



Universal Periodic Review: Mauritania

Second Cycle

Submission to the Stakeholders' Summary

Alkarama Foundation, 23 March 2015

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1. Background and Framework

1. Former French Overseas Territory, Mauritania acquired its autonomy within the French Community in 1958 and gained independence in 1960.
2. After numerous coups and a succession of presidents, the country welcomed its first democratically elected Head of State on 17 April 2007, Sidi Mohamed Ould Cheikh Abdullahi, who was overthrown on 6 August 2008 by the incumbent president, Mohamed Ould Abdel Aziz.
3. Mauritania has since witnessed a political crisis, marked by a decline in democracy, futile constitutional institutions, and the pre-eminent rule of the executive, whose excessive powers have been particularly detrimental to legislative and judicial institutions, which appear significantly weakened.
4. No constitutional institution was renewed within the statutory time limits. The parliamentary elections, initially scheduled for November 2011, have not ceased to be postponed, but the National Assembly, as the Senate, continue to sit and pass laws. For over two years, the country has lived with a National Assembly and municipal councillors without a valid mandate. During the elections of 22 December 2013, the presidential party will win a majority of seats in the National Assembly.
5. Moreover, two thirds of the members of the Senate – the upper house of Mauritanian Parliament – still convene to this day, despite the mandate's expiration. The senatorial elections set for March 2015,¹ were postponed indefinitely, ostensibly to promote a dialogue between the ruling party and the opposition who had planned to boycott the elections.
6. The refusal to renew the composition of the Senate, largely dominated by the ruling party, and the nepotism denounced by opposition parties, reflect the President's commitment to retain total control over the country's institutions. Much discrimination persists in Mauritanian society, often on ethnic or regional grounds.
7. Despite criticism of the opposition, Mohamed Ould Abdel Aziz had his mandate extended on 21 June 2014, after the elections were widely boycotted by other political parties, denouncing the lack of transparency and labelling it an "electoral farce".

1.1 Scope of international obligations

8. Mauritania is a party to the main international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)² and the Convention against Torture (CAT).³ In 2012, it also acceded to the Convention against Enforced Disappearance (ICCPED),⁴ as well as the Optional Protocol to the CAT (OPCAT).⁵

9. Recommendations:

- a) Recognise the competence of the Committee against Torture under article 20 and make the declarations under articles 21 and 22 CAT;
- b) Recognise the competence of the Committee on Enforced Disappearances under article 31 and 32 ICCPED.

1.2 Constitutional and legislative framework

10. The 1991 Mauritanian Constitution put in place a highly centralised presidential system.

¹ "Mauritania: Deferral of the March senatorial elections to promote dialogue with the opposition", *JeuneAfrique*, 5 February 2015, <http://www.jeuneafrique.com/actu/20150205T132226Z20150205T132151Z/> (accessed 16 February 2015).

² Ratified on 17 November 2004.

³ Ratified on 17 November 2004.

⁴ Ratified on 3 October 2012. However, Mauritania has not recognised the competence of the Committee under articles 31 and 32 of the Convention.

⁵ Ratified on 3 October 2012. Mauritania has neither recognised the competence of the Committee under article 20 of the Convention nor made any declaration under articles 21 and 22.

11. Since its inception, the Constitution was suspended twice, following the coups of 3 August 2005 and 6 August 2008, respectively.⁶ Revised for the first time in 2006, it was again amended on 20 March 2012.

12. The 2012 revision prohibits coups under article 2(4) and introduces a new article under which slavery and torture are qualified as "crimes against humanity".⁷

13. On 5 January 2013, the national press reported that the Members of Parliament had discussed the adoption of a draft law expressly criminalising torture under national law.⁸ This initiative has amounted to nothing thus far.

14. **Recommendation:**

a) Implement into domestic law the new constitutional provisions prohibiting slavery and criminalising torture.

1.3 Institutional and human rights infrastructure

15. During its first review in 2010, Mauritania took France's recommendation calling for the ratification of the OPCAT and the creation of an independent mechanism for the monitoring of detention facilities under consideration.⁹ However, it is yet to establish a National Protection Mechanism (NPM), despite having had a year to do so from the time of ratification, i.e. until 3 October 2013.

