

**IN THE AFRICAN COMMITTEE ON THE RIGHTS AND WELFARE OF THE  
CHILD**

In the matter between

Minority Rights Group International and SOS-Esclaves  
on behalf of  
Said Ould Salem and Yarg Ould Salem

And

The Republic of Mauritania

**Authors of the Communication**

Minority Rights Group International, UK

SOS-Esclaves, Mauritania

**minority  
rights  
group  
international**

**S.O.S-ESCLAVES**  
Mauritanie



Minority Rights Group International  
54 Commercial Street  
London E1 6LT  
United Kingdom

*Luz Clain*  
*Minority Rights Group*

Email: [minority.rights@mrgmail.org](mailto:minority.rights@mrgmail.org)

Telephone: +44 (0)20 7422 4200  
Fax: +44 (0)20 7422 4201

SOS-Esclaves

203, rue 42-156

Nouakchott, BP:4302

Mauritanie

*Amadou Thiessou* SOS-Esclaves

Email [afrique@sosesclaves.org](mailto:afrique@sosesclaves.org)

Telephone: +222 46 40 83 97

+222 22 16 00 16

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## I. INTRODUCTION

1. Minority Rights Group International (MRG) and SOS-Esclaves hereby submit their communication to the African Committee of Experts on the Rights and Welfare of the Child ('the Committee') against the Republic of Mauritania in accordance with the African Charter on the Rights and Welfare of the Child ('the Charter' or 'the Children's Charter'). MRG and SOS-Esclaves have lodged this case before the Committee on behalf of, and with the full involvement of, Said Ould Salem and Yarg Ould Salem, previously enslaved Haratine children in Mauritania.

## II. SUMMARY OF FACTS

### Background to slavery in Mauritania

2. Mauritanian society is highly stratified along lines of ethnicity, race and caste amongst its three main populations: broadly, these are the Arabic speaking Beidan or White Moors; the Arabic speaking Haratine or Black Moors; and several distinct black ethnic groups, collectively referred to as Black Mauritians, including the Pular, Soninke and Wolof, who speak their own ethnic languages as well as French. The State (including the government, judiciary, military and police) is largely dominated by White Moors. White Moor elites control large parts of the economy and possess considerable wealth. Leading White Moor tribes have major political influence. By contrast, the Haratine people, traditionally enslaved to the White Moors, are typically the poorest and most disenfranchised people in Mauritania, facing continued discrimination, marginalisation and exclusion on account of their belonging to the slave caste.
3. Slavery has existed for centuries in Mauritania, predominantly, though not exclusively, perpetrated by the White Moors against the Haratine<sup>1</sup>, with slaves treated as the property of their masters or mistresses and slave status being passed from mother to child such that a child born to a woman in slavery will belong to the master. Since independence in 1960 various steps have been taken firstly to abolish and, more recently, to criminalise slavery. The 1961 Constitution officially prohibited slavery and in 1981 a Presidential decree provided for the abolition of slavery. Many Haratine are now free in the legal sense but their association with a slave class means that they continue to suffer discrimination and marginalisation and limited access to economic resources. As a result, even if freed, many Haratines continue to serve their masters because of their economic, cultural and psychological dependence on them and the absence of other viable alternatives.<sup>2</sup>

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<sup>1</sup> Black Mauritians such as the Pular and the Soninke have strong internal traditions of social hierarchy and slavery as well and discrimination and slavery-related practices still exist among those groups.

<sup>2</sup> For a useful overview of slavery in Mauritania see the report of the UN Special Rapporteur on contemporary forms of slavery, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Mauritania (24 October – 4 November 2009)*, Human Rights Council, U.N. Doc. A/HRC/15/20/Add.2, 24 August 2010.



4. Despite such official abolition, the deeply ingrained nature of slavery in Mauritania, meant that a significant number of Haratines remained in slavery, living under the direct control of their masters and mistresses, treated as property and receiving no money for their labour. The absence of any supplementary regulations to enforce the 1981 decree enabled such a situation to continue without sanction. It was only in 2007 that the Slavery Act no. 2007-048 was enacted which, for the first time, criminalised slavery and slavery-like practices.<sup>3</sup> Five years later in 2012, an amendment to the Constitution was passed whereby slavery was recognised as a crime against humanity.<sup>4</sup> More recently still, on 10 September 2015, a further law was enacted which replaces the 2007 law.<sup>5</sup> This new anti-slavery law, seeking to address some of the shortcomings in the earlier 2007 law, declares slavery a crime against humanity and raises the act of slavery from an 'offence' to a 'crime', enhancing sentences of imprisonment to between 10 to 20 years as a reflection of the new status as 'crime'.
5. Notwithstanding such legislative measures, slavery remains a reality in Mauritania, made possible by the almost complete lack of enforcement of the 2007 anti-slavery law which has resulted in only one conviction of a slave master. Regrettably, there is nothing to suggest that the new 2015 law will be any better enforced.
6. In addition to domestic legislation outlawing slavery, Mauritania is party to the following international instruments which seek to prohibit slavery and analogous practices: UN Slavery Convention (1926); Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956); the International Labour Organization (ILO) Convention 29 (1930) on Forced and Compulsory Labour<sup>6</sup>; ILO Convention 105 (1957) Abolition of Forced Labour Convention<sup>7</sup>; ILO Convention 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour<sup>8</sup>; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (2000)<sup>9</sup>.
7. Mauritania has also ratified the following international conventions, which are relevant in the context of the present case: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel Inhuman, Degrading Treatment or Punishment; and the Convention on the Rights of the Child. Mauritania is also a party to the African Charter on Human and Peoples' Rights which expressly prohibits slavery (Article 5) as well as the African Charter on the Rights and the Welfare of the Child.

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<sup>3</sup> Annex 1 Loi n° 2007 – 048 du 3 septembre 2007 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (*Act criminalising slavery, 2007*).

<sup>4</sup> Loi constitutionnelle no. 2012-015 portant révision de la Constitution du 20 juillet 1991 (*Constitutional Act recognizing slavery as a crime against humanity, 2012*).

<sup>5</sup> Annex 2 Loi n° 2015-031 du 10 septembre 2015 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (*Act criminalising slavery 2015*).

<sup>6</sup> Ratified by Mauritania on 20 June 1961.

<sup>7</sup> Ratified by Mauritania on 3 April 1997.

<sup>8</sup> Ratified by Mauritania on 3 December 2001. Article 3 includes slavery as a worst form of child labour.

<sup>9</sup> Ratified by Mauritania on 22 July 2005.

## Facts and procedure in the domestic case

8. Said Ould Salem was born in 2000 and his younger brother, Yarg Ould Salem, in 2003. Their mother was a Haratine, part of Mauritania's slave class and a slave to the El Hassine<sup>10</sup> household. As a slave, her children automatically became slaves to the El Hassine family at birth.<sup>11</sup> As soon as he was old enough, Said was required to look after the family's herd of camels, spending the majority of his time out in the bush with the animals, sleeping and eating in a make-shift camp in the open. Yarg undertook domestic chores around the house: cooking, cleaning, washing clothes, preparing tea, buying produce from the local market. From time to time, Yarg would also be required to help his brother look after the camels. The two boys worked seven days a week without pay, with no time off (even on Fridays, the Muslim holy day) and no time to play. They were regularly beaten, usually with a stick or a rope; were not called by their given names but rather called 'slave'; and were only allowed to eat leftovers. Unlike the other children in the family, the two boys did not attend school nor did they learn the Quran.
9. In April 2011, Said managed to escape and make his way to his aunt's.<sup>12</sup> Together with his aunt, he went to the police commissioner and the aunt filed a complaint on the boy's behalf on 19 April 2011 against Cheik Ould Hassine and his brothers Nedhirou Ould El Hassine, Mohamed Ould El Hassine and Tijani Ould El Hassine for holding her sister's children in slavery.<sup>13</sup> In the meantime, the younger brother Yarg had been taken by the El Hassine family to his mother's house where the mother was told that if anybody came looking for him she was to say that he had been living with her the whole time. Yarg was subsequently tracked down to his mother's house and was able to join his elder brother.
10. The complaint was duly investigated and charges were brought under the 2007 law which criminalises slavery against a number of members of the family who had been holding Said and Yarg in slavery. These charges consisted of practising slavery over a minor and depriving a child of education (against Ahmed Ould El Hassine and his sister Oumekelthoum Mint El Hassine); inflicting corporal punishment and violating the physical integrity of a person held in slavery (against Mohamed Ould Sidi Mohamed, who would appear to be an employee of the El Hassine family but against whom charges have not been pursued, at least for the time being, because of uncertainty over his identity); and failing to denounce a crime of which one was aware (against the remaining El Hassine brothers). Charges were unfortunately also brought against the boys' mother (for assisting in the deprivation of a person's liberty) in a sign of the complete absence of understanding or appreciation of the effects of slavery on the free will and freedom of action of those held in slavery, even after

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<sup>10</sup> In some documents the masters' family name appears as Housseine or Houceine.

<sup>11</sup> It is not known who the boys' father is. As commonly said in Mauritania, 'slaves do not have fathers'. This is a reference to the fact that slave women are often raped by various male members of the slave owning family. The resulting children are slaves who belong to the family rather than one particular man. The lack of acknowledged paternity means that when slaves are freed they are not able to register in the civil registry and therefore lack the necessary identity documents to access public services such as schooling.

<sup>12</sup> The boys' mother had already left the El Hassine household, her husband managing to purchase her freedom, but she had had to leave Said behind and later Yarg was taken back by the masters when he was old enough to start working.

<sup>13</sup> Following investigation, charges were also brought against Ahmed Ould El Hassine, the fifth brother of the Hassine family, as well as their sister Oumekelthoum Mint El Hassine and also the boys' mother.

they have been freed. The charges were upheld by the investigating judge and the case referred to the Criminal Court in Nouakchott.

11. In November 2011, in the first and only successful prosecution under the 2007 anti-slavery legislation,<sup>14</sup> Ahmed Ould El Hassine was found guilty of holding the two young brothers in slavery and depriving them of schooling.<sup>15</sup> He was sentenced to two years' imprisonment and fined 500 000 MRO (roughly USD\$1500). His sister was however acquitted of the same charges. The 4 other El Hassine brothers were convicted of failing to denounce an offence of which they had knowledge and each received a 2 year suspended sentence and were each fined 100 000 MRO (roughly USD\$300). The boys' mother was found guilty of encouraging her two sons to forego their liberty and received a two year suspended sentence and was fined 500 000 MRO (roughly USD\$1500). Joint compensation was awarded to the boys of 840 000 MRO (roughly USD\$2500) for Said and 240 000 MRO (roughly USD\$700) for Yarg. While important in being the only successful prosecution under the 2007 law, the judgment was not representative of Said and Yarg's experience: although the entire El Hassine family had been engaged in exploiting them while they were held in slavery, only Ahmed El Hassine was charged with and convicted of the offence of practising slavery and he received the same sentence and fine as the boys' mother (albeit that his prison term was not suspended).
  
12. On 5 December 2011, an appeal was lodged by the State Prosecutor against the decision of the Criminal Court of Nouakchott.<sup>16</sup> The acquittal of Oumekelthoum Mint El Hassine and the sentences and the damages awarded against the other family members were not considered commensurate with the treatment the boys had experienced and the conditions under which they had been kept. Indeed under the 2007 legislation, the stipulated sentence for the crime of slavery is between 5 to 10 years of imprisonment. Regrettably, despite the acquittal of Oumekelthoum Mint El Hassine and the undue leniency of the sentences handed down to her brothers, the State Prosecutor did not appeal the judgment immediately but only filed an appeal after the lawyer representing Said and Yarg personally intervened on the children's behalf and requested the Prosecutor to act.<sup>17</sup> Additionally, an appeal was lodged directly on behalf of the two young victims by their lawyer appealing the amount of damages (the only part of the sentence that could be appealed directly by the civil party).<sup>18</sup> The convicted members of the El Hassine family (as well as the boys' mother) also lodged appeals against their convictions and sentences.<sup>19</sup> The fact of the appeals meant that the award of compensation in favour of the boys could not be enforced but was instead, and remains, suspended pending the outcome of the appeals.

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<sup>14</sup> The 2007 legislation has since been repealed and replaced by the new anti-slavery law enacted in September 2015.

<sup>15</sup> Annex 3 Jugement du Tribunal Pénal de Nouakchott, N: 330/11, 20 November 2011 (*Judgment, Nouakchott Criminal Court (2011)*).

<sup>16</sup> Annex 4 Extrait d'acte d'appel No 544/11, 5 December 2011 (*Confirmation of receipt of Prosecutor's appeal, 2011*).

<sup>17</sup> Regrettably, the Prosecutor's appeal covers all the orders of the judgment and as such includes an appeal against the sentence handed down to the boys' mother. The fact that the mother was prosecuted in the first place clearly serves as a further disincentive to victims of slavery to bring criminal complaints against their former masters/mistresses.

<sup>18</sup> Annex 5 Lawyer for the civil party, Elid Ould Mohameden's appeal against judgment No: 330/2011, 1 December 2011.

<sup>19</sup> Annex 6 Extrait d'acte d'appel No 533/11, 30 November 2011 (*Confirmation of receipt of the appeal lodged by the accused*).

13. Less than four months after being convicted and without any prior communication to the lawyer representing the victims as required so that he could make representations on the boys behalf,<sup>20</sup> the convicted slave-owner was released on bail for the sum of 200 000 MRO (roughly USD\$600). In the meantime, after initially being scheduled for hearing on 5 November 2012 only to be postponed, the appeal hearing has repeatedly been listed for hearing only to then have the hearing date vacated. Initially such postponements were said to be due to the absence of the President of the Criminal Chamber of the Court of Appeal and subsequently due to the inability of the authorities to locate Ahmed Ould El Hassine following his change of address. It is unclear what, if any, steps have actively been taken by the authorities to locate the convicted slave master who is also presumably in breach of his bail conditions. As such, 4 years since the lodging of the appeal against the acquittal and the unduly lenient sentences, Said and Yarg are still waiting for all the members of the family who held them in slavery to be adequately punished for depriving them of their liberty and schooling for the majority of their childhood; have yet to receive any compensation for the violation of their fundamental right to liberty; and live in the awareness that the members of the El Hassine family are still free and at liberty to continue holding others in slavery.
  
14. The failure by Mauritania to ensure the effective prosecution of the members of the family who held Said and Yarg in slavery and the proper enforcement of the 2007 legislation criminalising slavery amounts to a breach of the Respondent State's obligations with respect to the international prohibition on slavery and 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.

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<sup>20</sup> 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 provides that « *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.* »)

### III. SUBMISSIONS ON ACCESS TO THE COMMITTEE, FORM, CONTENT AND ADMISSIBILITY

15. The conditions for the receipt and admissibility of communications are set out in Article 44 of the Charter and the *Revised Guidelines for the Consideration of Communications by the African Committee of Experts on the Rights and Welfare of the Child*<sup>21</sup> ('the Revised Guidelines'). The compliance of this communication with these conditions is set out in further detail below.
16. At the outset it should be noted that, as set out in Article 46 of the Charter relating to the sources of inspiration:
- "the Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights (ACHPR), the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions."*<sup>22</sup>
17. In this regard, the present submissions make reference where appropriate to the rules and jurisprudence of the African Commission on Human and Peoples' Rights ('the Commission') and the African Court on Human and Peoples' Rights ('the Court'), as well as the jurisprudence and guidance of other regional human rights tribunals and UN treaty bodies.

#### 1. Access to the Committee

18. Article 44(1) of the Charter, together with Section I, Article 1 (c) of the Revised Guidelines, refers to the ability of the Committee to receive communications from any non-governmental organisation legally recognised in either one or more of the Member States of the African Union, a State Party to the African Children's Charter or the United Nations. MRG is an international human rights organisation which works to secure the rights of minorities and indigenous peoples worldwide. MRG's headquarters are in London, the United Kingdom where it is legally registered as a charity. It also has regional offices in Kampala, Uganda where it is legally registered under the Uganda NGO Board and Budapest, Hungary where it is registered as a non-profit organisation. MRG was granted observer status by the African Commission in 2001 at the 30<sup>th</sup> session of the Commission,<sup>23</sup> has had consultative status with the UN Economic and Social Council since 2004<sup>24</sup> and is also a civil society organisation registered with the Organisation of American States (OAS) since 2012. MRG has been party to a number of communications before the African Commission including the landmark case on indigenous

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<sup>21</sup> African Committee on the Rights and Welfare of the Child, *Revised Guidelines for the Consideration of Communications by the African Committee of Experts on the Rights and Welfare of the Child* adopted October 2014.

