Furthermore, Article 7 of the Covenant must not suffer any restriction, even in the event of public emergency,⁴⁴ such as the fight against terrorism. Article 15 of the Law on the Statute of the National Police⁴⁵ mentions “the obligation to refrain from any act likely to impair the individual and collective freedoms, *except as provided by law*, and in general all treatments cruel or degrading constituting a violation of the rights of the human person.”⁴⁶ “The legal exception under that provision remains of concern as it seems to weaken the prohibition of torture.

Furthermore, no reason, including the order of a superior officer or a public authority may not be invoked as a justification or mitigating circumstances.⁴⁷ However, Article 14 of the Law on the Statute of the National Police states that “[t] he staff of the National Police is obliged to hierarchical obedience in compliance with laws and regulations.”

It is also important that the law prohibits the use or declare inadmissible in judicial proceedings statements or confessions obtained under torture.⁴⁸ Although the preliminary Article of the Code of Criminal Procedure states that “confessions obtained by torture, violence or coercion are not admissible”, the practice of torture in order to obtain confessions exists Mauritania. Preliminary investigation records of the police may be based on confessions extracted through coercion, confessions will be considered by the trial court as evidence. At the stage of custody, abuse of power, torture and ill-treatment are common, the Prosecutor, who is supposed to control the action of the

³⁹ L’Authentique, « La Mauritanie poursuivra l’application de ses engagements internationaux dans le domaine des droits de l’homme », déclare le commissaire aux droits de l’homme, 28 February 2013, <http://lauthentic.info/spip.php?Article3414> (accessed on 27 March 2013).

⁴⁰ Islamic Republic of Mauritania, Reply to the questions of the Committee against Torture’s experts, May 2013, CAT/C/MRT/Q/1/Add.1, p. 15.

⁴¹ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.13.

⁴² Committee against torture, *Consideration of reports submitted by States parties under Article 19 of the Convention – Initial reports of State parties due in 2005 – Mauritania*, 13 March 2012, CAT/C/MRT/1, pp.19, 24.

⁴³ Committee against torture, *Consideration of reports submitted by States parties under Article 19 of the Convention – Initial reports of State parties due in 2005 – Mauritania*, 13 March 2012, CAT/C/MRT/1, para.114.

⁴⁴ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.3.

⁴⁵ Law n°2010-007 of 20 January 2010 dealing with the status of National Police.

⁴⁶ Emphasis added.

⁴⁷ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.3.

⁴⁸ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.12.

police, does not systematically do so, as highlighted by the report of Working Group on Arbitrary detention.⁴⁹

Thus, in the trial known as that of the “Salafis” in 2007, confessions obtained under torture had not been identified as incriminating evidence, which led to the acquittal on 11 June 2007 of 24 out of the 25 accused.⁵⁰ However, the perpetrators of the acts of torture practiced on the accused were never prosecuted.⁵¹ This case nonetheless demonstrated that torture is practiced routinely in police stations and used to establish the minutes of preliminary investigation which may subsequently be used against the accused.

In addition, those who encourage, condone, order or perpetrate acts contrary to Article 7 must be held accountable.⁵² Thus, Article 180 of the Criminal Code provides that “[a]ny civil servant or public official, government or police administrator, agent or officer, judicial marshal or police commandant or deputy commandant, who, *without just cause*, uses *violence* or causes violence to be used against persons in the performance of his duties, or while on duty, shall be punished according to the nature and extent of the violence used, and shall be liable to the penalty prescribed in article 190 below”.⁵³ This provision is of concern as it seems to affirm on the contrary that acts of violence committed against individuals can be justified if they are “legitimate”.

Finally, victims must be able to have access to a remedy in domestic law: complaints must be promptly and impartially investigated in order for the appeal be effective, including for compensation.⁵⁴ Amnesties are generally incompatible with this obligation.⁵⁵ However, a 1993 law⁵⁶ grants the “full” amnesty to “members of the Armed and Security Forces who committed crimes between 1 January 1989 and 18 April 1992 relating to events that occurred within these forces which led to armed actions and acts of violence and intimidation undertaken during the same period” (Article 1). This law intervened in the framework of an attempt to settle the unresolved humanitarian legacy issues, following the Senegalese-Mauritanian conflict that took place from 1989 to 1991. This conflict resulted in the death of hundreds of black Mauritians, including members of the Military accused by Ould Taya of preparing a coup against his regime, as well as deportation and forcible transfer of population. Despite the repatriation operations undertaken by the authorities as well as the compensation granted to victims, this amnesty law remains questionable since it prevents the torturers of the time from being prosecuted and absolves them completely.

2.2.2 Impairments to human dignity and the practice of torture in detention facilities

The development of legislation on torture is not enough to eradicate this practice. Alkarama has gathered many testimonies of torture and other ill-treatment, both at the stage of custody and in detention centers. Moreover, the NHRC had acknowledged in its report issued in March 2013 that the development of legislation on torture did not prevent its practice in prisons.⁵⁷

For example, Mr **Sidi Ould Habott**⁵⁸ who had been a victim of the wave of arrests in 2005 and was acquitted by the criminal court of Nouakchott was again arrested on 7 February 2008 based on the same facts and questioned on the 2005 case, however, which was closed with his

⁴⁹ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.54.

⁵⁰ Committee against torture, *Consideration of reports submitted by States parties under Article 19 of the Convention – Initial reports of State parties due in 2005 – Mauritania*, 13 March 2012, CAT/C/MRT/1, para.101.

⁵¹ RFI, Manon Rivière, *Une condamnation et 20 acquittements*, 6 June 2006, http://www.rfi.fr/actufr/Articles/090/Article_52434.asp (accessed on 27 March 2013).

⁵² Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.13.

⁵³ Emphasis added.

⁵⁴ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, paras.14-15.

⁵⁵ Human Rights Committee, 44th session, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, 10 March 1992, para.14.

⁵⁶ Law n°92-93 granting amnesty of 14 June 1993.

⁵⁷ National Human Rights Commission of Mauritania, *Annual Report*, March 2013, para.96.

⁵⁸ Testimony gathered by Alkarama.

acquittal. He had suffered on this occasion severe torture: sleep deprivation, deprived of its natural needs, etc. Transferred to another center, he was again held incommunicado for several weeks in a 2×1m cell, unhealthy and in a suffocating heat. Stripped naked and humiliated, he was deprived of sleep and food, forced to stand on a toilet waste-flooded floor for several days until he fainted on the ground.

It should also be noted that certain violations, such as enforced disappearance, form the breeding ground for torture.

In July 2008, Alkarama and submitted to the Special Rapporteur on torture the case of Mr **Abdelkrim Bouraoui**,⁵⁹ a Tunisian national arrested in Nouakchott on 18 January 2008 by the departments of the State Security (Amn Eddaoula) and held incommunicado for one month. He was brought before the Public Prosecutor of the Court of Nouakchott on 18 February 2008, and was then released without being prosecuted; he reported that he was tortured during the entire period of his detention. On 3 May 2008, he was again arrested by officers of the State Security with nearly a hundred others during an operation presented by the authorities as falling within the scope of counter-terrorism following the attack against the Israeli embassy of 2 February 2008. Abdelkrim Bouraoui then remained detained incommunicado for 25 days in a small 2×1m cell, unhealthy and with no window in a suffocating heat. During his detention, he was severely tortured. According to the testimony of one of his fellow inmates, he was stripped, beaten, deprived of his natural needs and sleep for several consecutive days. He was also handcuffed behind his back and hung for a long time in the so-called "jaguar" position. Brought on 28 May 2008 before the judge of the Court of First Instance of Nouakchott, he showed obvious signs of torture, according to several witnesses, including his lawyer, president of the Mauritanian Association of Human Rights. Accused in the case of the attack of 2 February 2008 when he was at that time held in the local State security services for more than 15 days, he was released on bail and placed under control the judiciary; however, the intelligence services took him directly to a military barracks controlled by the Army Command Staff, where he continued to be detained illegally.

Moreover, the poor conditions of detention in Mauritania characterise a violation of Articles 7 and 10 of the Covenant. In particular, Article 10.1 applies to general conditions of detention which are to be assessed in light of the *Standard Minimum Rules for the Treatment of Prisoners*.

Firstly, there has been for several years a phenomenon of overcrowding in prisons. Thus, the Dar Naim prison with a capacity of 300 already housed 900 inmates in 2009⁶⁰ and the situation there has worsened since. Nouadhibou prison (Northwest) exceeds 120% of its capacity, to the extent that prisoners are organised turns to sleep.⁶¹

Moreover, the problem of overcrowding often prevents the separation of pre-trial and convicted prisoners, thereby violating Article 10.2(a) of the Covenant. However, Article 644 of the Mauritanian CCP provides that "[t]he suspects, defendants and accused subjected to preventive detention serve it in a special section of the prison of their place of detention. They are, if possible, isolated from the convicted and placed in an individual cell day and night."

In addition, lawlessness, resulting in a certain level of insecurity seems to be knowingly tolerated, even encouraged and maintained by the prison administration in detention and is a reason for

⁵⁹ Alkarama, *Mauritanie : Détention au secret, tortures et risque de renvoi forcé vers la Tunisie de M. Abdelkrim Bouraoui*, 24 July 2008, http://fr.alkarama.org/index.php?option=com_content&view=Article&id=326:mauritanie--dntion-au-secret-tortures-et-risque-de-renvoi-forcers-la-tunisie-de-m-abdelkrim-bouraoui&catid=31:communiqu&Itemid=18 (accessed on 5 April 2013).

⁶⁰ President of the National Bar Association of Mauritania, *Report*, November 2009, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=74:rappport-du-batonnier-nov-2009&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 27 March 2013).

