



International Covenant on Civil and Political Rights

Human Rights Committee

Concluding observations on the initial report of Mauritania *

1. The Human Rights Committee considered the initial report of Mauritania (CCPR/C/MRT/1) at its 3018th and 3019th meetings (CCPR/C/SR.3018 and 3019) on 21 and 22 October 2013. At its 3031st meeting (CCPR/C/SR.3031), held on 30 October 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the initial report of Mauritania and the information presented therein but regrets that it was submitted with a significant delay. It appreciates the opportunity to establish a dialogue with the high-level delegation of the State party on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/MRT/Q/1/Add.1) to the list of issues (CCPR/C/MRT/Q/1), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the main international human rights instruments, including:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 22 January 2007;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 23 April 2007;

(c) The Convention on the Rights of Persons with Disabilities, on 3 April 2012;

(d) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 3 April 2012;

(e) The International Convention for the Protection of All Persons from Enforced Disappearance, on 3 October 2012;

(f) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 3 October 2012.

4. The Committee notes with satisfaction the State party's efforts to revise its legislation and, in particular, its adoption of:

(a) Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of children;

(b) Ordinance No. 2007/036 of 17 April 2007 setting out the Code of Criminal Procedure;

(c) Act No. 2007-048 of 3 September 2007 classifying slavery as a criminal offence and providing for the suppression of slavery-like practices;

(d) The 2006 and 2012 revisions of the Constitution;

(e) Act No. 2010-021 of 10 February 2010 on combating the smuggling of migrants.

C. Principal subjects of concern and recommendations

5. The Committee notes with concern that the Covenant has been neither invoked nor applied by the national courts, and that no Acts ratifying the human rights treaties and conventions or the instruments themselves have been published in the Official Gazette (art. 2).

The State party should systematically publish in the Official Gazette the Acts ratifying the human rights treaties and conventions, as well as the texts of these instruments, including the Covenant. It should also raise the awareness of judges, lawyers and prosecutors of the Covenant, to ensure that its provisions are taken into account by the national courts.

6. The Committee notes the concerns that the reference in the preamble to the State party's Constitution to Islam as the only source of law could lead to legislative provisions that prevent the full enjoyment of some rights provided for in the Covenant. The Committee notes with concern that the State party has entered a reservation to article 18, although the Covenant provides that there may be no

derogation from that article to article 23, paragraph 4, of the Covenant and regrets the State party's position that it will maintain them (arts. 2, 18 and 23).

The State party should ensure that the reference to Islam does not prevent the full application of the Covenant in its legal order and does not serve to justify the State party not implementing its obligations under the Covenant. The Committee therefore encourages the State party to consider withdrawing its reservations to article 18 and article 23, paragraph 4, of the Covenant.

7. The Committee regrets that the State party denies the existence of racial discrimination on its territory. It is also concerned by the absence of any definition or criminalization of racial discrimination in its legislation and regrets that the State party has not provided data on the extent of the phenomenon, the groups most affected and the measures taken to combat it. It notes with concern that racial discrimination based on ethnicity prevents the enjoyment of human rights by certain ethnic groups, including access for Haratine women to public affairs. The Committee is concerned that the State party has still not adopted the draft national plan of action against racial discrimination, xenophobia and related intolerance (arts. 2, 26 and 27).

The State party should adopt a definition of, and prohibit, racial discrimination in its legislation in conformity with the Covenant. It should also combat discrimination based on ethnic origin in all areas and expedite the drafting, approval and adoption of the draft national plan of action against racial discrimination, xenophobia and related intolerance, and both implement and publicize it.

8. The Committee notes with concern that homosexuality is considered to be a crime and is punishable by the death penalty, in violation of the provisions of the Covenant (arts. 2, 6, 17 and 26).

The Committee respects the cultural diversity and moral principles of all countries, but recalls that these always remain subordinate to the principles of the universality of human rights and non-discrimination (general comment No. 34 (2011) on freedom of opinion and freedom of expression, paragraph 32). Consequently, the State party should decriminalize homosexuality and take the necessary measures to protect the freedom and privacy of the person.

