**Mauritania**

**Civil & Political Rights**



Shadow Report on Mauritania submitted by

**Geneva International Centre** for **Justice (GICJ)**

to the

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# Introduction

1. Geneva International Centre for Justice (GICJ) is pleased to offer this submission to the Human Rights Committee (the Committee) during its 126th session, taking place from 1 to 26 July 2019, as a contribution toward the second periodic review of the Islamic Republic of Mauritania, and in response to the State party report (CCPR/C/MRT/2). We hope the information will prove useful to the Committee in the development of its Concluding Observations to the country.

# Background

1. Mauritania signed and ratified the International Covenant on Civil and Political Rights (ICCPR) on 17 November 2004. However, the State has reservations to articles 18 and 23.4 of the ICCPR, and did not ratify either the first optional Protocol to the Covenant that gives the Committee competence to examine individual complaints or the second optional Protocol to the Covenant on the abolition of the death penalty with regard to States who have accepted the Protocol.
2. Articles 18 and 23.4 of the ICCPR establish, respectively, the recognition of the principle that both parents have common responsibilities for the upbringing and development of the child and the promotion of international cooperation to the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children. The State has declared in its report that its reservations to articles 18 and 23.4 of the ICCPR are necessary since they are contrary to the provisions of Sharia law, the source of Mauritanian Law, in accordance to the Constitution.
3. Mauritania is a country where the White Maure, or Arab-Berbers, are a majority at the State, business and the faith community levels.[[1]](#footnote-1),[[2]](#footnote-2) Historically, Mauritania has carried out slavery-related practices against the so-called Harratines, or Black Maure. Even though a law was approved in 2015 regarding the prohibition of slavery and discrimination in Mauritania, this law is far from being fully implemented and so slavery and discrimination still very present in the country.
4. Mauritanian laws impose the death penalty for a broad range of offenses, including blasphemy, adultery, and homosexuality, that will be developed below.
5. In addition, the so-called *passif humanitaire* that took place between 1989 and 1991 in the country, a period in which serious human rights violations where committed due to the inter-ethnic conflict in the country, is still unresolved. State agents committed serious crimes and human rights violation. The Government has not succeeded in solving the historical conflict and still today Mauritanians are living with the consequences, which does not allow full national reconciliation between communities.

# Mauritania’s Obligations Under the Convention

## Impunity and past human rights violations (arts. 2, 6, 7, 14)

1. As previously mentioned, human rights violations and International Humanitarian Law violations where committed in the period between 1989 and 1991 in Mauritania due to the inter-ethnic conflict that the country went through. As of today, in 2019, these violations still have not been properly investigated by the Mauritanian Government, and so the perpetrators still have not been made accountable.
2. The lack of prosecutions is in part due to the existence of Law No. 93-23 of 14 June 1993 granting amnesty to the members of the army and security forces having committed grave acts and massive human rights violations, in particular, discrimination for ethnic reasons, torture, illegal detention, extrajudicial executions and mass expulsions of black Mauritanians.[[3]](#footnote-3)
3. Even though different UN bodies, including the Human Rights Committee, have reiterated the need for the Mauritanian Government to engage in a serious investigation regarding the crimes committed, the State party has not address the issue in its most recent report presented to the Human Rights Committee, which illustrates its lack of will to prosecute those responsible for such serious human rights violations.[[4]](#footnote-4) No official report concerning these events has been published by the Government until today, as indicated by Mutuma Ruteere, special rapporteur for contemporary forms of racism, racial discrimination, xenophobia and intolerance.
4. Additional Protocol II to the Geneva Conventions, relating to non-international armed conflicts, establishes in its article 6(5) that at “the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”.
5. However, customary IHL excludes from the benefit of amnesty people who, in the framework of a non-international armed conflict, are suspected or accused of war crimes or who have been condemned for such crimes.[[5]](#footnote-5)
6. Additionally, several regional courts have concluded that amnesties that preclude the investigation and prosecution of war crimes as well as serious human rights violations are incompatible with the obligation of States to investigate acts constituting crimes in international law and the grave violations of International Human Rights Law that do not permit any derogation.[[6]](#footnote-6)
7. Moreover, the African Commission on Human Rights and Peoples Rights has already held Mauritanian authorities responsible for such crimes in 2000. The Commission had recommended to the Government the opening of an independent enquiry to hold accountable the perpetrators of horrific acts, to ensure the repatriation and reintegration of deported people, and to provide reparation to the victims as well as to eradicate slavery.[[7]](#footnote-7)
8. Oumar Ould Beibacar, ex-colonel of the Garde nationale, has been under judicial control for three years now and faces accusations under the Law relating to the fight against terrorism only because, in November 2015, he denounced the authorities’ response to the atrocities committed during the so called *passif humanitaire*. Beibacar has declared that the grave repercussions he suffered are due to him being one of the rare Beydanes, and an army official as well, asking the authorities to exert more efforts to recognize and address the summary executions of Black Maures.
9. GICJ believes that there must be a balance between the aim of achieving peace and the fight against impunity. The State of Mauritania must Repeal Act No.93-23 of 14 June 1993 granting amnesty in respect of the events that took place in the country between 1989 and 1991, establish the historical truth and provide proper reparation to the victims or their dependents.

