

ISLAMIC REPUBLIC OF MAURITANIA

Honor-Brotherhood-Justice

Presidency of the Republic

Visa: DGLTE/JO

Law No. 2015-033 on the fight against torture repealing and replacing the law

No. 2013/011 of January 23, 2013 on the repression of crimes of slavery and torture as crimes against humanity

The National Assembly and the Senate adopted;

The President of the Republic promulgates the law whose content follows:

Chapter one: general provisions

Article 1: object

This law establishes the legal regime for the prohibition, prevention, repression of acts of torture and other cruel, inhuman or degrading offenses, as well as their reparation and measures for the protection of victims.

Acts of torture and cruel, inhuman or degrading treatment or punishment constitute, crimes against humanity. These crimes are imprescriptible.

Section 2: Torture

For the purposes of this law, the term "torture" means any act by which pain or severe suffering, physical or mental, is intentionally inflicted on a person for the purposes, in particular, of obtaining from him or from a third person information or confession, to punish her for an act that she or a third person has committed or is suspected of to have committed, to intimidate or put pressure on it or to intimidate or put pressure on a third person, or for any other reason based on any form of discrimination whatsoever, when such pain or suffering is inflicted by an officer of the public office or any other person acting in an official capacity or at his or her instigation or with his express or tacit consent. This term does not extend to pain or suffering resulting solely from legitimate sanctions, inherent in these sanctions or occasioned by them.

Article 3: public servant

Within the meaning of this law, the terms "public official" designate one of the of the following persons, whether exercising their powers in Mauritania or abroad:

1. a civil servant or any other person in charge of a public service mission;
2. a member of law enforcement, security and armed forces;
3. any person invested with a public or elective mandate;
4. a person whom the law of a foreign State invests with powers who, in Mauritania, would be those of a person mentioned in 1°, 2° or 3° above.

Chapter II: prevention of torture

Article 4: fundamental guarantees concerning the deprivation of liberty

From the moment a person is deprived of liberty, guarantees must be applied, in particular:

- The right to have a member of the family or a person of their choice immediately informed of his detention and the place of detention;
- The right, at his request, to an examination by a doctor upon his admission, arrest or internment;
- The right to have access to a lawyer from the start of the deprivation of liberty or to assistance of a person of their choice as well as the possibility of having quick access to judicial help if necessary;
- The right to be brought before a judge without delay and to have the legality of his detention, in accordance with the laws in force;
- The right to be informed in a language they understand of the above rights listed as well as the possibility of applying for legal aid;
- The obligation for the detaining authority to keep an up-to-date register, indicating in particular the identity and the physical and health condition of the person deprived of liberty, the date, time and reason for the deprivation of liberty, the authority which carried out the deprivation of release, the date and time of release or transfer to another place of detention, destination and transfer authority.

Failure to comply with these safeguards will result in disciplinary action or criminal prosecution if applicable.

Article 5: illegal detention

The detention of a person in any place other than those provided for by law is prohibited.

Article 6: value of the statement under torture

Any statement which is established to have been obtained by the use of torture, cannot be invoked as evidence in a proceeding except to establish proof of torture against the person accused for this act.

Article 7: teaching the prohibition of torture

Education and information concerning the prohibition of torture are part of part of the mandatory training of civilian or military personnel responsible for the application laws, in particular the police, the gendarmerie, the magistrates, medical personnel, civil servants and other persons who may intervene in custody, the interrogation or treatment of any individual arrested, detained or imprisoned in any way whether it be.

This prohibition is incorporated in the rules or instructions issued relating to obligations and powers of the persons referred to in the first paragraph of this article.

In order to prevent the commission of any case of torture, the public prosecutor's office exercises systematic control on the application of the rules, instructions, methods and practices of interrogation and on arrangements for the custody and treatment of persons arrested, detained or imprisoned.

Article 8: supervision of detention

As part of the prevention of torture, supervision of detention is entrusted to the bodies authorized for this purpose by the legislation in force.

Chapter III: punishment for torture

Article 9: impartial investigation

The competent judicial authorities immediately initiate an impartial investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment treatment has been attempted or committed in their jurisdiction, even in the absence of a complaint.

Referral to the competent authorities is open to anyone claiming to have been subjected to the torture. These proceed immediately and impartially to the examination of his case.

Article 10: Penalty incurred

Anyone who commits the act referred to in article 2 of this law shall be punished by ten (10) to twenty (20) years of imprisonment.

Accomplices and co-perpetrators of acts constituting cruel treatment or punishment, inhuman or degrading incur the penalties provided for in the preceding paragraph.