<sup>22</sup> African Charter on the Rights and Welfare of the Child, entered into force Nov. 29, 1999. OAU Doc. CAB/LEG/24.9/49 (1990).

<sup>23</sup> African Commission on Human and Peoples' Rights, *Fifteenth Activity Report of the African Commission on Human and Peoples' Rights: 2001-2002*, paragraph 40, p 12.

<sup>24</sup> UN Economic and Social Council, *Decision 2004/305* (51<sup>st</sup> plenary meeting, 23 July 2004).



peoples' property rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya*.<sup>25</sup> MRG was also granted permission by the African Court to intervene in a case before the Court in November 2014.<sup>26</sup>

19. SOS-Esclaves is a non-governmental organisation based in Mauritania where it has been leading the fight against slavery and slave like practices since its establishment in 1995. It works primarily for the eradication of slavery by descent and has become an authoritative resource in this field. It has been recognised under Mauritanian law since 2005.<sup>27</sup> It has observer status with the African Commission, granted in 1995 at the 17<sup>th</sup> Ordinary Session of the Commission<sup>28</sup> and it was also the author of an earlier communication to the African Commission challenging the continued practice of slavery in Mauritania.<sup>29</sup>
20. MRG and SOS-Esclaves have been supporting Said and Yarg in the pursuit of the criminal proceedings against those formerly holding them in slavery since 2011. This communication is brought on behalf of and with the full involvement and agreement of the two boys, as per the requirements of Article 1 of the Revised Guidelines.

## 2. Requirements of Form

21. Article 44(2) of the Charter, together with Section II, Article 2 of the Revised Guidelines, requires that a communication shall not be anonymous; must be in writing in one of the official languages of the Committee; must be signed by the complainant or his/her representative; and must concern a State which is signatory to the Charter. The names and addresses of MRG and SOS-Esclaves, as authors of this communication, are set out in full at the beginning of this written submission which has been signed by officials from the respective organisations. The submissions are written in English and French (originally written in English and subsequently translated into French). Furthermore, Mauritania ratified the Charter on 21 September 2005.

## 3. Requirements of Content

22. Section II, Article 3 of the Revised Guidelines sets out ten specific requirements regarding the content of a communication. It is submitted that these requirements are fully complied with in respect of the present

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<sup>25</sup> African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya* Communication 276/2003, 25 November 2009.

<sup>26</sup> African Court on Human and Peoples' Rights, *African Commission v. Kenya*, Application No 006/2012. The case against Kenya involving the Ogiek, a hunter-gather people, was referred to the Court by the Commission but MRG had been one of the original communicants at the Commission stage and through its intervention was able to ensure that the voices of the Ogiek were fully represented before the Court.

<sup>27</sup> It was legally registered in Mauritania on 17/05/2005 by authorization receipt No. 0069/Ministry of Interior/Department of Public Liberties/Division of Public Liberties (exact reference: 0069MIPT/DAPLP/SLP).

<sup>28</sup> See <http://www.achpr.org/network/ngo/165/>

<sup>29</sup> African Commission on Human and Peoples' Rights, *SOS-Esclaves v. Mauritanie*, Communication No 198/97, 5 May 1999. (The communication was ruled inadmissible for failure to exhaust domestic remedies).

communication in that: details of the complainants and the State party against which the complaint has been brought have been set out above; the names of the two brothers who are the victims of various human rights violations by Mauritania have been provided; a summary of facts giving rise to this complaint has been set out above; the provisions of the Charter which have been violated are addressed in full below; the remedies sought are listed at the end of these submissions; the issue of exhaustion of domestic remedies is addressed below; it is confirmed that the issue giving rise to this communication has not been submitted to any other international settlement procedure; and finally the addresses of the complainants for receiving correspondence are given as part of the author details above.

#### 4. Conditions of Admissibility

23. Section IX 1) of the Revised Guidelines set out six conditions in relation to admissibility which are addressed in turn below.

##### (a) Compatibility with the provisions of the Constitutive Act of the African Union and the African Charter on the Rights and Welfare of the Child

24. In the Committee's first decision, which concerned a case brought on behalf of children of Nubian descent against Kenya, the Committee found that the communication brought by two international NGOs on behalf of Nubian children did indeed comply with the compatibility requirements, albeit the Committee did not elaborate in any detail on what those requirements were.<sup>30</sup> However, with regard to the equivalent requirement in relation to communications brought before the African Commission, in its jurisprudence the Commission has established that in order to be compatible with the African Charter on Human and Peoples' Rights ('the ACHPR'), a communication must fall into the framework of the Commission's jurisdiction *ratione materiae, ratione personae, ratione temporis* and *ratione loci*:

*"Compatibility with the [ACHPR] has four main aspects. First, the Communication must allege that a right set out in the [ACHPR] has been violated (the 'substantive' requirement). Second, the Communication must be directed at a State Party and must be submitted by someone who is competent to do so (the 'personal' requirement). Third, the Communication must be based on events that have occurred within the period of the [ACHPR's] application (the 'temporal' requirement). Lastly, the Communication must be based on events that took place within the territorial sphere in which the [ACHPR] applies (the 'territorial' requirement)."*<sup>31</sup>

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<sup>30</sup> African Committee of Experts on the Rights and Welfare of the Child, *Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian Descent in Kenya) against the Government of Kenya*, Decision No 002/Com/002/2009, 22 March 2011 (hereinafter '*Children of Nubian descent v. Kenya*') at paragraph 23.

<sup>31</sup> Malcolm Evans and Rachel Murray, *The African Charter on Human and Peoples' Rights: The system in Practice, 1986-2006*, Cambridge University Press, 2008, pp. 95-96.



25. The present communication draws an analogy with this reasoning. As such, in order to be compatible with the Constitutive Act of the African Union and with the Children's Charter, the communication needs to demonstrate that it meets these four criteria.

(i) ***Compatibility rationae materiae/the 'substantive' requirement***

26. The Commission has indicated that, to be admissible, a communication must allege *prima facie* violations of the ACHPR.<sup>32</sup> Communications must specifically address violations of rights guaranteed in the ACHPR. By analogy, for a communication to be admissible under the Charter it must allege a *prima facie* violation of the rights guaranteed under the Charter. Indeed in its more recent decision of the *Talibés v. Senegal*, this Committee found that that communication was compatible with the Constitutive Act of the AU and the Charter because it concerned violations of the provisions of the Charter.<sup>33</sup>

27. As detailed in the merits section below, Mauritania is in breach of its obligations under Articles 1, 3, 4, 5, 11, 12, 15, 16, 21 and 29 of the Charter, through its ongoing failure to ensure the effective prosecution of all those responsible for holding Said and Yarg in slavery, preventing their schooling and using corporal punishment against them.

(ii) ***Compatibility ratione personae/ the 'personal requirement'***

28. The communication's compatibility with the personal requirement, in terms of being submitted against a State Party by those who are competent to do so, has already been addressed in paragraphs 18 to 21 above.

(iii) ***Compatibility ratione temporis/the 'temporal requirement'***

29. As for the temporal requirement, Article 56(2) of the ACHPR requires that communications be based on events that have occurred within the period of application of the ACHPR. The Respondent State must have ratified the ACHPR by the time the alleged violation occurred.<sup>34</sup> This is based on the principle of non-retroactive application of international treaties.

30. In relation to the present case, Mauritania ratified the Charter on 21 September 2005. While the two boys were held in slavery respectively from around 2000 and 2003 onwards, the violations of the Charter by

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<sup>32</sup> See for example: African Commission on Human and Peoples' Rights, *Frederick Korvah v. Liberia*, Communication 1/88, 4<sup>th</sup> Ordinary Session, October 1988, paragraph 6; African Commission on Human and Peoples' Rights, *Ligue Camerounaise des Droits de l'Homme v. Cameroon*, Communication 65/92, 21<sup>st</sup> Ordinary Session, 24 April 1997, paragraph 11.

<sup>33</sup> African Committee of Experts on the Rights and Welfare of the Child, *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine Pour La Défense Des Droits De L'Homme v Government of Senegal*, Decision No 003/Com/ 001/2012, 15 April 2014 (hereinafter *Talibés v. Senegal*), at paragraph 18.

<sup>34</sup> African Commission on Human and Peoples' Rights, *Muthuthurin Njoka v. Kenya*, Communication 142/94, 17<sup>th</sup> Ordinary Session, 22 March 1995, paragraph 5.

Mauritania arise from the Respondent State's failure to effectively prosecute and adequately punish those responsible for holding the brothers in slavery after the initial complaint was filed by their aunt in April 2011. Such failure occurred after ratification of the Charter by Mauritania and indeed the violations are ongoing given that the appeal against the acquittal and the unduly lenient sentences handed down have still not been heard. It follows that this communication is admissible *ratione temporis*.

(iv) ***Compatibility ratione loci/the 'territorial requirement'***

31. Under this requirement, the alleged violations must have occurred in the territory of the Respondent State. In the present case, the events that form the underlying basis of the communication took place in and around Boutilimit, a town 164km southeast of Mauritania's capital city, Nouakchott, where Said and Yarg lived in slavery with the El Hassine family. The criminal case against members of that family was heard by the Criminal Court of Nouakchott, capital city of Mauritania and is currently on appeal before the Criminal Court of Appeal of Nouakchott. Thus all the relevant actions/in-actions giving rise to the violations have occurred within the territory of Mauritania and the communication is accordingly admissible *ratione loci*.

**(b) The Communication is not based exclusively on information circulated by the media or is manifestly groundless**

32. The Revised Guidelines require that the communication must not be based on information gathered solely from the media. MRG and SOS-Eslaves have been closely involved in supporting this case since 2011. The information giving rise to the communication is based on direct contact between SOS-Eslaves and a local lawyer with the two boys, as well as from country visits by MRG to Mauritania and meetings with the two boys. It is further drawn from official documents, including police statements of the victims and court judgments, as well as from individual testimony of the children concerned.
33. With respect to the requirement that the communication is not manifestly groundless, this is similar to the requirement of the European Court of Human Rights ('the ECtHR') that for an application to be admissible it must not be "manifestly ill-founded". The guidance of the ECtHR provides that "any application will be considered 'manifestly ill-founded' if a preliminary examination of its substance does not disclose any appearance of a violation of the rights guaranteed by the [European Convention on Human Rights] with the result that it can be declared inadmissible at the outset without proceeding to a formal examination on the merits ..." <sup>35</sup>
34. It is respectfully submitted that a preliminary examination of the background facts and domestic procedure provided above indicate an apparent failure by Mauritania to fulfil its positive obligations to ensure that the two brothers are protected from slavery and to ensure that those who engage in such a practice, which

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<sup>35</sup> Council of Europe, European Court of Human Rights, *Practical Guide on Admissibility Criteria*, 1 January 2014, at paragraph 375 (available at [www.echr.coe.int](http://www.echr.coe.int)).

violates numerous rights of the child, are brought to justice. As such, this application is not manifestly groundless but instead requires a full examination of its substance to determine whether or not there has been any violation by the Respondent State of its obligations under the Charter.

**(c) The Communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter**

35. In accordance with Section IX, 1) c) of the Revised Guidelines, MRG and SOS-Esclaves confirm that the same issue is not pending consideration and has not been considered by another international body or procedure.

**(d) The Communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective**

36. The Revised Guidelines provide that communications received by the Committee shall be considered if they are sent after exhausting available and accessible local remedies. This requirement for the exhaustion of domestic remedies is one that calls for further consideration, with due regard to: (i) the underlying rationale of the requirement; (ii) the nature of the domestic remedies to be exhausted ("available, effective and sufficient" remedies); and (iii) exceptions to the requirement ("unduly prolonged" remedies).

37. At the same time, the Committee's attention is drawn to the fact that the principal basis of the case against Mauritania is that it is in breach of its positive obligations to protect the two young brothers from slavery due to its failure to effectively prosecute the members of the family who held them in slavery. As such, the issue of whether or not domestic remedies have been exhausted is necessarily and inextricably tied up with the merits of the case. Notwithstanding this position, the issue of exhaustion is addressed as a preliminary issue below in the event that the Committee considers it should be dealt with separately from the merits of the case. Furthermore, given the relevance of the issue of the availability, sufficiency and effectiveness of domestic remedies to both the admissibility and the merits of the present case, the deficiencies of domestic remedies and, in particular, the non-implementation of the 2007 anti-slavery legislation, is addressed here both in general terms and in relation to the specific case of the two brothers.

**(i) The underlying rationale for the requirement of exhaustion of domestic remedies**

38. As recalled by the Committee, local remedies have been defined as "any domestic legal action that may lead to the resolution of the complaint at the local or national level."<sup>36</sup> The Committee has further stated that "the primacy and greater immediacy of the domestic level is reinforced by the fact that local remedies are normally quicker, cheaper, and more effective and allow for better fact finding of alleged violations too."<sup>37</sup>
39. One of the main purposes of the requirement of the exhaustion of local remedies is to allow the Respondent State to be the "first port of call to address alleged violations at the domestic level."<sup>38</sup> This requirement, which has also been the subject of extensive analysis in the decisions of the African Commission, is founded on the principle that a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called to account before an international tribunal.<sup>39</sup> Such a requirement also avoids the difficulty of contradictory judgments arising between national and international levels.<sup>40</sup>
40. Whilst the domestic appeal in the present case is still pending before the local courts, MRG and SOS-Esclaves submit that the present communication is admissible. As elaborated on below, they affirm that both the formal requirements of the exhaustion rule (as developed in international jurisprudence) and its spirit are met in view of the fact that the Respondent State has had ample notice of the alleged violations and more than sufficient opportunity to address the same through securing the effective prosecution and punishment of the members of the family who held the two brothers in slavery by the timely and independent consideration of the appeal in the domestic case.

**(ii) The satisfaction of the formal requirement of exhaustion of domestic remedies**

41. The Revised Guidelines require domestic remedies which are available, accessible, effective and not unduly prolonged to be exhausted before any seizure of the Committee. This is in line with international human rights law under which it is established that the requirement to exhaust domestic remedies only relates to remedies which are 'available, effective and sufficient' and the Committee itself, drawing on earlier jurisprudence of the African Commission, formally recognised this in its earlier decisions on the children of Nubian descent in Kenya<sup>41</sup> and the *Talibés* in Senegal.<sup>42</sup>

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<sup>36</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraph 26, citing African Commission on Human and Peoples' Rights, *Constitutional Rights Project (in respect of Wahab Akamu, G. Adegas and others) v. Nigeria*, Communication 60/91, 17<sup>th</sup> Ordinary session, 22 March 1995.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, 30<sup>th</sup> Ordinary Session, 27 October 2001, paragraph 37.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraph 28, citing the African Commission decision *Dawda Jawara v The Gambia*, Communication 147/95-149/96, 27<sup>th</sup> Ordinary Session, 11 May 2000 (hereinafter *Dawda Jawara v Gambia*), paragraph 32. In a recent case *Abdel Hadi, Ali Radi & Others v Republic of Sudan* (368/09, 54<sup>th</sup> Ordinary Session, 14 July 2014, paragraph 48), the African Commission again recalled that there is no requirement to exhaust local remedies which do not meet these criteria.

## Meaning of available, effective and sufficient remedy

42. The Commission has precisely defined these terms over the course of a number of its decisions. Thus:

A remedy is considered to be available if the petitioner can pursue it without impediment or if he/she can make use of it in the circumstances of his/her case. *“The word ‘available’ means ‘readily obtainable; accessible’; or ‘attainable, reachable; on call, on hand, ready, present; ... convenient, at one’s service, at one’s command, at one’s disposal, at one’s beck and call’. In other words, remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the Complainant.”*<sup>43</sup>

In turn *“[T]he word ‘effective’ has been defined to mean ‘adequate to accomplish a purpose; producing the intended or expected result’ or ‘functioning, useful, serviceable, operative, in order; practical, current, actual, real, valid.’”*<sup>44</sup> As concluded by the Commission, *“if [the remedy’s] success is not sufficiently certain, it will not meet the requirements of availability and effectiveness.”*<sup>45</sup>

Finally, a remedy is sufficient *“if it is capable of redressing the complaint. [...] This Commission has also declared a remedy to be insufficient because its pursuit depended on extrajudicial considerations, such as discretion or some extraordinary power vested in an executive state official. The word ‘sufficient’ literally means ‘adequate for the purpose; enough’; or ‘ample, abundant; ... satisfactory.’”*<sup>46</sup>

43. In addition, the requirement to exhaust local remedies which are available, effective and sufficient has been applied by the Commission on a case-by-case basis in light of the circumstances of the specific case such that a remedy that may be available, effective and sufficient in general can still be found to be unavailable, ineffective, or insufficient in a given case.<sup>47</sup> The ECtHR has similarly held that remedies must be “sufficiently certain not only in theory but in practice”<sup>48</sup> and that:

*“the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the*

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<sup>42</sup> *Talibés v Senegal*, supra note 33 paragraph 20.