## Non-discrimination and minorities rights (arts. 2, 25, 26, 27)

1. Mauritanian Constitution recognizes in its article 1(2) that the Republic should ensure the equality of all citizens before the Law.[[8]](#footnote-8) However, the reality shows that the Harratine community still faces discrimination because of their slave ancestry.
2. It is difficult to know exactly how many people are still reduced to slavery in Mauritania because the Government refuses to carry out a deep investigation regarding the nature and extent of the practice of slavery in the country. However, a large number of local members of civil society have been denouncing the phenomenon for years, including physical, psychological and sexual violence against people reduced to slavery.
3. Harratines face discrimination in land ownership as well as access to resources and services such as water, food, employment, education, housing, and health care.
4. The Senegal River Valley is one of the most important systems of agricultural production in Mauritania. In 1983, the entire system of land rights was reformed allowing exploitation by White Maures of lands traditionally belonging to Harratines. The consequence was a situation of “land slavery” where prior Harratine owners lost ownership of land and starting to work for the new White Maure owners under unhuman conditions. This exploitation worsened during the *passif humanitaire* when thousands of Harratines were sent to Senegal, which encouraged the confiscation of their lands. This situation, which still exists today, established the basis of inequality in access to land and other resources.
5. The Government of Mauritania has exposed in its response to the list of issues, the prosecutions made by the Government against individuals who have violated article 11 of Law No. 2018-023. Regarding the case RP101/Golgol, the defendant has been condemned for discrimination in the process of procuring materials for a local development association. However, while the Government explains that this discrimination was based in the slave condition of the worker, it seems that the investigation did not go further in examining the existence of slavery, rather the authorities were content to condemn the person only on the basis of discrimination under Law No. 2018-023. This case shows the Government’s lack of respect for international standards and national laws regarding the prohibition of slavery.
6. In 2008, refugees began returning to Mauritania from Senegal within the framework of a tripartite agreement signed between Senegal, Mauritania and the UNHCR. The UNHCR was in charge of delivering a document authorizing the returnees to obtain a national identity card in Mauritania. In March 2011, Mauritanian authorities conducted a national census. The census was carried out in two steps. First, people had to submit several documents and information, including a national identity card, the numbers of national identification of their parents, and either a passport or an old birth certificate. Two years after the process had begun, the authorities announced that in order to register the children, parents had to present a marriage certificate. The Special Rapporteur about extreme poverty and human rights, Philip Alston, during his visit to Mauritania in 2016, said that this system presents particular problems for the Harratines because the majority of their parents and grandparents have never been registered or the parents did not have civil documentation of their marriage, and because of that they could not obtain the nationality. In summary, the exigences of this process were clearly discriminatory and led a big number of Mauritanians being excluded from rights of citizenship and they remain stateless.
7. In regard to the rights of minorities, we are deeply concerned about the fact that Harratines are not even recognized as a separate ethnic minority group while the State of Mauritania recognizes other ethnic minorities like the Peulh, Toucouleur, Soninké, and Wolof. This situation makes it difficult to address the issues of discrimination based on ethnicity that are still facing the country. Moreover, their identity is systematically denied. Their cultural practices, such as traditional music, are being assimilated into the majority culture and Arabic is the only official language despite the number of speakers of others languages such as Soninke, Wolof and Pular. These are violations of their rights as a minority. All this approach regarding Harratines is part of a political strategy to create a bigger ethnic majority.

