

## Submission to the United Nations Committee against Torture

### List of Issues Prior to Reporting – Mauritania

#### 62<sup>nd</sup> session (November-December 2017)

Freedom Now welcomes the opportunity to contribute to the *List of Issues Prior to Reporting* of the Islamic Republic of Mauritania (“Mauritania”) in preparation for its periodic review.

#### **Incommunicado Detention and Enforced Disappearances**

In the concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session (6-31 May 2013) (the “Concluding Observations”), the Committee Against Torture (the “Committee”) expressed its concern about “people being held in incommunicado detention, a practice that is conducive to torture and enforced disappearances.”<sup>1</sup> Unfortunately, since the Concluding Observations were released, Mauritania has continued to both forcibly disappear detainees and to hold detainees incommunicado. For example, on 11 November 2014, ten activists from various anti-slavery groups were arrested during a peaceful protest on the outskirts of Rosso and held incommunicado for three days. Between the period of 30 June 2016 and 9 July 2016, thirteen members of the anti-slavery group Initiative for the Resurgence of the Abolitionist Movement – Mauritania (“IRA”) were arrested and held incommunicado in a secret location, before they were finally produced to the court for arraignment on 12 July 2016.

#### **Recommended Questions to Mauritania**

1. *Please provide data on how many individuals, arrested by Mauritanian police or military forces during the most recent reporting period (the “Reporting Period”), have not been permitted to communicate with their attorneys or families within 24 hours of their arrest.*
2. *Please provide data on how many individuals, arrested by Mauritanian police or military forces during the Reporting Period, have not been permitted to challenge their detention before a judicial officer within 48 hours of their arrest.*
3. *Please provide information on any guarantees included in the Mauritanian Constitution, Penal Code and any other laws which require that detainees be permitted timely access to their attorneys, families and a judicial officer empowered to adjudicate the legality of a detainee’s arrest and continued detention.*
4. *Please describe what steps have been taken to ensure that detainees have the benefit of the fundamental legal safeguards set forth in paragraph 10(a) of the Concluding Observations.*
5. *Please provide information on what steps have been taken to hold accountable those officers or other authorities who have forcibly disappeared detainees or held detainees incommunicado, including those officers who held the ten anti-slavery activists incommunicado in November 2014 and those officers that forcibly disappeared the 13 IRA members in June-July 2016.*

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<sup>1</sup> Concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session (6-31 May 2013), U.N. Doc. CAT/C/MRT/CO/1, 11, (18 June 2013).

6. *Please provide information as to whether an up-to-date register, available to all competent judicial authorities, is kept for all detainees. Please confirm whether such register includes all of the information listed in paragraph 11(a) of the Concluding Observations.*

### **Torture During Interrogation of Detained Persons**

The UN Human Rights Committee has pointed out that incommunicado detention of a detainee serves to exacerbate the risk of other abuses occurring, such as mistreatment or torture.<sup>2</sup> Unfortunately, in Mauritania this fear has been realized as many of the detainees held without access to their attorneys or families have been abused by their interrogators. For example, all of the 13 IRA members who were arrested in June-July 2016 were abused during their initial detention; five endured particularly brutal physical torture involving prolonged stress positions, sexual humiliation, and painful lacerations. Moreover, despite the prohibition on using confessions gleaned from torture as evidence at trial in Mauritanian law, it is not uncommon for judges to ignore evidence of torture and consider such evidence. The judge in the trial of the detained IRA members, for example, dismissed the defendants' complaints of torture by stating that such investigation was outside of his jurisdiction as he was limited to only adjudicating the charges against the defendants.

### **Recommended Questions to Mauritania**

1. *Please provide data on how many individuals during the Reporting Period have reported mistreatment, abuse or torture during their interrogation; how often such reports of mistreatment, abuse and torture were investigated; and the results of such investigations.*
2. *Please provide information on the investigations undertaken into complaints of torture and the prosecution and convictions of persons who have committed acts of torture during the Reporting Period, including those officers who tortured the IRA members during their 2016 incarceration.*
3. *Please provide data on how often, during the Reporting Period, a judge or judicial officer has allowed into evidence any information where such judge or judicial officer had received a complaint of mistreatment, abuse or torture in connection with the interrogation that produced such information.*
4. *Please provide information on any guarantees included in the Mauritanian Constitution, Penal Code and any other laws which protect a detainee from torture during interrogation and prevent a court from using any confession or information gleaned therein as evidence.*
5. *Please describe what steps have been taken with respect to the recommendations set forth in paragraphs 8(a)-(d), 17(a)-(c) and 18(a)-(c) of the Concluding Observations.*

### **Independence of the Judiciary**

Although article 89 of the Mauritanian Constitution establishes the principal of independence of the judicial branch, in practice Mauritania's judiciary is significantly influenced by the government. The executive has the power to appoint and remove judges, including members of

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<sup>2</sup> UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 35, (16 Dec. 2014).

the Constitutional Council and the High Islamic Council. The National Bar Association of Mauritania has suggested that the role of the Supreme Court of Justice has been reduced to only handling administrative matters. Moreover, the subjection of the judiciary to the executive has been exacerbated by the rapid turnover of Supreme Court chief justices as well as the cronyism of the Ministry of Justice which seems to rely on ethnic background as important criteria in its hiring process.

This failure of independence can have disastrous consequences for detainees and defendants. For example, shortly after the January 2014 arrest of Mohammed Mkhaitir, a blogger who published an article viewed by some to be disrespectful of Islam, Mauritanian President Mohamed Ould Abdel Aziz joined a protest against Mr. Mkhaitir to demonstrate his sympathies with those calling for the death penalty; President Aziz also gave a speech after Friday prayer in which he promised to “apply God’s law on whoever insults the Prophet, and whoever publishes such an insult.” After being held in pre-trial detention for nearly 12 months, Mr. Mkhaitir was convicted of apostasy and sentenced to death—despite the fact that under Mauritanian law itself his repeated apologies should have negated the imposition of the death penalty.

