

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Seong-Phil Hong (Republic of Korea)

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Mohammed Shaikh Ould Mohammed Ould Mkhaitir

Citizen of the Islamic Republic of Mauritania

v.

Government of the Islamic Republic of Mauritania

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 003/31, 6/4, 15/18, and 24/7

Submitted By:

Maran Turner
Kate Barth
Freedom Now
1776 K Street NW, 8th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
kbarth@freedomnow.org

Jeremy Zucker
Dechert LLP
1900 K Street NW
Washington, DC 20006
United States of America
+1 (202) 261-3322 (tel)
+1 (202) 261-3333 (fax)
jeremy.zucker@dechert.com

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BASIS FOR URGENT ACTION REQUEST

As set forth in the attached Petition, the Mauritanian government is arbitrarily depriving Mohammed Shaikh Ould Mohammed Ould Mkhaitir of his liberty, and in so doing is placing his life and health in grave danger. As explained herein, Mr. Mkhaitir has been sentenced to death for exercising his fundamental freedoms of thought and expression. He remains in prison pending the outcome of his appeal to the Supreme Court of Mauritania.

Prison conditions in Mauritania are so abhorrent as to constitute cruel, inhuman and degrading treatment. Mr. Mkhaitir's mental and physical health are thus at serious risk. He suffers from malaria and lacks regular access to the appropriate medications. Mr. Mkhaitir is not receiving adequate food, and he has lost a significant amount of weight since he has been in prison. While his family was initially able to bring him food, they are no longer able to do so, and Mr. Mkhaitir is at risk of becoming dangerously malnourished. Mr. Mkhaitir's mental health is also at risk. Since his arrest, Mr. Mkhaitir has become paranoid and anxious and has developed a tremor. He is kept in solitary confinement in a tiny cell with little to no light or ventilation and without access to reading materials or television. He is accompanied by guards at all times, including while using the restroom. These conditions have caused Mr. Mkhaitir's physical and mental well-being to deteriorate significantly since his arrest. Despite his deteriorating physical and mental health, he has been denied access to regular medical care.

Mr. Mkhaitir has been sentenced to death by firing squad. While there is no indication that an execution date has been set, the possibility of the government of Mauritania following through looms as a threat to his life and mental stability.

Because Mr. Mkhaitir's sentence and the conditions of his detention pose significant threats to his life and health, we request that the Working Group on Arbitrary Detention ("Working Group") consider this petition pursuant to the "Urgent Action" procedure. We ask that a communication be made immediately to the Mauritanian government to ensure that Mr. Mkhaitir receives adequate food, clean water, and medical treatment and to protect Mr. Mkhaitir from any possible maltreatment. Furthermore, we ask that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as affirmed by Resolutions 2000/36 and 2003/31 and Human Rights Council Resolutions 6/4, 15/18, and 24/7.¹

¹ Resolutions 1997/50, 2000/36 and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolution 6/4, also extending the mandate of the Working Group on Arbitrary Detention, was adopted by the Human Rights Council which, in accordance with UN General Assembly Resolution 60/251, has "assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . ." G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006). *See* Human Rights Council resolutions

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY
ARREST OR DETENTION**

I. IDENTITY

1. *Family Name:* Ould Shaikh Ould Mkhaitir
2. *First Name:* Mohammed
3. *Sex:* Male
4. *Age at the Time of Detention:* 28
5. *Nationality:* Mauritanian
6. (a) *Identity document (if any):* unknown
(b) *Issued by:* unknown
(c) *On (date):* unknown
(d) *No.:* unknown
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):*
Mohammed Ould Shaikh Ould Mkhaitir is a 29-year-old Mauritanian blogger and anti-slavery activist sentenced to death for authoring a social and religious critique. He is an accountant by profession and was employed by the Mauritanian loading and unloading company SAMMA prior to his arrest and detention.
8. *Address of usual residence:* unknown

II. ARREST

1. *Date of arrest:* January 2, 2014
2. *Place of arrest (as detailed as possible):* Mkhaitir turned himself in to the authorities when he learned the police were looking for him.
3. *Forces who carried out the arrest or are believed to have carried it out:*
Nouadhibou gendarmerie brigade

6/4 of September 28, 2007; 15/18 of September 30, 2010; and 24/7 of September 26, 2013 (further extending the Working Group's mandate).

4. *Did they show a warrant or other decision by a public authority?* unknown
5. *Authority who issued the warrant or decision:* unknown
6. *Relevant legislation applied (if known):* Article 306 of the Mauritanian Penal Code

III. DETENTION

1. *Date of detention:* Arrested January 2, 2014; convicted and sentenced December 24, 2014.
2. *Duration of detention (if not known, probable duration):* Indefinite. Mkhaitir has been detained since January 2, 2014. He was sentenced to death on December 24, 2014.
3. *Forces holding the detainee under custody:* Government and Ministry of Justice of the Islamic Republic of Mauritania.
4. *Places of detention (indicate any transfer and present place of detention):* Mkhaitir is currently detained in Nouadhibou prison. In January or February of 2016, Mkhaitir was transferred from his initial cell to a different wing of the prison.
5. *Authorities that ordered the detention:* Criminal Court of Dakhlet Nouadhibou
6. *Reasons for the detention imputed by the authorities:* Mkhaitir was convicted of the crimes of (1) hypocrisy and (2) insulting the Prophet Mohammed. He has been detained indefinitely awaiting execution by firing squad. His conviction was modified on appeal, and his further appeal is currently pending before the Supreme Court. No date has been fixed for his execution.
7. *Relevant legislation applied (if known):* Article 306 (Title II, Section IV) of the Mauritanian Penal Code.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

1. With the highest incidence of slavery in the world, Mauritania has been described as slavery's "last stronghold."² By one estimate, up to twenty percent of the country's population is enslaved – as many as 680,000 persons in a country whose entire population numbers less than four million.³ Notwithstanding this startling figure, the Mauritanian government has continuously and obstinately denied the existence of slavery within its borders. Despite the enactment of progressive legal reforms since the formal abolition of slavery in 1981, the practice clearly continues to thrive. Not only has the government lacked the will to enforce its formal prohibitions on slavery; in recent years, it has spearheaded a crackdown on abolitionist voices and human rights groups.

2. Mohammed Shaikh Ould Mohammed Ould Mkhaitir is among the least fortunate victims of this crackdown. As a young abolitionist and blogger, Mkhaitir authored an article questioning the religious justifications sometimes invoked by the Mauritanian ruling class to justify slavery and slavery-like practices. As a result, he was sentenced to death for hypocrisy and for ridiculing the Prophet, serious crimes in Mauritania's Sharia-based legal system.

² John D. Sutter, *Slavery's Last Stronghold*, CNN FREEDOM PROJECT, 17 Mar. 2012, <http://www.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html>.

³ *Id.* (citing an interview with Gulnara Shahinian, Special Rapporteur on contemporary forms of slavery); *Slavery in Mauritania*, ANTI-SLAVERY INT'L, http://www.antislavery.org/english/slavery_today/descent_based_slavery/slavery_in_mauritania/default.aspx (last visited May 9, 2016) ("[S]ome people believe that as much as 18 per cent of the population (600,000 people) may still be affected by slavery . . ."). Other estimates are lower, but startling nonetheless. *The Global Slavery Index: Mauritania*, WALK FREE FOUNDATION, <http://www.globalslaveryindex.org/country/mauritania/> ("There are an estimated 155,600 people in modern slavery in Mauritania – this is equivalent to 4% of the entire population").

3. Before Mkhaitir’s conviction in December 2014, no Mauritanian court had handed down a death sentence in nearly three decades. Mkhaitir’s conviction and sentencing signal a worrisome step backwards and an alarming new direction in Mauritania’s crackdown on human rights activists. As explained below, the reasoning of the court that convicted and sentenced Mkhaitir was misguided and opaque.

4. This Statement of Facts first sets forth relevant background information about Mauritanian culture, history, and current events and conditions. Next, it details what is known about the events surrounding Mkhaitir’s arrest, detention, conviction and appeal.

1. Background on the Islamic Republic of Mauritania (“Mauritania”)

5. Mauritania is an Islamic Republic whose legal system is grounded in both the French civil law and Islamic Sharia law traditions. Mauritania’s constitution recognizes Islam as the sole official religion of the state and of its citizens, reflecting the importance of Islam in Mauritanian society.⁴ Mauritania ranks 156th in the United Nations Development Programme’s Human Development Index and is considered a “least developed country” by the United Nations Conference on Trade and Development.⁵ Nearly half the population subsists on less than two

⁴ CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA, 2012, art. 5, https://www.constituteproject.org/constitution/Mauritania_2012.pdf (“Islam is the religion of the people and of the State.”).

⁵ United Nations Development Programme, *Human Development Report 2015 (Statistical Annex)*, http://hdr.undp.org/sites/default/files/hdr_2015_statistical_annex.pdf; U.N. Conference on Trade and Development, *The Least Developed Countries Report 2015* (UNCTAD/LDC/2015), http://unctad.org/en/PublicationsLibrary/lhc2015_en.pdf.

dollars per day.⁶ The majority of Mauritania's 3.5 million inhabitants eke out precarious livelihoods in rural communities, where they depend heavily on agriculture and pastoralism.⁷

6. The population of Mauritania is divided into three major demographic groups. Arabo-Berbers ("Beydanes" or "White Moors") comprise 30% of the population; Arabic speakers of sub-Saharan ancestry ("Black Moors") account for another 40%; and "Afro-Mauritanians," or other citizens of sub-Saharan ancestry, comprise the remaining 30%.⁸ The Beydanes dominate participation in political and economic life; the other ethnic groups, comprising the majority of the population, are systematically excluded.⁹ The Black Moors, the largest ethnic group in Mauritania, are "the most politically and economically marginalized in what remains a society deeply stratified by ethnicity, descent, castes and class."¹⁰

a. Slavery in Mauritania

⁶ Sutter, *supra* note 2.

⁷ Mutuma Ruteere (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Mission to Mauritania, ¶ 5, U.N. Doc. A/HRC/26/49/Add.1 (June 3, 2014).

⁸ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, MAURITANIA 2014 HUMAN RIGHTS REPORT, <http://photos.state.gov/libraries/mauritania/231771/PDFs/MAUTITANIA-ENG-HR.pdf> [hereinafter 2014 HUMAN RIGHTS REPORT].

⁹ Ruteere, *supra* note 7, ¶ 5.

¹⁰ *Id.*, ¶ 6; *see id.*, ¶ 7 ("Despite some visible progress, the Haratine [Black Moors] are said to be the most disenfranchised community and suffer from discrimination, marginalization and exclusion due to their descent. . . . The Haratine remain marginalized and underrepresented in political and public positions. In 2013, it was reported that out of 95 seats in the National Assembly, only 5 were held by Haratine; and out of the 56 senators only 1 was Haratine. Moreover, only 2 out of 13 regional governors and 3 of the 53 regional prefects were Haratine. Haratine are said to account for the largest share of the total illiterate population; the majority of Haratine have not completed primary education; and they constitute only 5 per cent of those enrolled in higher education. The vast majority of dockers, domestic workers and labourers performing unskilled and low-paid jobs are said to be Haratine, while very few Haratine occupy high-ranking civil service or senior executive posts in the public and private sectors. Haratine also claim that they have been excluded from the business and banking sectors, as commercial enterprises are usually headed by non-Haratine.").

7. The further division of the population into hierarchical castes—both within and across ethnic groups— adds a layer of complexity to Mauritanian social structure. The highest of the Mauritanian castes are the warrior caste and the priestly “marabout” or *Z’waya* caste. Lower castes include the *Igawen* or musician caste; the *Haratine* or freed slave caste;¹¹ the *Labid* or slave caste; and the *Moulamine* or blacksmith caste.¹² As noted by the UN’s Special Rapporteur on contemporary forms of racism, slavery in Mauritania is inextricably linked to the caste system. Half of all Black Moors subsist in conditions of actual or de facto slavery through domestic servitude and bonded or forced labor.¹³ In many cases, their families have served the same masters for generations. Thus, this state of affairs has become engrained in the minds of slaves and slaveowners alike as the natural order of things: “the nature of descent-based slavery in Mauritania is such that victims have been indoctrinated over generations into accepting their status as possessions of their masters and remain economically tied and dependent on their de-facto masters”¹⁴

¹¹ The narrower Haratine caste is sometimes conflated with the broader Black Moor ethnic group, which may also be referred to by the name “Haratine.” Private communication.

¹² Private communication; see Ruteere, *supra* note 7; *Mauritanian Social Structure*, U.S. DEP’T OF STATE, EMBASSY OF THE UNITED STATES, NOUAKCHOTT, MAURITANIA, http://mauritania.usembassy.gov/uploads/images/o39wjl-r0pvc5_y22VocA/MauritanianSocialStructure.pdf (last visited May 18, 2016).

¹³ Ruteere, *supra* note 7, ¶ 7.

¹⁴ *Id.*, ¶ 23.

8. Among the various castes—taking into account even the Haratines and Labids—the Moulamines are considered by many to be the “lowest of the low.”¹⁵ As observed by the Special Rapporteur on contemporary forms of racism,

The Moors are divided into many different tribes stratified in castes by profession, such as blacksmith, religious leader, and warrior, inter alia. The Special Rapporteur was informed that relations among the different castes are very hierarchical and give rise to *the exclusion and marginalization of certain castes, such as that of blacksmiths*, in favour of others.¹⁶

9. In 1981, Mauritania became the last country in the world to formally abolish slavery. Unfortunately, no legal or practical measures were ever adopted pursuant to the 1981 law, and abolition on paper did not lead to abolition in practice.¹⁷ It was not until 2007 that the government finally criminalized the act of owning another person. However, the 2007 law lacked teeth,¹⁸ and the Mauritanian government lacked the will to enforce its provisions. Although another new slavery law entered into force on August 13, 2015, elevating the crime of slavery to a crime against humanity, the new law has been criticized for failing to protect the rights of slavery victims and takes no account of recommendations by the UN Human Rights Council and

¹⁵ 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; Private communication.

¹⁶ Ruteere, *supra* note 7, ¶ 9 (emphasis added).

¹⁷ Gulnara Shahinian (Special Rapporteur on contemporary forms of slavery, including its causes and consequences), Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Addendum: Follow-up mission to Mauritania, ¶ 8, U.N. Doc. A/HRC/27/53/Add.1 (Aug. 26, 2014).

¹⁸ The law itself is characterized by a broad regulatory approach and “provides for assistance and pecuniary compensation for victims of slavery or of slavery-like practices, such as sexual slavery.” *Id.*, ¶ 10. The problem is that the law relies on the police and prosecution authorities. Most cases are closed without proper investigation. Also, the law addresses only the individual criminal liability of slaveholders. It provides no civil cause of action for victims of slavery that would allow them to invoke an independent mechanism for justice. *Id.*, ¶ 11.

by civil society organizations.¹⁹ As of May 2016, only three people had ever been convicted of the crime of slavery, for which one received only a sentence of six months' imprisonment.²⁰ The other two individuals were each fined and sentenced to five-year prison sentences with one year to be served and four years suspended with supervision and probation.²¹

10. Gutting the efficacy of such newly-passed anti-slavery laws, the government has simultaneously spearheaded a crackdown on human rights defenders and, in particular, has waged a campaign of repression and intimidation against anti-slavery activists. High-ranking government officials including the country's president have publicly denied that slavery still exists in Mauritania. In a speech to the parliament in the spring of 2015, the Minister of Justice referred to members of an important abolitionist organization as criminals.²² In November 2015, President Aziz Abdel labeled abolitionist groups as "peddlers of the idea" of slavery.²³

¹⁹ Mauritania's recognition of slavery's status as a crime against humanity is also embodied in Article 13 of its constitution. CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA, 2012, art. 13, https://www.constituteproject.org/constitution/Mauritania_2012.pdf; Human Rights Committee, Concluding observations on the initial report of Mauritania, U.N. Doc. CCPR/C/MRT/CO/1, ¶ 17 (21 Nov. 2013) [hereinafter Concluding observations].

²⁰ *But see* Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Mauritania, ¶ 25, U.N. Doc. A/HRC/WG.6/23/MRT/1 (Aug. 6, 2015) [hereinafter HRC National Report], ("With regard to slavery, 31 cases of slavery-like practices have been dealt with by the courts, including 8 in Nouakchott and 23 in the wilayas of Hodh El Gharbi, Hodh Charghi, Tiris Zemour, Dakhlet Nouadhibou, Trarza, Gorgol and Adrar. The sentences imposed in these cases included imprisonment (2-year term), probation, a fine (200,000 ouguiyas (UM)) and civil damages for victims (UM 600,000).").

²¹ *Freed Anti-slavery Campaigner Says he Will Run for Mauritanian Presidency*, THE DAILY STAR LEBANON, 18 May 2016, <https://www.dailystar.com.lb/News/World/2016/May-18/352812-freed-anti-slavery-campaigner-says-he-will-run-for-mauritania-presidency.ashx>; Private communication.

²² The organization to which he referred was the Initiative for the Resurgent Abolitionist Movement ("IRA-Mauritania"). Private communication.

²³ Interview with President Aziz, *Le général Mohamed Ould Abdel Aziz sur TV5 monde, l'esclavage n'existe pas dans notre pays* (28 Nov. 2015), <https://www.youtube.com/watch?v=dUdwDHbSahM>.

11. Mauritanian anti-slavery activists regularly face harassment, intimidation, and arbitrary arrest and detention by the Mauritanian police and gendarmerie. For instance, on February 24, 2014, anti-slavery activist and IRA-Mauritania member Cheikh Ould Vall was arrested without a warrant, reportedly for assisting his mother in a land-related court case;²⁴ on April 6, 2014, police in Nouakchott arrested and beat IRA-Mauritania members Hanena Ould Boyrick and Boubacar Yatma for “rebellion against administrative authorities”;²⁵ on November 1, 2014, Sabbar Hussein was arrested after denouncing slavery and land exploitation at a Friday prayer in Nouakchott;²⁶ on November 3, 2014, Brahim Jiddou, Baba Traoré, and Yacoub Inalla were arrested after defending IRA-Mauritania at a mosque in Nouakchott and, along with Sabbar Hussein, were charged with disruption of prayer, incitement to hatred, and rebellion against authority.²⁷ Just one week after the passage of the 2015 law, a Mauritanian appeals court upheld the sentences of anti-slavery activists convicted for peacefully campaigning against slavery.²⁸

12. The UN Special Rapporteur on contemporary forms of slavery has expressed particular concern over the misinterpretation of religious texts to justify slavery in Mauritania.²⁹

²⁴ *Amnesty International Report 2014/15: The State of the World's Human Rights*, Amnesty Int'l, pp. 245-47, POL 10/001/2015 (2015), <https://www.amnesty.org/download/Documents/POL1000012015ENGLISH.PDF>.

²⁵ 2014 HUMAN RIGHTS REPORT, *supra* note 8.

²⁶ *IRA Leadership Arrested in Rosso*, IRA - USA, <http://ira-usa.org/ira-leadership-arrested-in-rosso/>.

²⁷ *Biram Dah Abeid Still Imprisoned: Latest Developments*, UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION (July 14, 2015) <http://unpo.org/article/17712>.

²⁸ *Id.*

²⁹ Shahinian, *supra* note 17, ¶¶ 10, 39.

“The misinterpretation of religion to justify slavery and slavery-like practices is a powerful means to keep slaves in subordination and to perpetuate manifestations of slavery.”³⁰

b. Freedom of Thought, Expression, and Religion

13. The UN Human Rights Committee (“HRC”) has recognized that Mauritania’s implementation of Islamic law could inhibit the enjoyment of fundamental freedoms.³¹ The Mauritanian government has apparently long been aware of this as well, having taken a reservation to Article 18 of the ICCPR, a provision that protects the freedoms of thought, conscience, and religion, and which is expressly non-derogable.³² Mauritania’s constitution, adopted in 1991, pays lip service to freedom of expression and freedom of opinion and thought.³³ Nevertheless, despite such constitutional guarantees and despite having ratified the International Covenant on Civil and Political Rights (“ICCPR”),³⁴ Mauritania falls woefully short when it comes to respecting these fundamental rights.