9. The Committee notes with concern the inequality that exists between men and women in certain areas of public affairs, including in the judiciary, the diplomatic service and senior positions in public administration. The Committee is concerned by the continued discrimination against women compared to men in respect of the transmission of nationality (Act No. 1961-112, as amended, setting out the Mauritanian Nationality Code, article 16); the discrimination against women in the 2001 Personal Status Code (arts. 9–13), which places unmarried women under guardianship; and discrimination in respect of inheritance rights and the rights of spouses during marriage and at the dissolution of marriage (arts. 2, 3, 23 and 26).

The State party should continue its efforts to improve the level of representation of women in political and public affairs and continue campaigns to raise women's awareness and inform them of their rights. The State party should review its Nationality Code to allow Mauritanian women to transmit their nationality on an equal footing with men and the 2001 Personal Status Code to remove the provisions that discriminate against women.

10. The Committee notes with concern that domestic violence, particularly violence against women, including rape, persists in the State party. The Committee is also concerned that such violence is not always prosecuted and punished, and that, furthermore, for rape to be punished, the victim must produce a witness in court. The Committee is also concerned by the stigmatization of women victims of rape and the fact that they may themselves risk criminal prosecution. Lastly, the Committee is concerned by the lack of information on the impact of protection measures taken by the State party, the inadequacy of shelters for women victims of violence, and the lack of information on campaigns to combat violence against women (arts. 3, 7 and 23).

The State party should ensure that women victims of violence, including rape, are able to bring charges easily and, to this end, should review the requirement that a witness must be produced when a charge of rape is brought. It should also strengthen the protective measures for victims and refrain from criminal prosecution. Finally, the State party should strengthen its awareness campaigns, particularly in the framework of the national plan of action to combat violence against women and girls, and train officers to enforce the law on violence against women. The State party should include in its next report to the Committee the results of the survey conducted by the National Statistics Office on all forms of violence against women and girls and provide statistical data on the investigations into, prosecutions and convictions of, and penalties imposed on the perpetrators of violence against women.

11. The Committee takes note of the information provided by the State party on the measures taken to combat female genital mutilation. It remains nevertheless concerned by the persistence of the practice in the State party. The Committee regrets the lack of information and statistical data concerning penalties imposed on perpetrators of female genital mutilation, and the absence of a specific law on the issue (arts. 3, 7 and 24).

The State party should ensure the effective implementation of article 12 of the ordinance on the judicial protection of children and adopt the bill specifically criminalizing female genital mutilation. The State party should also step up and continue its campaigns and other measures to raise awareness of and combat female genital mutilation among the population, including in rural areas.

12. The Committee notes with appreciation that the State party has been observing a moratorium on the use of the death penalty since 2007. The Committee nevertheless remains concerned that the death penalty is still provided for in the Criminal Code and is applied by the domestic courts, including in the case of crimes committed by minors. The Committee is, in addition, concerned by the fact that the death penalty is not restricted to the most serious crimes and is imposed in contravention of the provisions of article 6 of the Covenant and by allegations that the death penalty has been imposed following convictions based on confessions obtained under torture or as a result of trials that did not respect all the guarantees provided for in article 14 of the Covenant (arts. 6 and 14).

The State party should consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The State party should ensure that the death penalty is not, under any circumstances, imposed in violation of the guarantees provided for in article 6 of the Covenant.

13. The Committee is concerned by reports of killings of individuals following repression by the security forces during various demonstrations in the country, particularly in Magahama on 27 September 2011 and during the strike by employees of the *Mines de cuivre de Mauritanie* in July 2012. The Committee is also concerned by the lack of any specific detailed information on investigations carried out into these cases (art. 6).

The State party should carry out systematic and thorough investigations into these cases, prosecute the alleged perpetrators and, if they are found guilty, sentence them to penalties in proportion to the seriousness of the acts, and grant appropriate compensation to the victims and their families. It should develop and strengthen the human rights education programmes for members of the security forces, particularly in respect of the provisions of the Covenant. The State party should, in its next report, inform the Committee of the outcome of the investigation by the Kadei Public Prosecutor's Office into the death of the young man Lamine Manghane.

