

# briefing

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## Landmark ruling on Mauritania's continued failure to eradicate child slavery

Emelie Kozak





**Said and Yarg.**

Michael Hylton/Anti-Slavery International.

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### Minority Rights Group International

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# Landmark ruling on Mauritania's continued failure to eradicate child slavery

Despite being banned by law, slavery and slavery-like practices remain widespread in Mauritania, with thousands of men, women and children still trapped in servitude. Most of those affected belong to the marginalized Haratine ethnic group. To a large extent, impunity for these crimes has been enabled by the failure of authorities to take action against the perpetrators, leaving victims unprotected and with little or no access to justice. Minority Rights Group International (MRG), in partnership with Mauritanian NGO SOS Esclaves and Anti-Slavery International, has for years been working to secure recognition of these rights violations and ensure authorities take concrete measures to implement anti-slavery legislation, including adequate investigation and prosecution of those responsible.

A landmark legal ruling from the African Committee of Experts on the Rights and Welfare of the Child (the 'Committee') has lent significant support to the longstanding fight to end slavery in Mauritania. In December 2017, the Committee ruled that Mauritania has breached many of its obligations under the African Charter on the Rights and Welfare of the Child (the 'Charter') in relation to Said Ould Salem and Yarg Ould Salem, two brothers who were formerly child slaves. Finding violations of Articles 1, 3, 4, 5, 11, 12, 15, 16 and 21 of the Charter, the Committee requested the provision of individual remedies for the two child victims and ruled that Mauritania should make wide-reaching changes to national policy and practice to eliminate slavery and slavery-like practices.

The ruling represents an important step forward in the fight against slavery in Mauritania and has the potential to help end the plight of thousands of victims across the country. Since the ruling, another landmark judgment in March 2018 saw two individuals receive sentences of 10 and 20 years for their role in the enslavement of a Haratine family. However, as discussed further below, the Mauritanian Supreme Court rendered a decision in April 2018 that represents another step backwards in the struggle for the eradication of slavery, failing to take into account the Committee's ruling or the voices of victims seeking access to impartial and adequate justice.

## A history of slavery in Mauritania

Slavery has a long history in Mauritania and is closely intertwined with ethnicity and descent. The two main cultural and ethno-linguistic groups in Mauritania are the Arab-Berbers, also known as the white Moors, and the black African population, comprised of a number of

distinct peoples.<sup>1</sup> A third significant group is the Haratine community, or the black Moors, who originated from people belonging to sedentary black ethnic groups along the Senegal River. Centuries ago, these groups were subject to raids, enslavement and assimilation by the white Moors, who constitute much of the country's ruling elite today. Throughout the 20th century, the gradual freeing of the black Moors led to the adoption of the name 'Haratine,' a word derived from the Arabic word for freedom. Nevertheless, despite the formal abolition of slavery, Haratines are still widely viewed as members of the 'slave caste' and face severe discrimination and a lack of access to basic services.<sup>2</sup>

While slavery exists across the spectrum of ethnic communities in Mauritania, the Haratine community is predominantly affected by descent-based slavery,<sup>3</sup> in which slave status is passed from mother to child. Descent-based slavery remains prevalent in Mauritania today, largely due to the country's hierarchical social structure and the fact that the practice is deeply ingrained in society. Many slaves find it very difficult to escape: often, even freed Haratine slaves continue a life of servitude because of their total reliance on their former masters and their lack of means to start a new life. It is not uncommon for freed or escaped slaves to take up low-paid service jobs, domestic work or sex work.<sup>4</sup>

Mauritania's journey towards the abolition of slavery has been long. Following various official prohibitions,<sup>5</sup> it was not until 1981 that Mauritania became the last country in the world to formally abolish slavery, which was pronounced by presidential decree.<sup>6</sup> In 2007, national legislation was enacted that criminalized slavery and slavery-like practices for the first time (the '2007 Anti-Slavery Law').<sup>7</sup> This legislation prohibited all discrimination on the basis of slave status and made the crime of slavery punishable by 5 to 10 years' imprisonment and a fine of 500,000 to 1,000,000 ouguiyas (approximately US\$1,400 to US\$2,800).<sup>8</sup> The 2007 Anti-Slavery Law also required all public officials to investigate accusations of slavery-like practices brought to their attention: a failure to do so was punishable by 2 to 5 years' imprisonment and a fine of 200,000 to 500,000 ouguiyas.<sup>9</sup>