⁶¹ President of the National Bar Association of Mauritania, *Report*, October 2011, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=121:rappport-du-batonnier-octobre-2011&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 27 March 2013).

concern. The President of the Bar Association of Nouakchott had testified in a 2009 report that parts of the Dar Naim prison were managed by the prisoners in the logic of violence to which everyone must compel so that the indoor climate is a climate of terror, often bringing prisoners to pay a "tax" to live in peace.⁶²

Finally, the Mauritanian NHRI, which was able to visit some places of detention, reports that prison conditions are often difficult. Prisons are often dilapidated and unsanitary, prisoners are under or malnourished and no medical monitoring is available.⁶³

To end these practices and ensure the right to dignity of detainees, States parties must establish material safeguards for the protection of persons deprived of liberty, including through the supervision of prisons. While the prison administration is now under the leadership of the Ministry of Justice and not of the Interior, the reality of the conditions of detention has not changed. Indeed, the prison administration placed under the Ministry of Justice is only in charge of administrative matters and not the effective management of the detention or control of the prison.⁶⁴ Prison staffs who manage the daily life of inmates remains in fact subjected to the Ministry of Interior and the lack of control mechanism that would collect complaints and grievances of prisoners can lead to abuse. During the visit of the Working Group on Arbitrary Detention, it was found that the principal and superintendent of the prison were the only officials under the Ministry of Justice: the role of the administrator is also limited to only monitoring the legal situation of prisoners.⁶⁵

Moreover, it is essential that the persons arrested and detained are protected, benefit from effective remedies and can get the appropriate compensation for the violations they suffered.⁶⁶

However, in the internal practice, it is extremely rare that the proceedings result in the criminal conviction of implicated public officials.⁶⁷ Complaints of ill-treatment in detention are only being investigated in exceptional cases especially when the case is publicized.⁶⁸

For example, following the death of Mr **Hacene Ould Brahim** under torture by prison guards in Nouakchott on 1 October 2012, his parents have filed a criminal complaint with the prosecutor asking for an investigation and that those responsible are punished.⁶⁹ On 7 March 2013, the criminal court of Nouakchott condemned the staff members who were on duty at the time, including a lieutenant, two sergeants and six prison guards respectively to four years, three years and one year of imprisonment each.⁷⁰ It should be noted in this case that the sentences are correctional penalties and do not take into account the seriousness of the crime.

⁶² President of the National Bar Association of Mauritania, *Report*, November 2009, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=74:rappport-du-batonnier-nov-2009&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 27 mars 2013).

⁶³ National Human Rights Commission of Mauritania, *Annual Report*, March 2013, paras. 211-234.

⁶⁴ Committee against torture, *Consideration of reports submitted by States parties under Article 19 of the Convention – Initial reports of State parties due in 2005 – Mauritania*, 13 March 2012, CAT/C/MRT/1, paras 78-79.

⁶⁵ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.62.

⁶⁶ Comité des droits de l'homme, 44^e session, *Observation générale No. 21 : Remplacement de l'observation 9 concernant le droit des personnes privées de liberté d'être traitées avec humanité (art. 10)*, 10 avril 1992, §7.

⁶⁷ Amnesty International, *Mauritanie : La torture au cœur de l'Etat*, 3 December 2008, p.27.

⁶⁸ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, §53.

⁶⁹ Elhourriya, *La gendarmerie enquête sur la mort du détenu Ould Brahim*, 2 October 2012, <http://elhourriya.net/fr/actualite/1842-rim-la-gendarmerie-enquete-sur-la-mort-du-detenu-ould-brahim.html> (accessed on 27 March 2013).

⁷⁰ Agence Tawary, *L'affaire Hacene Ould Brahim : L'officier de garde Daha condamné à quatre ans d'emprisonnement*, 8 March 2013, http://tawary.com/fr/index.php?option=com_content&id=1188:ondamne-a-4-ans-demprisonnement (accessed on 27 March 2013).

2.3 The prohibition of slavery (Article 8 of the Covenant)

2.3.1 The denial of the practice of slavery: an unresolved legacy in Mauritania

Slavery, although officially abolished, persists in Mauritania and keeps on being denied by the authorities, denial which had also been noted by the Special Rapporteur on Contemporary Forms of Slavery during her visit to Mauritania in November 2009.⁷¹

Slavery in Mauritania dates back centuries and is deeply rooted in a hierarchical social structure. The "Haratins" or "black Moors", black Africans by the colour of skin, are the main victims⁷² although the number of people who remain in slavery is not known to date in Mauritania. In 2009, the Special Rapporteur on Slavery stated that "de facto slavery still existed in some remote parts of Mauritania"⁷³ and remained a "slow and invisible process, which results in the "social death" of thousands of women and men".⁷⁴ Three traditional forms of slavery persist to this day: domestic slavery (the slave is tied to a master during his lifetime and has no contact with her family of origin), sexual and finally agricultural.⁷⁵ Moreover, modern slavery takes various forms, such as early and forced marriages, serfdom, worst forms of child labour, human trafficking and domestic servitude.⁷⁶ In 2012, this concern was renewed by the Committee on Economic, Social and Cultural Rights in its concluding observations.⁷⁷

In this respect, the harassment and persecution people denouncing the practice of slavery are subjected to are indicative of the attitude of the authorities.

In July 2012, Alkarama submitted to the Working Group on Arbitrary Detention the case of seven human rights, anti-slavery and members of the Initiative for the Resurgence of the Abolitionist Movement (IRA), arbitrarily detained since 29 April 2012 in Nouakchott.⁷⁸ April 28, 2012, Mr **Biram Ould Dah Ould Abeid**, President of the IRA, during a protest against the position of some authors of Islamic law to justify the practice of slavery in Mauritania, symbolically burned in public the works of these jurists. The next day, himself and ten IRA members were arrested by police officers. Mr **Oubeid Ould Imijine** was arrested immediately after giving an interview with Al Arabiya satellite channel, in which he explained the nature of the claims of his association. All arrests were made without a warrant. These activists were all taken to the police station of Tawaragh Zeina in Nouakchott where they were brutally tortured and forced to sign the minutes containing confessions. On 2 May 2012, the Public Prosecutor finally decided to charge them with "endangering state security." The next day, the government spokesman told the Council of Ministers that everything would be done so that an exemplary punishment is imposed. General Mohamed Ould Abdel Aziz, then himself promised severe punishment against those acts. On 9 May 2012, the detainees' lawyers requested permission to communicate with their clients, which was rejected. On 30 May, four people were released, while on June 27 Mr Ould Imijine and six other activists were brought before the Criminal Court

⁷¹ Human Rights Council, 15th session, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian– Mission to Mauritania*, 24 August 2010, A/HRC/15/20/Add.2, para.8.

⁷² Historically, they were enslaved by the Arab-Berber White Moors. Following the 1905 Act, they were gradually freed but continued to be victim of discrimination, marginalisation and exclusion because they were always perceived as belonging to the servile caste.

⁷³ Human Rights Council, 15th session, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian– Mission to Mauritania*, 24 August 2010, A/HRC/15/20/Add.2, para.34.

⁷⁴ Human Rights Council, 15th session, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian– Mission to Mauritania*, 24 August 2010, A/HRC/15/20/Add.2, p.2.

⁷⁵ Slate Afrique, Anne Collet, *L'esclavage en Mauritanie reconnu comme crime contre l'humanité*, 4 December 2012, <http://blog.slateafrique.com/femmes-afrique/2012/12/04/lesclavage-en-mauritanie-reconnu-comme-crime-contre-lhumanite/> (accessed on 27 March 2013).

⁷⁶ Human Rights Council, 15th session, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian– Mission to Mauritania*, 24 August 2010, A/HRC/15/20/Add.2, para.37.

⁷⁷ Committee on Economic, Social and Cultural Rights, 49th session, *Concluding observations on the initial report of Mauritania, adopted by the Committee at its forty-ninth session (12-30 November 2012)*, 10 December 2012, E/C.12/MRT/CO/1, para.12.

⁷⁸ Alkarama, *Mauritanie : Sept militants anti-esclavagistes détenus arbitrairement depuis trois mois*, 31 July 2012, http://fr.alkarama.org/index.php?option=com_content&view=Article&id=1201:-mauritanie-sept-militants-anti-esclavagistes-detenus-arbitrairement-depuis-trois-mois&catid=31:communiqu&Itemid=18 (accessed on 5 avril 2013).

of Nouakchott, liable to be sentenced to 30 years' imprisonment or the death penalty, given counts of endangering the State security. On 3 September 2012, they were all released on bail.

2.3.2 Slavery: a theoretical abolition which persists in practice

Article 8 of the Covenant prohibits the practice of slavery and servitude. However, Mauritania, although slavery has been legally abolished, the practice of slavery persists along with the perpetrators' impunity.

Legally, slavery was abolished in Mauritania since 1905,⁷⁹ which was reaffirmed in the 1961 Constitution, and by an order of 1981.⁸⁰ This law provided only a vague definition of slavery and did not include criminal sanctions. In 2003, the Law to combat trafficking⁸¹ is enacted and criminalises "the recruitment, transportation and transfer of persons by force or under threat for sexual or economic exploitation" without explicitly mentioning the slavery. On 3 September 2007, President Ould Cheikh Abdallahi passed a law unanimously which criminalises and penalises all forms of slavery in Mauritania.⁸² The law then defines slavery in its Article 2 as "the exercise of ownership over one or more persons" and prohibits "any discrimination in any form whatsoever in respect of a person considered a slave" (Article 3). Slavery was finally criminalised, while incurring offender 5-10 years of imprisonment and a fine of 500 000 to 1 000 000 UM (between 1300 and 2500 €). However, the burden of proof lies with the victim who cannot bring civil action for compensation or damages, which prevents any possibility of effective resolution of the issue of slavery.

Despite this legal arsenal, the application of the 2007 law was limited since all those who practice slavery who have been brought to justice have always been released on bail.⁸³ These cases are often reclassified as "quarrel estate or land dispute" or "work of minor or undue exploitation", or do not lead to criminal proceedings due to lack of sufficient evidence. In some cases, the claimant had been pressured by his extended family, his master or sometimes local authorities to force him to withdraw its complaint.⁸⁴ In general, the police and justice are reluctant to act on complaints relating to allegations of slavery. Finally, the law is all the more difficult to apply since the authorities deny the existence of this issue and that the practice is rooted in social structures, making it difficult for the victims themselves to realise their own situation of servitude.

In November 2011, six people were sentenced by the Criminal Court of Nouakchott for having practiced slavery on two children aged 8 and 13, born slaves. Ahmed Ould Hassine was then sentenced to two years imprisonment - although the law provides for five to ten years' imprisonment - and four members of his family were sentenced to two years conditional imprisonment.⁸⁵ However, on 26 March 2012, he was released on bail, demonstrating the interference of the executive in the judiciary, and thus the lack of political will to enforce the law.⁸⁶

Finally, although a draft law criminalizing slavery as a "crime against humanity" was discussed by Parliament in January 2013, providing for sanctions in the form of imprisonment, fines and forfeiture of civil rights against offenders, it has so far not been formally promulgated.

⁷⁹ Slavery was then abolished by colonial decree.

⁸⁰ Order n°81-234 criminalising slavery of 9 November 1981.

⁸¹ Law n°2003-025 of 17 July 2003.

⁸² Law n°2007-048 of 3 September 2007.

⁸³ Le Calame, *Esclavage en Mauritanie : l'impossible éradication*, <http://lecalame.info/actualites/item/779-esclavage-en-mauritanie-l%E2%80%99impossible-%C3%A9radication> (accessed on 18 August 2013).