³⁰ *Id.*, ¶ 39.

³¹ Concluding observations, *supra* note 19, ¶ 6 (“The Committee notes the concerns that *the reference in the preamble to the State party’s Constitution to Islam as the only source of law could lead to legislative provisions that prevent the full enjoyment of some rights provided for in the Covenant.*”) (emphasis added).

³² ICCPR, art. 18(4) (“The Mauritanian Government, while accepting the provisions set out in article 18 concerning freedom of thought, conscience and religion, declares that their application shall be without prejudice to Islamic Sharia.”); Concluding observations, *supra* note 19, ¶ 6 (“The Committee notes with concern that the State party has entered a reservation to article 18, although the Covenant provides that there may be no derogation from that article to article 23, paragraph 4, of the Covenant and regrets the State party’s position that it will maintain them (arts. 2, 18 and 23).”); ICCPR, art. 18(1) (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”).

³³ CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA, 2012, arts. 10, 13, https://www.constituteproject.org/constitution/Mauritania_2012.pdf.

³⁴ United Nations Human Rights: Office of the High Commissioner, Ratification Status – Mauritania, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=110&Lang=EN.

14. Mauritanian law makes the exercise of certain fundamental freedoms punishable by death. Apostasy and hypocrisy, codified at Article 306 of the Mauritanian Penal Code, are examples of such crimes. The Human Rights Committee has condemned these laws:

While noting that Islam is the State religion in Mauritania, the Committee is concerned that exercise of the freedom of conscience and religion is not formally guaranteed for Muslim Mauritians, for whom a change of religion is classified as apostasy and is punishable by the death penalty (arts. 2, 6 and 18).

The State party should remove the crime of apostasy from its legislation and authorize Mauritians to fully enjoy their freedom of religion, including by changing religion.³⁵

15. Presciently, the Working Group worried that Article 306—the very provision under which Mkhaitir was sentenced to death—could lead to the perpetration of grave injustices:

Additionally, because of the sometimes vague wording, articles based on sharia, in particular article 306 on “public offences against Islamic morals and decency”, run the risk of being at variance with international standards, in particular the principle of legality, which is required in order to exclude the possibility that an act may be retroactively classed as criminal (see article 15 of the International Covenant on Civil and Political Rights). Several cases that could fall into this category were brought to the attention of the Working Group, including some related to the possession and sale of alcohol. One case involved a woman who was in possession of a condom; this was interpreted as a public attack on Islamic morals and decency, and she was sentenced to two years in prison under article 306.³⁶

³⁵ Concluding observations, *supra* note 19, ¶ 21.

³⁶ Report of the Working Group on Arbitrary Detention, Addendum: Mission to Mauritania, ¶ 77, U.N. Doc. A/HRC/10/21/Add.2 (Nov. 21, 2008) [hereinafter 2008 Working Group Report] (emphasis added).

16. Freedom of speech is also curtailed. Speech related to abolitionism is particularly restricted. Those who disseminate news on certain sensitive issues such as slavery are marked as troublesome by the authorities and are subject to harassment. Self-censorship is thus widespread among journalists out of fear of reprisal. As a result, Mauritania's press is considered only "partly free."³⁷

17. Outspoken abolitionists often find themselves the recipients of government persecution.³⁸ The government has reportedly pressured private employers and landlords to deny jobs and housing to members of abolitionist groups.³⁹ Peaceful abolitionist protests are confronted by police, often bearing batons and tear gas. Within a month of Mkhaitir's conviction, three other abolitionist dissidents were also sentenced to multi-year prison terms. As observed by the Human Rights Committee, such intimidation tactics are regrettably commonplace.⁴⁰

c. Lack of Judicial Independence

18. Mauritania's constitution contains prohibitions against arbitrary arrest and guarantees an independent judiciary and the right to a fair trial; however, in reality the Mauritanian justice system fails to fulfill such guarantees.⁴¹ Dysfunction in the administration of

³⁷ *Mauritania: Freedom of the Press 2015*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-press/2015/mauritania>.

³⁸ *Amnesty International Report*, *supra* note 24.

³⁹ Concluding observations, *supra* note 19, ¶ 22 ("The Committee notes with concern that, during rallies and demonstrations in the State party, human rights defenders and the demonstrators are threatened, intimidated and harassed by members of the security forces or the police.").

⁴⁰ *Id.*

⁴¹ "Article 89 of the Constitution establishes the principle of the independence of the judicial branch from the legislative and executive branches. The President of the Republic is the guarantor of the independence of the judiciary; he is assisted in this task by the Judicial Service Commission, over which he presides. Article 90 of the

justice is the primary cause of arbitrary detention in Mauritania.⁴² The Working Group has observed that the Mauritanian legal system falls short “of international principles and standards, *particularly with regard to the importance of proof.*”⁴³ Another area in which it falls short is the inconsistent application of Sharia law.⁴⁴

While the Government has undertaken far-reaching judicial reform with very positive results, the legacy of the authoritarian system is still making itself felt. The delegation points to certain shortcomings in the legislation, but above all emphasizes the *gap between the legal instruments currently in force and actual practice.*⁴⁵

19. The balance of power among the branches of the Mauritanian government bears the hallmarks of a still-reforming authoritarian regime. The executive branch wields tremendous authority, and the underdeveloped judiciary provides few meaningful checks on its exercise of that power. The executive has the power to appoint and remove judges, including members of the Constitutional Council and the High Islamic Council.⁴⁶ It has historically used this power to

Constitution stipulates that ‘judges shall obey only the law, and in discharging their duties, shall be protected against any form of pressure that may be detrimental to their free judgement.’” 2008 Working Group Report, *supra* note 36, ¶ 11.

⁴² *Id.*, ¶ 74.

⁴³ *Id.*, ¶ 75.

⁴⁴ “During its visit, the delegation of the Working Group noted that the cases of arbitrary detention that it found were mainly the result of dysfunctions in the administration of justice, such as: failure to observe time limits for police custody; failure to observe due process, including the right to have access to counsel; faulty oversight of the police and gendarmerie by judges and prosecutors; corruption; and inconsistent interpretations of sharia.” *Id.*, ¶ 74.

⁴⁵ *Id.*, p. 2.

⁴⁶ *Mauritania: Country at the Crossroads 2011*, FREEDOM HOUSE (2011), <https://freedomhouse.org/report/countries-crossroads/2011/mauritania>.

control the judiciary. According to the HRC, the judiciary is so dependent on the executive that there can be no guarantee of an independent tribunal in Mauritania.

The Committee is concerned by reports of 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*. The Committee is also concerned that legal aid is not always provided for most defendants and procedural rights are not always respected (art. 14).⁴⁷

The judiciary's subservience to the executive is exacerbated by the fact that many members of the judiciary are poorly trained. Judges not only lack training in human rights and procedural matters; they lack even "a common, university-level background."⁴⁸

d. Prison Conditions in Mauritania

20. Prison conditions in Mauritania are notoriously harsh. The conditions in some facilities are so bad that they amount to cruel, inhuman or degrading treatment.⁴⁹ Prisons are filled beyond capacity.⁵⁰ Prisoners are held in stifling heat and are denied access to fresh air and natural light. Many sleep on rags on the floor surrounded by vermin.⁵¹ Access to nutritious food,

⁴⁷ Concluding observations, *supra* note 19, ¶ 20 (emphasis added).

⁴⁸ 2008 Working Group Report, *supra* note 36, ¶ 73; *see id.*, ¶ 20.

⁴⁹ *Mauritania: Submission to the UN Universal Periodic Review*, AMNESTY INT'L, pp. 2-3, AFR 38/001/2010 (Apr. 12, 2010); 2014 HUMAN RIGHTS REPORT, *supra* note 8.

⁵⁰ 2014 HUMAN RIGHTS REPORT, *supra* note 8, p. 3; 2008 Working Group Report, *supra* note 36, ¶ 64.

⁵¹ *Mauritania: Submission to the UN Universal Periodic Review*, *supra* note 49, p. 2.

potable water, and medical care is extremely limited,⁵² while communicable diseases such as tuberculosis are rampant. The Office of the United Nations High Commissioner for Human Rights has observed that “in general, the conditions of detention in the places that were visited do not comply with the minimum international standards, most particularly the detention units and their ventilation.”⁵³ The HRC has also noted its concerns regarding “the inadequate conditions of detention in prisons in the State party, particularly the prison in Dar Naim. The Committee is particularly concerned by the overcrowding in some prisons.”⁵⁴ At the same time, a climate of violence looms. Torture, beatings, and ill-treatment are routine.⁵⁵

21. As explained in Section IV.A.5 below,⁵⁶ the conditions in which Mkhaitir is currently held are at least as bad as those of the average Mauritanian prisoner.

2. Mkhaitir

22. Mohammed Shaikh Ould Mohammed Mkhaitir is a 29-year-old accountant in Nouadhibou, an industrial city in the north of Mauritania. In December 2013, Mkhaitir published an anonymous article on www.aqlame.com, a Mauritanian news website whose anonymous posting format had given rise to a new forum for social and religious critiques. Mkhaitir was 28 years old at the time and worked as an accountant for a loading and unloading company called SAMMA.

⁵² 2014 HUMAN RIGHTS REPORT, *supra* note 8.

⁵³ *Information Note on Mauritania*, UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION, p. 1 (Dec. 12, 2014), <http://unpo.org/downloads/1156.pdf>.

⁵⁴ Concluding observations, *supra* note 19, ¶ 19.

⁵⁵ 2008 Working Group Report, *supra* note 36, ¶ 53.

⁵⁶ *See infra* § IV.A.5.

23. The article, entitled “Religion, Religiosity and Blacksmiths,”⁵⁷ 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 caste⁵⁸—known as the “blacksmith” caste and considered the “lowest of the low.”⁵⁹ Mkhaitir, a Moulamine himself, deplored the fact that the members of his caste were systematically denied any opportunity for socioeconomic advancement, due in part to deep-seated prejudices.⁶⁰ Thus, he sought to shed light upon Mauritania’s practice of invoking religion “to sanction racism and slavery.”⁶¹

24. To this end, Mkhaitir’s article called attention to certain instances in which the Prophet Mohammed showed mercy toward those with whom he shared common ancestry. Mkhaitir pointed out that in certain similar circumstances, Mohammed declined to extend the same mercy to members of other tribes.⁶² In Mkhaitir’s view, members of the Mauritanian ruling

⁵⁷ The original article can be found at <http://www.yennayri.com/news.php?extend.973>. For translated excerpts and commentary, see Bullard, *supra* note 15.

⁵⁸ See Jemal Oumar, *Mauritians 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).

⁵⁹ Bullard, *supra* note 15; see *supra* § IV.A.1.a; *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.”).

⁶⁰ Zouhair Mazouz, *Mauritania. Writer, Blogger, “Apostate”*, Free Arabs (Jan. 13, 2014), <http://www.freearabs.com/index.php/politics/69-stories/937-jb-span-mauritania-jb-span-writer-blogger-apostate>.

⁶¹ Bullard, *supra* note 15.

⁶² *Id.*

class had invoked the actions of Mohammed to justify contemporary racism and even slavery.⁶³ He professed that the culprit was not religion, but “*religiosity*.”⁶⁴ He explained what he meant by these terms at the outset of his article: religion is the infallible divine truth—the actual teachings handed down by God;⁶⁵ religiosity, on the other hand, is mankind’s imperfect attempt to apply God’s laws.⁶⁶ As such, it is susceptible to human error and can sometimes stray from the Prophet’s intent.

25. Many Mauritanian Muslims took offense at Mkhaitir’s characterization of the Prophet’s actions. According to Mauritania’s CRIDEM national news service, this was “the first time a text critical of Islam and of the Prophet has been published in Mauritania.”⁶⁷ Mkhaitir has said he is not a man educated in Islamic history, and he has recanted from the arguments made in his article.⁶⁸ Still, it is far from clear that Mkhaitir’s article was critical of Islam or of the Prophet. Although the article cited historical examples from Mohammed’s life, it did not criticize Mohammed’s actions themselves but rather the invocation of those actions today to justify racial discrimination.⁶⁹

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Mohammed Ould Shaikh Ould Mkhaitir, *Religion, Religiosity, and Blacksmiths*, AQLAME (Dec. 2013) [Appendix I].

⁶⁶ *Id.*

⁶⁷ Bullard, *supra* note 15.

⁶⁸ Trial Court Judgment, pp. 3-5 [Appendix II]; *see infra* ¶¶ 28, 33, 37.

⁶⁹ Mkhaitir, *supra* note 65 *passim* [Appendix I].

26. Nevertheless, the Mauritanian government set out to make an example out of Mkhaitir. Although his article had been published anonymously, the authorities managed to obtain 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.⁷⁰

27. Only eight countries currently make apostasy a capital offense; Mauritania is one of them.⁷¹ The last death sentence for apostasy in Mauritania, however, was in 1960.⁷² The last execution for any crime was in 1987.⁷³ Article 306 codifies the crimes of insulting the decency or customs of Islam; apostasy; hypocrisy (*zendegha*); indecent assault; and refusal to pray.⁷⁴

28. Article 306 does not define the elements of the crime of apostasy.⁷⁵ It provides, however, that a convicted apostate must be invited to repent following his conviction: “[e]very Muslim guilty of the crime of apostasy, either by word or by action apparent or obvious, will be

⁷⁰ 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>. French and English versions are presented in parallel at Appendix III.

⁷¹ Hanibal Goitom, *Laws Criminalizing Apostasy in Selected Jurisdictions*, THE LAW LIBRARY OF CONGRESS (May 2014), <http://www.loc.gov/law/help/apostasy/apostasy.pdf>.

⁷² REPORTERS WITHOUT BORDERS, *supra* note 59.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ AMEYAW DEBRAH, *supra* note 70 (“[d]espite the lack of clear parameters for what constitutes apostasy, and the absence of any precise or uniform decision in religious texts, one can agree that in its broadest sense, apostasy is the attitude of an individual who clearly and publicly renounces a religion or doctrine.”).

invited to repent within three days.”⁷⁶ The statute provides for a maximum sentence of two years if the apostate repents within three days of his conviction.⁷⁷ If the convicted person fails to repent within three days, the sentence is death – although one reading of Article 306 allows for the possibility that a convicted person could repent at any point before the date of his or her execution, even after the expiration of the three-day period.⁷⁸

29. The day after Mkhaitir’s arrest, a businessman from Nouadhibou named Abi Ould Ali called for Mkhaitir’s murder, placing a EUR 4000 bounty on his head. Civil society groups that expressed support for Mkhaitir, such as The Organization for a Green and Democratic Mauritania, were accused of being “traitors to Islam.”⁷⁹ 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.⁸⁰ Mkhaitir’s own family members so feared for their own safety that they wrote a joint letter condemning the article and distancing themselves from Mkhaitir:

It does look like the foolish modernists, secularists and
atheists are still attempting to derail us from the true path

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Article 306, Mauritanian Penal Code [Appendix III] (“If he repents before the execution of the judgment, the prosecutor will refer to the Supreme Court, which will decide on his full rehabilitation, without exclusion of correctional punishment as enshrined in the 1st paragraph of this article.”); *Laws Criminalizing Apostasy*, Library of Congress, <http://www.loc.gov/law/help/apostasy/#mauritania> (“It appears that article 306 of the Criminal Code also provides that if a person who has been sentenced to death for apostasy repents before his/her execution, the Mauritanian Supreme Court can commute his/her death sentence to a jail sentence of between three months and two years, and a fine of UM5,000–60,000 (approximately US\$17–\$203).”).

⁷⁹ 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>.

⁸⁰ *Id.*

after their Jewish and hypocrite masters failed to do so. [...] The author of the article must be sponsored by some outside forces. He equated his infallible religion with the rest of humanity's beliefs and falsely accused our prophet of racism and favoritism. This is not surprising from someone who seeks knowledge from those who hate Allah and his prophet peace be upon him. [...] We call upon society to denounce any individual who adopts a similar stance.”⁸¹

30. 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 Mkhaitir was to be tried. In one instance, the President of Mauritania dressed in traditional Mauritanian clothing and joined a protest related to Mkhaitir in order to communicate to the protestors that he was standing with them against Mkhaitir. When the protests became violent, the authorities were forced to reinforce security around the court.⁸²

31. At the same time, Mauritanian news outlets praised “the large crowds from all walks of life” who “even discarded their professional duties” in order to publicly condemn the blogger.⁸³ According to one Mauritanian press outlet:

Such outpouring of public anger is only part of a wave of Islamic radicalism that has been building in Mauritania. Mauritanian activists confirm that in collaboration with Salafists, members of Tawassoul (Mauritanian Islamist party) have been organizing an undercover Facebook witch hunt against their political enemies. In addition, public

⁸¹ Zouhair Mazouz, *Mauritania. Writer, Blogger, “Apostate”*, FREE ARABS (Jan. 13, 2014) (citing Joint letter from Mkhaitir's family).

⁸² *Id.*

⁸³ *Id.*

opinion has been flooded with calls for parents to better “monitor” their children. Mauritanian families were reportedly visited by ad-hoc committees who advised them to silence their adult sons and daughters. The latter are targeted disproportionately, as evidenced by the orchestrated campaign of condemnation against actress Laila Moulay for appearing unveiled in a videoclip.⁸⁴

32. The Mauritanian government found itself in a difficult position. Despite a decades-long de facto moratorium on the death penalty, a weak response would risk infuriating a conservative public that the government could barely contain.⁸⁵ Thus, on January 10, the Mauritanian government added its voice to the ongoing persecution of Mkhaitir. Speaking to protesters after Friday prayer, President Mohamed Ould Abdel Aziz said: “We will apply God’s law on whoever insults the Prophet, and whoever publishes such an insult.”⁸⁶

33. While in custody, Mkhaitir was interrogated repeatedly. In one of those interrogations, he repented and apologized for his article. The interrogation was recorded, but the police later claimed to have lost the recording.⁸⁷ On January 11, Mkhaitir issued a statement from prison again repenting and clarifying the intentions behind his article. He stated that his article had been misinterpreted and that his words had been twisted into a narrative that he did not intend.⁸⁸

Contrary to what have been rumored that I have insulted the Prophet Muhammad (Peace Be Upon Him), I want here

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Bullard, *supra* note 15.

⁸⁸ *Id.*

to make it clear what I wanted to clarify: is that in front of the duality of the superficial form and deep meaning, *the nobles (Zouaya) used the superficialities of those events and incidents that had occurred in the age of religion to establish thereon what serves their interests* in a time of total chaos “time of es-Sibah” by presenting that superficiality in the form of religious legislation that moved with times to the present day, *while neglecting the deep meanings of the Prophet (Peace Be Upon Him)*.⁸⁹

Further, Mkhaitir emphasized his love and respect for the Prophet and asserted that he had never, intentionally or unintentionally, insulted the Prophet.⁹⁰ He concluded by reminding all those who are marginalized that they have “the right to live in freedom and dignity” and by reiterating the need for unity among the members of disenfranchised castes.⁹¹

34. Still, he could not escape the public’s outrage.⁹² On January 26, a Mauritanian defense attorney offered his services to Mkhaitir. Within days, intimidating public protests – one of which ended in vandalism of shops owned by the employer of the attorney’s sons – forced him to withdraw his offer.⁹³

3. Trial, Conviction, and Sentencing

35. Mkhaitir was held for almost one year before his trial began on December 23, 2014, before the Criminal Court of Dakhlet Nouadhibou.⁹⁴ Mkhaitir was tried before a chamber

⁸⁹ Mkhaitir statement from prison (Jan. 11, 2014) [Appendix IV].

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Mazouz, *supra* note 60.

⁹³ MAURITANIA 2014 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 79, p. 4.

⁹⁴ *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

of five judges, two of whom were popular designees selected by the Ministry of Justice and who were reportedly among the most fundamentalist and obscurantist members of the judiciary.⁹⁵ Mkhaitir was represented by two public defenders.⁹⁶ In contrast, seven attorneys appeared *en parti civile* alongside the prosecution to represent Islamic organizations *Les Amis du Prophete* and *La Ligue d'Oulemas*.⁹⁷

36. The atmosphere of violence and intimidation continued through the two-day trial. A crowd gathered, both inside and outside the courtroom, to await Mkhaitir's conviction.⁹⁸ According to local news reports, religious leaders attended to ensure Sharia law was carried out.⁹⁹ The crowd that filled the courtroom was furiously hostile to the defense.