14. The Committee notes with concern that neither the Constitution (art. 13), the Criminal Code, nor the Code of Criminal Procedure (art. 58) gives a definition of torture or classifies it as a specific crime, which leads to inadequate repression of the crime of torture. The Committee is also concerned by allegations of the systematic practice of torture and ill-treatment or excessive use of force by members of the police or the security forces during demonstrations, arrests and interrogations, including of terrorism suspects and migrants, in places of detention, in particular in Dar Naim. The Committee is also concerned that no specific independent authority has been set up to examine complaints made against the police and security forces (arts. 7 and 10).

The State party should adopt a definition of and clearly criminalize torture in the Criminal Code, in conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the relevant international standards. It should also ensure that any investigation into acts of torture, ill-treatment or excessive use of force attributed to members of the police or security forces should be conducted by an independent authority. The State party should furthermore ensure that members of the law enforcement agencies are trained to prevent torture and ill-treatment, and to investigate such offences, by making sure that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is included in all training programmes for them. It should also ensure that allegations of torture and ill-treatment are the subject of thorough and impartial investigations, that the alleged perpetrators are brought to justice and, if found guilty, are sentenced to penalties commensurate with the seriousness of their acts, and that the victims receive adequate compensation. The State party should guarantee regular access to all places of deprivation of liberty and, following its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, put in place a national preventive mechanism.

15. While noting the explanations provided by the State party, the Committee remains concerned by allegations that torture is used to extract confessions that are then accepted by the courts to establish the guilt of the prisoner (arts. 7 and 14).

The State party should ensure that confessions obtained under duress are not used or accepted by the courts as evidence of the guilt of suspects. To that end, the State party should ensure the effective application of its Code of Criminal Procedure which provides that "any confession obtained under torture, violence or duress is inadmissible".

16. While noting the adoption by the State party of Ordinance No. 2005-015 on 5 December 2005 on the judicial protection of children, the Committee is concerned that the corporal punishment of children persists in the State party and is not prohibited by law (arts. 7 and 24).

The State party should take specific measures to end the practice of corporal punishment in all circumstances. It should encourage the use of non-violent disciplinary measures to replace corporal punishment and conduct information campaigns to raise public awareness of the harmful consequences of this type of violence.

17. The Committee is concerned that, despite many legislative initiatives, starting with the formal abolition of slavery as late as 1981, and other provisions adopted in 2012 on this matter, the practice of slavery persists in the State party. The Committee therefore regrets the absence of specific and detailed statistical data on the practice of slavery, as well as on investigations, prosecutions, convictions and penalties, and the rehabilitation of the victims. The Committee is also concerned that, in practice, victims of slavery are not provided with effective remedies against those responsible for slavery-like practices (art. 8).

The State party should ensure the effective implementation of its legislation criminalizing slavery and guarantee effective remedies for victims of slavery who have lodged complaints. The State party should also conduct investigations, effectively prosecute and sentence those responsible and provide compensation for, and rehabilitate the victims. Finally, the State party should expedite the hearing of pending cases; adopt and implement, as Government policy, the road map developed in collaboration with the Office of the United Nations High Commissioner for Human Rights on the recommendations of the Special Rapporteur on contemporary forms of slavery, including their causes and their consequences; and raise the awareness of all law enforcement officers and the general population, including in rural areas.

18. The Committee is concerned that not all of the fundamental legal safeguards in article 9 of the Covenant are provided for by the Code of Criminal Procedure for persons deprived of their liberty, and those that are included in the Code are not respected. It is also concerned that the provisions on police custody contained in articles 57 to 60 of the Code of Criminal Procedure, for both common

law and terrorist offences, are not fully consistent with the provisions of the Covenant. The Committee is furthermore concerned that article 3 of Act No. 2010-0435 of 21 July 2010 on combating terrorism defines terrorism in broad and vague terms (art. 9).

The State party should bring the duration of police custody, including for terrorist offences, into line with the provisions of the Covenant. The State party should also revise its criminal legislation to guarantee, both de jure and de facto, the fundamental legal safeguards for persons deprived of their liberty, including:

- (a) The right to be informed of the reasons for their arrest;**
- (b) Access to a lawyer or independent legal counsel or to legal aid;**
- (c) Access to a doctor and the possibility of informing a family member of the detention;**
- (d) The right to be brought before a judge without delay and to have the legality of their detention examined by a court.**

19. While noting the efforts made by the State party, the Committee remains concerned by the inadequate conditions of detention in prisons in the State party, particularly the prison in Dar Naim. The Committee is particularly concerned by the overcrowding in some prisons (art. 10).