Unfortunately, the Mauritanian authorities largely failed to implement the 2007 Anti-Slavery Law or enforce its provisions. Both UN treaty bodies and special rapporteurs have reported on these serious shortcomings.<sup>10</sup> For example, in separate visits to Mauritania, both the Special Rapporteur on contemporary forms of slavery<sup>11</sup> and the Special Rapporteur on racism<sup>12</sup> received reports of police and courts failing to follow up on allegations of

slavery-like practices, owing to either insufficient knowledge of the law or pressure from certain groups.<sup>13</sup>

A 2012 amendment to Mauritania's Constitution recognized slavery as a crime against humanity.<sup>14</sup> In September 2015, a new law repealed and replaced the 2007 Anti-Slavery Law (the '2015 Anti-Slavery Law').<sup>15</sup> This law recognized slavery as a crime against humanity and doubled the length of imprisonment for the crime of slavery to between 10 and 20 years. The law also introduced the creation of special regional tribunals for slavery and slavery-like practices.<sup>16</sup> In May 2016, two individuals were convicted under the new law, though they only received sentences of five years and a fine of 1 million ouguiyas. This sentence was confirmed in June 2016, with the fine raised to 6 million ouguiyas.

## The case of Said and Yarg: children born into slavery

Said and Yarg are two brothers, born in 2000 and 2003 to a Haratine mother within the El Hassine household. Slaves from birth, they automatically became the property of the El Hassine family. Said's main task was to look after the family's herd of camels. He spent most of his time sleeping and eating in a makeshift camp. Yarg was tasked with several domestic chores, in addition to helping his brother look after the camels. The brothers worked seven days a week, with no rest and no time for prayers. They were not allowed to attend school and they received regular beatings. Said and Yarg were not referred to by their given names, but instead called 'slave'. After enduring 11 years of slavery, Said managed to escape in April 2011. He located his aunt, who helped him file a slavery complaint with the police commissioner against the El Hassine family. Yarg was able to join his brother shortly after and was added to the complaint. The complaint was investigated and charges were brought under the 2007 Anti-Slavery Law against six members of the El Hassine family. Charges were considered, but not ultimately pursued, against an employee of the El Hassine family. In an unfortunate turn of events, charges were also brought against Said and Yarg's mother for assisting in the deprivation of their liberty.

In November 2011, in the first and only prosecution under the 2007 Anti-Slavery Law, Ahmed Ould El Hassine was found guilty of holding Said and Yarg in slavery and depriving them of schooling. He was sentenced to two years' imprisonment and fined 500,000 ouguiyas (less than the minimum fines for the two offences he was convicted of). One family member was acquitted of the same charges, while the other four received fines and suspended sentences. Said and Yarg's mother, however, was found guilty. She received a two year suspended sentence and a fine of 500,000 ouguiyas. Said and Yarg were awarded nominal compensation. In December 2011, Said and Yarg appealed the amount of damages. Their lawyer requested the state prosecutor appeal

as well, based on the overly lenient sentences and inadequate compensation. The El Hassine family also appealed their convictions and sentences, which meant Said and Yarg did not actually receive their compensation.

Four months after his conviction, Ahmed Ould El Hassine was released on bail. The boys' lawyer was never informed of his request for bail, which breached the section of the Criminal Code that states victims must be kept informed throughout the judicial process.<sup>17</sup> Mauritanian authorities have not been able to locate him since.

The appeal hearing was scheduled for November 2012 but never took place. Subsequent hearing dates were repeatedly postponed, first due to the absence of the President of the Court, and then because of the inability to locate the convicted slave master. Repeated requests were made to the Mauritanian authorities to address the delay. The appeal was finally heard in November 2016, as a direct result of Said and Yarg's complaint to the Committee being heard at the same time. While the Appeal Court raised the amount of compensation awarded to the boys, it did not increase the length of their former slave owner's sentence. With the support of their lawyer and MRG, Said and Yarg requested that the state prosecutor appeal to the Mauritanian Supreme Court. On 18 April 2018, the Supreme Court confirmed the Appeal Court's decision, in total contradiction to the Committee's recent ruling that emphasized the need to impose stricter sentences in accordance with the 2015 Anti-Slavery Law. At the time of writing, the Supreme Court has still not made public the reasons for its decision, but it is highly unfortunate that it appears not to have considered the Committee's ruling.

In December 2015, while still awaiting an appeal hearing, MRG and SOS Esclaves (the 'Complainants') submitted a communication to the Committee on behalf of Said and Yarg. They alleged violations of Articles 1 (obligation of State Parties), 3 (non-discrimination), 4 (best interests of the child), 5 (survival and development), 11 (education), 12 (leisure, recreation and cultural activities), 15 (protection from economic exploitation), 16 (protection against child abuse and torture), 21 (protection against harmful social and cultural practices) and 29 (prevention of sale, trafficking and abduction of children) of the Charter. MRG and SOS Esclaves also requested that the Committee recommend that Mauritania provide full redress to Said and Yarg for the violations of their rights.

