



# Mauritania

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## 1. Context

Mauritania, a former French colony, regained its independence in 1960. Colonel Maaouiya Ould Sid Ahmed Taya, the Army Chief of Staff, seized power by force in 1984 and was himself overthrown 20 years later. He established a multiparty system, but civil liberties were severely curtailed; opponents were persecuted, imprisoned and sometimes liquidated. His pro-American stance and the normalization of the country's relations with Israel were very controversial in the country. These were suspended after the attack on Gaza in early 2009.

On 3 August 2005, the military intervened again and placed Colonel Ely Ould Mohamed Vall at the head of the country, ostensibly to "end the totalitarian regime of President Taya and establish genuine democratic institutions." Elections were promised, and those who participated in the military coup did not present themselves as candidates. The vote was held in March 2007. The new democratically elected president, Sidi Mohamed Ould Cheikh Abdallahi, introduced a number of reforms, especially in the field of human rights. Furthermore, the UN's Working Group on Arbitrary Detention, which was invited to the country in March 2008, noted some improvements, despite some worrying factors to which we shall return. Greater freedom of expression and new political organizations were allowed. A law criminalizing slavery was passed. Thousands of Mauritians deported to Senegal and Mali in 1989 were repatriated.

Due to severe economic and social factors, especially rising food prices, the government faced a rebellion in Parliament which eventually brought on a crisis at the highest levels of the state. When four senior officers were dismissed because of their role in this destabilization attempt, one of them, the chief of staff, General Mohamed Ould Abdel Aziz, seized power by force on 6 August 2008 and imprisoned the elected President. After being challenged by the opposition, he resigned from the army in April 2009 in order to stand for presidential elections. Through the mediation of Senegal, a post-crisis agreement was concluded between General Ould Abdel Aziz and the opposition in June 2009. A new presidential election was scheduled for 18 July 2009. General Ould Abdel Aziz obtained an absolute majority of 52% in the first round, to calls of fraud from the opposition. Since then, he has had strong international support; foreign aid, which had been frozen after the coup, flowed back into the country. However, one of the conditions of the agreement in Dakar was a re-opening of the dialogue with the opposition – this has not taken place.

The attacks of 11 September 2001 had allowed the regime of Ould Sid Ahmed Taya to justify its repression of the opposition. Muslim reformists were particularly targeted because they were felt to be a threat, even though they did not advocate extremism or violence. From April 2005 a new wave of arrests was launched against the Reformers, who were charged with wanting to commit "acts of violence" and attending Algerian GSPC "training camps". Dozens of people were arbitrarily arrested, detained incommunicado and tortured.

The attack on the Lemgheity military barracks on 4 June 2005, which was attributed to the Algerian GSPC, meant that Mauritania became linked to a group of nations supposedly threatened by cross-border terrorism, thus justifying a U.S. military presence in the region (Operation Flintlock). The attack also allowed an anti-terrorism law to be enacted in July 2005. The presence of Al-Qaida is taken for granted, a perception reinforced by spectacular attacks as well as the murder of four French nationals in December 2007. Given the lack of credible investigations, it remains difficult to identify these armed groups, their sponsors or their goals.

Mauritania is one of the poorest countries in the world, but its natural resources are sought after. These include oil, which was discovered in the early 2000s – production began in 2006. Several promising deposits are to be exploited in the coming years.

## **2. Observations on the Mauritanian legal system**

The recently passed anti-terrorism legislation remains particularly worrying, since it contains serious challenges to human rights, even though the country has ratified most international agreements protecting key public and individual freedoms. Article 80 of the Constitution expressly provides for their primacy over domestic law.

