



Honorary Co-Chairs  
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FREEDOM NOW

November 28, 2016

## URGENT APPEAL

Mónica Pinto  
Special Rapporteur on the Independence of Judges and Lawyers  
Office of the United Nations High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14 Avenue de la Paix  
1211 Geneva 10, Switzerland

Re: Urgent Appeal Regarding Mohammed Shaikh Ould Mohammed Ould Mkhaitir

Dear Ms. Pinto:

We request urgent action from your office regarding the pending appeal of Mr. Mohammed Shaikh Ould Mohammed Ould Mkhaitir in the Islamic Republic of Mauritania, where Mr. Mkhaitir is sentenced to execution for alleged crimes involving the exercise of his freedom of expression. Mr. Mkhaitir was initially convicted of hypocrisy and remains in prison for authoring a critique which challenged the social and religious underpinnings of modern-day slavery. Mr. Mkhaitir is currently awaiting a final verdict from the Supreme Court of Mauritania. Throughout the entirety of Mr. Mkhaitir's proceedings, the independence and non-partiality of the courts have come into question and recent events have shown that the Mauritanian Supreme Court is under extreme pressure to uphold Mr. Mkhaitir's death sentence.

Mr. Mkhaitir's appeal to the Mauritanian Supreme Court was heard on November 15, 2016. Two days prior, the Forum of Imams and Ulema issued a fatwa demanding that the death sentence be carried out: "Kill him and bury him in conformity with the law of God." On the day of the appeal, thousands of people gathered outside the courthouse to demand Mr. Mkhaitir's execution.

Fearing for its own safety as well as the safety of the parties and counsel, the Supreme Court delayed the verdict and will reconvene on December 20, 2016. The public outcry and danger of violence threaten the judiciary's independence and hinder the Supreme Court's ability to safeguard his due process rights, which are guaranteed to him by the International Covenant on Civil and Political Rights ("ICCPR"), the Universal Declaration of Human Rights ("UDHR"), and the Basic Principles on the Independence of the Judiciary.

Mr. Mkhaitir respectfully requests the support of your office during this critical time. Freedom Now, together with Dechert LLP, represents Mr. Mkhaitir as his international *pro bono* counsel and we maintain contact with him through his local counsel. In the pages that follow, we set forth the basic facts of Mr. Mkhaitir's case. We ask that your office grant the relief requested in Section III below. **Considering that Mr. Mkhaitir's final appeal and opportunity to reverse his death sentence is set to be heard in less than a month, we urge you to take immediate action.**

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*Our mission is to free prisoners of conscience through focused legal, political and public relations advocacy efforts.*

We would welcome the opportunity to provide your offices with further information or to clarify any issues in relation to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Barth". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kate Barth  
Senior Program Attorney  
Freedom Now

## I. Summary of the Facts Surrounding Mr. Mkhaitir's Trial and Recent Appeal

Mohammed Shaikh Ould Mohammed Mkhaitir is a young accountant in Nouadhibou, an industrial city in the north of Mauritania. In December 2013, Mr. Mkhaitir published an anonymous article on [www.aqlame.com](http://www.aqlame.com), a Mauritanian news website whose anonymous posting format had given rise to a new forum for social and religious critiques. The article, entitled "Religion, Religiosity and Blacksmiths,"<sup>1</sup> was a social commentary on the nexus between religion and discrimination. It denounced caste-based classism and racism, with the goal of challenging rampant discrimination against members of the Moulamine caste<sup>2</sup>—known as the "blacksmith" caste and considered the "lowest of the low."<sup>3</sup>

Many Mauritanian Muslims took offense at the way in which Mr. Mkhaitir's article characterized certain actions of the Prophet Mohammed. Although Mr. Mkhaitir had published the article anonymously, the authorities managed to obtain Mr. Mkhaitir's name. On January 2, 2014, he was summoned to the local police station, where he was arrested. He was charged with the crimes of (1) insulting the Prophet Mohammed and (2) apostasy, as set forth in Article 306, Title II, Section IV of the of the Mauritanian Penal Code.<sup>4</sup>

