



Mauritania

Alternative Report

**Report submitted to the Committee against Torture during the
Review of the Initial Report on Mauritania**

April 2013

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1 Introduction

The initial report of Mauritania (CAT/C/MRT/1) was submitted to the Committee against Torture in January 2012, seven years late, and will be examined by the Committee at its 50th session in May 2013. As part of this review process, Alkarama submits this alternative report in which it draws a picture of the situation of torture in Mauritania, highlighting its main concerns and addressing recommendations to the State party.

This report is based on our work in this regard, mainly consisting of documenting individual cases and bringing them to the attention of the United Nations Special Procedures with the cooperation and participation of local actors, namely the victims themselves, their families, lawyers and local organizations involved in the promotion and protection of human rights. This paper also aims to establish an analysis of the situation of human rights in the country, more generally, and with a focus on torture in particular.

In order to provide a complete picture of the situation of human rights in the country, it is necessary to conduct an overview of the current situation in **Mauritania (2)** first. It is also important to assess the situation of torture in Mauritania in the light of its **political history, which has been marked by coups (2.1), the fight against terrorism (2.2), and the on-going issue of slavery,** which remains unresolved **(2.3)**.

The review of the **legal framework of the fight against torture (3)**, particularly by examining the non-criminalization of torture, none-the-less described in official statements as a "**crime against humanity (3.1); impunity of violators (3.2), a questionable program of custody (3.3) with respect to both its excessive length (3.3.1) and the limits in the guarantee of access to a lawyer (3.3.2), and the systematic extension of preventive detention (3.4)** shows that there still remain a number of serious shortcomings and failures that promote the practice of torture and therefore undermine respect for human rights in the country.

As for the actual examination of **the practice of torture and means of prevention in Mauritania (4)**, it will be reviewed from different angles, including its **use as evidence at the stage of preliminary investigation (4.1), the grounding of torture in incommunicado detention and enforced disappearances (4.2), the situation in places of detention (4.3) in particular the conditions in places of deprivation of liberty (4.3.1) and arbitrary detention despite court orders for release or acquittals (4.3.2), the issue of extraditions performed in violation of Article 3 of the Convention against Torture (4.4)**. Finally, the **lack of resources for the prevention of torture will be highlighted (4.5), the lack of independence of the judiciary which constitutes an obstacle to change (4.5.1), and the limited role of the national human rights institution (4.5.2)**.

2 Background

2.1 A Political History Marked by Coups

The political history of the Islamic Republic of Mauritania is marked by a succession of coups and alternating authoritarian civilian and military regimes. Decades of human rights violations have left its mark on the country and the persistence of torture is the a legacy of its recent past.

After independence in 1960, President Moktar Ould Daddah adopted a constitution establishing an authoritarian presidential system dominated by a single party¹. He was overthrown in 1978 by a group of senior military officers who installed a National Salvation Committee that governed the country until 1992, when policy reforms were adopted and a new "democratic" constitution was promulgated as the result of a popular referendum in 1991. The introduction of a multiparty system and the legalization of political parties led to the holding of multiparty elections in 1992, 1997 and 2003, which were won by Colonel Maaouya Ould Taya, already in power since 1984. The electoral process, however, remained hotly contested by the opposition and civil liberties ere, in practice, severely restricted. Opponents continued to be persecuted, imprisoned and sometimes physically liquidated. While the regime cooperated with the United States in the fight against terrorism, internal criticism against its leader was widespread and continued to grow.

On 3 August 2005, a new military coup led by a "Military Council for Justice and Democracy" (CMJD) under the direction of Ely Ould Mohamed Vall, Director General of State Security, overthrew the Ould Taya government that had been in place for two decades, ostensibly to "put an end to the totalitarian practices of the regime." The new regime attempted to establish a democratic transition based on a series of policy and institutional reforms over a period of two years, with the stated goal of creating the foundations for rule of law to take root in the country. The democratic transition process began with the organization of a constitutional referendum in June 2006, and continued with the holding of municipal and legislative elections in the same year, and finally senatorial elections in 2007. Despite these advances, clan rivalries and political infighting demonstrated the limits of the democratic transition process.

These reforms led to the election² of Sidi Mohamed Ould Cheikh Abdallah in March 2007. The newly-elected President then introduced reforms, particularly in the field of human rights. Greater freedom of expression was granted and new political organizations were allowed. In addition, a law criminalizing slavery was passed. However, the conflict between the military hierarchy (including the former members of the junta) and the traditional political class led to a crisis between the President and some members of parliament who blocked the implementation of his political program.

On 6 August 2008, the head of state and prime minister were arrested by the military and placed under house arrest. The new coup was carried out by the head of the presidential guard, General Mohamed Ould Abdel Aziz, and was, according to observers of the Mauritanian political scene, a response to his dismissal, according to a presidential decree read that morning by the army Chief of Staff. The coup organized a "State Council" and promised free elections, setting the deadline of 6 June 2009. In order to stand for election, General Mohamed Ould Abdel Aziz resigned from the army. While the opposition threatened to boycott the elections, so-called "Dakar" agreements were signed between the main political components of the country and elections were postponed to 18 July 2009. They were won in the first round by General Mohamed Ould Abdel Aziz, with over 52% of the vote.

The 2009 elections, strongly criticized by the opposition, seem, in this context, to have been more about the legalization of a military coup than the holding of truly free elections. The Working Group on Arbitrary Detention, invited by the authorities to visit in February 2008, noted the progress made during the period of democratization and consolidation of the rule of law between 2005 and 2008, and regretted the fact that this process was abruptly interrupted by the coup of 6 August 2008³. Instead,

¹ The Mauritanian People's Party.

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

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.

the Mauritanian authorities described the holding of these elections as a "return to the normal constitutional order"⁴ but appear to be seeking to legitimize the takeover, carried out in a highly-questionable manner.

Management of the country remains centralized in the executive, and the president has broad powers. The mechanisms of political and judicial review that should be exercised under the Constitution by the legislative and judicial powers appear weak.⁵ The legislative elections, originally scheduled for November 2011, have continued to be postponed, while the National Assembly, the Senate continues to sit and pass laws. The authorities continue to justify the successive delays by the need to ensure free and fair elections, to ensure the technical security of the ballot and especially to complete the process of voter registration - the terms of which are to this day still debated.⁶ The Constitutional Council, when asked about the matter, considered "legal" a postponement of the elections until May 2012.⁷ Within the framework of a "dialogue" with the opposition initiated in 2011 (the main opposition groups boycotted the process), some recommendations were implemented including the initiation of constitutional reforms and the establishment of an Independent National Electoral Commission (INEC) in May 2012. However, this initiative was rejected by the members of the Coordination for Democratic Opposition (COD)⁸. The INEC was implemented despite this opposition, and recently announced that parliamentary and municipal elections would be held between mid-September and mid-October 2013.⁹

It is in this context of a military coup in 2008, contested presidential elections in 2009, and successive delays of municipal and legislative elections that one must place the question of the situation of human rights in Mauritania.