## Key arguments on behalf of Said and Yarg

The basis of the legal argument was that the Mauritanian government had failed to effectively enforce the 2007 Anti-Slavery Law and to ensure that members of the El Hassine family were adequately prosecuted and punished in accordance with the seriousness of their actions. It was also argued that Mauritania had failed to

hear the appeal within a reasonable timeframe and to bring the convicted slave master to justice.

First, the Complainants alleged that a State's obligations under Article 1 of the Charter are both negative and positive; therefore, Mauritania has a negative obligation not to violate the rights of Said and Yarg, but also a positive obligation to protect them by enacting and enforcing anti-slavery laws as well as providing adequate redress for the violation of their rights. The Complainants also claimed that human rights obligations under the Charter apply to the State as a whole, meaning that Mauritania could not seek to avoid its responsibility to enforce the 2007 Anti-Slavery Law because the actions of a few individuals had been inadequate.

In terms of the right to non-discrimination under Article 3 of the Charter, the Complainants submitted that Said and Yarg had been treated differently by their slave masters on the basis of their belonging to the Haratine ethnic group, which could not be objectively justified under any circumstances. The Complainants also argued that Mauritania had systematically failed to enforce the 2007 Anti-Slavery Law, which had a disproportionate impact on individuals belonging to the Haratine ethnic group and their ability to enjoy their other rights under the Charter.

The Complainants claimed that Mauritania had breached its duty to act in Said and Yarg's best interests under Article 4 of the Charter by failing to ensure that members of the El Hassine family protected them. Throughout the criminal proceedings, the relevant judicial and administrative authorities had completely disregarded the best interests of the boys through their actions or inactions, which also amounted to a violation of Article 4.

In the Complainants' view, it was clear that subjecting children to slavery undermines their physical, mental, spiritual, moral, psychological and social development, constituting a violation of the right to survival and development under Article 5(2) of the Charter. They argued that States must take action to protect children's development when it is threatened by private individuals. Mauritania had breached its obligation to do so by failing to ensure that members of the El Hassine family were properly punished and the boys received adequate redress for their years in slavery. The Complainants also alleged that Mauritania directly violated its duty to respect Said and Yarg's right to development by failing to move the criminal process forward, leaving them in a state of legal limbo and with the knowledge that their former masters had not faced proper justice.

During their years of slavery, Said and Yarg were not able to attend school. Despite the provision in the 2007 Anti-Slavery Law that made it an offence to deprive a child of schooling, the only member of the El Hassine family found guilty of this charge was not given an adequate sentence. This, the Complainants submitted, constituted a violation of the right to education under Article 11 of the

Charter. The Complainants also argued that Mauritania further violated this right by failing to take concrete measures to help Said and Yarg have access to public school both during their time in slavery and after their escape.

The Complainants claimed that Said and Yarg had been deprived of their right to rest, leisure and play under Article 12 of the Charter. In their view, Mauritania had failed in its positive obligation to protect the boys by properly investigating their treatment, punishing those responsible and providing adequate redress.

The Complainants then considered child labour under Article 15 of the Charter, noting that slavery is recognized as one of the worst forms of child labour. They submitted that despite having enacted the 2007 Anti-Slavery Law, Mauritania had contravened its obligation to protect Said and Yarg from slavery. In particular, Mauritania had failed to undertake the necessary due diligence at various stages of enforcing the law, from failing to adequately charge all the El Hassine family members with the actual offence of slavery to inexcusably delaying the appeal process.

In terms of Article 16 of the Charter, which protects children against abuse and torture, the Complainants stated that Said and Yarg were routinely subject to physical violence, mental violence and neglect. They argued that Mauritania had violated its obligation to protect the boys from violence by inadequately punishing the El Hassine family, failing to provide the boys with adequate redress and releasing the convicted slave master on bail. They also claimed that the delay in hearing the appeal constituted a failure by the State to respect due process, to act as expeditiously as possible and to take into primary consideration the protection, development and best interests of Said and Yarg.

The Complainants submitted that the practice of holding children in slavery constitutes a harmful social and cultural practice in the context of Article 21 of the Charter. Therefore, Mauritania's failure to take all necessary measures to eliminate the harmful practice of slavery constituted a violation of Article 21.

The Complainants argued that Mauritania had violated Article 29 of the Charter, which relates to the sale, trafficking and abduction of children. The Complainants invited the Committee to find that Article 29 should be read as including all forms of traditional and modern slavery, of which trafficking is one specific example. According to the Complainants, the adoption of an inclusive approach would allow the Committee to find that Mauritania had violated Article 29 as a result of its inadequate enforcement of the 2007 Anti-Slavery Law.

