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增进和保护所有人权、公民、政治、经济、  
社会和文化权利，包括发展权

任意拘留问题工作组的报告

增 编

对毛里塔尼亚的访问<sup>\*</sup>

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<sup>\*</sup> 本内容提要以所有正式语文分发。报告正文附于内容提要之后，只以英文和法文分发。

## 内容提要

任意拘留问题工作组代表团应毛里塔尼亚政府的邀请，于 2008 年 2 月 19 日至 3 月 3 日访问了毛里塔尼亚伊斯兰共和国。代表团访问了分布在首都努瓦克肖特以及 Nouadhibou 和 Rosso 的监狱、各种拘留所、派出所、一个移民拘留中心和一个精神病院。代表团与共和国总统、行政、立法、司法当局的官员、律师以及全国人权委员会和一些非政府组织的代表举行了会晤。

本报告叙述毛里塔尼亚目前正经历的过渡期内造成自由和人权被剥夺的体制和法律框架。在体制和立法层次上已经进行了重要的改革：全国人权委员会已经建立，另外建立了对司法和监狱行政系统进行监督的总检查署，虽然后者尚未完全投入运行。工作组欢迎该国政府为改善司法部门工作条件并加强其职权、改革法律援助制度和建设新监狱而作出的努力。

尽管政府进行了影响深远的司法改革并产生了积极的效果，但集权主义制度的遗产仍在发挥作用。代表团指出了立法方面的某些缺陷，尤其强调目前生效的法律文件与实际落实之间的差距。在访问期间观察到的任意拘留案件主要源于司法系统失灵，具体表现为：警察拘留不遵守时间限制，侵犯公平审判权，尤其是限制获得律师帮助，对警察缺乏有效司法监督，腐败，对伊斯兰法律的解释前后不一致等。

工作组在其建议中特别强调下列几点：保障辩护权利，加强对警察拘留行为和拘留所的监督，为包括法官和检察官在内的司法系统全体工作人员开展培训计划。工作组呼吁国际社会和联合国人权事务高级专员办事处提供必要的技术和资金援助，帮助毛里塔尼亚加强保护人权的国家能力并支持政府所进行的司法改革。

**Annex**

**REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON  
ITS MISSION TO MAURITANIA**

(19 February-3 March 2008)

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 7	6
I. INSTITUTIONAL AND LEGAL FRAMEWORK OF DETENTION .....	8 - 34	7
A. Institutional framework .....	8 - 20	7
1. Political system .....	8 - 10	7
2. Judiciary .....	11 - 14	7
3. Police and gendarmerie .....	15 - 17	8
4. Penitentiary administration .....	18 - 19	9
5. The National Human Rights Commission .....	20	9
B. Legal framework .....	21 - 34	9
1. International obligations .....	21	9
2. Constitution .....	22	9
3. Rules on the functioning of the criminal justice system .....	23 - 25	9
4. Detention in the context of criminal procedure .....	26 - 30	10
5. Access to legal counsel .....	31 - 32	11
6. Juvenile justice .....	33 - 34	11
II. POSITIVE ASPECTS .....	35 - 46	11
A. Context of the visit: transition to democracy and the rule of law .....	35 - 36	11
B. Complete cooperation by the Government .....	37 - 38	12

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
C. Legislative and institutional reforms .....	39 - 46	12
1. Strengthening of guarantees for the protection of the rights of persons deprived of their liberty.....	40	12
2. Measures to reform the penitentiary system .....	41 - 44	12
3. Establishment of the National Human Rights Commission .....	45 - 46	13
III. SUBJECTS OF CONCERN .....	47 - 83	13
A. Guarantees during police custody .....	47 - 54	13
1. Period of custody .....	47 - 50	13
2. Registers and records of arrest .....	51 - 52	14
3. Ill-treatment .....	53	15
4. Ineffective oversight of police activities .....	54	15
B. Pretrial detention .....	55 - 58	15
C. Access to and assistance from counsel .....	59 - 61	16
D. Shortcomings in the penitentiary system .....	62 - 64	16
E. Lack of a legal framework for the detention of foreigners .....	65 - 68	17
F. Lack of a legal framework for committal to a psychiatric hospital .....	69 - 71	18
G. Judicial branch .....	72 - 74	18
H. Violations related to the application of sharia rules .....	75 - 77	19
I. Counter-Terrorism Act .....	78	19
J. Corruption .....	79 - 80	20
K. Discrimination .....	81 - 83	20
IV. CONCLUSIONS .....	84 - 88	21

**CONTENTS (*concluded*)**

	<i>Paragraphs</i>	<i>Page</i>
V. RECOMMENDATIONS .....	89 - 91	21
A. Detention under criminal law .....		21
B. Defence .....		22
C. Sharia rules .....		23
D. Judicial branch .....		23
E. Penitentiary system .....		23
F. Detention of migrants .....		23
G. Training .....		24
H. Detention in the Neuropsychiatric Centre .....		24
I. Discrimination and corruption .....		24