Protests began immediately. The day after Mr. Mkhaitir's arrest, a businessman from Nouadhibou named Abi Ould Ali called for Mr. Mkhaitir's murder, placing a EUR 4000 bounty on his head. Civil society groups that expressed support for Mr. Mkhaitir, such as The Organization for a Green and Democratic Mauritania, were accused of being "traitors to Islam."<sup>5</sup> The editor of *Aqlame* took down the article in response to angry comments and tried to absolve himself of responsibility by claiming that he had not read the article prior to publishing it.<sup>6</sup> Mr. Mkhaitir's own family members so feared for their safety that they wrote a joint letter condemning the article and distancing themselves from Mr. Mkhaitir.<sup>7</sup>

The government remained silent as street-corner fulminations became protest marches with participants numbering in the thousands, eventually escalating into violent clashes between angry mobs and police forces. Protesters gathered outside the court where Mr. Mkhaitir was to be tried. In one instance, the President of Mauritania dressed in traditional Mauritanian clothing and joined a protest related to Mr. Mkhaitir in order to communicate to the protestors that he was standing with them against Mr. Mkhaitir. When the protests became violent, the authorities were forced to reinforce security around the court.<sup>8</sup>

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<sup>1</sup> The original article can be found at <http://www.yennayri.com/news.php?extend.973>. For translated excerpts and commentary, see Alice Bullard, *Religion, Race, and Repression in Mauritania: The Ould Mkhaitir Apostasy Affair*, JADALIYYA (May 29, 2014), <http://www.jadaliyya.com/pages/index/17914/religion-race-and-repression-in-mauritania-the-oul>.

<sup>2</sup> See Jemal Oumar, *Mauritanians Condemn Call to Kill Author*, ALL AFRICA (Jan. 10, 2014), <http://allafrica.com/stories/201401120133.html> (last visited July 2015) ("They are inciting people to kill a young man just because he wrote an analytical article in which he referred to some of the positions of the Prophet Mohammed. This means that Mauritania is on the verge of entering an era of terrorism . . .") (quoting researcher Salihy Ould Ab).

<sup>3</sup> *Call for Young Blogger's Death Sentence to be Quashed on Appeal*, REPORTERS WITHOUT BORDERS (Dec. 31, 2014), <http://en.rsf.org/mauritania-call-for-young-blogger-s-death-31-12-2014.47435.html> ("[H]e only wanted to defend the lowly 'maalemine' (blacksmith) caste, to which he belongs.").

<sup>4</sup> The Mauritanian Penal Code, established in 1983, can be found (in French) here: <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>. See *Free Mohamed Cheikh! African youths sign petition to free journalist sentenced to death in Mauritania*, AMEYAW DEBRAH, (Jan. 6, 2015), <http://ameyawdebrah.com/free-mohamed-cheikh-african-youths-sign-petition-free-journalist-sentenced-death-mauritania>.

<sup>5</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, MAURITANIA 2014 INTERNATIONAL RELIGIOUS FREEDOM REPORT, p. 4, <http://www.state.gov/documents/organization/238450.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> Zouhair Mazouz, *Mauritania. Writer, Blogger, "Apostate"*, FREE ARABS (Jan. 13, 2014) (citing Joint letter from Mkhaitir's family).

<sup>8</sup> *Id.*

Mr. Mkhaitir was held for almost one year before his trial began on December 23, 2014 before the Criminal Court of Dakhlet Nouadhibou.<sup>9</sup> He was tried before a chamber of five judges, two of whom were popular designees selected by the Ministry of Justice.<sup>10</sup> Mr. Mkhaitir was represented by two public defenders.<sup>11</sup> In contrast, seven attorneys from Islamic organizations appeared alongside the prosecution.<sup>12</sup> The atmosphere of violence and intimidation continued through the two-day trial. A crowd gathered, both inside and outside the courtroom, to await Mr. Mkhaitir's conviction.

On December 24, the court declared Mr. Mkhaitir guilty of the crimes of (1) hypocrisy and (2) insulting the Prophet, and sentenced him to death by firing squad.<sup>13</sup> When the verdict was read aloud, Mr. Mkhaitir fainted<sup>14</sup> as the crowd cheered.<sup>15</sup>

In its decision, the court failed to acknowledge Mr. Mkhaitir's repentances, and instead found him guilty of hypocrisy, a crime with which he was never charged. Under Article 306 of the Mauritanian Penal Code, if the defendant repents, the maximum sentence for apostasy is two years, but repentance is not a mitigating factor for hypocrisy. The court discussed what it considered to be historical inaccuracies in the article and took this as evidence that Mr. Mkhaitir's repentance was not sincere. Mr. Mkhaitir and his lawyers did not know until the verdict was read that the court was considering the crime of hypocrisy. Mr. Mkhaitir's defense team focused its defense on his repentance in reliance on the fact that Mr. Mkhaitir was being tried for apostasy, and they were therefore shocked when Mr. Mkhaitir was sentenced to death for a different crime altogether.