In addition to their arguments on the substantive merits of the communication, the Complainants asked the Committee to request that Mauritania provide full redress to Said and Yarg. The Complainants therefore sought the adoption of a number of measures aimed at remedying the specific violations against Said and Yarg as well as addressing the broader conditions of slavery in Mauritania.

The Complainants' arguments were supported by a third party intervention by Anti-Slavery International. Like many regional and international human rights bodies, the Committee has the ability to accept interventions by interested third parties.<sup>18</sup> An intervention provides the decision-making body (in this case, the Committee) with relevant information that will assist it in making a decision on a given communication. Anti-Slavery International's written intervention provided relevant insight on slavery in Mauritania based on over two decades of experience in the country.<sup>19</sup> The intervention included information such as the ongoing prevalence of slavery in Mauritania, the treatment of slaves by their masters and typical experiences of enslaved children. It also highlighted the vulnerabilities of children in slavery and the numerous difficulties former child slaves face in accessing education, social support and other services, often as a direct result of not having identity documents.

## The Mauritanian government's response

The Mauritanian government did not provide written submissions in response to the Complainants' arguments. However, it did make oral submissions during the Committee's 28th Ordinary Session in October 2016. The Committee summarized the government's submissions in its ruling.

The Mauritanian government submitted that the country's legislative framework is a solid foundation for the protection of children against exploitation and abuse. It argued that, under the law, no one can be subject to slavery, torture and other cruel, inhuman or degrading treatment or punishment. The government cited its adoption of a roadmap to address the challenges of slavery as evidence of its willingness to implement the recommendations of the UN Special Rapporteur on contemporary forms of slavery. The government also referenced the development of a plan of action against child labour, undertaken in conjunction with the International Labour Organization, which included the adoption of the 2015 Anti-Slavery Law and the creation of specialized courts to support slavery-related claims. The government further referred to other measures it had taken to enable slavery victims to obtain civil status. The government also submitted that it was implementing measures to reduce disparities in school enrolment in targeted areas of the country.<sup>20</sup>

With respect to the case of Said and Yarg, the government submitted that it had willingly prosecuted the El Hassine family and that Ahmed Ould El Hassine was granted bail in spite of the state prosecutor's steady opposition.<sup>21</sup> However, in assessing the government's response, the Committee noted that '[t]he Respondent State evasively denied all the allegations of the violations of

the rights of Said and Yarg...by submitting that there is no phenomenon of slavery in Mauritania and indicating the due diligence of the Government of Mauritania in responding to the challenges faced by Said and Yarg by prosecuting [the El Hassine family] and according social protection mechanisms to the children.'<sup>22</sup>

## Analysis of the Committee's ruling

Before considering the merits of the Complainants' substantive claims, the Committee considered various procedural issues. In terms of allowing the government a sufficient chance to respond to the allegations, the Committee sent a copy of the communication in January 2016 and requested a response within 60 days.<sup>23</sup> After receiving no response, the Committee followed up with a further request in August 2016. The government again failed to respond. Given the 'serious nature and time sensitiveness of the allegations', the Committee therefore decided to consider the communication's admissibility despite the lack of response from the State.<sup>24</sup> In September 2016, the Committee declared the communication admissible.<sup>25</sup>

In its admissibility decision, the Committee addressed the requirement to first exhaust all available and accessible local remedies. It noted that this requirement is only with regards to remedies that are 'available, effective and sufficient'.<sup>26</sup> Based on the Complainants' submissions and various independent reports, the Committee found that 'seeking a criminal conviction of one's slave master and obtaining compensation for one's deprivation of liberty which exists in theory is not effective in practice.'<sup>27</sup> The Committee also noted that at that time, four years had passed since the appeals were lodged and no hearing had taken place. Accordingly, it found the government had failed in its responsibility to move the criminal process forward in a timely manner. Importantly, the Committee held that the delay was not in the best interests of the child, which amounted to an exception to the requirement to exhaust local remedies.<sup>28</sup>

In March 2017, the Committee undertook a mission to Mauritania to establish facts in relation to the allegations raised by the Complainants.

Turning to the substantive claims, the Committee found violations of all but one of the articles of the Charter, as alleged by the Complainants. It noted that, under Article 1 of the Charter, Mauritania has an obligation to take legislative and other measures to protect children from slavery. The obligation 'to take legislative measures' includes not only legislation, but also policies and guidance to support implementation of the law, which should be guided by a child protection approach. The content of 'other measures' includes both administrative and judicial measures aimed at enforcing and ensuring the visibility, advancement and realization of children's rights.