16. On 30 April 2014, the Minister of Justice announced the establishment of this mechanism and his intention to entrust this task to the National Human Rights Commission (NHRC).¹⁰

17. However, if the NHRC currently benefits from status A, it is worrying that it does not appear to be totally independent and in conformity with the Paris Principles. During Mauritania's last review before the Committee against Torture, noting the presence of NHRC members within the official state party delegation, the rapporteur for Mauritania found that "the composition of Mauritania's delegation shows that there is still confusion between the state's responsibilities in the protection against torture and those of other parties, such as NHRIs".¹¹

18. In addition, on 22 July 2014, the lawyer Takioullah Eidda also questioned the NHRC's credibility, noting their inaction and failure to address multiple violations of human rights committed in the country.¹²

19. **Recommendations:**

a) Establish an independent NPM, composed of members of civil society, recognised for their competence, integrity and impartiality;

b) Bring the NHRI in conformity with the Paris Principles.

⁶ Ahmed Salem Ould Bouboutt, "The Constitutional Revision of 20 March 2012 in Mauritania", *L'année du Maghreb* [online], October 2014, <http://anneemaghreb.revues.org/1982> (accessed 3 February 2015).

⁷ Article 13: "No one shall be held in servitude of any form of human enslavement, nor subjected to torture or other cruel, inhuman or degrading treatment".

⁸ "Mauritania: Members of Parliament discuss the criminalisation of slavery and torture", *Alakhbar*, 5 January 2013, <http://www.fr.alkhbar.info/5699-0-Mauritanie-Les-deputes-discutent-sur-la-criminalisation-de-lesclavage-et-de-la-torture.html> (accessed 3 February 2015).

⁹ Recommendation No. 92.1 (France).

¹⁰ Letter from the Mauritanian Minister/Ministry of Justice, dated 31 April 2014, <http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Correspondence/LetterMauritania08052014.pdf> (accessed 12 February 2015).

¹¹ Committee against Torture, *Summary record of the 1138th meeting*, 13 May 2013 (CAT/C/SR.1138).

¹² Takioullah Eidda, "Le déni de la CNDH, assoie la crédibilité de Biram", *Sahara media*, http://fr.saharamedias.net/Le-deni-de-la-CNDH-assoie-la-credibilite-de-Biram_a4849.html (accessed 12 February 2015).

2. Cooperation with human rights mechanisms

2.1 Cooperation with international treaty bodies

20. During the last UPR, Mauritania accepted Norway's recommendation to "strengthen its cooperation with the United Nations treaty bodies by submitting overdue reports as a matter of priority, and strengthening its cooperation with the special procedures".¹³

21. Yet, the report due for submission under the ICCPED on 3 November 2014 is still pending.

22. Moreover, following the conclusions of the Committee against Torture's initial review, Mauritania was given a year to submit information on the implementation of the respective recommendations. It has still not sent its observations and the Special Rapporteur has reiterated its request on 7 July 2014.¹⁴

23. Recommendation:

a) Strengthen cooperation with treaty bodies and special procedures and submit overdue reports.

3. Implementation of international human rights obligations

3.1 Right to life, liberty and security of the person

24. Despite the *de facto* moratorium on the death penalty, it remains within the Penal Code and is still pronounced by courts, including for minors.¹⁵ Several death sentences were handed down in recent years, the latest of which on 24 December 2014, against Mohamed Cheikh Ould Mohamed for apostasy.

25. Deaths in places of detention are also a matter of concern. As such, Maarouf Ould Al Hiba,¹⁶ aged 33, died on 12 May 2014 during his secret detention on the Salaheddine military base owing to negligence of the authorities, who denied him access to medical care.

26. Recommendation:

a) Bring to an end all *incommunicado* detention, place all persons deprived of their liberty under the protection of the law, and ensure respect for their lives and bodily integrity.

3.2 Torture and the situation in prisons

27. During its last UPR, Mauritania agreed to take steps to end torture and other ill-treatment, and to ensure that the claims of alleged victims would be subject to investigation and prosecution in conformity with its treaty obligations.¹⁷

28. However, the Committee against Torture¹⁸ and NGOs raised concern about the absence of measures being taken to define and criminalise torture under domestic law.¹⁹ To this day, there is no independent authority having the prerogative to ensure that investigations are systematically initiated following allegations of torture.

29. It was only in 2007 that an amendment to the 1983 Code of Criminal Procedure²⁰ introduced a provision explicitly addressing the issue of torture, stating that "confessions obtained by means of

¹³ Recommendation No. 90.15 (Norway).

¹⁴ Letter of the Special Rapporteur for Follow-up on Concluding Observations to the State of Mauritania, dated 7 July 2014, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MRT/INT_CAT_FUL_MRT_17609_E.pdf (accessed 12 February 2015).

¹⁵ To date, Mauritania has upheld its decision made during the last UPR, namely not to ratify the Second Optional Protocol to the ICCPR.