⁸⁴ Human Rights Council, 15th session, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian – *Mission to Mauritania*, 24 August 2010, A/HRC/15/20/Add.2, §para.91.

⁸⁵ RFI, *Mauritanie: six personnes condamnées pour pratique de l'esclavage sur des mineurs*, 23 November 2011, <http://www.rfi.fr/afrique/20111123-six-personnes-condamnees-pratique-esclavage-mineurs-nouakchott> (accessed on 27 March 2013).

⁸⁶ Libération, Roger Botte, *République islamique de Mauritanie : feu l'esclavage ?*, http://www.liberation.fr/monde/2012/05/28/republique-islamique-de-mauritanie-feu-l-esclavage_821958 (accessed on 27 March 2013).

2.4 The prohibition of arbitrary detention and the right to a fair trial (Articles 9 and 14 of the Covenant)

Article 9 of the Covenant prohibits arbitrary arrest or detention as well as any deprivation of liberty that does not meet the standards and procedures prescribed by law, as well as providing a series of safeguards to protect persons deprived of their liberty. Article 14 provides guarantees of supplementary procedures for people accused of a criminal offense.

Respect for these two Articles is essential because arbitrary detention and lack of a fair trial are often related to violations of other rights protected by the Pact.⁸⁷

For example, Alkarama submitted the cases of 18 people arrested during a wave of arrests in April and June 2005 to the Working Group on Arbitrary Detention. The victims were detained in secret and gravely tortured. The individuals in question were arrested because of their political positions, demonstrating the aim of the authorities to repress opposition and any other kind of expression. The government justified their arrests by saying they endangered the security of the state because of they belonged to an illegal extremist group that had called for violence and used mosques to spread their sectarian political propaganda.

On 14 September 2005, the accused were granted bail by the investigating judge, pending their ongoing trial. The release order was confirmed by a hearing in the Trial Chamber of the court on 6 April 2006. Despite these decisions, the General Prosecutor of the Court of Nouakchott refused to release them. In addition, Alkarama had submitted their cases to the Working Group on Arbitrary Detention,⁸⁸ which declared on 9 May 2007 that their deprivation of liberty was arbitrary and contrary to the spirit of Articles 9 and 14 of the International Covenant on Civil and Political Rights.⁸⁹

2.4.1 The prohibition of arbitrary detention

Article 91 of the Mauritanian Constitution declares that “[n]o one may be detained arbitrarily. The judicial branch, the guardian of individual liberty, is responsible for respecting this principle under the conditions established by law.” Despite these provisions, arbitrary detention remains a common practice in Mauritania.

2.4.1.1 Arrest procedures and custody (Articles 9.1, 9.2, 9.3 and 14.3(a))

According to Article 9.2 of the Covenant, people must be informed of the reasons for an arrest as the arrest is taking place. They must also be informed of the accusations held against them in the shortest possible delay. These obligations are to ensure that they can challenge the reason for their arrest and its legal foundations as well as the evidence used to inform the charges.⁹⁰ In addition, 14.3(a) of the Covenant requires that any person accused of a criminal offense be informed within the shortest possible delay the nature and reason for the accusations against him or her.

In the Islamic Republic of Mauritania, police officers are responsible for registering violations of criminal law, gathering evidence, finding those responsible, and launching a preliminary investigation to find further information (Article 20 of the CCP). Police officers are also required to report crimes, misdemeanours, and infractions brought to their attention to the Public Prosecutor *without delay* (Article 22 CCP).

⁸⁷ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.17.

⁸⁸ Opinion n° 6/2007 of 9 May 2007.

⁸⁹ Alkarama, *Mauritania: Working group issues opinion in case of 18 detainees*, 10 June 2007, http://en.alkarama.org/index.php?option=com_content&view=Article&id=26:mauritania-working-group-issues-opinion-in-case-of-18-detainees&catid=28:communiqu&Itemid=143 (accessed on 5 April 2013).

⁹⁰ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.25.

Subpoenas or warrants for arrest, appearance, or detention are normally issued by an investigating judge (Article 109 CCP). However, "In the case of *flagrante delicto* if the investigating judge has not yet been seized, the Public Prosecutor can issue a warrant against any person suspected of having participated in the infraction" (Article 63 CCP). Police officers can then proceed to arrest the authors, in addition to the fact that "in the case of *flagrante delicto* punishable by a prison term, any person may apprehend the perpetrator and bring them to the nearest police officer" (Article 66 CCP). Additionally, "if he is a suspect, the police officer shall inform him of the facts alleged against him" (Article 23 CCP).

Despite these provisions, arrests sometimes take place without a warrant or without the suspects being informed of the reasons for their arrest. For example, Messrs. **Ould Dah Ould Abeid and Ould Imijine** (whose cases were previously cited) were arrested in April 2012 without the presentation of a warrant.

Under Article 9.3 of the Covenant, any individual who is arrested or detained for a criminal offense must be brought before a judge or legal authority without delay. This provision aims to ensure that the detention of an individual in the course of an investigation or criminal prosecution is under judicial control and protected by an objective, independent, and impartial authority,⁹¹ since prosecutors are rightly considered by the Committee to be biased.⁹² The Committee also established that 48 hours is sufficient to transfer the individual and prepare a hearing⁹³ and that the individual must appear in person before the judicial authority.

However, the legal limits to custody are excessive in Mauritania. According to Article 57 of the CCP, the duration of *custody* is 48 hours renewable once with the Public Prosecutor's authorisation. Yet the legal regime regulating *custody* states that a "crime or offense against the internal or external security of the state" and terrorism permits derogation from this rule and the legal length of custody is effectively extended to five days, renewable two times with the written authorisation of the Public Prosecutor, with a maximum of 15 days of detention. In both case, the duration of custody does not take into account weekends, public holidays, or festivals. Additionally, if the arrest takes place in a location far away from the competent jurisdiction, one day of detention is added for every 100km of distance, without exceeding eight additional days. These provisions can extend the duration of custody to 23 days in cases of terrorism and attacks on the security of the state. This length of time is clearly excessive, especially because those arrested are detained without contact with the outside world in particularly difficult conditions.

According to the same Article 57, "[at] the expiration of these delays, the detainee must be released or brought before the Public Prosecutor if a warrant has been brought against him or her during this period." Even with the excessive delays to custody, this principal is frequently ignored and people in custody are not always released following the expiration of the period of custody. The Public Prosecutor controls the conditions of custody and could order the detention terminated or the accused brought before him at any time (Article 59 CCP).

The Mauritanian Code of Criminal Procedure does not expressly address situations where the legal conditions of *custody* are not respected, for example in the case of expiration of the legally-proscribed period. Thus a defendant who is the victim of a prolonged period of custody going beyond the period permitted by law cannot use these facts to dismiss the case against him.

Access to a lawyer during custody is also very limited. Article 58 of the CCP states that only in the case of extension of custody (a principal that itself is not always formally respected, as we have seen) may a detainee ask the police officer to inform his lawyer with a written authorisation from the

⁹¹ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.33.

⁹² Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.33.

⁹³ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.34.

Prosecutor. It is not therefore until after 48 hours, in the case of a renewal of *custody* that a suspect has access to a lawyer in a common law cases. A police officer is present at the meeting, which is limited to 30 minutes, putting the guarantee of a “confidential interview” in question (Article 58). It is also provided that “the prosecutor [may] delay communication of the lawyer with his or her client at the request of a police officer if it is deemed necessary for the investigation.” Leaving this decision to the discretion of the Prosecutor creates a legal system that is conducive to violation of the right to access to legal counsel for people placed under *custody*.

Finally, in cases of arrests for infractions against the security of the state and for terrorism, the right to communicate with a lawyer is completely excluded. The lawyer is absent not only during the entire period of custody, which can be extended up to 23 days, but also during the first appearance before the investigating judge. When an inquiry is opened at the request of the prosecutor, it is only after the detainee is charged with a crime that he or she may “communicate freely with his counsel” (Article 103 CCP). But the investigating judge has the right to “prohibit communications for a period of 15 days renewable once”. In sum, a person suspected of a terrorist act or attack against the security of the state can be deprived of all contact with a lawyer during the already excessive period of custody as well as during a part of their preventive detention once charged (for one month). For a law that claims to respect international standards regarding detention, this is particularly excessive.

2.4.1.2 *Remand and the maintenance in detention despite a release order (Articles 9.1, 9.3 and 14.3(c))*

Article 642 of the Code of Criminal Procedure states that “[n]o one may be deprived of liberty except by virtue of a decision by a judicial authority ordering preventive detention or by virtue of the execution of a decision under the authority of *res judicata* [...]” Despite this provision, arbitrary detention is widespread in Mauritania, often in the guise of a prolonged remand beyond normal time limits or the maintenance in detention despite a judicial decision to the contrary.

Remand extending beyond legal limits is a violation of Articles 9.3 (being brought promptly before a judge) and 14.3(c) (the right to be tried without undue delay) of the Covenant. In Mauritania, remand is regulated by Article 138 of the CCP and can, in theory, be ordered by the investigating judge on the basis of “the gravity of the charges against the defendant or the need to prevent evidence disappearance, flight, or the commission of further misdemeanours.” These reasons are too vague and imprecise⁹⁴ and are against the principal that detention of people awaiting trial shall be the exception and not the rule.⁹⁵

In the case of a “detained individual [who] has never been convicted of a common law crime or offense, has not been the object of legal sanctions or prison sentences longer than one year, or may be sentenced to a term greater or equal to five years,” the length of preventive detention is limited to four months (renewable once) in tort and six months (renewable once) in criminal cases, on the order of an investigating judge or at the request of the Public Prosecutor.

However, “if the crime took place outside the country or if the person is wanted for murder, drug trafficking, terrorism, conspiracy, prostitution, robbery, or crimes committed by an organized gang,” the length of remand can be extended to two years in tort and three in criminal cases. Such long and flexible periods of remand are open to abuse, and are an obvious violation of the right to be tried without undue delay.

During its visit in 2008, the Working Group on Arbitrary Detention confirmed that normally detention is extended almost automatically for the maximum period allowed, without notification of the decision.⁹⁶

⁹⁴ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.39.

⁹⁵ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.39.

⁹⁶ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.55.

