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## مجلس حقوق الإنسان

الدورة الرابعة والثلاثون

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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## تقرير المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة عن بعثته إلى موريتانيا

## مذكرة من الأمانة

قام المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة بزيارة موريتانيا في الفترة من ٢٥ كانون الثاني/يناير إلى ٣ شباط/فبراير ٢٠١٦. وتمكّن، أثناء البعثة، من زيارة أماكن الحرمان من الحرية في مختلف أنحاء البلد، كما تمكن من إجراء مقابلات سرية مع محتجزين اختارهم بنفسه، وهو ممتن للحكومة بذلك.

وفي حين عززت موريتانيا مشاركتها في الإطار الدولي والإقليمي لحقوق الإنسان واعتمدت عدة تشريعات هامة ترمي إلى استئصال التعذيب وسوء المعاملة، بما في ذلك قانون عام ٢٠١٥ لمكافحة التعذيب وقانون عام ٢٠١٥ المنشئ للآلية الوقائية الوطنية لمناهضة التعذيب، وفقاً للبروتوكول الاختياري لاتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، يشدد المقرر الخاص على أنه لا بد لموريتانيا الآن من وضع القوانين والضمانات القائمة لحماية جميع الأشخاص من التعذيب وسوء المعاملة موضع التطبيق العملي.



الرجاء إعادة الاستعمال

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**Report of the Special Rapporteur on torture and other cruel,  
inhuman or degrading treatment or punishment  
on his mission to Mauritania\***

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\* Circulated in the language of submission and French only.

## **I. Introduction**

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, visited Mauritania, at the invitation of the Government, from 25 January to 3 February 2016.
2. During his mission, the Special Rapporteur met with the President, the Prime Minister and representatives of: the Office of the Commissioner on Human Rights and Humanitarian Action, the Ministry of Justice, the Ministry of the Interior and Decentralization, the Ministry of National Defence, the Ministry of Health, the Ministry of Social Affairs, Children and Family, the Supreme Court, the Court of Appeals in Nouakchott, the National Human Rights Commission, the Ombudsman, the police, the intelligence services, the gendarmerie, the national guard and the national bar association, as well as the administrative, judicial and security services in the regions he visited. He also met with representatives of United Nations agencies, embassies and civil society organizations, and with victims of torture and their relatives.
3. The Special Rapporteur thanks the Office of the Commissioner on Human Rights and Humanitarian Action for facilitating his visit and expresses appreciation to the Government for granting access to detention facilities, including a maximum security penitentiary, in accordance with the terms of reference for fact-finding missions by special rapporteurs (see E/CN.4/1998/45, appendix V). A concerning exception is the refusal to provide timely access to a place that may be an unofficial detention location and where individuals suspected of committing acts of terrorism may have been held.
4. The Special Rapporteur shared his preliminary findings with the Government of Mauritania at the conclusion of his visit.

## **II. Legal framework**

### **A. International level**

5. Mauritania is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Rights of Persons with Disabilities.
6. International treaties have primacy over national law once they have been ratified and published. Regrettably, the main human rights treaties ratified by Mauritania, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have only been published in a December 2014 special issue of the Official Journal and have not been widely distributed.

### **B. Regional level**

7. Mauritania is a party to the African Charter on Human and Peoples' Rights, its Protocol on the Rights of Women in Africa and its Protocol on the Establishment of an African Court on Human and Peoples' Rights. It is also a party to the African Charter on the Rights and Welfare of the Child and has subscribed to the Guidelines and Measures for

the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines).

### C. National level

8. The Constitution was adopted in 1991 and revised in 2006 and 2012 to, among other things, classify torture (and slavery and slavery-like practices) as crimes against humanity (art. 13).

9. The Penal Code did not used to establish acts of torture as a discrete offence. In accordance with the constitutional amendment of 2012, Law No. 2013/011 of 23 January 2013 established torture as a specific crime punishable as a crime against humanity (art. 3) and removed the statute of limitations (art. 1), yet did not define the crime of torture. In September 2015, Law No. 2015-033 (the anti-torture law) was adopted, replacing the 2013 law. It contains a definition of torture and provisions on the interdiction, prevention and repression of torture and on reparation and protection measures. In addition, it includes new guarantees for all persons deprived of their liberty.

10. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in September 2015 Mauritania also adopted Law No. 2015-034, which establishes the National Preventive Mechanism against Torture, the purpose of which is to prevent torture and other cruel, inhuman or degrading treatment or punishment in places of detention, including by conducting scheduled and unscheduled visits to places of deprivation of liberty, receiving complaints of torture and ill-treatment and transmitting them to the competent administrative or judicial authority, providing advice on draft laws, making recommendations and contributing to outreach efforts (art. 3). The Mechanism's president and 12 members were nominated by decree in April 2016.<sup>1</sup> At the time of writing, however, the NPM did not seem fully operational and, despite having organised an introductory seminar in August 2016 and conducted some initial visits, had not adopted a long-term strategy nor received adequate financial means and resources to fulfil its mandate.

11. The Code of Criminal Procedure contains additional safeguards in its preliminary articles, in which it is specified that confessions obtained under torture or as a consequence of violence or force are invalid, and in its article 58, which states that the human dignity of all persons under any form of deprivation of liberty must be respected and that persons deprived of their liberty cannot be subjected to psychological or physical ill-treatment or be held in a place other than the one provided for by law for that purpose.

12. Moreover, in line with article 15 of the National Police Regulations Act (Law No. 2010.07 of 20 January 2010), members of the national police shall abstain from all cruel or degrading treatment.

13. According to article 10 of order No. 2005-015 of 5 December 2005 on the protection of children, subjecting children to acts of torture or brutality is punishable with six years of imprisonment. If the offence is committed repeatedly or occasions damage, mutilation or permanent disability, it is punishable with 15 years of imprisonment, and if it unintentionally results in death, with life imprisonment (art. 11).

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<sup>1</sup> See [www.cridem.org/C\\_Info.php?article=683398](http://www.cridem.org/C_Info.php?article=683398).

### III. Assessment of the situation

#### A. Torture and ill-treatment

14. Mauritania has emerged from a past under military rule and the devastating events of the late 1980s and early 1990s (the so-called “*passif humanitaire*”), during which gross human rights violations were perpetrated or encouraged by the Government and during which the forced deportation of Mauritanian citizens, in particular members of various black ethnic groups, was the norm. Although most victims of those violations are still awaiting remedies, including prosecutions for international crimes such as torture, Mauritania has since improved the human rights situation on the ground and strengthened its engagement with international and regional human rights frameworks.

15. While acts of torture and ill-treatment are no longer rampant in Mauritania, they still occur frequently. While recognizing the State’s limited resources, the Special Rapporteur stresses the need for political will and urgent action to put into practice existing laws and safeguards and ensure that current practices and existing conditions do not give rise to torture or other ill-treatment or punishment.