<sup>43</sup> African Commission on Human and Peoples’ Rights, *Anuak Justice Council v. Ethiopia*, Communication 299/05, 39<sup>th</sup> Ordinary Session, 26 May 2006, paragraph 51.

<sup>44</sup> *Ibid.* paragraph 52.

<sup>45</sup> *Ibid.* paragraph 52.

<sup>46</sup> *Ibid.* paragraph 52.

<sup>47</sup> African Commission on Human and Peoples’ Rights, *Ilesanmi v. Nigeria*, Communication No. 268/2003, 37<sup>th</sup> Ordinary Session, 11 May 2005, paragraph 46. See also: African Commission on Human and Peoples’ Rights, *Centre for Free Speech v. Nigeria*, Communication No. 206/97, 26<sup>th</sup> Ordinary Session, 15 November 1999, paragraph 8 (holding that the determination of whether a case satisfies the conditions of Article 56 “must be assessed based on the circumstances of each particular case”).

<sup>48</sup> European Court of Human Rights, *Aksoy v. Turkey*, Application No. 21987/93, 18 December 1996, paragraph 52.



*existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant.*<sup>49</sup>

44. The following analysis demonstrates that for a variety of reasons the domestic remedy of seeking a criminal conviction of one's slave master and obtaining compensation for one's deprivation of liberty which exists in theory is neither effective nor sufficient in practice, both as a general proposition but also on the specific facts of the present case.

### **Lack of effective or sufficient domestic remedy in general for victims of slavery**

- ***The lack of enforcement of the 2007 anti-slavery law***

45. Mauritania's legal and institutional framework appears on its face to offer protection against slavery and to guarantee the sanction of slavery practices.<sup>50</sup> The adoption on 3 September 2007 of the Slavery Act<sup>51</sup> criminalizing slavery and punishing slavery-like practices appeared a significant step in the combat against slavery. Article 2 of the Act defines slavery as "the exercise of all or some of the rights of property over one or more persons."<sup>52</sup> Article 3 prohibits "discrimination, in any form, against a person alleged to be a slave."<sup>53</sup> Enslavement is punishable by 5 to 10 years' imprisonment and a fine of approximately US\$ 2,000–4000. In addition, those who do not follow up a denunciation of any slavery-like practice brought to their attention, including governors, prefects, local chiefs and police officers, shall be liable to prison sentences and a fine (Article 12).
46. Nevertheless there has been an almost complete lack of political or judicial will to enforce the 2007 law. The unwillingness of Mauritania to take timely and appropriate action and to progress slavery cases at all stages of the criminal procedure, from initial police investigation and charges being brought by the prosecutor to consideration by the investigating judge and subsequently by the criminal court, is confirmed by numerous reports from international organisations, governments and NGOs. For example, the UN Committee of the

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<sup>49</sup> *Ibid.* paragraph 53. See also: European Court of Human Rights, *Donnelly and Others v. United Kingdom*, Application Nos. 5577/72 and 5583/72 (1973), paragraph 4 (Law section). Furthermore the Council of Europe, in its *Practical Guide on Admissibility Criteria*, recommends that "the existence of remedies must be sufficiently certain not only in theory but also in practice. In determining whether any particular remedy meets the criteria of availability and effectiveness, regard must be had to the particular circumstances of the individual case" (Council of Europe/European Court of Human Rights, *Practical Guide on admissibility criteria*, updated to 1 January 2014, paragraph 72).

<sup>50</sup> Over the last century, slavery in Mauritania has theoretically been abolished in law three times. In 1905, a colonial decree implemented the 1848 French law abolishing slavery in all French colonies. In 1961, at independence, abolition was reaffirmed by the Constitution, which incorporated the principles of the Universal Declaration of Human Rights. In 1980, President Haidalla issued a statement announcing the abolition of slavery, and a ruling was enacted (Ordonnance n° 081-234 du 9 novembre 1981 portant abolition de l'esclavage).

<sup>51</sup> Annex 1 Loi n° 2007 – 048 du 3 septembre 2007 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (*Act criminalising slavery, 2007*).

<sup>52</sup> Translated from French « *L'esclavage est l'exercice des pouvoirs de propriété ou certains d'entre eux sur une ou plusieurs personnes.* »

<sup>53</sup> Translated from French "*Est interdite toute discrimination, sous quelque forme que ce soit, à l'encontre d'une personne prétendue esclave.* »

Rights of the Child in its 2009 Concluding Observations on Mauritania expressed its concern over “the lack of effective implementation of the [2007] law”<sup>54</sup> and urged Mauritania “to take all necessary measures to eradicate slavery and in particular to ensure that perpetrators of such practices are held accountable in accordance with the law”.<sup>55</sup>

47. Similar concerns were expressed by the UN Committee on Economic, Social and Cultural Rights in 2012 regarding the fact that “a large number of persons and families are employed in situations of de facto slavery, in spite of the adoption in 2007 of the Slavery Act” as well as “the very low number of prosecutions under the Act despite the fact that it entered into force in 2007.”<sup>56</sup> Regrettably, by the time of the 2014 follow-up country visit to Mauritania of the UN Special Rapporteur on Contemporary Forms of Slavery the situation had still not improved with the Special Rapporteur noting that the enforcement of the 2007 anti-slavery law relies solely upon the police and judiciary, who “have shown a reluctance to follow up on allegations of slavery-like practices, with most cases being closed without any proper investigation.”<sup>57</sup> She concluded that de facto slavery continues to exist in Mauritania.<sup>58</sup>
48. Equally, in 2014, the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations noted in relation to Mauritania that “the actions of the Government to combat slavery remain insufficient and do not create an enabling environment for its eradication, but instead maintain an environment conducive to the development of slavery.”<sup>59</sup> It described the measures accompanying the 2007 Act as a “dead letter.”<sup>60</sup>
49. In its 2014/15 Report, Amnesty International assessed that implementation of the anti-slavery law in practice remained poor, stating that “court cases were subject to long delays.”<sup>61</sup> It indicated that between 2010 and the end of 2014, at least six cases of slavery were submitted to the Public Prosecutor but no ruling on any of them had been made by the end of 2014.<sup>62</sup> The Global Slavery Index<sup>63</sup> described a “deliberate and systematic failure

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<sup>54</sup> UN Committee on the Rights of the Child, *Concluding Observations on the Report of Mauritania*, CRC/C/MRT/CO/2, 51<sup>st</sup> Session, 17 June 2009, at paragraph 36.

<sup>55</sup> *Ibid.*

<sup>56</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Initial Report of Mauritania*, E/C.12/MRT/CO/1, 58<sup>th</sup> Session, 12-30 November 2012, at paragraph 13.

<sup>57</sup> United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Follow-up mission to Mauritania*, 27<sup>th</sup> Session, A/HRC/27/53/Add.1, 26 August 2014, paragraph 11.

<sup>58</sup> *Ibid.* Summary.

<sup>59</sup> *ILO Committee of Experts on Application of Conventions and Recommendations*, 139–40, ILC.103/III (1A), International Labor Conference, 103rd Session, 5 February 2014, p. 139.

<sup>60</sup> *Ibid.*

<sup>61</sup> Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*. London: Amnesty International, 2015 p. 245. Available at: <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

<sup>62</sup> *Ibid.*

<sup>63</sup> The Global Slavery Index is an annual ranking of slavery conditions in countries worldwide published by the Walk Free Foundation. It is based on a combined measure of three factors: estimated prevalence of modern slavery by population; a measure of child marriage; and a measure of human trafficking in and out of the country. (Walk Free Foundation. *The Global Slavery Index 2013*. Walk Free Foundation, 2015. p. 1).



of the government to enforce laws” and expressed its concern about “the institutionalised acceptance of slavery by police and judges” and the “low levels of investigations and prosecutions.”<sup>64</sup>

50. It is more than apparent from the foregoing that the Mauritanian Government is fully aware of the persistence of slavery and, notwithstanding purported attempts by the Respondent State to address the matter, including most recently in September 2015 the adoption of new legislation replacing the 2007 law, a climate of impunity persists. Indeed, the failure to bring to adequate and timely justice the members of the family who held in slavery the two boys who are the subject of the present communication is symptomatic of the lack of political or judicial will to bring an overdue end to slavery in Mauritania.

51. The continued prevalence of slavery in Mauritania and the lack of enforcement of the 2007 anti-slavery legislation is not dissimilar from the situation which existed in the earlier case considered by this Committee of the *Talibés v. Senegal*. In that case, while it was apparent that penal laws were in existence proscribing the practice of forcing children to beg, Senegal had made little effort to enforce such provisions: as of 2011, only 10 cases had been brought resulting in 9 convictions but with the duration of imprisonment being minimal. In such circumstances, this Committee was of the view that the avenue of pursuing a criminal complaint was “inefficient”.<sup>65</sup> By analogy, with regard to the present communication, any remedies that may be available in theory under the 2007 Act, under which there has only been one conviction to date with a sentence not meeting the minimum prescribed by law, are neither effective nor sufficient in practice.

- ***The lack of independence of the judiciary***

52. The African Commission has consistently declared in its assessment of domestic remedies that it takes into account “the circumstances of each case, including the general context in which the formal remedies operate.”<sup>66</sup> Specifically and importantly for this case, the African Commission has highlighted the impartiality of the judicial process as a decisive factor in determining whether the available remedies are effective and should be exhausted. It has accordingly found admissible communications where “the legal process [was] wilfully obstructed by the government”<sup>67</sup> and ruled that complainants were not required to exhaust remedies “from a source which does not operate impartially”<sup>68</sup> or when the judiciary is controlled by the regime.<sup>69</sup> This is

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<sup>64</sup> Walk Free Foundation. *The Global Slavery Index 2014*. Walk Free Foundation, 2015. pp. 68-9. Available at: [http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global\\_Slavery\\_Index\\_2014\\_final\\_lowres.pdf](http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf)

<sup>65</sup> *Talibés v. Senegal*, *supra* note 33 at paragraph 22.

<sup>66</sup> African Commission on Human and Peoples’ Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, Communication 334/06, 9<sup>th</sup> Extraordinary session, 1 March 2011, paragraph 92. See also *Anuak Justice Council v. Ethiopia*, *supra* note 43 at paragraph 49.

<sup>67</sup> African Commission on Human and Peoples’ Rights, *John K. Modise v. Botswana*, Communication 97/93, 28<sup>th</sup> Ordinary session, 6 November 2000, paragraph 69.

<sup>68</sup> African Commission on Human and Peoples’ Rights, *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan*, Communication No 379/09, 15<sup>th</sup> Extraordinary session, 7-14 March 2014, paragraph 68. See also ACHPR, *Constitutional Rights Project (in respect of Zamani Lakwot and 6 Others) v. Nigeria*, Communication 87/93, 17<sup>th</sup> Ordinary session, 22 March 1995, paragraph 8 and ACHPR, *Constitutional Rights Project (in respect of Wahab Akamu, G. Adega and Others) v. Nigeria*, *supra* note 36, paragraph 10.

particularly pertinent in the case of Mauritania, where the widespread corruption within and lack of independence of the judicial system have been the subject of comment by a number of independent bodies, including those mentioned below.

53. Several UN treaty bodies have expressed their concern with regard to the lack of independence of the Mauritanian judiciary and interference with it by the Executive. For example, in its 2012 Concluding Observations on Mauritania, the UN Committee on Economic, Social and Cultural Rights referred to the fact that “corruption affects all sectors of the State, including the judiciary.”<sup>70</sup> Similarly, in its 2013 Concluding Observations on Mauritania, the UN Human Rights Committee reported its concern relating to “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.”<sup>71</sup> Equally, in its 2013 Concluding Observations on Mauritania, the UN Committee against Torture commented that it was:

*“concerned by credible reports regarding the exertion of pressure on members of the judiciary and interference in the judicial system. The fact that article 89 of the Constitution of 1991 states that the President of the Republic is the ‘guarantor of the independence of the judiciary’ and presides over the Supreme Council of the Judiciary only heightens the Committee’s concerns in this respect. The Committee is concerned by the absence of measures to guarantee the effective independence of the judiciary (art. 2).”<sup>72</sup>*

54. Following an on-the-ground mission including meetings with the President, government ministers, judges, law practitioners, officials and NGOs, the International Federation for Human Rights (FIDH) published an alarming report regarding a “deficient” judiciary.<sup>73</sup> The report describes the “hyper presidency” (« *hyper présidence* ») as extremely preoccupying, recounting the control over and the instrumentalisation of the judiciary by the executive.<sup>74</sup> During an interview, a judge stated that the justice system was “*complètement au service [du Pouvoir], inefficace et branlante.*”<sup>75</sup> Opposition members shared their concern about justice being “*muselée et prise en otage par le Pouvoir exécutif.*”<sup>76</sup>

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<sup>69</sup> *Dawda Jawara v. the Gambia*, supra note 41, paragraph 40. See also *Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v. Angola and Thirteen Others*, Communication 409/12, 54<sup>th</sup> Ordinary session, 30 April 2014, paragraph 99.

<sup>70</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Initial Report of Mauritania*, E/C.12/MRT/CO/1, 49<sup>th</sup> Session, 10 December 2012, paragraph 9.

<sup>71</sup> UN Human Rights Committee, *Concluding Observations on the Initial Report of Mauritania*, CCPR /C/MRT/CO/1, 109<sup>th</sup> Session, 21 November 2013, paragraph 20.

<sup>72</sup> UN Committee against Torture, *Concluding Observations on the Initial Report of Mauritania* adopted by the Committee, 50<sup>th</sup> session (6–31 May 2013), CAT /C/MRT/CO/1, 18 June 2013, paragraph 15.

<sup>73</sup> International Federation for Human Rights (FIDH). *Mauritanie : critiquer la gouvernance, un exercice risqué*. FIDH ISSN 2225-1790, November 2012, available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/FIDH\\_Mauritania107.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/FIDH_Mauritania107.pdf) at p. 9.

<sup>74</sup> *Ibid.* p. 6

<sup>75</sup> *Ibid.* p. 9. “*completely at the command of the executive, inefficient and unstable/easy to influence.*”

<sup>76</sup> *Ibid.* p. 9. “*muzzled and held hostage by the executive power.*”

55. In addition to the above material, a series of arrests followed by prompt convictions of anti-slavery activists in late 2014/early 2015, when compared to the lack of progress on criminal cases against slave masters and mistresses, would also appear to demonstrate a reluctance on the part of the Mauritanian Government to eradicate slavery and to support concerns over judicial independence. More specifically, three anti-slavery activists were arrested in November 2014 and tried and sentenced in January 2015 following their involvement in a peaceful assembly. Their appeal against their sentences was heard in August 2015 resulting in the upholding of the original sentences. One of the activists was a prominent opposition politician, Biram Ould Dah Ould Abeid, former presidential candidate and president of the Initiative for the Resurgence of the Abolitionist Movement (IRA), an organisation which campaigns against slavery. The three activists were given two-year sentences after being convicted of membership of an unrecognized organization and taking part in an unauthorised assembly. Such a sentence is the same as that handed down to the only member of the El Hassine family charged with and convicted of holding the two boys in slavery. Given the stark contrast in the severity of the crimes (slavery is recognised as a crime against humanity in Mauritania’s constitution), the fact that they resulted in the same prison sentence would appear to add weight to the previously stated concerns that while there may be a functioning judicial system its independence and impartiality has been compromised. The swiftness of the appeal upholding these sentences, less than 10 months after the first instance judgment, when compared to the 4 years which have passed without any appeal hearing in the present case, also suggests that the judiciary prioritises proceedings against anti-slavery activists over securing justice for slavery victims.
56. Such lack of judicial independence should be taken into account by the Committee when assessing the availability, effectiveness and sufficiency of any local remedies in the present case.

- ***Lack of alternative remedies to the 2007 anti-slavery law***

57. The only alternative to seeking redress under the 2007 Act would be for a victim of slavery to bring a purely civil claim for financial compensation. However, international and regional courts have recognised that in certain situations, the protection provided by civil law is an insufficient and ineffective deterrence and that adequate protection and reparation can only be achieved through criminal sanctions. The ECtHR has found civil remedies insufficient in cases involving fundamental values and personal integrity<sup>77</sup> as well as serious violations such as torture<sup>78</sup> and violations of the right to life,<sup>79</sup> and has accordingly found that there was no obligation to pursue and exhaust civil remedies in such cases. The Inter-American Commission of Human Rights adopted the same reasoning in *Moiwana Community v. Suriname*, where it stated that “a civil action for damages [...] does not represent an adequate and effective remedy in response to actions that may constitute

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<sup>77</sup> European Court of Human Rights, *Siliadin v France*, Application No. 73316/01, 26 July 2005, paragraphs 143-144.

