

HUMAN RIGHTS WATCH

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V. Appendix I: Letter to Minister of Justice Brahim Daddah and Minister of Interior Ahmedou Ould Abdallah

August 11, 2017

His Excellency Brahim Daddah
Minister of Justice

His Excellency Ahmedou Ould Abdallah
Minister of Interior

Dear Mr. Ministers,

I would like to thank you again for the welcome our delegation received when they traveled to Mauritania in March of this year. I am writing to provide you a summary of our interim findings and a series of questions, and invite you to respond to them. We will reflect all pertinent information that we receive from you by September 11, 2017 in our public findings. We would welcome the opportunity to continue this process of engagement and to meet again when we return to Mauritania.

We salute Mauritania's ratification of the major human rights treaties, its engagement with human rights mechanisms and special procedures, and the freedom that our delegation experienced to conduct our mission without obstacles.

However, we are concerned by restrictions imposed on civil society groups and individuals that campaign on issues that are politically sensitive, such as the *passif humanitaire*, slavery, and the national ID card registration process. In many cases, these restrictions appear to violate Mauritania's obligations under international human rights treaties that it has ratified.

The Mauritanian authorities do not dispute that state officials carried out deportations, arbitrary detention, torture, and extrajudicial killings of Afro-Mauritians (the period known as *le passif humanitaire*) between 1989 and 1991. According to our information, authorities have never made public the 1993 amnesty law covering this period, and no senior officials have been held criminally accountable for the abuses perpetrated during it.

Victims' advocacy groups dissatisfied with both the amnesty law and the compensation scheme implemented by the government told Human Rights Watch that the government has obstructed their efforts to campaign for justice and accountability, including by breaking up demonstrations and refusing authorization for events.

Retired Colonel Oumar Ould Beibacar told Human Rights Watch that because of his criticism of the authorities' response to the *passif humanitaire*, he is under investigation for terrorism offenses, and has been under a judicial control order that prohibits him from leaving the capital, Nouakchott, since December 2015.

SOS-Esclaves and the Initiative for the Resurgence of the Abolitionist Movement (IRAM) are the country's two most prominent anti-slavery organizations. Whereas SOS-Esclaves is a registered civil society organization, the authorities have rejected IRAM's application for formal registration. In explaining this decision, both of you stated to us that that the organization "divides national unity," and conducts itself both as a nongovernmental association and as a political party, and must choose between the two. "Dividing national unity" was the reason that they provided us for the government's refusal to recognize Touche Pas à Ma Nationalité (TPMN), an association that was founded in response to a 2011 census and a subsequent national registration process, which TPMN portrays as denying black Mauritians citizenship rights.

Under the 1964 law on associations, the Interior Ministry has the power to approve authorization requests from civil society organizations and to revoke the authorization of organizations that engage in "anti-national propaganda," or whose work "exercises an unwelcome influence on the minds of the people." A draft law intended to repeal and replace the 1964 law remains under consideration, having been approved by the Council of Ministers in 2016. If passed, the draft law will require that organizations submit

significantly more information to the Interior Ministry and to other authorizing authorities at regional and district level.

Senior members of IRAM appear to have been subjected to unfair trials that resulted in lengthy prison sentences, and there are credible allegations that some have endured torture. Abdallahi Saleck and Moussa Bilal Biram, two of the thirteen IRAM members jailed in August 2016, having been charged with involvement in the violent unrest in Nouakchott in June 2016, remain in prison. The men's lawyers and some of those convicted alongside them but subsequently released on appeal told Human Rights Watch that torture marks were visible on Saleh and Biram when they were brought before a prosecutor in the early hours of July 12. At no stage, according to our information, did the judiciary initiate any investigation into these torture allegations. Mauritania passed anti-torture legislation in 2015, which guarantees detainees the right to have access to a lawyer from the moment of their detention. The case highlighted tensions between this new law and Mauritania's code of criminal procedure, which prosecutors can invoke to deny detainees' access to lawyers in cases pertaining to national security and terrorism, and which they can use to deny defendants' their right to have a judge examine the lawfulness of their detention without delay by classifying their alleged offenses as *délits flagrants*.