It also noted that the Arabic version of Article 138 is inexact and open to different interpretations. For example, the Indictment Chamber of the Court of Nouadhibou gave an interpretation that cumulated the periods of remand in criminal cases, therefore equivalent to six months, to which was added three years.⁹⁷

In a 2009 report, the President of the National Bar Association stated that the majority of detainees (60%) in the prison of Dar Naim were detained on remand,⁹⁸ confirming the numbers given by the Working Group on Arbitrary Detention.⁹⁹ In February 2010, the President noted that there had been no improvement and said he had visited people who had been in administrative detention for 3-6 years.¹⁰⁰

Mr **Mohamed Lemine Ould Dadde**, the former Mauritanian Commissioner for Human Rights, was fired on 26 August 2010 and imprisoned a month later, officially for having embezzled 271 ouguiyas (750,000€) during his tenure by purchasing relief materials at an inflated price. These charges were arrived at by an investigation brought by the Inspector General of the state, the functionary of the Prime Minister.¹⁰¹ On 27 September 2010, he was arrested and remanded into custody. Despite the maximum duration of detention of 6 months, renewable once, he was held for more than 20 months instead of being released on 27 September 2011 as prescribed by law. On 26 October, the Public Ministry justified its decision to keep him in custody by citing Article 138 of the CCP, which allows the extension of detention to 3 years in the case of a serious crime.¹⁰² On 4 December, he appeared before the investigating judge who referred his case to a Criminal Court. On 10 June 2012, he was sentenced to 3 years of detention and released on parole on 26 December 2012. His lawyers denounced his remand as arbitrary and ordered for political reasons, given Mr Ould Dadde's role in combating slavery and the inconsistencies and lack of any material evidence in his case.

In addition, the right to enforce the decisions of justice are often violated in Mauritania. This is despite the fact of the Human Rights Committee's jurisprudence has established that the continued detention of prisoners beyond the completion of their sentence without authorisation is arbitrary and illegal.¹⁰³

In a case concerning a bounced check, Dr **Yahya Ould Mohamedou Nagi** – the son of a leader of the Union of Forces for Progress (UFP) – was sentenced to a suspended sentence and should therefore have been released after his judgement on 3 March 2009. The Public Ministry opposed his release and kept him in custody despite subpoenas sent to the prison superintendent. The General Prosecutor of the Court of Appeal of Nouakchott issued summons for a hearing before the Criminal Court on 19 March. The Court President confirmed to Dr Ould Mohamedou Nagi that was free and that he had not signed an order of extraction from prison, even though the police had just brought Dr Ould Mohamedou Nagi

⁹⁷ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.55.

⁹⁸ President of the National Bar Association of Mauritania, *Report*, November 2009, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=74:rappport-du-batonnier-nov-2009&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 27 March 2013).

⁹⁹ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.56.

¹⁰⁰ President of the National Bar Association of Mauritania, *Report*, February 2010, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=81:rapport-fevrier2010&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 27 March 2013).

¹⁰¹ Marie Verdier, Mohamed Lemine Ould Dadde : son combat contre l'esclavage l'aurait mené derrière les barreaux (Marie Verdier, Mohamed Lemine Ould Dadde: his fight against slavery waged from behind bars), La Croix, 10 October 2011, http://www.la-croix.com/Actualite/Monde/Mohamed-Lemine-Ould-Dadde-son-combat-contre-l-esclavage-l-aurait-mene-derriere-les-barreaux- EP_-2011-10-10-721365 (accessed 15 August 2013).

¹⁰² Justine Spiegel, *Mauritanie : Mohamed Lemine Ould Dadde, le séquestré de Nouakchott (Mauritania: Mohamed Lemine Ould Dadde, the sequester of Nouakchott)*, Jeune Afrique, 25 December 2011, <http://www.jeuneafrique.com/Article/ARTJAJA2657p046.xml0/> (accessed 15 August 2013).

¹⁰³ Human Rights Committee, 107th session, *General Comment n°35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.12.

from the Dar Naïm detention centre. The Court declared the trial adjourned until 23 March 2009 to guarantee a fair trial. Given Dr Ould Mohamedou Nagi status as “free”, he left the courtroom but was immediately re-arrested by the police in the courtyard of the courthouse, who told him this was an order from their superiors and that they did not have an arrest warrant. Brought once again to Dar Naïm, the officer on duty protested his incarceration without a warrant. Dr Ould Mohamedou Nagi was nonetheless imprisoned, supposedly because of the hearing summons of 23 March, even though such summons cannot legally be considered as a warrant for detention. On 23 March 2009, the Court of Appeal sentenced him to two years in prison.

In some cases, individuals remain in detention after having served their sentence due to lost files¹⁰⁴ or because they cannot pay the *dīyah*.¹⁰⁵

2.4.1.3 *Habeas corpus and the right to reparation for illegal arrest or detention (Articles 9.4 and 9.5)*

Under Article 9.4 of the Covenant, any person deprived of liberty may appeal to a court to establish the legality of their detention without delay, and to obtain an order for their release if the detention is illegal.

The right of *habeas corpus* is not possible in Mauritania, however. Only the Public Prosecutor has the authority to order an end to custody and can decide to summon the person to be taken into custody (Article 59 of the CCP). The Working Group on Arbitrary Detention noted in 2008 that during the entire period of custody, people are not presented before the Prosecutor and thus have no remedy to challenge the legality of their detention.¹⁰⁶

Finally, Article 9.5 of the Covenant states that any individual who is the victim of an illegal arrest or detention has the right to reparation. State parties to the Covenant have the obligation to establish a legal framework to pay reparation to victims, as an enforceable right, and not as a matter of grace or discretion.¹⁰⁷ Given that the right to challenge one’s detention is not guaranteed in Mauritania, the right to reparation is also not guaranteed under Mauritanian law.

2.4.2 The right to a fair trial

2.4.2.1 *The right to a independent, impartial, and competent tribunal (Article 14.1)*

Article 14.1 guarantees the equality of access and means (“equality of arms”) before the courts: all of the parties to a legal proceeding should therefore have the same rights.¹⁰⁸

The preliminary Article of the Mauritanian Code of Criminal Procedure confirms that “legal proceedings must be fair and adversarial and preserve the balance between the rights of the parties” and seeks to “guarantee the separation of the authorities responsible for prosecution and authorities responsible for judgment.” In reality, however, the submissions of the Public Prosecutor are preponderant when it comes to legal proceedings. In interviews with Alkarama, lawyers state that the most common legal practice is that the proceedings are initiated at the request of the Prosecutor General and that the judges submit themselves entirely to the will of the Public Ministry: people are often arrested and detained with the goal of creating a case against them to justify their prosecution, including seeking

¹⁰⁴ President of the National Bar Association of Mauritania, *Report*, October 2011, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=121:rapport-du-batonnier-octobre-2011&catid=12:rapports-du-batonnier&Itemid=14 (accessed on 27 March 2013).

¹⁰⁵ The *dīyah* is civil compensation. Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2, para.57.

¹⁰⁶ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008, A/HRC/10/21/Add.2 para.48.

¹⁰⁷ Human Rights Committee, 107th session, *General Comment No. 35: Liberty and security of person (art. 9)*, 29 January 2013, CCPR/C/107/R.3, para.52.

¹⁰⁸ Human Rights Committee, 90th session, *General Comment n°32: Right to equality before courts and tribunals and to a fair trial (art. 14)*, 23 August 2007, CCPR/C/GC/32, para.13.

incriminating evidence during police custody even though the prosecution should normally be initiated due to a complaint or proven facts that establish criminal acts.

The Article also guarantees the right of all people to a fair and public hearing for their cases by a competent, independent, and impartial tribunal. This guarantee is an absolute right without exception.¹⁰⁹ However, there are several legal provisions which formally hinders the separation of powers.

Although Article 89 of the Mauritanian Constitution enshrines the principal of the independence of the judiciary, the executive branch exercises powerful influence over the exercise of justice, despite the fact that the President of the Republic theoretically “guarantees the independence of the judiciary” and “is assisted by the Supreme Council of the Magistracy over which he presides.” The vice-presidency is held by the Minister of Justice,¹¹⁰ who is also a member of the Supreme Council of the Magistracy. On 20 March 2012, Article 89 was amended,¹¹¹ and the following terms were added: “the Supreme Council of the Magistracy has two sections, one with jurisdiction over judges and the other with jurisdiction over prosecutors” in order to guarantee a greater independence of the judiciary. To this day, however, the modification has not been integrated in the law of the magistracy; the Supreme Court of the Magistracy is thus still only has a single branch.¹¹²

Under Article 90 of the Constitution, the judge answers only to the law and is protected against any pressure that may threaten his independence. Article 7 of the law of the magistracy also confirms that “sitting judges do not submit, in the exercise of their jurisdictional functions, to anything but the law.” In practice, the independence of judges is submitted to pressures by the executive branch, notably the power to nominate and fire judges.

According to Article 4 of the law of the magistracy, judges are named by decree of the President of the Republic at the suggestion of the Supreme Council of the Magistracy and by the order of the Ministry of Justice for prosecutors of the Public Ministry. The executive thus clearly plays an essential role in the nomination of judges. Assignments are determined by favouritism and used to punish insubordinate judges. Reprisals against judges that express a desire for independence from the executive are common.

Judge **Mohamed Lemine Ould Moctar** issued the decision to release a group of defendants in a drug trafficking case. On 5 September 2011, the Ministry of Justice took an administrative measure forbidding him from exercising his functions and bringing him before the disciplinary body of the Supreme Council of the Magistracy that endorsed the suspension and relieved him of his duties.¹¹³

Additionally, even though the principal of the irremovable nature of judges is established in Article 8 of the law of the magistracy, it is not constitutionally guaranteed. This irremovable nature is limited by the fact that judges are assigned by the Ministry of Justice against their will “for the necessity *majeure* of service.” This expression is not defined (legally or in jurisprudence) and thus may be broadly interpreted.¹¹⁴

¹⁰⁹ Human Rights Committee, 90th session, *General Comment n°32: Right to equality before courts and tribunals and to a fair trial (art. 14)*, 23 August 2007, CCPR/C/GC/32, para.19.

¹¹⁰ Article 48 of the law pertaining to the statute of the magistracy.

¹¹¹ Constitutional Law n°015-2012 of 20 March 2012 revising the Constitution of 20 July 1991.

¹¹² Brahim Ould Ebety, *Le Conseil supérieur de la magistrature empêché de fonctionner (The Supreme Council of the Magistracy prevented from functioning)*, Taqadoumy, 31 December 2012, http://taqadoumy.com/fr/index.php?option=com_content&view=Article&id=2717:le-conseil-superieur-de-la-magistrature-empêche-de-fonctionner&catid=39:idees-contre-idees&Itemid=399 (accessed on 14 August 2013).

¹¹³ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance: un exercice risqué (Mauritania: Criticizing the government, a risky business)*, November 2012, p.17.

¹¹⁴ Haimoud Ramdan, *Le fonctionnement de la justice dans les pays en voie de développement : le cas de la Mauritanie (The Administration of Justice in Developing Countries: The Case of Mauritania)*, Editions L'Harmattan, 2009, p.231.