2.2 Counter-Terrorism Measures

The attacks of 11 September 2001 and the beginning of the international fight against terrorism allowed the Ould Taya regime, like other repressive Arab regimes in the region, to justify its repression of the opposition. This meant in particular the Islamist opposition, regardless of whether it was a structured political movement or not. In May 2003, the first wave of arrests of dozens of key figures by police began, including of representatives from NOUHOUD, a political party.¹⁰ Authorities charged them with belonging to Islamic terrorist networks financed by foreigners. In April 2005, another wave of arrests was carried out following the "discovery of a terrorist cell on Mauritanian territory."¹¹ Dozens of people are still arbitrarily detained, held incommunicado and tortured in this context to date.

Following an attack against the military barracks in Lemgheity on 4 June 2005 attributed to the Salafist Group for Preaching and Combat (GSPC)¹²-Algeria, a law to combat terrorism was promulgated on 26 July 2005.¹³ It modified the 1983 Criminal Code and introduced a particularly vague definition of terrorist offenses without clear or definite scope.

⁴ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania (CAT/C/MRT/1), para. 7.

⁵ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué* (not available in English, Mauritania: Criticizing governance – a risky business), November 2012, p. 6

⁶ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué* (not available in English - Mauritania: Criticizing governance – a risky business), November 2012, p. 7.

⁷ ODH Mauritanie, *Mauritanie : législatives prévues « dans les délais » soit avril-mai (président)* (in French only - Mauritania : legislative elections 'on schedule' for April-May (President)), 31 January 2012, <http://odh-mauritanie.com/actualite-8424-mauritanie-legislatives-prevues.html> (consulted 27 March 2013).

⁸ Mauriweb, *Mauritanie – L'opposition décline ses conditions de participation aux prochaines élections* (not available in English - Mauritania –Opposition Presents its Conditions for Election Participation), 13 March 2013, <http://www.mauriweb.info/fr/?p=14> (consulted 27 March 2013).

⁹ Mauriweb, *Mauritanie – L'opposition décline ses conditions de participation aux prochaines élections* (not available in English - Mauritania –Opposition Presents its Conditions for Election Participation), 13 March 2013, <http://www.mauriweb.info/fr/?p=14> (consulted 27 March 2013).

¹⁰ International Federation of Human Rights Leagues (FIDH), *Mauritania: The Case of the "Islamists": Torture in the Name of the Fight Against Terrorism*, September 2007, No. 479/2, p.5.

¹¹ International Federation of Human Rights Leagues (FIDH), *Mauritania: The Case of the "Islamists": Torture in the Name of the Fight Against Terrorism*, September 2007, No. 479/2, p.16.

¹² Which became Al-Qaeda in the Islamic Maghreb (AQIM) in 2007.

¹³ Law No. 2005-047 of 26 July 2005.

Following the coup of 3 August 2005, the government's position towards the Islamists seemed to change. Ould Mohamed Vall began democratic reforms and Islamist prisoners were tried and acquitted by the criminal court in Nouakchott. However, at the end of 2007, the murder of four French tourists and three Mauritanian soldiers at Al-Ghallaouia military base were claimed by Al Qaeda in the Islamic Maghreb (AQIM). Upon coming to power in 2008, Ould Abdel Aziz thus began an active campaign against the Mauritanian Islamists, under the pretext of fighting terrorism. Finally, following the abduction of European nationals in 2009, Parliament passed a new anti-terrorism law on 5 January 2010, repealing and replacing the 2005 Act, with the stated goal of ending the phenomenon of terrorism. The new law is more draconian and is therefore contested by the opposition.

Thus, a request for review of the Act by the Constitutional Council was introduced with the support of 32 of the 95 members of Parliament. Ten provisions were declared unconstitutional, including the non-exhaustive list of acts constituting a terrorist crime, the fact that the provisions also apply to minors or that broad powers are conferred to police officers who can, legally, place under observation anyone suspected of terrorism and search his or her home at any time.

Although the law has been amended to incorporate the changes made by the Constitutional Council, the draft of 21 July 2010¹⁴ still includes certain provisions that are vague and imprecise. Article 3 states that a terrorist offense may be constituted by an act with the purpose of "perverting the fundamental values of society and destabilizing the structures and/or constitutional institutions, political, economic or social structures of the Nation". This terminology is dangerous because it may include certain offenses that should not fall into the category of terrorist acts or criminalizes legitimate activities of political opponents and human rights activists.

Finally, there is concern that the current conflict in Mali may aggravate the situation in Mauritania through the involvement of Mauritanian security forces in the conflict.¹⁵ In sum, accusations of terrorism often lead to the commission of human rights violations as they create an enabling environment, justifying arbitrary arrests, secret detentions, or even torture.

2.3 Slavery Still a Problem

Slavery, although officially abolished, persists in Mauritania. The fact that this issue is completely absent from the initial report submitted by the State party to the Committee demonstrates a denial of the existence of this practice and the risk of abuse faced by victims. The Special Rapporteur on Contemporary Forms of Slavery noted this denial during his visit in November 2009.¹⁶

Slavery in Mauritania dates back centuries and is deeply rooted in a hierarchical social structure. The "Haratines" or "black Moors" (black Africans, as determined by their skin colour) are the main victims¹⁷, although the exact number of people who live in slavery is not known. In 2009, the Special Rapporteur on Slavery stated that "de facto slavery continues to exist in certain remote parts of Mauritania"¹⁸ and remained a "low, invisible process which results in the "social death" of many thousands of women and men."¹⁹ Three traditional forms of slavery persist to this day: domestic slavery (the slave is tied to a master during his or her lifetime and has no contact with his or her family of origin), sexual, and finally agriculture.²⁰ Moreover, modern slavery takes various forms, such

¹⁴ Law No. 2010-035 of 21 July 2010.

¹⁵ Magharebia, *Mali terror threat impacts Mauritania*, http://magharebia.com/en_GB/articles/awi/features/2013/01/24/feature-01?change_locale=true (consulted 27 March 2013).

¹⁶ Human Rights Council, 15th session, *Report of the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences Ms Gulnara Shahinian – Mission to Mauritania*, 24 August 2010 (A/HRC/15/20/Add.2), para. 8.

¹⁷ Historically, they were enslaved by the white Moors (Arab-Berbers). Following a law enacted in 1905, they were progressively enfranchised, but continued to be the victim of discrimination, marginalization and exclusion as they continued to be perceived as belonging to the servile caste.

¹⁸ Human Rights Council, 15th session, *Report of the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences Ms Gulnara Shahinian – Mission to Mauritania*, 24 August 2010 (A/HRC/15/20/Add.2), para. 34.

¹⁹ Human Rights Council, 15th session, *Report of the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences Ms Gulnara Shahinian – Mission to Mauritania*, 24 August 2010 (A/HRC/15/20/Add.2), p.2.