37. At the outset of the proceedings, Mkhaitir again repented before the tribunal and asked for forgiveness, explaining that he never meant to insult the Prophet and that any insult to be found in his article was the result of misinterpretation.¹⁰⁰ In response, the president of the

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.”).

⁹⁵ Private communication.

⁹⁶ *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).

⁹⁷ 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.

⁹⁸ Bullard, *supra* note 15.

⁹⁹ COMMITTEE TO PROTECT JOURNALISTS, *supra* note 94.

¹⁰⁰ *See id.* (“In court, Mohamed said he had not intended to insult the Prophet Muhammad and had repented.”); *Mauritania Must Immediately Release Mohamed Mkhaitir, Blogger Sentenced to Death for Apostasy*, AMNESTY INT’L, AFR 38/002/2015 (2015), <https://www.amnesty.org/en/documents/afr38/0002/2015/en/> (“Mkhaitir repented again during his trial, explaining that his article was solely intended to denounce those who use religion to belittle others.”).

tribunal told Mkhaitir that the societal problems he had written about existed only in his mind.¹⁰¹ When Mkhaitir asked the president how he could say such things, the president responded, “Everyone you had tried to involve in your campaign demanding rights has abandoned you.”¹⁰²

38. At one point, a member of the crowd hurled a bottle at the defense lawyers.¹⁰³ One of Mkhaitir’s attorneys so feared public reprisal that he stood up to explain the reasons why he was obliged to defend Mkhaitir.¹⁰⁴ This scene was a stark contrast from the trial of three anti-slavery activists that was taking place in Rosso at the same time. The three defendants in the weeklong Rosso trial were represented by forty *pro bono* defense lawyers, twenty-five of whom gave “fully-developed” defense arguments.¹⁰⁵

39. Even though the contents of Mkhaitir’s article formed the basis for the charges against him, the court prohibited the parties from discussing the contents of the article.¹⁰⁶ Yet the court provided no explanation for this prohibition. The defense thus focused its argument on the fact that Mkhaitir had repented and should be pardoned pursuant to the terms of Article 306.¹⁰⁷ The defense formulated these submissions as a simple request for forgiveness, for fear of further enraging the crowd that packed the courtroom and the courthouse square.

¹⁰¹ See Alice Bullard, *Maître Alice Bullard : Avocats Intimidés, Ould Mkhaitir Sans Défense*, KASSATAYA, <http://www.kassataya.com/vous/16363-maitre-alice-bullard-avocats-intimides-ould-mkhaitir-sans-defense> (informal translation) [Appendix V].

¹⁰² Private communication.

¹⁰³ Private communication.

¹⁰⁴ Private communication.

¹⁰⁵ Bullard, *supra* note 101.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

40. At the close of oral arguments, Mkhaitir repented once again in open court:

At the end, the floor was given to the defendant, so that he might be the last to speak in the courtroom, who then said that he had made an error in his life and in his testimony before the court and to those present and those not present, and that he repents to God, asking permission to write a few lines in the register of the session, and when the chief justice of the session gave him that permission, the defendant wrote these words: “I wish to say, before you, Mr. chief justice, I testify before God and to you that I repent to God for all sin[s], be they small or large, for what I committed in my life, God is my witness”.¹⁰⁸

41. On December 24, the court declared Mkhaitir guilty of the crimes of (1) hypocrisy and (2) insulting the Prophet, and sentenced him to death by firing squad.¹⁰⁹ When the verdict was read aloud, Mkhaitir fainted¹¹⁰ as the crowd cheered.¹¹¹

42. Mkhaitir’s defense team was shocked. Article 306 provides for leniency in the case of repentance, and despite the court’s failure to invite Mkhaitir to repent at the time of conviction, Mkhaitir had already repented numerous times. He had done so while being interrogated by the police; he had done so in his written clarification; he had done so while speaking with his attorneys; and he had done so twice before the court. However, the court had

¹⁰⁸ Trial Court Judgment, p. 9 [Appendix II].

¹⁰⁹ *The Islamic Republic of Mauritania*, THE ADVOCATES FOR HUMAN RIGHTS (Nov. 2015), http://www.theadvocatesforhumanrights.org/uploads/mauritania_hrc_dp_march_2015_2.pdf.

¹¹⁰ *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>.

¹¹¹ *Id.*

sentenced Mkhaitir for a different crime than the one with which he was charged – without ever notifying his defense team.

43. The crime for which Mkhaitir was ultimately sentenced was the crime of *zendegha*, or hypocrisy. This crime, also set forth in Article 306, is distinct from the crime of apostasy. Although the elements of the crime are not set forth in the statute, a hypocrite is reportedly one who, having committed the crime of apostasy, repents insincerely.¹¹² Unlike the provision governing apostasy, this provision excludes the death penalty only for the “prior” repentance of the accused and does not mandate the court to invite the convicted person to repent. It is unclear how a court is to determine whether a repentance is sincere or insincere. It is likewise unclear what precisely is intended by “prior” repentance, but one might infer that this refers to a “genuine” repentance made before conviction.

44. The reasoning of the court’s written judgment was opaque and illogical. The court found Mkhaitir guilty of insulting the Prophet because (1) Mkhaitir had acknowledged authoring the article, and (2) the article contained expressions and questions representing “a clear insult and offense to the Prophet.” The judgment explored at length the supposed “falsehoods, inaccuracies, and ‘hidden truths’” of the article. A large portion of the judgment was devoted to recounting stories from the Quran and dissecting the ways in which Mkhaitir’s recollection of those stories differed from the court’s version. The court emphasized that the article mentioned the name of the Prophet a number of times without praying over him. The court took this to be a sign of “intentional disdain.” During the course of the trial, Mkhaitir had admitted to having a weak knowledge of Islam, but the court perversely took this as further evidence of his guilt:

¹¹² Private communication.

he wanted to make fun of the Prophet because he discusses things he knows nothing about, while in his article he states truths in a fragmentary manner, and this means that his intent remains to cause harm to society.¹¹³

It additionally noted that when the chief justice had asked Mkhaitir to identify one word of the article that did not malign the Prophet, he could not (or did not) do so.

45. In support of the conviction for hypocrisy, the court found:

- that Mkhaitir had deprecated the importance of certain words spoken by the Prophet;
- that he had used “reproachful and derisive expressions” that “cannot be spoken by a believer in Islam” and “from which the intent to offend the figure of the Prophet, peace be upon him, is clearly eviden[t]”;
- that statements previously made by Mkhaitir in an article titled *My Brother Blacksmiths in God* and on his Facebook page “reveal[ed] a lack of faith and represent a violation of the obligations of religion”; and
- that he had encouraged Muslims to abandon Islam, as indicated by the following passage:

I wish only to add, along with you, to try (attempt) to make a separation between the religious spirit and the religiosity of certain events. This is good, but it is not my responsibility.¹¹⁴

Mkhaitir has repeatedly denied that his article carried the meaning taken by the court. But even if he had intended his article to have the meaning taken by the court, Mkhaitir’s conviction

¹¹³ Trial Court Judgment, p. 20 [Appendix II].

¹¹⁴ *Id.*, p. 22.

ultimately rested on the court's assessment of his religious beliefs based on the content of his speech.

46. Moreover, the judgment neglected altogether to address Mkhaitir's repentance(s), which was the central issue at trial and the insincerity of which was an essential element of the crime for which he was convicted.

4. Mkhaitir's Appeal

47. Mkhaitir was represented in his appeal by one Mauritanian attorney and two attorneys from Tunisia. The Mauritanian attorney filed the appeal with the court of appeal in October 2015, but the appeal was delayed several times due to the court repeatedly requiring the Mauritanian attorney to resubmit her requests for an appellate hearing. The Mauritanian attorney wrote to the President of the court of appeal in late October 2015 to request that the case be enrolled.¹¹⁵

48. After months of delay, the court of appeal heard the appeal and rendered a decision on April 21, 2016.¹¹⁶ In its decision, rendered the same day as the appellate hearing, the court of appeal confirmed the decision of the trial court, but also referred the case to the Supreme Court for consideration of the issue related to the qualification of the offense (*i.e.*, apostasy versus hypocrisy). The court of appeal indicated that after consideration of the facts, the appropriate offense would have been that of apostasy rather than hypocrisy, and that in cases of

¹¹⁵ Private communication.

¹¹⁶ Private communication.

apostasy, the case should be referred to the Supreme Court to assess the sincerity of repentance.¹¹⁷ No hearing date has been set for the Supreme Court review.

5. Mkhaitir's Present Condition

49. Mkhaitir is currently confined in abysmal conditions in Nouadhibou prison. Prison conditions are extremely poor in Mauritania, and Mkhaitir's experience has been no different. The prison in which he is detained is overcrowded and reportedly lacks the money to feed all of its inmates. Food rations are reportedly divided in thirds, with one third going to the prison's warden, one third to the guards, and only the remaining third being allotted to the prisoners.¹¹⁸ This has led to a serious food shortage among the prisoners.¹¹⁹

50. Until recently, Mkhaitir was confined alone in a small cell, with only a carpet and no bed.¹²⁰ In January 2016, he was transferred to a new cell. The official reason given for the transfer was for his own protection from abuse by guards and other prisoners; however, there is no evidence that any such abuse ever occurred. Mkhaitir's Mauritanian counsel has not been permitted to visit his new cell, and since his transfer Mkhaitir has been all but unable to

¹¹⁷ Private communication.

¹¹⁸ Private communication.

¹¹⁹ *Id.*

¹²⁰ The conditions of Mkhaitir's detention violate international minimum standards for detention centers, including numerous provisions of the UN's Standard Minimum Rules for the Treatment of Prisoners. *See* G.A. Res. 70/175, The Nelson Mandela Rules, Rule 21 (17 Dec. 2015) ("Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.").

Rule 13 of the Standard Minimum Rules for the Treatment of Prisoners provides, "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, *minimum floor space*, lighting, heating and ventilation." *Id.*, Rule 13 (emphasis added).

communicate with the outside world about his living situation and health. We do know that his new cell has poor ventilation and little to no natural light.¹²¹ Prior to his transfer, he was only allowed ten minutes of exercise per day,¹²² and he was forbidden from reading anything other than Islamic texts.¹²³ Since January 2016, however, he has been constantly kept in his locked cell without access to television or reading materials. The quality of the food and water is poor, and Mkhaitir's malnourishment has become a significant health concern.¹²⁴ Mkhaitir is guarded at all times and is even accompanied by guards for basic tasks such as using the restroom. Unsurprisingly, he has lost a great deal of weight in prison, and his health has deteriorated—yet he has no access to medical care.¹²⁵ He now suffers from malaria and lacks regular access to the

¹²¹ Rule 13 of the Standard Minimum Rules for the Treatment of Prisoners provides, "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and *ventilation*." *Id.* (emphasis added).

Rule 14(a) of the Standard Minimum Rules for the Treatment of Prisoners provides, "In all places where prisoners are required to live or work, . . . [t]he windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation . . ." *Id.*, Rule 14(a).

¹²² Rule 23(1) of the Standard Minimum Rules for the Treatment of Prisoners provides, "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." *Id.*, Rule 23(1).

¹²³ Rule 64 of the Standard Minimum Rules for the Treatment of Prisoners provides, "Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it." *Id.*, Rule 64.

¹²⁴ Rule 22 of the Standard Minimum Rules for the Treatment of Prisoners provides:

"(1) Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he or she needs it." *Id.*, Rule 22.

¹²⁵ Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners provides, "The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed." *Id.*, Rule 31.

appropriate medications.¹²⁶ Since his conviction, Mkhaitir has also developed a tremor and has reportedly become paranoid and anxious.¹²⁷

51. Prior to his trial, Mkhaitir would receive food sent by his family to supplement his meager prison rations. However, prison officials discovered an alleged attempt to assassinate Mkhaitir when tests carried out on food sent to him from the outside revealed that it was poisoned.¹²⁸ Since the alleged assassination attempt, Mkhaitir no longer receives food from the outside, including from his family. He continues to receive death threats from the other prisoners because of the crime for which he was convicted.

52. Mkhaitir has nine siblings and step-siblings,¹²⁹ for whom he is the only source of income. For as long as he is in prison, their livelihood is uncertain.

¹³⁰ 

B. Legal Analysis

53. Mkhaitir's detention constitutes an arbitrary deprivation of liberty¹³¹ under Category II and Category III as defined by the Working Group.¹³² The detention is arbitrary

¹²⁶ Private communication.

¹²⁷ Private communication.

¹²⁸ As of November 2015, Mkhaitir was not aware of the assassination attempt because his family and friends did not want to frighten him. Telephone call with A. M. Moctar (Nov. 3, 2015).

¹²⁹ We have received conflicting information about the number Mkhaitir's siblings.

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¹³¹ An arbitrary detention of liberty is defined as any "deprivat[ion] of liberty except on such grounds and in accordance with such procedures as are established by law." ICCPR, art. 9(1). Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." UDHR, art. 9(1). "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law" Body of Principles for the Protection of Persons under Any Form of Detention or

under Category II because it resulted from Mkhaitir's peaceful exercise of his freedom of expression and because the law under which he was convicted is itself a facial violation of international law. The detention is arbitrary under Category III because the government's detention and prosecution of Mkhaitir failed to meet minimum international standards of due process.

1. Deprivation of Liberty Under Category II

54. Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.¹³³ This case meets the requirements of Category II because Mkhaitir's detention is a result of his exercise of his fundamental freedoms of opinion and expression guaranteed by the UDHR and the ICCPR, to which Mauritania is a party; furthermore, Mkhaitir's detention is arbitrary under Category II because he was convicted pursuant to a law that facially violates international principles of freedom of religion.

a. Mkhaitir Was Convicted for Exercising His Freedoms of Opinion and Expression.

55. The freedoms of opinion and expression are protected by international and regional instruments and include the freedom to seek, receive and impart information of all kinds,

Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

¹³² Human Rights Council, Methods of work of the Working Group on Arbitrary Detention, ¶¶ 8(b)-(c), U.N. Doc. A/HRC/30/69 (Aug. 4, 2015) [hereinafter Methods].

¹³³ Methods, *supra* note 132, ¶ 8(b).

either orally or in writing.¹³⁴ Article 19(2) of the ICCPR provides that “everyone shall have the right to freedom of expression.”¹³⁵ Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.¹³⁶ The HRC has clarified that article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”¹³⁷ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”¹³⁸ Article 9(2) of the African Charter on Human and Peoples’ Rights (“ACHPR”) similarly provides that “[e]very individual shall have the right to express and disseminate his opinions within the law.”

56. Pursuant to Article 19(3) of the ICCPR, the freedom of expression and opinion may only be restricted as necessary for either the respect of the rights and reputations of others or the protection of national security or public order, health or morals.¹³⁹ However, such permissible limitations on the right to freedom of expression do not apply in this case. The HRC has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting that “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”¹⁴⁰ As such, any limitation “must meet a strict test of

¹³⁴ *Id.*

¹³⁵ ICCPR, art. 19(2). As noted above, Mauritania acceded to the ICCPR in 1994 and entered no reservations to this provision.

¹³⁶ UDHR, art. 19.

¹³⁷ Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, ¶ 12, U.N. Doc. CCPR/C/G/34 (Sep. 12, 2011).

¹³⁸ *Id.*

¹³⁹ ICCPR, art. 19(3).

¹⁴⁰ General Comment No. 34, *supra* note 137, ¶ 21.

justification.”¹⁴¹ To guide states, the HRC has established three requirements for any limitation on the right to freedom of expression. A permissible limitation must be (1) “provided by law,” (2) for the protection of one of the “enumerated purposes,” and (3) “necessary” to achieve that purpose.¹⁴² In this case, the limitation on Mkhaitir’s freedom of expression fails to meet both the second and third requirements.

57. Aside from these strictly limited permissible restrictions, political discourse, discussion of human rights, and religious discourse are all protected speech, and the “scope of [the ICCPR provision protecting speech] embraces even expression that may be regarded as deeply offensive.”¹⁴³ The HRC has explicitly stated that national laws that infringe on individual’s rights of opinion and expression may not “prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”¹⁴⁴ Additionally, “[l]aws that penalize the expression of opinions about historical facts are incompatible with the obligations that the [ICCPR] imposes on State parties in relation to the respect for freedom of opinion and expression.”¹⁴⁵ The HRC explains that the ICCPR “does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events.”¹⁴⁶

¹⁴¹ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995 (adopted Oct. 20, 1998), ¶ 10.3.

¹⁴² *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (adopted Mar. 16, 2004), ¶ 7.3.

¹⁴³ General Comment No. 34, *supra* note 137, ¶ 11.

¹⁴⁴ *Id.*, ¶ 48.

¹⁴⁵ *Id.*, ¶ 49.

¹⁴⁶ *Id.*

58. Mkhaitir's article falls squarely within the protection of the ICCPR, UDHR, and ACHPR. In his article, Mkhaitir discussed his views on the use of Islam to perpetuate the Mauritanian caste system and slavery. He took the position that it was wrong to use Islam to justify practices that discriminate against individuals. The article can be described as both political and religious, and it therefore clearly falls under the protections of article 19. At the same time, the article did not advocate violence or disorder and therefore posed neither a threat to others' rights or reputations nor a threat to national security or public order, health or morals; rather, the article bravely called for a reconsideration of the justifications behind the abhorrent practice of slavery. Above all, Mkhaitir's point was a political one, in support of which he—rightly or wrongly—employed religious allegories. Although Mauritania is a deeply religious country and Mkhaitir's statements may have been offensive to some, a public outcry cannot excuse depriving a person of liberty for exercising his freedoms of opinion and expression.

59. In its judgment, the trial court discussed at length the historical events that Mkhaitir referenced in his article.¹⁴⁷ The court's assessment of Mkhaitir's guilt rested largely on a determination that his statements may not have been historically accurate according to Islamic teachings. Whether Mkhaitir's recollection of historical events was factually correct is irrelevant based on the HRC's guidance that prohibitions of incorrect interpretations of past events are contrary to the ICCPR and international law. Even if Mkhaitir's article was historically inaccurate, the government of Mauritania cannot rightly convict him and sentence him to death for these errors. Erroneous statements are protected to the same degree as historically accurate ones.

¹⁴⁷ Trial Court Judgment *passim* [Appendix II].

60. Because Mkhaitir was detained for making statements that were protected by his freedoms of opinion and expression, his detention is arbitrary under Category II of the Working Group's methods.

b. Mkhaitir Was Convicted under a Law that Facially Violates International Law.

61. Article 18 of the UDHR provides that “[e]veryone has the right to freedom of thought, conscience and religion.”¹⁴⁸ Article 18 of the ICCPR provides an analogous right. Under the ICCPR, “[t]his right shall include freedom to have or to adopt a religion or belief of his choice.”¹⁴⁹ The HRC has explained that the “freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 [of the ICCPR] is far-reaching and profound.”¹⁵⁰ Although Mauritania entered reservations regarding Article 18 when it acceded to the ICCPR, the HRC has explained:

The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor

¹⁴⁸ UDHR, art. 18.

¹⁴⁹ ICCPR, art. 18(1).

¹⁵⁰ Human Rights Committee, General Comment No. 22, Article 18 (Freedom of Thought, Conscience or Religion), ¶ 1, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993).

in any discrimination against adherents to other religions or non-believers.¹⁵¹

62. Article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice.”¹⁵² Freedom of religion includes the right to critique religious values and to profess “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.”¹⁵³

63. Freedom of religion is also protected by regional law. Article 8 of the ACHPR provides, “[f]reedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”¹⁵⁴

64. Here, Mauritania has convicted and detained Mkhaitir for allegedly violating a law that prohibits individuals from having or expressing views that the government determines are contrary to Islam. He was charged with apostasy and convicted of hypocrisy and insulting the Prophet, crimes based solely on the government’s determination of his religious beliefs. As such, the statute at issue penalizes the exercise of the fundamental freedom of religion under the UDHR, the ICCPR, and the ACHPR. These laws facially abrogate Mauritanian citizens’ freedom of religion. Whether the underlying factual allegations are true or not, and although Mkhaitir did

¹⁵¹ *Id.*, ¶ 9.