Article 1 also includes the requirement of due diligence, which in practice means preventing human rights violations, investigating violations that have occurred and prosecuting and punishing perpetrators. Importantly, the Committee found that where a State fails to diligently prevent or investigate violence perpetrated by third parties, the State will be held legally responsible for those actors.<sup>29</sup>

In assessing Mauritania's due diligence, the Committee looked at the results it had achieved through legislative and other measures taken to tackle slavery. While the Committee appreciated that slavery had been criminalized through legislation, it found that Mauritania had not identified the specific measures it was taking to prevent slavery and to free enslaved children. The Committee also found that although the appeal had finally been considered, this fact did not mitigate Mauritania's accountability for the time Said and Yarg spent in slavery, the inadequate prosecution of the slave masters or the delayed court proceedings. The Committee disagreed with Mauritania's argument that other government organs could not interfere with the judiciary's lower court decision and the delayed appeal. According to the Committee, the State apparatus is one entity and all organs are responsible for upholding the rights in the Charter. The Committee therefore held that Mauritania had violated Article 1 by failing in its due diligence obligations to prevent the enslavement of Said and Yarg, to investigate the longstanding violations of their rights, to effectively prosecute and punish the perpetrators and to provide Said and Yarg with an effective remedy.<sup>30</sup>

Addressing the alleged violation of Article 3 of the Charter, the Committee noted that Said and Yarg had been treated differently from the other children in the El Hassine household. It found that this differential treatment was based on their slave status within the family, which could not be justified and therefore amounted to discrimination. The Committee found that Mauritania's duty to protect children from discrimination includes two components: 1) the duty to take preventive measures against human rights violations by private actors; and 2) the duty to take remedial measures once the violations have occurred. It stated that Mauritania had violated its duty to protect by failing to effectively implement anti-slavery laws and prevent the discriminatory treatment faced by Said and Yarg. The Committee also found that Mauritania's failure to provide an effective remedy to the boys, including its lack of support to integrate them into society, violated its duty to protect the right to non-discrimination.<sup>31</sup> Finally, the Committee found that insufficient evidence had been provided regarding Mauritania's direct interference with Said and Yarg's enjoyment of the right to non-discrimination, and therefore did not reach a finding on the Complainants' submission that Mauritania had breached its negative obligation to respect the right due to its systematic failure to enforce the 2007 Anti-Slavery Law.

Considering the claims under Article 4 of the Charter, the Committee noted that the best interest of the child is a

general principle that applies to all actions or omissions taken by State and non-State actors. Guided by the UN Committee on the Rights of the Child, the Committee focused on Said and Yarg's identity, their vulnerability and the protection of their rights. The Committee determined that prior to and throughout the criminal proceedings, the Mauritanian government had failed to prioritize Said and Yarg's best interests, as required under Article 4. This was apparent through the government's failure to duly investigate and prosecute all the perpetrators, its decision to issue a prison sentence to Ahmed Ould El Hassine that fell below the minimum sentence in the 2007 Anti-Slavery Law and its failure to hear the appeal in a timely manner.<sup>32</sup>

The Committee described the content of the right to survival and development in Article 5 as encompassing all aspects of a child's development. It noted that child labour is a severe impediment to children's development and wellbeing; in the case of Said and Yarg, their years of servitude 'severely limited their physical and psychological development and deprived them of their childhood.'<sup>33</sup> The Committee determined that Mauritania has a duty to protect children's right to survival and development from infringement by third parties. Moreover, Mauritania's duty to ensure children's survival and development means realizing their other rights, including education, health, nutrition, recreation and leisure. Mauritania's failure to 'holistically realize the rights under the Charter' in relation to Said and Yarg's survival and development therefore amounted to a violation of Article 5(2) of the Charter.

Addressing the right to education under Article 11 of the Charter, the Committee cited the UN Committee on Economic, Social and Cultural Rights, which has noted that States must take deliberate, targeted and concrete actions to ensure the exercise of the right to education without discrimination. If a child is deprived access to education through exclusion, including by non-State actors, this constitutes discrimination in education. The Committee acknowledged that neither the government nor the El Hassine family took any steps to enrol Said and Yarg in school during their 11 years of slavery. What is more, the government failed to assist the boys with school enrolment or access to identity documents after they were freed. As a result, the Committee found Mauritania had violated Said and Yarg's right to education based on its failures to ensure compulsory education for them, to take special measures in light of their vulnerability and to protect their right to education from violation by the El Hassine family.<sup>34</sup>

In regards to Article 12 of the Charter, the Committee noted the importance of the role of leisure, recreation and cultural activities to a child's overall wellbeing. It further noted that Mauritania has a duty to take necessary measures to ensure that this right is not interfered with by third parties. The Committee found that because of their domestic work requirements, Said and Yarg were denied any play, rest and participation in cultural activities for 11 years, which amounted to a clear violation of Article 12.<sup>35</sup>