²⁰ Slate Afrique, Anne Collet, *L'esclavage en Mauritanie reconnu comme crime contre l'humanité* (in French only – Slavery in recognised as a Crime against Humanity in Mauritania), 4 December 2012, <http://blog.slateafrique.com/femmes-afrique/2012/12/04/lesclavage-en-mauritanie-reconnu-comme-crime-contre-lhumanite/> (consulted 27 March 2013).

as early and forced marriages, serfdom, the worst forms of child labour, human trafficking and domestic servitude.²¹ In 2012, this concern was renewed by the Committee on Economic, Social and Cultural Rights in its concluding observations.²²

In theory, slavery has been abolished in Mauritania since 1905²³, and abolition is reiterated in the Constitution of 1961 and by an Order in 1981²⁴. This law provided only a vague definition of slavery and did not provide for criminal sanctions. In 2003, the Law on the Suppression of Trafficking in Persons²⁵ was promulgated and condemns "the recruitment, transport and transfer of persons by force or threat for sexual or economic exploitation" without explicitly mentioning the slavery. On 3 September 2007, President Ould Cheikh Abdallah passed legislation unanimously criminalizing and penalizing all slavery practices in Mauritania.²⁶ The law defines slavery in article 2 as "the exercise of the powers of ownership of one or more persons" and prohibits "any discrimination in any form whatsoever in respect of a person alleged slave" (article 3). Slavery was finally criminalized and any offender potentially incurs five to ten 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 and he or she cannot bring a civil action for compensation or damages.

However, to date, only one case based on this law has led to a conviction in court, although many cases have been brought to the attention of the authorities. These cases are often reclassified as an "estate conflict" or "land dispute" and do not give rise to criminal prosecution for lack of sufficient evidence. In some cases, the person who complained is pressured by his extended family, his master, or, sometimes, local authorities to force him to withdraw his complaint.²⁷ Generally, the police and the judiciary are reluctant to respond to complaints relating to allegations of slavery. Finally, persecuting those who violate the law is made more difficult by the denial of the authorities that the problem exists, as well as the fact that slavery is rooted in Mauritania's social structures, sometimes making it difficult for the victims themselves to recognize their situation even constitutes slavery.

In November 2011, six people were sentenced by the Criminal Court of Nouakchott for the practice of slavery of two children aged 8 and 13, born slaves. Ahmedou Ould Hassine was then sentenced to two years imprisonment, and four members of his family to two years probation.²⁸ However, on 26 March 2012, he was released on bail, demonstrating the lack of political will to enforce the law.²⁹

Finally, although a draft law criminalizing slavery as a "crime against humanity" was discussed by Parliament in January 2013, which would provide for sanctions in the form of imprisonment, fines and forfeiture of civil rights against offenders, although it has so far not yet been officially enacted into law.

²¹ Human Rights Council, 15th session, *Report of the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences Ms Gulnara Shahinian – Mission to Mauritania*, 24 August 2010 (A/HRC/15/20/Add.2), para. 37.

²² 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.

²³ Slavery was then abolished by a colonial decree.

²⁴ Order No. 81-234 criminalising slavery on 9 November 1981.

²⁵ Law No. 2003-025 of 17 July 2003.

²⁶ Law No. 2007-048 of 3 September 2007.

²⁷ Human Rights Council, 15th session, *Report of the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences Ms Gulnara Shahinian – Mission to Mauritania*, 24 August 2010 (A/HRC/15/20/Add.2), para. 91.

²⁸ RFI, *Mauritanie : six personnes condamnées pour pratique de l'esclavage sur des mineurs* (in French only – Mauritania : Six People Sentenced for Slavery of Minors), 23 November 2011, <http://www.rfi.fr/afrique/20111123-six-personnes-condamnees-pratique-esclavage-mineurs-nouakchott> (consulted 27 March 2013).

²⁹ Libération, Roger Botte, *République islamique de Mauritanie : feu l'esclavage ?* (Islamic Republic of Mauritania : the Death of Slavery?), <http://www.liberation.fr/monde/2012/05/28/republique-islamique-de-mauritanie-feu-l-esclavage> 821958 (consulted 27 March 2013).

3 Gaps in the Legal Framework to Combat Torture

The practice of torture in Mauritania is made possible by an unclear legal framework and the absence of an effective monitoring system that promotes impunity for the perpetrators.

3.1 Torture: a "Crime against Humanity" ... That is Not Criminalized

Although Mauritania acceded to the Convention against Torture on 17 November 2004, its legislation does not contain a definition of torture, leaving a legal vacuum that makes it difficult to pursue eradication of this practice in the country. A definition in accordance with Article 1 of the Convention should therefore be introduced into Mauritanian law and practice, and there should also be a specific legal regime criminalizing it as an independent offense.

It was not until 2007³⁰ and the revision of the first Code of Criminal Procedure (CCP) issued in 1983³¹ that torture is mentioned. The new CCP set out a preliminary article that states that "[e]vidence obtained by torture, violence or coercion has no value." This introductory article is the only provision referring to the term "torture" as such.

On March 20, 2012, article 13 of the Constitution was repealed³² and replaced by the following provision: "[n]o one shall be held in slavery or any form of enslavement of human beings, or torture and other cruel, inhuman or degrading treatment. These practices constitute crimes against humanity and are punishable as such by the law." Previously, the Constitution indirectly addressed the issue of torture, as stated "the inviolability of the human person" and proscribed "any form of physical or moral violence."

On 5 January 2013, the national press reported that the Mauritanian Parliament had discussed the adoption of a bill criminalizing torture and the practice of slavery, calling it a "crime against humanity."³³ According to the bill, both now had clearly become exempt from prescription and sanctions were coupled with fines, deprivation of liberty and civil forfeitures³⁴. However, despite the fact that in his speech on 27 February 2013 at the 22nd Session of the Human Rights Council, Mr. Abdullahi Mohamed Ould Khattrra reaffirmed "that torture was now criminalized³⁵," this bill has not yet been made public. If it is actually adopted, it will constitute an important step in the fight against torture.

The fact remains that to this day, as was clear from the State party's initial report, torture can be punished only as intentional assault or manslaughter, offenses defined and punished by Articles 279, 285 and 286 of the Criminal Code.³⁶ The fact that torture is not yet recognized as an autonomous crime leaves a loophole for impunity. According to Articles 222 and 340 of the Code of Criminal Procedure, although criminal and correctional courts are theoretically competent to hear cases of torture which could be qualified as offenses or crimes³⁷, it remains unlikely that such acts are effectively prosecuted as such because of the absence of a definition in conformity with article 1 of the Convention.

Furthermore, the affirmation of political will to qualify this practice as a "crime against humanity" is in contradiction with the lack of a legal framework relative to torture.

³⁰ Order No. 2007-036 of 17 April 2007.

³¹ Order No. 83-163 of 9 July 1983.

³² Constitutional law No. 2012-015 revising the Constitution of 20 July 1991.

³³ Alakhbar, *Mauritania : Les députés discutent sur la criminalisation de l'esclavage et de la torture* (in French only - Mauritania : MPs discuss the Criminalisation of Slavery and Torture), 5 January 2013, <http://www.fr.alakhbar.info/5699-0-Mauritanie-Les-deputes-discutent-sur-la-criminalisation-de-lesclavage-et-de-la-torture.html> (consulted 27 March 2013).

³⁴ National Human Rights Commission of Mauritania, *Annual Report* (in French), March 2013, para. 297.

³⁵ L'Authentique, "Mauritania will continue its efforts to implement its international human rights engagements", declared the Human Rights Commissioner, 28 February 2013 <http://lauthentic.info/spip.php?article3414> (consulted 27 March 2013).