¹⁵² *Id.*, ¶ 3.

¹⁵³ See Heiner Bielefeldt (Special Rapporteur on freedom of religion or belief), Interim report of the Special Rapporteur on freedom of religion or belief, ¶ 20, U.N. Doc. A/67/303 (Aug. 13, 2012).

¹⁵⁴ Mauritania ratified the ACHPR on June 14, 1986, signed the protocol establishing an African Court on Human and Peoples’ Rights on March 22, 1999, and ratified the protocol on May 19, 2005. Therefore, it is bound by the Charter’s provisions.

not consciously set out to exercise his freedom of religion, the Mauritanian government has deprived Mkhaitir of his liberty based on a judgment about his religious beliefs. His detention is therefore arbitrary because the law under which he was convicted is itself incompatible with UDHR and ICCPR freedom of religion guarantees.

65. The Mauritanian government’s power to punish citizens for their religious beliefs is contrary to international law and abridges its citizens’ freedoms of religion and thought. The HRC recommended that Mauritania abolish the crime of apostasy, stating that Mauritania “should remove the crime of apostasy from its legislation and authorize Mauritians to fully enjoy their freedom of religion, including by changing religion.”¹⁵⁵ Similarly, the UN Special Rapporteur on freedom of religion or belief (“Special Rapporteur on religion”) reported, “States should repeal vague provisions against so-called ‘proselytism,’ ‘unethical conversion,’ ‘*apostasy*’ and ‘blasphemy’ and should reform respective legislation to align it with the provisions of article 18(3) of the International Covenant on Civil and Political Rights.”¹⁵⁶ Additionally, the Special Rapporteur on religion recommended that “States should ensure that no person is exposed to situations in which she or he may experience pressure to convert or reconvert against her or his will, especially in State-controlled institutions, such as the police force, the military or penal institutions.”¹⁵⁷

66. Moreover, the narrow limitations permitted on the right to freedom of religion set forth in Article 18(3) of the ICCPR do not apply to this case. Article 18(3) of the ICCPR permits

¹⁵⁵ Concluding observations, *supra* note 19, ¶ 21.

¹⁵⁶ Bielefeldt, *supra* note 153, ¶ 69(g) (emphasis added).

¹⁵⁷ *Id.*, ¶ 70(b).

limitations as “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” However, the HRC has emphasized the narrowness of this limitation by noting that:

Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.¹⁵⁸

The HRC further observed limitations on the freedom of religion for the purpose of protecting morals cannot be based on principles deriving from a single religion.¹⁵⁹

67. In this case, because the law applied by the court was based solely on principles arising from the Islamic religion and because the limitations were neither directly related nor proportionate to any specific need to protect public safety, order, health or morals or the fundamental freedoms of others, such limitations are impermissible.

68. As discussed in section IV.A.3 above, Mkhaitir was not properly convicted under Mauritanian law. However, even if he had been properly convicted of apostasy or hypocrisy by a trial meeting all due process requirements, his detention would be arbitrary because the applicable Mauritanian provisions of Article 306 are facially contrary to, and here were factually applied in violation of, international law. Because Mkhaitir was convicted under a law that

¹⁵⁸ General Comment No. 22, *supra* note 150, ¶ 8.

¹⁵⁹ *Id.*

facially violates international principles of freedom of religion, his detention is arbitrary under Category II of the Working Group's methods.

2. Deprivation of Liberty Under Category III

69. A detention is arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to a fair trial, established in the [UDHR] and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹⁶⁰ Articles 5, 7, 8, 9, 10 and 11 of the UDHR and articles 9 and 14 of the ICCPR provide international norms of fair trial. In addition to the due process requirement established by the ICCPR and UDHR, the Working Group may also look to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”) in making a determination as to the arbitrary nature of a detention.¹⁶¹ Mauritania failed to observe the minimum international standards of due process by denying Mkhaitir his rights to a hearing by an independent and impartial tribunal, equality before the court, a presumption of innocence, to prepare a defense, to be informed of the charges against him, to be released pending trial and to be tried without undue delay.

a. The Government of Mauritania Denied Mkhaitir the Right to an Independent and Impartial Tribunal, Equality Before the Court and a Presumption of Innocence.

¹⁶⁰ Methods, *supra* note 132, ¶ 8(c).

¹⁶¹ *Id.*, ¶ 7(a).

70. The right to a fair trial is enshrined in the ICCPR and requires, *inter alia*, that a defendant enjoy trial before an independent and impartial tribunal, equality before such tribunal and a presumption of innocence.¹⁶² Article 14(1) provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹⁶³ Article 10 of the UDHR and article 7(1)(d) of the ACHPR provide the same protection. The HRC has stated, “[t]he requirement of independence refers, in particular, to . . . the actual independence of the judiciary from political interference by the executive branch and legislature.”¹⁶⁴ The HRC continued,

[t]he requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, not harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.¹⁶⁵

There can be no fair trial without an independent and impartial court. This is an absolute right not subject to any exceptions.¹⁶⁶

¹⁶² ICCPR, art. 14(1); *see also* UDHR, art. 10 (“Everyone 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.”); ACHPR, art. 7(1)(b), (d) (“Every individual shall have the right to have his cause heard. This comprises: . . . the right to be presumed innocent until proved guilty by a competent court or tribunal; [and] the right to be tried within a reasonable time by an impartial court or tribunal.”).

¹⁶³ ICCPR, art. 14(1).

¹⁶⁴ General Comment No. 32.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*, ¶ 19; *see also* *Gonzalez del Rio v. Peru*, Communication No. 263/1987, U.N. Doc. CCPR/C/46/263/1987 (1992), ¶ 5.2 (“The Committee recalls that the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception.”).

71. Article 14(1) of the ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals.”¹⁶⁷ The HRC has explained that “[e]quality before courts and tribunals also requires that similar cases are dealt with in similar proceedings.”¹⁶⁸ Under Mauritanian law, an individual charged with apostasy is to be given an opportunity to repent, and if he repents, the court must consider that repentance as a mitigating circumstance.

72. Under article 14(2) of the ICCPR, every criminal defendant is also entitled to “the right to be presumed innocent until proven guilty.”¹⁶⁹ The HRC has explained that the right to be presumed innocent requires that the defendant be given the “benefit of the doubt” and that “all public authorities refrain from prejudging the outcome of the trial.”¹⁷⁰ In Mkhaitir’s case the court was neither independent nor impartial, did not treat Mkhaitir with equality and did not grant him a presumption of innocence.

73. *First*, two members of the tribunal had been chosen by the Ministry of Justice specifically for this trial.¹⁷¹ As explained in section IV.A.1.c above, this is one mechanism by which the Mauritanian executive asserts control over the judiciary and is a key reason why there can be no guarantee of an independent tribunal in Mauritania.¹⁷² Viewed in light of the executive branch’s history of using judicial appointments to control the judiciary and President Aziz’s prior

¹⁶⁷ ICCPR, art. 14(1); *see also* UDHR, art. 7.

¹⁶⁸ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, ¶ 14, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

¹⁶⁹ *See also* UDHR, *supra* note 1, at art. 11(1); ACHPR, *supra* note 144, at art. 7(1)(b).

¹⁷⁰ General Comment No. 32, *supra* note 168, ¶ 30.

¹⁷¹ *See supra* ¶ 35.

¹⁷² Concluding observations, *supra* note 19, ¶ 20.

denunciation of Mkhaitir—which undoubtedly left an impression on the tribunal and violated the HRC’s instruction that public officials must “refrain from prejudicing the outcome of the trial”—the fact that the judges were hand-selected by the Ministry of Justice alone raises serious questions about the tribunal’s independence. Moreover, the court did not give Mkhaitir the “benefit of the doubt” as might be expected of an impartial criminal court. Rather, the court had to read between the lines of Mkhaitir’s article to justify its decision. At the same time, the court refused to allow Mkhaitir to explain his intent or to listen to Mkhaitir’s pleas for forgiveness.

74. *Second*, the court prevented Mkhaitir from discussing the content of the article at trial, foreclosing key avenues of defense and removing any requirement that the prosecution prove the elements of hypocrisy or apostasy relating to the content of his statements.

75. *Third*, the court denied Mkhaitir the opportunity to repent following his conviction, as required by Mauritanian law. Under Mauritanian law, an individual charged with apostasy is required to be given an opportunity to repent. Here, Mkhaitir was given no such formal opportunity and even though the court was aware that he had repented, the court completely ignored his repentance in reaching its decision. Mkhaitir, of his own accord and on the counsel of his lawyers, recanted and publicly apologized for his statements, but his recantations were repeatedly ignored. Under the apostasy provision of Article 306, a sentence of two years is the maximum Mkhaitir should have received.¹⁷³ However, the court ignored traditional procedural and substantive law for an apostasy charge and denied Mkhaitir the right to be treated equally before the court.

¹⁷³ As explained above, the court apparently determined that Mkhaitir’s recantation was not genuine. *See supra* ¶¶ 43-46.

76. *Fourth*, the court did not presume Mkhaitir to be innocent as required by Article 14(2) of the ICCPR, Article 11(1) of the UDHR and Article 7(1)(b) of the ACHPR. As discussed in paragraph 73, two members of the tribunal had been specifically chosen by the Ministry of Justice for this trial, reflecting the executive’s control of the Mauritanian courts. Long before Mkhaitir was convicted, the president of Mauritania himself joined a protest related to Mkhaitir in order to communicate to the protestors that he was standing with them against Mkhaitir; he also made public statements confirming that Mauritania would punish whoever insulted the Prophet. Such actions and statements by Mauritania’s president, when combined with the facts that the Mauritanian executive frequently exercises control over the judiciary and two members of the tribunal were handpicked to decide Mkhaitir’s case, confirm that the government never considered Mkhaitir to be innocent. It was also made clear at the trial’s outset, when the chief justice asked Mkhaitir to point to “even one word [of the article] that did not indicate mockery,” that the tribunal had already prejudged his guilt.¹⁷⁴ The court told Mkhaitir, before hearing any evidence at all, that the contents of his article were false. This conduct demonstrates that the court had determined Mkhaitir’s guilt before the trial even began.

77. *Fifth*, while Mkhaitir’s trial was certainly “public” within the meaning of ICCPR article 14(1) and UDHR article 10, it was hardly fair. That the court allowed unruly crowds to pack the courtroom further shows that the court had prejudged Mkhaitir’s guilt. It would have been very difficult for Mkhaitir’s attorneys to present a defense in such a hostile environment; indeed, as discussed in section IV.A.3 above, the defense may have been motivated to pursue its ultimately failing strategy out of fear of further antagonizing the crowd. Likewise, it would have

¹⁷⁴ Trial Court Judgment, p. 3 [Appendix II].

been difficult for the court to remain independent and impartial in the face of the crowd, especially considering that among the crowd's members were Sharia scholars attending to ensure Mkhaitir's conviction.

78. *Sixth*, key evidence was withheld by the investigative authorities. The police did not turn over Mkhaitir's recorded repentance from his time in police custody, claiming that they had lost the recording. By denying Mkhaitir access to exculpatory evidence, the authorities further chipped away at Mkhaitir's right to a fair trial.

79. Ultimately, this case was about making an example of Mkhaitir for taking a stance against the use of Islam to justify slavery and discrimination. The trial court did not rule based on an impartial consideration of the evidence. Instead, the tribunal decided Mkhaitir was guilty and crafted a judgment designed to reach that conclusion. To do so, it had to ignore the fact that Mkhaitir had already repented more than once.

80. The government of Mauritania repeatedly and directly violated the rights guaranteed by article 14 of the ICCPR. These systematic violations, when taken individually and in the aggregate, demonstrate that Mkhaitir did not receive a fair trial by an independent and impartial tribunal, or enjoy either equality before the court or a presumption of innocence—fundamental rights that the HRC has identified as essential to the realization of a fair trial. Because the government of Mauritania denied Mkhaitir essentially all of the basic elements of a fair trial guaranteed by international law, his detention is arbitrary.

b. The Government of Mauritania Denied Mkhaitir the Right to be Informed of the Charges Against Him and the Right to Prepare a Defense.

81. Article 14(3)(a) of the ICCPR provides that “[i]n the determination of any criminal charge against him, everyone shall be entitled . . . to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”¹⁷⁵ The HRC has elaborated that “‘promptly’ requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such.”¹⁷⁶ Article 14(3)(b) provides that an individual charged with a criminal offense shall “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing.”¹⁷⁷ The right to prepare a defense is “an important element of the guarantee of a fair trial.”¹⁷⁸

82. Here, Mkhaitir was charged with one crime and convicted of another. It came as a surprise on the evening of December 24th when the court delivered a guilty verdict for the crime of hypocrisy, rather than rendering a decision on the charged crime of apostasy. The court did not explain why it had switched the charge, and it did not explain why it deemed Mkhaitir to have repented insincerely. Although the crimes of apostasy and hypocrisy are defined by the same article of the Mauritanian Penal Code (which defines five separate offenses), the distinction between the two is crucial because they have different elements.¹⁷⁹ Accordingly, Mkhaitir and

¹⁷⁵ ICCPR, art. 14(3).

¹⁷⁶ General Comment No. 32, *supra* note 168, ¶ 31.

¹⁷⁷ ICCPR, art. 14(3)(b); *see also* UDHR, art. 10, 11(1); ACHPR, art. 7(1)(c) (“Every individual shall have the right to have his cause heard. This comprises: . . . the right to defense, including the right to be defended by counsel of his choice.”).

¹⁷⁸ General Comment No. 32, *supra* note 168, ¶ 32.

¹⁷⁹ The UNWGAD has previously acknowledged the gross imprecision of Article 306, recommending in its 2008 report that Mauritania “[r]eformulate article 306 of the Criminal Code so that it is more precise, by setting out the acts that are punishable under this article.” 2008 Working Group Report, *supra* note 36, ¶ 89.C(a).

his lawyers were unable to prepare a proper defense. They understood that because Mkhaitir was charged with apostasy, the best defense would focus on his repentance. Based on the Mauritanian Penal Code's definition of the crime, his maximum sentence would be two years in prison. This bait-and-switch tactic permitted the court to apply the death sentence notwithstanding Mkhaitir's repentance.

83. Had Mkhaitir and his counsel known before trial—as required by ICCPR Article 14(3)(a)—that the court would consider his repentance as a constitutive element of a crime that was not charged, they might have had time to prepare a more appropriate defense. However, because Mkhaitir had no advance notice of the hypocrisy charge, he did not have adequate time to prepare a defense. The court of appeal subsequently overturned the trial court's classification of the offense as hypocrisy. The court of appeal modified the trial court judgment, reclassifying the offense as apostasy and referring the case to the Supreme Court for determination of the sincerity of Mkhaitir's repentance.

84. In addition, the trial court hamstrung Mkhaitir's ability to defend himself by prohibiting him from discussing the content of the article in his defense. This ruling precluded Mkhaitir from arguing, *inter alia*, that the text of the article did not prove Mkhaitir had renounced Islam. The court's foreclosure of this principal avenue of defense was in itself a violation of Mkhaitir's right to a fair trial and demonstrates that the court had already determined the post's contents to constitute apostasy.

85. Moreover, the trial court permitted the unruly crowd inside the courtroom to intimidate Mkhaitir's defense team, further inhibiting their ability to mount a defense. Mkhaitir's two public defenders chose to formulate their submissions as an appeal for mercy rather than as a

positive case, in part because they feared further enraging the crowd that packed the courtroom. They feared that any other approach might give angry crowds an excuse to lynch Mkhaitir, or worse.¹⁸⁰ This deprived Mkhaitir of adequate facilities for preparing his defense.

86. Both the trial court and the court of appeal made it impossible for Mkhaitir and his lawyers to prepare and present a defense. Furthermore, the defense that his team presented was blatantly ignored as the courts convicted Mkhaitir of a different crime than that with which he was charged. For these reasons, Mkhaitir's trial was a violation of his fundamental rights under article 14(3)(a) and (b) of the ICCPR, article 11(1) of the UDHR, and article 7(1)(c) of the ACHPR.

c. The Government of Mauritania Denied Mkhaitir the Right to Release Pending Trial and the Right to be Tried Within a Reasonable Time of his Detention.

87. Article 9(3) of the ICCPR provides that “[a]nyone arrested or detained on criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody”¹⁸¹ Article 9(4) of the ICCPR further provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” Principle 39 of the Body of Principles bolsters these guarantees for release pending trial setting out that, “[e]xcept in special cases provided for by law, a person detained on a criminal charge

¹⁸⁰ Private communication.

¹⁸¹ ICCPR, art. 9; *see also* UDHR, art. 9; ACHPR, art. 6.

shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law.”¹⁸² With respect to a court’s refusal to grant pre-trial release, the HRC has held that “remand in custody pursuant to arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.”¹⁸³

88. Article 14(2)(c) of the ICCPR provides that “everyone shall be entitled to . . . be tried without undue delay.”¹⁸⁴ Similarly, article 7(1)(d) of the ACHPR provides the right to be “tried within a reasonable time.”¹⁸⁵ The HRC has confirmed that the reasonable amount of time in which a trial must be held must be “assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.”¹⁸⁶ However, in cases where the accused has been denied bail by the court, the HRC has confirmed that such detainee must be tried as expeditiously as possible.

89. After his arrest in January 2014, Mkhaitir was not speedily brought before a judge or judicial officer for a determination of the lawfulness of his arrest and detention and to consider

¹⁸² G.A. Res. 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 39 (Dec. 9, 1988).

¹⁸³ *Marinich v. Belarus*, Communication No. 1502/2006, U.N. Doc. CCPR/C/99/D/1502/2006, ¶ 10.4, (2010); *see also* Human Rights Committee, Draft General Comment No. 35, U.N. Doc. CCPR/C/107/R.3, ¶ 39, (Jan. 28, 2013).

¹⁸⁴ ICCPR, art. 14 § 3(c).

¹⁸⁵ ACHPR, art. 7(1)(d).

¹⁸⁶ General Comment No. 32, *supra* note 168, ¶ 30.

his release pending trial. Rather, Mkhaitir sat in pre-trial detention, without possibility of bail and in abhorrent prison conditions, for nearly a year until his trial was held in December 2014—which was also his first appearance before a judicial officer. The fact that Mkhaitir was (i) not brought promptly before a judicial officer who could make a determination as to his release pending trial and (ii) not granted release pending trial violated his rights under Article 9(3) and (4) of the ICCPR. Further, the fact that Mkhaitir had to wait a year for his trial—an unreasonable amount of time in any circumstance, much less in a situation where the accused sits in pre-trial detention—violated his right to a trial without undue delay under Article 14(2)(c) of the ICCPR, article 9 of the UDHR, and articles 6 and 7(1)(d) of the ACHPR.

90. The numerous failures of the Mauritanian courts outlined above collectively constitute an ongoing manifest failure of justice. The rights to an independent and impartial tribunal, equality before the courts, a presumption of innocence, to be informed of the charges, to prepare a defense, to release pending trial and to be tried without undue delay are fundamental to the principles of fair trial and due process. Because Mkhaitir was deprived of these rights, his conviction and sentence are arbitrary under Category III of this Working Group’s methods.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

1. Mkhaitir was initially sentenced by the trial court on December 24, 2014. He appealed the trial court judgment, and the court of appeal rendered its decision on April 21, 2016. The case has been referred to the Supreme Court for consideration of the issue related to the qualification of the offense (*i.e.*, apostasy versus heresy or hypocrisy), however no date for this

hearing has yet been fixed. Mkhaitir has also filed an incidental appeal against the decision of the court of appeal, requesting that the Supreme Court also rule on the violation of Article 306 of the Criminal Code.¹⁸⁷

2. Until the Supreme Court reviews the case, Mkhaitir will continue to be confined in abhorrent prison conditions in violation of his basic human rights guaranteed by international law. If the delays before his trial and his first appeal are any indication, it may be a long time before the Supreme Court reviews the case, and it is far from certain that the Supreme Court will reverse Mkhaitir's conviction. If the Supreme Court rejects Mkhaitir's incidental appeal, a reversal would still turn on the court's interpretation of Mkhaitir's sincerity in his repentance, a fact which alone demonstrates that he is being detained solely on the basis of the content of his speech—and the Mauritanian judiciary's assessment of his religious beliefs—in violation of his fundamental rights.