The Committee addressed the claims under Article 15 of the Charter by acknowledging that the prohibition of slavery and slavery-like practices, the worst forms of child labour, has achieved the status of customary international law. Accordingly, all States have a fundamental obligation to prohibit and eliminate slavery, which they must not deviate from under any circumstances. Furthermore, justifications of failures to prohibit slavery and slavery-like practices are unacceptable. The Committee determined that in light of the status of the prohibition of slavery and slavery-like practices, the Mauritanian government should take 'concrete and practical steps' towards their abolition. It found that Mauritania's adoption of anti-slavery laws, while a welcome development, was not sufficient to fulfil its obligations under Article 15. Accordingly, the Committee found that Mauritania had violated Articles 15(1) and 15(2)(c) of the Charter based on its failures to take necessary measures to free Said and Yarg, to ensure adequate penalties for their masters and to ensure that Said and Yarg received proper compensation.<sup>36</sup>

The Committee noted that in accordance with Article 16 of the Charter, States Parties must adopt an array of specific measures to protect children from abuse and torture, which can be both physical and psychological. These measures must include prevention, intervention and prosecution, as appropriate. The Committee determined that the treatment Said and Yarg endured during their servitude was degrading. Mauritania had not only failed to prevent the abuse, but had also failed to intervene to stop it. This inaction, combined with Mauritania's failures to prosecute all members of the El Hassine family involved in the abuse and to provide adequate and timely remedies, therefore constituted a violation of Article 16.<sup>37</sup>

With regards to Article 21 of the Charter, the Committee noted that States Parties must take legislative, administrative and other measures to eliminate harmful practices such as slavery that affect children's welfare, dignity, normal growth and development. The Committee recognized that the case of Said and Yarg is not isolated in Mauritania, but is representative of widespread practices of slavery throughout the country. In respect of Said and Yarg specifically, the boys were only free as a result of their effort to escape rather than through any intervention by the government. The Committee determined that the measures taken by the government to address slavery were not sufficient to eliminate it, nor were they sufficient to provide protection to Said and Yarg, therefore amounting to a violation of Article 21.<sup>38</sup>

Finally, the Committee considered the Complainants' arguments under Article 29 of the Charter on the sale, trafficking and abduction of children. Noting that the issue of slavery had been dealt with under Article 15 and determining that the Complainants had not established the relevance of Article 29 to the facts of the case, the Committee concluded that there were insufficient legal and factual grounds to find a violation of Article 29.

## Remedies and reparations

The final part of the Committee's ruling focused on steps the Mauritanian government should take to remedy the various violations. In relation to Said and Yarg, the Committee requested that the government undertake the following:

- ensure all members of the El Hassine family are prosecuted and receive sentences commensurate to their crimes;
- take measures to ensure that Said and Yarg obtain all necessary documents, including birth registration certificates and identity cards (this also extended to all enslaved children in Mauritania);
- facilitate Said and Yarg's enrolment in public schools as soon as possible;
- take special measures to support the boys in their education;
- provide Said and Yarg with psychosocial support for their rehabilitation and reintegration;
- ensure everyone involved in Said and Yarg's servitude is prosecuted, and convictions meet at least the minimum sentences prescribed by law; and
- provide Said and Yarg with adequate compensation, commensurate to the years of slavery they endured and the corresponding violations of their rights.<sup>39</sup>

Beyond Said and Yarg, the Committee specified far-reaching actions the government should take in order to eliminate slavery and slavery-like practices throughout Mauritania. These include the following steps:

- ensure the effective implementation of the 2015 Anti-Slavery Law and other national strategies aimed at eliminating slavery and slavery-like practices;
- make the elimination of slavery and slavery-like practices a priority in issuing policies, allocating budget and training human resources;
- undertake a baseline survey to establish the number of, and identify the situation of, children in slavery or slavery-like practices;
- take special measures to remove children from slavery and slavery-like practices and to ensure that these children receive psychosocial, educational and all necessary forms of support;
- ensure that government organs collaborate on issues of slavery and slavery-like practices and provide training to law makers, police, prosecutors and judges;
- undertake an accelerated campaign and sensitization to create awareness about the negative impacts of slavery and slavery-like practices and their prohibition under national and international law;
- work with and support civil society organizations and other stakeholders who work on eradicating slavery and slavery-like practices; and



- design a child friendly mechanism for reporting instances of all forms of child abuse.<sup>40</sup>

Finally, the Committee gave the Mauritanian government 180 days to report back on all measures it has taken to implement the ruling.