<sup>78</sup> European Court of Human Rights, *Assenov and Others v. Bulgaria*, 28 EHRR 652, 28 October 1998, paragraphs 84-86.

<sup>79</sup> European Court of Human Rights, *Zubayrayev v. Russia*, Application No. 67797/01, 10 January 2008, paragraphs 63-4.

serious crimes under Suriname's domestic law."<sup>80</sup> Similarly, the UN Committee on the Elimination of Racial Discrimination has repeatedly found that civil remedies "could not be considered an adequate avenue of redress" and cannot be considered to be an alternative to criminal sanctions.<sup>81</sup> Similarly, while not addressing the issue explicitly, the African Commission has ruled cases admissible where the complainants have argued, inter alia, that civil remedies did not constitute effective remedies for serious human rights violations such as torture.<sup>82</sup>

58. It is respectfully submitted that slavery, recognised as a crime against humanity under Mauritanian law, constitutes both a serious human rights violation and one involving fundamental values and personal integrity. As such, civil remedies alone do not constitute an effective remedy for slavery and are not required to be exhausted; only criminal law can provide adequate protection, redress and effective deterrence.
59. For completeness, the Committee's attention is drawn to the fact that a new anti-slavery law has recently been adopted in Mauritania.<sup>83</sup> This law, which, among other things, provides for higher sentences for the crime of slavery and allows certain human rights organisations to represent victims in criminal proceedings, repeals and replaces the 2007 law. However, it does not have retroactive effect. In any event, given the serious failings in the enforcement of the 2007 law and the absence of any apparent discussion, analysis or learning process being undertaken at an official level in relation to the same, it is extremely difficult to envisage how this new law will meet with greater success in terms of implementation.
60. Having due regard to the lack of enforcement of the 2007 Act, the lack of independence of the judiciary and the absence of any sufficient alternative causes of action to the 2007 Act, it is submitted that there are no effective or sufficient remedies available for victims of slavery in Mauritania.

#### **Lack of effective or sufficient domestic remedy in the specific circumstances of the present case**

61. Despite the general absence of any sufficient or effective domestic remedies due to the lack of enforcement of the 2007 law and the lack of judicial independence, the two victims in the present case *have* sought to engage with the criminal justice system in an attempt to see those who held them in slavery brought to justice and joined themselves as the civil party to such criminal action in order to obtain compensation. However, the history of their domestic case simply serves as a specific example of the lack of sufficient or effective remedies available to victims of slavery more generally.

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<sup>80</sup> Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment of June 15, 2005, Series C No. 124, paragraph 46(e). See also *Michael Gayle v. Jamaica*, Case 191/02, Report No. 8/03, OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 308, 24 October 2005, paragraphs 41-43; *Jeremy Smith v. Jamaica*, Case 558-05, Report No. 87/08, OEA/Ser.L/V/II.130 Doc. 22, rev. 1, 30 October 2008, paragraph 34.

<sup>81</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Ziad Ben Ahmed Habassi v. Denmark*, Communication No. 10/1997, 54<sup>th</sup> session, 17 March 1999, CERD/C/54/D/10/1997, paragraph 6.1. See also CERD, *Emir Sefic v. Denmark*, Communication No 32/2003, 66<sup>th</sup> session, 7 March 2005, CERD/C/66/D/32/2003, paragraph 6.2; and CERD, *Lacko v. Slovakia*, Communication No. 11/1998, 59<sup>th</sup> session, 9 August 2001, CERD/C/59/D/11/1998, paragraph 6.3.

<sup>82</sup> *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, supra note 41 at paragraph 29.

<sup>83</sup> Annex 2 Loi n° 2015-031 du 10 septembre 2015 (*Act criminalising slavery 2015*).



- ***Leniency of the sentences and release on bail of Said and Yarg's convicted slave master***

62. The lack of political and judicial will to eradicate slavery is amply demonstrated by the present case which is the only 'successful' prosecution under the 2007 law despite the continued widespread practice of slavery: only two members of the El Hassine household were charged with slavery, the other four members simply being charged with the failure to report a crime of which they had knowledge; of the two charged with slavery, only one was convicted; the sentence pronounced against the only El Hassine family member convicted of slavery failed to meet the minimum tariff established under the 2007 law and he was released on bail soon after his sentencing following his filing of an appeal. The minimum sentence set down under the 2007 law for subjecting a person to slavery is 5 years whereas Ahmed Ould El Hassine was only sentenced to two years imprisonment and at no point was the children's lawyer informed of his request for bail, despite the potential risks to the boys and the fact that the under the criminal code the civil party must be informed throughout the judicial process.<sup>84</sup>

63. Given the leniency of the original sentences and the failure to deal expeditiously with the appeal against the same, such an appeal only being lodged by the State Prosecutor following the intervention of the lawyer acting for the two children and still being pending 4 years later, it is submitted that the remedy available to the children to obtain justice for the years that they were held in slavery is both ineffective and insufficient in practice.

- ***The failure to investigate the disappearance of the convicted master following his release on bail pending the appeal***

64. In the present case, unlike the majority of slavery cases which do not proceed beyond the original complaint stage for want of any effective investigation by the police or the prosecutor, the complaint originally made by the children's aunt was investigated and the matter duly referred to the courts. However, following the handing down of an unduly lenient sentence and the release on bail pending his appeal of the only family member convicted of slavery, there appear to have been no adequate attempts by the authorities in Mauritania to locate the convicted slave master. It is this very failure to locate the convicted master that has been given as an official reason for the repeated postponement of the appeal hearing over the last three years. The two children live in the knowledge that the person who ill-treated them previously is living as a free person, notwithstanding his conviction for a crime recognised as a crime against humanity, and that there is little likelihood of him being located or his sentence being increased to reflect the severity of his crime and the suffering that the children faced.

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<sup>84</sup> 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.* »

65. In the case of *Abdel Hadi, Ali Radi & Others v Republic of Sudan*,<sup>85</sup> the African Commission was concerned with a case of torture where the Respondent State was aware of the allegations of torture but had failed to investigate the complaints lodged by the Applicants. The Commission stated that allegations of torture “impose an immediate duty on the State to initiate a prompt, impartial and effective investigation in order to establish the veracity of these allegations and bring the perpetrators to justice if the allegations are founded.”<sup>86</sup> By analogy, by failing to deal with the case expeditiously and in a manner commensurate with the severity of the crime, Mauritania has “made any local remedies that theoretically existed, ineffective.”<sup>87</sup>

- ***State’s obligation to move the criminal process forward and not the victims***

66. It is readily apparent from the foregoing that victims of human rights violations which are treated as criminal offences under a State’s domestic laws have little, if no, control over the criminal process. It is for this reason that the African Commission has consistently ruled that:

*“Whenever there is a crime that can be investigated and prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its ultimate conclusion. In such cases, one cannot demand that the complainants or the victims or their family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards.”<sup>88</sup>*

Instead, by failing to properly investigate a criminal matter of which it has been notified and to move the criminal process forward to its ultimate conclusion a State “forfeit[s] its prerogative to deal with the matter domestically.”<sup>89</sup>

67. The Committee is respectfully invited to adopt a similar approach to that of the Commission and to rule that the two boys in the present case cannot be demanded to assume the task of exhausting domestic criminal remedies (the only remedies which are sufficient given the nature of the violations) but that it is instead for the Respondent State to move the criminal process forward to its ultimate conclusion in a timely and effective manner, something which it has failed to do.

68. In conclusion, the above shows how the pursuit of local remedies under the 2007 Act has been fraught with impediments. MRG and SOS-Esclaves submit that for all the above stated reasons Mauritania has made local remedies which exist in theory unavailable, ineffective and insufficient in practice and accordingly there are no local remedies that remain to be exhausted.

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<sup>85</sup> *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *supra* note 41.

<sup>86</sup> *Ibid.* paragraph 46.

<sup>87</sup> *Ibid.* paragraph 48.

<sup>88</sup> African Court on Human and Peoples’ Rights, *Article 19 v Eritre*, Application No 275/2003, paragraph 72. See also African Commission on Human and Peoples’ Rights, *Dr Farouk Mohamed Ibrahim v Sudan*, Communication No.386/10, 19-25 February 2013.

<sup>89</sup> *Ibid* paragraph 72. See also *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *supra* note 41 at paragraphs 45 and 46.

(iii) ***The satisfaction of the exception of undue delay to the requirement to exhaust domestic remedies***

69. In addition, or as an alternative to the above arguments that there are no available, effective or sufficient remedies to be exhausted, it is submitted that any domestic remedies that may theoretically exist are unduly prolonged and accordingly there is no requirement to exhaust them before coming before this Committee. This is in line with the Committee's earlier decision concerning the Nubian children where it stated that it was "of the view that the Complainants can be exempted from exhausting local remedies if such an attempt would be or is unduly prolonged, which is an explicitly mentioned exception under Article 56[5] of the African Charter on Human and Peoples' Rights."<sup>90</sup>
70. The undue delay exception is also recognised by other international human rights tribunals. The UN Human Rights Committee has held that a case may be admissible if lengthy delays in proceedings are "neither attributable to the alleged victims nor explained by the complexity of the case."<sup>91</sup> In the present case, the victims of slavery have at no stage of the proceedings caused the delay, indeed through their lawyer they have repeatedly sought to ensure a hearing of the appeal, nor can the case be qualified as complex, since it does not pose any novel legal points or evidential obstacles.
71. Steps have actively been taken by those representing the two boys to move the appeal proceedings on but have to date yielded no result. Due to the lack of political and judicial will, numerous procedural obstacles have been raised which have stalled the case. Following the initial acquittal, convictions and unduly lenient sentencing in November 2011, the matter was appealed by all parties in December 2011. An initial hearing date was set for the 21 November 2012, almost a year later. However, this hearing never took place and subsequent hearing dates have repeatedly been postponed. Initially, the lawyer for the two boys was informed that this was due to the absence of the President of the Court. Subsequently the reason given for the postponements was the inability to locate the convicted slave master who had been released on bail in March 2012.
72. Various steps have been taken by the complainants to bring the case forward. The local lawyer representing the boys and the President of SOS-Eslaves have had meetings with the General Prosecutor and both the previous and current Ministers of Justice raising the issue of the delay in the hearing of the case. MRG, together with two other international non-governmental organisations, Anti-Slavery International and Open Society Justice Initiative, during a joint mission to Nouakchott in December 2014, reiterated their concern regarding the slowness of justice during a meeting with the Minister of Justice.
73. At the time of submitting this communication four years have passed since the original lodging of the appeal. Such delay is on no account due to the actions of the two child victims but indeed is despite the repeated

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<sup>90</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraph 31. See also *Talibés v Senegal*, *supra* note 33 at paragraph 21.

<sup>91</sup> UN Human Rights Committee, *Fillastre, Bizouarn v. Bolivia*, Communication No. 336/1988, 5 November 1991, paragraph 5.2.



efforts of those representing the two boys to advance the case. For the reasons given below it is respectfully submitted that such delay amounts to unreasonable or undue delay such that the exception to the requirement to exhaust any domestic remedies that do exist operates.

### **The involvement of minors as a relevant factor in the consideration of time limits**

74. The status and age of the victim is a relevant factor to be taken into account in determining whether any delay is unduly prolonged. International rules and jurisprudence require the special situation of the child to be taken into consideration at all stages of judicial proceedings concerning them, whether bearing in mind their age and maturity or considering their time perception. For example, the Guidelines on Action for Children in the Justice System in Africa, referred to by the Special Representative on Violence Against Children<sup>92</sup> and by the UN High Commissioner for Human Rights,<sup>93</sup> call for a child-friendly justice and provide that “[j]ustice proceedings where children are involved should be completed without undue delay and as speedily as possible, bearing in mind children’s age, maturity and stage of development, and postponements of proceedings must be kept to the minimum.”<sup>94</sup>
75. The UN Committee on the Rights of the Child in turn has referred to the need to take into account the “special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests.”<sup>95</sup> The UN Committee went on to underline that “the passing of time is not perceived in the same way by children and adults ... Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. [...] The timing of the decision should, as far as possible, correspond to the child’s perception of how it can benefit him or her.”<sup>96</sup> Specifically in the context of children who are victims of violence, the same UN Committee has stated that “[i]n all proceedings involving children victims of violence, the celerity principle must be applied, while respecting the rule of law.”<sup>97</sup>
76. In line with the above approach, this Committee in its earlier decision concerning children of Nubian descent in Kenya declared that:

*“a year in the life of a child is almost six percent of his or her childhood. It is in the spirit and purpose of the African Children’s Charter, the Africa Call for Accelerated Action (Cairo Plus 5), the Millennium*

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<sup>92</sup> UN Human Rights Council, *Annual report of the Special Representative of the Secretary-General on Violence against Children*, 13 January 2012, A/HRC/19/64, paragraph 65.

<sup>93</sup> UN Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 16 December 2013, A/HRC/25/35. p. 5.

<sup>94</sup> *Guidelines on Action for Children in the Justice System in Africa*. Kampala Conference on Child Justice in Africa, 7-8 November 2011 paragraph 37.

<sup>95</sup> UN Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 62<sup>nd</sup> session, CRC/C/GC/14, 29 May 2013, paragraph 37.

<sup>96</sup> *Ibid.* paragraph 93.

<sup>97</sup> UN Committee on the Rights of the Child, *General Comment No. 13 (2011), on the right of the child to freedom from all forms of violence*, CRC/C/GC/13, 18 April 2011, paragraph 54(d).

*Development Goals and other similar commitments, that States need to adopt a 'children first' approach with some sense of urgency. This is one of the messages that the drafters of the African Children's Charter wanted to communicate in its Preamble when they recognized that 'the child occupies a unique and privileged position in the African society.'*<sup>98</sup>

77. In many ways this requirement to ensure that judicial proceedings involving children should be completed as promptly as possible is part of the wider principle of the need to ensure the best interests of the child. As recalled by the UN Committee on the Rights of the Child, the obligation is to ensure that all judicial and administrative decisions shall demonstrate "that the child's best interests have been a primary consideration,"<sup>99</sup> where the expression "primary consideration" means that "the child's best interests may not be considered on the same level as all other considerations."<sup>100</sup>
78. Indeed, as previously stated by this Committee "the implementation and realization of children's rights in Africa is not a matter to be relegated for tomorrow, but an issue that is in need of proactive immediate attention and action [...] it cannot be in these children's best interests [...] to leave them in a legal limbo for such a long period of time."<sup>101</sup> This Committee went on to hold that "the unduly prolonged court process is not in the best interests of the child principle and warrants an exception to the rule on exhaustion of local remedies."<sup>102</sup> The Committee furthermore underlined the role of the State as "an upper guardian of children" and that in fulfilment of this role, the State and its institutions should "proactively take the necessary legislative, administrative and other appropriate measures in order to bring to an end the current situation children [...] find themselves in."<sup>103</sup>
79. At the time of submitting this Communication, the victims have been waiting for an appeal hearing for four years. In line with the Committee's reasoning, this period of time represents almost 24 percent of the boys' childhood and clearly constitutes undue delay. Such delay is in complete disregard of the principle of the best interests of the child and runs counter to the role of the State as the upper guardian of children. Instead Said and Yarg remain in what the Committee described as "a legal limbo."<sup>104</sup>
80. It is respectfully submitted that when the status and age of the two brothers are taken into account, the delay of some four years in hearing the appeal at the domestic level is unduly prolonged such that the boys are not required to wait for the outcome of that appeal before bringing their complaint before the Committee.

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<sup>98</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraph 33.

<sup>99</sup> Committee on the Rights of the Child, *General comment No. 14 (2013)*, *supra* note 95 at paragraph 14(b).

<sup>100</sup> *Ibid.* paragraph 37.

<sup>101</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraphs 29 and 33.

<sup>102</sup> *Ibid.* paragraph 32.

<sup>103</sup> *Ibid.* paragraph 29.

<sup>104</sup> *Ibid.* paragraph 29.