## Introduction

1. The Working Group on Arbitrary Detention, which was established by the Commission on Human Rights in its resolution 1991/42 and whose mandate was confirmed and extended by the Human Rights Council in its resolution 6/4, carried out an official mission to the Islamic Republic of Mauritania at the invitation of the Government, from 19 February to 3 March 2008.
2. The Working Group's delegation was composed of Ms. Leila Zerrougui, at the time Chairperson-Rapporteur of the Working Group; Ms. Manuela Carmena Castrillo, then Vice-Chairperson of the Working Group; the secretary of the Working Group, and another official from the Office of the United Nations High Commissioner for Human Rights.
3. The visit took in the capital, Nouakchott, and the towns of Nouadhibou and Rosso. In Nouakchott, the Working Group visited Dar Naim men's prison, the women's prison, the minors' prison and the Tevragh Zeina police station. In Nouadhibou, the delegation visited Nouadhibou prison, the central police station and the migrants' centre. In Rosso, the Working Group visited the prison, the central police station and the gendarmerie.
4. The Working Group held meetings with the President of the Republic; the Minister for Foreign Affairs and Cooperation; the Minister of Justice; the Minister of the Interior; the members of the Senate Legislation Committee and the Justice and Internal Affairs Committee of the National Assembly; the Prime Minister's Chief of Staff; the President, the Solicitor-General, judges and prosecutors of the Supreme Court of Justice, the Court of Appeal and district courts; department officials of the criminal investigation police, the State security service and the territorial security service; the provincial governor (*Wali*) in Nouadhibou; officials of the local administrations in Nouadhibou and Rosso; the heads of the prison guards' service and the wardens and administrators of the penitentiaries in Nouakchott, Nouadhibou and Rosso; the Secretary-General of the Ministry of Health and the director of the Nouakchott Neuropsychiatric Centre.
5. The Working Group also interviewed members of the National Human Rights Commission and representatives of civil society, the National Bar Association, the United Nations Development Programme (UNDP) and the local branch of the Office of the United Nations High Commissioner for Refugees.
6. The Working Group wishes to thank the Mauritanian Government for inviting it to visit the country during this crucial period, as the country seeks to consolidate its democracy and the rule of law. This invitation bears witness to the Government's will to undergo an independent and objective assessment of the degree to which the national law governing the deprivation of liberty and its practical application are in conformity with the relevant international standards. Throughout its mission, the Working Group enjoyed the full cooperation of the Government in respect of access to prisons, the Nouadhibou migrants' centre and places of detention in police stations and gendarmeries. The Working Group expresses its appreciation to the National Human Rights Commission and to all those whom it met outside the Government, including detainees, for their support and the quality of their contributions. It would also like to express its thanks to the country office of the United Nations Development Programme for its help and assistance.

7. The Working Group would like to point out that this report was drawn up while the Islamic Republic of Mauritania was under a democratic form of government; during its visit, the delegation of the Working Group was able to see the progress made in democratizing the country and in consolidating the rule of law. That process came to an abrupt halt with the coup d'état of 6 August 2008. The Working Group on Arbitrary Detention expresses the hope that the country will soon return to a process of democraticization, with full respect for the civil and political rights of the Mauritanian people. The Working Group adopted its report at the 7th meeting of its fifty-first session (5-9 May 2008).

## **I. INSTITUTIONAL AND LEGAL FRAMEWORK OF DETENTION**

### **A. Institutional framework**

#### **1. Political system**

8. Since acceding to independence in 1960, the Islamic Republic of Mauritania has been governed by authoritarian civil and military regimes. In August 2005, a coup d'état ended a 30-year period in which President Maaouya Ould Sid'Ahmed Taya was in power, and thus began what is commonly known in Mauritania as the "transition towards democracy". During this period significant reforms were begun and several elections were held, including a referendum in June 2006 amending the 1991 Constitution. The transitional period ended with the election of President Sidi Mohamed Ould Cheikh Abdallahi, who assumed office on 19 April 2007, having prevailed in multiple-candidate elections generally qualified as free and transparent.

9. The country has a presidential political system. Under articles 23, 25 and 26 of the new Constitution, the President of the Republic is elected by universal suffrage for a five-year term, renewable once; he is Head of State, holds executive power and presides over the Council of Ministers.

10. The legislative power resides in parliament, which comprises two representative chambers, the Senate and the National Assembly: deputies in the National Assembly are elected for five years by direct vote; senators are elected for six years, by indirect ballot (arts. 45-47).

#### **2. Judiciary**

11. Article 89 of the Constitution establishes the principle of the independence of the judicial branch from the legislative and executive branches. The President of the Republic is the guarantor of the independence of the judiciary; he is assisted in this task by the Judicial Service Commission, over which he presides. Article 90 of the Constitution stipulates that "judges shall obey only the law, and in discharging their duties, shall be protected against any form of pressure that may be detrimental to their free judgement". Management of the careers of members of the judiciary (judges and prosecutors) is the responsibility of the Judicial Service Commission, the composition and functioning of which are established by Organization Act No. 94-012 of 17 February 1994, on the regulations governing the judiciary, as amended and supplemented by Order No. 2006-016.

12. The judiciary includes 53 courts of first instance (*moughataa*) that hear civil cases involving sums of less than 10,000 ouguiyas (approximately US\$ 43), personal law and inheritance; 13 *wilaya* (regional) courts, whose remit includes civil and commercial matters and minor offences; 4 appeal courts, each composed of 7 chambers, including 3 dealing with criminal cases: the indictments chamber, the assize chamber and the criminal chamber. At the top of the hierarchy is the Supreme Court of Justice, the court of cassation, whose members are appointed by the President of the Republic; it is composed of five chambers: civil, social, commercial, administrative and criminal. The Constitutional Court is made up of six judges, and rules on the constitutionality of laws.

13. The courts are under the purview of the Minister of Justice. Article 10 of Order No. 2007-012 of 8 February 2007, on the organization of the judiciary, set up a general inspectorate for judicial and penitentiary administration, under the direct authority of the Minister of Justice. At the time of the delegation's visit, the inspectorate was not yet operational.

14. There is another service under the authority of the Minister of Justice: the prosecution service, i.e., all public prosecutors. It has representatives at each criminal court who institute criminal proceedings and see to it that the law is enforced; they direct preliminary investigations and ensure that judicial decisions are implemented, and they have the right to call upon law enforcement agencies to take action.

### **3. Police and gendarmerie**

15. The National Police reports to the Ministry of the Interior and is responsible for maintaining public order in urban areas. It includes the Department of Territorial Surveillance, the Department of State Security (which deals with migration and counter-terrorism) and the criminal investigation police, all of which are accountable to the Directorate-General of National Security. The work of the criminal investigation police is also subject to oversight by the Public Prosecutor's Office.<sup>1</sup>

16. The senior law enforcement officers are responsible for registering violations of criminal law, collecting evidence and finding the perpetrators; they receive complaints and denunciations (art. 20) and are obliged to inform the public prosecutor without delay of the crimes, misdemeanours and infractions brought to their attention (art. 22).

17. In rural areas, it is the National Gendarmerie (part of the military), under the authority of the Ministry of Defence, that maintains public order and conducts criminal investigations. It is also responsible for conducting criminal inquiries into offences committed by members of the military.