### **Recommended Questions to Mauritania**

1. *Please provide information on what steps have been taken to ensure that the Court of Appeals, scheduled to rehear Mr. Mkhaitir’s case, will not be unduly influenced by the public position of the President Aziz with respect to Mr. Mkhaitir’s guilt.*
2. *Please describe what steps have been taken to guarantee and protect the independence of the judiciary, particularly as recommended in paragraph 15(a)-(e) of the Concluding Observations.*

### **Conditions of Detention, Extended Pre-Trial Detention and Medical Care Available for Detained Persons**

Prison conditions in Mauritania are notoriously harsh. Prisoners live in a climate of violence, where allegations of torture, beatings, abuse and ill-treatment are routine. Prisons are also severely overcrowded, which can lead to inadequate sanitation and poor hygiene. In some prisons the only opportunity that prisoners have to stretch their legs is in cramped hallways which are filled with refuse. The problem of overcrowding has been exacerbated by the Mauritanian government’s practice of holding detainees in extended pre-trial detention. For example, Mr. Mkhaitir was held in pre-trial detention for nearly a year, from the time of his arrest on January 2, 2014 to the time of his conviction on December 24, 2014. Biram Dah Abeid, Brahim Bilal Ramdane and Djiby Sow, three human rights activists who were convicted to two years in prison in January 2015 for their non-violent protest activities, were held in pre-trial detention for over three months.

Prisoners are held in stifling heat and are rarely allowed to leave their cells; many sleep on rags on the floor surrounded by vermin. For example, Mr. Abeid, Mr. Ramdane and Mr. Sow were all held together in the Aleg prison in cell about 2 meters by 3 meters long, which only had small air vents at the top of the walls. The heat in the cell was stifling, regularly reaching over 100 degrees Fahrenheit. The three men were not allowed to leave their cell, which was infested with

vermin and mosquitoes and they were initially not permitted visitors and not provided with mattresses, mosquito netting or nourishing food. In February 2015, the three men staged a hunger strike to protest the dire prison conditions, which they ended when prison authorities agreed to allow them visitors.

Prisons are also plagued by inadequate ventilation, lack of potable water, and the spread of communicable diseases. Unfortunately, in such conditions, medical care is extremely limited. For example, Mr. Sow, Mr. Abeid, Mr. Mkhaitir and several of the imprisoned IRA members suffered from serious medical ailments which were exacerbated after the authorities refused to allow timely treatment.

### **Recommended Questions to Mauritania**

1. *Please provide data on the number of prisoners within each of Mauritania's prisons along with the capacity of such prison and how many of such detainees are being held in pre-trial detention.*
2. *Please provide information on any guarantees included in the Mauritanian Constitution, Penal Code and any other laws which entitle a detainee to release pending trial.*
3. *Please provide information on any steps taken to ensure that detainees' right to release pending trial is respected, including an explanation as to why Mr. Mkhaitir, Mr. Abeid, Mr. Ramdane and Mr. Sow were held in extended pre-trial detention.*
4. *Please provide data on the state of sanitation, hygiene, temperature conditions, provision of nutritional food and clean water and visitation rights for each of Mauritania's prisons.*
5. *Please provide data on reports of prisoner mistreatment, abuse or torture during the Reporting Period within each of Mauritania's prisons, including how often such reports of mistreatment, abuse and torture were investigated; and the results of such investigations.*
6. *Please provide data on any deaths or hospitalizations among detainees which has occurred within each of Mauritania's prison.*
7. *Please provide data regarding the incidence and spread of communicable diseases within Mauritania's prisons.*
8. *Please provide information about the health care and treatment available to detainees, including an explanation as to why Mr. Sow, Mr. Abeid, Mr. Mkhaitir and several of the imprisoned IRA members were unable to access timely care and whether an investigation until the denial of care to these detainees has been instigated.*
9. *Please describe what steps have been taken to improve conditions of detention, particularly with respect to the recommendations set forth in paragraph 22(a)-(g) of the Concluding Observations.*

### **Imposition of Capital Punishment**

Mauritania allows capital punishment for certain crimes, such as apostasy, adultery or homosexuality.<sup>3</sup> Although no execution has been carried out since 1987, there are still a number of individuals under sentence of death, such as Mr. Mkhaitir who was sentenced to death on December 24, 2014 for the crime of apostasy. While international law does not prohibit the use

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<sup>3</sup> Penal Code of Mauritania, arts 306, 307 and 308, Ordinance No. 83-162, Jul. 9, 1983.

of capital punishment, it does proscribe a number of limitations as its use, including that capital punishment must be restricted to perpetrators of the most serious crimes who have been convicted after a fair trial. Considering the types of non-violent offenses for which Mauritania imposes a sentence of capital punishment, and as discussed above, considering that Mauritanian courts are not independent, often subject detainees to torture in order to obtain a confession and often do not respect a defendant's full slate of due process rights, the imposition of the death penalty in Mauritania is in contravention of the prohibition against cruel and inhuman punishment in the Convention against Torture.

### **Recommended Questions to Mauritania**

1. *Please provide data on the number of prisoners currently under a sentence of death in Mauritania and the offenses for which such sentence was given.*
2. *Please describe whether any steps have been taken to reform the Mauritanian Penal Code to ensure that the use of capital punishment is restricted to persons who have committed the most serious of violent offenses.*
3. *Please describe whether any steps have been taken to ensure that the due process rights of individuals charged with a capital crime are scrupulously observed.*