In disciplinary matters, the Supreme Council of the Magistracy is the competent authority. The facts that motivate disciplinary proceedings are announced by the Ministry of Justice, an executive ministry (Article 38). The Ministry of Justice may also, in cases of emergency and with the assent of the President of the Supreme Court and the Attorney General, prohibit judges from exercising their functions (Article 36). In disciplinary matters, the Council is presided over by the President of the Supreme Court; the President of the republic or the Ministry of Justice do not appear,¹¹⁵ suggesting that these decisions may be more independent. However, repeated sacking of the President of the Supreme Court in recent years demonstrates a will to control the process by the executive.

Mr **Seyid Ould Ghaylani** was fired *de facto* on 24 May 2012, even though he was “named” the Ambassador to Yemen by the President of the Republic.¹¹⁶ Although the tenure of the President of the Supreme Court is five years, Mr Seyid Ould Ghaylani was the third president who had been fired since 2007. This practice is a violation of Article 15 of the Judicial Order,¹¹⁷ which states that the provisions of the Statute of the Magistracy regarding irremovability, independence, and freedom of decision are applicable to the President of the Supreme Court.

It should finally be noted that judges do not have a right to strike and cannot “take any concerted action that stops or impedes the functioning of the courts or their participation in them, including the establishment of association with a union” (Article 14 of the Statute of the Magistracy). This clearly constitutes an obstacle to the independence of judges.

It therefore appears that the executive branch exercises influence on judicial power in Mauritania that undermines its independence. A situation in which the functions and attributes of the judiciary and the executive cannot be clearly distinguished and in which the latter can control or direct the former is incompatible with the principle of an independent court.¹¹⁸

Finally, the idea of a fair trial includes the guarantee of a public trial. It also assures representatives of the media access to the trial chamber. Even if the trial itself takes place behind closed doors, the judgment must be made public.

Article 276 of the Code of Criminal Procedure provides that proceedings in the Criminal Court are public, but includes exceptions stating that “if it is considered that publicizing the case is dangerous to public order or morals, the president can order that they be held in private.”

This provision is broadly interpreted, leading to abuses. Although the Committee recognizes that secrecy can be ordered under exceptional circumstances tied to national security, these circumstances presuppose the existence of a “democratic society” as the sole guarantee of the fundamental rights of individuals.

2.4.2.2 *The guarantees of criminal proceedings (Article 14.2-6)*

Several guarantees regarding legal proceedings are identified by the Covenant, such as the presumption of innocence (Article 14.2). According to this principle, the burden of proof lies with the accuser while the accused benefits from doubt: no one may be presumed guilty unless the charges against him or her can be proved beyond a reasonable doubt.¹¹⁹

This principle was confirmed by Article 13 of the Mauritanian Constitution: “every person is presumed innocent until proven guilty in a regular court of law.” According to the preliminary Article of the Code

¹¹⁵ Article 4 of Decree n°94-051 organizing the methods of electing the members of the Supreme Council of the Magistracy.
¹¹⁶ RFI, *Polémiques autour du limogeage du président de la Cour suprême mauritanienne (Controversy over the dismissal of the president of the Mauritanian Supreme Court)*, <http://www.rfi.fr/afrique/20120527-polemiques-autour-limogeage-president-cour-supreme-mauritanienne-presidence> (accessed on 27 March 2013).
¹¹⁷ Order n°2007-012 of 8 February 2007.
¹¹⁸ Human Rights Committee, 90th session, *General Comment n°32: Right to equality before courts and tribunals and to a fair trial (art. 14)*, 23 August 2007, CCPR/C/GC/32, para.19.
¹¹⁹ Human Rights Committee, 21st session, *General Comment n°13: Administration of Justice (art. 14)*, 13 April 1984, HRI/GEN/1/Rev.9(Vol.I), para.7.

of Criminal Procedure, "any person suspected or prosecuted is presumed innocent until their guilt is established by decision which has the authority of *res judicata* in a fair trial fulfilling all legal guarantees. Doubt is interpreted in favour of the accused."

The rights to a defence are also guaranteed by the Covenant. The accused must be informed of the nature and reason for the accusations against them without delay (Article 14.3(a)), and they must be afforded the necessary facilities and time to prepare their defence and must be able to communicate with legal counsel of their choice (Article 14.3(b)). In this regard, the Committee states that the accused must have free and confidential communications with their counsel.¹²⁰ To safeguard the rights of the accused, judges must have the right to examine any allegation of violation of these rights at any stage of the proceedings.¹²¹

According to Article 7 of the Order regarding the organization of the judicial branch, "no one may be judged without being provided the means of defence. The defence and the choice of defender are free. Lawyers have complete access to all jurisdictions." Since no one should be deprived of their right to dispute charges in a court of law,¹²² the state parties are encouraged to offer free legal aid to the accused.¹²³ The ineffectual nature of the legal aid system¹²⁴ in Mauritania¹²⁵ often prevents access to a lawyer *de facto*. Additionally, although the legislature established legal aid in a 2006 law through Order No. 2006-05, the decrees have not been put in place and their provisions have not been adopted. As confirmed by the CNDH, legal assistance is rare if not non-existent for 84% of detainees that cannot hire a lawyer due to lack of means.¹²⁶

Oftentimes during trials, the minimal guarantees are not respected, especially in cases where the executive branch interferes by the bias of the Public Ministry, systematically violating the right to defence.

In November 2008, Mr **Yahia Ould Ahmed El Waghef**, the ex-Prime Minister under President Abdallahi, was prosecuted with three others¹²⁷ for the bankruptcy of Air Mauritanie, a company for which he had served as CEO. It appears that the true reason for their prosecution was their hostile attitude towards the coup d'état: Mr Ould Ahmed El Waghef was arrested with the former President Abdallahi during the military coup in 2008.

The handling of the case was fraught with different kinds of violations.¹²⁸ In particular, the procedure of commercial liquidation was transformed into a criminal case. Additionally, the right to defence was violated when a ruling was granted to the Public Ministry in the course of the proceedings at the expense of the defence. At the request of the Prosecutor, the indictment court set the bail at 400,000,000 Mauritanian ouguiyas (MRO), or around 1 million Euros. The defence then appealed to the Supreme Court on 18 May 2009, and the Supreme Court annulled the judgment of the criminal court and ordered the defendant be released on 31 million MRO bail (78,000 Euros).

¹²⁰ Human Rights Committee, 21st session, *General Comment n°13: Administration of Justice (art. 14)*, 13 April 1984, HRI/GEN/1/Rev.9(Vol.I), para.9.

¹²¹ Human Rights Committee, 21st session, *General Comment n°13: Administration of Justice (art. 14)*, 13 April 1984, HRI/GEN/1/Rev.9(Vol.I), para.15.

¹²² Human Rights Committee, 21st session, *General Comment n°13: Administration of Justice (art. 14)*, 13 April 1984, HRI/GEN/1/Rev.9(Vol.I), para.6.

¹²³ Human Rights Committee, 90th session, *General Comment n°32: Right to equality before courts and tribunals and to a fair trial (art. 14)*, 23 August 2007, CCPR/C/GC/32, para.10.

¹²⁴ Order n°2006-05 regarding legal aid, 26 January 2006.

¹²⁵ President of the National Bar Association of Mauritania, *Report*, October 2010, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=Article&id=104:rappport-du-batonnier-octobre-2010&catid=12:rappports-du-batonnier&Itemid=14 (accessed on 4 April 2013).

¹²⁶ National Human Rights Committee of Mauritania, *Annual Report*, March 2013, para.74.

¹²⁷ Didi Ould Biyé, Moustapha Ould Hamoud and Isselmou Ould Khatry.

¹²⁸ Collective defence of Prime Minister Yahya Ould Ahmed Waghef and his companions, *Communiqué de presse (press release)*, 8 June 2009, <http://fr.ufpweb.org/spip.php?Article2363> (accessed on 13 August 2013).

The same day, the bonds were paid. The Supreme Court prosecutor general, however, refused to implement the decision of the highest court in the land and order their release. They were not freed until 4 June 2009 by a release order from the investigating judge at the request of the Public Ministry, without the presence of their lawyers. These people should have been freed by the decision of the Supreme Court and not on the basis of an order issued by a judge in the court of first instance.

This case illustrates the executive influence over the judicial system, since the investigating judge ignored an order from the Supreme Court at the request of the Public Ministry. In addition, following a meeting between the Minister of Justice and the lawyers of the victims, it was claimed that the Attorney General believed that his requests had not been taken under consideration and decided to withdraw the decision of the Supreme Court on the basis of Articles 138 and 145 of the CCP, even though they do not apply in this case.¹²⁹

2.5 Freedom of opinion and expression, the right to assemble, and the freedom of association (Articles 19, 21, 22 of the Covenant)

2.5.1 Legislative bidding for civil liberties

The rights to freedom of opinion and expression constitute the basis of the full enjoyment of other human rights¹³⁰ and the public authority is responsible for not placing restrictions on these rights.¹³¹

Mauritania has a legal system that seems to guarantee these fundamental rights on the surface. Article 10 of the Mauritanian Constitution expressly enshrines the freedom of opinion, expression, assembly, and association.

Mauritania is also classified by Reporters without Borders as the best Arab country in terms of the freedom of the press.¹³² However, the February 25th Movement demonstrates the fact that the situation has regressed since 2007: Mauritania placed 50th out of 67 countries in the 2007 ranking.¹³³

Regarding freedom of the press, the media sector is regulated by Order No. 017-2006,¹³⁴ which repealed and replaced Order No. 91-023.¹³⁵ Despite its repeal, the latter law is still mentioned by the Mauritanian authorities in their initial report to the Committee.¹³⁶ The Order establishes a system of censorship, since the publication of a periodical or newspaper must be authorized by the Prosecutor's office and the Ministry of the Interior (Article 6). In addition, the distribution of newspapers "likely to undermine the principals of Islam or the legitimacy of the state, to the detriment of public interest or jeopardizing the public order and security" is prohibited (Article 11). The law sets down heavy penalties, notably imprisonment from 3 months to a year for "insulting the President of the Republic."

In 2006, a new Order (No. 17-2006) replaced the law but was no less repressive. In effect, according to its Article 11, a declaration of publication must be submitted to the prosecutor of the competent court and, upon publication, a copy must be sent to the Public Prosecutor of the Republic at the Court

¹²⁹ The only remedies available are the request for review and the appeal. Brahim Ould Ebety, *Dossier : Etat de droit – détention arbitraire (Case study: Rule of Law – arbitrary detention)*, June 2009, <http://mauritanie-ouldkaige.blogspot.ch/2013/08/etat-de-droit-detention-arbitraire.html> (accessed on 13 August 2013).