3. If the Supreme Court declines to overturn Mkhaitir's conviction, his execution could occur at any time.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

1. 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. Freedom Now, in collaboration with Dechert LLP has been retained by Mkhaitir as his international counsel.

¹⁸⁷ We are awaiting receipt of a copy of the incidental appeal.

Maran Turner
Kate Barth
Freedom Now
1776 K Street NW, 8th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
kbarth@freedomnow.org

Jeremy Zucker
Dechert LLP
1900 K Street NW
Washington, DC 20006
United States of America
+1 (202) 261-3322 (tel)
+1 (202) 261-3333 (fax)
jeremy.zucker@dechert.com

Date:

Signature

APPENDIX I

Religion, Religiosity, and Blacksmiths by Mohammed Ould Shaikh Ould Mkhaitir¹⁸⁸

Honorable Blacksmiths (Lem'almin), religion has nothing to do with your cause. In religion, there are no lineage, caste, "Blacksmiths", "White Moors" (Beydanes) or whatsoever...

Your problem, so to speak, may fall within the scope of "religiosity"...

This is a new approach to the issue and I found among the Blacksmiths themselves those who defend it...

Well ...

Let us now go back to religion and religiosity in order to figure out the place of lineage and caste in religion...

What is the difference between religion and religiosity...?

Dr. Abdul Majid Al-Najjar points out that (the reality of religion is different from the reality of religiosity. While religion is the teachings themselves which are a sacred law of God, religiosity is putting those teachings into practice; it is a human gain. In fact, this main difference between them leads to difference in the attributes and the rules of each of them) (Kitab Al Uma) [the Book of the Nation].

Therefore, the religion is a divine status and religiosity is a human gain...

When did religion start and when did the religiosity start...?

Undoubtedly, if we divide the Islamic Period into two parts, we will find:

- The period of Muhammed's life is a period of religion
- The period after Muhammed is a period of religiosity

Let us explore some scenes from the age of religion:

Time: After Badr Battle 624 A.D.

Place: Yathrib

What happened?

Prisoners of Quraysh were in the grip of Muslims, and the judgment was issued as follows:

The Senior Advisor to the Messenger of Allah, Abu Bakr Al-Siddiq, said, "O Messenger of Allah, those are the cousins, the clan and the brothers. I see that you take ransom from them, so what we have taken gives us power over the infidels, so that God may guide them and they may become a support for us."

Note: Who are the infidels here according to Abu Baker's point of view...?

¹⁸⁸ Translation from Arabic obtained by Dechert LLP.

Afterwards, the decision of Abu Baker was the final decision with an addition of Education for those who do not have the money.

However, wait... There have been an exceptional case. Zaynab, the daughter of the Messenger of Allah, wanted to redeem her husband Abul'As with a necklace of her that she had kept with Khadijah. When the Messenger of Allah saw her, He felt great tenderness about it and told His companions, "If you consider that you should free her prisoner for her and return to her what belongs to her. They said, Yes", Narrated by Abu Dawud.

What do you think of this exception...?

Time: 625 A.D.

Location: Uhud

Event: A fighting between Muslims and Quraysh

Quraysh confronts the Muslims in retaliation for Badr Battle and to kill Muhammed and his followers.

Hend bent 'Utba hires Wahshi to kill Hamza in exchange for his freedom and her jewelry as a financial reward.

Hend reaches the target and mutilates the body of Hamza.

After many years, during the days of the Conquest of Mecca, Hend converted to Islam and she obtained the famous title "Dear in Disbelief...Dear in Islam"

However, Wahshi was ordered by the Prophet to hide from his sight when he converted to Islam.

Hend is from Quraysh and Washi is from Abyssinia. Otherwise, what is the reason of discrimination between them while they are, regarding the crime at least, equal? More specifically, Hend is the real culprit. What is the fault of a hired slave?

Always and in the same battle- Uhud-, and to compare what happened to "Wahshi" with the role of someone else who is Khaled bin Al-Waleed who was the main reason in the defeat of Muslims in the battle of "Uhud", killed many Muslims when he converted to Islam and took the famous title "The Drawn Sword of Allah". Why did not they treat Wahshy in the same way? and why did not he take the title of "The God's Spear of the Unmistakable Target"...?

Location: Mecca

Time: 630 A.D.

Event: the Conquest of Mecca

What is the result...?

The people of Mecca were granted a general amnesty despite the harm they caused to the Messenger Muhammed and his message, and despite the ability of the Islamic Army to exterminate them. The amnesty was declared while they were gathering near the Kaaba awaiting the judgement of Prophet Muhammed on them, the Prophet said, "what do you think I am going

to do to you?”, They said, “Well, a generous brother and a generous nephew”, He said, “No reproach on you this day, may Allah forgive you” and the phrase “Go your way. You are free”. As a result, this amnesty led to save the souls from killing or captivity, to keep the movable assets and lands with their owners, and not to impose a land tax upon them. Thus, the people of Mecca were not treated as the people of other areas.

Location: Bani Quraizah Stronghold

Time: 627 A.D.

Event: extermination of Bani Quraizah

Reason:

1. Some men in Bani Quraizah conspired against Muslims in the siege of the Trench battle- they are only the leaders if we generalized, knowing that there is a verse that says, “And no bearer of burdens shall bear another's burden”
2. It was proved that the prophet told the Jews while he was just on the stronghold of Bani Quraizah besieging them, “O Brothers of monkeys and Pigs and worshipers of tyrants do you curse me?”. He said, “they kept swearing by the Torah, which was revealed to Moses: What did we do?”. They said, “O Abu Al-Qasim you were not ignorant”. Then the Messenger of Allah, Peace Be Upon Him- presented the lancers from his companions.

He called them as such because they insulted him. (Al-Tabari 2/252) report by Sheikh Ahmed Shaker, and it was mentioned by Ibn Kathir in the report of Al-Wade'i (1/ 207)

Before I continue, I want to point out that when we are in the context of talking about the Prophet, we are talking about what could be called “Comprehensive Mind” given that He does not speak from his desires.

Let us return to the comparison between the two cases – Macca and Bani Quraizah:

Bani Quraizah were about to help Quraysh - which did not happen- to defeat Muhammed and his message. A general amnesty was granted to Quraysh while a death sentence was carried out against Bani Quraizah. It makes no difference who broke the pledge and who did not. A sentence was carried out against Bani Quraizah whose fighters were killed, and their children were held captive. The genitals of the adolescents were being exposed, and whoever has a pubic hair was killed and those who did not have a pubic hair yet were considered among the captive children. Narrator: updated: Ebn Al-Mulaqen- Source: Al-Badr Al-Muneer [The Enlightening Full Moon]- Page or No. (6/670) updated summary judgment: famous and authentic.

A boy who is called Atia Al-Kurdi, was not killed because the Muslims exposed his genitals and they did not find pubic hair (Evidence of puberty). Thus, he was saved from the Muhammadi sword.

Attiah Al-Karadi said, “I was among the captives of Quraizah, we were presented to the Prophet-PBUH- and they were watching; whoever has pubic hair was killed, and those who do not have were not killed. Thus, they exposed my genitals and they found that the hair has not grown yet. For that, they considered me among the captives”. Narrator: Atiah Al-Qurazi. Updated: Al-

Albani. Source: Takhrij Meshkat Almasabih – Page or No. 3901 updated summary judgment: Attributed correctly.

Quraysh faced the Muslims in more than one battle and besieged them strictly in the Trench battle. At the beginning of the Message, Quraysh commissioned forty young men to kill Muhammed at the night of Hijra (emigration). In Mecca, before Hijra, they killed and tortured the Muslims, with utmost force. During the Conquest of Mecca, they found before them a generous brother and a generous nephew. He told them Go away. You are free.

Bani Quraizah were just about to ally with the infidels and their punishment was mass killing.

Where Mercy has gone...

Or that the brotherhood plays a role in the “Absolute / Comprehensive Mind”.

As a summary:

If the concept of: “the cousins, the clan and brothers” makes Abu Baker reluctant to kill the infidels

The parenting relationship between Zaynab and the Messenger grants her the right to release her husband for free, and the affiliation to Quraysh gives the titles of championships for the people of Quraysh and prevents them for the Abyssinians.

The brotherhood, blood relationship and kinship grant mercy for Quraysh in the Conquest and deprive Beni Quraizah of such right.

All these matters happen during the age of religion, let alone the age of religiosity.

My Bothers,

I want you to know – and I address the Blacksmiths mainly- that the attempt to differentiate between the spirit of religion and the reality of religiosity are 'good but uncompetitive' attempts. The facts could not be obscured, and this Cub / White Moor (Beydane) is from that lion...

The person who suffers should be honest with himself regarding the cause of his suffering, whatever is the cause. If religion plays a role let us say it loudly: the religion, clergy and the books of religion play their roles in all social issues starting from: issues of Black Moors (Heratin), Blacksmiths (Lem'almin) and Story tellers and entertainers (Igawen) who are still silent despite the acknowledgment of religion that their food, drink and work are prohibited (Haram).

Mohammed Sheik Ben Mohammed

Mauritania

APPENDIX II

Trial Court Judgment¹⁸⁹

In the name of God Most High, the Merciful

Islamic Republic of Mauritania

Honor, brotherhood and justice

Criminal court of Dakhlet Nouadhibou

Case number: 03/2014

The civil party: The Public Prosecutor

The defendant: Mohammed Shaikh Ould Mohammed ould Mkhaitir.

The charge: making a mockery of the Prophet and violating the sacredness of God

Sentence Number 71/2014

Date: 02/03/1436 of the lunar calendar, which corresponds to Dec. 21, 2011 [*sic: should be Dec. 24, 2014 (?)*]

Classification: appeal

Level: preliminary.

Summary: conviction of the defendant Mohamed Ashaikh Ould Mohamed Ould Mkhaitir, born in 1983, in the city of Karu, of the following crimes: making a mockery of the Prophet Mohammed ibn Abdullah ibn Abdul Muttalib, may peace and the blessings of God be upon him, and of the crime of atheism, a crime for which capital punishment will be applied.

The criminal court of the city of Nouadhibou met at the courthouse in special session in hearing room number 1, on Wednesday of the beginning of the month of Rabi Al-Awwal of the year 1436, which corresponds to the 23rd of December 2014.

The court consisted of:

Chief Justice Abdullah Ould Mohammed Yuslim ould Shama'd

¹⁸⁹ Translation from Arabic obtained by Dechert LLP.

Assistants: Mohammed ould Mohammed al-Amin ould Aghshamt/Mohammed, son of Abu Bakr di Amba'rak

The jury: Mohamed Sad Bau di al-Main/Barkalal di Almamun.

The first court clerk: Dr. Shaikh Abda'ti di Mohammed Mahmud

In the presence of the Judge, Ahmed son of Aslam, the representative of the republic at the court of Dakhlet Nouadhibou who represents the public prosecutor at the court.

That session was convened in accordance with question number 03/2014, relating to the defendant Mohammed Shaikh Mkhahir with the charge of making a mockery of the Prophet and violating the sacredness of God as set forth in Article 306 paragraphs 1-2 of the Mauritania Criminal Code.

The events that occurred

We report the events that occurred in this case starting with report number 03/2014, issued by the gendarmerie of the city of Nouadhibou on Jan. 5, 2014. Based on an enforcement order issued by the representative of the Republic, the gendarmerie summoned Mr. Mohamed Mkhahir, who works as an accountant at the Mauritania loading and unloading company Samma, with the charge of violating Article Three of the Criminal Code for having published the article *Religion, Religiosity and the Blacksmiths* on some internet sites, which contains statements questioning the fairness of the Prophet, reporting certain matters in a partial manner and raising certain question that reveal cynicism and malign the Prophet.

When the defendant listened to the above, he acknowledged being the author of the article and that his intent was to describe certain aspects about society and relating, in a light-hearted manner, certain historical events associated with the Prophet from particular perspectives, thereafter making distinctions between the terms religion and religiosity.

At that point, the suspect was placed under surveillance pending the preliminary.

After all the investigations were completed, the police delivered (make reference) the defendant to the Republic's delegate who, in turn, delivered him to the preliminary investigations judge, requesting that an investigation be opened against him with the charge of having ridiculed the Prophet and violating religious sacredness.

After the investigation was completed, the preliminary investigations judge made a referral to the criminal court with order number 14/26 on Jan. 20, 2014.

The case came to the criminal court on May 5, 2014.

Fact and law

After the court took the question under examination based on the decisions reported above, and after the file was returned to the court for the procedures appealing the decisions to deny

temporary freedom, the defendant was taken from prison on Dec. 16, 2014 to proceed with forced interrogation. Since the question had gone to the special criminal session, it was decided that the session would be held on Dec. 23, 2014.

On the day of the session, the defendant was brought by the forces of order to appear before the court, after which his identity was ascertained and he was informed of the charge made against him, the defendant denied it, saying that he was unaware of having mocked the Prophet and that if he had involuntarily committed such an error in his life, he would repent for it, and that he was well aware that there is no connection between the Prophet and the sufferings of any social class or group and that the article contained no lack of respect for or mockery of the Prophet, that only an erroneous interpretation had led to such an understanding and that he had no power over others' interpretations.

But when the chief justice of the court gave the article to him, asking him to cite a single example or a single expression or even one word that did not indicate mockery, the defendant returned the copy of the article without answering the question but instead remained silent.

The defendant also added that there is no connection between the problems of some social classes and religion and that the problem lies in religiosity.

In regard to his educational level, he said that he studied in public schools, obtaining a high school diploma in the field of economic sciences and that he was pursuing a master before being arrested. He also stated that he works at a public company as an accountant and had never made any distinction between people and social classes in his life.

The defendant claimed that someone could understand the article only if he or she had read another previous article entitled "My brother blacksmiths in Allah", claiming that he made reference in the last article to this first one.

The defendant said that, in the first article, he responded to a person who had presented religious examples in favor of equality. He himself recalled that the reason for not having asked for God's blessing on the Prophet, who was mentioned 17 times in the article, was due to a printing error or forgetfulness.

In regard to certain terms that appear in the article, such as the word "puppy", he responded that he meant to say "Beydane" in 2014 and with the word "Lion" he meant the "Beydanes" in the 18th and 19th centuries of the Common Era.

In regard to the comparison among Hind, Khalid and Wuahshi (may God be pleased with them), he meant that the Beydanes continued to be connected to the aspect of social classes.

He stated that he was not well-informed as to the accuracy of certain historical events until he read some books on the life of the Prophet during his stay in prison. He also added that he was unaware of the effects he caused by certain questions and statements that appeared on [his] Facebook page, such as the question about why creation occurred or his comment on the Qur'an verse: "I did not create mankind and the except to worship me" and his statement in which he

said: “being an atheist with a sincere heart is better than a religious person with a hypocritical heart!” These were written in 2010 and the meaning of the latter sentence is that a nonbeliever is better than a hypocrite.

The defendant said he never mocked the pilgrims when he compared them to Hindus and that he repents to God for having written certain comments on the occasion of his birthday in 2010 where there were certain questions about the concept of divinity.

And his intent in the expression “in order that you know that the stupidity of a belief lies in believing in a faith different from it” was to communicate with someone who does not know the faith, while the expression “O God, give me more than what you want” means O God give me more grace of your favors.

The defendant said that if he had committed any error then he would repent and that the meaning of the expression “the religious era” means what the people he addressed understand, and that the article had been superficially understood by many people and when the court questioned him, to understand what the underlying meaning of the article was, the defendant replied: “the opposite of what people understood” and that he had addressed the question contained in the article, namely, “what happened to mercy?” to the Beydane society and that, on the other hand, the questions asked on the Facebook page had been addressed to everyone.

In relation to his religious knowledge, the defendant said that knowledge was very weak; so then the court asked him that if he had very little knowledge of medicine, if he could contradict a doctor’s opinion. The defendant answered by saying no, and it asked him if he could oppose a firefighter’s proposal, and he answered: I could not. At that point the court asked him this question: therefore, just as you cannot oppose the opinion of a doctor or of a firefighter, who are not persons immune from error, how can you object to the laws of the Sharia, which were revealed by God to the best of his creatures, immune from errors, doubting his actions and asking questions about his fairness? The defendant answered that he did not intend to instigate by asking those questions and that they were understood superficially. He also stated that he has no objections to religious laws, although he remains uncertain as to the reason why a woman whose husband has died must observe a waiting period to remarry, even if the marriage between the two was not consummated.

The defendant stated that he did not voluntarily turn himself over to the authorities, but that he was contacted by telephone and was requested to appear at the police station.

He also stated that the Prophet does not belong to any particular class and that the Banu Quraida [*sic*: Banu Qurayza] tribe came to a bad end because they were war criminals and the expressions “genocide” and “mass murders” do not allude to any episode in particular and that his intent in using the expression “brotherhood and wealth” was to enable the Beydanes to understand what was stated in the article.

He stated that he wrote the article even though he did not have adequate knowledge of the events he reported, and that when he wrote the article he did not demonstrate generosity toward the

“foreign” groups that want to attack Islam and its sacredness or Muslim critics; he also stated that he sent his writing to 4 or 5 internet sites without any of them opposing its publication. He said there is no relationship between religion and social problems and that immediately after the article was published, he himself published an article clarifying what was previously stated in the article.

The defendant stated that he did not know that the ransom price for (Fidyatu) Abi A’s, husband of Zainab (may God be pleased with them), was to cause her to emigrate and that he learned of these details only after he was arrested, just as he was not aware that the person who hired Al Wahschi to kill Hamza was Jubair Ibn Matam and not Hind as the defendant had alleged.

The defendant stated that the historical events reported in the article resulted in an erroneous understanding of the article.

The defendant also stated that someone cannot hurt anyone if that person did not have a specific desire to attack him or her and that he absolutely had no intention to cause what happened in society, and that he repents for all the errors he committed, and that reporting specified historical events in a partial manner and not in their entirety and objectively represents an error.

After the Prosecutor-General asked questions and listened to the defendant’s responses, the court decided to adjourn the session until the following day.

On Dec. 24, 2014, the Court met in a public session, the defendant came into the room, and the defense was given the floor to ask some questions; the floor was then given to Dr. Nian Yusuf Tirnu, who asked the defendant whether he still intended to ask for a pardon. The defendant responded that the articles he wrote contain many errors and that he was testifying before God and the court to ask pardon from God.

At that point the court decided, after a consultation among its members, to accept the request of certain attorneys for the civil party who were engaged by entities, mosques and religious institutions to intervene in regard to the social harm caused, and this was after the court ascertained that the conditions for moral harm were met, as stated in Articles 2-3 of the Code of Criminal Procedure.

Dr. Abdulla Arraka’d took the floor, stating that the seriousness of what the defendant wrote cannot be quantified, “because all those who have died in the past, the people of this epoch and the new generations in their mothers’ wombs” were offended in the article, because the truthfulness (fairness) of the Prophet was questioned, peace be upon him. He asked that symbolic compensation of 10,000,000 Uqiyyas be paid and that amount go to orphans because the Prophet, peace be upon him, so favored that.

Then Dr. Mohammed Yuslim Abdu-Da’im took the floor, saying that this document is very dangerous because the best of the creatures are offended. Dr. Mohammed cited some passages from the article in which the Prophet was maligned and, lastly, concluded by asking the court to consider that seriousness before passing judgment.