Mr. Mkhaitir's counsel filed an appeal on his behalf in October 2015, but the proceedings were delayed several times due to the court repeatedly requiring Mr. Mkhaitir's counsel to resubmit their requests for an appellate hearing. After months of delay, the court of appeal heard the appeal and rendered a decision on April 21, 2016.<sup>16</sup> In a decision rendered the same day as the appellate hearing, the court of appeal simultaneously confirmed Mr. Mkhaitir's conviction and referred the case to the Supreme Court for consideration of (1) the qualification of the offense (*i.e.*, apostasy versus hypocrisy) and (2) the sincerity of Mr. Mkhaitir's repentance. The court of appeal indicated that Mr. Mkhaitir's actions constituted apostasy rather than hypocrisy, and that in cases of apostasy, the Supreme Court must assess the sincerity of the defendant's repentance.<sup>17</sup>

The Supreme Court of Mauritania heard Mr. Mkhaitir's appeal on November 15, 2016. Initially, local defense counsel was optimistic that the Supreme Court would accept Mr. Mkhaitir's repentance and prevent his execution; after all, Article 306 of the Mauritanian Penal Code calls for the death penalty to be cancelled if a convicted person repents and Mr. Mkhaitir had publicly repented several times during the course of his trial. Even aside from considering the illegality of imposing a death sentence on an individual for the

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<sup>9</sup> *In Mauritania, Blogger Sentenced to Death for Apostasy*, COMMITTEE TO PROTECT JOURNALISTS (December 26, 2014), <https://cpj.org/2014/12/in-mauritania-blogger-sentenced-to-death-for-apost.php> ("The trial began Tuesday but was postponed to Wednesday by the judge after an altercation broke out in court when the prosecutor admitted to being a member of the caste that the blogger criticized in his article . . . Mohamed belongs to a lower social class.").

<sup>10</sup> Private communication.

<sup>11</sup> *See id.* (explaining that Mkhaitir's first lawyer, Maitre Icheddou, was the subject of numerous threats and resigned early on in his representation of Mkhaitir and that the two lawyers described here resigned post-conviction).

<sup>12</sup> Mauritanian law does not permit human rights organizations to take part in criminal proceedings. An exception to this rule allows Islamic organizations to participate at the trial.

<sup>13</sup> *The Islamic Republic of Mauritania*, THE ADVOCATES FOR HUMAN RIGHTS (Nov. 2015), [http://www.theadvocatesforhumanrights.org/uploads/mauritania\\_hrc\\_dp\\_march\\_2015\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/mauritania_hrc_dp_march_2015_2.pdf).

<sup>14</sup> *Lawyers Appeal Death Sentence in Mauritania Apostasy Case*, AFRICA REVIEW (Dec. 29, 2014), <http://www.africareview.com/News/Lawyers-appeal-death-sentence-in-Mauritania-apostasy-case/-/979180/2572118/-/jf89oy/-/index.html>.

<sup>15</sup> *Id.*

<sup>16</sup> Private communication.

<sup>17</sup> Private communication.

exercise of his free expression under international law, under Mauritanian law it seemed clear that Mr. Mkhaitir's repeated apologies should prevent his execution.

However, in the days leading up to the hearing, the Forum of Imams and Ulema issued a fatwa demanding that the death sentence be carried out: "Kill him and bury him in conformity with the law of God."<sup>18</sup> They asked that Mr. Mkhaitir be shown no mercy.<sup>19</sup> The statement reinvigorated public outrage, which had been rampant during Mr. Mkhaitir's initial trial. On the day of the appeal, an angry and threatening crowd of thousands gathered outside the courthouse to demand Mr. Mkhaitir's execution.<sup>20</sup> One protester, who local Mauritania media reported to be the leader of an Islamist pressure group, was carrying a gun.<sup>21</sup> Amidst the chaos, the Supreme Court delayed their verdict. The Supreme Court will reconvene in less than one month, on December 20, 2016.