¹³⁰ Human Rights Committee, 102nd session, *General Comment n°34: Freedom of opinion and freedom of expression (art. 19)*, 12 September 2011, CCPR/C/GC/34, para.4.

¹³¹ Human Rights Committee, 102nd session, *General Comment n°34: Freedom of opinion and freedom of expression (art. 19)*, 12 September 2011, CCPR/C/GC/34, para.7.

¹³² Maurimedia, *Classement Reporters Sans Frontières: La Mauritanie, premier pays arabe en matière de liberté de la presse (Reporters without Borders Rankings: Mauritania is the first Arab country in terms of freedom of the press)*, 31 January 2013, <http://www.maurimedia.com/Classement-Reporters-Sans.html> (accessed on 20 August 2013).

¹³³ Le Calame, *Mouvement du 25 février : « La Mauritanie ne s'est pas améliorée dans le domaine de la liberté de la presse » (February 25th Movement: "Mauritania has not improved in the area of press freedom")*, 04 May 2013, <http://www.lecalame.info/actualites/item/375-mouvement-du-25-f%C3%A9vrier---la-mauritanie-ne-s%E2%80%99est-pas-am%C3%A9lior%C3%A9e-dans-le-domaine-de-la-libert%C3%A9-de-la-presse> (accessed on 20 August 2013).

¹³⁴ Order n°017-2006 of 12 July 2006 regarding freedom of the press.

¹³⁵ Order n°91-023 of 25 July 1991 regarding freedom of the press.

¹³⁶ Human Rights Committee, *Review of the reports presented by the state parties on the implementation of Article 40 of the Covenant, Initial reports of state parties, Mauritania*, 13 April 2012, CCPR/C/MRT/1, para.170.

of Nouakchott (Article 15). A provision for sources is also introduced in the Order (Article 3): at the same time as it confirms the right of the journalist to sources and the right to protect them in any circumstance, it also introduces an exception to this rule. In cases where the "needs of the fight against crimes and misdemeanours, especially those on the security of the state or terrorism," the journalist must reveal his or her source. This provision is dangerous because it allows the authorities total freedom of interpretation in terms of what constitutes "the fight against crimes and misdemeanours." Finally, the provisions regarding foreign journalists are particularly worrisome since the Ministry of the Interior can ban them if they "are likely to undermine the principals of Islam or the legitimacy of the state, to the detriment of public interest or jeopardizing the public order and security" (Article 21). Offenses by publications are often accompanied by prison terms (Articles 19, 28, 30, 33, 36, 40, 41 and 47). In 2011, a bill decriminalizing press offenses was adopted by the Council of Ministers. To date, the law has not been enacted.

Order 2006-34 created the High Authority for Press and Broadcasting with the mission of the "regularisation of public communication."¹³⁷ The executive branch controls the organization and the President of the Republic names its President and five members.¹³⁸ NGOs and journalists' unions are not represented in this body, which exercises the control of the public authorities over the media.

In practice, journalists are frequently harassed and are the victims of aggression or arrest by the security services or military authorities.¹³⁹

For example, in January 2010, Alkarama submitted the case of the journalist Mr **Hanevy Ould Dahah**¹⁴⁰ to the Special Rapporteur on the right to freedom of opinion and expression. Mr Ould Dahah was arrested on 18 June 2009 by men in civilian clothes without a warrant and without being told of the reasons for this arrest. He was brought to the local police station and then to the police station in Nouakchott and held in custody for five days without a visit from his family or lawyer. He was subsequently brought before a investigating judge on 24 June 2009, charged with "indecent actions," and remanded into custody. The arrest followed a complaint filed by a candidate in the presidential election – Ibrahim Moctar Sarr, president of the AJD/MR party¹⁴¹ – regarding the publication of an Article on the website Taqadoumy criticizing him. On 19 August of the same year, he was convicted of the charge by a criminal court and sentenced to six months in prison. While he should have been released on 24 December 2009, he was kept in detention and began a hunger strike in protest. On 14 January 2010, the Supreme Court was seized by an appeal of the 19 August decision by the Public Prosecutor, which overrode the decision and brought the accused before the Court. He was finally freed on 26 February 2010 following a presidential pardon.

The right to assemble is regulated by Law No. 73-008 of 23 January 1973 that states in Article 2: "public assembly is guaranteed and subject to conditions prescribed by the law." Notably, "all public assemblies must declare themselves to the competent administrative authorities at least three days before the date of the assembly" (Article 3). Finally, "no assembly may be held on public roads." Violations of this law are punishable by prison terms of 2-6 months.

According to Article 101 of the Penal Code, "any unarmed group that could disturb the public tranquillity" is prohibited in public roads and spaces. Additionally, "representatives of the public

¹³⁷ Human Rights Committee, *Review of the reports presented by the state parties on the implementation of Article 40 of the Covenant, Initial reports of state parties, Mauritania*, 13 April 2012 CCPR/C/MRT/1 para.173.

¹³⁸ Article 13 of Law n°026/2008 repealing and replacing Order n°2006-034 of 20 October 2006 establishing the High Authority for Press and Broadcasting.

¹³⁹ Alakhbar, *Mauritanie : Neuf journalistes agressés ou arrêtés en mai 2012-2013 (Mauritania: nine journalists threatened or arrested in May 2012-2013)*, 4 May 2013, <http://fr.alakhbar.info/6642-0-Mauritanie-Neuf-journalistes-agresses-ou-arrestes-en-mai-2012-2013.html> (accessed on 22 August 2013).

¹⁴⁰ Alkarama, *Mauritania: Journalist, Hanevy Ould Dahah, arbitrarily detained after publishing Article*, 25 January 2010, http://en.alkarama.org/index.php?option=com_content&view=Article&id=409:mauritania-journalist-hanevy-ould-dahah-arbitrarily-detained-after-publishing-Article&catid=28:communiqu&Itemid=143 (Accessed 5 April 2013).

¹⁴¹ Alliance pour la justice et la démocratie (Alliance for Justice and Democracy)/Mouvement pour la renovation (Renovation Movement).

forces [police] may disperse a gathering (...) and may use force if violence or assault occurs against them, or if they cannot otherwise defend the occupied areas or positions whose custody is entrusted to them." According to Article 102, any person that does not disperse may be arrested and sentenced to 2 months to a year in prison. Finally, any direct provocation of an unarmed crowd through "public speeches, displayed or distributed" can be imprisoned for one month to a year (Article 104).

These legal provisions are extremely worrisome because they clearly prohibit the right to assemble and authorize the repression of assemblies.

Law No. 098-64 of 9 June 1964 regulates the freedom of association. According to Article 3, associations cannot form or engage in activities without the authorisation of the Ministry of the Interior. The authorisation is not granted if the association was created for a cause "contrary to the law or morality, or that seeks to attack the integrity of the national territory or to attack the republican form of the government." Article 4 allows the removal "at any moment" of the authorisation of the Ministry of the Interior if the association provokes "armed or unarmed demonstrations in the streets that compromise the public security or order," or engages in "antinational propaganda," or "undermines the legitimacy of the state with its activities or exercises a detrimental influence over the people's minds." These restrictions, established by an out-dated law, have been adapted by successive military regimes and can be interpreted more or less broadly according to circumstance, thus invalidating freedom of association established under the Constitution.

Order No. 024-91 of 25 July 1991 regulates political parties.¹⁴² To legally create a party, the group must make a declaration to the Ministry of the Interior (Article 7). Any "provocation to demonstrations that compromise the public order, peace, and security" is prohibited by Article 4 of the Order. This provision drastically restricts any political party's ability to express their positions in peaceful public protests without the approval of the administration.

On 4 August 2013, the Ministry of the Interior rejected the request for recognition of the Radical Party for Global Action (inspired by the IRA), which is in large part made up of former slaves.¹⁴³ The Ministry claimed that the party violated Article 6 of the Order, which states that no party can be identified with "a race, an ethnicity, a region, a tribe, a gender, or a brotherhood." The decision seems to be based on the party's position to eradicate the practice of slavery and discrimination. Additionally, the application for recognition was sent to the Ministry of the Interior on 15 April 2013 and didn't receive a response until 4 August 2013, even though the law only allows for a waiting period of 60 days (Article 12).

2.5.2 Systematic repression of any opposition movement

In Mauritania, a resurgence of violence against protestors is occurring, while protest itself reflects a general feeling of discontentment and has many faces.

On 25 February 2011, following the example of several other Arab countries, demonstrations were organized throughout the country to demand reforms and denounce the evils that are ignored by the current authorities, such as poverty, the economic crisis, the practice of slavery, and corruption.¹⁴⁴ The protests gave rise to the "February 25th Movement" (2011) that was formed outside of the existing political parties and gathered youths from every political and social background whose goals were wide-ranging: they called for the establishment of a democratic state, a reinforcement of

¹⁴² Order n°024-91 of 25 July 1991 regarding political parties, amended by Law n°014-94 and Law n°030-2001 of 7 February 2011 regarding the financing of political parties.

¹⁴³ West Africa Democracy Radio, *Mauritanie : Un parti antiesclavagiste rejeté (Mauritania: An anti-slavery party is rejected)*, 6 August 2013, http://wadr.org/fr/site/news_fr/5284/Mauritanie--Un-parti-antiesclavagiste-rejet%C3%A9.htm (accessed on 21 August 2013).

¹⁴⁴ Al Jazeera, *Mauritania's overlooked uprising*, 28 January 2012, <http://stream.aljazeera.com/story/mauritania-overlooked-uprising-0022010> (accessed on 20 August 2013).

national unity, a fight against racism and exclusion as well as poverty, and the consolidation of civil society.¹⁴⁵

The movement regularly organizes demonstrations that are systematically repressed, leading to arbitrary arrests. On 25 April 2011, "the day of anger," protests were organized throughout the country to call for the departure of President Ould Abdel Aziz, but were violently repressed by the police. Twenty people were arrested in Nouakchott, including the blogger **Ahmed Jeddou** who had been photographing police stations after the arrest of activists.¹⁴⁶

On 25 February 2012, on the anniversary of the Movement, a large protest was organized in Nouakchott. The police proceeded to arrest protestors and surrounded a mosque so that people within it could not join the demonstration at the end of prayer. Several journalists covering the event (from Al Jazeera, Al Arabiya, and Sahara Media) were harassed and their materials were confiscated; one of them was even arrested and detained.¹⁴⁷ The police then repressed the protest with tear gas and used a large amount of violence (with batons, etc.). Forty people were injured and seventeen protestors were arrested.¹⁴⁸ At the memorial march at the second anniversary of the Movement, activists were once again arrested.¹⁴⁹

Students calling for better living conditions and an increase to their stipends have regularly protested since 2012. On 25 January and 22 February 2012, students from the Higher Institute for Islamic Studies and Research (ISERI) protested in the streets of Nouakchott to oppose the closing of their school. The riot police intervened and violently dispersed them using tear gas; several students were also arrested¹⁵⁰ and six of them were brought before the Court of Nouakchott on 23 February and charged with "crimes to destabilize the state with killing or devastation" and "unlawful assembly."¹⁵¹ The trial hearing was postponed indefinitely and the students were eventually released. The detained students did not have access to a lawyer and testified to having been tortured in custody.