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<sup>1</sup> Article 13 - The senior law enforcement officers and investigators of the criminal investigation police carry out their work under the direction of the public prosecutor. The public prosecutor may thus send them explanations, guidelines or warnings in cases related to their functions.  
Article 14 - The senior law enforcement officers report to the Prosecutor-General of the Court of Appeal and the supervisory mechanism of the indictments chamber concerned.



#### **4. Penitentiary administration**

18. The Penitentiary Services Department is a part of the Ministry of Justice. The penitentiary system in Mauritania is governed by Decree No. 98-078 of 26 October 1998, on the organization and functioning of penitentiaries; Decree No. 70-153 on the internal system within penitentiaries; and the Criminal Code and Code of Criminal Procedure. There are currently 15 prisons in Mauritania: one in each *wilaya*; and a women's prison and a prison for minors in Nouakchott. The number of persons held in facilities run by the Ministry of Justice stood at 1,145 in January 2008. Supervision of the penitentiary administration has been transferred from the Ministry of the Interior to the Ministry of Justice, so as to facilitate the establishment of a penitentiary system geared towards reintegration.

19. Articles 645 to 653 of the Code of Criminal Procedure set out the categories of penitentiaries, the means of enforcement of sentences involving deprivation of liberty, and the conditions for parole.

#### **5. The National Human Rights Commission**

20. The National Human Rights Commission was established and placed under the authority of the Prime Minister by Order No. 2006-015, of 12 July 2006. It is independent and enjoys administrative and financial autonomy. Article 5 of the Order stipulates that it is "assigned the task of considering all situations in which violations of human rights have been reported or brought to its attention, and to undertake all appropriate action in that connection, in cooperation and coordination with the competent authorities". The Commission has not been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

### **B. Legal framework**

#### **1. International obligations**

21. The Islamic Republic of Mauritania has ratified the main international treaties, which, in accordance with article 80 of the Constitution, take precedence over national law.

#### **2. Constitution**

22. Article 10 establishes that the State shall guarantee civil liberties and personal freedoms for all individuals, and emphasizes that liberty can be restricted only by the law.

#### **3. Rules on the functioning of the criminal justice system**

23. Criminal justice in Mauritania is based on French law and the civil law system, in which a balance is struck between inquisitorial and adversarial procedures. During the investigation phase, when an investigating judge is in charge, the procedure is written and secret, but during the trial stage it is oral and public. The investigation procedure generally begins with a preliminary or expedited investigation carried out by the police under the direction and supervision of the prosecutor's office. The judicial investigation is primarily assigned to the investigating judge, and secondarily to the indictments chamber; it is mandatory in criminal

cases and subject to appeal in all cases. The regional courts try misdemeanours or infractions, while felonies are heard by the criminal court, which sits in the Court of Appeal and has a mixed composition (three professional and two lay judges). The second-hearing principle is recognized and judicial review proceedings are the responsibility of the Supreme Court.

24. It should, however, be pointed out that the Criminal Code adopted in 1983<sup>2</sup> (currently in force) draws upon two sources: Islamic law and modern law. Thus, some offences, and certain sentences, are based on sharia. This applies in particular to offences “against Islamic morals and decency” such as heresy, apostasy, atheism, refusal to pray and adultery (Criminal Code, section IV, art. 306 ff.). This also applies to the following sentences: *hadd* (death, amputation and flagellation); *qisas* (retaliation); and *diyah* (blood money) (art. 1, and art. 280 ff.). While *hadd* must be imposed by the judge, *qisas* and *diyah*, which penalize offences against life or physical integrity, are applied at the discretion of victims, their families or clans, who may request that the guilty party be subjected to the same treatment as the victim (*qisas*), or who may accept financial compensation (*diyah*). In the case of some offences (rape and adultery), the means of establishing proof is based on Islamic law as well.

25. The Working Group was informed that *qisas* and *hadd* sentences were sometimes handed down by courts, though they were not executed. Since 1982, a moratorium has been in place, and no death sentences have been carried out. The Working Group also learned that the Criminal Code is now being revised.

#### **4. Detention in the context of criminal procedure**

26. Order No. 2007/036 revising the Code of Criminal Procedure strengthened judicial guarantees for persons deprived of their liberty. It established the presumption of innocence, the adversarial principle and the principle of balance between the parties’ rights, equality before the law and before the court, the protection of victims’ rights, and the separation of the functions of prosecution and trial.

##### **(a) Police custody**

27. Article 57 of the Code of Criminal Procedure limits police custody to cases in which there is serious and corroborating evidence justifying an indictment, and establishes that police custody may last for 48 hours, renewable only once by written authorization of the public prosecutor. However, for certain offences, there are provisions allowing for longer periods of custody.

28. The senior law enforcement officer is obliged to inform persons in police custody of the charges they face and to give them the opportunity to communicate with their families (art. 57). It is prohibited for the officer to abuse them or to hold them in places other than those legally authorized for such custody (art. 58).

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<sup>2</sup> Official Journal of the Islamic Republic of Mauritania, No. 608-609; adopted 9 July 1983; published 29 February 1984; Order No. 83.162.

29. Arbitrary detention is punishable by law (Criminal Code, arts. 319-321), including when it is carried out by the authorities (Criminal Code, arts. 111-119).

**(b) Pretrial detention**

30. Article 138, which governs pretrial detention and establishes how long it may last, stipulates that such detention may be ordered only by the investigating judge when it is justified by the serious nature of the acts in question, or when it is required for the purposes of the investigation. Once a person has been deprived of his or her liberty, the investigating judge is obliged to expedite the procedure; if this is not done, the judge may be held liable (art. 139). The indictments chamber has the obligation of handing down its decision within a week of the Prosecutor-General's submissions.

**5. Access to legal counsel**

31. Access to counsel may be authorized by the prosecutor as from the first extension of police custody (Code of Criminal Procedure, art. 58). Under the same article, persons arrested for offences related to State security or terrorism are not entitled to communicate with counsel during their time in police custody.