³⁶ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania (CAT/C/MRT/1), pp.19 and 24.

³⁷ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania (CAT/C/MRT/1), para. 114.

3.2 A Legal Framework that Favours the Impunity of Violators

It should be noted that the term "torture" does not exist in domestic law, where it is replaced by the euphemism "violence" in one provision of the Criminal Code, article 180, which states that "[w]hen a public official or officer, director, agent or employee of the government or the police, executor of the mandates of justice or judgment, a commander or a subordinate of the police force has, *without legitimate reason*, made use of *violence* against people in the course of or in connection with the performance of his duties, he shall be punished according to the nature and severity of the violence and will be sentenced following the rule of Article 190 below."³⁸ This provision is of concern as it seems to say that some violence committed against individuals can be justified if it is "legitimate".

In the same vein, article 15 of the Law on the Statute of the National Police³⁹ mentions "the obligation to refrain from any act likely to impair individual and collective freedoms, *except as provided by law*, and generally all cruel or degrading treatment in violation of the rights of the human person."⁴⁰ This exception is also worrying because it seems to relativize the prohibition of torture. The contention of the State party's initial report that "any member of this body [may] refuse to obey orders to commit torture"⁴¹ " may well be questioned. Similarly, the State party states in its initial report that section 14 of the Act sets out that "the staff of the National Police is not restricted to hierarchical obedience in compliance with laws and regulations." Contrary to the version provided to the Committee, the actual wording of article 14 states that "[t]he staff of the National Police is obliged to hierarchical obedience in compliance with laws and regulations."

In domestic practice, it is extremely rare that court proceedings lead to the conviction of the public officials implicated.⁴² Complaints of ill-treatment are only investigated in exceptional cases.⁴³ For example, following the death of **Hacen Ould Brahim** under torture by prison guards Nouakchott on 1 October 2012, his parents filed a criminal complaint with the prosecutor asking for an investigation and that those found guilty be punished.⁴⁴ On 7 March 2013, the criminal court of Nouakchott condemned the team members who were on duty at the time, including a second lieutenant, two sergeants and six prison guards to, respectively, four years, three years and one year imprisonment each.⁴⁵ It should be noted in this case that the sentences are misdemeanour sentences and do not take into account the seriousness of the crime.

Finally, a 1993 law⁴⁶ granted "full and total" amnesty to "members of the Armed and Security Forces who committed offences between 1 January 1989 and 18 April 1992 relating to events that occurred in these forces that led to armed and violent acts" as well as "Mauritanian citizens who perpetrated offenses following armed attacks and [such] acts of violence and intimidation during the same period" (article 1). This law is an attempt to settle the humanitarian liabilities of Mauritania following the Senegal-Mauritania conflict, which lasted from 1989 to 1991. The conflict had resulted in the deaths of hundreds of black Mauritians, including soldiers accused by Ould Taya of preparing a coup against his regime, as well as deportations and forcible transfers of certain populations. Despite the repatriation operations undertaken by the authorities as well as the reparations provided to victims, the amnesty law remains questionable since it prevents the torturers of the time to be the subject of criminal proceedings, and liability for actions is entirely removed.

³⁸ Our emphasis.

³⁹ Law No. 2010-007 of 20 February 2010 on the status of the National Police.

⁴⁰ Our emphasis.

⁴¹ Our emphasis. Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania (CAT/C/MRT/1), para. 102.

⁴² Amnesty International, *Mauritania - torture at the heart of the state*, 3 December 2008, p.27.

⁴³ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 53.

⁴⁴ Elhourriya, *La gendarmerie enquête sur la mort du détenu Ould Brahim* (not available in English - Gendarmerie Investigates Death of Inmate Ould Brahim), 2 October 2012, <http://elhourriya.net/fr/actualite/1842-rim-la-gendarmerie-enquete-sur-la-mort-du-detenu-ould-brahim.html> (consulted 27 March 2013).

⁴⁵ Agence Tawary, *L'affaire Hacen Ould Brahim : L'officier de garde Daha condamné à quatre ans d'emprisonnement* (not available in English – Hacen Ould Brahim Case : Prison Guard Daha Sentenced to Four Years' Imprisonment), 8 March 2013, http://tawary.com/fr/index.php?option=com_content&id=1188:ondamne-a-4-ans-demprisonnement (consulted 27 March 2013).

⁴⁶ Law No. 92-93 concerning the 14 June 1993 amnesty.

3.3 Custody: A Questionable Legal Practice

3.3.1 An Excessive Legal Limit Already in Place

According to article 57 of the CCP, the length of custody is 48 hours, renewable once upon authorization from the Public Prosecutor. However, when custody relates to a "crime or offense against the internal or external security of the state" or terrorism, this is different. In this case, the statutory period of custody is extended to five days, renewable twice with written authorisation from the Public Prosecutor, with a maximum of 15 days. In both cases, the duration of custody does not include weekends, holidays and public holidays. When the arrest is made in a remote location relative to the competent jurisdiction, the limit is extended by one day for every 100 kilometres travelled, to a maximum of eight additional days in total. Thus, these provisions allow for the extension of the period of detention to 23 days in cases of terrorism or when the security of the state is allegedly threatened. This delay is obviously particularly excessive, especially as detainees are held without contact with the outside world and in particularly difficult conditions.

On the other hand, the Code of Criminal Procedure does not explicitly consider cases where the legal conditions of custody are not met, for example in instances of delay. A defendant who has been the victim of prolonged custody beyond the legal period of custody cannot invoke this circumstance to nullify the preliminary investigation.

The Working Group on Arbitrary Detention found in 2008 that these delays often surpass 72 hours, the time period recommended by international mechanisms.⁴⁷ The body also noted that throughout custody, people were not brought before the Prosecutor and there was no remedy to challenge the lawfulness of detention.⁴⁸

In addition, in practice custody is often extended without written permission, although this is required by article 57 of the CCP. During the visit of the Working Group, the authorities were not able to provide authorization of extensions mentioned in case files.⁴⁹ Since the person in custody is not required for the granting of the extension by the magistrate, the risk is that extension becomes a mere formality. Finally, while article 59 requires that a register, signed and initialled⁵⁰ by the Prosecutor, be held in all the places where a person can be detained, the Working Group found that the majority of the records they saw mentioned neither the time of the arrest, nor of the release, and that changes had been made to it *ex post facto*.⁵¹ This practice raises doubt as to the exact date of the arrest of the person in custody, which can encourage incommunicado detention and, consequently, the practice of torture. In the absence of an effective oversight of the Prosecutor on the actions of the police, the situation of persons in police custody remains a concern.⁵²

This "flexibility" in the duration of custody that delays presentation before a magistrate of the court threatens the right of the accused person to be examined by a doctor, since it is only after the appearance before the competent magistrate that he or she may invoke this right, either directly or through a member of his or her family (article 60 CCP). In addition, the family, which should theoretically be told in the "shortest possible delay" of the arrest (article 58 CCP), never is, in most cases. In practice, laws are not respected: custody, of which the legal term is already excessive, can last for weeks during which the detainee cannot receive visits from his family or be examined by a doctor.

⁴⁷ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 47.