**(e) The communication is presented within a reasonable time of the exhaustion of remedies at the national level**

81. Under Section IX, Article 1(e) of the Revised Guidelines, the Communication shall be presented within a reasonable period after exhaustion of local remedies at the national level. As demonstrated above, the Complainants submit that the failure of Mauritania adequately or effectively to enforce the 2007 legislation in the present case, including the delay in the appeal proceedings at the domestic level, should be taken either as showing that domestic remedies do not fall within the ambit of “available, effective and sufficient” remedies or, given that the delay is not in the best interests of the children, should warrant an exception to the exhaustion of local remedies rule.<sup>105</sup>
82. A similar state of affairs existed in the earlier case brought before this Committee on behalf of the Nubian children, where the communication was filed at a time when the legal case instigated at the domestic level was still pending. In that case, no time limit was set by the Committee to determine what was a “reasonable time” within which to submit the case. Instead the Committee relied on the facts of that case to decide whether the complainants had waited for a sufficient period of time to see whether local remedies would allow a prospect of success.<sup>106</sup> This approach was again followed by this Committee in its subsequent decision involving the children of Northern Uganda.<sup>107</sup>
83. As set out in preceding paragraphs, an appeal against the unduly lenient sentence was lodged in December 2011, some four years ago. Since then active steps have been taken by those acting for the two brothers to secure a hearing of the appeal but to no avail. Following the last meeting with the Minister of Justice in December 2014 and a further request being lodged in April 2015 for a date for the hearing, it was apparent that no effective or sufficient redress would be forthcoming at the domestic level but rather such redress for the boys would need to be sought before a regional human rights body. Following discussions with the two boys it was decided to bring a case before this honourable Committee and to that end the process of drafting submissions by the complainants with the involvement of the two boys and their local lawyer was started. It is respectfully submitted that both a sufficient period of time has been given to see if local remedies would offer a prospect of success and that the current communication has been submitted as promptly as possible once it became apparent that local remedies would not offer such a prospect of success, taking into due account the need to involve the boys, who speak neither French nor English and live outside of Nouakchott.

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<sup>105</sup> *Ibid.* paragraph 32.

<sup>106</sup> *Ibid.* paragraph 34.

<sup>107</sup> African Committee of Experts on the Rights and Welfare of the Child, *Michelo Hunsungule and Others (on behalf of Children in Northern Uganda) v. Uganda*, Communication No 1/2005, 21<sup>st</sup> Ordinary Session, 15-19 April 2013, (hereinafter *Michelo Hunsungule and Others v Uganda*) paragraph 22.

(f) **Wording of the communication shall not contain any disparaging or insulting language**

84. In accordance with Section IX, Article 1(f) of the Revised Guidelines, the communication is not written in a disparaging or insulting language. It is presented in a professional, polite and respectful language, as requested by the Committee.<sup>108</sup>

**IV. CONCLUSION ON ADMISSIBILITY**

85. It is submitted that the present communication fully satisfies the Revised Guidelines provided by the Committee in relation to the six requirements for admissibility and accordingly should be declared admissible.

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<sup>108</sup> *Children of Nubian descent v. Kenya*, *supra* note 30 at paragraph 23.

## V. SUBMISSIONS ON THE MERITS

86. The claim brought on behalf of the two brothers is based on the fact that Mauritania has failed adequately or effectively to enforce the 2007 law criminalising slavery and to ensure that the members of the family who had held the two boys in slavery were charged with offences and received sentences and punishments commensurate to the seriousness of their actions. Furthermore, Mauritania has failed to ensure that the appeal against the unduly lenient sentences handed down and the level of compensation awarded is heard promptly and that the absconded slave master is located and brought to justice. The complainants submit that such failures amount to violations by the Respondent State 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 African Charter on the Rights and Welfare of the Child.

### Article 1: Obligation of State Parties

87. Article 1 of the Charter provides:

*Member States of the [African Union], Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of this present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.*

### Fundamental nature of Article 1

88. This Committee had the opportunity to consider Article 1 in its earlier decision of *Michelo Hunsungulu and Others v Uganda* where it referred to this Article as setting out the 'fundamental duty' of States.<sup>109</sup> It further stated, with reference to the jurisprudence of the African Commission, that "effective implementation of laws with due diligence is part of States obligations under the Charter."<sup>110</sup>
89. The equivalent Article of the ACHPR has come before the African Commission on numerous occasions. The Commission has stated that:

*"Article 1 gives the Charter the legally binding character always attributed to international treaties of this sort. Therefore a violation of any provision of the Charter, automatically means a violation of*

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<sup>109</sup> *Michelo Hunsungulu and Others v Uganda*, supra note 107, paragraph 37.

<sup>110</sup> *Ibid.* paragraph 38.

*Article 1. If a State party to the Charter fails to recognise the provisions of the same, there is no doubt that it is in violation of this Article. Its violation therefore goes to the root of the Charter.”<sup>111</sup>*

### **Negative and positive obligations**

90. The African Commission has held that Article 1 of the ACHPR imposes a positive obligation on States “not only to ‘recognise’ the rights under the Charter but to go on to ‘undertake to adopt legislative or other measures to give effect to them.’ The obligation is peremptory, States ‘shall undertake’. Indeed, it is only if the States take their obligations seriously that the rights of citizens can be protected.”<sup>112</sup>
91. The nature of Article 1 of the ACHPR, and earlier decisions concerning it, were analysed in detail by the African Commission in the case of *Association of Victims of Post Electoral Violence & Interights v Cameroon*. In that case, having referred to the *sui generis* nature of the Article, the Commission identified the obligation of the State Parties established by Article 1 of the ACHPR as being one of “respecting, protecting, promoting and implementing” the rights set out in that Charter.<sup>113</sup> While the duty to respect places a negative obligation on the State not to do anything directly to violate the right itself, “Article [1] places on the State Parties the positive obligation of preventing and punishing the violation by private individuals of the rights prescribed by the Charter. Thus any illegal act carried out by an individual against the rights guaranteed and not directly attributable to the State can constitute ... a cause of international responsibility of the State, not because it has itself committed the act in question, but because it has failed to exercise the conscientiousness required to prevent it from happening and for not having been able to take the appropriate measures to pay compensation for the prejudice suffered by the victims.”<sup>114</sup>
92. Furthermore, the Commission concluded that the obligation imposed by Article 1 of the ACHPR was not merely one of diligence but one of result. In so deciding, the Commission emphasised that:

*“[I]t is also important to clarify that the signature, acceptance and ratification by the States of the provisions contained in the Charter, the preparation or the adoption of legal human rights instruments only constitute, in themselves, the beginning of the indispensable exercise of promotion, protection and the reparation of human and peoples’ rights. The practical implementation of these legal instruments through the State Institutions endowed with creditor, material and human resources, is also of*

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<sup>111</sup> *Dawda Jawara v Gambia*, *supra* note 41 at paragraph 46.

<sup>112</sup> African Commission on Human and People’s Right, *Legal Resources Foundation v Zambia*, Communication No. 211/98, 23 April-7 May 2001, paragraph 62. See further decisions such as African Commission on Human and Peoples’ Rights, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communication No. 279/03-296/05, 13-27 May 2009, at paragraph 227.

<sup>113</sup> African Commission on Human and People’s Right, *Association of Victims of Post Electoral Violence & Interights v Cameroon*, Communication No 272/03, 46<sup>th</sup> Ordinary Session, 25 November 2009, paragraph 87.

<sup>114</sup> *Ibid* paragraph 88.

*considerable importance. It is not enough to make do with taking measures, these measures should also be accompanied with institutions that produce tangible results.”<sup>115</sup>*

93. Of particular relevance in the context of the present case is the analysis by another regional body, the Community Court of Justice of the Economic Community of West African States (‘the ECOWAS Court’), of a State’s obligations to protect individuals from human rights violations founded on slavery even though the slavery itself was due to a private individual. In the case of *Hadijatou Mani Koraou v Niger* the ECOWAS Court considered that:

*“the slavery situation of the applicant, although it was due to a particular individual acting in a so-called customary or individual context, gave her the right to be protected by the Nigerien authorities, be they administrative or judicial. Consequently, the defendant [State] becomes responsible under international law as well as national law for any form of human rights violations of the applicant founded on slavery because of its tolerance, passivity, inaction or abstention with regard to the practice.”<sup>116</sup>*

#### **Obligations binding on State Party as a whole**

94. Regard should also be had to the fact that the obligations established in Article 1 (as well as under other provisions of the Charter) are binding on State Parties as a whole. As stated by the UN Human Rights Committee when considering the equivalent article in the International Covenant on Civil and Political Rights:

*“All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally ... may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility.”<sup>117</sup>*

95. The engagement of a State’s responsibilities by the action or inaction of its judiciary was considered by the ECOWAS court in the case against Niger referred to above: “when failing to deal with a prohibited offence of its own volition and failing to take adequate measures to ensure punishment, the national judge did not assume its duty of protecting [the applicant’s] human rights and therefore engaged the defendant [state’s] responsibility ...”<sup>118</sup> By analogy, in the present case, the Respondent State cannot seek to argue that it is not

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<sup>115</sup> *Ibid* paragraph 108.

<sup>116</sup> ECOWAS Community Court of Justice, *Hadijatou Mani Koraou v the Republic of Niger*, Judgment No. ECW/CCJ/JUD/06/08, 27 October 2008, paragraph 85.

<sup>117</sup> UN Human Rights Committee, *General Comment No 31 (2004) on the Nature of the Legal General Obligation on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, 29 March 2004 paragraph 4.

<sup>118</sup> *Hadijatou Mani Koraou v Niger*, *supra* note 116 at paragraph 86.



responsible for the shortcomings in the enforcement of the 2007 anti-slavery law because it was: (i) the prosecutor who failed to charge all the members of the family who had held the two brothers in slavery with the crime of slavery and has failed, with the assistance of the police, to locate the convicted slave master following his release on bail; and (ii) it was members of the judiciary who acquitted one of the two family members charged with slavery, passed an unduly lenient sentence against the other, subsequently released the only convicted slave master on bail and have repeatedly failed to schedule a hearing of the appeals.

***Relevance of general context to the duty to prevent and to protect***

96. Further, it is respectfully submitted that in relation to the obligation to protect and a State's duties to prevent human rights violations at the hands of non-state actors, to carry out a serious investigation into violations committed in its jurisdiction, to identify those responsible and impose an appropriate punishment and to ensure the victims receive adequate compensation, the State's actions (or inaction) should not be examined in a vacuum. Such an approach has been followed, for example, by the Inter-American Court of Human Rights which considers that the general state of affairs in existence at the time is also of relevance in determining whether a State has acted with due diligence, for example whether the particular situation under consideration is "part of a more general pattern of negligence and lack of effective action by the State in prosecuting and punishing aggressors."<sup>119</sup> This is of particular relevance in the present case where, as detailed above in relation to the exhaustion of domestic remedies, the inadequate enforcement of the 2007 law criminalising slavery is not unique to the situation of the two brothers but is part of a more widespread failure by the authorities in Mauritania to enforce that law and to ensure that cases of slavery are actively investigated and slave owners prosecuted and brought before the courts.
97. This Committee has previously referred to and applied the reasoning of the African Commission in relation to States' obligations to protect and to ensure that third parties do not deprive children of their rights in its decision on the *talibés* in Senegal, albeit in the context of Article 4 of the Charter rather than Article 1.<sup>120</sup> In line with such reasoning of both this Committee, as well as the African Commission concerning the duty to respect (a negative obligation) and the duty to protect (a positive obligation of result), it is apparent that Mauritania is under: (i) a negative obligation to refrain from violating directly by its own actions or inactions any of the Charter rights of the two brothers who are the subject of this communication; and (ii) a positive obligation to protect their rights by enacting and enforcing domestic laws so as to punish their former masters and mistress for the violations of various of their rights set out in the Charter as well as to provide adequate redress to the two boys for such violations.

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<sup>119</sup> Inter-American Commission of Human Rights, *Maria da Penha Maia Fernandes v Brazil*, Report No: 54/01, 16 April 2001, paragraph 56.

<sup>120</sup> *Talibés v. Senegal* *supra* note 33 at paragraph 37. The negative and positive nature of the general legal obligation established in other human rights treaties has also been examined by the UN Human Rights Committee in its *General Comment No 31 (2004)*, *supra* note 117.

98. As expanded upon in detail in the following sections, through its failure adequately to enforce the provisions of the 2007 law in respect of those who held the two boys in slavery, Mauritania is in breach of both its negative and positive obligations in relation to various of the rights set out in the Charter. As such, it is necessarily in breach of its fundamental duty provided for under Article 1.

### **Article 3: Non-discrimination**

99. Article 3 provides that:

*Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.*

100. This Committee previously considered this Article in its decision concerning children of Nubian descent in Kenya.<sup>121</sup> As acknowledged by the Committee in that case, racial and ethnic discrimination are prohibited as binding *jus cogens* norms of international law.<sup>122</sup> The right not to be discriminated against is a fundamental principle of human rights law<sup>123</sup> and, as emphasised by the African Commission, "equality or the lack of it affects the capacity of one to enjoy many other rights. For example, one who bears the burden of disadvantage because of one's place of birth or social origin suffers indignity as a human being and as an equal and proud citizen."<sup>124</sup>

### **General Principles of the Right to Non-Discrimination**

101. It will be noted that Article 3 does not provide a free standing right to non-discrimination but rather a right not to be discriminated against in relation to one's enjoyment of other rights set down in the Charter (a 'parasitic right'). Where the discrimination in respect of the enjoyment of an underlying Charter right is carried out by a private individual or other non-state actor such discrimination will invoke the responsibility of the State if it fails in its obligations to prevent such discrimination, to investigate and punish such acts of discrimination and to protect and provide adequate redress to the victims of such discrimination as explored in relation to Article 1 above.
102. In addition to a State's negative obligation not to discriminate itself or through its agents in relation to a child's enjoyment of his or her Charter rights and a State's positive obligation to prevent and protect against

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<sup>121</sup> *Children of Nubian descent v Kenya*, *supra* note 30, paragraphs 55-57.

<sup>122</sup> *Ibid.* paragraph 56.

<sup>123</sup> African Commission on Human and Peoples' Rights, *Kenneth Good v the Republic of Botswana*, Communication No 313/05, 47<sup>th</sup> Ordinary Session, 26 May 2010, paragraph 218.

<sup>124</sup> *Legal Resources Foundation v. Zambia*, *supra* note 112, paragraph 63.

discrimination by private individuals, the right to non-discrimination has been said by the UN Committee on the Rights of the Child not to be “a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention [on the Rights of the Child], but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.”<sup>125</sup> As the UN Committee on the Rights of the Child has further said “[t]his non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures.”<sup>126</sup>

103. It is well established that not every difference in treatment amounts to unlawful discrimination. However, to be justified such difference in treatment must be for a legitimate aim and the measures taken must be proportionate to the achievement of such aim. As stated by the African Commission when considering the equivalent provision to Article 3 under the ACHPR:

*“The test to establish whether there has been discrimination has been well settled. A violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) if there is no proportionality between the aim sought and the means employed. These requirements have been expressly set out by international human rights supervisory bodies, including the European Court of Human Rights, the Inter-American Court of Human Rights and the Human Rights Committee.”*<sup>127</sup>

104. However, in respect of racial and ethnic discrimination, the ECtHR has gone further and stated:

*“Ethnicity and race are related concepts. Discrimination on account of a person's ethnic origin is a form of racial discrimination ... Racial discrimination is a particularly egregious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment ...*

*“In this context, where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible ... The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures ...”*<sup>128</sup>

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<sup>125</sup> UN Committee on the Rights of the Child, *General comment No. 14 (2013)* supra note 95, at paragraph 41.

<sup>126</sup> UN Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003, paragraph 12.

<sup>127</sup> *Kenneth Good v Botswana*, supra note 123, paragraph 219 (footnotes omitted).

<sup>128</sup> *Sejdic and Finci v Bosnia and Herzegovina* Application nos. 27996/06 and 34836/06, Grand Chamber decision of 22 December 2009, paragraphs 43 and 44.

105. The Committee is respectfully invited to follow the approach of the ECtHR and declare that any difference in treatment based exclusively or primarily on a person's ethnic or racial origin cannot be justified.