32. Article 101 obliges investigating judges to inform any persons brought before them of their right to choose an attorney. Article 6 of the order organizing the judiciary grants legal aid to any person who can prove they have no resources.

**6. Juvenile justice**

33. Order No. 2005-015, on defence of children in criminal matters, calls for the establishment in each district (*moughataa*) of a police station or special police unit for children. Special guarantees are provided for children who have been arrested. Children may be held in police custody for no more than 24 hours, and the senior law enforcement officer must immediately inform the child's parents or legal guardian (art. 101). The right to be seen by a doctor is also set out (art. 102), and access to counsel is obligatory from custody onwards.

34. In addition, articles 60 to 63 of the Criminal Code set out specific measures and extenuating circumstances for minors in conflict with the criminal law.

**II. POSITIVE ASPECTS**

**A. Context of the visit: transition to democracy and the rule of law**

35. The visit to Mauritania by the delegation of the Working Group took place in a context of transition. The new President, Sidi Ould Cheikh Abdallahi, elected on 25 March 2007, had made it a priority to strengthen democracy and restore national unity and the rule of law.

36. Many measures taken by the Government have led to a significant improvement in the human rights situation. This was recognized by the overwhelming majority of the people contacted by the delegation.

## **B. Complete cooperation by the Government**

37. Throughout its stay, the delegation of the Working Group enjoyed the full cooperation of the Government and the authorities with whom it was in contact. It was able to visit all the detention centres and other facilities that it wanted to see, and was able to meet all the detainees that it wished to talk to, in private and without the presence of any officials.

38. The Working Group notes with appreciation that the authorities addressed the most sensitive problems in a frank manner. They admitted the shortcomings of their legal and judicial system and said that they had identified the action to be taken to correct them. It was pointed out that the Government had drawn up a road map aimed not only at strengthening the legal and institutional apparatus, but above all at changing practice and mentalities. The authorities stated that they would take into consideration the recommendations made and, during the visit itself, took steps to remedy some situations that the Working Group brought to their attention. The officials who met with the Working Group nonetheless noted that the country lagged behind considerably, faced enormous challenges and had limited resources. They therefore called for assistance from the international community to support their efforts. The Working Group supports this request, which it considers all the more justified because Mauritania is one of the world's poorest countries.

## **C. Legislative and institutional reforms**

39. As indicated in chapter II, numerous measures have been adopted by the Government to bring the country's legal and institutional framework into line with its regional and international obligations. Among these, the most noteworthy are the strengthening of the protection of rights and freedoms, the reform of the penitentiary system and the establishment of the National Human Rights Commission.

### **1. Strengthening of guarantees for the protection of the rights of persons deprived of their liberty**

40. The Working Group notes with satisfaction that improvements have been made, with the adoption of the new Code of Criminal Procedure, to strengthen the legal regime for the protection of rights and freedoms in the criminal justice system. In particular, persons in police custody have access to counsel and the right to contact their families, the length of police custody and pretrial detention has been shortened, and the rights of the defence have been consolidated. Notwithstanding some shortcomings, this represents a clear improvement over the previous code. The Working Group also welcomes the adoption of the laws on legal aid and on child protection.

### **2. Measures to reform the penitentiary system**

41. The Working Group recognizes that the number of persons deprived of their liberty is not very high in Mauritania, which may indicate that liberty is highly valued and generally respected. It was informed that some non-punitive mechanisms existed and were in use to deal with offences under the Criminal Code, and it welcomed that information. According to the statistics given by the Ministry of Justice, in all the Ministry's penitentiaries there are fewer than 1,200 detainees and convicts. In the three towns visited by the Working Group, which are among the

largest in the country, the Dar Naim local prison held 714 prisoners, including 28 women, 26 minors and about 100 foreigners (513 of the total were in pretrial detention and 201 had been convicted); in Nouadhibou prison there were 115 prisoners, including 42 in pretrial detention; and Rosso prison held 27 prisoners, including 6 in pretrial detention.

42. The Working Group welcomes the transfer of supervision of the penitentiary administration to the Ministry of Justice, with the aim of facilitating the establishment of a penitentiary system geared towards rehabilitation and reintegration.

43. The Working Group also welcomes the establishment of a judge for the enforcement of sentences and the strengthening of supervisory mechanisms for penitentiaries under the new provisions of the Code of Criminal Procedure (arts. 638 and 651),<sup>3</sup> although these had yet to be put into practice.

44. The Working Group also appreciates the fact that, despite an acute lack of human and material resources, efforts have been made to improve detention conditions in prisons. It has also noted that renovation work and the construction of new prisons are under way, in particular in Nouakchott and Nouadhibou.

### **3. Establishment of the National Human Rights Commission**

45. The Working Group welcomes the establishment of the National Human Rights Commission, the diversity and representativeness of its membership and the scope of its mandate. The Working Group considers it particularly important to point out that the Commission has begun carrying out visits to places of detention. For example, on 6 February 2008 it went to the three penitentiaries in Nouakchott, and submitted its observations to the authorities. Apparently, it was further to this visit that measures were taken to end violations of the legal time limits for detention.

46. Among the measures taken, the Working Group would also like to draw attention to the ones intended to improve working conditions for members of the judiciary and to provide them with a status that strengthens their position and protects them from interference.

## **III. SUBJECTS OF CONCERN**

### **A. Guarantees during police custody**

#### **1. Period of custody**

47. While in general terms the length of police custody has been shortened following the revision of the Code of Criminal Procedure, the Working Group considers that custody still exceeds by far the 72 hours generally recommended by international mechanisms. It is stipulated

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<sup>3</sup> “The investigating judge, the judge for the enforcement of sentences, the public prosecutor and the Prosecutor-General of the Court of Appeal shall visit penitentiaries. The prisons are, furthermore, subject to oversight by prison-monitoring commissions, the organization and functions of which shall be established by decree.”

that the 48-hour limit on police custody, renewable once with the written authorization of the public prosecutor, applies only to felonies and misdemeanours under ordinary law, and that in the case of offences against internal or external State security, the time limit for police custody is five days from the arrest, renewable twice for the same period upon the written authorization of the public prosecutor, which comes to a total of 15 days. The delegation from the Working Group was informed that this exception applies to offences related to terrorism as well,<sup>4</sup> and that for cases involving drugs, the authorized period of police custody is 72 hours, renewable twice with the written authorization of the prosecutor. Furthermore, article 57 of the Code of Criminal Procedure stipulates that the time limits do not include days of weekly rest or public holidays, and may be extended by one day for every 100 kilometres travelled when the arrest is carried out far from the location of the competent court.