##### 1. During arrest and detention (extraction of confessions)

16. Both the national police and the paramilitary forces (the gendarmerie and the national guard) can act as judicial police and have powers of arrest and interrogation. Generally, the police operates in cities and towns, whereas the gendarmerie is responsible for areas outside urban centres. The national guard is less involved in arrests and interrogations. When acting as judicial police, the gendarmerie, while nominally subordinate to the Ministry of National Defence, reports directly to the public prosecutor, as does the national police.

17. Police and gendarmerie stations are equipped with small lock-ups of between one and two cells. Suspects can be deprived of their liberty during the judicial investigation for a limited time depending on the charge.<sup>2</sup> Police custody is initially imposed by the judicial police and immediately reported to the relevant public prosecutor, who is thereafter responsible for the detainee.

18. The Special Rapporteur received numerous credible testimonies from detainees and other individuals in contact with law enforcement about the use of torture and other ill-treatment, particularly in the early stages of arrest and detention. Aspects of the “culture of torture” that characterized the military regimes remain in police and gendarmerie units, which have few means of conducting serious investigations and often resort to ill-treatment to extract confessions.

19. While it seems that physical and mental pressure is exerted on detainees mostly during interrogations for more serious crimes, it is reportedly also exerted for misdemeanours and ordinary crimes. The perception that the harshness of the treatment is related to the social, economic or even ethnic background of the suspect, with a bias against impoverished members of society and those not possessing social or family connections, is widespread.

20. Forensic evidence corroborates reports of physical trauma and transitory physical injuries caused by beatings (often with clubs), occasional blows with blunt objects, punches, kicks with boots, slaps, the cuffing of hands and feet, and the forced placement in

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<sup>2</sup> For the length of time that suspects can be deprived of their liberty, see paras. 75-83.

stress positions for hours. Verbal insults and threats have also been reported. Such mistreatment is generally short in duration and the injuries sustained heal by themselves without leaving physical scars.

*State security and terrorism cases*

21. The use of torture against and the ill-treatment of individuals during the first hours after arrest and in detention are particularly serious when it comes to allegations of terrorism or threats to national security or other serious crimes that require complex investigations. Terrorism is regulated under Law No. 2010-035 of 21 July 2010 as amended on 22 April 2016, implementation of which is under the responsibility of specialized anti-terrorism units in the offices of the public prosecutor and the investigative judge in Nouakchott, which cover the entire country. Terrorism suspects are frequently arrested and detained by the Directorate of State Security and the Directorate of Territorial Surveillance, both of which are intelligence services under the Ministry of the Interior and Decentralization.

22. For terrorism-related charges, suspects can be kept in police custody for a period of 15 days, renewable twice, for a total of 45 working days (art. 23 of Law No. 2010-035 of 21 July 2010 as amended). For other State security crimes, the initial period is 5 days, renewable twice, for a total of 15 days.<sup>3</sup> Access to legal counsel is denied during that period.<sup>4</sup>

23. The Special Rapporteur received credible reports that suspects were often held in unofficial detention locations for interrogation during the course of investigations.<sup>5</sup> The Special Rapporteur was denied access to one such location thought to have been used to detain and interrogate terrorism suspects. He was unable to accept subsequent invitations to visit the location, as his terms of reference specified that visits to detention facilities should be unannounced.

24. The long time that terrorism suspects spend in police custody, in particular if held incommunicado and in secret locations, facilitates the perpetration of torture and other ill-treatment and can in itself constitute ill-treatment.

25. Indeed, the Special Rapporteur received credible testimony from a majority of terrorism suspects and convicts interviewed that torture and ill-treatment were used during the early stages of arrest, during the initial interrogation and throughout the time in police custody. In addition to the ill-treatment described in paragraph 20 above, the interviewees reported being subjected to severe sleep deprivation, having their wrists and ankles handcuffed, having to hold stress positions for several days and being suspended in the air by their arms and legs. The allegations were largely corroborated by forensic examinations. Reports of prolonged solitary confinement of convicted terrorists were also received.

26. Such methods are used to extract confessions and many interviewed detainees confirmed having signed confessions under duress. The Special Rapporteur is deeply concerned that this reflects a systemic pattern.

27. The Special Rapporteur finds that the detention of terrorism suspects for up to 45 days without access to legal representation or the possibility to challenge their detention or treatment is excessive under any circumstance. He recalls that the prohibition of torture and ill-treatment is absolute and that judicial procedural guarantees must apply to all

<sup>3</sup> Code of Criminal Procedure, art. 57.

<sup>4</sup> See paras. 75-83.

<sup>5</sup> The use of such locations was confirmed by the Ministry of the Interior and Decentralization.

persons deprived of their liberty, including those charged with crimes against the State or terrorism.

## 2. Excessive use of force

28. The Special Rapporteur heard reliable testimonies, from civil society and victims, of demonstrators being dispersed through the use of excessive force and violent means, including beatings with clubs, by law enforcement officers. Forensic examinations of victims' wounds corroborated the use of such instruments.

29. The Government explained that most demonstrations were not authorized and that the demonstrators had, therefore, been dispersed legitimately. The Special Rapporteur reiterates that excessive use of force is prohibited under international law and that law enforcement officers must use non-violent means. The methods habitually applied do not conform to international principles of crowd control, and peaceful protesters are frequently wounded. Depending on the severity of the wounds, this practice amounts to ill-treatment, whether the demonstration is lawful or not.

30. The Special Rapporteur was assured by representatives of the Ministry of the Interior and Decentralization that not a single complaint regarding excessive use of force against demonstrators had been lodged in the five to six months prior to the visit. He was similarly informed by local authorities in Rosso, a southern border-crossing town where numerous demonstrations had allegedly been dispersed through the excessive use of force, that absolutely no complaints had been made against law enforcement officers. Such disturbing statistics point to a faulty complaints mechanism rather than to an actual lack of reasons to complain.

31. The Government has a duty to investigate instances and allegations of excessive use of force by law enforcement personnel and cases of wounded demonstrators, even in the absence of a formal complaint.<sup>6</sup> The Special Rapporteur calls upon the Government to provide adequate training to law enforcement personnel, specifically on crowd control.

## 3. Death penalty

32. The Special Rapporteur welcomes the de facto moratorium on the death penalty, in effect since 1987, but regrets that Mauritania has not abolished and continues to impose death sentences.

33. The Special Rapporteur expresses concern about the types of crimes for which the death penalty can be imposed under Mauritanian law, and its mandatory nature for some offences. According to international principles, the death penalty may be imposed only for the most serious crimes, namely intentional crimes of violence resulting in death. Mandatory death sentences for such crimes as, for example (as is the case in Mauritania), murder and aggravated murder, adultery, apostasy and homosexual acts, are against international law.