Article 3 of Act No. 2005-047 of 26 July 2005 treats any act intended to destabilize or destroy the fundamental values of society or the political, constitutional, economic or social structures of the nation as terrorism. This broad remit runs the risk of criminalizing any form of political opposition or peaceful association. Following the kidnapping of European citizens in late 2009, the Mauritanian government found that the 2005 law was inadequate and presented a new draft law which was adopted on 5 January 2010 by Parliament. This was very controversial - nearly one third of MPs, from both the opposition and the presidential party, filed an appeal before the Constitutional Council. A dozen articles were deemed contrary to the Constitution, in particular Articles 3, 4 and 5 which defined terrorism in terms that criminalized a long list of activities; article 21, which provided for capital punishment; Article 22 relating to minors; Article 28 concerning the period of preventive custody, which it planned to raise to 15 working days instead of 48 hours, renewable under certain circumstances (Art. 56 of the Code of Criminal Procedure - CCP). The process specifically but ambiguously calculated the 15 days in accordance with the provisions of the CCP, but failed to confirm that the arrangements for extending the period allowed by Article 56 of CCP were applicable to terrorist crimes. As regards Articles 31, 32 and 33 of the draft, they give wide powers to police officers, who would be able to legally wiretap and search the home of anyone suspected of terrorism. But the most surprising aspect is definitely the legal impossibility of challenging the *procès verbale* (minutes) of the judicial police, except in cases of suspected forgery. Article 38 allows the Prosecutor of the Republic to keep a person in detention until the *Chambre d'accusation* (Magistrate's Court) rules on the appeal by the Prosecutor against the release of the person, despite a dismissal order or a parole remand being ordered by the investigating judge. It is feared that the Mauritanian Government will ignore the Constitutional Council's decision of 4 February 2010 by basing itself on article 60 of the Constitution which allows the Government to adopt by Ordinance (a regulation adopted by the executive in a domain normally reserved for statute law) this law, which would lead to toughening of criminal law, under the pretext of terrorism.

It is worth noting some other shortcomings of the Mauritanian legal system. In its report of November 2005, the Interdepartmental Committee for Justice noted a series of malfunctions.<sup>1</sup> In its latest report<sup>2</sup>, the National Lawyers' Association expressed genuine concern regarding the arbitrary tendency of the legal system and further expressed its fear of a negation of the separation of powers guaranteed by Article 90 of the Constitution. The executive's grip over the judiciary means that the latter cannot perform its tasks effectively.

Given these conditions, the National Commission on Human Rights (NCHR) which was established on 12 July 2006 does not appear to be a particularly effective or influential national institution for human rights (NHRI). To date it has still not been accredited to the International Coordinating Committee of National Human Rights Institutions.

## **3. Arbitrary detention**

Arbitrary detention in Mauritania exists in several forms: custody and preventive detention are sometimes extended beyond the statutory time limits; persons are detained despite having been released by a court order or having served their sentence.

The period of custody is governed by the CCP. In the case of common law, a person may be held for 48 hours, renewable once on the orders of the Prosecutor, and in cases of attempts on internal or external security, the period is five days, renewable twice, bringing the maximum to 15 days. Special arrangements, however, extend this custody to 23 days.<sup>3</sup> Extensions must be ordered

in writing by the Prosecutor of the Republic (Article 57 of CCP). After this period, the person must be released or presented to the court.

Article 58 of the CCP allows the detainee to communicate with their family. However, lawyers are only allowed to see their client after the first extension, with approval from the Prosecutor. The meeting must take place in the presence of a police officer. According to this section, "persons arrested for offences against state security and terrorism offences" are not allowed to see their lawyers during police custody.