Then Dr. Sayd al-Mukhtar oulad Sayydi intervened, citing examples of praises by Western intellectuals of the Prophet such as Jean Jauques [*sic*: Jean-Jacques] Rousseau, Bernad [*sic*: Bernard] Shaw and others, and said that the Prosecutor-General had failed to properly address the entire question, because the charge of violating the sacredness of Islam can involve a Muslim woman who removes the veil, thereby uncovering a part of her head, or a woman who marries without a guardian, etc., while the facts relating to this question are much more dangerous and relate not only to the aspect of mockery, but instead must be considered true slander and thus it is obligatory to apply the requirements of Article 449 of the Criminal Code which refers to Islamic law (Sharia). He then added that the use of nicknames, which the defendant [is accused of], is a common thing in society and everyone uses them regardless of class and tribe, and thus must not be considered as a distinction against anyone (discrimination).

Then Dr. Mohammed al-Amin oulad Khairi spoke, who said that what the defendant committed is similar to what Salman Rushdie did, emphasizing the fact that he admitted writing the article and having invited his own class of “blacksmiths”, at the end of the article, to leave the religion (apostasy). He also stated that learned men had clearly given their opinion on that question and that the legal scholars of the Maliki school are unanimous in deeming that crime to be punishable with the death penalty. The attorney then asked that the maximum penalty be applied under Article 449 of the Criminal Code and that the judge render a judgment in regard to compensation of Muslims.

Then Dr. Yaya Oulad Abdu spoke, who said: all citizens are wounded by this offense because it is well-known that this is a people who love the Prophet, peace be upon him and his companions. Also, this question is very complex in its scope; it is not possible for a Muslim person to make statements of such seriousness just as it is not possible to have justice except in Islam. Muslim youth must know that justice and equality are found in Islam, and he concluded that the person who committed such an offense must be punished with the most severe penalty.

Dr. Sayd Mohammed Oulad Tamimi took the floor, saying that he also cites those who asked that the document be reviewed, because the defendant went beyond a simple offense and reached the point of slander, citing some examples stated in certain sentences of the article, and added that this is atheistic thought and that the defendant did not act alone but that this is the work of a well-prepared group. That question involves the entire Islamic world and what happened is a very dangerous event and thus applying the most severe penalty is obligatory.

Dr. Zaim Oulad Hamd Fa’l stated that he defends himself, because the Prophet does not need people to defend him, and stated that he suffered enormous grief from this question because he lost his mother who suffered a heart attack and died after reading the serious offenses contained in the article.

According to Dr. Zaim Oulad Hamd Fa’l, the man is not alone, but must be considered to be the head of a network of atheist persons who are on Facebook. He also added that the question is of extreme religious seriousness and that the harm caused to Muslims cannot be compensated for except by the application of an appropriate penalty.

From the Public Prosecutor's office, the charge stated that the Prophet brought the message of Islam to bring mankind out of darkness and into the light, from nonbelief to faith and from injustice to justice. The Prophet was absolutely the fairest in everything he did. The public prosecutor then read the events that happened that were reported in the article, including the prisoners of the battle of Badr, the question of Hind and Wuhshi and the question of the Banu Quraida tribe.

The public prosecutor stated that the historical events reported in the defendant's article are fragmentary and conclude with a question which reveals the slander, the offense and the insult to the Prophet. The public prosecutor also added that the defendant explicitly called on his class to abandon religion and that this act constitutes a crime under the Mauritanian Code, based on Article 306 of the Criminal Code that punishes all crimes against religion, such as apostasy and making a mockery of the prophets, the angels and the Heavenly Books, and that Article 449 of that Code states that, if there is not an explicit reference in the Mauritanian Code in regard to a question, then reference must be made to Islamic law (Sharia), and furthermore the legal scholars of the Maliki school agree on the fact that anyone who ridicules the Prophet must receive capital punishment.

Moreover, the defendant did not deny or retract what he wrote in the article. The public prosecutor thus requested application of Articles 306 and 449 of the Criminal Code and that the defendant's punishment be execution by firing squad.

The defense: Dr. Niyan Yusuf Tirnu spoke: "I believe in the Islamic Republic of Mauritania and in its constitution, which states that the defendant is innocent until he or she is found guilty; this is a general rule to be applied to any accused person in any era. His defense of the defendant is in conformity with his profession of attorney, given the requirement that the defendant have an attorney to represent him before the criminal court. I took an oath as an attorney to defend all accused persons impartially and without distinction." The attorney stated he was a Muslim who loves the Prophet in accordance with the prophetic proverb: "none of you is a believer until God and his messenger are dearer to you than anything else", and that he wished to repeat these certainties so that anyone who asks can hear them: how can an attorney defend a defendant in a case like this?

The attorney also added that justice has two aspects: the first is the conviction and the other is the defense of individuals (without exception) and of the entire society.

The attorney then added that the defendant is a human being who is imperfect by nature and makes mistakes that are in the nature of the being; this should not be considered evil because only persevering with the mistake represents the manifestation of evil.

The Islamic religion is forgiveness and indulgence of those who make mistakes and then repent for their sins. Such conduct was well-expressed by the Prophet by word and deed: the defendant clearly acknowledged his error in this case, repeating his penitence before the preliminary investigations judge and the court itself many times. The attorney also said he wished to defend

the defendant before asking him whether he wished to repent, and when he confirmed his wish to repent to him, he then accepted the engagement to defend him.

In regard to the defendant's repentance, it cannot be considered dubious because it was clearly expressed. The attorney pointed out to the public prosecutor that, just as Article 306 makes reference to the death penalty, at the same time it also refers to a different punishment (reprimand) as an alternative to capital punishment, in the event that the repentance is made three days before the conviction. The attorney also added that the repentance must be submitted to the Supreme Court where the defendant expresses it before the conviction. On the other hand, in regard to Article 449, namely, the reference to Islamic law if there is not a specific reference in the Mauritanian Criminal Code, it must be said that the only acceptable reference is to Article 306 and thus there is no need to refer to Article 449. The question of the lack of references to a crime set forth in the Mauritanian Criminal Code relates to legislative power and, therefore, where we wish to apply a punishment not stated in the Criminal Code, we must refer to legislative power to find the proper punishment, whereas the judicial power is responsible for ensuring observance of the Code. The attorney added that the current Criminal Code, issued in 1983, is taken from Islamic law and therefore Article 306 derives from Islamic law. The attorney then concluded by requesting that Article 306 of the Criminal Code and the consequences thereof as a result of the request for repentance.

Dr. Mohammed Mahmud oulad Bay stated that some people have asked that Article 449 of the Criminal Code be applied and that the conviction be reviewed, because the Criminal Court can only judge those who fall within the articles of the Criminal Code.

It is fundamental to provide the defendant with a fair court because the entire world expects application of Islamic justice that adheres to the teachings of the Prophet in regard to this case. Thus, the very important question that we must ask ourselves is: "If a person writes things, convinced that he is telling the truth, and then that truth is shown to be false, can this man be convicted, even though he did not have adequate knowledge?["] The professor responded with the words of Shaikh Abdurahman Al-Akhdari, may God have mercy on him, in his famous book in which he speaks of the adorations and states: "no person is considered guilty by the learned men in the footsteps of the first Muslims ... as the prophetic proverb states: In truth actions speak for the intentions". (Bukhari and Muslim).

He then cited the verses of the Qur'an which speak of repentance and that God welcomes the repentance of those who turn to him repentant, just as Dr. Oulad Al-Hajj Bay referred to the meaning of repentance, which is: "returning to God and returning to obedience to his laws after having disobeyed".

He also added that the required repentance is sincere repentance, where the intention of the person repenting is to never sin again and his or her intention is specifically to obey the divine precepts. For this reason, the Most High in his Sura of The Prohibition said: "O ye who believe, turn to Allah with sincere repentance". The attorney added that the defendant repented before the court, possessing all of his mental faculties, that the door to repentance is always open and that it

is one of the mercies that God gave to the community of Muslims that is the best. God asked the peoples to order goodness and condemn the bad, and asked them to be indulgent of those to make mistakes and, especially, to justify those who make errors who are Muslims, putting in practice Islamic principles that are based on justice and human dignity, committing in this life and in the hereafter to take those persons who fall into ignorance by the hand. The road from darkness to light, to rectitude and goodness which lead to paradise passes through the door of repentance, which is open to all those who make mistakes, even if the greatest of errors is involved, such as associating someone with God. The attorney then cited the proverb where the Prophet states: “the person who repents from sin is like the person who did not sin”, and he then cited examples where reference is made to repentance and to the request to repent.

He also added that making reference to Sharia rather than to the Criminal Code lies in the fact that, for this question, the Sharia part prevails over that in the Criminal Code; referring to the first and second paragraphs of Article 306 of the Criminal Code, and particularly to the fact that the second paragraph refers to a lesser punishment (reprimand) where the defendant has repented, he believes that the question must thus be brought to the attention of the court to decide whether capital punishment should be applied. It is thus within the clemency of this court to decide whether the defendant’s precautionary custody period is sufficient punishment, given that that punishment exceeds the minimum punishment.

Dr. Oulad Al-Hajj [agreed] that the defendant’s repentance should be accepted and the precautionary custody period be deemed sufficient as a punishment.

At the end, the floor was given to the defendant, so that he might be the last to speak in the courtroom, who then said that he had made an error in his life and in his testimony before the court and to those present and those not present, and that he repents to God, asking permission to write a few lines in the register of the session, and when the chief justice of the session gave him that permission, the defendant wrote these words: “I wish to say, before you, Mr. chief justice, I testify before God and to you that I repent to God for all since, be they small or large, for what I committed in my life, God is my witness”.

After that the court withdrew to deliberate, and its decision was rendered on the same day for the following reasons:

The court agreed to render judgment on the question based on the resolution that was given to it by the preliminary investigations judge, thus the undertaking in regard to the form must be considered valid.

In regard to the form, the actions with which the defendant is charged are actions over which the Criminal Court has jurisdiction.

After a careful study of the question by the court, and after hearing both parties, evidence and facts were revealed that show the defendant is guilty of having ridiculed the Prophet, peace be upon him, based on what shall be stated below:

First point: during the sentencing the defendant acknowledged of his own free will and in full freedom that he was the author of the article; this means that the conditions for an acknowledgement by the judiciary were met.

Second point: what appeared in the article were clear expressions and questions; they represent a clear insult and offense to the Prophet, stoking doubts as to the fairness (justice) of his actions, expressions and orders.

We will indicate the evidence on which the accusation regarding the article is based below:

1: It cites some examples in a fragmentary fashion of the story of the Prophet, peace be upon him, to confirm his theory that Religion is a source among the sources of social injustice, and relates those examples incorrectly, making an arbitrary comparison among events, people and particular situations.

The manner of expression used by the defendant is theatrical, represents an insult and a mockery of the words and actions of the Prophet, peace be upon him: “the liberation of Abi Al A’s ibn Rabi, husband of Zainab, may God be pleased with them, was an ‘exceptional’ event among the prisoners of the battle of Badr, and this was because he was freed without paying any ransom; furthermore, the defendant concluded that paragraph of the same article with this question: ... in your opinion, what is this exception? Even the arbitrary comparison he made between Wuahshi, Hind and Khalid ibn Wualid, may God be pleased with them, writing that Hind was of the Quraish tribe while Wuahshi was an Abyssinian or otherwise what would be the difference between them? And he added in regard to Khalid ibn Wualid: He was the main cause of the defeat of the Muslims in the battle of Uhud, he killed a large number of Muslims and when he converted to Islam he took the famous name of “The Sword of Allah”, thus why did Wuahshi not receive a similar welcome and instead he took the name “The Infallible” for himself, just like the comparisons made by the defendant between the nonbelievers of Mecca and the Banu Quaraida tribe. At the end of the article, the defendant asked this question: “what happened to mercy?” (...) In truth, these questions mislead the reader, convincing him or her of the correctness of his theory regarding the role of the Prophet and thus what he defines as a social injustice.

2: For the erroneous conclusion the defendant reached through examples lacking precision in his article, particularly when he asks the question: “if the degree of kinship and brotherhood prevents Abu Bakr from killing the nonbelievers and all these things happened in the time of religion, imagine how it will be in the era of religiosity?”

These references are so clear that they cannot be interpreted any other way, such as when he states that the relation of kinship between Zainab and her father the Prophet, peace be upon him, led to the liberation of her husband without any ransom, “just as those belonging to the Quraish tribe were called by the name of victor while it was denied to the Abyssinians”, just as when, lastly, he writes about how the relationship of brotherhood and blood was given as a matter of law to the Quraish when Mecca was conquered while it was denied to the Banu Quraida.

Without doubt, these statements are true insults to the Prophet, peace be upon him, because things are attributed to him that are not befitting his rank, nor do they conform to his nature, and at the same time they contradict his teachings.

3. The defendant mentioned the name of the Prophet 17 times without praying over him (Peace be upon him) even once, in the context of the article, from the beginning to the end. It can be understood from this that the defendant maligns the Prophet in his way of acting, leading to a type of doubt as to his fairness.

The fact that the defendant offers no prayer over the Prophet in the article reinforces his intentional disdain towards the Prophet. It is well-known that God, specifically because of the importance reserved for him, prohibited the Prophet from being called by the name of Mohammed; the Most High said: “do not address the Messenger in the same way you address each other”. (The Light 63), just as God the Most High ordered the believers to pray over the Prophet: “Indeed Allah and His angels bless the Prophet; o you who have faith bless him and invoke peace upon him”. (Al Hazab 56).

4: The defendant’s inability to present any example to the court that was not an insult or offense to the Prophet, after the court gave him a copy of the article asking him, specifically, to cite a single word or one phrase that did not have the meaning of maligning the Prophet and His actions.

5: The falsehoods, inaccuracies and the truths hidden by the defendant in the article; in fact, among the things he allegedly hid are:

1. The ransom for Abu Al-a’s ibn Rabi, may God be pleased with him, was, in truth, sending Zainab, may God be pleased with her, to Medina, because this had been his promise, in exchange for his freedom when he was among the prisoners of Badr. In fact, the Prophet said in that regard: “he spoke to me, he believed in me, he promised me and then he kept his promise” (Bukhari 4/83).

Just as rationality and justice cannot allow the property of a Muslim (in this case, a necklace of Zainab’s) to be taken as ransom for a non-Muslim.

This conduct was believed by Muslims to be a demonstration of respect for the pact regarding Khadija, may God be pleased with her, because the necklace was Khadija’s, who gave it to her daughter Zainab when she married the son of her sister Abu al-A’s, and everyone knows the role that Khadija had, especially at the beginning of the prophetic message, because she welcomed and believed the Prophet Mohammed from the beginning of his prophetic mission, to such an extent that Muslims called the year that Khadija died “the year of sadness”.

In conclusion, it is unimaginable that the Muslims took Khadija’s necklace as ransom in exchange for liberating the husband of her daughter (Zainab).

In reality, Abu Ala’s cannot be considered an exception among the slaves of the battle of Badr; in fact, the Prophet granted his grace to some of them only because they promised to follow his

orders. In fact, the Imam al-Bahiaqi reported that a man by the name of Azzata al-Jumahi was among those who did not pay the ransom; the Prophet left [him with his daughters] and promised that he would no longer fight against him. However, in the battle of Uhud, this man fought against the Prophet and was the only one of the nonbelievers to be taken captive; then the man addressed the Prophet and said: “o Prophet grant me a favor, leave me to my daughters and I promise you that I will never fight you again”. The Prophet answered: “no, you will go to Mecca saying I deceived Mohammed twice, and ordered that he be struck down”.

Another anecdote is the grace that the Prophet granted to those who had been taken prisoner in the battle of Badr, when as ransom he was asked, since they knew how to read and write, to teach ten Muslim children to write. (Reported by Ahmed).

Perhaps this should be considered an exceptional historical event in the history of humanity, excluding a few other circumstances, due to the fact that the defendant is given freedom in exchange for work that is useful to society for a specified period. This method is being put into practice today in developed nations after 14 centuries have passed since Muslims put that method into practice in a noble, dignified and merciful fashion.

2: It was not Hind bint Utba that incited Wuahshi ibn Harb, may God be pleased with them, to kill Hamza in the battle of Uhud, may God be pleased with him, but it was Jubair ibn Matam, who was Wuahshi’s master. It was he who incited him to commit this homicide because Hamza, during the battle of Badr, killed Taimata ibn Uddi who was the uncle of Jubair, and at that point Jubair promised to free Wuahshi if he killed Hamza. (Reported by Ibn Hisham and Ahmed).

Wuahshi himself reported those events, in some reliable versions, saying: “I watched Hamza, who instilled terror with his sword, and no one remained standing before him. For God I looked for him, I prepared myself and I hid from him behind a plant or a rock. I came to him hidden behind a man, Siab ibn Abdul Uzza, and as soon as Hamza saw him get too close to him, he did not hesitate to kill. It was at that moment that I grasped my spear and I set upon him, and he tried to react. When I determined he had died I took my spear and went to the encampment to await being freed. And that is what happened, I was freed in Mecca”.

3: There is no proof by the Prophet, his companions or those who came afterwards, by a legal scholar or historian, that he gave the nickname of “dear” to Hind in nonbelief, dear in Islam, no one can provide proof of this if the defendant cannot.

4: Khalid ibn Wualid was nicknamed the sword of God because of his courage and his actions and his chivalrous conduct, such as the courage he showed in the battle of Muta and his victory, after which many Muslims died, to the point that the Prophet invoked God, saying: “O Allah, he is your sword, sustain him”.

Thus, if Wuahshi ibn Harb, may God be pleased with him, had performed noble actions at the time of the Prophet, then he, too, would have achieved those merits that the Prophet, full of mercy, granted to the people, as he did with Bilala the Abyssinian, Salman (Persian), Suhaib (Roman), the family of Yasir and Usama ibn Zaib, may God be pleased with all of them. In the

same way, we cannot forget that the Prophet warned his uncle Abu Talib that, if he continued to engage in misdeeds, he would be condemned to the fire of Hell and this is because in Islam, at the time of the Prophet, peace be upon him, there was no classification and social distinction and each received on the basis of his or her own actions, according to justice and fairness.

5: The reason why the Prophet showed scant shrewdness towards Wuahshi, as reported by Al Bukhari when he said “can you disappear from me?” was dictated by the pain that the Prophet felt on of the death of his uncle Hamza, who had been killed by Wuahshi. When the Prophet saw the body of his uncle Hamza, whose liver had been crushed and the nose and ears amputated, he said: “what was done to you will never happen again, I have never seen a more horrendous thing than this”. The Prophet’s “disdain” was due to the fact that the Prophet did not want to see the perpetrator of that terrible homicide before his eyes. In spite of what happened, Wuahshi accepted Islam specifically because of the Prophet’s persuasive action, as recounted by the Imam Attabarani. The Imam ibn Hajr reported, in addition to the above, that the Prophet said: “a person hates to see the person who harms his or her relative or friend, but this does not mean that there cannot be a form of respect and relationship between them; this means that the choice of Islam erases what happened in the past”.

In this story, we see how the Prophet did not ask Wuahshi for ransom or any atonement for having killed his uncle; in a hadith, the Prophet said: “God laughs at two men: one of them kills the other and both will enter paradise; this is because one of them died on the road of God while God will accept the repentance of the other, who will become Muslim and will then die on his road”.

The connection that existed between the Prophet and Wuahshi is evidenced by the fact that the Prophet sent him together with a group of Muslims to a mosque that had not been built for God to be destroyed.

Thus, if the Prophet had asked the question of Wuahshi in personal terms, he would not have invited him to Islam nor would he have accepted his faith, and he would have ordered the Muslims to stay away from him. He could also have condemned him to a painful punishment to get revenge, but these behaviors are not becoming of the Prophet.

In regard to his “distancing himself”, it must be said that this did not occur just in regard to Wuahshi but also as to those who disobey his orders, as is well-known in the story of the three companions of the Prophet, Kab ibn Malik, Maraartu ibn Rabi and Hilal ibn Banu Umayya, may God be pleased with them. In fact, the Prophet prohibited the Muslims from talking to them and ordered them to stay away from their women, all of this until God had made their repentance clear.