## Potential impact of the ruling in Mauritania and beyond

The Committee's ruling has the potential to bring positive change for both Said and Yarg as well as for thousands of other child victims of slavery in Mauritania. Although the Mauritanian Supreme Court has now upheld the Appeal Court's November 2016 decision, a disappointing development that indicates a failure to properly apply the law, Said and Yarg are clearly entitled to the support of the Mauritanian government and to compensation that adequately reflects the numerous human rights violations they suffered, as found by the Committee. As such, the Committee's ruling represents an important legal tool for anti-slavery advocates within Mauritania and beyond its borders, and moving forward it will remain important to raise awareness of the ruling and its potential impact.

Despite the recent setback before the Mauritanian Supreme Court, the ruling does extend beyond the case of Said and Yarg to bring hope to other victims of slavery in

Mauritania. A number of slavery cases in the country have been brought before domestic courts, but the lack of political and judicial will to move them forward has proven to be a major barrier to their resolution. The Committee's finding that the government violated several provisions of the Charter by failing to adequately investigate, prosecute, punish and remedy instances of slavery may provide the necessary impetus for advancing current and future cases.

The far-reaching actions identified by the Committee regarding the elimination of slavery and slavery-like practices throughout the country are also significant. While broad in scope, their specificity provides important guidance to the Mauritanian government as to how it should move forward in eliminating these worst forms of child labour. While securing implementation of the ruling may prove to be a challenge, the Committee as well as anti-slavery and human rights advocates will be expecting evidence from Mauritania of concrete steps taken to comply with the ruling.

Indeed, since the Committee's ruling, another potentially ground-breaking legal ruling took place in March 2018 when two individuals were sentenced to 10 and 20 years respectively, along with a third individual posthumously, for slavery offences. To date, these are the strongest sentences ever handed out for the crime of slavery in Mauritania. It is hoped that together these rulings may represent the beginning of a more substantial process of reform within the country.



## Notes

- 1 *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Mission to Mauritania, A/HRC/15/20/Add.2, 24 August 2010, para. 5 [hereinafter Report of the Special Rapporteur on contemporary forms of slavery, 2010].*
- 2 *Ibid.*, paras. 12-14.
- 3 According to Anti-Slavery International, descent-based slavery describes 'a situation where people are born into slavery because their ancestors were captured into slavery and their families have "belonged" to the slave-owning families ever since. Slave status is passed down the maternal line.' Anti-Slavery International, 'Descent-based slavery', available at: <https://www.antislavery.org/slavery-today/descent-based-slavery>.
- 4 *Report of the Special Rapporteur on contemporary forms of slavery, 2010, supra* note 1, paras. 6, 12-14.
- 5 Prior to Mauritania's independence, a 1905 colonial decree implemented the French law that abolished slavery in all French colonies. Mauritania gained independence in 1960; the promulgation of the 1961 Constitution resulted in an official prohibition on slavery. *Ibid.*, para. 22.
- 6 Ordonnance n° 81-234 du 9 novembre 1981 portant abolition de l'esclavage (Ordinance on the abolition of slavery, 1981).
- 7 Annex 1 Loi n° 2007-048 du 3 septembre 2007 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (Act criminalizing slavery, 2007) [hereinafter 2007 Anti-Slavery Law]. See also Minority Rights Group International and Anti-Slavery International, *Enforcing Mauritania's Anti-Slavery Legislation: The Continued Failure of the Justice System to Prevent, Protect and Punish*, October 2015, available at <http://minorityrights.org/publications/enforcing-mauritanias-anti-slavery-legislation-the-continued-failure-of-the-justice-system-to-prevent-protect-and-punish/>.
- 8 *Ibid.*, article 4.
- 9 *Ibid.*, article 12.
- 10 In 2009, the UN Committee on the Rights of the Child noted a lack of effective implementation of the law, expressing serious concern about the continuing practice of caste based slavery, the lack of services for child victims and inadequate measures to educate the public about slavery. Committee on the Rights of the Child, *Concluding observations: Mauritania, CRC/C/MRT/CO/2, 17 June 2009, para. 36.*
- 11 The title in full is the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.
- 12 The title in full is the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
- 13 *Report of the Special Rapporteur on contemporary forms of slavery, 2010, supra* note 1, para. 92; *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Mission to Mauritania, A/HRC/11/36/Add.2, 16 March 2009, para. 56; Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Follow-up mission to Mauritania, A/HRC/27/53/Add.1, 26 August 2014, para. 11.*
- 14 Loi constitutionnelle n° 2012-015 portant révision de la Constitution du 20 juillet 1991 (Constitutional Act recognizing slavery as a crime against humanity, 2012).
- 15 Annex 2 Loi n° 2015-031 du 10 septembre 2015 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (Act criminalizing slavery, 2015).
- 16 *Ibid.*, articles 2, 7 and 20.
- 17 Ordonnance n° 2007.36 portant révision de l'ordonnance n° 83.63 du 9 juillet 1983 portant institution d'un code de procédure pénale, article préliminaire, which can be translated to 'the criminal procedure must be equitable and adversarial, and must preserve a balance between the rights of the parties [...] The judicial authorities must inform the victims and ensure their rights throughout any criminal procedure.'
- 18 African Committee of Experts on the Rights and Welfare of the Child, *Revised Guidelines for the Consideration of Communications Provided for in Article 44 of the African Charter on the Rights and Welfare of the Child*, October 2014, Section XVII, page 20.
- 19 For the full text of Anti-Slavery International's intervention, see <http://minorityrights.org/law-and-legal-cases/mauritania-challenging-slavery-of-haratine-women>. *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v the Government of the Republic of Mauritania*, Communication No. 007/Com/003/2015, Decision No. 003/2017, African Committee of Experts on the Rights and Welfare of the Child, 15 December 2017 (notification to the Complainants dated 24 January 2018) [hereinafter Committee Ruling, 2017], paras. 42, 43.
- 20 *Ibid.*, paras. 36-40.
- 21 *Ibid.*, para. 39.
- 22 *Ibid.*, para. 41.
- 23 *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v the Government of the Republic of Mauritania*, Decision on Admissibility No. 002/2016, African Committee of Experts on the Rights and Welfare of the Child, September 2016, para. 1.
- 24 *Ibid.*
- 25 *Ibid.*, para. 30.
- 26 *Ibid.*, para. 21 (citing *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v the Government of Kenya*, Decision No. 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child, 22 March 2011, para. 28).
- 27 *Ibid.*, para. 23.
- 28 *Ibid.*, paras. 26-27.
- 29 Committee Ruling, 2017, *supra* note 19, paras. 46-52.
- 30 *Ibid.*, paras. 55-58.
- 31 *Ibid.*, paras. 61-64.
- 32 *Ibid.*, paras. 66, 68-69.
- 33 *Ibid.*, paras. 71-72.
- 34 *Ibid.*, paras. 74-75.
- 35 *Ibid.*, paras. 76 and 78.
- 36 *Ibid.*, paras. 80, 82-84.
- 37 *Ibid.*, paras. 85, 87-88.
- 38 *Ibid.*, paras. 91-92.
- 39 *Ibid.*, para. 98(A)-(G).
- 40 *Ibid.*, para. 98(H)-(O).