In reality, the laws are not respected. Custody can last weeks, during which the person cannot be visited by their family or a lawyer; nor can they be examined by a doctor. The places of detention only rarely have registers which can be checked by the Prosecutor, as required by Article 59 of CCP. Suspects, particularly in cases of alleged terrorist activities, are held incommunicado from the time of their arrest and subjected to torture and ill-treatment. The Working Group on Arbitrary Detention, which visited Mauritania in early March 2008, found that "the Prosecutor lacked control over police actions", particularly "the situation of persons in custody."<sup>4</sup>

In 2005, as we mentioned above, a wave of arrests affected dozens of people including opposition politicians, particularly members of the Reform movement. On 12 June 2006, Alkarama informed the Working Group on Arbitrary Detention about 18 persons who had been arbitrarily deprived of their liberty since April-May 2005. All were held incommunicado for a period of 20-44 days. Some were detained at the Nouakchott police academy; others were held in the El Mina No.2 police station. All were subjected to serious torture. The detainees were not freed despite a release order which was confirmed by the *Chambre d'accusation* (Magistrate Court). The General Prosecutor of the Court of Nouakchott opposed their release by introducing an appeal in the Court of Cassation, despite domestic law stating that the decision of the *Chambre d'accusation* cannot be subject to appeal. While some were released on 12 July 2006, others were kept in custody until 5 June 2007, when they were acquitted.<sup>5</sup> The Working Group on Arbitrary Detention issued an Opinion (No. 6/2007) in which it recognized their detention as being arbitrary and demanded their release.<sup>6</sup>

In his public reports of February 2010, the President of Mauritania's National Lawyers' Association, Master Ahmed Salem Bouhoubeyni, denounced the detention of persons in Dar Naim prison.<sup>7</sup> They include people who "are expecting a judge to call them to a trial that will never happen, who are waiting for a lost file, or for an appeal which will never be heard, who will face a prolonged detention of 3, 4, 6 years or were convicted in haste without a defence; or simply those who have served their sentences".<sup>8</sup> He indicates that almost 60% of inmates in this prison are on remand, many of them beyond the time limits provided by law (Art. 138 CCP). He mentioned the case of Sidi Mohamed Ould Issawi and Oumar Gueye, who have been in custody since 2002.

Alkarama submitted the case of journalist Mr Ould Hanevy Dahah to the Working Group on Arbitrary Detention. He was arrested on 18 June 2009 due to the publication of an article on a news website which he runs. Having been sentenced on 19 August 2009 to six months in prison for "undermining public morality", he should have been released on 24 December 2009. However, he was illegally held in custody until 26 February 2010, when he was granted a presidential pardon.<sup>9</sup>

Due to heavy pressure from European countries to stem the influx of migrants to the north, the Mauritanian authorities take repressive measures against people travelling through the country. Refugees, mostly from Mali and Senegal, who can in principle reside and travel freely in the country without visas, are often abused, detained and eventually deported by Mauritanian authorities. The reception centre for migrants in Nouadhibou, partly funded by the European Union, is in fact a detention centre where people are deprived of their liberty, even if their papers are in order.<sup>10</sup> Additionally, many migrants reported that that they had been subjected to severe deprivation and abuse by Mauritanian guards. In fact, the authorities illegally punish any attempt to leave the territory of Mauritania. NGOs in the field have noted that detainees are often turned away without access to counsel and are not given the chance to challenge the legality of the decision to

detain or deport them.<sup>11</sup> Those who are expelled are not subject to any formal decision in this regard precisely because of obsolete nature of regulations relating to immigration.

#### **4. Torture and prison conditions**

Those arrested for political reasons are often tortured during police custody, with no possibility of contact with the outside world. Suspects are taken to the army General Staff headquarters or unofficial places such as private villas to be tortured.

The aim of torture is to obtain confessions or evidence to arrest more suspects. Preliminary investigations by police are often launched on the basis of confessions extracted through coercion. Mauritanian law contains no specific provision sanctioning torture, but the CPP noted in its introductory article that "confessions obtained through torture, violence or coercion have no value." Furthermore, Article 180 of the Penal Code provides that if a public official uses or orders the use of violence in the exercise of his duties, "he will be punished according to the nature and severity of such violence." It is not known, however, whether any public official has been prosecuted for torture.