Members of the 25 February Movement, a protest movement that emerged in February 2011, told Human Rights Watch that they have been the subject of government repression and harassment in retribution for their criticism of the authorities. Cheikh Baye Ould Cheikh Mohamed, a journalist and a member of the 25th February Movement received a three-year sentence for "offending public authorities, violence and material aggression" for throwing his shoe, in an act of protest, at a government minister who was speaking at a press conference about the price of food and gasoline. Cheikh Mohamed told Human Rights Watch that immediately after his conviction he was driven 250 kilometers overnight to a prison in Aleg, with hands cuffed behind his back and his legs shackled. He said that authorities subjected him to 10 days in solitary confinement in a windowless cell in Aleg prison, with his hands cuffed behind his back. His sentence was reduced on appeal.

We would welcome your comments on any of the preceding. We would also appreciate your responses to the following questions, so we can reflect them in our final report:

- The draft law on associations will, if passed and implemented, divide civil society associations into three categories: national, regional (wilaya), and district (mouqata'a). Will an organization be able to work at all three levels and, if so, would they require three separate authorizations? Would the Interior Ministry still approve or deny requests for legal status from associations working at the national level? Would the relevant regional and district authorities decide on such requests from organizations working on issues within their jurisdiction?
- The Initiative for the Resurgence of the Abolitionist Movement (IRAM), Touche pas à ma Nationalité, and Le collectif des veuves des victimes militaires et civiles des événements de 1989 – 1991 all state that they have applied for legal recognition and been refused. Is this accurate? If so, how can the refusal to allow these organizations to formally register as associations be reconciled with Mauritania's obligation to respect the right of freedom of association, as outlined in article 22 of the International Covenant on Civil and Political Rights (ICCPR)?
- Authorities informed us that there is widely available video evidence that shows members of IRAM involved in violence against the security forces during the unrest that broke out in Nouakchott on June 29, 2016. We would welcome copies of this material in order that we can assess the veracity of these claims and IRAM's counterclaims that there is no evidence of their members being involved in such violence.
- How can the authorities reconcile the prosecution of Oumar Ould Beibacar with its obligation to respect the right to freedom of expression, as outlined in article 21 of the ICCPR? Is Beibacar still under a judicial control order, and, if so, what is the legal basis for the length of the order exceeding the maximum period of 10 months for which the law provides.
- Do the authorities plan to introduce amendments to articles 57 and 58 of the code of criminal procedure to ensure consistency with Mauritania's 2015 anti-torture law, and ensure that all detainees have the right to a lawyer from the beginning of any period of detention? In view of the fact that the torture law is the newer and

more specific law, what steps, if any, have the authorities taken to inform police, prosecutors, and judges of its supremacy over the code of criminal procedure with regard to the right of access to a lawyer?

- How does Mauritania reconcile laws that provide for the death penalty for blasphemy with its ratification of the ICCPR, article 6 of which states that countries that have not abolished the death penalty should reserve it “only for the most serious crimes”?

We look forward to receiving responses to any of these findings or recommendations and will reflect all pertinent information that we receive by September 11, 2017 in our public reporting.

We would also welcome the opportunity to engage again with the government of Mauritania to discuss our findings and recommendations and we will be available for meetings prior to the release of our report.

I look forward to receiving a response at your earliest convenience.

Yours sincerely,

Sarah Leah Whitson
Executive Director
Middle East and North Africa
Human Rights Watch

VI. Appendix II: Mauritania Ministry of Justice Response to Human Rights Watch (English Translation)

The Islamic Republic of Mauritania

Honor Brotherhood Justice

Ministry of Justice

Nouakchott, 27 OCT 2017

The Minister

To Mrs. Sarah Leah Whitson
Middle East and North African Division
Human Rights Watch

Reference: Your Letter Dated 11 August 2017

In response to your letter referenced above, which is controversial due to its touching on several issues related to baseless claims about human rights violations and the disrespect for freedoms in Mauritania, in the interests of addressing all of the observations and questions posed by this letter I would inform you of the following:

We do not understand your claimed feelings of concern towards the restriction of freedoms in Mauritania, at a time when the country is experiencing increasing growth and prosperity in the expression and practice of freedoms, a fact attested to by all, with Mauritania playing a pioneering role in the regional gatherings to which it is affiliated, lauded by international rights organizations. The claims that you have tirelessly repeated are non-existent, as there are no restrictions on civil society or its activities so long as their conduct and expression are consistent with the objective legal and procedural framework. The facts have been misconstrued in all of the cases that you have referred to.