The State party should implement measures to improve the conditions of detention in its prisons and to reduce prison overcrowding.

20. The Committee is concerned by reports of the lack of independence of the judiciary and interference by the executive authorities such as to prevent any guarantee of an independent tribunal and to prejudice the proper administration of justice. The Committee is also concerned that legal aid is not always provided for most defendants and procedural rights are not always respected (art. 14).

The State party should guarantee the independence of the judicial system and the transparency of its procedures, while providing it with the resources it needs to function. It should also include human rights education in the training of judges, magistrates and lawyers. Lastly, the State party should make available the necessary means to ensure, both in law and in practice, that defendants are guaranteed all the rights provided for in article 14 of the Covenant.

21. While noting that Islam is the State religion in Mauritania, the Committee is concerned that exercise of the freedom of conscience and religion is not formally guaranteed for Muslim Mauritians, for whom a change of religion is classified as apostasy and is punishable by the death penalty (arts. 2, 6 and 18).

The State party should remove the crime of apostasy from its legislation and authorize Mauritians to fully enjoy their freedom of religion, including by changing religion.

22. The Committee notes with concern that, during rallies and demonstrations in the State party, human rights defenders and the demonstrators are threatened, intimidated and harassed by members of the security forces or the police. The Committee is also concerned by the obstacles that exist to the creation and registration of some NGOs or associations (arts. 19, 21 and 22).

The State party should adopt a new Act governing the exercise of the freedom of association that complies with international standards and provides the necessary protection for human rights defenders. The State party should, furthermore, take specific measures to ensure the protection of members of NGOs against any retaliation and the protection of peaceful demonstrations organized on its territory; in the case of violations, it should conduct investigations with a view to the prosecution of those responsible.

23. While noting that the Personal Status Code establishes the age of marriage at 18 years, the Committee notes with concern the persistence of early marriage (arts. 3, 23 and 24).

The State party should ensure the strict application of its legislation banning early marriages. It should carry out campaigns to publicize the legislation and inform girls, their parents and community leaders of the harmful effects of early marriage.

24. The Committee regrets that the State party has not yet adopted the Asylum Act. It is also concerned by the restrictions imposed on the freedom of movement of refugees and asylum seekers who, since the revision of the Civil Status Act of 2011, no longer enjoy refugee status. The Committee is further concerned that urban refugees and asylum seekers continue to encounter legal obstacles to the registration of their children born in Mauritania because of the provisions of the Personal Status Code. Lastly, the Committee is concerned that not all the repatriated Mauritanian refugees have obtained identity and citizenship documents yet; this is likely to create obstacles to their enjoyment of some rights and to promote the risk of statelessness. In addition, the Committee is concerned that other Mauritanian refugees who are in Mali as a result of the events of 1989–1990 do not always have identity documents (arts. 12 and 24).

The State party should speed up the adoption of the asylum bill in order to facilitate asylum application procedures. It should also consider the situation of former refugees and asylum seekers with a view to providing them with identity documents, where appropriate, and allowing them to move about more easily. The State party should remove the legal obstacles to the registration of births of children of refugees and asylum seekers born in Mauritania. Finally, it should make it easier for refugees repatriated under the tripartite agreement between the State party, Senegal and the Office of the United Nations High Commissioner for Refugees to obtain identity documents, and consider signing a similar agreement to cover Mauritanian refugees in Mali following the events of 1989–1990. It should consider establishing a mechanism to address the humanitarian consequences of those events.

25. The State party should widely disseminate the Covenant, its initial report, the written replies to the list of issues prepared by the Committee and the present concluding observations, in its official language, to the judicial, legislative and administrative authorities, civil society and NGOs in the country, and to the public at large. The Committee also requests the State party, when preparing its next periodic report, to broadly consult with civil society and NGOs.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 14, 17 and 19 above.

27. The Committee requests the State party, in its next periodic report, due to be submitted by 1 November 2017, to provide specific, up-to-date information on the follow-up given to its other recommendations and on implementation of the Covenant as a whole.