Alkarama followed the case of Mr Sidi Ould Habott who was first arrested with six others on 6 April 2005 in the wave of arrests mentioned above. Although the court decided to release him after finding that the accusations made against him were unfounded, he was kept in detention. He subsequently escaped from prison and fled the country. Acquitted by the Nouakchott criminal court in absentia, he returned to Mauritania in 2007, where he was again arrested on 7 February 2008. He was manhandled by military police and thrown in a dungeon. The first interview focused on the case of 2005, despite the fact that he had been acquitted. He was subjected to a range of torture: sleep deprivation, prohibition from using a toilet, etc. After being transferred to another facility, he was held incommunicado in a cell measuring 2x1m in unhealthy and oppressive temperatures. Stripped and humiliated, he was forced to stand in the room while it was flooded with human waste. This torture lasted for three whole days, during which he was not allowed to sleep, eat or pray. He fainted and fell to the floor, which was still covered in filth. The jailers then sprayed him with water to wake him up and made him eat unknown substances, before transferring him to State Security.<sup>12</sup>

Mr Abdelkrim Ben Fraj Bouraoui, a Tunisian national, was detained on 3 May 2008 in Nouakchott, with nearly a hundred other people, in a wave of arrests which officials said were part of combating terrorism following the attack against the Israeli Embassy of 2 February 2008, even though at that time he was being held by state security services during the 15 days after his first arrest. During his second detention he was held incommunicado for 25 days in an unhealthy, completely enclosed cell of 1x2m. He was severely tortured during the interrogations: stripped, beaten, and deprived of sleep and the use of a toilet for several days. He was also handcuffed behind his back and hung in the "Jaguar" position, a method of torture used by the Mauritanian security services. He was then detained in a military barracks under the command of the army General Staff.<sup>13</sup>

The situation in prisons is particularly disturbing: there are overcrowded buildings and dirty, cramped cells that are not properly ventilated. Detainees lack food and health care, and are regularly abused. Even the new prison in Dar Naim, inaugurated in 2007, now contains 1000 prisoners even though it was designed to hold 300 inmates. These prison conditions alone constitute a form of torture. More importantly, prisons are controlled and administered by the National Guard, under the Ministry of Interior, and they therefore fall outside the control of the judiciary.<sup>14</sup> Deaths in unclear circumstances were reported in the prison of Dar Naim. On 6 August 2009, the Lawyers' Association reported that Sidi Ould Samba died in this prison.<sup>15</sup>

Just as the situation was starting to improve in 2007, NGOs reported a sharp deterioration after the August 2008 coup, recalling the earlier period of the Presidency of Ould Sid Ahmed Taya. Aminetou Mint Moctar, president of the Association of householding women, said: "Opinion leaders are locked in the same prisons as killers and drug dealers. They are disturbed and assaulted

by these criminals," adding: "Former ministers [who are incarcerated] are abused and suspected terrorists are tortured because they ask for the right to pray."<sup>16</sup>

## 5. The application of the law against slavery is not effective

During the dramatic events of 1989 which took place on both sides of the border between Senegal and Mauritania and displaced thousands of people, serious human rights violations were committed by Mauritanian authorities against black Mauritians, both civilians and officers, who were forced to flee to Senegal and Mali. Although Mauritania has no racist legal structures<sup>17</sup>, its multi-ethnic population comprises a number of descendants of persons of servile status, the "harratins". Any efforts to eradicate the country's deeply-rooted discriminatory culture come up against the ineffectuality of the law on the subject and the Arab dominance of the country's officialdom. There have been several legislative attempts to tackle the issue of discrimination against part of the population.