The issue of *passif humanitaire* has been dealt with and settled completely to the satisfaction of patriotic Mauritians in accordance with those traditions of tolerance and

wisdom which have shaped the Mauritanian people over the ages and helped them avoid the severe consequences that some agitators, who would sell their conscience for a few dirhams, still aspire to and work towards at the expense of the diversity, unity and solidarity of the Mauritanian people. It is notable, unfortunately, that you are hung up on and opposed to the General Amnesty Law of 1993 which is no longer a topic of discussion since it has been surpassed, and the case of *passif humanitaire* has been closed, ensuring the rights of victims and aggrieved in a wise and responsible way, as we have said previously.

As for the authorization of associations, it should be noted that the government has already approved a draft law that would abrogate and replace the 1964 Law, and it will soon present this draft law to Parliament for a vote before it can be applied, in accordance with the procedures of its issuance, in appropriate circumstances, guaranteeing the exercise of freedoms and rights and consecrating related international obligations as per the Mauritanian legal code.

The necessary care has been taken with the issue of slavery. The phenomenon of slavery has been confronted resolutely through legislation criminalizing the practice of enslavement, penalizing perpetrators and upholding the rights of victims. The authorities continue to fight the effects of this phenomenon, to limit its consequences and combat its social, economic and cultural impact on Mauritanian society as a whole. The road map to combat modern forms of slavery and the institutions founded under it, such as the Joint Ministerial Committee to Combat Slavery and the Technical Committee and the Solidarity Agency, are all shining examples of a clear strategy and ambitious programs to heal the wounds caused by enslavement practices.

Your letter also touched on the registration process of Mauritanian citizens and the difficulty of obtaining civil documents, however this process is carried out normally and in a customary fashion, as evidenced by the fact that this ambitious program has thus far been able to register the vast majority of citizens and resident foreigners, with more than 95% registered as measured against the general census of residents and housing carried out at the beginning of 2013, and the work is ongoing. What is frustrating for some are the necessary identification-confirmation procedures which make it possible for all Mauritanians and Mauritanians alone to obtain certified civil documents, taking into account the rights of all resident foreigners and those transiting through Mauritania to

establish and settle their legal positions on Mauritanian soil. And I would be remiss if I did not express to you my surprise that Human Rights Watch has, without verification, fallen for fraudulent claims and baseless exaggerations, which are no more than biased slander. The census or citizen registration process to obtain identity documents has never been selective; if it had been so it would not have produced the expected results in the set time period, which near and far attest have involved every segment of Mauritanian society.

As regards the retired Colonel Oumar Ould Beibacar, he is being prosecuted for charges of instigating ethnic and racial strife and inciting harm to the state's internal and external security, which are acts punishable under the Mauritanian criminal code, in accordance with the provisions of the Counter-Terrorism Law and the Law of Freedom of the Press. As to his being placed under judicial control, this criminal status is a substitute for precautionary incarceration, and anyone charged may be placed under this control at any time during the investigation. He has appealed to overturn the last ruling passed against him, and the decision is still before the Supreme Court.

As regards the so-called Gazra Bouamatou events, the individuals who claim to be affiliated with the unlicensed "IRA" movement in 2016 carried out acts of rioting and armed congregation and incited others to do the same, and they violently assaulted public force agents carrying out their duties, destroying public and private property, which are criminal acts punishable under relevant law. They were tried and convicted in a fair trial in which they were afforded every legal recourse.

Evidence seized was presented before the court, including video clips of the scene of the crime from cameras, some of which belonged to the accused themselves, which showed the involvement of some of them in the acts ascribed to them, and the Appeals Court threw out this evidence for all of the accused except the two who appeared clearly in the videos. The case is still before the Supreme Court, and so the video cannot be provided to anyone not a party to the case.

As for the so-called Cheikh Baye, he was prosecuted on the charge of material assault and insulting a public authority, which are acts stipulated in Articles 204, 210 and 212 of the criminal code, and he was convicted and sentenced to one year, with seven months served. As to his confessions, the individual himself stated to the Court during his trial that the police did not torture him, as evidenced by the full record of his statements which he

previously signed voluntarily. As to his solitary confinement in prison, this happened because of his repeated violation of internal prison rules, such as bringing in and using banned communication devices and bad behavior, etc.

Mr. Brahim Ould Daddah