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

⁴⁹ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 50.

⁵⁰ This register is supposed to indicate the identity of the person, the reasons for the custody, the time custody began and when it ended, the duration of the interrogation, meal times, the physical state and health of the person arrested and what food is provided to him or her.

⁵¹ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 52.

⁵² Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 87.

3.3.2 Access to a Lawyer: the Limitations of a Fundamental Guarantee

Access to, and assistance by, a lawyer during police custody are limited. Indeed, according to article 58 of the CCP, it is only in a case of extension of custody (which, as we have seen, is not always strictly adhered to) that the person detained may ask the police officer to inform legal counsel via the written authorization of the Prosecutor. Thus, access to a lawyer is only theoretically possible after 48 hours in a common law case, and it is only in a case of renewal of the custody that the accused has immediate access to a lawyer. It should be noted that the police officer is present during the visit and it is limited to 30 minutes, thereby it does not guarantee a real "secret interview" (article 58). In addition, it is expected that "the prosecutor [may] delay communication between a lawyer and his client, at the request of the police officer, if the needs of the investigation so require." This decision is left to the discretion of the Prosecutor and creates a legal framework that can lead to violations of the right to legal assistance of the person in custody.

In addition, in cases of arrests for offenses committed against the security of the state and terrorism, the right to communicate with counsel is completely excluded. The lawyer is absent not only during the entire period of custody that may be extended up to 23 days, but at the first appearance before the investigating judge. When an inquiry is opened at the request of the prosecutor, it is only if the detainee is charged that he can "communicate freely with counsel" (article 103 CCP). This prohibition to communicate with counsel may be extended by the judge who has the right to "prescribe the prohibition of contact for a period of fifteen days, renewable once." In other words, a person suspected of a terrorist offense may be deprived of any contact with a lawyer throughout an already excessive period of custody and also for part of his pre-trial detention once charged (one month), which, for legislation allegedly concerned with respecting international standards of detention, is particularly excessive.

In practice, even in matters of crime or offense under common law, access to a lawyer is never allowed by the judicial authorities⁵³, which constitutes a violation of the human rights of individuals in custody and can create a climate that promotes the practice of torture.

Moreover, the inefficiency of the legal aid system⁵⁴ in Mauritania⁵⁵ often *de facto* prevents any access to a lawyer. Thus, according to the National Human Rights Commission, legal aid is not available or not functional for 84% of inmates who have renounced judicial remedies for lack of resources.⁵⁶

3.4 Pre-Trial Detention Often Prolonged

Arbitrary detention in Mauritania comprises, among other things, pre-trial detention beyond legal limits, persons whose releases have been ordered by a court and remain detained, and those whose sentence has been served, but remain in detention. Pre-trial detention is governed by article 138 of the CCP, and can in theory be ordered by the judge on the basis of the gravity of the charges of the accused, the need to prevent the disappearance of evidence of the crime, the flight risk presented by the accused, or to prevent of the commission of further offenses.

In the case of an "individual in detention [that] has never been convicted of a crime or offense under common law, has not been subject to a criminal sanction or a sentence of a period of imprisonment of more than a year, or may be sentenced to not less than five years," the duration of pre-trial detention is limited to four months (renewable once) for tort, and six months (renewable once) in criminal matters.

⁵³ Dean of the Mauritanian Bar association, *Report* (not available in English), August 2012, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=article&id=155&catid=8&Itemid=25 (consulted 4 April 2013).

⁵⁴ Order No. 2006-05 of 26 January 2006 regarding the provision of legal aid.

⁵⁵ Dean of the Mauritanian Bar association, *Report* (not available in English), October 2010, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=article&id=104:rapport-du-batonnier-octobre-2010&catid=12:rapports-du-batonnier&Itemid=14 (consulted 4 April 2013).

⁵⁶ National Human Rights Commission of Mauritania, *Annual Report* (not available in English), March 2013, para. 74.

However, "if the elements of the offense were committed outside the national territory, or if the person is prosecuted for murder, drug trafficking, terrorism, conspiracy, prostitution, robbery, or causing the offense as part of an organized gang," the time may extend up to two years in tort and three years for serious offenses. Long and flexible extensions of pre-trial detention can lead to abuse and constitutes an obvious violation of the right to be tried without undue delay (article 14.3(c) of the International Covenant on Civil and Political Rights).

During its visit, the Working Group on Arbitrary Detention found that detention was extended almost automatically without notification of the decision to extend detention until the maximum period had already been exhausted.⁵⁷ It noted that the Arabic version of article 138 was unclear and had therefore given rise to different interpretations. For example, the Indictment Chamber of the Court of Nouadhibou had given an interpretation that led to delays in criminal proceedings equivalent to six months and three years.⁵⁸

In a 2009 report, the Dean of the National Bar Association stated that the majority (60%) of inmates in Dar Naim prison were held in pre-trial detention⁵⁹, which was confirmed by the Working Group on Arbitrary Detention.⁶⁰ This may expose the detainee to ill-treatment and also aggravates the problem of prison overcrowding, which may constitute a form of inhuman and degrading treatment in itself. In February 2010, the Dean of the Bar noted no improvement and said he had visited persons who had been in administrative detention for three to six years.⁶¹ However, some individuals remain in custody after serving their sentences due to files being lost⁶², or because they are not able to pay diyah.⁶³

4 The Practice of Torture and Methods of Prevention

4.1 Torture as Evidence during Preliminary Investigations

Article 58 of the CCP provides that "[a]ll persons deprived of their liberty under arrest or detention, or any other forms of deprivation of liberty shall be treated in accordance with respect for human dignity. It is forbidden to abuse him or her physically or morally or to legally hold him or her off of the approved premises for that purpose." In addition, although the preliminary article of the Code of Criminal Procedure states that "evidence obtained by torture, violence or coercion has no value," the practice of torture in order to obtain confession is common in Mauritania and is used as a valid method in preliminary inquiries.

Most acts of torture are committed during the period of custody, in formal and informal places (such as private villas) belonging to the police, as well as military barracks.⁶⁴ Preliminary investigations by the police are often based on confessions obtained through coercion, and confessions will be considered by the trial court as evidence.

The national report submitted to the Committee notes that the Criminal Court had rejected in its 2007 decision confessions obtained through torture in the trial of the "Salafists" and acquitted 24 of the 25

⁵⁷ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 55.

⁵⁸ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 55.

⁵⁹ Dean of the Mauritanian Bar association, *Report* (not available in English), 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 (consulted 27 March 2013).

⁶⁰ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 56.

⁶¹ Dean of the Mauritanian Bar association, *Report* (not available in English), February 2010, http://www.avocatmauritanie.org/fr/index.php?option=com_content&view=article&id=81:rappport-fevrier2010&catid=12:rappports-du-batonnier&Itemid=14 (consulted 27 March 2013).

⁶² Dean of the Mauritanian Bar association, *Report* (not available in English), 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 (consulted 27 March 2013).

⁶³ Diah is a type of civil reparation. Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 57.

