

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

REPORT FOR THE WTO GENERAL COUNCIL

TRADE POLICY REVIEW OF MAURITANIA

Geneva, 29-30 May 2018

INTERNATIONALLY RECOGNIZED CORE LABOUR STANDARDS

SUMMARY

The Government of Mauritania (GoM) has failed to make progress towards establishing internationally recognized worker rights, contrary to the commitment expressed in the WTO Doha and Singapore Ministerial Declarations¹. The GoM has failed to take adequate measures against forced labour and does not afford respect to the right to freedom of association in line with its international obligations.

This report exposes the persistence of hereditary slavery as a result of the government's failure to fully implement anti-slavery legislation by establishing inclusive and effective institutions. Civil society organisations and trade unionists are regularly persecuted for their activism against slavery. Indeed, the national legal framework does not allow for the free establishment and functioning of trade unions. Since the last Trade Policy Review in 2011 Mauritania's relevant laws and practice have been under recurring scrutiny of the supervisory bodies of the ILO. We request that during Trade Policy Review in May 2018 Mauritania should be called upon to bring its laws and practices in line with its international obligations.

¹The 1996 Doha Ministerial Declaration, para 4, and the 2001 Singapore Ministerial Declaration, para 8.

I. Introduction

Mauritania is member of the International Labour Organization and has ratified all Fundamental Conventions, including ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and ILO Forced Labour Convention, 1930 (No. 29) and its supplementing Protocol of 2014. Mauritania has also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These human rights instruments protect freedom of association (Article 22 ICCPR), right to form and join trade unions and the right to strike and the right to freely chosen or accepted work (Article 8 ICESCR), freedom from slavery, servitude and forced labour (Article 8 ICCPR).

The ITUC represents 207 million workers globally and has four affiliated members in Mauritania: Confédération Générale des Travailleurs de Mauritanie (CGTM); Confédération Libre des Travailleurs de Mauritanie (CLTM); Confédération Nationale des Travailleurs de Mauritanie (CNTM) and Union des Travailleurs de Mauritanie (UTM).

Section I of this submission analyses the failure to guarantee freedom from forced labour, while Section II addresses the failure to guarantee the right to freedom of association and collective bargaining. Section III identifies key recommendations.

II. Forced Labour

Persistence of slavery: Mauritania is one of the last countries in the world where people are still born into descent-based slavery facing a lifetime of abuse and forced labour. Most slaves have come from the Haratine (also known as Black Moors) and make up the country's largest ethnic group — about 40 percent of the population. The Haratine continue to suffer discrimination, marginalisation and exclusion because they belong to the 'slave' class. Many remain affected by slavery until today living under the direct control of their masters/mistresses without receiving any remuneration for their work. Slave status is passed down from mother to child, so children born to a mother in slavery will be 'inherited' by the children of the master. Even though Haratines and Afro-Mauritanians together make up over two-thirds of the population, they remain systematically absent from almost all positions of power.² While the government has failed to carry out a definitive survey, it is estimated that thousands of people continue to be enslaved. The Global Slavery Index estimates the number of people in slavery at 43,000. This number may not account for other, less-formalized types of indentured servitude. Indeed, Mauritanian anti-slavery organisations estimate that up to 500,000 Haratine may still be living under some form of control by their former masters.³ Despite the numerous findings of the UN human rights bodies, the government continues to reject the persistence of slavery having rejected the recommendations provided under the Universal Period Review.⁴ The denial of the existence of slavery or slavery-like practices

²Gulnara Shahinian, United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Report on the mission to Mauritania A/HRC/15/20/Add.2 (http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20.Add.2_en.pdf); Report on the follow-up mission to Mauritania A/HRC/27/53/Add.1, (<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx>); Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, End-of-mission statement on Mauritania 2016 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19948&LangID=E>); Report on the mission to Mauritania A/HRC/35/26/Add.1 (<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Pages/ListReports.aspx>)

³ UPR Submission, Anti-slavery International, 2015 (http://www.antislavery.org/wp-content/uploads/2017/01/1_upr_submission_on_mauritania_2015.pdf)

⁴ UPR, "Responses to Recommendation and Voluntary Pledges: Mauritania," June 30, 2016.

directly contributes to a conducive environment for impunity with respect to slavery and demonstrates the government's lack of commitment to address this fundamental problem.