48. The Working Group notes with concern that during the period of police custody, which, according to the officials interviewed, may extend to 23 days for the most serious crimes, the detainees are not taken before the prosecutor and have no opportunity to challenge the legality of their detention.

49. The Working Group concludes that these time limits, which are not always observed in practice, do not meet international standards, in particular article 9, paragraph 3, of the International Covenant on Civil and Political Rights, to which Mauritania is a party.

50. The delegation from the Working Group further notes that, in practice, police custody is not extended in writing, as required by article 57 of the Code of Criminal Procedure. In most of the police stations visited, the authorities were not in a position to produce the extension authorizations mentioned in the records of the hearings or needed for persons held in custody for more than 48 hours at the time of the visit. Experience has shown that whenever the physical presence of the person in police custody is not required before a legally authorized judge, the extension of police custody becomes a mere formality. It has been established that prosecutors often cover up the fact that people are held beyond the legal limit for custody, and that they also sometimes issue authorizations after the fact.

## **2. Registers and records of arrest**

51. Article 59 of the Code of Criminal Procedure requires that a register, coordinated and initialled by the public prosecutor, be kept at all places where a person may be held in police custody. The register must record the person's identity, the reason for the custody, the time when it started and ended, the length of the interrogation, hours of rest, the physical state and health of the arrested person and the food provided; the register must also bear the signatures of the person who is in custody and the senior law enforcement officer.

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<sup>4</sup> The Act of 9 July 1983 on attacks, conspiracy and other offences against the authority of the State and the integrity of the national territory, which applies to terrorist offences, has been amended by the Counter-Terrorism Act (No. 2005 047) of 26 July 2005.

52. While acknowledging that the adoption of the new Code of Criminal Procedure has produced improvements, the delegation of the Working Group notes that most of the registers that it checked did not mention the time of arrest, the time of release or any information on the extension of police custody. The delegation also noted that entries or changes had been made retroactively in certain registers. The Working Group has concluded that the state of such registers makes it difficult to monitor the legality of the deprivation of liberty.

### **3. Ill-treatment**

53. A large number of detainees informed the delegation that abuse of authority, torture and ill-treatment were commonplace in places where people were held in police custody, and that the criminal investigation police often forced them to admit to the charges brought against them. Such allegations are all the more serious since, according to many of the persons interviewed, it is only in exceptional circumstances that complaints of ill-treatment are investigated.

### **4. Ineffective oversight of police activities**

54. The ineffectiveness of the prosecutor's oversight of police activities in general, and police custody in particular, is a subject of major concern for the Working Group. By law, the prosecutor is responsible for, among other things, ensuring respect for guarantees against ill-treatment, for enforcing the time limits on police custody, for keeping the registers up to date and ensuring that they meet the legal requirements, and for regularly carrying out visits to places where people are held in police custody. The delegation noted that in practice the prosecutors did not carry out such monitoring on a regular and systematic basis.

### **B. Pretrial detention**

55. The Working Group noted that article 138, which sets the time limits for pretrial detention for misdemeanours at four months, renewable once for a maximum of two years, and for felonies at six months to three years, is neither understood nor applied uniformly. In the prisons that were visited, the Working Group noted that detention is extended almost automatically, without notification of the decision to do so, until the maximum time limit is reached. In Nouadhibou, the indictments chamber has interpreted the law in such a way that the time limits are cumulative (six months plus three years) for felonies, without the periodic renewal prescribed by law.<sup>5</sup> The delegation was informed that the Arabic version of article 138 was not clear, and allowed diverging interpretations. The Working Group therefore invites the Supreme Court to take steps to standardize jurisprudence in this area.

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<sup>5</sup> Article 138, last paragraph: "When, after this time limit lapses, it is necessary to extend pretrial detention, the investigating judge may do so ex officio by issuing a reasoned order to that effect, or in response to a reasoned request by the public prosecutor, for a period equal to the initial period."

56. That said, it must be recognized that, except in rare cases, pretrial detention is not excessive. In Nouadhibou prison, for example, of the 130 detainees, only 42 had not yet been tried, including 15 whose trials were currently under way, and the oldest case dated back to 15 May 2006. At Dar Naim prison, while the majority of the detainees were in pretrial detention, only two had been in detention since before 2004.

57. The Working Group noted, however, that certain persons are kept in detention indefinitely because they are unable to pay the *diyyah*, or because the family of the victim rejects financial compensation and demands the application of *qisas*. Detention that may be prolonged without setting a release date violates current international standards.

58. During its visit to Rosso, the delegation of the Working Group also noted that convicted persons did not receive a complete copy of their sentence, which effectively nullifies their right, set out in article 14 of the International Covenant on Civil and Political Rights, to have the guilty verdict and the sentence reviewed by a higher court.

### **C. Access to and assistance from counsel**

59. Under article 58 of the Code of Criminal Procedure, a person in police custody may not contact counsel until the first period of custody has been extended, and access to counsel, limited to 30 minutes, must be authorized by the prosecutor. Furthermore, persons arrested for offences against State security and for terrorism do not have the right to communicate with counsel during the entire duration of custody (from 5 to 23 days).

60. The experience of the Working Group is that access to counsel immediately after arrest is the best protection against abuse. It has also been established that judicial guarantees set out in legislation are only effective if counsel provides assistance during all phases of the criminal procedure, and not only to those who can afford it but whenever it is required in the interest of justice, in particular when persons are deprived of their liberty. This system can only function effectively if the cost of legal aid is covered by the State.