⁶⁴ Amnesty International, *Mauritania - torture at the heart of the state*, 3 December 2008, p.6.

defendants on 11 June 2007⁶⁵, refusing to retain evidence obtained under torture. This case demonstrated that torture is practiced routinely in police stations, and is used to establish the transcripts of preliminary investigations, which are then used against the accused. Furthermore, the authors responsible for the acts of torture carried out on the accused were never prosecuted.⁶⁶

In July 2012 Alkarama submitted to the Working Group on Arbitrary Detention the cases of seven human rights anti-slavery activists and members of the Initiative for the Resurgence of the Abolitionist Movement (IRA), all arbitrarily detained from 29 April 2012 in Nouakchott.⁶⁷ On 28 April 2012, Mr **Biram OULD DHA OULD ABEID**, President of the IRA, participated in a protest against the position of some authors of Islamic law to justify the practice of slavery in Mauritania, and symbolically burned in public several works of these jurists. The next day he and ten IRA members were arrested by the police. Mr **Oubeid OULD IMIJINE** was arrested immediately after being interviewed by the Al Arabiya satellite channel, in which he explained the nature of the claims of his association. All the arrests were made without a warrant. The activists were all taken to the Tawaragh Zeina police station in Nouakchott where they were brutally tortured and forced to sign transcripts of their interviews containing confessions. On 2 May 2012, the Public Ministry finally decided to charge them with "endangering state security." The next day, the government spokesperson stated to the Council of Ministers that everything would be done for an exemplary punishment to be imposed. The President of the Republic himself then promised severe punishment against the accused. On 9 May 2012, the detainees' lawyers applied for permission to communicate with their clients, which was rejected. On 30 May, four people were released, while on 27 June Mr Ould Imijine and six other activists were brought before the Criminal Court of Nouakchott, incurring up to 30 years' imprisonment or the death penalty given the charges of endangering the security of the state. On 3 September 2012, they were released on bail.

4.2 Secret Detention and Enforced Disappearance: Breeding Grounds for Torture

Enforced disappearances involving secret detention and the non-recognition by the authorities of the detention places victims outside any legal framework of control and promotes the practice of torture.

Thus, in July 2008, Alkarama submitted to the Special Rapporteur on torture the case of Mr **Abdelkrim BOURAOUI**⁶⁸, a Tunisian national arrested in Nouakchott on 18 January 2008 by the State Security services (Amn Eddaoula) and held incommunicado for a month. He was presented to the Public Prosecutor of the Court of Nouakchott on 18 February 2008, and then released without being prosecuted. He reported that he had been tortured during the whole period of his detention. On 3 May 2008, he was again arrested by officers of the State Security with nearly a hundred others in an operation presented by the authorities as part of their counter-terrorism initiative following the attack on the Israeli embassy on 2 February 2008. Abdelkrim Bouraoui was held incommunicado for 25 days in a small (one by two meters), unhealthy and very hot cell, without a window. During his detention, he was again severely tortured. According to the testimony of one of his fellow inmates, he was stripped, beaten, and deprived of possibility to go to the toilet 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. On 28 May 2008, he was presented to the judge of the Court of First Instance of Nouakchott. He showed obvious signs of torture, according to several witnesses, including his lawyer, the chairperson of the Mauritanian Association of Human Rights. Accused in the case of the attack on 2 February 2008 (when in fact, by that time he had been in the custody of local security services of the State for more than 15 days), he was released on bail and placed under probation, but the intelligence services

⁶⁵ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania, 13 March 2012 (CAT/C/MRT/1), para. 101.

⁶⁶ RFI, Manon Rivière, *Une condamnation et 20 acquittements* (not available in English – One Condamnation and 20 Acquittals), 6 June 2006, http://www.rfi.fr/actufr/articles/090/article_52434.asp (consulted 27 March 2013).

⁶⁷ Alkarama, *Mauritania: Seven anti-slavery activists detained arbitrarily for three months*, 31 July 2012, http://en.alkarama.org/index.php?option=com_content&view=article&id=980 (consulted 5 April 2013).

⁶⁸ Alkarama, *Mauritania: Incommunicado detention, torture and risk of forcible return to Tunisia of Mr. Abdelkrim Bouraoui*, 24 July 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=126:mauritania-incommunicado-detention-torture-and-risk-of-forcible-return-to-tunisia-of-mr-abdelkrim&catid=28:communiqu&Itemid=143 (consulted 5 April 2013).

instead brought him to a military barracks under control of the General Staff of the army, where he continued to be detained illegally.

In addition, in December 2011, Alkarama submitted to the Working Group on Enforced or Involuntary Disappearances the cases of Mssrs. **Mohamed Mahmoud OULD SEBTI** and **Mohamed Abdellah OULD HMEDNAH**, both missing since 23 May 2011.⁶⁹ Mr Sebti was arrested on 5 July 2008 and sentenced to ten years imprisonment. While serving his sentence in Nouakchott civil prison, he was kidnapped by soldiers with a group of thirteen other inmates, including Mr Ould Hmednah, who had been sentenced to death. All were taken overnight to an unknown destination. Relatives of the victims and their lawyers then sought to learn about their fate from the prison administration and the authorities but have not received any information thus far. On 8 June 2011 all the prisoners' personal belongings were handed over to their families without further explanation.

These people, who were sentenced to prison by the state and thus under its responsibility, were illegally removed from an official institution (the civil prison in Nouakchott) by agents of the state. The place of their detention remains unknown to this day. It is clear that these people are the victims of enforced disappearance, and their families have expressed a well-founded fear for their lives, and that they may be subjected to torture or other inhuman or degrading treatment. In their annual report to the Human Rights Council of 28 January 2013, the Working Group on Enforced and Involuntary Disappearances said that the case remained pending due to a lack of information⁷⁰.

4.3 The Situation in Places of Detention

4.3.1 Conditions in Places of Detention: Inhuman and Degrading Treatment

Torture is also used to humiliate and punish inmates in prisons. Torture is used as a real tool of repression by the security apparatus. Moreover, the conditions of detention are often very poor, and thus constitute a form of inhuman treatment. A study conducted by the National Human Rights Commission found that more than half of the inmates considered the food in prison insufficient and felt that health services needed be improved.⁷¹

Although the authorities claim that the prison administration is now under the leadership of the Ministry of Justice and not of the Interior, the reality is more nuanced. In fact, the prison administration under the Ministry of Justice is only responsible for administrative matters and not the effective management of detentions or control of the prison.⁷² Prison staff who actually control the detainees in effect remain subject to the Ministry of Interior and the lack of a control mechanism which could collect complaints and grievances of inmates encourages abuse. Thus, the aforementioned case of **Hacene Ould Brahim**, who died under torture at the Dar Naim prison, shows that prisons are places of abuse outside of the control of the justice system, where torture is routinely practiced.

During the visit of the Working Group on Arbitrary Detention, it noted the presence of 15 prisons in Mauritania: a prison in each wilaya, a women's prison, and juvenile prison.⁷³ Prisons are generally overcrowded, however: the Dar Naim prison houses 900 inmates (in 2009) when it was designed to

⁶⁹ Alkarama, *M Mauritania: Six months since the disappearances of fourteen detainees from Nouakchott prison*, 2 December 2011, http://en.alkarama.org/index.php?option=com_content&view=article&id=873:mauritania-six-months-since-the-disappearances-of-fourteen-detainees-from-nouakchott-prison-&catid=28:communiqu&Itemid=143 (consulted 5 April 2013).