### ***Discrimination against slaves and those of slave descent in Mauritania***

106. Specifically in relation to slavery in Mauritania, the UN Committee on the Elimination of Racial Discrimination has previously noted "that vestiges of the caste system persist in Mauritania. [...] It remains concerned about information on the persistence of slavery-like practices, which constitute serious instances of discrimination based on descent."<sup>129</sup> Equally the UN Committee on the Rights of the Child expressed its concern over the persistence of "de facto discrimination" against children living in slavery or of slave descent in Mauritania.<sup>130</sup>

107. More recently the UN Human Rights Committee expressed its regret in relation to Mauritania "that the State party denies the existence of racial discrimination on its territory" and also that it was "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 ..."<sup>131</sup>

108. The lack of disaggregated data, an issue highlighted by different UN human rights bodies,<sup>132</sup> necessarily means that the full extent of discrimination faced by those held in slavery and those associated with the slave caste in regard to the enjoyment of their human rights is not known. Nevertheless, it is recognised that those belonging to the Haratine group suffer widespread "discrimination, marginalisation and exclusion"<sup>133</sup> with former slaves being "the poorest in society with limited access to basic services such as education and economic opportunities".<sup>134</sup>

### ***Discrimination suffered by the two brothers***

109. As briefly set out in the summary of facts above, the two brothers were treated differently from other children in their former masters' family. In particular they were held as slaves, required to work seven days a week without pay and without rest, were not allowed to attend school and were not afforded time for play, leisure or recreation. As described by Said: "*I realised that we were treated differently from other [children]. The other [children] were called by their name, 'Mohammed' or 'Abdel' but me, they called 'slave'. I understood that*

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<sup>129</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Report of Mauritania*, CERD/C/65/CO/5, 10 December 2004, paragraph 15.

<sup>130</sup> UN Committee on the Rights of the Child, *Concluding Observations on the Report of Mauritania*, CRC/C/MRT/CO/2, 51<sup>st</sup> Session, 17 June 2009, at paragraph 29.

<sup>131</sup> UN Human Rights Committee, *Concluding Observations on the Initial Report of Mauritania*, *supra* note 71, paragraph 7.

<sup>132</sup> See for example, CERD Concluding Observations, *supra* note 129 at paragraph 9 and the follow-up mission report to the UN Human Rights Council, *Report of the Special Rapporteur on Contemporary forms of Slavery, including its Causes and Consequences Gulnara Shahinian*, A/HRC/27/53/Add.1, 27<sup>th</sup> Session, 26 August 2014, at paragraph 42

<sup>133</sup> UN Human Rights Council, *Report of the Special Rapporteur on Contemporary forms of Slavery, including its Causes and Consequences Gulnara Shahinian*, A/HRC/15/20/Add.2, 15<sup>th</sup> Session, 16 August 2010, at paragraph 12.

<sup>134</sup> *Ibid* paragraph 10.

*something wasn't normal.*" Such difference in treatment made the two boys "feel very, very sad because we had no rights. When we merely touched the Quran, they would say to us 'Don't touch the Quran, you are infidels.'" <sup>135</sup>

110. Such difference in treatment was exclusively based on the two brothers belonging to the Haratine ethnic group and, as will be expanded upon below, the underlying treatment violated numerous of the boys' Charter rights, not least their right to development (Article 5), to education (Article 11), to leisure (Article 12) and their right not to be subject to child labor (Article 15) nor to inhuman and degrading treatment (Article 16). Given that the difference in treatment experienced by the two boys compared to other children in the family was based solely on their belonging to the Haratine ethnic group, such difference is not capable of being objectively justified, in line with the approach of the ECtHR, and therefore constitutes discrimination.
111. In the event that the Committee decides not to follow the approach of the ECtHR and considers that racial or ethnic discrimination is still, in certain, limited circumstances, open to justification, then, as in the children of Nubian descent case, once a prima facie case of discrimination has been established, the burden of proof moves to the State to justify it.<sup>136</sup> The very fact of the two brothers being held as slaves because they were Haratine and the conditions of their lives in slavery speak for themselves and, as with the treatment faced by children of Nubian descent in Kenya, amount to "an affront to their dignity and best interests."<sup>137</sup> Any justification for such different treatment must be for a legitimate interest and 'strictly proportional with' and 'absolutely necessary' for that interest to be obtained.<sup>138</sup> However, given its prohibition under both domestic and international law, as well as its recognition as a crime against humanity, there can be no justification by the various members of the slave owning family for holding the two boys in slavery.
112. Given that the difference in treatment faced by the brothers in respect of various of their Charter rights amounted to discrimination, the Respondent State was under an obligation to prevent such discriminatory treatment, to investigate it and adequately punish those perpetrating it and to provide redress to the two brothers by proper and timely enforcement of the laws prohibiting slavery. This the Respondent State has failed, and continues to fail, to do through its inadequate enforcement of the 2007 anti-slavery law<sup>139</sup> and it is therefore in breach of its positive obligation under Article 3.
113. Equally, given that the systematic failure by Mauritania to enforce the 2007 anti-slavery law, by its very nature, disproportionately impacts on those belonging to the Haratine ethnic group<sup>140</sup> and that there is no justification

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<sup>135</sup> Annex 7 Interview of Said and Yarg, 5 June 2015, with follow up interview on 3 December 2015. Said and Yarg were speaking through an interpreter. The French version of the interview has been signed by the boys as being a correct account of the interview.

<sup>136</sup> *Children of Nubian descent v Kenya*, *supra* note 30, paragraph 56.

<sup>137</sup> *Ibid.* paragraph 57.

<sup>138</sup> *Ibid.* paragraph 57.

<sup>139</sup> See paragraphs 45 to 51 above.

<sup>140</sup> There is still some slavery practised within the Black Mauritania community: see, for example UN Human Rights Council *Report of the Special Rapporteur on Contemporary forms of Slavery*, A/HRC/15/20/Add.2 *supra* note 133 paragraphs 9-11. However, children who are White Moors are not victims of slavery.

for such a failure by the State to adequately enforce such legislation, thereby depriving those held in slavery of the enjoyment of their fundamental human rights, Mauritania is in breach of its own negative obligation under Article 3 not to discriminate in the enjoyment of other Charter rights.

114. Finally, rather than actively seeking out the two brothers, as well as other children held in slavery, and taking special measures to redress the situation of real inequality which they have faced, the Respondent State has done the exact opposite. Through the inadequate enforcement of the 2007 anti-slavery law, slave owners have been free to continue holding Haratine children in slavery thereby preventing such children equally enjoying the full range of human rights to which they are entitled. As far as the two brothers who are the subject of the present communication are concerned, the Respondent State's failure to pro-actively enforce the 2007 law and to take special measures to redress the inequality which they faced, meant that they were unable to enjoy on an equal basis to the other children in the El Hassine family the right to development, to education, to leisure or to be protected from child labour, child abuse and harmful social practices.
115. Accordingly, it is submitted that the Respondent State is responsible for violating Article 3 both by: (i) its failure to prevent and provide protection against the discrimination suffered by the two brothers at the hands of their slave masters and others in the El Hassine family in their enjoyment of other Charter rights; and (ii) its own discriminatory failure to enforce adequately the 2007 anti-slavery law and to take proactive measures to ensure effective opportunities for children held in slavery, including the two boys, to enjoy their rights under the Charter.

#### **Article 4: Best Interests of the Child**

116. Article 4 provides that:

*1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*

117. This Committee previously considered Article 4 in its decision on the *talibés* in Senegal where it stated that:

*"[I]n guaranteeing the best interest of the child, a State Party has the obligation to ensure the consideration of the best interest of the child in all actions taken by 'any person' or authority affecting the life of the child. In this context 'any person' is broadly interpreted and entails that the principle of the best interest of the child must be applied in all actions concerning children, regardless of whether those acts are undertaken by private or public entities. The Committee also notes that actions include omissions ..."*<sup>141</sup>

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<sup>141</sup> *Talibés v Senegal supra* note 33, paragraph 35.



118. The equivalent provision in the UN Convention on the Rights of the Child (Article 3(1)) has been expanded upon by the UN Committee on the Rights of the Child in its General Comment no. 14 on the right of the child to have his or her best interests taken as a primary consideration.<sup>142</sup> There the UN Committee describes the best interests of the child as (i) a substantive right; (ii) a fundamental, interpretive legal principle; and (iii) a rule of procedure. Furthermore, the UN Committee has stipulated that “[T]he principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions.”<sup>143</sup>
119. In the case of the *talibés* in Senegal, which concerned children attending private, religious schools (*daaras*) who were forced by their religious teachers (*marabouts*) to spend much of their day on the streets begging, this Committee considered that Senegal had recognised the explicit prohibition on child begging contained in the Charter under Article 29(b) and complied with this by prohibiting child begging in certain provisions of its penal code. Nevertheless, the Committee held that Senegal had “failed to discharge its obligation to enforce these provisions by not taking the necessary administrative measures, including supervision of the [religious schools] and bringing to justice the *marabouts* who force the *talibés* into begging.”<sup>144</sup> Furthermore, the Committee, having provided some analysis of a state’s obligation to protect and its responsibility to ensure that non-state actors respected the rights of children, went on to find that Senegal had, in violation of Article 4, not acted in the best interests of the *talibés* by failing to protect them through its failure to enforce national, regional and international laws already in place regarding the prohibition of child labour, including the failure to prosecute the perpetrators and religious leaders.
120. The current case is not dissimilar to that of the *talibés* in so far as Mauritania has enacted legislation criminalising slavery, a practice which self-evidently runs counter to the best interests of those children who are held in slavery, but has failed adequately to enforce such legislation. In particular, the Respondent State has, with regard to the two brothers, failed to bring to timely and adequate justice the members of the family who held the two boys in slavery, all of whom remain at liberty, including the one person convicted for the practice of slavery and of preventing the two brothers from going to school. Such non or inadequate enforcement amounts to a breach of Mauritania’s positive obligation to protect the best interests of Said and Yarg by ensuring that private individuals (the members of the family holding the two boys in slavery) themselves act in the children’s best interests.
121. At the same time, the failure by the State prosecutor to charge all the family members with the crime of slavery and instead charging four of them with the lesser offence of failing to report an offence of which they had knowledge; the failure of the same to appeal the acquittal and the unduly lenient sentences handed down until the very last moment and only at the prompting of the children’s lawyer; the failure by the judge to

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<sup>142</sup> UN Committee on the Rights of the Child, *General Comment No.14*, *supra* note 95.

<sup>143</sup> UN Committee on the Rights of the Child, *General Comment No.5*, *supra* note 126, paragraph 12.

<sup>144</sup> *Ibid.* paragraph 37.

inform the children's lawyer that the convicted master had requested bail and then granting such bail without affording the children's lawyer the opportunity to make representations on behalf of the children; the failure by the Court of Appeal to hear the appeals lodged by all parties in a timely manner (the appeals having been pending since December 2011); and the failure by the prosecutor, with the assistance of the police, to locate the convicted slave master who has absconded all demonstrate a complete and total disregard by the State itself of the best interests of the two boys in the criminal proceedings. In the words of Said: *"For me, all the members of the family are slave owners and should have suffered the same punishment. The father can no longer be pursued because he is dead but his children must be judged and should receive the same sentence. Instead, only one was convicted and only for 2 years, which is much too lenient."*<sup>145</sup>

122. As recognised by this Committee in the case of the Nubian children in Kenya and as highlighted by the UN Committee on the Rights of the Child "[d]elays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible."<sup>146</sup>

123. Far from 'active' measures being taken by the relevant judicial and administrative bodies to have regard to the best interests of the two boys, their best interests have been completely disregarded. Such total failure by these bodies to consider how the boys' rights and interests would be affected by their actions, inactions and decisions amounts to a breach by Mauritania of its obligation to ensure that primary consideration is given to the best interests of the two boys and equally constitutes a violation of Article 4 of the Charter.

## **Article 5: Survival and Development**

124. Article 5 provides:

1. *Every child has the inherent right to life. This right shall be protected by law.*
2. *State Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.*

125. This Article was previously considered by the Committee in the case of the *talibés* in Senegal where the Committee took a holistic approach to the concept of development regarding the right to survival and development as 'essential preconditions'<sup>147</sup> to the enjoyment of other rights in the Charter and stating that:

*"[s]urvival and development encapsulates the right to life and imposes an obligation on States to ensure an adequate standard of living for children including the right to life and their physical, mental, spiritual, moral, psychological and social development. The obligations of the State Parties under this*

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<sup>145</sup> Annex 7, Interview of Said and Yarg, 5 June 2015, with follow up interview on 3 December 2015. Said and Yarg were speaking through an interpreter.

<sup>146</sup> UN Committee on the Rights of the Child, *General Comment No. 14 (2013)*, *supra* note 95 at paragraph 93.

<sup>147</sup> *Ibid.* paragraph 41.

*principle also encompasses protection of children's rights to access healthcare and education services, access to clean water, the right to live in a safe and clean environment and protection from any form of abuse and degrading treatment, including child labour.*"<sup>148</sup>

126. It is readily apparent that subjecting children to slavery whereby they are treated as the property of their masters or mistresses, required to work for long hours without pay, subjected to physical and psychological abuse, not able to attend school and with no free time for play and recreation, all in total contrast to non-slave children living within the same household, is a situation which undermines a child's proper physical, mental, spiritual, moral, psychological and social development. The positive obligation of States to protect a child's right to development requires it to act diligently when such development is threatened by private individuals. However, Mauritania's failure adequately to enforce its 2007 slavery law to ensure that those holding Said and Yarg in slavery are properly punished and that the two boys receive adequate redress for their years of living in slavery is in breach of such positive obligation.
127. Equally, the legal limbo the two brothers have been left in while the appeal case is pending, together with the knowledge that all those who held them in slavery remain at liberty, potentially to hold other children in slavery, is a direct violation by the Respondent State of its duty to respect the boys' right to mental, spiritual and psychological development. While the two boys have done their best, unassisted by the Respondent State, to move on with their lives in freedom, the unduly prolonged legal case necessarily hangs over them and with it the uncertainty as to the eventual outcome of the appeal hearing and whether they will finally see some financial compensation for their years in slavery and the members of the El Hassine family brought to adequate justice.
128. The Respondent State's failure adequately to punish the members of the family holding the two brothers in slavery, as well as its deleterious handling of the appeal, accordingly amount to a violation of Article 5(2) of the Charter.

### **Article 11: Education**

129. Article 11 provides:

1. *Every child shall have the right to education.*
2. *The education of the child shall be directed to:*
  - (a)
  - (b) *Fostering respect for human rights and fundamental freedoms ..*
  - (c)

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<sup>148</sup> *Talibés v Senegal*, *supra* note 33, paragraph 42. This is in line with the approach of the UN Committee on the Rights of the Child, *General Comment 5 (2003)*, *supra* note 126, paragraph 12 and the UN General Assembly, Resolution World Summit for Children, 45/217, A/RES/45/217, 45<sup>th</sup> Session, 21 December 1990.

*(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all pupils, ethnic, tribal and religious groups.*

...

3. State Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:

...

*(e) Take special measures in respect of ... disadvantaged children, to ensure equal access to education for all sections of the community.*

130. The right to education has been considered by this Committee in all three of its decisions to date.<sup>149</sup> In the case concerning the *talibés* in Senegal, the Committee outlined the requirements of the right to education as elaborated on by the UN Committee on Economic, Social and Cultural Rights (CESCR), namely of ensuring education which is available, accessible and acceptable.<sup>150</sup> Accessibility further entails that education is accessible on a non-discriminatory basis, in other words that it is “accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”.<sup>151</sup> Such equality of access is reflected in Article 11(3)(e) of the Charter and the requirement to take special measures in respect of disadvantaged children, a provision expressly commented on by this Committee in the case of the children of Northern Uganda.<sup>152</sup>

131. The importance of the right to education has been succinctly described by the CESCR in the following terms:

*“[e]ducation is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in ... safeguarding children from exploitative and hazardous labour ...”*<sup>153</sup>

132. As with other human rights, the right to education imposes obligations on States to respect, protect, promote and fulfill. Of particular relevance to the present case, the obligation to protect requires that States take measures to prevent third parties from interfering with the right to education.<sup>154</sup> While living in slavery, and in contrast to the non-Haratine children in the family, neither Said or Yarg were able to attend school. Yarg expressly asked if he could go to school when he saw other children in the family, younger than him, being

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<sup>149</sup> *Children of Nubian descent in Kenya*, supra note 30, paragraphs 63-66; *Michelo Hunsungule v Uganda*, supra note 107, paragraph 63; and *Talibés v. Senegal* supra note 33, paragraphs 46-50.

<sup>150</sup> *Talibés v Senegal*, supra note 33, paragraph 46, referring to UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, paragraph 6.

<sup>151</sup> CESCR *General Comment No 13* paragraph 6 b (i). See also paragraph 31 of the same which emphasizes that the right to non-discrimination in education is of immediate effect and is not subject to progressive realization nor the availability of resources.

<sup>152</sup> *Michelo Hunsungule v Uganda* supra note 107, paragraph 63. See also UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13 on the Right to Education (art 13)*, 21<sup>st</sup> Session, E/C.12/1999/10, 8 December 1999, paragraph 32.

<sup>153</sup> Committee on the Right of the Child, *General Comment No. 13*, supra note 97, paragraph 1.