## Equality between men and women, and discrimination against women (arts. 2, 3, 23, 25, 26)

1. We welcome the advancements made by the Government in regard to equality between men and women. However, concerning representation in political life we regret that the plans and actions of the Government did not take into account the specific discrimination faced by Harratine women.
2. Inequalities in Mauritania still are present in all sectors of the society, such as education, justice and health. For example, as pointed out by the CEDAW, the participation of women in the labor market is very low. [[9]](#footnote-9) Moreover, women, especially those belonging to ethnic minorities, are under-represented in decision-making positions in both the public and private sectors.

## Right to life and discrimination in Penal Law (arts. 6, 2, 25, 26)

1. The death penalty is still applied to a broad range of offences, including murder from a mother to her child[[10]](#footnote-10), murder between people from the same religion[[11]](#footnote-11), rape[[12]](#footnote-12), blasphemy[[13]](#footnote-13), adultery[[14]](#footnote-14), homosexual relationships[[15]](#footnote-15), etc.
2. GICJ is deeply concern about these provisions of the Mauritanian Penal Code. We regret the amendment of art. 306, paragraph 4of the Penal Code, adopted by the parliament on 27 April 2018, with the aim of increasing the penalty for blasphemy. While the old text of the article established that any Muslim guilty of blasphemy, either by word or action, would be allowed to regret the acts within 3 days, the new text does not allow this possibility. The death penalty is now the only option.
3. The State said in its responses to the list of issues that the death penalty applied only to the gravest crimes. However, blasphemy is not considered by the international community as a grave crime. Therefore, the provision of art. 306, paragraph 4 should be abolished by the State.
4. The State claims to provide protection against discrimination against women; however, art. 278 of the Penal Code provides that the death penalty will apply to a mother who murders her child, but not to a father who murders his child. This is a clear violation of the right to equality and non-discrimination.
5. Art. 306 of the Penal Code on the crime of adultery is also discriminatory because it provides for different means of proof depending if the alleged perpetrator is a man or a woman. If the alleged perpetrator is a man, the required evidence is the testimony of four witness or the confession of the man, while if the alleged perpetrator is a woman, the pregnancy of the woman is sufficient for determining guilt.
6. Regarding art. 309 of the Penal Code on the crime of rape, if the perpetrator of a rape is married, the penalty is death, while for a single person the penalty is forced labor and, in some cases, flagellation. There is no justification for such a difference in the penalty for an act only based in the marital status of the perpetrator. This provision is discriminatory since a high proportion of perpetrators of rape are men, which means that single men are less dissuaded by the Penal Code than non-married man. Thus, the provision puts women at a disadvantage and in a vulnerable situation.