The opposition focuses on contesting the discriminatory census process as well as the fact that the terms of members of the government and Parliament expired two years ago. The opposition has organized numerous protests and sit-ins over the last few years.

On 18 April 2012, a movement of young Mauritians organized a protest against the regime: forty youths were arrested and many injuries were counted.¹⁵² The month of May was also particularly eventful and the police dispersed sit-ins and repressed demonstrations. For example, on 3 May 2012 the police broke up an opposition sit-in in the morning calling for the departure of President Ould Abdel Aziz. On 19 May, twenty protestors were arrested including the President of the National Council

¹⁴⁵ Tahalil, *Un Mouvement du 25 février est né (The 25th February Movement is Born)*, 02 October 2011, <http://www.journaltahalil.com/detail.php?id=5548> (accessed on 25 August 2013).

¹⁴⁶ GlobalVoices, *Entretien avec Ahmed Jedou, blogueur et militant de Mauritanie (Interview with Ahmed Jedou, a Mauritanian blogger and activist)*, 13 June 2013, <http://fr.globalvoicesonline.org/2013/06/13/148120/> (accessed on 19 August 2013).

¹⁴⁷ <http://lissnup.wordpress.com/2012/02/26/mauritanias-feb25-movement-1st-anniversary/>

¹⁴⁸ Blog Lissnup, *Mauritania's Feb25 Movement first anniversary*, 26 February 2012, <http://lissnup.wordpress.com/2012/02/26/mauritanias-feb25-movement-1st-anniversary/> (Accessed 20 August 2013).

¹⁴⁹ Agence Tawary, *Mauritanie : Arrestation de 5 activistes du M25 à Nouadhibou (Mauritania: 5 M25 activists arrested in Nouadhibou)*, 26 February 2013, http://tawary.com/fr/index.php?option=com_content&view=Article&id=1125:mauritanie-arrestation-de-5-activistes-du-m25-a-nouadhibou&catid=1:actualites&Itemid=2 (accessed on 20 August 2013).

¹⁵⁰ Al Jazeera, *Mauritania's overlooked uprising*, 28 January 2012, <http://stream.aljazeera.com/story/mauritanias-overlooked-uprising-0022010> (accessed on 20 August 2013).

¹⁵¹ FIDH, *Mauritanie : libération de six étudiants qui risquent toujours la peine de mort et les travaux forcés (Mauritania: release of six students still in danger of the death penalty and forced labor)*, 27 February 2012, <http://www.fidh.org/Mauritanie-liberation-de-six> (accessed on 20 August 2013).

¹⁵² Jeune Afrique, *Mauritanie : la police évacue un sit-in de l'opposition à Nouakchott (Mauritania: police break up an opposition sit-in in Nouakchott)*, 3 May 2012, <http://www.jeuneafrique.com/actu/20120503T083120Z20120503T083117Z/> (accessed on 22 August 2013).

of the Tawwasoul Party.¹⁵³ The police also used deafening bombs and batons to break up the protestors.¹⁵⁴

Several protest movements operate in Mauritania, but they are all systematically repressed and their demands ignored by the authorities. Despite the guarantee of the right to expression and assembly, in practice these rights are routinely violated.

2.6 The right to take part in the conduct of public affairs, to vote, and to be elected (Article 25 of the Covenant)

2.6.1 A discriminatory census practice: obstacles to the participation of all citizens in public affairs and access to public service positions (Articles 25(a) and (c))

Article 25 of the Covenant protects the right of citizens “[t]o take part in public affairs.”¹⁵⁵ Every citizen must be able to enjoy this right without any discrimination according to Article 2 of the Covenant.

Historically, the composition of the Mauritanian state has included the polarity between the Arab and African populations, a tension that has been used politically by successive regimes that privileged the Arab population in the construction of Mauritanian identity.¹⁵⁶ This policy reached its climax in the Senegal-Mauritania conflict of 1989-1991, during which hundreds of black Mauritians were killed, including soldiers accused by Ould Taya of plotting a putsch. Tens of thousands of black Africans were also deported to Senegal (approx. 60,000) and Mali (approx. 40,000) and thousands of civilian and military positions previously held by black Africans were eliminated from public service. Their documents proving their Mauritanian nationality were destroyed and their lands were confiscated.

In 2007, a tripartite peace accord was signed (by Senegal, Mauritania, and the High Commissioner for Refugees) and organized the return of the Mauritanian refugees to their country. Approximately 20,000 people have since returned, but have been unable to obtain any form of identification and cannot recover their stolen land and property.

In 2004, the Committee for the Elimination of Racial Discrimination said it was concerned by the “very low participation rate of Black Moors and Black Africans in the army, the police, the administration, the government, and other state institutions.”¹⁵⁷ In addition, during his visit to Mauritania in 2009, the Special Rapporteur on contemporary forms of racism noted that as a principal, “Mauritanian society has been deeply affected by persistent practices of racial and ethnic discrimination, rooted in cultural traditions and pervasive social structures, the principal institutions of the state (notably the armed forces and the judicial branch) and in attitudes.”¹⁵⁸

It was thus in November 2010 that the authorities announced the beginning of a census that was officially aimed at consolidating the civil state, but that in practice became a tool of administrative purification that allowed the justification of political exclusion, which is evident in participation rates in public functions.

¹⁵³ Blog Haratine, *Mauritanie : plusieurs arrestations après la répression d'une marche de l'opposition (Mauritania: more arrests after the repression of an opposition march)*, 19 May 2012, <http://haratine.blogspot.ch/2012/05/mauritanie-plusieurs-arrestations-apres.html> (accessed on 20 August 2013).

¹⁵⁴ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué (Mauritania – Criticizing the government, a risky business)*, November 2012, p.15.

¹⁵⁵ Human Rights Committee, 57th session, *General Comment No. 25: The right of every citizen to take part in public affairs, to vote, and to have the right of access to public service (Art. 254)*, 12 July 1996, para.1.

¹⁵⁶ Blog Haratine, *Mauritanie : Mémoire du mouvement « Touche pas à ma nationalité » France (Mauritania: Memorandum from the movement "Don't touch my nationality" France)*, 14 April 2012, <http://haratine.blogspot.ch/2012/04/mauritanie-memorandum-du-mouvement.html> (accessed on 28 August 2013).

¹⁵⁷ Committee for the Elimination of Racial Discrimination, 66th session, *Review of the reports provided by the state parties concerning Article 9 of the Convention – Final observations of the Committee for the Elimination of Racial Discrimination – Mauritania*, 18 August 2004, CERD/C/421/Add.1, para.14.

¹⁵⁸ Human Rights Council, 11^e session, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène – Addendum: Mission to Mauritania*, 16 March 2009, A/HRC/11/36/Add.2, p.2.

The composition of the National Registration Agency of Population and Secure Documents (ANRPTS) – whose President, Mohamed Fadel Ould El Hadrami, is close to the President of the Republic – is in charge of the census. It is made up of only one ethnicity and includes many members of the security services.¹⁵⁹ Several local NGOs have denounced the main objective of the census, which appears to be questioning the right of black Mauritians to citizenship¹⁶⁰ and includes a humiliating¹⁶¹ interrogation process.

The movement “*Touche pas à ma nationalité*” (Don’t touch my citizenship) formalized the denunciation of the discriminatory census (or the “registration”) and was severely repressed in September 2011 when thirty movement sympathizers were arrested. Tensions run particularly high in Kaédi in the south of Mauritania where violent confrontations between the security services and movement sympathizers have taken place. One of the group’s leaders was even arrested at town hall when he came to negotiate with the authorities.¹⁶²

On 24 September 2011, Mr **Bakary Bathily** was severely beaten by agents of the security services, leading to his hospitalisation for a month due to a cranial trauma and the complete loss of his teeth. His family brought a complaint to the Prosecutor of the Republic, to the police prefecture of Kaédi, and to the Ministry of the Interior on 13 December 2011, asking for an investigation to be opened into his torture. In January 2012, the Prosecutor closed the case without further action.¹⁶³ The death of the young Mr **Lamine Mangane** (mentioned above as a violation of the right to life) on 27 September 2011 in Maghama illustrates the violence of repression in Mauritania. Finally, on 29 September 2011, a demonstration planned in Nouakchott that hadn’t been authorized by the authorities turned into a riot. Youths were prevented from reaching the National Assembly where they wished to demand the census be revoked. The police responded with violence, saying the youths had not received permission to organize the march.¹⁶⁴ A dozen people were injured and 15 people were arrested.¹⁶⁵

2.6.2 The systematic delay of elections (Article 25(b))

Senatorial, legislative, and municipal elections scheduled for November 2011 have been postponed indefinitely, officially to allow for a dialogue between different political actors to agree upon political reforms, especially those that can guarantee free and fair elections, to reassure the technical security of the ballots, and to complete the census process.¹⁶⁶ Despite the expiration of its term (set at 5 years by Article 47 of the Constitution), deputies and senators continue to remain in government and vote on laws.

¹⁵⁹ ODH Mauritania, *L’enrôlement et la question de la citoyenneté : lisons entre les lignes (The Census and the issue of citizenship: reading between the lights)*, 11 August 2011, <http://odh-mauritanie.com/actualite-7118-l-enrolement-et-la-question-de-la-citoyennete-lisons-entre-les-lignes.html> (accessed on 28 August 2013).

¹⁶⁰ Jeune Afrique, *Mauritanie : la colère noire (Mauritania: Black anger)*, 25 November 2011, <http://www.jeuneafrique.com/Article/ARTJAJA2653p053-055.xml0/> (accessed on 28 August 2013).

¹⁶¹ Questions regard knowledge of Arabic, the Qur’an, or the origins of surnames, or the birthplace of the grandfather.

¹⁶² RFI, *Mauritanie : troisième jour de manifestations contre le recensement à Kaédi (Mauritania: third day of protests against the census in Kaédi)*, 27 September 2011, <http://www.rfi.fr/afrique/20110927-3e-jour-manifestations-contre-le-recensement-ville-mauritanienne-kaedi> (accessed on 20 August 2013).