Article 11: aggravation of the sentence

The penalty incurred is twelve (12) to twenty four (24) years of imprisonment:

1. if the act of torture was committed on a minor or on a pregnant woman;
2. if the act of torture was committed using devices specifically intended for torture.
3. The penalty incurred is thirty (30) years' imprisonment:
4. if the act of torture resulted in the total or partial infirmity of the victim;
5. if the act of torture was followed by mutilation, deprivation of the use of a sense organ, of the loss of the reproductive organ.

The author faces life imprisonment if the act of torture resulted in the death of the victim or if it was constituted by rape or preceded by rape.

Article 12: deprivation of civic rights

Without prejudice to the penalties provided for in articles 10 and 11 of this law, the deprivation full political rights and partial civil rights may be pronounced against the author of the act of torture.

Article 13: Incommunicado detention

Any public official who detains an arrested or convicted person in an establishment or in a place not registered as a place of deprivation of liberty will be punished a prison sentence of ten (10) to twenty (20) years.

Article 14: No justification of torture

No exceptional circumstances whatsoever, whether in a state of war, of a state of emergency or any other exceptional situation, cannot be invoked to justify the torture.

Torture cannot be justified by the order of a superior or a public authority.

Article 15: Disobedience to the order to torture

No one shall be punished for having disobeyed an order to commit an act equivalent to the torture and cruel, inhuman or degrading treatment or punishment.

Article 16: Complicity in torture

Any person complicit in an act of torture will be punished with the same penalties as the perpetrator of the act of torture.

Any attempt at torture which will have been manifested by a commencement of execution, if it has not been suspended or if it has failed in its effect only by circumstances beyond the control of its author, is considered to be the act of torture itself and punishable by the same penalties.

Article 17: Jurisdiction

Mauritanian courts are competent to prosecute, judge and punish any person who would have committed an act of torture if:

1. the act is committed on the territory of the Islamic Republic of Mauritania;
2. the act is committed on board a vessel registered under Mauritanian law or in respect of which a license or an identification number has been issued in accordance with such a law;
3. the act is committed on board an aircraft:
 - either registered in Mauritania;
 - either rented without crew and put into service by a person fulfilling the registration conditions as owner of an aircraft in Mauritania;
4. the author has Mauritanian nationality;
5. the complainant or the victim has Mauritanian nationality;
6. the author of the act is in Mauritania after the commission of the act.

Article 18: refusal of expulsion, refoulement and extradition for risk of torture

Without prejudice to the principles governing the extradition procedure, no one shall be expelled, returned or extradited to a State where he runs the risk of being subjected to torture.

In this case, the Mauritanian courts will have jurisdiction to judge the person on the acts subject to extradition if these are provided for and punished by the legislation in force in Mauritania or if they constitute an international crime.

Article 19: mutual assistance in legal matters

Mutual legal assistance is granted to any State or any international Jurisdiction, including with respect to the disclosure of all evidence that is necessary for the purposes of the torture proceedings.

Chapter IV: protective measures

Article 20: protection against torture and ill-treatment

The victim of torture or ill-treatment benefits from legal aid in the conditions provided by law.

Protection and assistance are provided to victims of acts of torture and ill-treatment, to witnesses or persons in charge of the investigation as well as their families against the violence, threats of violence or any other form of intimidation or retaliation because of complaints filed, hearings or statements made, reports made or of investigation.

These measures are fixed by decree.

Chapter V: Reparation

Article 21: Right to compensation

The victim of an act of torture has the right to obtain compensation from the perpetrator of that act.

The victim is compensated fairly and adequately by the State, including the means necessary for his rehabilitation as completely as possible, in particular medical appropriate medical treatment and medical and social rehabilitation.

When the authorities or any person acting in an official capacity have committed acts of torture or ill-treatment or if they knew or had reasonable grounds to believe that such acts had been committed and did not exercise due diligence to prevent them, investigate or take action against their perpetrators in order to punish them in accordance to the legislation in force, they are required to provide compensation to the victims of such acts.

Article 22: Pecuniary compensation

Compensation for damages suffered by victims of torture and ill-treatment as a result of acts committed by public officials or by any other person acting in an official capacity or at his instigation or with his express or tacit consent are repaired in accordance with common law.

Chapter VI: final provisions**Article 23: repeal**

This law repeals all previous provisions to the contrary, in particular the law No. 2013-011 of January 23, 2013 on the repression of crimes of slavery and torture as as crimes against humanity.

Article 24: publication

This law shall be executed as law of the State and published in the Official Journal of the Islamic Republic of Mauritania.

Done in Nouakchott, on 09/10/2015

MOHAMED OULD ABDEL AZIZ

The Prime Minister

YAHYA OULD HADEMINE

The Minister of Justice

Me BRAHIM OULD DADDAH