34. The recent imposition of the death penalty under article 306 of the Penal Code, for the first time since independence, is particularly disturbing. Mohamed Cheikh Ould M'Khaitir, a blogger, was convicted for *zendagha* (hypocrisy) and sentenced to death in 2014. Despite his repentance, an option under sharia law, no pardon or commutation was granted. On 21 April 2016, the Court of Appeals dropped the more serious charge of hypocrisy but confirmed the death sentence for apostasy, thereby offering an opportunity for the Supreme Court to review the validity of the repentance. While the Special

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<sup>6</sup> See the report on the fact-finding mission undertaken by the Office of the United Nations High Commissioner for Human Rights in Mauritania on 15 and 16 November 2014, para. 113.

Rapporteur regrets the use of the very vague provisions of article 306 and the imposition of the death penalty for a crime that does not fall under the category of most serious crimes, he welcomes the reported improvement since March 2016 in Mr. M'Khaitir's detention conditions in Nouadhibou and, in particular, the end of his prolonged solitary confinement.

35. It is unclear how many detainees are currently on death row in Mauritania. Many are held in Aleg, but also in the central prison in Nouakchott and in the maximum security penitentiary near the Salahdine military base. Others are held among the general prison population in smaller facilities throughout the country. While the detention conditions of persons sentenced to death are usually similar to those of other inmates,<sup>7</sup> the Special Rapporteur considers that the indefinite detention and uncertainty about possible execution and, in some cases, drastically reduced human contact or isolation, render their situation tantamount to ill-treatment or even torture.

#### **4. Vulnerable populations**

36. The Special Rapporteur received numerous reports regarding the mistreatment and excessive use of force by law enforcement officers of some of the most vulnerable groups, groups that have traditionally been marginalized and discriminated against.

37. He is particularly concerned about reports of the collective expulsion of irregular migrants and refugees, which suggests that the fundamental principle of non-refoulement is not respected. Migrants are often abandoned in Senegal, just across the southern border from the town of Rosso, without any further assistance or regard for whether they possess Senegalese citizenship. No specific centres exist for detaining illegal migrants, who are regularly held in police stations not equipped to hold such large numbers, often in inhumane conditions.

38. Repatriated Mauritians who fled or were forcefully expelled during the humanitarian crisis of the late 1980s and early 1990s face similar difficulties. Many have not obtained personal documents (i.e. birth, marriage or death certificates, personal identification cards and travel documents), a task that is particularly difficult to carry out if their documents were confiscated prior to expulsion. Consequently, of the 24,000 returnees, only around 8,000 have obtained official documents identifying them as Mauritians; the others continue to face great difficulties in accessing State services like education and health care and in registering to vote, and are excluded from national censuses. Without identity documents, many repatriated persons are at risk of becoming stateless.

39. The Special Rapporteur commends the authorities for their commitment to eradicating slavery, as demonstrated by the adoption of the 2007 and 2015 slavery acts criminalizing the practice, and welcomes the road map on the fight against contemporary forms and remnants of slavery. Today, slavery-like practices persist, even if often underground, creating an environment in which ill-treatment flourishes. The Special Rapporteur calls upon the Government to fully enforce the anti-slavery laws and prosecute and punish perpetrators.

#### **5. Gender-based violence**

40. According to information received from the Ministry of Social Affairs, Children and Family, female genital mutilation is still widespread in Mauritania, with an estimated 69 per cent of women having undergone the procedure. Female genital mutilation is acknowledged as a form of gender-based violence that constitutes ill-treatment and torture. It has severe, immediate and long-lasting negative health consequences (see A/HRC/31/57, paras. 61-62).

<sup>7</sup> A notable exception is the maximum security facility Salahdine (see paras. 52-53 below).

41. The Government has stepped up efforts to eradicate the practice, which is typically justified on the grounds of tradition or religion. The Special Rapporteur welcomes the efforts to raise awareness and cooperate with religious and cultural leaders. He is concerned, however, that the draft law on sexual and gender-based violence adopted by the Council of Ministers in March 2016 falls short of the international human rights commitments of Mauritania and does not contain any provisions on female genital mutilation.

## **B. Conditions of detention**

42. Mauritania has a prison population of approximately 1,800-2,000 detainees,<sup>8</sup> a relatively small number compared to the general population. Nevertheless, conditions of detention are typically inhumane. A majority of detainees are held in the capital;<sup>9</sup> the rest are held in smaller detention centres throughout the country.

43. The Special Rapporteur visited a number of facilities for the deprivation of liberty in Nouakchott and the interior, namely in Atar, Tidjikja, Aleg, Boghé and Rosso, as well as the Salahdine military base. He also visited cells and lock-ups of the police and the gendarmerie and pretrial detention facilities and penitentiaries (usually mixed), including a wing for inmates on death row and one for juveniles. In addition, he went to the sole women's prison, a maximum security penitentiary, detention facilities under the intelligence services' control, a detention facility for irregular migrants and asylum seekers, and the country's only juvenile correctional facility and sole psychiatric institution.

### **1. Overcrowding and inadequate conditions of detention**

44. Detention centres throughout the country are overcrowded. Many detention facilities are makeshift and do not have an official capacity, which makes estimating the overpopulation very difficult. The problem is particularly serious in Nouakchott, where the Dar-Naim facility, which has an approximate capacity of 300 inmates, often holds up to 1,000 persons. The other detention facility for men in Nouakchott, the central prison, was operating slightly below capacity at the time of the visit<sup>10</sup> but its juvenile section was severely overcrowded, holding around 65 minors when it was built for approximately 20. Most detention centres in the interior hold between fewer than 10 and about 50 detainees, but facilities are often not large enough to accommodate even such small numbers, and cells are commonly overcrowded.

45. The Special Rapporteur visited a severely overcrowded police station in the Baghdad neighbourhood of Nouakchott, where irregular migrants were being held before deportation. The 20-30 detainees in each of the two cells did not have enough room to lie or even sit down to sleep. Sanitary conditions were abhorrent, as there were no proper toilet facilities or showers. The Special Rapporteur stresses that while those individuals may have

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<sup>8</sup> There are 1,873 detainees as at 3 July 2015, according to the annual report of the National Human Rights Commission on the situation of human rights in Mauritania, covering the period 2013-2014. Available from [www.cndh.mr/images/rapport\\_cndh\\_2015.pdf](http://www.cndh.mr/images/rapport_cndh_2015.pdf). According to the Directorate for the Administration of Penitentiaries and Penal Affairs, there are some 1,920 detainees (information gathered during a meeting with the Special Rapporteur held on 25 January 2016).

<sup>9</sup> According to the Ministry of Justice, of the 1,229 detainees being held in the three facilities in Nouakchott on 24 January 2016, 995 were in Dar-Naim, 34 in the women's prison and 203 in the central prison. According to the Directorate for the Administration of Penitentiaries and Penal Affairs, 1,265 detainees were being held in the capital on 25 January 2016.

<sup>10</sup> On 27 January 2016, 234 detainees were being held in the prison, which has a capacity of 250.

been in Mauritania illegally, their treatment and conditions of detention must nevertheless respect human rights, in particular the right to be free from ill-treatment.