## Prohibition of torture and of cruel, inhuman or degrading treatment and treatment of persons deprived of their liberty (arts. 6, 7, 10)

1. The use of torture has declined since the 1990s, as indicated by the special rapporteur on torture and inhuman or degrading treatment in 2017. Nevertheless, national NGOs reported during the 64th session of the Committee against Torture that torture is still being used against detainees and people arrested because of political reasons.
2. The use of torture takes place during arrest, transport to the place of detention, and generally during police custody. The use of forced confessions is also a common practice as an investigation method.
3. A variety of groups are victims of torture and inhuman treatment. From the detained opposing resistance to authority, during the detention, until migrants or ethnic minorities during identity controls, as well as anti-slavery activist from the IRA group.
4. The perpetrators of these practices are members of national police, gendarmerie, security forces as well as the so-called *officiers de police judiciaire* in charge of monitoring infractions to Penal Law and finding evidence.[[16]](#footnote-16)

## Refugees, asylum seekers, stateless persons and freedom of movement (arts. 7, 12, 13, 16, 26)

1. The State did not provide clear information about the Status of the asylum bill, which should contain a concrete procedure for seeking asylum in the country.
2. Regarding returnees from Senegal that were forcedly displaced because of political matters and their ethnical origin, who have been victims of torture and unhuman treatment, arbitrary detentions, etc. during the *passif humanitaire*, we consider that there is still a lot of work to do to reintegrate these people into Mauritanian society. The level of ongoing discrimination against Harratine and other minorities demonstrates the need for a real investigation to hold the perpetrators of discriminatory crimes accountable.
3. The Committee recommended to the Government of Mauritania to work toward an agreement with Mali similar to the “Accord Tripartide” signed between Mauritania and Senegal, in order to better satisfy the needs of a vast number of migrants fleeing the violence they are facing in Mali. The Government of Mauritania did not say anything in its report regarding this issue.
4. The Government of Mauritania did not address the issue of stateless people. As mentioned, below, the census process carried out by the Government in 2008 let returnees and families from rural areas without recognized citizenship.

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# Recommendation

1. Geneva International Centre for Justice (GICJ) believes the Human Rights Committee can play a crucial role in encouraging the Mauritanian government to increase its efforts to address discrimination, achieve justice for the victims of human rights violations, and work toward national reconciliation for the harms caused during the *passif humanitaire*. In particular, we offer the following specific recommendations. It is our hope that the Committee will address these recommendations to Mauritania and incorporate them into its concluding observations report.
2. GICJ requests the Committee to encourage Mauritania to do the following:
3. Ensure full implementation of the international conventions ratified by the Country, without any reservation.
4. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty.
5. Amend arts. 278, 280, 306, 307, 308, 353 and 354 of the Penal Code in order to abolish the death penalty and remove discriminatory provisions based on gender and religion.
6. Abolish Law No. 93-23 of 14 June 1993 granting amnesty to the members of the army and security forces who committed grave acts and massive human rights violations.
7. Establish a judicial investigation into the crimes committed during the *passif humanitaire* in order to hold accountable those responsible, grant compensation to the victims or their families and promote national reconciliation.
8. Recognize Harratines as an ethnic minority and ensure specific actions protecting against discrimination of this community, including a multi-perspective approach incorporating both ethnicity and gender.
9. Avoid assimilationist politics towards Harratines and develop policies aiming to recognize their history, cultural particularities and patrimony.
10. Conduct a national study about slavery to investigate the causes, nature and scale of the phenomenon in the country. Once the study concludes, carry out procedures to hold responsible the individuals engaging in this forbidden practice.
11. Stop persecuting human rights defenders who speak -out about the issue of slavery in the country.
12. Provide gender-based training to State actors.
13. Provide training to police and security forces about the use of torture and other forms of inhuman treatment.
14. Ensure the drafting of a law on asylum, including procedures to seek asylum, designating national authorities in charge of reviewing asylum applications, and rights for asylum seekers that considers their specific vulnerabilities.
15. Sign an agreement with the Government of Mali to properly address the issue of Malian refugees.
16. Conduct a national study about the presence of stateless people in remote areas of the country and ensure access to citizenship for those who are in this situation.



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