Indeed, although slavery was abolished by Ordinance No. 81-234 of 9 November 1981, slavery-like practices persist<sup>18</sup> and have necessitated the adoption of Act No. 2003-05 of 17 July 2003 to combat human trafficking, and Act No. 2007-048 of 3 September 2007 which criminalizes and punishes both forms of slavery with penalties that range from five to ten years' imprisonment. Local NGOs have denounced these practices, especially decrying the prevailing climate of impunity. It was this context that prompted the visit of Ms. Gulnara Shahinian, UN Special Rapporteur on Contemporary Forms of Slavery, on 3 November 2009 in Nouakchott.<sup>19</sup>

## 6. Recommendations

1. Comply with obligations under international instruments on human rights which Mauritania has signed up to. In particular, endorse the Constitutional council's rejection of provisions contrary to the Constitution which were introduced in the antiterrorism bill.

2. Ensure the principle of separation of powers and the independence of justice by completely eliminating any interference by the executive in judicial affairs.

3. End torture and inhuman and degrading treatment; investigate allegations of torture, prosecute and convict those responsible for these acts and compensate victims; incorporate the crime of torture into domestic law as defined by the Article 1 of the Convention against Torture and impose appropriate penalties to punish offenders.

4. Prohibit the use of incommunicado detention; release those detained illegally or in violation of rules of criminal procedure, bring all the country's places of detention under the control of the judicial authorities, and implement a system of independent control over all prisons, ensuring that inmates enjoy humane conditions of detention.

5. Ensure the effective implementation of all laws relating to the abolition of slavery and the suppression of human trafficking.

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<sup>1</sup> Comité interministériel chargé de la justice (Interdepartmental Committee for Justice), *Rapport final sur la justice* (Final Report on Justice), November 2005, available from <http://www.mauritania.mr/fr/RapportsCM/Rapport-Final-Justice.pdf> (accessed 2 April 2010)

<sup>2</sup> L'Ordre National des Avocats de Mauritanie (National Lawyers' Association of Mauritania), *Rapport du Bâtonnier sur la justice Mars 2010* (Report on Justice by the President of the National Lawyers' Association of Mauritania, March 2010), 13 March 2010, [http://avocatmauritanie.org/francais/index.php?option=com\\_content&view=article&id=85:rapport-du-batonnier-mars-2010&catid=12:le\\_point\\_sur\\_la\\_justice\\_&Itemid=14](http://avocatmauritanie.org/francais/index.php?option=com_content&view=article&id=85:rapport-du-batonnier-mars-2010&catid=12:le_point_sur_la_justice_&Itemid=14) (accessed 2 April 2010)

<sup>3</sup> Holidays and weekends are excluded. There is also the option to lengthen custody by one day per one hundred kilometres' distance if the arrests took place in a remote location.

<sup>4</sup> Human Rights Council, 10<sup>th</sup> Session, *Report of the Working Group on Arbitrary Detention: Mission to Mauritania*, 21 November 2008, A/HRC/10/22/Add.2, para. 87

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<sup>5</sup> Alkarama press release, *Mauritania: Acquittal and freeing of detainees*, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=17:mauritania-acquittal-and-freeing-of-detainees&catid=28:communiqu&Itemid=144](http://en.alkarama.org/index.php?option=com_content&view=article&id=17:mauritania-acquittal-and-freeing-of-detainees&catid=28:communiqu&Itemid=144) (accessed 2 April 2010)

<sup>6</sup> Alkarama press release, *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=144](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=144), (accessed 2 April 2010)

<sup>7</sup> Ordre National des Avocats de Mauritanie (National Lawyers' Association of Mauritania), *Rapport du Bâtonnier sur la justice February 2010* (Report on the Justice by the President of the National Lawyers' Association, February 2010) 9 February 2010, [http://avocatmauritanie.org/francais/index.php?option=com\\_content&view=article&id=81:rapport-fevrier2010&catid=12:le-Point-of-the-court & Itemid = 14](http://avocatmauritanie.org/francais/index.php?option=com_content&view=article&id=81:rapport-fevrier2010&catid=12:le-Point-of-the-court & Itemid = 14) (accessed 2 April 2010)