61. While taking note of the legislative provisions introduced in 2007 under the law on the organization of the judiciary with the aim of setting up such a system, the Working Group was informed that legal assistance from a court-appointed attorney, when provided, is mostly ineffective, as it is not remunerated. In Mauritania, most detainees are dependent on legal aid. While persons accused of a crime do receive assistance from a court-appointed attorney, in practice such assistance is provided only during the hearing before the investigating judge and the reading of the judgement; the presence of counsel is mostly a mere formality. In respect of political prisoners, the Working Group was informed that the bar has always organized and provided free defence for all prisoners of conscience.

### **D. Shortcomings in the penitentiary system**

62. As indicated above, the Working Group welcomes the transfer of supervision of penitentiaries to the Ministry of Justice; it considers, however, that this measure is not sufficient, as the staff guarding the prisoners have not been placed under the supervision of that ministry. In



the prisons that it visited, the delegation noted that the wardens and administrators were the only officials of the Ministry of Justice. It further noted that the functions of the administrator were limited to monitoring detainees' criminal sentences. The day-to-day management of the institution remained the responsibility of the head of the prison guards, who along with the prison warders, is under the authority of the Ministry of the Interior. The guards are not trained to respond to the specific needs of persons deprived of their liberty.

63. The Working Group further observed that parole, for which provision is made in the law as a reward for good behaviour, is used only in exceptional cases, and that most prisoners serve their entire sentences without parole. This is due to the fact that applications for parole are considered by a parole board in the Ministry of Justice, and that the preparation of the application requires the services of an attorney, which most prisoners cannot afford. Release on parole is widely considered to be discriminatory and the privilege of the rich, who can afford to hire an attorney.

64. The Working Group is also concerned about detention conditions in the prisons in Nouakchott and Nouadhibou, where, owing to overcrowding, people in pretrial detention are not held separately from convicted prisoners. There are other problems as well, such as restricted access to medical care, and violence among the prisoners. During the visit to Nouakchott women's prison, the delegation of the Working Group noted that the women were guarded by men; it learned that at night the female staff of the Ministry of Justice left the prison and the inmates were left alone with male guards, which is a violation of paragraph 53 of the Standard Minimum Rules for the Treatment of Prisoners.

#### **E. Lack of a legal framework for the detention of foreigners**

65. Mauritania has signed agreements with Spain and the European Union to stem the tide of illegal migrants bound for the Canary Islands and to provide for the repatriation of migrants to their countries of origin. Under this agreement, the authorities must regularly carry out arrests and detain potential immigrants, with a view to returning them to their countries of origin. Most of those arrested are from Mali or Senegal, countries with which Mauritania has concluded agreements allowing their citizens to stay in the country without a visa. The 1964 Aliens Act is now being revised, as it is no longer adapted to the problems currently posed by migration in Mauritania. It does not criminalize attempts to leave the country illegally, which is often the reason given by the authorities for arresting foreigners heading for Europe. Such people are thus arrested and detained without any legal grounds.

66. The delegation of the Working Group visited the migrants' centre in Nouadhibou, which is in fact a former school that has been converted into a detention centre. According to the authorities, this is not a prison, but a "social" centre that houses foreigners for very short periods (a week at most) pending their repatriation. The authorities maintain that the police can only arrest illegal aliens (undocumented, without visas) and persons who are caught in the act of attempting to embark for Europe by sea (shipwrecked persons or those found at sea).

67. For the Working Group, the Nouadhibou migrants' centre is a detention centre, as the persons in it are kept in collective cells that they are not allowed to leave freely. The detention conditions are appalling. The persons interviewed said that they were locked up night and day, that they were not allowed to shower and that they had no access to medical care. Some prisoners informed the delegation that they had been arrested in a room they had rented in Nouadhibou; others maintained that their papers were in order, and that police officers had arrested them downtown, far from the port. A few claimed that their papers had been confiscated by the police.

68. At least in some cases, legal aliens arrested by the police or the gendarmerie and detained without any legal grounds have been repatriated without being able to challenge the legality of their detention or expulsion.

#### **F. Lack of a legal framework for committal to a psychiatric hospital**

69. Regarding committal to a psychiatric hospital, the Working Group was informed that there was no legal basis for the involuntary internment of a person suffering from a psychiatric disorder; in practice, some refer to a French law, Act No. 1838, which dates back to before 1960 and which is no longer applicable in France.

70. The delegation was able to visit the Nouakchott Neuropsychiatric Centre. In the absence of a legal framework, the centre's management "delegates" responsibility for the detention of patients to family members, so that it is the designated family member who "detains" the patient against his or her will; that person must remain with the patient during his or her stay at the hospital. The Working Group was informed that, in general, such stays do not last more than two weeks.

71. According to the information received, there is no provision for a judicial appeal to allow the persons concerned to challenge their committal to a psychiatric institution; in practice, committal is decided jointly by the family and doctors. While the delegation did not witness any abuse during its visit, it does consider that a legal framework for involuntary internment in institutions providing psychiatric treatment needs to be adopted.

#### **G. Judicial branch**

72. Many people pointed out to the delegation of the Working Group that members of the judiciary are not representative of the country's population in respect of ethnic or social origin, language or gender. For example, there is only one female judge. The Arabization of the judicial system in the 1970s also effectively excluded population groups that do not speak Arabic. Additional efforts appear to be needed to bring members of all population groups and women into the judiciary.

73. It was also pointed out to the Working Group that there are certain shortcomings in the training of the judiciary, which can result in a sometimes limited knowledge of procedural rules. As the Inter-Ministerial Committee on Justice noted in 2005, there are shortcomings in the basic training of the judiciary, as it is dominated by theory and does not harmonize the knowledge of

students from different training backgrounds. Specifically, some students are trained in sharia at the Higher Institute of Islamic Studies, while others are trained in law faculties. Apart from the updating of the curricula, the Committee also recommends that the resources required to ensure a solid basis of common, university-level training should be provided, and that efforts should be made to establish bilingualism in the judiciary.

74. During its visit, the delegation of the Working Group noted that the cases of arbitrary detention that it found were mainly the result of dysfunctions in the administration of justice, such as: failure to observe time limits for police custody; failure to observe due process, including the right to have access to counsel; faulty oversight of the police and gendarmerie by judges and prosecutors; corruption; and inconsistent interpretations of sharia.