Lack of enforcement of anti-slavery laws: While Mauritania has criminalised slavery in 2015 with Law 2015-031, the effective implementation of this legislation has been virtually non-existent. This is largely due to the fact that both the police and judiciary have been extremely reluctant in investigating and prosecuting allegations of slavery. For example, SOS Esclave, a civil society organisations supporting victims of slavery, reported that none of the eight cases (affecting around 50 people) it reported to the police between 2016-2017 had been prosecuted as of May 2018. The country's three specialized courts with exclusive jurisdiction over slavery have so far delivered only four judgments ever since they were established in 2015. Of the four judgments, two were delivered in 2018 when the specialized courts for the first time convicted two slave-owners to 10 and 20 years imprisonment respectively, as foreseen in Law 2015-031. Notably, these court judgments were only delivered following a decision of the African Union Committee of Experts on the Rights and Welfare of the Child, which emphasized that the conviction of slave owners must meet at least the minimum threshold prescribed by the Law 2015-031.⁵ The number of judgments is shockingly low in light of the very high number of people estimated to be exposed to slavery. Furthermore, it remains unclear why the vast majority of complaints filed by SOS Esclave, at least 45 cases (involving 114 victims), have not been brought before the specialized courts for adjudication. The very low number of criminal convictions and resulting absence of effective remedies for victims is compounded by the fact that victims of slavery also have no recourse for civil cause of action, which has repeatedly pointed out by UN human rights bodies as a major weakness in any serious effort to eradicate slavery.⁶

Weak institutions: The GoM has equally failed at setting up functioning and effective institutions to address slavery. The National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight Against Poverty ("Tadamoun") was set up in 2013. Its mandate includes three goals: to combat poverty, to address the consequences of slavery and to design and implement programmes to promote the reintegration of Mauritanian returnees who were forced to flee during the *passif humanitaire*. Yet, the institution has had little to no impact so far, in particular with respect to the last two roles. In fact, the government seems to believe that no special programmes focussing on the particular needs of people in slavery or suffering from the consequences of slavery were necessary because general anti-poverty development projects would be sufficient. However, even the Tadamoun's development projects are implemented without consultation and they are wholly inadequate and in fact resemble charitable projects rather than measures designed and implemented to lift people out of poverty. The Tadamoun's main activities concern the construction of schools, health facilities, dams and wells with no indication on how priorities are set, beneficiaries are selected and sustainability is ensured. These institutional weaknesses have come under heavy criticism from activists, trade unions, ILO supervisory bodies and UN special mandate holders, which have repeatedly raised concerns about the fact that the agency does not appear to be directly addressing the needs of victims of slavery.⁷ Moreover, despite repeated calls from ILO supervisory bodies there continues to be no involvement of trade unions and anti-slavery organizations in the agency's activities.

Retaliation against anti-slavery organizations and activists: Government authorities have refused to register anti-slavery organisations, thus making it impossible for these organisations to operate freely.

⁵ ACERWC Decision on the communication submitted by MRGI and SOS Esclaves on behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania, Communication No 007/Com/003/2015, decision No. 003/2017 (http://www.acerwc.org/download/acerwc-decision_communication_mauritania_final_english/?wpdmdl=10278)

⁶ UN HRC (2014) Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian on her mission to Mauritania (HRC 27th session) A/HRC/27/53/Add. 1, paras 11, 36-42 (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/53/Add.1)

⁷ For example, see: HRC (2017) Report of the Special Rapporteur on extreme poverty and human rights Philip Alston on his mission to Mauritania (HRC 35th session 6-23 June 2017) A/HRC/35/26/Add.1, paras 47-51, available at : <https://reliefweb.int/sites/reliefweb.int/files/resources/G1705381.pdf>

Moreover, the lack of recognition of anti-slavery organisations makes them unable to join a civil legal action in defence of victims of slavery. The law No. 64-098 requiring NGOs to obtain prior authorization from the Minister of Interior has been applied selectively. Many groups remain “unauthorised” obstructing their ability to function.⁸ For example, lack of registration makes it illegal to hold public events such as peaceful demonstrations. The government continues to deny the registration of the Initiative for the Resurgence of the Abolitionist Movement (IRA), one of the leading anti-slavery organizations.⁹

Moreover, anti-slavery activists have repeatedly been subjected to arrest and imprisonment. The leader of the organisation, Biram Dah Abeid and other members of the IRA have been targeted for arrest and imprisonment. In January 2015, the leadership of the IRA, Biram Dah Abeid and Brahim Bilal, were arrested together with Djiby Sow, leader of the anti-slavery organisation Kawtal. In a gross violation of their due process rights, the activists were subject to interrogation without access to legal representation and subsequently sentenced to 18 months imprisonment for having engaging in peaceful protest action.