46. The authorities have attempted to alleviate the problem by building new detention facilities and transferring detainees to them. The new prison complex in Aleg currently operates at capacity, holding 255 detainees at the time of the visit on 30 January 2016. Still, much remains to be done. The Special Rapporteur furthermore highlights that transfers to other cities or regions may make contacts between inmates and their lawyers and families more difficult.

47. The Special Rapporteur observed unsanitary and unhygienic conditions in cells, lavatories and yards and an absolute lack of toilet or shower facilities in several smaller detention centres. Such conditions and poor oral hygiene lead to many inmates suffering from dermatological diseases and dental problems. In some locations, the electric wiring is loose and exposed, which makes conditions dangerous.

48. In all detention centres visited, nutrition was insufficient, both in terms of quantity and quality, which means that inmates were not getting enough protein or vitamins, or even enough drinking water. Inmates often relied on their families to supplement the poor diet.

49. In some detention centres, yards were open throughout the day and accessible to inmates. In others, however, detainees had no or very limited access (i.e. 15 minutes per day) to open areas and sunlight.

50. In none of the visited centres were inmates given opportunities for schooling, vocational training or work. A very restricted number of detainees may be allowed to work in the kitchen or distribute food, or act as the “leader” of certain areas of the facility. Recreational or cultural activities were totally absent. One exception was the women’s prison, where inmates, with the help of the non-governmental organization Fondation Noura, were given the opportunity to participate in sewing classes, language lessons and a newly established exercise room, among others.

51. At the time of the visit, family visits were suspended in many detention centres throughout the country. In the central prison, visits were suspended owing to an inmate’s recent escape. In the women’s prison, the specific authorization required for visits had not yet been renewed for the new year. Even when families were allowed to visit, they could only do so once or twice a week and for no more than 15-30 minutes, usually in the presence of guards.

52. The Special Rapporteur was able to visit the maximum security penitentiary near the Salahdine military base, which was created in 2011 by presidential decree for the detention of 14 convicted terrorists considered to be a high security risk. He received credible reports from inmates who had been detained there during the first three years of its existence of the inhumane and cruel detention conditions, which included exposure to extreme heat or cold depending on the season and time, the locking of inmates in small bare cells at all times (without beds, mattresses or blankets), insufficient nutrition of poor quality, salty drinking water leading to serious health problems, denial of access to open areas and sunlight, unsanitary conditions with inadequate access to water resulting in skin allergies and rashes, and insufficient or total lack of medical care.

53. Following the death of one inmate as a result of those conditions and the hunger strike held by the remaining 13 in protest, the inmates were transferred to the central prison in Nouakchott to continue serving their sentences in better conditions. In January 2015, three inmates were transferred back to Salahdine after initiating a riot during which prison guards were taken hostage; in January 2016, a fourth individual, an escapee from the central prison, was transferred after his capture. The Special Rapporteur observed that conditions at Salahdine had improved but were nevertheless inadequate. Inmates were still

forced to drink salty water, had no access to sunlight (except for a few days before the Special Rapporteur's visit) and could not be visited by their families. Their individual cells, which were small and completely dark, were however opened during the day, allowing inmates to communicate,<sup>11</sup> and mattresses and blankets, as well as limited medical care, had been provided.

## **2. Lack of adequate infrastructure and trained personnel**

54. Another serious concern is the lack of trained prison personnel and appropriate infrastructure for detention. The State does not have experience or training in the management of penitentiaries or in ensuring safe conditions of detention for prisoners. While the overall responsibility for all detention facilities in Mauritania lies with the Ministry of Justice, with the Directorate for the Administration of Penitentiaries and Penal Affairs responsible for convicted prisoners and the public prosecutor responsible for pretrial detainees, external and internal security in all detention locations is handled by the national guard. The national guard is a paramilitary corps subordinate to the Ministry of the Interior and Decentralization with no specific training in penitentiary security and administration. A notable exception to the above is the Salahdine detention facility, where the gendarmerie, subordinate to the Ministry of National Defence, is responsible for security. Like the national guard, however, the gendarmerie does not possess any specific training for these kinds of duties.

55. Each detention facility is in principle run by a director who represents the Ministry of Justice inside the prison. Discipline is the responsibility of the public prosecutor in each region, with the exception of Nouakchott, where it is directly under the Directorate for the Administration of Penitentiaries and Penal Affairs. In practice, however, the national guard runs the facilities and approaches them strictly from a security dimension (internal and external) with little concern for the well-being or rehabilitation of inmates. This translates into detention centres that simply keep inmates from escaping, without offering anything else.

56. Of particular concern is the fact that male members of the national guard are also responsible for the external and internal security of the women's prison, and even have unconstrained access to cells.

57. Disciplinary measures are in principle administered by the prison director and usually consist of a loss of privileges for inmates. However, the power structures described above give national guard elements inappropriate leverage over detainees and the possibility to administer disciplinary measures at their own discretion, without supervision by the director or, ultimately, the prosecutor. Solitary confinement exists as a disciplinary measure of last resort and in certain penitentiaries can last more than 15 days – the limit set by international law beyond which it is considered to constitute cruel, inhuman or degrading treatment, or even torture.

58. Despite the obligation to register all detainees, logbooks in law enforcement lock-ups and detention centres are often poorly kept, lack important information such as the release date of inmates or the authority that authorized their detention and sometimes seem to have been filled in retroactively. This puts detainees at risk of getting lost in the system, being ill-treated or not released on time. In that respect, the Special Rapporteur welcomes article 4 of the new anti-torture law, which explicitly sets out the minimum information required in all logbooks and recommends the revision and updating of existing logbooks to reflect the new obligations.

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<sup>11</sup> That said, inmates can only communicate with one other person, as the four individuals currently detained are kept in two separate rows of cells.

59. Furthermore, with the exception of a few purpose-built penitentiaries, such as the central prison in Nouakchott and the detention centre in Aleg, most inmates in Mauritania are held in normal buildings and residential houses that function as detention centres. These buildings have inadequate facilities, with inmates sleeping on floors, and makeshift lavatories, sanitary facilities and kitchens (if there are any at all); moreover, security cannot adequately be provided for, which makes the conditions often inhumane.

### **3. Lack of adequate medical care**

60. In all penitentiaries visited, access to health care was inadequate and dental and psychiatric support were completely absent. In principle, medical care is provided free of charge to all inmates. Some of the larger or newer facilities have infirmaries, with medical staff on duty or regularly visiting. Other detention centres do not have infirmaries but doctors or nurses may visit once a week for a limited time or can be called in. If needed, inmates can be transported to the nearest hospital for care.

61. In reality, however, there are few generalist medical practitioners and no psychiatric specialists or dentists in most prisons. The Special Rapporteur observed several detainees with suspected infectious and contagious diseases needing medical attention who did not receive any. They continued to live among the general prison population creating the risk of contagion to others.

62. The small number of penitentiary medical staff who exist have no specialized training in providing care in prisons or medical forensic expertise. Infirmaries, if they exist, are primitive, lack basic medical equipment and are insufficiently stocked with appropriate medicines, which means that detainees often have to rely on their families for the provision of drugs. Any transport to a hospital is at the discretion of the guards, who are not trained to assess whether an inmate requires medical attention.