⁷⁰ Human Rights Council, 22nd session, Report of the Working Group on Enforced or Involuntary Disappearances, 28 February 2013, A/HRC/22/45, paras. 238-239.

⁷¹ National Human Rights Commission of Mauritania, *Annual Report* (not available in English), March 2013, para. 74.

⁷² Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania, 13 March 2012 (CAT/C/MRT/1), para. 78-79.

⁷³ Human Rights Council, 10th session, *Report of the Working Group on Arbitrary Detention*, 21 November 2008 (A/HRC/10/21/Add.2), para. 18.

house 300.⁷⁴ In the prison of Nouadhibou (in the northwest of the country), prisoners are organized in alternating teams in order to sleep.⁷⁵

A threshold of insecurity seems to be knowingly tolerated or even maintained by the prison administration in detention rooms and is a source of concern. The Dean of the Nouakchott Bar association stated in a 2009 report that parts of Dar Naim prison were managed by the prisoners, who dominated by violence, to which all detainees were subjected. This created a climate of extreme fear, often bringing prisoners to pay a "tax" to be able to live in peace.⁷⁶

4.3.2 Maintenance in Detention despite Legal Decisions

People frequently remain in detention despite a court decision acquitting the accused or ordering his or her provisional release. This kind of detention is also a form of inhuman or degrading treatment.

Alkarama submitted the cases of 18 people arrested in April and June 2005 in a wave of arrests to the Working Group on Arbitrary Detention. Following their arrests, they were held in secret and severely tortured. These arrests demonstrate the commitment of the authorities to suppress any hint of opposition or any form of critical expression. The government justified their arrests by alleging they were endangering the security of the State and also accused them of being part of an extremist group operating illegally, calling for violence and using mosques for sectarian political propaganda.

It should be noted that the accused had, during the investigation, received an order of the judge issued on 14 September 2005 setting their bail, an order confirmed by a judgment of 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. It should also be noted that on 9 May 2007 the Working Group on Arbitrary Detention⁷⁷ said the continuing detention of those accused in the case was arbitrary, and contrary to the provisions of Articles 9 and 14 of the International Covenant on Civil and Political Rights.⁷⁸

Mr **Sidi OULD HABOTT**⁷⁹ was a victim of the first wave of arrests mentioned above and was acquitted by the criminal court of Nouakchott, but was again arrested on 7 February 2008 on the same charges and was questioned about the 2005 case that had resulted in his acquittal. During the interrogations, he suffered severe torture: sleep deprivation, prevented from going to the toilet, etc. He was transferred to another centre where he was held in secret for several weeks in a dirty cell measuring 2m × 1m, exposed to suffocating heat. Stripped naked and humiliated, he was deprived of sleep and food, forced to stand on a flooded floor filled with waste for several days until he fainted.

4.4 Extraditions Practiced in Contravention of Article 3 of CAT

The national report notes that extradition proceedings are excluded "if extradited person risks being subjected to torture in the country to which he is extradited"⁸⁰ and that "legal provisions governing extradition do not take into account security concerns."⁸¹ However, there is no express provision in

⁷⁴ Dean of the Mauritanian Bar association, *Report* (not available in English), 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 (consulted 27 March 2013).

⁷⁵ Dean of the Mauritanian Bar association, *Report* (not available in English), 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 (consulted 27 March 2013).

⁷⁶ Dean of the Mauritanian Bar association, *Report* (not available in English), 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 (consulted 27 March 2013).

⁷⁷ Opinion No. 6/2007 of 9 May 2007.

⁷⁸ 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 (consulted 5 April 2013).

⁷⁹ Testimony collected by Alkarama.

⁸⁰ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania, 13 March 2012 (CAT/C/MRT/1), para. 103.

⁸¹ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention – Initial reports of States parties due in 2005 – Mauritania, 13 March 2012 (CAT/C/MRT/1), para. 104.

domestic law that is in line with article 3 of the Convention.⁸² Article 715 (2) of the Criminal Procedure Code merely states that extradition is not granted "[w]hen the crime or offense is of a political character or if extradition is requested for political purposes."

The practice of the State party contradicts its law in the case of Mr **Abdullah AL-SENOUSSI**, former head of the Gaddafi regime's intelligence services. He was arrested on 16 March 2012 at Nouakchott airport with under a false Malian passport and placed in custody before being charged on 21 May with falsification of travel documents and illegal entry into the country. At the time, there was already a warrant out for his arrest by the International Criminal Court⁸³ and France⁸⁴, while the Libyan Prime Minister visited Mauritania to ask President Ould Abdel Aziz for his extradition in July 2012. In August, President Ould Abdel Aziz had stated that "it is only once the Mauritanian justice system is done with the case that a political decision on his extradition will be made."⁸⁵ Despite this declaration, on 5 September 2012⁸⁶, the Mauritanian authorities handed Al-Senoussi to the Libyan authorities without allowing him to appeal to the national courts and despite the fact that there were clearly reasonable grounds for believing that he would be subjected to torture and/or inhuman and degrading treatment if he were to be forcibly returned to Libya.

The extradition was in clear violation of article 3 of the Convention against Torture, to which Mauritania is party, which stipulates that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

4.5 Torture Prevention Measures Remain Inadequate

4.5.1 The Lack of Independence of the Judiciary: a Barrier to Change

The lack of independence and the instrumentalisation of the Mauritanian judiciary poses a large problem for the effective administration of justice and the rule of law. Some opposition members claim that the justice system is "muzzled and held hostage by the executive power."⁸⁷

For example, in January 2010 Alkarama submitted the case of journalist Mr **Ould Hanevy DAHAH**⁸⁸, arrested 18 June 2009 by men in civilian clothes without a warrant and without being informed of the reasons for his arrest. He was taken to the local police station and then the police station in Nouakchott and held in custody for five days without being able to receive visits from his family or his lawyer. He was subsequently brought before an investigation judge and charged with "indecenty" due to a complaint filed by a candidate in the presidential election, Ibrahima Moctar Sarr, president of AJD/MR party⁸⁹, in response to the publication of an article on the website *Taqadoumy* criticizing him. Ould Dahah was charged on 24 May 2009 and remanded into custody. On 19 August, he was sentenced by the Criminal Court to six months in prison. While he should have been released on 24 December 2009, he was detained past this date and protested by launching a hunger strike. On 14 January 2010, the Supreme Court of Mauritania heard an appeal of the decision of 19 August 2009 brought by the Prosecutor, dismissed the decision and decided that Mr Ould Dahah should be retried by the same court that had initially condemned him, with different judges. He was finally released on 26 February 2010 following a presidential pardon.

⁸² Law No. 2010-036 of 21 July 2010.

⁸³ He was accused of having murdered and persecuted civilians, constituting crimes against humanity.

⁸⁴ He was sentenced *in absentia* to life imprisonment for the terrorist attack of 19 September 1989 against flight UTA 772.