Another anecdote is when the Prophet, peace be upon him, “distanced himself” from his uncle Abu Sufian and from the son of his paternal aunt Abdullah ibn Abu Umayya al Mughira and others

6: He issued a condemnation against the Banu Quraida tribe, namely, of “killing those who fought” and even though that sentence was acknowledged by the word of God, there are obvious reasons that are well-known to those who knowledgeable of the events that occurred. The sentence against the Banu Quraida tribe was not due to discriminatory reasons but after they became guilty of:

- Breaking the treaty of Medina which is considered, from a historical perspective, as the first civil document guaranteeing citizens’ rights and equality of the obligations and rights for all residents of the city of Medina. In our times, it could be considered as one of the high forms of democracy.
- Their misdeed was not only breaking the treaty but sustaining and supporting the enemies of the Muslims in a time of war. They tried to kill the Muslims in every way possible, to the point of asking the coalitions to give them 70 of their sons as security to ensure that the coalition’s army was not withdrawn from the city of Medina until after all the Muslims were killed (AS-sirat Al-halbiya 2/347).

And everyone knows that, even today, there is no misdeed that can be [compared] to betrayal (and this is during peacetime; imagine in a time of war) such as that of capital punishment with other additional punishments such as confiscation of property and arms.

- The Banu Quraida tribe, which had been given several warnings, was well aware of what had already happened to the other Jewish tribes (Banu Qaynuqa and Banu Nadir) that had previously broken the treaties. The Prophet, peace be upon him, sent a delegation to them consisting of Sa’d ibn Mua’d, who was the chief of the Aus tribe, Sa’d ibn Uba’da, chief of the Khazraj tribe, and Abdullah ibn Rawua’ta and also Khawuat ibn Jubair - may God be pleased with them – specifically to remind them of the treaty between them and the Muslims, warning them of the consequences they would incur if the treaty were broken. They responded in the worst possible way to all of the above, saying: “who is God’s Messenger?”, “there is no treaty or agreement between us and Mohammed”. It is well-known that justice imposes a harsher punishment on those who, even after being warned, persist in their error.
- The Prophet, peace be upon him, rejected the request of the Aus – who were allied with the Banu Quraida – saying: “O people of the Aus, will you be content if the person who judges among you is one of your people?”. They responded: “of course!”. And the Prophet said: “here is Sa’d ibn Mua’d”, after which the Banu Quraida accepted that choice. Sa’d, may God be pleased with him, was welcomed by all – including the Prophet, peace be upon him – entered into a pact, namely: “that the sentence he would decree, all would have to accept”. This was the judgment: “you must kill those who fought against (us), take the women and children captive and divide up their property”. At that point the Prophet responded: “you have judged among them with God’s judgment from above the seven heavens” (Ibn Kathir, The beginning and the end, the battle with the Banu Quraida).

Sa'd ibn Mua'd's choice, may God be pleased with him, the leader of the Aus who were allied with the Banu Quraida and [who] submitted to his judgment, should be considered one of the first cases in the history of mankind to give rights to the defendant and recognize that the prosecution is separate from the judiciary.

- The disgraceful actions committed by the Banu Quraida and the Banu Nadir, who conspired against the Muslims and put together a coalition of polytheists to destroy Islam, after they had been ordered not to do so, did not [result in] a new sentence. The Banu Quraida were the most blameworthy, compared to the Banu Qainaqah [*sic: Qaynuqa*] and Banu Nadir tribes, because they betrayed and conspired and also started the war against the Muslims.
- Thus, if the serious subversive plans of the Banu Quraida tribe had been realized, it would, without any doubt, have led to a genocide of the Muslims and to their destruction, in one of the largest and most dangerous alliances that the Muslims lived through during that period. God reported those events and the dangers the Muslims faced in some verses of the Qur'an; in the Sura The Allies, the Most High says: "When they came upon you from above you and from below you, and when the eyes shifted in fear and the hearts reached to the throats, and you were harboring doubts about Allah. The believers were tried and shaken with a mighty shaking (verse 10-11)". The Imam ibn Kathir, in explaining these verses, stated that the Prophet, along with a group of Muslims, approximately three thousand and, according to other sources, approximately seven hundred, departed for battle, turning their faces towards the enemy. There was a ditch between them and the horses and the men could not reach them; the women and children stayed in Medina. The Banu Quraida tribe, which was a Jewish tribe, had a significant superiority in the eastern part of Medina; there was a treaty between them and the Prophet, they had approximately eight hundred fighters. A man by the name of Huyay ibn Akhtab went to the Banu Quraida tribe until they broke the treaty, inciting the allies against the Prophet; at that moment things became difficult and dangerous. (*Tafsir* ibn Kathir 6/375). With this it becomes clear that what occurred [resulted in] a sentence against them, a sentence appropriate to the betrayal.
- Of the Banu Quraida tribe, only those who fought against the Muslims were put to death and some of them, who did not participate in that deception, were saved along with their property and their families, such as Amrin ibn Sa'di al-Qurti or those who accepted Islam that night, such as Thalaba ibn Saiya, Usaid ibn Saiya, Asad ibn Ubaid and others. (Ibn Kathir, *The beginning and the end* 4/81) Thus the word "genocide" is not justifiable, and that truth is confirmed in the same sura in verse 26 where the Most High says: "He brought down those who supported the allies among the people of the Scripture from their fortresses and cast terror into their hearts. Some of them you killed, and some you took captive".

These facts, namely, that some were killed and others taken captive, is confirmed in the explanation reported by the Imam Atabari in his *tafsir* (*Note from the translator from the Arabic: explanation of the Qur'an*) from Qatada. (20/250)

7: The misdeed of the Banu Quraida cannot be compared to the breaking of the treaty of Hudaibiya, which was shattered by the polytheists of Mecca. This is because the misdeed of the Banu Quraida represents a serious betrayal, namely, the breaking of a treaty that governed mutual defense and equality in the obligations and duties between Muslims and Jews in the city of Medina. Today, that treaty could be compared to the highest level of constitutions in existence; furthermore, their misdeeds were also supporting the enemy and betraying the Muslims (who were residents of Medina) in a time of war. Their serious guilt is not only due to having conspired against the Muslims (citizens in the current meaning); such misdeeds have a criminal effect by their nature which most laws consider the intentional infliction of harm and thus there is no need to determine the facts; the intent to do something and the action are considered equally. Until now, we have found that the applicable punishment in such cases is decapitation, confiscation of property and war materiel.

8: What happened during the conquest of Mecca is proof of the justice, clemency, goodness, and noble character of the Prophet Mohammed, peace be upon him, which values leave no doubt that the Prophet did not act unfairly.

Here are some examples:

- The entrance into the city of Mecca
- The day the Prophet, peace be upon him, entered the city of Mecca, he had a black turban on, was in a non-sacred state, and held his head low in a sign of submission to God for the grace he received with the conquest of Mecca. His head was so low that his chin almost reached the beast of burden. He went through the city of Mecca reciting the Qur'an, the Sura The Victory (the assistance) and feeling the grace of God for the conquest of Mecca, for the pardon and for the success he received. At the moment he entered Mecca, he had Usama ibn Zaid climb up behind him, and the Prophet did not do this with any of the Quraish or those from the Banu Hashim tribe even though they were present in large numbers.
- Subsequently the Prophet, peace be upon him, went to the Ka'aba with Usama ibn Zaid, Bilal and Uthma'n ibn Talha, may God be pleased with them, entered and closed the door. Ibn Omar, may God be pleased with him, said: "I asked Bilal, when he came out, what the Prophet did, and he answered: 'he had two pillars to his left, one to his right and three behind him, at that time there were six pillars in the Ka'aba; the Prophet prayed inside the Ka'aba, then he went out and made a circuit around it, glorified God and offered praises of his uniqueness, then opened the door. The Quraish tribe, who had filled the mosque, awaited the decision of the Prophet, peace be upon him, and Mohamed, turning to the faithful", said: "There is no divinity other than God, He has kept his promise, he

supported his servant and allowed us to defeat the allies. My power is limited to controlling the city and does not include custody of the Ka'aba, with the obligation to give a drink to the pilgrims. Anyone who is guilty of homicide will have to pay 100 camels, of which forty will go to the families and children of the victims. O mankind, in truth God has removed you from the age of ignorance, mankind comes from Adam and he was created from the earth.[?] Then he recited these verses: "O mankind, indeed we have created you from a male and a female and made of you tribes and peoples that you may know one another. The most noble of you in the sight of God is the most righteous of you. Indeed, He is all-knowing and all-aware" (Sura, The Chambers, 13)

- The keys to the Ka'aba were entrusted to Uthman ibn Talha, even before he became Muslim. Ali, may God be pleased with him, asked the Prophet to be entrusted with the keys to the Ka'aba so that he could take care of the sacred place and satisfy the obligation to give a drink to the pilgrims. However, the Prophet decided to give them to Uthman ibn Talha, saying: "today is the day of promises and of goodness". (Ibn Hisham)

The Prophet asked Uthman ibn Talha to give him the keys before his emigration to Medina; they were difficult words, and he patiently said: "O Uthman, perhaps someday you will see these keys in my hands, I will give them to who I wish". Uthman said: "today the Quraish tribe was destroyed and humiliated". The Prophet answered: "rather, they were given glory". Uthman ibn Talha thought that the matter would be concluded thus, as the Prophet had stated, but the Prophet delivered them to Uthman, saying: "here are your keys, Uthman, today is the day of goodness and of the promises, take them for all eternity, no one will take them from you unless he does so unjustly".

- All of the people of Mecca received the Prophet's pardon, even those who had supported the coalition, even though the Islamic army could have destroyed them. The Prophet announced their pardon publicly when everyone was near the Ka'aba, waiting to learn of his decision. The Prophet turned to all of them and said: "what do you think I will decide for you?" And they answered: "goodness, o dear brother". The Prophet added: "I will not punish you, today God pardons you". (Ibn Hisham)

9: The consequence of this gesture of absolution, this general pardon of the population of Mecca by the Prophet, was conversion to Islam by men and women, free men and slaves, not by force but by free choice. The wisdom of the Prophet, peace be upon him, caused this profound transformation of Mecca.

- 10: Mecca was not the only city that derived benefit from the pardon of the Prophet, peace be upon him; in fact he pardoned all the people of Taif, notwithstanding the evil they had committed when his feet were wounded. The Prophet, struck by the sadness, worry, fatigue and pain for what the residents of Taif had committed against him, refused to invoke the punishment of God against them, even when the archangel Gabriel came and asked him: "o Mohammed, if you order me to do so I will crush them between the

two mountains”. The Prophet responded mercifully, saying: “No, perhaps God among them will raise up those who glorify him and will not associate anything with [them]”. (Bukhari and Muslim).

In the same way, he pardoned the people of Khaibar and Wadi al-Qura, without killing any of them. To conquer Khaibar, the Prophet, peace be upon him, avoided resorting to the harshness of punishment, also in order to transmit the sweetness of Islam and bring new people to Islam. In that case there is no reason to use force.

11) Mecca is not treated like the other cities conquered by force, due to its sacredness and the importance it has for Muslims. That explanation is given in the proverb of the Prophet, peace be upon him, which refers to the day that He, entering Mecca, learned that the Khaza'ta [*sic: Khuza'a (?)*] tribe, his allies, killed a polytheist in the Hudai [*sic*] tribe, to avenge a man killed before Islam.

To that news the Prophet, peace be upon him, became angry and went to the people saying: “O mankind, God made Mecca sacred from the day he created the heavens and the earth, it is thus sacred until the day of judgment, no man who believes in God and in the last day is permitted to shed blood in this city or to break a plant. This is not permitted to anyone, whether he comes before or after me. And this prohibition also applies to me, except in this moment of conflict and skirmish. Thereafter Mecca will be sacred again as it was yesterday. Those present among you shall inform those who are absent, and if someone tells you ‘In truth the Prophet fought in the city of Mecca’, then answer that God allowed that only to the Prophet and not to you”.

“O men of the Khuza'at [*sic: Khuza'a (?)*] tribe, do not kill, you killed a man because of his misdeed, anyone who kills after today, then his relatives can choose between death and the price of the blood”.

And when Sa'd ibn Ubba'da, may God be pleased with him, went to Abu Sufian, who was the leader of the people of Mecca, saying: “today is the day of the massacre, today Mecca will be liberated”; these words reached the Prophet and he said: “Sa'd spoke a lie, today is the day God made the Ka'aba great and the day when it will be re clothed (the cloth that is placed on the Ka'aba)”. (Bukhari)

Ibn Hajr then explained that the expression used by the Prophet, “Sa'd spoke a lie”, specifically indicates Sa'd's error and mistake.

12) The decision taken in regard to the Banu Quraida tribe must be considered a divine decision, even though it was made by Sa'd ibn Mu'ad, as testified by the words of the Prophet, peace be upon him: “you judged with God's judgment from above the seven heavens” and in another version: “you judged among them with the King's judgment”. Thus God wanted the reward for the Banu Quraida tribe to be of the same kind as what he intended to do for the Muslims. The Most High said: “but the plotting of evil only entangles those who practice it”. (Sura The Creator, 43)

It is known that the Prophet did not hesitate to inflict punishment on those who did not satisfy God's obligations. Aisha, may God be pleased with her, said that the Prophet, peace be upon him, never took revenge for a wrong against him, unless the principles of Islam were violated; in that case he took revenge. (Bukhari and Muslim).

In confirmation of this, we find the proverb in which the Prophet, peace be upon him, refused the intercession requested by Usama ibn Zayd, may God be pleased with him, for a woman who had stolen; the Prophet said: "in truth, what destroyed those who preceded you is the fact that when a nobleman stole, they did not apply the punishment, but when a weak person stole, they punished him"; then he added: "I swear in God's name that if Fatima – daughter of the Prophet – committed a theft, I would cut off her hand". (Bukhari and Muslim).

However, whenever the Prophet was wronged, in those cases he always showed patience and willingness to forgive. Here are some examples:

The indulgence he showed toward a bitter enemy of the Muslims, Haba'r ibn Al Aswad. The latter harassed the daughter of the Prophet, Zainab, while she was travelling, hitting her with a spear and causing her to fall from her beast of burden. Zainab's fall caused her to lose her child. This horrible act committed by Haba'r, which he would never have been able to escape, on the day of the conquest of Mecca, was forgiven by the Prophet. His punishment was cancelled and as a result Haba'r converted to Islam and the Prophet, accepting his testimony of faith, forgave him.

It is reported that while the Prophet, peace be upon him, was in Medina with his companions, Haba'r ibn Al Aswad approached him and said: "o Prophet, insult those who insulted you, I have come to testify that there is no other divinity than Allah, and you are his servant and messenger". The Prophet accepted his testimony of faith. Zainab, may God be pleased with her, went to this man and told him: "may God not give you grace, you are the one who hurt me and caused my child to die". The Prophet intervened, saying: "Islam erases the misdeeds of the past" and prohibited anyone from insulting him or hurting him.

Another story is about the Jewish woman who wanted to kill him.

Bukhari relates that a Jewish woman went to the Prophet with a poisoned sheep; the Prophet ate it and when he was asked, "should not we kill her?" he responded: "No!".

Another example that has been reported is when in the battle of Uhud, the polytheists wounded the face of the Prophet, breaking one of his molars and destroying the helmet he was wearing, hitting him with stones. Some rings on the helmet wounded his face as they broke and the blood began to flow freely from his cheek. Fatima, his daughter, may God be pleased with her, washed his face that was smeared with blood, without being able to stop the flow. Fatima tore a piece of stiff fabric and, after placing it in the fire, applied it to the Prophet's cheek, managing to stem the copious flow of blood from his face. The Prophet, while receiving his daughter's ministrations, repeated: "O Allah forgive my people, verily they know not what they do". (Bukhari and Muslim).

There are so many examples of mercy, forgiveness and indulgence in the life of the Prophet.

Thus the fact that the defendant reported these events, limiting himself to partial, fragmentary and thus incomplete narrations, using sarcastic, theatrical and comedic expressions, is sufficient for us to understand that the defendant wanted to cause harm, offense and insult to the Prophet, peace be upon him. Even if the falsehoods contained in the article were not spoken with the intention of offending the Prophet, this does not justify the defendant but, in fact, reinforces our theory.

The accused acknowledged before the court that the fact of reporting such incomplete and fragmentary events must be considered an offense (misdeed) and, at the same time, a despicable gesture towards the Prophet, peace be upon him.

The fact that the defendant defended himself before the Court by saying he had not had the opportunity to learn certain truths until he went to prison (and that fact would be considered even more serious than the crime he committed) represents an aggravating factor. The defendant hid behind the fact of having acknowledged before the Court that he could not oppose the opinion of a doctor in the field of medicine, and in the same manner he could not contradict a fireman's opinion in a fire, and this is because his scant information in the field of medicine and in the field of safety do not allow him to contradict or oppose such individuals, even though they are not free from error. That notwithstanding, he objects to divine decisions and teachings and orders of the Prophet, who does not speak in vain. All of this, even though the defendant acknowledged before the court that his knowledge about religion is very meager! This proves the theory that he wanted to make fun of the Prophet because he discusses things he knows nothing about, while in his article he states truths in a fragmentary manner, and this means that his intent remains to cause harm to society.

After the court carefully studied the matter in question, and after listening to the defendant during the sessions, it came to the point of proving his atheism. We report some examples below:

First: rejecting the divine decision about the fact of the Banu Quraida tribe, deprecating the importance of the words said by the Prophet to Sa'd, may God be pleased with him. This is a deprecation and thus a rejection and objection to what was decided by the Prophet.

It is well-known that rejecting what God and the Prophet decide, or not applying or even failing to accept such divine judgments with one's heart, must be considered as losses of faith. Shaikh Shanqati said about the verse in the Qur'an: "No, by your Lord, they are not believers unless they come to you to judge in their disputes and have no hesitation in accepting your judgment, submitting completely" (Sura The Women, 65), that no one is a believer unless he or she submits to the judgment of the Prophet, peace be upon him, in all things, submitting inside and out and accepting the testimony without limits and doubts. In another verse, it is clear that such an attitude is the one and only attitude that believers must have, says God the Most High: "when the believers are called to Allah and His Messenger to judge in their affairs, their response is, we hear and we obey; these are the ones who will prosper". (Sura The Light, 51).

Second: in the article, the defendant repeated expressions several times in which he makes fun of, degrades, slanders and curses the Prophet, peace be upon him, accusing him of injustice and tending towards what is unbecoming to the Prophet, peace be upon him, using reproachful and derisive expressions and otherwise, from which the intent to offend the figure of the Prophet, peace be upon him, is clearly evident.

We are well aware that God judges misdeeds done to the Prophet as if they were done to Him, cursing those who offend the Prophet, in this life and the hereafter; the Most High said: “those who malign Allah and His messenger are cursed by Allah in this life and in the hereafter; Allah has prepared a humiliating punishment for them”. (Sura The Allies, 57).

“Those who malign the Messenger of Allah will have a painful punishment”. (Sura The Repentance, 61). It is also well-known that the use of expressions making fun of the Prophet, ridiculing him or not giving him due respect, are considered actions that lead to nonbelief. The Most High said: “if you ask them, they would say: We were only conversing and playing! Say: do you wish to mock Allah, His verses and His messenger? Make no excuses, you have become nonbelievers after having believed; if we pardon some of you, we will punish others, because they were truly blasphemous.” (Sura The Repentance, 65-66).

The wise man Ayaad explained that the expression, “you have become nonbelievers”, refers to what had been said about the Prophet.

What strengthens this theory is that a believer of any religion cannot denigrate the Messenger that God sent.

Third: the ridiculous expressions that the defendant used about religion in his articles, in some paragraphs, are obvious evidence that take him outside of Islam.

He said: “here I mean to say, before continuing, that we are talking about things that involve the Prophet, we are talking about what can be called ‘universal thought’ based on the verse that the Prophet does not speak on impulse”.

Even the questions that he asks himself when he says: “what happened to mercy?” or “do brotherhood and *tabnaima [sic]* have a role in universal thought?”

These expressions are ridiculous and cannot be spoken by a believer in Islam.

Fourth: the clear invitation that the defendant, in his article, addressed to a group of people to abandon Islam. That expression is clear in the final part of the article, where he says: “I wish only to add, along with you, to try (attempt) to make a separation between the religious spirit and the religiosity of certain events. This is good, but it is not my responsibility”. And in the final part where he says: “religion decides that your food, drink and work is *haram* (Note from the translator from the Arabic: *forbidden*)”.