63. The Special Rapporteur also observed the absence of any general medical, physical and analytical health examination upon admission or transfer into a detention centre, and of regular screening of all detainees.

### **4. Non-separation of detainees**

64. In all detention centres visited, large or small, convicted and pretrial detainees were held together indiscriminately. Typically, this included inmates sentenced to the death penalty. A notable exception was the new facility in Aleg, where inmates on death row were held in a separate wing. In the central prison in Nouakchott an attempt was made to hold individuals convicted on terrorism-related charges (many of whom had been sentenced to death) in separate cell blocks, which were, however, usually open during the day, leaving detainees free to mingle with each other.

65. Similarly, in the central prison boys are effectively mixed with the general adult prison population despite being held in a separate wing. In several other facilities visited in the interior of the country, boys appeared to be held indiscriminately with the adult male prison population.

66. The Special Rapporteur did not encounter women or girls being detained with men, despite the fact that separate facilities for women and girls do not exist in the interior of the country. In discussions with the authorities, the Special Rapporteur was assured that, once arrested, women and girls were immediately transported to the appropriate detention centre in Nouakchott should their continued detention appear necessary. He was informed, however, that several women were being held in a separate wing in a male detention facility in Nouadhibou. Furthermore, in the detention centre for women in Nouakchott, the Special Rapporteur encountered girls who were being held with the adult female population.

67. The indiscriminate detention of different types of inmates in the same centres and at times even in the same block or cell is deeply concerning to the Special Rapporteur. He calls upon the Government of Mauritania to address the issue urgently.

#### **5. Juveniles in conflict with the law**

68. A notable exception to the above-mentioned problem is the centre for children aged 13-18 years (although younger ones are sometimes admitted) in Nouakchott, the sole facility for the detention and rehabilitation of juveniles in conflict with the law, which is run jointly by the State and Terre des Hommes — Italy.

69. During his visit, the Special Rapporteur observed decent living conditions and, in general, good treatment of juveniles. While juveniles were given opportunities for schooling, vocational training and recreational activities, the Special Rapporteur also received credible reports of corporal punishment being meted out by some members of the staff. He was also told that children were placed in isolation, alone or in small groups, for extended periods of time (between one and two months) in separate small cells. The children subjected to such punishment were not allowed to carry out the usual activities and could leave their cells only for short periods, for example for meals or bathroom breaks. Such treatment, even if imposed for disciplinary measures, amounts to cruel, inhuman and degrading treatment, and the Special Rapporteur stresses that the solitary confinement of juveniles, defined as 22-24 hours of isolation per day, is considered torture.

70. The Special Rapporteur believes that the centre could contribute significantly to the rehabilitation of juveniles but is at present sadly underutilized. According to the law, alternatives to detention, including stays at the centre, need to be prioritized by judges. In reality, however, judges tend to impose traditional detention sanctions on children in conflict with the law instead of having them housed at the centre, receive a non-custodial penalty or be detained in an adult detention centre.

71. Nevertheless, the Special Rapporteur welcomes the plans to establish a second rehabilitation centre for juveniles in Nouadhibou in the near future.

#### **6. Psychiatric institution**

72. Mauritania has only one psychiatric wing, in the neuropsychiatric hospital in Nouakchott, with a capacity of 21 beds. It is an open institution and patients are usually housed with their families, who are fully integrated into the treatment of the patients. Patients are not placed in isolation, shackled or otherwise physically restrained, and no electric shock therapy is used. The hospital's therapeutic approach suffers from the insufficient provision of medication and psychoactive drugs by the State. Nevertheless, conditions are generally very good and the Special Rapporteur commends the authorities responsible for this exemplary institution.

### **C. Safeguards and prevention**

73. The Special Rapporteur welcomes the latest legislative developments in the fight against torture and ill-treatment, in particular the 2015 laws for the prevention of torture and the establishment of the national preventive mechanism. Today, legal safeguards are in place but the judicial authorities must understand that a problem exists and step up their efforts to use and implement those safeguards.

74. The Special Rapporteur is particularly concerned about the almost total absence of investigations into allegations of torture and ill-treatment and calls on the Government to implement existing laws and safeguards aimed at protecting all suspects and detainees in Mauritania from torture and ill-treatment.

## 1. Access to legal counsel

75. A fundamental safeguard against torture and ill-treatment is the right of access to counsel at all stages of the investigation process, in particular from the moment of apprehension. That right is enshrined in article 4 of the 2015 anti-torture law. Article 58 of the Code of Criminal Procedure, however, provides for access to a lawyer only after the first extension of the initial time in police custody,<sup>12</sup> i.e. after 48 hours for those charged with common crimes<sup>13</sup> and 72 hours for those charged with drug-related offences.<sup>14</sup> Access to a lawyer is granted only upon written authorization by the relevant prosecutor, for no longer than 30 minutes and under the surveillance of the judicial police. If necessary for the investigation, the prosecutor may withhold access to counsel.<sup>15</sup>

76. In cases involving charges of terrorism or crimes against the State, article 58 denies access to counsel during police custody entirely. That contradicts article 46 of the 2010 anti-terrorism law, revised in 2015, which states that no provision of the law should be interpreted with a view to limiting or reducing constitutionally guaranteed individual rights, including the right to a defence.

77. Unfortunately, the anti-torture law is silent on the matter. According to the principles of *lex posterior derogat legi priori* and *lex specialis derogat legi generali*, however, that law supersedes the relevant provisions in both the Code of Criminal Procedure and the anti-terrorism act, as it is the newer and more specific law.

78. The Special Rapporteur is greatly concerned that, at the time of his visit, despite the new law having been in force for several months, prosecutors, members of the judiciary and law enforcement personnel seemed to continue to apply the older provisions, either because they were unaware of the new law or because of misconceptions regarding its application. Even more disturbing is the position of the Ministry of Justice, conveyed to representatives of the Office of the United Nations High Commissioner for Human Rights in Mauritania, that the anti-torture law would not apply to individuals facing terrorism charges.

79. The Special Rapporteur strongly believes that suspects should have the right to access a lawyer from the moment of apprehension. He calls upon Mauritania to make the provisions of the anti-torture law known to its prosecutors, magistrates and judicial police, to amend its Code of Criminal Procedure accordingly and to clarify that its provisions supersede older, more general laws (including the 2015 anti-terrorism law). Mauritania now needs to make sure that that law is known and applied in all cases.

80. Furthermore, Mauritania lacks a proper public defender institution or legal aid programme for accused indigents. Order No. 2006.05 of 26 January 2006 has not resulted in a full-fledged legal aid or public defenders programme. In an effort to improve access to justice for the indigent, Law No. 2015-030 of 10 September 2015 was adopted to offer legal aid to indigent Mauritians seeking representation before a court in civil matters (art.1). In criminal matters, access to legal assistance is limited to the “civil party”, thus excluding the defendant in criminal cases regardless of his or her status. Moreover, indigent foreigners can only benefit from legal assistance if a judicial agreement exists with their country of origin. While Law No. 2015-030 has yet to be implemented, it is unfortunately unlikely to address the concerns of the most vulnerable and marginalized detainees, as they are effectively excluded from the scope of the law.