<sup>154</sup> *Ibid.* paragraph 47.

taught. However, he was never given the opportunity to do so, something which made him feel bad as he saw how the other children in the family were given preferential treatment to him.

133. Such lack of education is the reality of the vast majority of children held in slavery in Mauritania. The absence of such children from the classroom violates their own right to education but also means that the education provided to other children who are able to attend school cannot seek to prepare those children for “responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all ... ethnic ...groups” as stipulated in Article 11(2)(d). Instead, the absence of children held in slavery from the classroom, the majority of whom are from the Haratine ethnic group, serves to perpetuate the discrimination by others against those children and further entrenches their inferior position in society.
134. In recognition of this disturbing reality, the 2007 anti-slavery law specifically provides that it is an offence to deprive a child of schooling. However, given the widespread absence of Haratine children from the classrooms, in contrast to the fact that there has only been one ‘successful’ prosecution under this provision of the 2007 law, it is respectfully submitted that the Respondent State has failed adequately to enforce this measure. This is similar to the situation in the case of the *talibés* in Senegal where it was held by this Committee that Senegal had “failed to take concrete steps to enforce its [own laws] and end the exploitation and abuse of the talibés” and, as such, had violated the children’s right to education.<sup>155</sup>
135. With respect to the specific situation of the two brothers, one member of the family that held them in slavery was prosecuted under the 2007 anti-slavery law for depriving the children of schooling and the Criminal Court of Nouakchott found him guilty of this charge. However, he was sentenced to 2 years imprisonment for both the offence of slavery (for which the stipulated sentence is 5 to 10 years imprisonment) and depriving the children of access to education (for which the stipulated sentence is 6 months to 2 years imprisonment). Given the importance of the right to education both intrinsically and instrumentally, it is respectfully submitted that the sentence received was not commensurate with the violation, fails to provide adequate reparation to the two brothers and fails to act as an effective deterrent to ensure that others do not engage in similar violations. Accordingly, the Respondent State is in breach of its obligation under Article 11 to protect the right to education of the two brothers from being violated by third parties.
136. In addition, Mauritania is in breach of its obligation under Article 11(3)(e) to take special measures to ensure equal access of all children to education, particularly those from disadvantaged groups. At no point, whether during their time in slavery or following their escape, has the Respondent State taken any concrete measures to assist the two boys in entering the public school system or to make up for those years in which they were deprived of access to any schooling notwithstanding the importance of such a measure to the boys’ rehabilitation and their full inclusion and participation in society. Indeed because of their lack of identity

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<sup>155</sup> *Talibés v Senegal*, *supra* note 33, paragraph 50.

documents, the two boys were not able to access any state education after their escape.<sup>156</sup> It was not until 2015, some 4 years after they were freed from slavery, that the boys were able to start attending the regular local school following an agreement reached with the local authorities. However, following a move to Nouakchott in the latter part of 2015, the two boys are again unable to access the public school system on account of their lack of identify documents and instead have had to enroll in a private school.

## Article 12: Leisure, Recreation and Cultural Activities

137. Article 12 provides that:

*1. State Parties shall recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts.*

138. This right to rest, leisure and play finds equal provision in Article 31 of the UN Convention on the Rights of the Child, which itself draws upon the earlier 1959 Declaration of the Rights of the Child. Article 31 of the UN Convention has been expounded upon by the Committee on the Rights of the Child in General Comment no. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.<sup>157</sup> As stated by the UN Committee:

*“Play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills. They contribute to all aspects of learning; they are a form of participation in everyday life and are of intrinsic value to the child.”<sup>158</sup>*

139. As such, rather than being a secondary matter, the right to rest, leisure and play is fundamental and constitutes “the conditions necessary to protect the unique and evolving nature of childhood.”<sup>159</sup> Furthermore, this right is inextricably linked with other rights such as the right to development, to education, to health:

*“rest and leisure are as important to children’s development as the basics of nutrition, housing, health care and education. Without sufficient rest, children will lack the energy, motivation and physical and mental capacity for meaningful participation or learning. Denial of rest can have an irreversible physical and psychological impact on the development, health and well-being of children.”<sup>160</sup>*

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<sup>156</sup> Article 7.2(c) of the ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour requires that States ensure access to free basic education for all children removed from the worst forms of child labour.

<sup>157</sup> UN Committee on the Rights of the Child, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, 62<sup>nd</sup> Session, CRC/C/GC/17, 17 April 2013.

<sup>158</sup> *Ibid.* paragraph 9.

<sup>159</sup> *Ibid.* paragraph 8.

<sup>160</sup> *Ibid.* paragraph 13.



140. In terms of the constituent elements of this right, the UN Committee has described them in the following terms:

**“Rest:** *The right to rest requires that children are afforded sufficient respite from work, education or exertion of any kind, to ensure their optimum health and well-being. It also requires that they are provided with the opportunity for adequate sleep ...*

**Leisure:** *Leisure refers to time in which play or recreation can take place. It is defined as free or unobligated time that does not involve formal education, work, home responsibilities, performance of other life-sustaining functions or engaging in activity directed from outside the individual. In other words it is largely discretionary time to be used as the child chooses.*

**Play:** *Children’s play is any behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise ... Play involves the exercise of autonomy, physical, mental or emotional activity, and has the potential to take infinite forms, either in groups or alone ... The key characteristics of play are fun, uncertainty, challenge, flexibility and non-productivity ... While play is often considered non-essential, the Committee reaffirms that it is a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of physical, social, cognitive, emotional and spiritual development.*

**Recreational activities:** *Recreation is an umbrella term used to describe a very broad range of activities, including, inter alia, participation in music, art, crafts, community engagement, clubs, sports, games, hiking and camping, pursuing hobbies. It consists of activities or experiences, chosen voluntarily by the child ...”<sup>161</sup>*

141. As stated in the summary of facts, the two brothers were required to engage in either domestic chores or looking after the camel herd seven days a week without being afforded any opportunity for rest, leisure or play. In the words of Yarg, *“the essence of life with the masters was work. Working, that was all, following the animals, the herds.”<sup>162</sup>* Equally Said has described how: *“[I]n the morning, I left around 4 o’clock, worked all day, returned in the evening, prepared some food and went to bed at 10pm. At 4am, I would untie, clean and tend to the camels and follow them into the bush. That was a typical day.”<sup>163</sup>* At the same time, the other children in the family were often free to play, for example, playing football while neither Said nor Yarg had any time to do this as they were always working. As described by Yarg *“We were treated very differently. We did everything and the other children did nothing. The masters hardly even let us prayer.”<sup>164</sup>*

142. Such treatment of the two boys on the part of the family holding them in slavery clearly amounted to a denial of their right to rest and leisure and consequently the Respondent State was under a positive obligation to

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<sup>161</sup> *Ibid.* 157, paragraph 14 (a) to (f).

<sup>162</sup> Annex 7 Interview with Said and Yarg, 5 June 2015, with follow up interview on 3 December 2015. Said and Yarg were speaking through an interpreter.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

protect the boys from such a violation, including by adequately investigating their treatment, punishing those responsible in accordance with the law and providing adequate redress to the two boys. The Respondent State's failure to enforce the 2007 law effectively, to adequately charge and punish those members of the family for holding the boys as slaves and to provide the two brothers with sufficient and timely redress amounts to a breach of the State's positive obligation under Article 12.

## **Article 15: Child Labour**

143. Article 15 provides that:

*1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.*

*2. State Parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organisation's instruments relating to children. State Parties shall in particular:*

*(a) provide through legislation, minimum wages for admission to every employment;*

*(b) provide for appropriate regulation of hours and conditions of employment;*

*(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;*

*(d) promote the dissemination of information on the hazards of child labour to all sectors of the community.*

144. Slavery is defined in the UN Slavery Convention, to which Mauritania is a party, as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."<sup>165</sup> It is recognised as one of the worst forms of child labour and is prohibited under ILO Convention 182 (Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) to which Mauritania is also a party and under which it is obliged to eliminate the practice of slavery as a matter of priority.<sup>166</sup> In addition, slavery is expressly prohibited under the African Charter<sup>167</sup> and the UN Covenant on Civil and Political Rights<sup>168</sup> both of which Mauritania has ratified. Slavery squarely falls within the prohibition on child labour contained in Article 15 of the Charter involving as it does children being exploited, working long

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<sup>165</sup> League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, Article 1(1).

<sup>166</sup> International Labour Organization, *Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, adopted on 17 June 1999 and entered into force on 19 November 2000, Article 2(b).

<sup>167</sup> African Charter of Human and Peoples' Rights Article 5 where it is recognized as a particular form of exploitation and degradation.

<sup>168</sup> International Covenant on Civil and Political Rights, Article 8.

hours without pay for their masters and mistresses and profoundly interfering with all forms of personal development through the very denial of their personhood and their identity as free people.

145. Under Article 15(2), Mauritania is required to take legislative and administrative measures to ensure that children are protected from slavery. While Mauritania has enacted legislation which criminalises slavery, it has taken minimal action to enforce such a legislative measure. This situation is readily apparent from the most recent observations of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) on Mauritania's implementation of the Forced Labour Convention no.29 (1930):

*"States ratifying the Convention are obliged to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and strictly enforced. It emphasizes that victims of slavery are in a situation of considerable economic and psychological vulnerability which calls for specific action by the State. Pointing out that only one case has led to a court conviction since the adoption of the Act of 2007, the Committee urges the Government to take the appropriate steps to ensure that victims of slavery are actually able to assert their rights, and that when complaints are brought before the administrative or judicial authorities, these authorities conduct investigations promptly, effectively, and impartially throughout the country, as required by the Act of 2007"*<sup>169</sup> (emphasis in original).

146. This position echoes that of the UN Human Rights Committee in its 2013 concluding observations on Mauritania:

*"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 criminalising 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."*<sup>170</sup>

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<sup>169</sup> International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 5 February 2015, ILC.104/III/1/A, p. 166.

<sup>170</sup> UN Human Rights Committee, *Concluding Observations on the Initial Report of Mauritania*, *supra* note 71, at paragraph 17.

147. As with a number of the other rights under consideration in this communication, the situation concerning victims of slavery in Mauritania is not dissimilar from that of the child beggars or *talibés* in Senegal which this Committee has previously had cause to consider. As noted by the Committee in that case, while Senegal had ratified international laws and prohibited child begging under its domestic law, it had failed to take any effective measures against those forcing the *talibés* to beg or to protect such children from exploitation. As such, Senegal was found to be in breach of its obligations under Article 15(2) to take appropriate measures to ensure the full protection of children against child labour.<sup>171</sup>
148. The same conclusion necessarily follows in the present case. Even though the Respondent State did take certain measures to enforce those legal provisions which criminalise slavery against the members of the El Hassine family, such measures were not pursued with the requisite due diligence. In particular, only two of the family members were charged with the actual offence of slavery, while other family members were simply charged with the lesser offence of failing to inform the authorities of an offence of which they had knowledge; the only family member charged and duly convicted of slavery was given a sentence lower than the minimum set out in the law; the same family member was released on bail shortly after his conviction without the involvement of the civil party; and the appeal against the acquittal of one of the family members, the unduly lenient sentences handed down to the others and the level of compensation awarded to the brothers has been and continues to be subject to unacceptable and inexcusable delay in complete disregard of the best interests of the two brothers and the designation of slavery as a crime against humanity under Mauritania's own constitution. As such, Mauritania has failed to provide adequate protection to the two brothers against the worst form of child labour in breach of its obligations under Article 15.

### **Article 16: Protection Against Child Abuse and Torture**

149. Article 16 of the Charter, like Article 19 of the UN Convention on the Rights of the Child, guarantees protection against child abuse and torture:

*1. State Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.*

150. As this Committee has previously recalled, "by adopting the African Charter on the Rights and Welfare of the Child (the Charter), African States committed themselves to the mission of protecting children against abuse and ill-treatment which constitute the key elements of violence against children."<sup>172</sup> The UN Committee on the Rights of the Child, in its General Comment on the right of the child to freedom from all forms of violence, has emphasised that while the term violence is often understood in ordinary speech to mean only physical and intentional harm "non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and

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<sup>171</sup> *Talibés v Senegal supra* note 33, paragraph 61.

<sup>172</sup> African Committee of Experts on the Rights and Welfare of the Child, *Statement on Violence against Children*, April 2011, p.1.

psychological maltreatment)<sup>173</sup> equally constitute forms of violence and need to be addressed. In the same General Comment, the UN Committee provides a non-exhaustive list of forms of violence applied to children, including:

**“Neglect or negligent treatment.** Neglect means the failure to meet children’s physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children’s care have the means, knowledge and access to services to do so. It includes:

(a) Physical neglect ...

(b) Psychological or emotional neglect ...

(c) Neglect of childrens’ physical or mental health ...

(d) Educational neglect: failure to comply with laws requiring caregivers to secure their children’s education through attendance at school or otherwise;<sup>174</sup>

**“Mental violence.** ‘Mental violence’, as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include:

(a) All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another’s needs;

(b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism;

...

(d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings;<sup>175</sup>

**“Physical violence.** This includes fatal and non-fatal physical violence. The Committee is of the opinion that physical violence includes:

(a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment; ...<sup>176</sup>

151. Additionally, in a separate General Comment on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the same UN Committee has stated in commenting on the

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<sup>173</sup> UN Committee on the Rights of the Child, *General Comment No. 13 (2011)*, *supra* note 97, paragraph 4.

<sup>174</sup> *Ibid.* paragraph 20.

<sup>175</sup> *Ibid.* paragraph 21.

<sup>176</sup> *Ibid.* paragraph 22.

obligation of states to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation:

*“There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”<sup>177</sup>*

152. As described earlier, both of the brothers were routinely subject to beatings (physical violence); were called not by their given name but ‘slave’ as well as being treated very differently from other children in the family (mental violence); and did not attend school (educational neglect). As described by Said: *“the masters and their employees hit me practically every day. I only knew that. They didn’t beat me for nothing. They would tell me why they were beating me. For example, if I didn’t do the work well or if I lost some of the camels. If in the evening a camel had gone astray, they would beat me.”<sup>178</sup>* Furthermore, *“I was hit when I didn’t do the work well or when I fought with the master’s sons. If I fought with them, I would always be hit. The others would get nothing. I realised then that the other [children] were more important. But when it was the others who did something wrong to me, I would get beaten. There was no equality!”<sup>179</sup>* Such treatment was in clear violation of the boys’ right not to be subject to physical or mental injury or abuse, neglect or maltreatment and the right not to be discriminated against in relation to the same.

153. In relation to States’ obligations, the UN Committee on the Rights of the Child has stated that in respect of violence by third parties:

*“[the] obligations are due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress [for] human rights violations ... States parties, furthermore, shall ensure that all persons who, within the context of their work, are responsible for the prevention of, protection from, and reaction to violence and in the justice systems are addressing the needs and respecting the rights of children.”<sup>180</sup>*

154. Previously, in the case of the *talibés* of Senegal, this Committee considered the severe physical punishment and abuse and the looming threat of violence that the *talibés* were subjected to by the *marabouts*. It held that such treatment amounted to a violation of the children’s right to freedom from physical and mental violence

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<sup>177</sup> UN Committee on the Rights of the Child, *General Comment No 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (2006), 42<sup>nd</sup> Session, CRC/C/GC/8, 2 March 2007, paragraph 18.

<sup>178</sup> Annex 7, Interview with Said and Yarg, 5 June 2015, with follow up interview on 3 December 2015. Said and Yarg were speaking through an interpreter.

<sup>179</sup> *Ibid.*

<sup>180</sup> UN Committee on the Rights of the Child, *General Comment No 13, supra* note 97, paragraph 5.



and abuse and that Senegal, in failing to take specific administrative and judicial measures against the *marabouts* (there having been only 10 criminal cases for child exploitation against the *marabouts* resulting in only 9 convictions) was in breach of its obligation to protect the children from physical or mental abuse, injury, neglect, maltreatment and torture.<sup>181</sup>

155. The same reasoning applies in the present case where the failure of Mauritania to adequately punish the members of the family holding the brothers in slavery (only one member being charged and convicted of actual slavery and his sentence being less than the minimum set down by law) and to provide appropriate redress to the two brothers, coupled with the release of the convicted master on bail pending the appeal hearing, constitutes a failure by Mauritania to protect the two boys from violence as required under Article 16.
156. Furthermore, as stated by the UN Committee in its General Comment no. 13 on the right of the child to freedom from all forms of violence, the protective measures to be applied by states should include judicial involvement and that:

*“At all times and in all cases, due process must be respected. In particular, the protection and the further development of the child and his or her best interests (and the best interests of other children where there is a risk of a perpetrator reoffending) must form the primary purpose of decision-making, with regard given to the least intrusive intervention as warranted by the circumstances. Furthermore, the Committee recommends the respect of the following guarantees:*

...