¹⁶ Alkarama, *Mauritania: Suspicious death of a prisoner while secretly detained*, 28 May 2014, <http://en.alkarama.org/mauritania/1232-mauritania-suspicious-death-of-a-prisoner-while-secretly-detained> (accessed 12 February 2015).

¹⁷ Recommendation No. 90.33 (Sweden).

¹⁸ Committee against Torture, *Concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session* (6-31 May 2013), 18 June 2013, (CAT/C/MRT/CO/1), para. 7.

¹⁹ NGO collective and CCPR Centre, *Follow-up report to the concluding observations*, October 2014, pp.5-6, <http://www.cccprcentre.org/doc/2014/10/Mauritania-note-des-ONGs-sur-recommandations-du-Ct%C3%A9A9DH.pdf> (accessed 3 March 2015).

²⁰ Ordinance No. 2007-036 of 17 April 2007 on the establishment of the Code of Criminal Procedure.

torture, violence or coercion have no legal value". Article 13 of the revised Constitution²¹ equally identifies torture as a crime against humanity. However, under domestic legislation, acts of torture can only be punished as assault and battery or voluntary manslaughter.²² Torture is thus not recognised as a separate crime, thereby contributing to impunity.

30. Finally, domestic criminal law²³ provide for sanctions only when agents of the state, in exercising their official functions, use violence "without just cause". While the term "violence" is inappropriate, the fact that it could be justified on legitimate grounds remains particularly worrying.

31. In 2011, the president of the National Bar Association testified to the poor conditions in places of detention and affirmed: "The prisons that the Minister of Justice prevents us from visiting, despite our requests for three months, experience a dire fate". Offering the example of Nouadhibou prison, where the number of detainees "exceeds its capacity by 120%, and the prisoners are organised to sleep in shifts". In its report, the Bar Association also denounced the problem of malnutrition and the lack of access to healthcare.²⁴

32. **Recommendations:**

- a) Define and criminalise torture in the Criminal Code in line with article 1 CAT;
- b) Take concrete measures to investigate, independently and impartially, cases of torture or ill-treatment and ensure that perpetrators are prosecuted; strengthen complaint and compensation mechanisms for victims;
- c) Ensure compliance with condition of detention to the Standard Minimum Rules for the Treatment of Prisoners.²⁵

3.3 Arbitrary Detention

33. The prohibition of arbitrary detention is enshrined in article 91 of the Constitution.²⁶ Yet, it remains standard practice throughout the country.

34. Arbitrary detention takes several forms: the duration of police custody and pre-trial detention are sometimes extended beyond the legal timeframes and persons acquitted by judicial proceedings or having served their prison sentence are kept in detention. For example, Oubeid Ould Imijine and his companions were arrested and detained despite the proceedings against them having been dropped.

35. Moreover, Alkarama has documented numerous cases of arbitrary detention of persons exercising their right to freedom of expression and association. Mauritania has hereby violated its international obligations; particularly under article 19 ICCPR.

36. **Recommendation:**

- a) Ensure that deprivations of liberty respect the guarantees offered by international law.

3.4 Freedom of expression, association and peaceful assembly, and right to participate in public and political life

37. Article 10 of the Constitution guarantees a number of fundamental rights, including the freedom of expression, association and peaceful assembly. Nevertheless, the Executive too commonly violates these rights – essential to any democracy.

²¹ Constitutional Law No. 2012-015 amending the Constitution of 20 July 1991.

²² Articles 279, 285 and 286 of the Criminal Code.

²³ Article 180 of the Criminal Code.

²⁴ Ahmed Salem Bouhoubeyni, *Report of the President of the Bar Association*, 17 October 2011, http://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 12 February 2015).

²⁵ The Standard Minimum Rules for the Treatment of Prisoners were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 13 May 1955.

²⁶ "No one shall be arbitrarily detained. The judiciary, guardian of individual liberty, shall ensure respect for this principle as provided for by law".

38. The authorities systematically repress peaceful protests, often using violence against demonstrators.

39. A general campaign of harassment and repression by the authorities continues to target human rights defenders, opposition parties and students, with the objective of silencing them and punishing them for their peaceful activities.

40. On 11 November 2014, Biram Dah,²⁷ president and founder of the Initiative for the Resurgence of the Abolitionist Movement, was arrested without any warrant whilst taking part in the "Caravan for the abolition of slavery".²⁸ Brought before the Rosso Tribunal on 15 January 2015, he was sentenced to two years in prison, following an unfair trial.