#### **H. Violations related to the application of sharia rules**

75. The Mauritanian legal and judicial system is formally founded on the rules and standards of sharia, which thus heavily influences it. The legal framework for detention as applied in Mauritania thus has certain shortcomings in respect of international principles and standards, particularly with regard to the importance of proof and the prohibition of sex-based discrimination. While welcoming the fact that the corporal punishment permitted under the Criminal Code is no longer practised, the Working Group should like to emphasize that it should be replaced by clearly defined prison sentences so as to avoid situations in which detention is virtually endless if detainees find it impossible to pay compensation and are thus not released.

76. In this context, the Working Group is also concerned about persistent allegations that sharia rules on adultery are often used to exert pressure on women who claim that they have been sexually abused or raped. According to those interviewed, if women attempt to file complaints for such acts of violence, the accused often threaten to denounce them for adultery. The women may thus be doubly victimized.

77. Additionally, because of the sometimes vague wording, articles based on sharia, in particular article 306 on “public offences against Islamic morals and decency”, run the risk of being at variance with international standards, in particular the principle of legality, which is required in order to exclude the possibility that an act may be retroactively classed as criminal (see article 15 of the International Covenant on Civil and Political Rights). Several cases that could fall into this category were brought to the attention of the Working Group, including some related to the possession and sale of alcohol. One case involved a woman who was in possession of a condom; this was interpreted as a public attack on Islamic morals and decency, and she was sentenced to two years in prison under article 306.

#### **I. Counter-Terrorism Act**

78. The Working Group noted that the definition of terrorism in article 3 of the Counter-Terrorism Act (Act No. 2005-047) of 26 July 2005, was imprecise, especially in the reference to “destabilizing or destroying society’s fundamental values and the political, constitutional, economic or social structures of the nation”. This wording poses problems. On the one hand it may violate the principle of legality set out in article 15 of the International Covenant on Civil and Political Rights, and on the other hand this rather vague description could be used to treat mere political opposition as a criminal act.

## **J. Corruption**

79. Another factor of concern that was brought to the attention of the Working Group is the extent of corruption in the administration of justice. Many of those interviewed saw this as a sign of discrimination against the poor and certain population groups; it can also lead to arbitrary detention.

80. In 2005 the Inter-Ministerial Committee on Justice concluded that the judicial branch and the criminal investigation police were affected by corruption (paras. 67 and 73 of its report). Following its report, the Government drew up a global strategy to combat corruption in cooperation with UNDP. Based on the results of a study carried out in 2007 on the impact of corruption on the justice sector, a national integrity campaign has been launched; it will include the drafting in 2008 of a sectoral plan of action to combat corruption.

## **K. Discrimination**

81. The Working Group noted that social inequality and racial disparities sometimes undermine the principle of equality before the law, which is a matter of concern in a country with as much ethnic and cultural diversity as Mauritania.<sup>6</sup> Many of the people interviewed by the delegation maintained that it was above all the members of certain population groups who were in detention, and that others, protected by their families or ethnic groups, were able to avoid it. In the absence of statistics on the ethnic origin of detainees, the Working Group would like to recall that equality of all persons before the law without any discrimination is a pillar of international law. This means that, in all circumstances, laws must be interpreted in a strictly non-discriminatory manner.

82. The delegation of the Working Group also heard many detainees allege that they had not had access to interpreters during interrogations, and that they had been forced to sign statements that they could not understand. This was the case for several foreigners, who account for many of the inmates at the prison in Nouadhibou (of 130 persons held there, 64 were foreigners, mainly from Mali, Senegal and Guinea). However, some Mauritanian nationals who were French-speaking or illiterate and thus did not understand Hassanya were forced to sign statements written in that language, and non-French-speaking persons were forced to sign statements written in French. The police confirmed that there were practically no interpreters, but pointed out that there were generally French-speaking officers who understood Hassanya at police stations of a certain size. Problems related to interpretation were also reported in respect of court hearings. In this context, the Working Group would like to draw attention to article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights.

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<sup>6</sup> See the forthcoming report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on his mission to Mauritania.

83. The Working Group is aware that the reforms undertaken require significant efforts and economic and financial resources. In drawing up its observations on the subjects of concern noted during the mission, it has taken into consideration the difficulties faced by the Government.

#### IV. CONCLUSIONS

84. The Working Group welcomes the many positive measures taken by the Government which have led to a significant improvement in the situation, as acknowledged by the overwhelming majority of the persons contacted by the Working Group. Many of the persons interviewed pointed to a genuine political will to build democracy and to strengthen the rule of law, in particularly difficult economic circumstances.

85. At the same time, the Working Group notes some shortcomings, in particular related to access to counsel and interpretations of the rules of sharia in the Criminal Code and the new Code of Criminal Procedure, which must be corrected to ensure observance of international standards and to avoid any arbitrary detention.

86. Nevertheless, the Working Group remains concerned about the gap between practice and the laws in force. The credibility of a democratic Government is dependent upon its ability to give effect to the guarantees enshrined in law.

87. In a number of areas, laws that comply with international standards have been adopted, but they have not been translated into practical changes. The main concern in this respect is the ineffectiveness of the prosecutor's oversight of police activity in general, and police custody in particular. The Working Group is concerned about the difficulties related to access to counsel and legal aid, which may have a negative impact on respect for the adversarial principle and the principle of equality of arms.

88. Furthermore, the Working Group is concerned about the overall perception that it is first and foremost the members of certain population groups who are affected by detention, and that other people, who are protected by their families or their ethnic groups, are able to avoid it. The Working Group would like to emphasize that the credibility of the justice system is dependent upon the application of the law in a non-discriminatory manner to all, and that the authorities should make special efforts to combat any inequality and, by ensuring transparency in the administration of justice, avoid any semblance of discrimination.