<sup>12</sup> Working days, not weekends or holidays.

<sup>13</sup> Code of Criminal Procedure, art. 57.

<sup>14</sup> Law No. 93-37 of 20 July 1993 on the suppression of the production of, trafficking in and illicit use of drugs and psychotropic substances, art. 24.

<sup>15</sup> Code of Criminal Procedure, art. 58.

81. Independently of the law, one of the tasks of the National Bar Association is to provide free legal representation to indigent individuals, before all jurisdictions, including in criminal cases. This aspiration seems however to be far from the reality: the Special Rapporteur was in fact greatly concerned to find out that, in at least one of the regions visited, there was only one lawyer.

82. Lack of access to a lawyer was indeed one of the main concerns raised by detainees interviewed by the Special Rapporteur, and the fact that their families could not afford to pay for legal services.

83. The Special Rapporteur welcomes the adoption of the new law on legal aid but regrets that it does not address the right of indigent defendants to an adequate defence. He stresses the need to ensure that indigent defendants are effectively provided with apt legal representation financed by the State as a fundamental safeguard against torture and ill-treatment.

## 2. Exclusion of evidence obtained under torture

84. According to article 6 of the 2015 anti-torture law, any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except as evidence against a person accused of committing torture, and the preliminary articles of the Code of Criminal Procedure state that confessions obtained under torture, violence or force shall be invalid.

85. Yet, as suspects most often lack legal representation, in particular during the first hours in police custody and while the judicial investigation is ongoing, they are at high risk of being subjected to ill-treatment or torture while undergoing interrogations aimed at extracting a coerced confession.

86. Despite legal provisions and numerous testimonies heard by the Special Rapporteur of forced confessions, only in a very limited number of cases has evidence been excluded because it was obtained through torture or ill-treatment. In a meeting with representatives of the Ministry of Justice, the Special Rapporteur was informed of only two cases,<sup>16</sup> both brought before a court in the capital, involving confessions that were declared null and void and that were therefore stricken from the proceedings because they were obtained under duress. The suspects in the two cases were acquitted.

87. The Special Rapporteur is very concerned that judges are apparently willing to admit confessions in criminal proceedings without attempting to corroborate them with other evidence, thereby creating conditions that encourage the torture and ill-treatment of suspects.

## 3. Complaints procedure

88. In principle, prosecutors can and must investigate all allegations of torture and ill-treatment *ex officio*. They do not need to receive a complaint.<sup>17</sup>

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<sup>16</sup> In case No. 751/2006, a first instance court of Nouakchott acquitted and released several suspects whose confessions had been obtained under duress, after their statements had been excluded from the proceedings (decision No. 128/2007 of 31 July 2007). In case No. 570/2014, the Penal Chamber of the Court of Appeals in Nouakchott West (decision No. 30-2015) reversed the first instance conviction of several individuals after declaring that their statements to the police were null and void — as were all subsequent proceedings — because the suspects had been arrested and charged with the same crime twice (*ne bis in idem/res judicata*).

<sup>17</sup> Anti-torture law, art. 9.

89. If a complaint is brought before an investigative judge or through a prison director, it should be transmitted immediately to the office of the prosecutor, which is obliged to investigate. A medical examination of the wounds can be requested by the complainant, the investigative judge or the prosecutor *proprio motu*. Medical staff in a detention centre who come to know of any torture or ill-treatment of inmates are expected to report such treatment and the dossier is then handed over to the prosecutor for further investigation.

90. In practice, however, complaints are rare and it is very difficult for detainees to make them despite the existence of legal safeguards. Victims rarely have effective access to lawyers and prosecutors and investigative judges who have a duty to regularly visit places of detention and receive complaints from inmates do so only sporadically in reality. Complaints from within the detention centres addressed to the prison director do not always reach him or her or the prosecutor, as detainees are more in contact with the national guard than they are with representatives of the Ministry of Justice.

91. Throughout his visit, the Special Rapporteur heard of a troubling lack of complaints being brought forward, even to institutions specifically mandated to assist in such cases, such as the National Bar Association and the National Human Rights Commission, both of which informed the Special Rapporteur that they had never received a complaint of torture.

#### 4. Lack of effective investigations into allegations of torture

92. During his visit, the Special Rapporteur discerned a concerning lack of will within the entire judiciary to investigate and prosecute persons suspected of committing torture and ill-treatment. He was informed repeatedly by various interlocutors that there were no allegations or complaints of torture or ill-treatment and, consequently, no investigations. Yet, as stipulated in article 9 of the 2015 anti-torture law, an investigation should be initiated whenever there are reasonable grounds to believe that torture or ill-treatment has been committed or attempted, or whenever a confession has been obtained through such means, even in the absence of a complaint.

93. The Special Rapporteur was informed of only one case involving allegations of torture that led to a conviction: in that case (No. 1272/2012), the Supreme Court upheld the conviction of a prison guard from the national guard and sentenced him to two years of imprisonment for the death by torture of an inmate, Hassan Ould Brahim, in the Dar-Naim prison in Nouakchott in 2012. The convictions of the other eight guards in the case were reversed by the Court of Appeals in Nouakchott. Disciplinary measures were also imposed on the perpetrators, at least one of whom was dismissed from the national guard.<sup>18</sup> As the new anti-torture law was not yet in place at the time, the perpetrators were prosecuted for torture leading to manslaughter (with intent). Neither the Court of Appeals in Nouakchott nor the Supreme Court have considered any cases of torture since 2013.

94. The Special Rapporteur was informed of another isolated case involving a police officer who was disciplined for mistreating minors in detention.<sup>19</sup>

95. The Special Rapporteur welcomes these cases but concludes that the failure to bring any significant number of cases against State officials accused of torture before the courts or to impose genuine disciplinary measures against perpetrators strongly indicates that the judiciary lacks the will to investigate and prosecute allegations of torture and ill-treatment, thereby contributing to an atmosphere of impunity. This is not so much a question of

<sup>18</sup> Information received from the Ministry of the Interior and Decentralization.

<sup>19</sup> The officer was placed in confinement for 15 days and transferred before the disciplinary council, according to information received from the national police.

interpreting the letter of the law but of the attitude of prosecutors, investigative judges and court officials, who do not appear to take the issue seriously.

96. The Special Rapporteur strongly believes that it is the responsibility of prosecutors and investigative judges to establish whether anyone has been mistreated or not, even in the absence of a victim's complaint. It is the State that ultimately carries the international legal obligation to prevent torture and ill-treatment, and it is imperative for Mauritania to prosecute public officials who order, condone or cover up torture in flagrant abuse of their superior authority, including in situations where they know or ought to know that torture was about to be, was being or had been committed. While the establishment of the national preventive mechanism is a very welcome addition to the institutional arsenal for combating torture, it does not absolve prosecutors and investigative judges from their responsibilities to investigate and prosecute all allegations of torture and ill-treatment.