¹⁶³ OMCT, *Mauritanie : disparition de M. Bakary Bathily, secrétaire général du Syndicat national des étudiants de Mauritanie (Mauritania: disappearance of Mr Bakary Bathily, Secretary General of the National Union of Students in Mauritania)*, 15 February 2012, <http://www.omct.org/fr/human-rights-defenders/urgent-interventions/mauritanie/2012/02/d21633/> (accessed on 20 August 2013).

¹⁶⁴ ODH Mauritania, *Mauritanie – Recensement : manifestation interdite, heurts à Nouakchott (Mauritania – The census: demonstrations banned, clashes in Nouakchott)*, 29 September 2011, <http://odh-mauritanie.com/actualite-7530-mauritanie-recensement-manifestation-interdite-heurts-a-nouakchott.html?m=3&a=2013> (accessed on 20 August 2013).

¹⁶⁵ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance: un exercice risqué (Mauritania: Criticizing the government, a risky business)*, November 2012, p.16.

¹⁶⁶ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance: un exercice risqué (Mauritania: Criticizing the government, a risky business)*, November 2012, p.7.

In September 2011, Mr Ould Abdel Aziz committed to a “national dialogue” between the majority parties and the four parties in the opposition, but excluding the opposition parties with the most representation.¹⁶⁷

The Constitutional Council was seized *a posteriori* and pronounced the postponement of elections to May 2012 to be legal.¹⁶⁸ It considered the postponement to fall under the discretionary power of the government and extended the mandate of the current Parliament to avoid a legal vacuum. It is evident that the decision has no legal or constitutional basis.

In June 2012, the President issued a decree naming the new committee director of the National Independent Electoral Commission (NIEC) who is in charge of managing the electoral process. The Commission is not recognized by the opposition (COD), which accuses it of being non-inclusive. Following the Dakar agreement, it was decided that the opposition would appoint two-thirds of the NIEC and that any decision requires a two-thirds majority.¹⁶⁹ Instead, the central powers imposed the election date even though the government was still discussing a possible day. The elections took place and the results were contested, leading to the resignation of the president of NIEC. The electoral process has been taken over since 2009 and the opposition now refuses to recognize the NIEC, and thus the conditions of elections are laid down in advance unilaterally by the current authorities.

The NIEC also initially announced the holding of legislative and municipal elections on Saturday, 12 October 2013,¹⁷⁰ but they were eventually postponed until 23 November.¹⁷¹ The principal forces of the opposition have decided to boycott the elections since the date was unilaterally set without discussion with other political factions and the elections *de facto* exclude people who have not been “identified” in the census or received their identity card.¹⁷²

In addition, the administrative electoral census (RAVEL) organized by NIEC was not launched until 25 July 2013 (and lasts until 7 September).¹⁷³ Elections are only open to people with their new identity card, but the process of “identification” will not be complete before the elections and thus many people will not be able to receive their new identity card, excluding a significant part of the population from participating in the elections. The credibility of the elections cannot be guaranteed given these conditions. Elections that allow all citizens to participate without exception, prepared by independent governmental institutions with ample technical and material resources, are the only way to guarantee valid results. The current situation lends itself to false results that will perpetuate the existing political crisis.

2.6.3 The grip of the executive branch over all state structures

The shortcomings mentioned above are actually symptomatic of the total control of the executive over all sectors of public life in Mauritania. The main opposition groups report that all of the state

¹⁶⁷ RFI, *La Mauritanie lance un « dialogue national » entre la majorité et une partie de l'opposition (Mauritania launches a "national dialogue" between the majority and the opposition)*, 18 September 2011, <http://www.rfi.fr/afrique/20110918-mauritanie-lance-dialogue-national-entre-majorite-une-partie-opposition> (accessed on 29 August 2013).

¹⁶⁸ ODH Mauritanie, *Mauritanie : législatives prévues « dans les délais » soit avril-mai (président) (Mauritania: Legislative elections predicted "on time" in April/May – president)*, 31 January 2012, <http://odh-mauritanie.com/actualite-8424-mauritanie-legislatives-prevues.html> (accessed on 27 March 2013).

¹⁶⁹ For Mauritania, *Mauritanie : Une CENI magique ou l'illusion (Mauritania: The CENI, magic or illusion)*, 09 June 2012, <http://www.fr.for-mauritania.org/416-0-Mauritanie-Une-CENI-magique-ou-lillusion.html> (accessed on 28 August 2013).

¹⁷⁰ CENI, *Communiqué : Elections législatives et municipales (Press release: Legislative and municipal elections)*, 1 August 2013, http://www.ceni.mr/spip.php?page=Article&id_Article=388 (accessed on 16 August 2013).

¹⁷¹ CENI, *Réunion extraordinaire du Comité directeur : report des élections législatives et municipales (Extraordinary meeting of the Committee Director: Report of legislative and municipal elections)*, 21 August 2013, http://www.ceni.mr/spip.php?page=Article&id_Article=405 (accessed on 28 August 2013).

¹⁷² Alakhbar, *Mauritanie : l'opposition dénonce la décision « unilatérale » de la date des élections » (Mauritania: The opposition denounces the "unilateral" decision on the date of elections)*, 4 August 2013, <http://www.fr.alakhbar.info/7336-0-Mauritanie-lopposition-denonce-la-decision-unilaterale-de-la-date-des-elections.html> (accessed on 16 August 2013).

¹⁷³ CENI, *Lancement du RAVEL du 25 juillet au 7 septembre 2013 (The launch of RAVEL from 25 July to 7 September 2013)*, 24 July 2013, http://www.ceni.mr/spip.php?page=Article&id_Article=380 (accessed on 28 August 2013).

structures are now controlled by the entourage of the President who seeks to preserve his own grip on all of the inner workings of the country.

Several officials who were considered close or sympathetic to the opposition were replaced by people chosen on the basis of clientelism and favouritism¹⁷⁴ in violation of the General Statute of Government Staff.¹⁷⁵

The opposition also denounces the fact that public assets are used to the exclusive benefits of candidates in power and that principal nominations for civil and military positions are wholly decided on the basis of clientelism.¹⁷⁶ The opposition recently denounced the involvement of several military officers in the electoral process, notably through the mass registration of several garrisons from specific constituencies designed to influence the final result of the vote.¹⁷⁷ In addition, the dismissal of civil servants and the financial repression of businessmen and merchants have become more and more widely used to punish opponents, creating a climate of suspicion and political tension.

The economic resources of the state have been placed under the direct control of the executive in recent years, especially the sectors of mining, fishing, petrol, and banking, which have passed into the hands of the family members of the President or his relatives. The opposition particularly denounces the management of the mining sector, which is an important source of financial resources, and a report from Transparency International has implicated senior government officials in major cases of fraud.¹⁷⁸ The report reveals that politicians, military leaders, and members of the security services are involved in corruption in the diamond fields of Akjoujt.

3 Conclusion

Certain rights protected by the Covenant were effectively integrated into Mauritanian law, and in theory international treaties have superiority over domestic laws according to Article 80 of the Constitution. Yet in practice Mauritanian citizens never invoke these same rights.

The authorities have passed extensive legislation against the practice of torture, slavery, and to protect freedom of expression. The initial report on Mauritania presented to the Committee also reads like a compilation of legal and administrative measures – albeit insufficient ones – regarding the rights protected under the Covenant, but says little about how they are put into effective practice. Indeed, implementation in Mauritania remains woefully inadequate.

In addition, the influence of the executive powers over all sectors of public life in Mauritania prevents any improvement in the situation of human rights in the country and, consequently, the establishment of fundamental rights protected by the Covenant.

4 Recommendations to the State Party

¹⁷⁴ Union des Forces de Progrès, *La Mauritanie sous Mohamed Ould Abdel Aziz (Mauritania under Mohamed Ould Abdel Aziz)*, 15 March 2012, <http://fr.ufpweb.org/spip.php?Article3485> (accessed on 29 August 2013).

¹⁷⁵ Law n°93-09 of 18 January 1993 on the general statute of officials and agents contracted to the state.

¹⁷⁶ Mauriweb, *Vision de la COD pour des élections libres, honnêtes et transparentes (Vision of the COD for free, honest and transparent elections)*, 16 May 2013, <http://www.mauriweb.info/fr/?p=2840> (accessed on 29 August 2013).

¹⁷⁷ Mauritanie Web, *L'opposition « modérée » mauritanienne dénonce l'immixtion d'officiers de l'armée dans le jeu électoral (The "moderate" Mauritanian opposition denounces the imposition of army officers in the electoral game)*, 29 August 2013, http://www.mauritanie-web.com/actualite_9875_1_l-opposition-quot-moda-copy-ra-copy-e-quot-mauritanienne-da-copy-nonce-l-immixtion-d-officiers-de-l-arma-copy-e-dans-le-jeu-a-copy-lectoral.htm (accessed on 3 September 2013).

¹⁷⁸ CRIDEM, *L'élite politique Mauritanienne impliquée dans la corruption de l'exploitation minière (The Mauritanian political elite implicated in the corruption of the mining industry)*, 29 June 2013, http://www.cridem.org/C_Info.php?Article=644663 (accessed on 29 August 2013).

1. Take effective measures to ensure that the violation of the right to life has no exceptions, especially in cases where a hierarchical superior orders it; order exhaustive inquiries into extrajudicial executions and punish those responsible.
2. Make torture a specific, imprescriptible criminal offense and provide appropriate punishments for those responsible.
3. Improve the conditions of detention and put in place material guarantees to ensure the security of people deprived of liberty.
4. Put a definitive end to the practice of enforced disappearances and/or similar practices and place all people detained in secret under the protection of the law without exception in recognized penitentiaries.
5. Ensure the implementation of the law of 2007 on slavery of any sort and ensure that the perpetrators and those responsible for these practices are effectively prosecuted and that the punishments prescribed under law are applied.
6. Reduce the legal limits to *custody* in conformity with international standards; guarantee access to a lawyer during custody; guarantee the right to a speedy trial and modify the legal provisions on administrative detention; offer guarantees regarding the legal process, notably the respect for the presumption of innocence and the right to a defence; ensure the execution of decisions to release detainees handed down by judicial authorities.
7. Reform the legal system to effectively ensure the independence of the judicial branch and guarantee the principle of irrevocability of judges from their seat, specifically changing the provisions relative to the Statute of the Magistracy.
8. Effectively guarantee the right to freedom of expression, assembly, and association and change the law to put an end to systematic repression of any opposition movement.
9. Ensure the holding of free and transparent legislative and municipal elections that conform to international standards and put in place a framework that allows for the participation of all citizens without exception.