<sup>8</sup> Ordre National des Avocats de Mauritanie (National Lawyers' Association of Mauritania), *Rapport du Bâtonnier sur la justice (novembre 2009)* (Report on Justice by the President of the National Lawyers' Association (November 2009)) 9 February 2010, [http://avocatmauritanie.org/francais/index.php?option=com\\_content&view=article&id=81:rapport-fevrier2010&catid=12:le-Point-of-the-court & Itemid = 14](http://avocatmauritanie.org/francais/index.php?option=com_content&view=article&id=81:rapport-fevrier2010&catid=12:le-Point-of-the-court & Itemid = 14) (accessed 2 April 2010)

<sup>9</sup> Alkarama press release, *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=144](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=144) (accessed 2 April 2010)

<sup>10</sup> Human Rights Council, 10<sup>th</sup> Session, *Report of the Working Group on Arbitrary Detention, Mission to Mauritania* (A/HRC/10/21/Add.2), 21 November 2008, para. 66-68.

<sup>11</sup> Association Malienne des Expulsés (Malian Association of Expelled - AME) and Asociación Pro Derechos Humanos de Andalucía (the Andalusia Association for Human Rights - APDH) *Une autre frontiere de non-droit: Mali-Mauritanie/ Co-responsabilité de l'Espagne dans les rapatriements en cascade de l'Europe vers l'Afrique, Rapport de mission conjointe AME-APDH*, (Another Lawless Border: Mauritania-Mali / the Co-Responsibility of Spain in the On-Going Repatriations from Europe to Africa, Joint Mission Report by AME and APDH), Cercle de Niore du Sahel, Mali, 21-29 October 2008, p. 55-58, [http://www.apdha.org/media/Informe\\_Niorem200509.pdf](http://www.apdha.org/media/Informe_Niorem200509.pdf) (accessed 2 April 2010)

<sup>12</sup> Testimony gathered by Alkarama

<sup>13</sup> Alkarama press release, *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=144](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=144), (accessed 2 April 2010)

<sup>14</sup> Amnesty International, *Mauritania: Torture at the Heart of the State*, Index: AFR 38/009/2008, December 2008, p.21

<sup>15</sup> Ordre National des Avocats de Mauritanie (National Lawyers' Association of Mauritania), *Resumé du rapport du Bâtonnier sur la justice, Juin-Aout 2009* (Summary report by the President of the National Lawyers' Association, June-August 2009), 13 August 2009, available at [http://avocatmauritanie.org/francais/index.php?option=com\\_content&view=article&id=60:rapport du bar council-August-2009 & catid = 12: the point-of-the-Justice & Itemid = 1](http://avocatmauritanie.org/francais/index.php?option=com_content&view=article&id=60:rapport du bar council-August-2009 & catid = 12: the point-of-the-Justice & Itemid = 1) (accessed 2 April 2010)

<sup>16</sup> Jeune Afrique, *Les aveux des prisonniers soutirés par la torture* (Confessions of prisoners extracted by torture), 18 December 2008, <http://www.jeuneafrique.com/Article/DEPIRIN20081218115140/-torture-Les-aveux-des-prisonniers-soutires-par-la-torture.html> (accessed 2 April 2010)

<sup>17</sup> Human Rights Council, 7<sup>th</sup> session, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diene - Addendum MISSION TO MAURITANIA: PRELIMINARY NOTE* (A/HRC/7/19/Add.6), 7 March 2008, para. 3.

<sup>18</sup> Amadou Seck, *Mauritanie – L'esclavage a la peau dure* (Mauritania - Slavery has thick skin), *Courrier International*, 19 November, 2009, <http://www.courrierinternational.com/article/2009/11/19/l-esclavage-a-la-peau-dure>, (accessed 2 April 2010)

<sup>19</sup> Office of the High Commissioner for Human Rights, *Unaddressed, slavery in all its forms may be an obstacle to the future of Mauritania*, 4 November 2009, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9596&LangID=E> (accessed 2 April 2010)