## **5. Burden of proof and medical examinations**

97. The carrying out of professional forensic examinations and documenting allegations of torture and ill-treatment, as well as deaths in custody, are important components of any effective investigation and prosecution.

98. The Mauritanian Code of Criminal Procedure guarantees the right to a medical examination once a suspect in police custody is brought before an investigative magistrate and upon request of the suspect or his or her family (art. 60). Under the new anti-torture law, the physical and health status of each detainee must furthermore be registered in the logbooks of the detaining authority (art. 4). After holding numerous interviews with detainees, however, the Special Rapporteur observed that medical examinations upon entry into the penitentiary system are not carried out routinely, they are indeed rare, nor are they regularly ordered by the investigative magistrate when a suspect is first brought to court.

99. Even when a forensic medical examination is performed, it is unlikely to meet minimum international standards for the clinical forensic assessment of victims or to assist the court in finding the truth. Mauritania is plagued by a serious lack of forensic expertise: medical forensic specialists are absent (only one medical doctor has undergone a limited two-month training on medical forensics) and medical personnel in detention centres do not receive specialized training in medical forensics, for example through the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) or similar tools. In cases of deaths in custody, autopsies are not systematically performed and if they are do not meet minimum international standards. Medical doctors have no knowledge of the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the Minnesota Protocol).

100. The lack of forensic medical examinations may be one of the reasons for the very rare application of the exclusionary rule with regard to evidence obtained under torture and the even rarer conviction of perpetrators of torture. This situation deprives the country's judiciary of information of paramount importance on allegations of torture and ill-treatment and opens the door to impunity for perpetrators of abuse.

## **6. Lack of monitoring of places of detention and the national preventive mechanism**

101. It is alarming that currently in Mauritania places of deprivation of liberty are not monitored officially. Prosecutors and investigative judges who are under a duty to regularly visit places of detention rarely do so, and there is no legal aid or public defenders programme for monitoring places of detention.

102. The National Human Rights Commission has a mandate to monitor all types of detention centres through unannounced visits and confidential interviews with inmates and their families, in accordance with its founding legislation (see Law No. 2010-031 of 20 July 2010, art. 4). However, allegedly owing to limited resources, the Commission has been unable to pursue such visits since 2012.<sup>20</sup>

103. Consequently, the operationalization of the National Preventive Mechanism against Torture, following the adoption of Law No. 2015-034 and in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of utmost urgency. The Mechanism will be authorized to conduct scheduled and unscheduled visits to all places of deprivation of liberty and to receive and channel complaints to the competent authorities (art. 3).

104. The Special Rapporteur welcomes the appointment in April 2016 of the members of the Mechanism and stresses the importance of providing the Mechanism with full administrative and financial autonomy to carry out its mandate. Its set-up should guarantee complete impartiality and independence and its members must act with integrity and professionalism. Access to all locations where individuals are deprived of their liberty must be guaranteed, including detention facilities, penitentiaries, gendarmerie and police stations and other, less traditional, places of deprivation of liberty.

105. It is furthermore hoped that the Mechanism can contribute to establishing the right to complain not only in law but also in practice, by serving as an additional means for channelling complaints of torture and ill-treatment (while not replacing the responsibilities of prosecutors and magistrates).

## 7. Impunity for crimes of the past

106. The Special Rapporteur welcomes the efforts made by the Government of Mauritania and civil society to address the serious and widespread human rights violations that occurred during the *passif humanitaire* in the late 1980s and early 1990s.

107. Unresolved matters remain, however, and cannot simply be wished away. While the Special Rapporteur recognizes the utility of laws such as the 1993 amnesty law, he also recalls that, for Mauritania to enter a new era of social unity, under international law a blanket amnesty cannot be applied to prevent the investigation of international crimes, a category that includes torture, mass deportation and extrajudicial killings. Such offences must be investigated and those responsible must be prosecuted and punished; amnesties and statutes of limitations must not be applied.

108. To this day, no independent investigation has been conducted into the crimes committed during the *passif humanitaire*, and no one has been brought to justice. Victims of the crisis, in particular torture victims, and their families must have effective remedies available to them.

109. The ongoing impunity for these past crimes continues to be an obstacle to reconciliation in Mauritania, causes mistrust between communities and breeds impunity for abuses committed today. The Special Rapporteur calls upon the Government of Mauritania to address this issue urgently and to bring alleged perpetrators before a court of law.

<sup>20</sup> See the annual report of the National Human Rights Commission on the situation of human rights in Mauritania, covering the period 2013-2014.

## **IV. Conclusions and recommendations**

### **A. Conclusions**

110. The human rights situation in Mauritania, including with regard to torture and other cruel, inhuman or degrading treatment or punishment, has improved since the years of the military regimes and the gross human rights violations committed during the *passif humanitaire* in the late 1980s and early 1990s.

111. Mauritania has strengthened its engagement with the international and regional human rights framework and has adopted several important pieces of legislation aiming at eradicating torture and ill-treatment, including the 2015 anti-torture law and the 2015 law establishing the National Preventive Mechanism against Torture, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

112. However, Mauritania must now implement the existing laws and safeguards for the protection from torture and ill-treatment.

113. Torture and ill-treatment still occurs frequently, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases with the gravity of the crime the individual is suspected of and is particularly serious in State security and terrorism cases.

114. Conditions of detention often amount to cruel, inhuman or degrading treatment. Severe overcrowding affects the living conditions of inmates. Detainees are often faced with inadequate access to health care, including dental and psychiatric support, insufficient nutrition and water (both in terms of quantity and quality), almost complete lack of work and education opportunities, as well as insufficient access to sun, fresh air and recreational activities.

115. Impunity for acts of torture and ill-treatment remains the rule rather than the exception, partly owing to a lack of political will by the State and its judiciary and partly owing to highly deficient procedures related to the monitoring and documenting of allegations.

### **B. Recommendations**

116. In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government of Mauritania, with appropriate assistance from the international community, take decisive steps to implement the recommendations outlined below.

117. Regarding the legal framework, the Special Rapporteur recommends that the Government:

(a) Systematically publish and distribute all international and regional human rights treaties ratified by Mauritania in order to guarantee their primacy over national law and awareness and understanding of their provisions and spirit by members of the legal profession and law enforcement personnel;

(b) Effectively implement and enforce existing laws and safeguards for the protection from torture and other cruel, degrading and inhuman treatment or punishment;

(c) Ensure complete awareness and understanding by members of the legal profession and by law enforcement personnel of the latest legislative developments regarding torture, in particular Law No. 2015-033 (the anti-torture law) and Law No. 2015-034 (establishing the National Preventive Mechanism against Torture), by publishing and widely distributing the texts of laws, providing training opportunities and distributing leaflets outlining their main safeguards and their relationship with other pieces of legislation already in existence;

(d) Recognize and implement the 2015 anti-torture law in such a way as to ensure its primacy over older and more general legislation, according to the principles of *lex specialis derogat legi generali* and *lex posterior derogat legi priori*, and, if necessary, have that primacy determined authoritatively by Parliament or the courts;

(e) Ensure the application of judicial procedural guarantees under the 2015 anti-torture law in all cases and to everyone deprived of liberty (whether for common crimes or for State security and terrorism charges) and in particular with regard to the right to access counsel from the moment of apprehension (see art. 4 of the anti-torture law).