⁸⁵ Le Monde, *Avant d'être extradé, le libyen Al-Senoussi devra être jugé en Mauritanie* (not available in English – Libyan Al-Senoussi Should be Tried in Mauritania Before Extradition to Libya), 6 August 2012, http://www.lemonde.fr/libye/article/2012/08/06/avant-d-etre-extrade-le-libyen-al-senoussi-devra-etre-juge-en-mauritanie_1742874_1496980.html (consulted 27 March 2013).

⁸⁶ Le Point, *Mauritanie : Abdallah al-Senoussi, l'ex-espion de Kadhafi, extradé vers la Libye* (Mauritania : Extradition to Libya of Former Qaddafi Spy Abdallah al-Senoussi), 5 September 2009, http://www.lepoint.fr/monde/mauritanie-abdallah-al-senoussi-l-ex-espion-de-kadhafi-extrade-vers-la-libye-05-09-2012-1502800_24.php (consulted 27 March 2013).

⁸⁷ FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué* (not available in English - Mauritania: Criticizing governance – a risky business), November 2012, p.9.

⁸⁸ 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 (consulted 5 April 2013).

⁸⁹ Alliance for Justice and Democracy/Movement for Renewal.

In addition, several legal provisions formally threaten the separation of powers. According to article 89 of the 1991 Constitution, the President of the Republic is the "guarantor of the independence of the judiciary" and "is supported by the Higher Judicial Council which he chairs." In addition, the President may appoint three members of the Constitutional Council under article 81 of the Constitution.

In practice, the constant interference by the President of the Republic in the judicial system has been demonstrated, in particular in the dismissal of the President of the Supreme Court Mr Seyid Ould Ghaylani on 24 May 2012, who was then "appointed" ambassador to Yemen by decision of the President of the Republic.⁹⁰ Although the tenure of the President of the Supreme Court is five years, Mr Seyid Ould Ghaylani is the third president to have been removed from his position since 2007. This practice is in violation of article 15 of the Judicial Ordinance⁹¹, which states that the provisions of the Statute of the Judiciary relative to the security of tenure, independence of judges, and the freedom of decision are applicable to the President of the Supreme Court.

In addition, reprisals against judges expressing their desire for independence vis-à-vis the executive branch remain common. Judge Mohamed Lemine Ould Moctar was removed from his position for his decision to release a group of defendants in a drug trafficking case. On 5 September 2011, the Minister of Justice directly issued an administrative measure prohibiting Judge Moctar from exercising his functions, after which he was instructed to present himself to the disciplinary commission of the High Council of the Judiciary, which then endorsed the decision and dismissed him.⁹²

4.5.2 The Role of the National Human Rights Institution

The National Human Rights Commission (NHRC) was created in 2006, and in the context of its 2012 annual report, reflects on the progress made by Mauritania in combating torture, in particular of the ratification of the International Convention for the Protection of All Persons against Enforced Disappearance and the Optional Protocol to the Convention against Torture.

The Commission acknowledged these practice in prisons and lamented that they "are contrary to the international commitments of Mauritania on the prohibition and prevention of torture."⁹³ Despite this, the recommendations formulated by this body remain weak and disappointed the expectations of human rights defenders in the country who criticize the organization's president, Bamariam Koïta Baba, who ran the presidential campaign of Ould Abdel Aziz in 2009. The NHRC confines itself to requests that the authorities communicate on the subject of allegations so that they can "stop the rumours" and "possibly" conduct investigations⁹⁴.

On 3 October 2012, Mauritania ratified the Optional Protocol to the Convention against Torture and should, in this context, establish a national mechanism for the prevention of torture (NPT) within one year after entry into force of the Protocol⁹⁵. Now, six months after the ratification, no action has, to our knowledge, been taken to establish this national mechanism. In his speech before the Human Rights Council on 26 February 2013, Mr Mohamed Abdallahi Ould Khattra merely stated that such a mechanism "will be established,"⁹⁶ without specifying how or within what timeframe.

In addition, the Mauritanian NHRC had said in its report that it "advocated" the establishment of an NPT whose mandate would be to prevent torture through regular visits to places of detention and the submission of reports and recommendations, adding that the Commission was "already" carrying out part of this work.⁹⁷ For such a mechanism to be effective, however, it should be completely

⁹⁰ RFI, *Polémiques autour du limogeage du président de la Cour suprême mauritanienne* (Controversy Surrounds the Dismissal of Head Judge of Supreme Court of Mauritania), <http://www.rfi.fr/afrique/20120527-polemiques-autour-limogeage-president-cour-supreme-mauritanienne-presidence> (consulted 27 March 2013).

⁹¹ Order No. 2007-012 of 8 February 2007.

⁹² FIDH/AMDH, *Mauritanie – Critiquer la gouvernance : un exercice risqué* (not available in English - Mauritania: Criticizing governance – a risky business), November 2012, p.17.

⁹³ National Human Rights Commission of Mauritania, *Annual Report* (not available in English), March 2013, para. 97.

⁹⁴ National Human Rights Commission of Mauritania, *Annual Report* (not available in English), March 2013, para. 266.

⁹⁵ As set out by article 17 du Optional Protocol.

⁹⁶ Full quote: "a national mechanism for the protection against torture will be established".

⁹⁷ National Human Rights Commission of Mauritania, *Annual Report* (not available in English), March 2013, para. 289.

independent of the executive and have a pluralistic composition which would allow for the inclusion of civil society representatives.

5 Recommendations to the State Party

1. Introduce into its Criminal Code a **definition of torture** in conformity with article 1 of the Convention and classify it as a **specific and imprescriptible crime**. Mauritania should in particular ensure that acts of torture are not defined as a lesser offense, for example as "assault and battery" or "violence" and provide **appropriate penalties** for those responsible, accounting for the seriousness of the acts committed.
2. Guarantee the **right of a subordinate to refuse an order** from their superior that is contrary to the Convention against Torture.
3. **Repeal the Amnesty Law of 1993** that prevents torturers from being subject to criminal proceedings for acts for which they are liable, as well as the **law to combat terrorism**.
4. Take concrete steps to **impartially and independently investigate cases of torture** and other ill-treatment, and if necessary, ensure that the perpetrators are effectively **prosecuted**; strengthen **complaint mechanisms** for victims and ensure them of **reparation** and that they will **not suffer retaliation or intimidation**.
5. Take effective measures to ensure that all persons deprived of their liberty shall, from the time of their detention, all **fundamental legal safeguards**, including the right to be **informed of the reasons for arrest**, to be **brought promptly before a judge**, to **challenge the legality of their detention**; and **release** all prisoners who have **served their sentence**.
6. Revise the Code of Criminal Procedure to reduce the **legal limit for custody** to conform to international standards and guarantee the right to be tried without undue delay by changing the legal provisions on the **legal period of pre-trial detention**.
7. Guarantee **access to a lawyer** in the first hours of custody; guarantee **legal aid, in particular in criminal cases**, in all cases where it is necessary.
8. Improve the **conditions in prisons** and establish a **system of impartial oversight and inspection** of all places of detention.
9. Put an end to extraditions in violation of article 3 of the Convention against Torture.
10. Reform the **legal system** to guarantee its **independence** vis-à-vis executive power, and establish a **national mechanism for the prevention of torture** in conformity with article 3 of the Optional Protocol by October 2013.