41. On 29 January 2015,²⁹ a peaceful protest organised in the wake of his conviction was violently repressed by the police, resulting in numerous injuries and arrests.

42. **Recommendations:**

- a) Ensure respect of the freedom of association, expression and peaceful assembly;
- b) Cease all acts of reprisal against human rights defenders within the country.

3.5 Human rights and counter terrorism

43. Since his inauguration in 2008, President Ould Abdel Aziz has pursued an active policy against Islamists under pretext of the fight against terrorism. Following the abduction of European nationals in 2009, the Parliament adopted a new anti-terrorism law on 5 January 2010, repealing and replacing that of 2005, with the declared objective of eradicating terrorism. This new legislation remains particularly draconian and some of its provisions contradict the Constitution. As such, article 3 is particularly imprecise, defining acts of terrorism as those which "distort the fundamental values of society and destabilise the nation's constitutional, economic, political or social structures and/or institutions". This terminology could include facts or offences unrelated to terrorism and criminalise legitimate activities of political opponents and human rights defenders. The scope of the law extends to minors and confers very broad powers to law enforcement officers.

44. Charges of terrorism often lead to violations of human rights, creating a framework for arbitrary arrests, *incommunicado* detentions or torture. As such, 14 persons convicted of acts of terrorism on the basis of the 2010 law, were forcibly disappeared on 23 May 2011.³⁰

45. **Recommendation:**

- a) Amend the 2010 anti-terrorism law and bring it in conformity with the international law principles and guarantees.

3.6 Application of the prohibition of slavery

46. Mauritania³¹ has the legislative arsenal to fight against slavery. The practice was abolished in 1981,³² criminalised in 2007,³³ and pronounced a "crime against humanity" in 2012.³⁴

²⁷ Alkarama, Mauritania: Another Human Rights Defender Behind Bars – The case of Biram Dah, 9 December 2014, <http://en.alkarama.org/mauritania/1582-mauritania-another-human-rights-defender-behind-bars-the-case-of-biram-dah> (accessed 12 February 2015).

²⁸ An event organised by anti-slavery activists, who travel the country to raise awareness on the issue of slavery.

²⁹ Alkarama, *Mauritania: Violent repression of a demonstration in Nouakchott*, 6 February 2015, <http://fr.alkarama.org/component/k2/item/1745-mauritanie-violente-repression-d-une-manifestation-a-nouakchott?Itemid> (accessed 12 February 2015).

³⁰ Alkarama, *Mauritania: 14 prisoners abducted from Nouakchott prison six months ago remain disappeared*, 3 December 2011, <http://fr.alkarama.org/component/content/article/96-mauritanie/communiqu/1076-mauritanie-quatorze-detenus-enlevés-il-y-a-six-mois-de-la-prison-de-nouakchott-sont-toujours-disparus> (accessed 10 February 2015).

³¹ In accepting recommendation n.90.40 (Germany), Mauritania agreed to continue and intensify the fight against all forms of modern slavery and its aftermath.

³² Ordinance No. 081-234 of 9 November 1981 on the abolition of slavery.

³³ Law No. 2007-048 of 3 September 2007 on the criminalisation of slavery and practices relating thereto.

³⁴ Article 13 of the Mauritanian Constitution: "No one shall be held in servitude or any form of human enslavement, nor subjected to torture or other cruel, inhuman or degrading treatment. These practices constitute crimes against humanity

47. The state approved the visit of Ms. Gulnara Shahinian, Special Rapporteur on contemporary forms of slavery, in February 2014, who noted with concern that the issue of slavery in Mauritania remained entirely, a position shared by a group of NGOs.³⁵ The Special Rapporteur recalled that the relevant laws and policies should be fully implemented.

48. Indeed, the rate of prosecution under the law dealing with individual criminal responsibility of slave owners is too low. It is applied solely to the discretionary initiative of the police and public prosecutor, who display a certain reluctance to investigate. Moreover, the possibility for victims to pursue a civil action is still unforeseen. In 2013, the Head of State and the Judicial Council announced the establishment of a special court to try cases of slavery. Nevertheless, to date, no such court has been formed.

49. **Recommendation:**

a) Ensure implementation of all legal provisions on the prohibition of slavery and human trafficking.

and are punishable by law as such".
³⁵ NGO collective and CCPR Centre, *Follow-up report to the concluding observations*, October 2014, <http://www.cprcentre.org/doc/2014/10/Mauritanie-note-des-ONGs-sur-recommandations-du-Ct%C3%A9A9DH.pdf> (accessed 3 March 2015).