118. Regarding conditions of detention, the Special Rapporteur recommends that the Government:

(a) Ensure minimum standards of conditions of detention in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and ensure that current practices and conditions do not give rise to torture or cruel, inhuman or degrading treatment or punishment;

(b) Adopt and implement measures to reduce significantly overcrowding, including by:

(i) Reviewing sentencing policies and providing for alternative, non-custodial penalties, in particular for lesser, non-violent offences;

(ii) Introducing alternatives to incarceration (for example, bail and electronic surveillance for pretrial defendants and early release for those convicted);

(iii) Introducing possibilities for parole or conditional liberty before the end of a sentence;

(iv) Accelerating the judicial process for all offences;

(c) Amend the Code of Criminal Procedure to abolish the continuation of a completed imprisonment sentence while an appeal is pending or when the convict is unable to pay the debt related to the conviction;

(d) Design a system that aims at rehabilitating and reintegrating offenders, including through the creation of work and schooling opportunities;

(e) Ensure the separation of minors from adults, females from males, and pretrial inmates from convicts;

(f) Prioritize alternatives to detention for all juvenile offenders and, in exceptional circumstances where detention is necessary, ensure their detention in separate special rehabilitation facilities that meet their specific needs as children;

(g) Allocate sufficient budgetary resources to provide adequate health care by employing a sufficient number of qualified professionals and providing infirmaries in detention centres with adequate equipment and medicines;

(h) Ensure the daily presence of truly independent and qualified medical health staff, including psychiatric and dental specialists, in all places of deprivation of liberty, in cooperation with the public health services, to perform medical entrance exams and regular check-ups for all detainees and to provide medical assistance as necessary;

(i) Regulate and improve the quantity and quality of food and water and ensure adequate sanitary and hygienic conditions, ventilation and access to exercise, sunlight and recreational activities;

(j) Introduce independent, effective and accessible complaints mechanisms in all places of deprivation of liberty by installing telephone hotlines or confidential complaints boxes and ensure that complainants are not subject to reprisal.

119. Regarding safeguards and prevention, the Special Rapporteur recommends that the Government:

(a) Ensure prompt registration of all persons deprived of their liberty with at least the minimum information required under article 4 of the 2015 anti-torture law, update existing logbooks to reflect these new obligations and periodically inspect records at police and prison facilities to ensure that they are maintained in accordance with the established procedures;

(b) Ensure that both suspects and accused individuals have access to a lawyer of their own choosing from the moment of apprehension, without the presence of judicial police and without requiring the authorization of the prosecutor, including in national security and terrorism cases;

(c) Ensure that indigent defendants, no matter the charges they are facing, are effectively provided with apt, State-funded, legal representation — either through a public defender system, legal aid, bar association services, the case-by-case payment of attorneys' fees by the State or any other means — as a fundamental safeguard against torture and ill-treatment, in all regions and through all stages of criminal proceedings;

(d) End the practice of secret and incommunicado detention in unofficial and unrecognized detention locations;

(e) Ensure that statements or confessions made by persons deprived of their liberty other than those made in the presence of a judge and with the assistance of legal counsel have no probative value in proceedings against them;

(f) Ensure that national police, gendarmerie and national guard officers receive adequate training to ensure that national procedures are compliant with international human rights law;

(g) Create and develop medical forensic capacity and infrastructure and ensure the adequate training of all health professionals involved with detainees, including by providing specific training on the forensic assessment and documentation of ill-treatment and torture, in accordance with the Istanbul Protocol and the Minnesota Protocol;

(h) Authorize and facilitate the regular, effective and independent monitoring of places of deprivation of liberty by international and regional bodies, the National Preventive Mechanism against Torture, the National Human Rights Commission and civil society organizations;

(i) Ensure that, once operational, the National Preventive Mechanism against Torture is fully independent and impartial, is provided with sufficient funds to carry out its activities and is guaranteed access to all locations where individuals are deprived of liberty, including detention facilities, penitentiaries, gendarmerie and police stations and other, less traditional, places of deprivation of liberty.

120. Regarding prompt, thorough and impartial investigations, the Mauritanian judiciary should:

(a) Effectively abide by its obligation to genuinely investigate and prosecute all those suspected of torture and ill-treatment, in accordance with the international legal obligation of Mauritania, and ensure that investigations are launched *ex officio* without any need for formal complaints by prosecutors and investigative magistrates whenever there are reasonable grounds to suspect torture or ill-treatment;

(b) Ensure that allegations of torture and ill-treatment are admitted at all stages of judicial proceedings;

(c) Hold criminally responsible the perpetrators of torture and ill-treatment and impose adequate disciplinary measures;

(d) Ensure that the exclusionary rule with regard to evidence obtained under torture is fully implemented by the courts and that confessions in criminal proceedings are not admitted as evidence in the absence of any corroborating evidence;

(e) Ensure the regular, unimpeded and unsupervised access of each detainee to the relevant prosecutor and/or investigative magistrate, through regular visits to places of deprivation of liberty and upon the request of the detainee, to allow for the submission of complaints of torture and ill-treatment;

(f) Ensure that victims of torture and ill-treatment receive adequate compensation, including full rehabilitation, and that they are not subject to reprisal.

121. Regarding control of demonstrations, the Special Rapporteur recommends that the Government:

(a) Act in compliance with international standards on the principles of necessity and proportionality in relation to the use of force, such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with respect for the right to life and physical integrity;

(b) Provide adequate training for law enforcement personnel on crowd control to prevent the excessive use of force;

(c) Investigate allegations of excessive use of force against protestors and prosecute and punish perpetrators, even in the absence of a formal complaint.

122. Regarding migrants and refugees, the Special Rapporteur recommends that the Government:

(a) Respect the fundamental human rights of migrants and refugees, including the right to not be returned or sent to places where they are at risk of torture or ill-treatment (non-refoulement) in accordance with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Ensure that illegal migrants are detained in conformity with the Nelson Mandela Rules.

123. **Regarding sexual and gender-based violence, the Special Rapporteur recommends that the Government:**

(a) **Review the draft law on sexual and gender-based violence adopted by the Council of Ministers in March 2016 in the light of the international obligations of Mauritania;**

(b) **Adopt and implement legislation to prohibit all forms of female genital mutilation and to hold criminally accountable health-care professionals, community leaders and other public officials who perpetrate or condone the practice or refuse to implement relevant laws.**

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