In June 2016, 13 activists of IRA were jailed for their alleged role in a protest against forced evictions in Nouakchott, despite the fact that they denied having been involved at all in organising the action. Five activists, Moussa Bilal Biram, Abdallahi Maatallah Saleck, Amadou Tijani Diop, Abdallahi Abou Diop and Jamal Ould Samba, were sentenced to 15 years based on false allegations of rebellion and violence. Seven other IRA members were handed prison sentences of three to five years. While the penalties were reduced on appeal, two IRA leaders, Abdallahi Saleck and Moussa Bilal, remain behind bars serving their terms in the Bir Moghreïn prison, 1200 km from their homes in Nouakchott. According to the UN special procedures the trial was marred by irregularities and fell short of international standards.¹⁰ The UN Special Rapporteur on Poverty Philip Alston expressed concern that these arrests, which took place shortly after his visit to Mauritania in May 2016, may have been partly in reprisal for the group’s cooperation with the UN during his visit.¹¹ More recently, Birham Dah Abeid was attacked by armed forces during a protest and teargassed until he lost consciousness and required immediate hospitalisation.¹²

III. Freedom of Association and Collective Bargaining

Mauritanian workers do not enjoy the right to freedom of association and the right to collective bargaining as guaranteed by international labour standards. National legislation is not in line with ILO Convention No. 87 on Freedom of Association and ILO Convention No.98 on the Right to Organise and Collective Bargaining. Government authorities have repeatedly interfered in trade union activities

⁸ HRW Report, Ethnicity, Discrimination, and Other Red Lines - Repression of Human Rights Defenders in Mauritania, 2018, (<https://www.hrw.org/report/2018/02/12/ethnicity-discrimination-and-other-red-lines/repression-human-rights-defenders>)

⁹ Amnesty International, Growing repression of human rights defenders who denounce discrimination and slavery, March 2018 (<https://www.amnesty.org/en/latest/news/2018/03/mauritania-slavery-and-discrimination-human-rights-defenders-repressed/>)

¹⁰ A/HRC/34/75, Communication sent to the Government of Mauritania by eight special procedure mandate holders (MRT 1/2016) on 2 August 2016 (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20699&LangID=E>)

¹¹ UN HRC, Report of the Special Rapporteur on extreme poverty and human rights on his mission to Mauritania, June 2017 (<https://reliefweb.int/sites/reliefweb.int/files/resources/G1705381.pdf>)

¹² Unrepresented Peoples and Nations Organization, Biram Dah Abeid Injured during Protests in Nouakchott, 2017 (<http://unpo.org/article/20253>)

by intimidating workers and interfering in the free election of workers' representatives at enterprise level.

The Committee of Experts on the Application of Conventions and Recommendations has called on the government for several years to amend certain provisions of the Labour Code in order to bring them into full conformity with the Convention with no avail.

Workers do not enjoy the right to freely elect their representatives without interference from the public authorities. The combined implementation of sections 268 and 273, as well as articles 274-278 of the Labour Code constitutes an obstacle to the right of elect representatives in full freedom by preventing workers from electing qualified persons or depriving them of the experience of certain leaders, if they do not have among their own ranks sufficient numbers of persons considered as competent by the government. Moreover, section 278 of the Labour Code stipulates that changes to the administration or leadership of a trade union can only take effect, if and when approved by government authorities.

Meaningful enterprise-level union representation became impossible when the Ministry of Labour issued a Circular No.002 in 2014 instructing regional labour inspectorates to stop all the enterprise-level elections of workers' representatives. While in 2017 the government agreed to a Memorandum of Understanding and a Roadmap in to pave the way to enterprise-level elections in the private and public sectors, progress in initiating the election process has been slow.

There are also numerous legislative and practical restrictions with respect to the right to peaceful and legitimate strike action. The lengthy and complicated legal procedures for declaring a strike make it practically impossible to declare a legal strike. Section 246 of the Labour Code require unions to pass through a mandatory mediation process with a duration of up to 120 days before being able to call a lawful strike. Moreover, the legislation prohibits certain types of strike action involving the occupation of the workplace or its immediate surroundings under the threat of penal and disciplinary sanctions. In a large number of sectors, such as telecommunications, water treatment, garbage collection and health and social affairs workers, there is a blanket ban on the right to strike.

Furthermore, the national legal framework is not conducive to free and voluntary collective bargaining negotiations between employers and workers as required by ILO Convention No.98. The government has significant scope to intervene and thereby undermine collective bargaining negotiations. Government officials from the Ministry of Civil Service and Labour are entitled to take participate in the preparation of collective agreements, which constitutes an interference in the autonomy of the bargaining partners. In addition, the government has the right to refer a collective dispute to compulsory arbitration without the agreement of employers and workers (sections 350–356, Labour Code).