## II. Legal Analysis Engaging the Special Rapporteur's Mandate

Mr. Mkhaitir is hopeful that the Supreme Court of Mauritania will issue a fair verdict, but we remain concerned that public pressure, paired with the statement of the Forum of Imams and Ulema, will hinder the Supreme Court's ability to properly observe the due process protections guaranteed to Mr. Mkhaitir by international law. The mandate of your office recognizes the link between the weakening of safeguards for the judiciary and the frequency of violations of human rights.

International law has codified the necessity of fairness in trials, sentencing, and appeals. Pursuant to Article 10 of the UDHR, "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Similarly, Article 14 of the ICCPR guarantees criminal defendants "a fair and public hearing by a competent, independent and impartial tribunal established by law" and provides for review of any conviction by a higher tribunal. In interpreting Article 14 of the ICCPR, the UN Human Rights Committee has confirmed the necessity of protecting judges against intimidation.<sup>22</sup>

The Basic Principles on the Independence of the Judiciary include the requirement that the judiciary "decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." The Principles dictate that each Member State is responsible for providing "adequate resources to enable the judiciary to properly perform its functions."

Here, the public outcry and protests in Mauritania calling for Mr. Mkhaitir's death have put substantial pressure on the Supreme Court of Mauritania, creating a risk that the due process safeguards memorialized in the UDHR, ICCPR, and Basic Principles on the Independence of the Judiciary will be violated. The significant threat of violence against Mr. Mkhaitir, his family, his lawyers and the members of the Supreme Court of Mauritania falls squarely within the type of improper influence and threat prohibited by international law. These circumstances directly engage your office's mandate to work to ensure that the judiciary remains impartial and independent.

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<sup>18</sup> *Mauritania: Muslim Leaders Call for Blogger's Death Sentence to be Upheld*, NEWSWEEK (Nov. 15, 2016), <http://europe.newsweek.com/mauritania-muslim-leaders-call-bloggers-death-sentence-be-upheld-520829?rm=eu>.

<sup>19</sup> *Mauritania Clerics Want 'Apostasy' Blogger Executed*, BBC (Nov. 14, 2016), <http://www.bbc.com/news/world-africa-37975552>.

<sup>20</sup> *IHEU Briefing on Mohamed Cheikh Ould M'Kheitir Case*, IHEU (Nov. 16, 2016), <http://iheu.org/iheu-briefing-on-mohamed-cheikh-ould-mkheitir-case/>.

<sup>21</sup> *Id.*

<sup>22</sup> General Comment 32, UN Doc. No. CCPR/C/GC/32, ¶19 (Aug. 23, 2007).

### **III. Request for Urgent Action**

In accordance with your mandate to “act[ ] on information submitted to his/her attention concerning alleged violations relating to the independence and impartiality of the judiciary and the independence of the legal profession by sending allegation letters and urgent appeals to concerned Governments to clarify and/or bring these cases to their attention,”<sup>23</sup> we request that your office act on the foregoing information and urge Mauritania to support the Supreme Court of Mauritania to enable it to issue a fair verdict. Mr. Mkhaitir’s pending appeal, a time-sensitive matter involving loss of life or imminent damage, satisfies your office’s criteria for the issuance of an urgent appeal to the government of Mauritania.

Specifically, we seek the following three actions from the Government of the Islamic Republic of Mauritania:

- to ensure that public pressure does not influence the decision of the judges of the Supreme Court of Mauritania in Mr. Mkhaitir’s appeal and that Mr. Mkhaitir’s rights under Mauritanian law and international law are upheld;
- to ensure that all due process protections are observed in Mr. Mkhaitir’s appeal; and
- to ensure the physical safety of Mr. Mkhaitir, his family, his lawyers, and all judicial personnel working in relation to Mr. Mkhaitir’s case.

### **IV. Information Concerning Authors of Present Urgent Appeal**

Freedom Now is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts. Along with Dechert LLP, Freedom Now has been retained by Mr. Mkhaitir as his international counsel.

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<sup>23</sup> Mandate of the Special Rapporteur on the Independence of Judges and Lawyers (2014), A/HRC/RES/26/7.