# working to secure the rights of minorities and indigenous peoples

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## Landmark ruling on Mauritania's continued failure to eradicate child slavery

Emelie Kozak

Despite being banned by law, slavery and slavery-like practices remain widespread in Mauritania, with thousands of men, women and children – most of whom belong to the marginalized Haratine ethnic group – still trapped in servitude. To a large extent, impunity for these crimes has been enabled by the failure of authorities to take action against the perpetrators, leaving victims unprotected and with little or no access to justice. To address this Minority Rights Group International (MRG), in partnership with Mauritanian NGO SOS Esclaves and Anti-Slavery International, has for years been working to secure recognition of these rights violations and ensure authorities take concrete measures to implement anti-slavery legislation, including adequate investigation and prosecution of those responsible.

While there have been some positive steps in recent years, including the passing in 2007 of the country's first anti-slavery legislation, implementation and enforcement of its provisions have been almost non-existent. In November 2011, in the first prosecution under the 2007 Anti-Slavery Law, Ahmed Ould El Hassine was found guilty of holding two brothers, Said and Yarg Ould Salem, in slavery and depriving them of schooling. Despite this apparent milestone, however, the sentences imposed were well below the minimum terms stipulated by the law and the slave master was subsequently released on bail just four months after his conviction.

In response, MRG and SOS Esclaves brought a case before the African Committee of Experts on the Rights and Welfare of the Child. In December 2017, the Committee ruled that Mauritania had failed to take adequate measures to prevent, prosecute and remedy slavery and found multiple violations of its obligations to protect children's rights under the African Charter on the Rights and Welfare of the Child. The background and implications of this groundbreaking ruling are discussed in detail in this briefing. In light of a subsequent decision by the Mauritanian Supreme Court in April 2018 in relation to the case of Said and Yarg, which apparently failed to consider the Committee's ruling, it is more important than ever to raise awareness about the proper application of anti-slavery laws in Mauritania for the benefit of other slavery victims.

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The text does not necessarily represent in every detail the collective view of MRG or its partners. Copies of this study are available online at [www.minorityrights.org](http://www.minorityrights.org)

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