These inviting words cannot come from a person who has a single atom of faith in the message of Islam, because a believer cannot tell others to not be believers.

Fifth: in his article *My brother blacksmiths in God*, there are expressions that are joking and derisive towards religion, such as “the religion we practice has many faces. How can many faces give us a single true face?” These words lead one outside of religion. And also: “the time has come to know that the result of our struggles will not find the light under the shadow of the flag of religion/religiosity. Every opinion (*fatwa*) is a resolution of the problem that takes its fragrance from the blessed spirit of the Prophet, but this is rejected with what happened at the time of the Prophet. Thus the struggle in the shadow of active people has no advantage ... and, like them, everyone carries the seeds of losing the struggle inside themselves and all of this is in the name of their religion. The question is solely an earthly question. To the point of saying “may they await your grace, o Allah, and not their action”, these things cannot be written by a believer.

Sixth: the defendant acknowledged that all of the expressions which, moreover, are very clear, which were reported on Facebook, reveal a lack of faith and represent a violation of the obligations of religion. Some examples are given below:

- 1) On Dec. 24, 2013, the defendant stated these words on his internet blog, which are malicious and lying expressions towards the Prophet, peace be upon him; he wrote: “my last article, *Religion and Religiosity and the Blacksmiths*, some preferred it, some said it does not represent them, some of them sent me a series of ugly words, some called me a nonbeliever ... I say: everything I wrote I wrote knowingly. To those who say that my words do not represent them, know that what I said is the truth, accept it or not. Everything I said in the article is historical truths that cannot be ignored”. This is the conformation of the accused’s lack of faith, but the greatest seriousness is in the fact of rejecting the divine orders with falsehoods and half-truths about the events that occurred.

The defendant’s criminal guilt in expressing a certain atheism based on what we presented above is obvious.

- 2) He claims that what is stated in that blog is poetry; he writes: “it concerns me greatly (*the poetry*); the people are not committed to religion but only to the material life”. This “poetic” expression tells us that the accused is not aware of the faith in his society.
- 3) The questions he asks himself on his birthday; he says: “I ask myself what advantage man derives from his creation? Someone will respond with the verse ‘I did not create mankind and the Jinn (*Note from the translator from the Arabic: good or bad creatures created from fire*) except to worship me’.[“] In truth, these are questions that ridicule the Qur’an verse in which God says: ‘I did not create mankind and the jinn except to worship me’ (Sura ad-Dharyat [The Scatterers], 56). These questions create doubt about the principles of faith and divine wisdom and why God created humanity.
- 4) The expression that was made at the beginning of his blog where he says: “O Allah give me more than what you have established for me” because this is also a form of non-belief.

- 5) In addition, there are many expressions, insertions and comments made by the accused such as: “the first century, the sword, the second, male pleasure, (...) or the sixth, defeat, or, or, or?”.

Another expression denigrating religion is: “so that you may know that the stupidity of faith is the fact of having faith in another, (...) thus if we take into consideration, from an objective standpoint, every belief, could we know if it is completely foolish? (...) And if all faiths are stupid, where is the proof?”, or his question: “is there a particular faith that manages to give us a truth about the being and the Creator?” and also: “being atheist with a good heart is better than being religious with a bad heart”, or: “religion has faces”, or even the expression in which he ridicules Muslims: “a billion Muslims, Buddhists, Hindus, Christians and polytheists. So are there a billion [truths]?”. Making a mockery of religious precepts: “cutting off your eyebrows is forbidden because it involves a change in religion, while circumcision is normal, it is a new look”.

These expressions ridicule Islam and its followers, and leave no doubt that the person who stated them has left Islam.

The fact that the defendant, in his words and writings, gave life to questions of a social nature by reporting presumed “historical truths”, using, moreover, expressions that resemble poetry, literature, and art, lead to a perverse revolution of the principles of Islam from a social perspective and are obvious proof of his apostasy. Even his defense before the Court, when he stated that the article was misunderstood, is certain proof of his nonbelief and of the attempt to conceal his atheism.

The fact that that the defendant several times used expressions on Facebook that were offensive and denigrating to Islam and its Messenger, casting doubt on Islamic principles and violating its sacredness, is to be considered evidence that leads to the delineation of a criminal intent on the defendant’s part regarding the crime of atheism.

The Court held that the defendant went beyond the wrong of having violated religious sacredness and reached the point, Islamically, of demonstrating atheism.

This led to a review of paragraphs 1, 2, 3, 4, 5 and 6 of Article 306 of the Criminal Code.

Article 306 of the Criminal Code provides that an atheist’s repentance must be accepted where the defendant repents before his or her atheism is obvious. That accused acknowledged before the Court that the judicial police authorities unexpectedly went to his home before he was arrested for the crime of apostasy. His article required careful analysis and verification, and the accused did not demonstrate his repentance immediately. The things written on Facebook were then discovered by the preliminary investigations judge, which means that there was no intention to repent nor any condition to be able to accept it.

For that reason, the court believes that the request for repentance must be rejected because the defendant wanted to repent only after the facts came to the attention of the judiciary and not

before. Secondly, the request for repentance cannot be accepted after the evidence of the crime of atheism has been ascertained. A person who commits that crime cannot be granted repentance after that guilt has been established under Article 306, paragraph 6 of the Criminal Code.

The punishment for the crime of atheism is execution based on Article 306, paragraph 6.

The court's position is based on the "lawfulness of penalties and punishments" rule and excludes a broader view (the possibility of indulgence) for such crimes. On that basis, the court rejected the request of the general Republic (defense) and of certain social parties to review the situation, thus resorting, as indicated by legal experts, to Article 449 of the Criminal Code, which makes explicit reference to Sharia for matters not expressly set forth therein.

The court is required to apply the principles of law and not to take account of opinions, contrary or otherwise, to the application of the articles.

The court dismisses the requests for compensation made by the social parties.

Given that there is no advantage in a punishment that is not a deterrent, the harshness of the punishment does not lend any benefit. It is well-known that deterrence varies based on the seriousness of the punishment and there is no greater misdeed than prejudice towards religion, just as there is no greater benefit than that brought by faith.

For those reasons, after the legal deliberations based on Articles 321, 322 and 323 of the Criminal Code and based on Article 306, paragraph 6 of the Criminal Code, after the deliberation based on the votes of the members

The judgment:

The court found the defendant Mohammed Shaikh oulad Mohammed oulad Amkhitir, born in 1983 in the city of Karu, guilty on appeal for the misdeed of having ridiculed the Prophet Mohammed ibn Abdullah ibn Abdu al Mutali, may peace be upon him, based on Article 306, paragraph 2 of the Criminal Code, and finds him guilty of the crime of atheism based on Article 306, paragraph 6 of the Criminal Code, excluding the application of the first paragraph of that Article,

with the punishment of the death penalty.

The other requests are dismissed.

Court costs shall be paid by the defendant based on Article 333 of the Code of Criminal Procedure.

The Chief Justice

The court clerk,

APPENDIX III

Mauritanian Penal Code, Art. 306¹⁹⁰

	français	English
1	Toute personne qui aura commis un outrage public à la pudeur et aux mœurs islamiques ou a violé les lieux sacrés ou aidé à les violer, si cette action ne figure pas dans les crimes emportant la Ghissass ou la Diya, sera punie d'une peine correctionnelle de trois mois à deux ans d'emprisonnement et	Anyone who publicly insults decency or customs of Islam, or violates the sacred places or aids someone to violate them, if his act is not among the crimes that involve Ghissass (law of retaliation) or diya (blood money) is punished with a correctional penalty, from three months to two years of

¹⁹⁰ French translation available at <http://www.droit-afrique.com/upload/doc/mauritanie/Mauritanie-Code-1983-penal.pdf>. Informal English translation obtained through private communication.

	d'une amende de 5.000 à 60.000 UM.	detention and a fine of 5,000 to 60,000 UM.
2	Tout musulman coupable du crime d'apostasie, soit par parole, soit par action de façon apparente ou évidente, sera invité à se repentir dans un délai de trois jours.	Every Muslim guilty of the crime of apostasy, either by word or by action apparent or obvious, will be invited to repent within three days.
3	S'il ne se repent pas dans ce délai, il est condamné à mort en tant qu'apostat, et ses biens seront confisqués au profit du Trésor. S'il se repent avant l'exécution de cette sentence, le parquet saisira la Cour suprême, à l'effet de sa réhabilitation dans tous ses droits, sans préjudice d'une peine correctionnelle prévue au 1er paragraphe du présent article.	If he does not repent in this period, he is sentenced to death as an apostate and his property is confiscated by Public Treasury. If he repents before the execution of the judgment, the prosecutor will refer to the Supreme Court, which will decide on his full rehabilitation, without exclusion of correctional punishment as enshrined in the 1st paragraph of this article.
4	Toute personne coupable du crime d'apostasie (Zendagha) sera, à moins qu'elle ne se repente au préalable, punie de la peine de mort.	Whoever is guilty of apostasy (Zendagha) will, subject to prior repentance, be punishable with death.
5	Sera punie d'une peine d'emprisonnement d'un mois à deux ans, toute personne qui sera coupable du crime d'attentat à la pudeur.	Anyone who is guilty of the crime of indecent assault, will be punished with detention between one month and two years.
6	Tout musulman majeur qui refuse de prier tout en reconnaissant l'obligation de la prière sera invité à s'en acquitter jusqu'à la limite du temps prescrit pour l'accomplissement de la prière obligatoire concernée. S'il persiste dans son refus jusqu'à la fin de ce délai, il sera puni de la peine de mort.	Every adult Muslim who refuses to pray, while recognizing the duty of prayer, will be invited to pay it until the time limit prescribed for the recitation of obligatory prayer in question. If he persists in his refusal until the expiration of the term, he will be punished with the death penalty.
7	S'il ne reconnaît pas l'obligation de la prière, il sera puni de la peine pour apostasie et ses biens confisqués au profit du Trésor public. Il ne bénéficiera pas de l'office consacré par le rite musulman.	If he does not recognize the obligation as a prayer, he will be punished with the penalty for apostasy and his assets will be confiscated by the Public Treasury. He will not be provided with Muslim consecrated rite.

APPENDIX IV

Mkhaitir Statement from Prison¹⁹¹

Clarification regarding my Article: “Religion, Religiosity and Blacksmiths”

I followed, during the last few days, the various reactions on my article “Religion, Religiosity and Blacksmiths” which were mostly racist reactions, charges with Kufr (disbelief in Allah) and telephone calls full of threats and intimidation.

There are several factors that led to these reactions including:

- Conspiratorial analysis which is inherent in the nobles (Zouaya), represented by the judaization, Charging with disbelief in Allah, marginalizing all Blacksmiths and focusing on the superficial aspects in order to achieve the goals of their mean souls through the fabrication of the sayings (Hadiths) of the Messenger of Allah (Peace Be Upon Him) while the Messenger of Allah (Peace

¹⁹¹ Translation from Arabic obtained by Dechert LLP.

Be Upon Him) is completely innocent of their fabrications, such as “Nothing good can come from the Blacksmith, even if he was a scientist.”

My brothers:

Whoever dares to fabricate the sayings of the Messenger of Allah (Peace Be Upon Him), morals and religion would not prevent him from interpreting an article for a simple person in a submerged world, especially if this person was a “Blacksmith”, and he would not lose effort to move the religious passion in Muslims in general. Their insolence went too far to spread rumors about “Blacksmiths” accusing them of abusing the Messenger of Allah (Peace Be Upon Him) through an article written by a “Blacksmith”. They did exactly as they had previously rumored that the person responsible for the fall of the mountain path of the Prophet, PBUH, in the battle of Uhud is a “Blacksmith”.

In this context, I would like to emphasize the following:

1- I did not speak lightly in the past of the Messenger of Allah (Peace Be Upon Him) intentionally or unintentionally and I would not do it in the future, and I believe that no one in the world is more respectful than me of the Prophet (Peace Be Upon Him).

2- All the events and the facts that I have mentioned in my previous article are real and historical events. As all other events, they have their superficial aspects and deep meanings.

3- This is the most important point, which led to misunderstanding among many people who have read the article. I would like you to pay attention to this point. Contrary to what have been rumored that I have insulted the Prophet Muhammad (Peace Be Upon Him), I want here to make it clear what I wanted to clarify: is that in front of the duality of the superficial form and deep meaning, the nobles (Zouaya) used the superficialities of those events and incidents that had occurred in the age of religion to establish thereon what serves their interests in a time of total chaos “time of es-Sibah” by presenting that superficiality in the form of religious legislation that moved with times to the present day, while neglecting the deep meanings of the Prophet (Peace Be Upon Him).

So My Brothers:

To all those who misunderstood me intentionally: You know, I did not speak lightly of the Prophet (Peace Be Upon Him). Stop obliterating the facts.

To the good people who heard the fabricated story only: You should know that I will never speak lightly of the Prophet (Peace Be Upon Him), and I do understand your tremendous consciousness of the honor of Prophet Muhammad which is totally like my fervor and love to Him, and we are all one in defending our sanctuaries.

My Blacksmiths Brothers:

We should all know that we are living an old renewing conflict with the so-called “(Zouaya), and that they will spare no effort to draw us back as much as possible and they will use all legitimate and illegal means. We must be attentive and careful. We should know that, among their means of

top priority, is the use of discrimination factor which they borrowed from their old comrade: the “colonizer” represented by the rule of “divide and rule”. Therefore, we should be very aware of this and we should maintain our unity and the unity of our struggles.

My vulnerable Brothers:

We have to know – in the full sense of the word- that we are destined to have this land as our homeland. So we must defend our right in our homeland, and our right to live in dignity, that right which would not be granted to us but obtained by our struggles and as much as those struggles unite, the attainment of the desired goals becomes faster.

APPENDIX V

Maître Alice Bullard : Avocats Intimidés, Ould Mkhaitir Sans Défense by Alice Bullard¹⁹²

Lawyers Intimidated, Drop Representation of Ould Mkhaitir

Mohamed Ould Mohamed Ould Mkhaitir has lost his lawyers again. Intimidated by local Islamists and fearful for their lives, Maitre Youssef Niane and Maitre Med Mahmouda resigned some weeks after their client was sentenced to death for the crime of apostasy. Ould Mkhaitir's first lawyer, Maitre lcheddou resigned after only a few weeks due to threats to himself, his family and his business. An attempt to staff his defense with government appointed lawyers failed. Finally Niane and Mahmouda were hired by Ould Mkhaitir's father upon promise of a large payment. Now that these lawyers have been intimidated into dropping their client, and with

¹⁹² Translation from French obtained by Dechert LLP.

no lawyer in Mauritania willing to accept the assignment, his family is searching in Morocco for a lawyer well versed in Islamic jurisprudence.

On January 13th, 2015 I traveled to Nouadhibou with the hope of meeting Ould Mkhaitir. However, the Procureur in charge of authorizing visits was not inclined to allow an American human rights lawyer access to this prisoner. Nonetheless I was able to spend the day with his (then) attorneys, and hear from them about the trial and sentencing of Ould Mkhaitir.

The trial was very short, taking place largely on the 23rd of December 2014. Already on the 24th the verdict — a death sentence — was delivered.

Ould Mkhaitir fainted when the sentence was read. The defense lawyers were stunned and appalled. They had prepared their client for a possible two year sentence, the maximum penalty for an apostate who recants his apostasy.

During the trial the prosecution had spoken only of apostasy, but lurking in the Mauritanian penal code is also the crime of *zendegha*, or hypocrisy. A hypocrite is defined as someone who commits apostasy and then recants, but does so without sincerity. The penalty for *zendegha* is death, and it is on this basis that Ould Mkhaitir was sentenced.

In any event, how one judge's the relative sincerity of an apology is unclear. Some Islamic legal scholars, such as Abdullahi A-na-im, point out the strong tradition of consigning the truth in the hearts of men to God's judgment. The Koran itself offers no earthly punishment for apostates. A conviction for hypocrisy seems to be on even less stable ground. Once one is accused of hypocrisy it seems this is virtually impossible to refute. Those predisposed to believe one is a hypocrite, are virtually impossible to convince otherwise.

In this rapid trial the two defense lawyers with their hapless client faced two prosecutors flanked by seven more lawyers present *en parti civile* representing the Islamic organizations *Les Amis - du Prophete* and *La Ligue d'Oulemas*. The Mauritanian state habitually refuses human rights organizations the right to participate in judicial proceedings, but this deviation from that rule was offered to the Islamist organizations. The large audience in the overflowing courtroom was vociferously hostile to the defendant. At one point a bottle was thrown at the defense lawyers. In the plaza outside an even larger crowd anticipated Ould Mkhaitir's conviction.

This scene contrasts sharply with another human rights trial taking place simultaneously in Rosso, Mauritania. That trial of anti-slavery activists from the organization the Initiative for the Resurgent Abolition Movement and one person from Kawtal featured a crowd vocally supportive of the defendants. The Mauritanian bar association organized a team of forty pro bono defense lawyers. In hearings that stretched out over the course of a week, some twenty-five lawyers gave fully developed defense arguments for the anti-slavery activists. Facing five years in prison and five years loss of civil liberties, the verdict, while still disappointing, nonetheless resulted in the acquittal of seven people and the sentencing of three — Biram Dah Abeid, Brahim Bilal Ramdhane and Djiby Sow to two years in prison.

In the Ould Mkhaitir trial, highly talented lawyers who might have argued for the defense were too afraid to make the commitment. Some human rights non-profits in Mauritania have spoken

up in Ould Mkhaitir's defense, notably IRA and Aminetou Ely's Femmes Chefs de la Famille. Ely's defense of Ould Mkhaitir was answered with a fatwa authorizing her murder as an advocate of apostasy issued by Yehdih Ould Dahi, president of Amis du Prophete. On June 6, 2015 Ely filed suit against Dahi for this death threat, but her case has stalled out in the court process.

The Court prohibited any discussion of the actual contents of what Ould Mkhaitir wrote. The presiding judge (the President of the tribunal) told Ould Mkhaitir that the problems he wrote about — the racism in Mauritania, especially the racism suffered by Malamines— were only in his own head. "Why would you say these problems exist," asked the judge? "All the people you are trying to get to claim their rights have abandoned you."

The Defense lawyers therefore focused on the fact that Ould Mkhaitir had repented and framed the rest of the defense as a request for pardon. To take any other approach, they explained to me, would have risked enraging the crowds who thronged the court-room and milled about in the huge plaza outside the courthouse. The defense lawyers were very concerned not to augment the tension, as they felt doing so would play into the Islamists hands and give them justifications for riots or worse.

On the first day of the trial a new judge joined the panel, an assessor named Mohamed Ould Boubar, who had not previously participated in proceedings against Ould Mkhaitir. His attorney told me, it was as though it were a trap. L'Assessor, sent specially from Nouakchott for this trial, is a Haratine with a huge complex because of his disavowed heritage of slavery; an inflated ego and often in conflict or insolent. Maitre Niane explained that this Haratine was put onto the bench expressly because of his ancestry, to be a token of racial diversity and yet a reliable enforcer of the established hierarchy. He is from the Lemtouna tribu but a Haratine, he has enjoyed some favors (i.e., his career as a judge) but remains subjected to the will of the tribe. A leader of the Lemtouna is a magistrate in Nouakchott and has been the mentor for Ould Boubar's career.

Legal issues that might be fruitfully raised on appeal include the claim by Maitre lcheddou, Ould Mkhaitir's first lawyer, that his client had repented and apologized for his allegedly blasphemous blog post. This should be grounds for a maximum two year sentence. However, the recording of this apology was confiscated by the police and has not resurfaced.

In addition the police and prosecutors made a serious legal error by not inviting Ould Mkhaitir to recant his apostasy. According to article 306 of the criminal code any Muslim guilty of the crime of apostasy should be invited to repent within three days. Such an invitation was never extended to Ould Mkhaitir.

According to his lawyers, Niane and Mahmouda, Ould Mkhaitir was not previously a revolutionary; he is just an average young man with ideas about how to make his society better. He was active on Facebook.

The fear that grips the Mauritania, including the legal community, in relation to this case is sobering. The human rights community needs to meet this challenge head-on.