*(d) In all proceedings involving children victims of violence, the celerity principle must be applied, while respecting the rule of law.”<sup>182</sup>*

157. The fact that appeals were lodged by all parties in December 2011 yet, 4 years later, there has still been no hearing of those appeals constitutes a failure (i) to follow due process; (ii) to have the two boys’ protection and further development and their best interests as the primary aim; and (iii) to apply the celerity principle or to act as expeditiously as possible.
158. For all of the above reasons, the Respondent State is in breach of its obligations under Article 16 of the Charter.

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<sup>181</sup> *Talibés v Senegal supra* note 33, paragraph 68.

<sup>182</sup> UN Committee on the Rights of the Child, *General Comment No. 13 (2011)*, *supra* note 97, paragraph 54.

## Article 21: Protection against Harmful Social and Cultural Practices

159. Article 21 provides that:

*1. State Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and, in particular,*

*(a) those customs and practices prejudicial to the health or life of the child; and*

*(b) those customs and practices discriminatory to the child on the grounds of sex or other status.*

160. On its face, this provision is both more explicit and more extensive than that in the UN Convention on the Rights of the Child where the prohibition on harmful cultural practices is contained within the right to health and refers simply to the abolition of “traditional practices prejudicial to the health of children.”<sup>183</sup> Nevertheless, the Committee on the Rights of the Child has made it clear that this provision needs to be read in conjunction with Article 19 of the UN Convention which provides for the right of the child to be protected from all forms of violence, including physical, sexual or psychological violence, and also Article 37, which requires States parties to ensure that no child be subjected to torture or other cruel, inhuman or degrading treatment or punishment. As such State parties are under an obligation to eliminate harmful practices understood as:

*“persistent practices and forms of behaviours that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status.”<sup>184</sup>*

161. Such an understanding of harmful practices applies equally to Article 21 of the Charter as recognised by the Committee in its earlier decision on the *talibés* in Senegal.<sup>185</sup>

162. In relation to the corresponding obligation on states to eliminate such harmful practices, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have stated that:

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<sup>183</sup> UN Convention on the Rights of the Child, Article 24(3).

<sup>184</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW)/the Committee on the Right of the Child (CRC), *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014, paragraph 15.

<sup>185</sup> *Talibés v Senegal* *supra* note 33, paragraph 70.

*"[t]he obligation to protect requires States parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices. The Committees call on States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for the means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices."*<sup>186</sup>

163. Moreover,

*"The enactment of legislation alone is, however, insufficient to effectively combat harmful practices. In accordance with the requirements of due diligence, legislation must therefore be supplemented with a comprehensive set of measures to facilitate its implementation, enforcement and follow-up and monitoring and evaluation of the results achieved."*<sup>187</sup>

164. In the case of the *talibés* in Senegal, this Committee considered Article 21 in the context of the practice of children being used to beg. The Committee had no equivocation in holding that such a practice constituted a harmful practice, it being expressly prohibited under Article 29 of the Charter, and that Senegal was therefore under an obligation to eliminate such a practice.<sup>188</sup> While accepting that Senegal had outlawed the practice of forced begging through the enactment of criminal legislation, the fact that such legislation had not been enforced and no action had been taken against the *marabouts* led the Committee to conclude that Senegal was in breach of its obligation to protect the children from the harmful practice of forced begging in violation of Article 21(1) of the Charter.

165. It is respectfully submitted that, as with forced begging, the practice of holding children in slavery is also a harmful social and cultural practice prejudicial to the welfare, dignity and development of the child and, in Mauritania, usually discriminatory on the basis of a child belonging to the Haratine ethnic group. In the words of Said: *"Being a slave is like being somebody who is not alive; it's like being a dead person, an animal, an object."*<sup>189</sup> Accordingly, State parties to the Charter are required to take all necessary measures to eliminate such a practice.

166. In the present case, Mauritania, while outlawing the practice of slavery through the adoption of the Slavery Act 2007, has failed adequately to enforce such legislation with those holding the two brothers in slavery not being adequately charged; the one family member charged and convicted of slavery being given a sentence less than

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<sup>186</sup> UN CEDAW and CRC, *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, *supra* note 184, paragraph 13.

<sup>187</sup> *Ibid.* paragraph 41.

<sup>188</sup> *Talibés v Senegal supra* note 33, paragraph 71.

<sup>189</sup> Annex 7, Interview with Said and Yarg, 5 June 2015, with follow up interview on 3 December 2015. Said and Yarg were speaking through an interpreter.

the legal minimum; his being released on bail 4 months after filing an appeal against his conviction; and the appeals by all parties still not being heard 4 years after their filing in December 2011. Such failures on the part of the government of Mauritania amount to a clear breach of its obligations under Article 21 of the Charter to eliminate the harmful social practice of slavery.

## **Article 29: Sale, Trafficking and Abduction**

167. Article 29 provides that:

*State Parties to the present Charter shall take appropriate measures to prevent:*

*(a) the abduction, sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardian of the child.*

*(b) the use of children in all forms of begging.*

168. This Article importantly signals out for express prohibition particular actions which are exploitative of children and prejudicial to their welfare, notwithstanding that such actions are likely to fall within the ambit of other Articles in the Charter, particularly Article 15 (child labour) and/or Article 27 (sexual exploitation). Article 29 finds its counterpart in Article 35 of the UN Convention on the Rights of the Child (though that Article does not refer explicitly to begging). However, the Charter contains no equivalent to Article 36 of the UN Convention which additionally provides that “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”

169. This Committee has previously considered Article 29 in the case of *Talibés v Senegal* where it found that the actions of the *marabouts* in recruiting the *talibés* from rural areas and from neighbouring countries and then forcing them to beg engaged both limbs of Article 29.<sup>190</sup> In considering whether the *marabouts* were engaged in trafficking, the Committee referred to the definition of trafficking contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime (2000) (the Palermo Protocol).<sup>191</sup> The Palermo Protocol is, as the name of the Convention it supplements suggests, strictly concerned with transnational trafficking involving criminal groups. Nevertheless, the definition it provides for trafficking is widely regarded as applying more generally. Under Article 3(a) of the Protocol trafficking is defined as:

*“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include,*

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<sup>190</sup> *Talibés v. Senegal*, *supra* note 33, paragraph 76.

<sup>191</sup> *Ibid.*

*at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (emphasis added).*

170. It is apparent from this definition that trafficking is closely associated with other exploitative practices, including slavery.<sup>192</sup> Indeed trafficking is classified in ILO Convention no.182 (the Worst Forms of Child Labour Convention), to which Mauritania is a party, as a particular ‘form of slavery or practice similar to slavery.’<sup>193</sup> Together with other forms of slavery or slavery like practices such as debt bondage and forced labour, as well as the sexual exploitation of children<sup>194</sup> and their use in the production and trafficking of drugs,<sup>195</sup> such exploitation of children is signalled out in the ILO Convention as a worst form of child labour which States are required to eliminate as a matter of urgency. It is notable that the Charter, as well as its express prohibition in Article 29 of trafficking of children and their use in begging, expressly prohibits the sexual exploitation of children (Article 27) and the use of children in the drug trade (Article 28). Hence, in addition to the general provision on child labour in Article 15, the Charter explicitly addresses four of the worst forms of child labour identified in ILO Convention no.182. However, the Charter contains no explicit prohibition of slavery itself.
171. The express reference to trafficking in the Charter but not to slavery is in contrast to some of the earlier human rights instruments which expressly prohibit slavery, servitude or forced or compulsory labour but are generally silent as to trafficking. For example, at the international level, the International Covenant on Civil and Political Rights prohibits slavery, the slave trade, servitude and forced or compulsory labour.<sup>196</sup> In a similar manner, the European Convention on Human Rights prohibits slavery, servitude and forced or compulsory labour.<sup>197</sup> The American Convention on Human Rights, by contrast, as well as prohibiting slavery, servitude and forced or compulsory labor, prohibits trafficking, albeit only in relation to women.<sup>198</sup> Specifically in relation to Africa, the ACHPR, in the English text, prohibits slavery and the slave trade as particular forms of exploitation and degradation of people in Article 5.<sup>199</sup> Notably, however, the French text expressly prohibits in the same Article ‘l’esclavage’ et ‘la traite des personnes’ where the latter can be read as referring to trafficking and not simply the slave trade.<sup>200</sup>

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<sup>192</sup> Trafficking is often referred to as a form of modern day slavery. See for example [http://www.antislavery.org/english/slavery\\_today/what\\_is\\_modern\\_slavery.aspx](http://www.antislavery.org/english/slavery_today/what_is_modern_slavery.aspx)

<sup>193</sup> ILO Convention no.182 Article 3(a).

<sup>194</sup> *Ibid* Article 3(b).

<sup>195</sup> *Ibid* Article 3(c).

<sup>196</sup> International Covenant on Civil and Political Rights, Article 8: ‘(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (2) No one shall be held in servitude. (3) (a) No one shall be required to perform forced or compulsory labour.’

<sup>197</sup> European Convention on Human Rights, Article 4: ‘(1) No one shall be held in slavery or servitude. (2) No one shall be required to perform forced or compulsory labour.’

<sup>198</sup> American Convention on Human Rights, Article 6: ‘(1) No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. (2) No one shall be required to perform forced or compulsory labour ...’

<sup>199</sup> African Charter of Human and Peoples’ Rights, Article 5: ‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.’

<sup>200</sup> Charte africaine des droits de l’homme et des peuples, article 5: « Tout individu a droit au respect de la dignité inhérente à la personne humaine et à la reconnaissance de sa personnalité juridique. Toutes formes d’exploitation et d’avilissement de l’homme



172. Such direct prohibition of slavery in all the foundational international and regional human rights instruments is scarcely surprising given that:

*“[T]he prohibition on slavery and slavery-like practices is often cited as among the most basic and well-established norms in international law.<sup>201</sup> The prohibition is enshrined in all major international and regional human rights treaties (as non-derogable rights applicable at all times), recognized in customary law and has been described as enshrining obligations erga omnes, owed not just to individuals affected or to other states but to the international community as a whole, and as constituting a jus cogens norm, thereby ranking among the most sacrosanct of the international legal order.”<sup>202</sup>*

173. The prohibition of slavery but the absence of any explicit reference to trafficking in certain earlier human rights instruments and the question of whether trafficking came within the ambit of the prohibition on slavery had to be addressed by the ECtHR for the first time in the 2010 case of *Rantsev v. Cyprus and Russia*.<sup>203</sup> In so doing, the ECtHR stressed that the provisions of the Convention could not be applied in a vacuum and that regard had to be had to the object and purpose of the Convention “as an instrument for the protection of individual human beings, [which] requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.”<sup>204</sup> The ECtHR went on to conclude that:

*“There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes “slavery”, “servitude” or “forced and compulsory labour”. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.”<sup>205</sup>*

174. In a similar manner it can be said that there can be no doubt that slavery threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Children’s Charter which, as with the ECHR and other human rights instruments, is a

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notamment l'esclavage, la traite des personnes, la torture physique ou morale, et les peines ou les traitements cruels inhumains ou dégradants sont interdites. »

<sup>201</sup> Mentioned as *ergo omnes*, obiter dicta, in *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p.3, at para. 34. See also *Rio Negro Massacres v. Guatemala*, Judgment of 4 September 2012, Series C No. 250 (IACtHR), 141.

<sup>202</sup> Duffy H. (2016 forthcoming), *Regional Human Rights Courts and Modern day Slavery: a nascent contribution*, *Journal of International Criminal Justice* 13(5).

<sup>203</sup> European Court of Human Rights *Rantsev v. Cyprus and Russia* Application no. 25965/04, judgement of 7 January 2010.

<sup>204</sup> *Ibid* paragraphs 274-5.

<sup>205</sup> *Ibid* paragraph 282. See also the ECtHR’s *Guide to Article 4 of the Convention: Prohibition of Slavery and Forced Labour* (2014)

[http://www.echr.coe.int/Documents/Guide\\_Art\\_4\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf)



'living instrument'<sup>206</sup>. Equally, slavery falls squarely within the ambit of Article 36 of the UN Convention on the Rights of the Child and its prohibition of "all other forms of exploitation prejudicial to any aspects of the child's welfare."<sup>207</sup> As such, and in line with international legal standards in Africa and beyond which prohibit slavery in all its forms and having regard to the Charter's explicit reference to particular types of modern slavery and other worst forms of child labour, the Committee is respectfully invited to adopt a similarly purposive approach to the interpretation of the Charter as applied by the ECtHR in relation to Article 4 of the ECHR and find that Article 29 was intended to and should be read as covering all forms of traditional and modern slavery, of which trafficking and forced begging are particular examples.

175. Applying such an inclusive rather than exclusive interpretation to Article 29, the Respondent State is under an obligation to take appropriate measures to prevent slavery. As in the *Talibés v Senegal* case, such measures are not limited merely to the enactment of legislation but require the actual enforcement of such legislation and the provision of reparation to victims of slavery.<sup>208</sup> As has been referred to in detail above, the Respondent State in the present case has failed, through its inadequate enforcement of the 2007 anti-slavery legislation, to protect the two brothers from slavery or provide them timely and adequate reparation.<sup>209</sup> Accordingly, Mauritania is in breach of its obligations under Article 29.

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<sup>206</sup> *Ibid* paragraph 277.

<sup>207</sup> See paragraph 168 above.

<sup>208</sup> *Talibés v Senegal supra* note 33, paragraph 80.

<sup>209</sup> See in particular the submissions in respect of Article 15 above.

## VI. CONCLUSION

176. The complainants hereby request the African Committee of Experts on the Rights and Welfare of the Child to:

- a) Find the Republic of Mauritania to be in breach of its obligations under Articles 1, 3, 4, 5, 11, 12, 15, 16, 21 and 29 of the Charter;

177. And furthermore to recommend that the Respondent State provide full redress to Said and Yarg for such violations of their rights. Such reparation is to encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in line with the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>210</sup> It is to include, though is not necessarily to be limited to the following measures:

- b) pay compensation to Said and Yarg for the violations by Mauritania of their rights under the Charter as detailed above;
- c) take all procedural and judicial measures to ensure that the two boys obtain a final judgment on the appeal within 6 months of this decision and that the final sentences and level of compensation are fully reflective of the seriousness of the crime and the hardship that the boys faced while held in slavery;
- d) issue Said and Yarg with identity documents without delay, notwithstanding the lack of details of their paternity;
- e) ensure that Said and Yarg are able to have access to public education on a formal basis and on an equal footing with other children wherever they are residing in Mauritania. Such access to be provided with immediate effect;
- f) progress any other cases already brought under the 2007 law, particularly where children are concerned, without further delay;
- g) ensure that the 2015 slavery law, which replaces the 2007 law, is enforced rigorously at all stages of the criminal justice system (police, prosecutors and judiciary);
- h) provide training to police, prosecutors and judges on the 2015 slavery law;
- i) provide training to all those involved in the criminal justice system on the principle of the best interests of the child;
- j) monitor in a transparent fashion the enforcement of the 2015 law, particularly in relation to children, including the number of complaints brought under the 2015 law, the number of complaints followed up by the judicial police and referred to the prosecuting authorities, the number of cases pursued by the prosecuting authorities and referred to the investigative judge, the number of cases upheld by the

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<sup>210</sup> United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147. See for further elaboration on these distinct elements of reparation UN Committee Against Torture, General Comment no.3 *Implementation of Article 14 by State Parties* (2012) CAT/C/GC/3 13 December 2012.

investigating judge and referred to the criminal court, and the number and outcome of cases before the criminal court. Details of why cases fall out of the criminal justice process and the time taken to proceed between each of the relevant stages should also be recorded.

- k) ensure that those emerging from slavery, especially children, are immediately provided with identity documentation, bearing in mind that they have no other documentation and often no details nor documentation regarding their parents (particularly their fathers). Where the issuing of identity documentation is likely to be delayed, 'temporary' or 'emergency' documentation should nevertheless be provided and such documentation should be recognised as valid for accessing basic services such as schooling.
- l) ensure that children coming out of slavery are actively assisted in entering the school system; and
- m) provide broader and better funded programmes of socioeconomic and psychological support for those emerging from slavery, including children, to enable such survivors of slavery to maintain their freedom, to integrate on a more equal footing into wider Haratine society and to provide encouragement to those still held in slavery to come forward and leave their masters and mistresses.

178. Finally,

- n) In line with Section XXI 1i) of the Revised Guidelines on Communications, request Mauritania to report on its implementation of the above recommendations within 180 days of the receipt of the Committee's decision.