#### V. RECOMMENDATIONS

89. **In the light of the foregoing and the observations made, the Mauritanian Government is invited to take the measures listed below in the following nine areas.**

##### **A. Detention under criminal law**

**(a) Amend the legislation, or stipulate in the jurisprudence of the Supreme Court of Justice, the time limits for police custody and pretrial detention and the conditions for their extension, so as to remove any ambiguity;**

**(b) Take the measures necessary to strengthen and make effective the oversight of police activities by prosecutors;**

**(c) Ensure that the mechanisms established by the law<sup>7</sup> to ensure monitoring and supervision of places of detention are set up as soon as possible and ensure independent oversight of places of detention, in particular by carrying out unannounced visits to them. The Working Group encourages the Islamic Republic of Mauritania to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**

**(d) Assign to an independent and impartial body with effective authority and the power to initiate inquiries promptly the task of dealing with complaints of actions by State agents, in particular the police;**

**(e) Explicitly establish in the law or in the jurisprudence of the Supreme Court that an admission of guilt may in no circumstances constitute the sole proof with which to establish guilt;**

**(f) Replace corporal punishment, as provided for in the Criminal Code, with clearly defined prison sentences so as to avoid situations in which detention is virtually endless if detainees find it impossible to pay compensation and are thus not released;**

**(g) Oblige police officers to inform persons in police custody of all their rights, and monitor implementation of this obligation;**

**(h) Improve detention conditions at police stations.**

## **B. Defence**

**(a) Review the legislation, and above all legal practice, to guarantee an effective and high-quality defence, so as to ensure full respect for international obligations regarding the presumption of innocence, the adversarial principle and equality of arms;**

**(b) Revise article 58 of the Code of Criminal Procedure to ensure the active presence of counsel from the very start of police custody, without the need for the prior consent of the prosecutor, for all detainees without exception, including persons suspected of committing acts against State security;**

**(c) Implement the legal aid mechanism as soon as possible to ensure an effective defence for all persons accused of offences punishable by imprisonment, and ensure appropriate remuneration for attorneys assigned to provide such aid;**

**(d) Facilitate in-service training of attorneys and, in particular, make them aware of international standards of human rights and due process, and support ethical training for attorneys.**

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<sup>7</sup> Article 10 of Order No. 2007-012 of 8 February 2007, on the organization of the judiciary; article 638 of the Code of Criminal Procedure, which provides for the post of judge for the enforcement of sentences; and article 651 on visits by the prosecutor, the investigating judge and the prison monitoring commissions.

### **C. Sharia rules**

- (a) Reformulate article 306 of the Criminal Code so that it is more precise, by setting out the acts that are punishable under this article;**
- (b) Amend the legislation to ensure that the prohibition of discrimination against women is respected, and to prevent women who are the victims of acts of violence from being accused of adultery if they file complaints against the perpetrators of such acts.**

### **D. Judicial branch**

- (a) Take measures to facilitate the recruitment of women and members of underrepresented communities in the administration of justice, so that the diversity of society is reflected;**
- (b) Continue efforts already undertaken to ensure the integrity of the judiciary;**
- (c) Update training programmes; provide the resources necessary to ensure a solid basis for common university training, and introduce bilingualism into the judiciary;**
- (d) Make the members of the judiciary aware of the role they play in overseeing the criminal police and the penitentiaries.**

### **E. Penitentiary system**

- (a) Ensure a genuine separation of responsibilities between bodies assigned the task of investigation and those responsible for detaining suspects;**
- (b) Supplement the reform of the penitentiary administration by establishing a specialized corps of prison guards;**
- (c) Implement the provisions contained in the legislation on parole, and ensure that all detainees have effective access to this mechanism;**
- (d) Inform all detainees of the procedure for applying for parole by distributing brochures or using radio programmes to explain the procedures and the relevant criteria;**
- (e) Continue efforts to improve detention conditions in prisons; separate categories of detainees, in particular those awaiting trial from those who have been convicted;**
- (f) Ensure that all sentences are communicated in writing.**

### **F. Detention of migrants**

- (a) Provide a legal framework for pretrial detention in keeping with the relevant international standards;**
- (b) Avoid detention of migrants where possible. When such detention is unavoidable, ensure that detention conditions meet international standards;**

**(c) Ensure that any person detained under the migration law has an effective legal remedy enabling them to challenge the legality of administrative decisions regarding detention, expulsion and refoulement;**

**(d) Extend, in practice, the right to assistance from court-appointed counsel to foreigners detained with a view to their expulsion or refoulement.**

#### **G. Training**

**(a) Raise awareness of human rights among all those involved in the field of criminal justice;**

**(b) Hold in-service training courses for police officers, gendarmes, judges and prosecutors;**

**(c) Support bilingualism, or even multilingualism, among all those involved in the field of criminal justice;**

**(d) Ensure the constant updating of study programmes to reflect the latest developments in the jurisprudence of international bodies.**

#### **H. Detention in the Neuropsychiatric centre**

**(a) Establish a legal framework to avoid situations of arbitrary detention and to protect doctors who decide that a person should be detained;**

**(b) Take measures to guarantee that any person who has been involuntarily interned has a legal remedy to challenge the legality of the decision to intern them in a psychiatric institution, and establish a regular review procedure to determine whether the involuntary internment should continue.**

#### **I. Discrimination and corruption**

**(a) Make it part of normal procedure for members of the judiciary to declare their assets when first appointed, and strengthen oversight of disciplinary action and penalties;**

**(b) Adopt a code of ethics for all the legal professions and the members of the judiciary, and establish mechanisms to ensure respect for such codes so as to restore the public's trust in the justice system;**

**(c) Plan for the adoption of rules on incompatibility, obliging members of the judiciary to recuse themselves when they are linked by family or tribal ties to the attorney of one of the parties;**

**(d) Ensure access to interpretation services at all stages of the criminal procedure, and ensure that any person in detention is informed of their rights;**



**(e) Take steps to combat discrimination by following the recommendations made in the forthcoming report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Mauritania.**

**90. The Working Group would like its recommendations to be taken into consideration in the reform process undertaken by the Government of the Islamic Republic of Mauritania.**

**91. The Working Group urges the international community and the Office of the United Nations High Commissioner for Human Rights to provide the technical and financial support required to strengthen Mauritania's national capacities in the field of human rights.**

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