More importantly, trade union members and leaders are unable to engage in peaceful activities without facing violence, arrests and intimidation. On 10 May, 2017, security forces violently cracked down on a peaceful protest organized by the Secondary Education Teacher Union in the capital Nouakchott in front of the Ministry of National Education.¹³ On 25 August 2017, police interrogated several trade union leaders, including Mr. Abfallahi Ould Mohamed Naha, Secretary General of the CGTM, and Samoury Ould Beye, Secretary General of the CLTM, subsequently ordering their house arrest and the confiscation of their passports. In addition, the Public Prosecutor initiated an investigation into corruption on the mere basis that the union allegedly received foreign funding. On 6 April 2016, during a dockworkers' strike at the port of Nouakchott, trade unionist Moctar Ould Oueineni was fatally injured when police fired teargas to suppress a protest. On 7 November 2016, the police once again used force to repress strike action at the port. Thirty dockers were arrested. In both instances, the dockworkers, backed by the CGTM and the CLTM were protesting against a decision by import companies to transfer

¹³ Mauritania: Security forces violently suppressed a peaceful protest, Arab Trade Union Confederation, May 2016 (<http://arabtradeunion.org/en/content/mauritania-security-forces-violently-suppressed-peaceful-protest>)

containers directly to their own storage facilities where the unloading is done by migrants with even poorer pay conditions than theirs.

Finally, the GoM has not put in place inclusive institutions, which could address the above-mentioned shortcomings in its laws and practices when it comes to the right to freedom of association and the right to collective bargaining.

Section III: Recommendations

The GoM has failed to establish or make progress towards establishing internationally recognized worker rights. To comply with the commitment to observance of the internationally recognized core labour standards expressed in the WTO Ministerial Declarations, the government must urgently take the necessary steps to eradicate slavery and to guarantee the right to freedom of association as well as the right to bargain collectively. We urge the WTO General Council and its Members to call upon the Government of Mauritania to bring its laws and practices in line with its international obligations, in taking the following the steps:

Slavery and forced labour

- Strictly enforce the 2015 anti-slavery law to ensure that those responsible for the practice of slavery be effectively investigated, prosecuted and receive and serve sentences that are commensurate with the crime;
- Ensure that cases of slavery are reported to the authorities and result in judicial action and dissuasive convictions for perpetrators as well as effective remedies for victims;
- Strengthen the labour inspectorate and other relevant enforcement mechanisms to combat the exaction of forced labour;
- Establish specialized units in the Office of the Public Prosecutor and the forces of order with the capacity to gather evidence and initiate the corresponding judicial procedures;
- Ensure that prosecutions at the special courts for slavery crimes are supported and processed in a timely manner, and with public awareness-raising campaigns around the convictions;
- Ensure the social and economic integrations of victims of slavery by providing access to services and resources enabling them to reconstruct their lives and to prevent a return to slavery;
- Reform the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun” and the Roadmap to Combat the Vestiges of Slavery after consultations with trade unions and civil society organisations in order to ensure that they function effectively in specifically targeting the eradication of slavery;
- Increase the visibility of awareness-raising campaigns for the general public, victims, the police, administrative and judicial authorities and religious authorities.
- Finalize the national survey on slavery to provide a comprehensive analysis of the nature and incidence of slavery.

Freedom of association and collective bargaining

- Allow for elections of workers’ representatives to determine trade union representativeness at enterprise-level in the public and private sector;
- Immediately repeal Circular No.002 of 2014;
- Ensure that freedom of association can be exercised in a climate free of intimidation and violence against workers and their organizations;

- Investigate arbitrary interference by police in lawful, peaceful and legitimate trade union activities and hold accountable those responsible;
- Amend the Labour Code, in consultations with the trade unions, in order to bring it into full conformity with international labour standards by specifically addressing the following provisions:
 - i. Section 278 in order to ensure that any change in the administration or leadership of a trade union can take effect as soon as it has been notified to the competent authorities.
 - ii. Section 350 to limit the possibility for the Minister of Labour to have recourse to compulsory arbitration to a minimum.
 - iii. Sections 350-356 in order to limit the excessive list of sectors determined as essential services.
 - iv. Section 346 in order to reduce the maximum duration before any lawful strike action can be undertaken.
 - v. Section 359 in order to abolish the prohibition of the peaceful occupation of workplaces or their immediate surroundings.
 - vi. Review the eligibility criteria for the election of trade union leaders and officers.