



HUMAN
RIGHTS
WATCH

“They Told Me to Keep Quiet”

Obstacles to Justice and Remedy for Sexual Assault Survivors
in Mauritania



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in Mauritania**

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Map of Mauritania



Glossary of Acronyms and Terminology

Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Convention on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
FGM	Female genital mutilation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NHRC	National Human Rights Commission
OHCHR	Office of the United Nations High Commissioner for Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
WHO	World Health Organization

Terminology

Child: Person under the age of 18.

Rape: Any physical invasion of a sexual nature without consent or under coercive circumstances. A “physical invasion” occurs when there is a penetration, however slight, of any part of the body of the victim (or of the perpetrator by the victim) with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

Sexual assault: Violation of a person’s bodily integrity and sexual autonomy, which includes rape and other non-penetrative forms of sexual assault and can take place in coercive circumstances.

Sexual violence: Any nonconsensual sexual act, threat, or attempt to perform such an act, or compelling someone else to perform such an act on a third person. It is not limited to physical violence and does not necessarily involve physical contact. It includes but is not limited to forced marriage, female genital mutilation, sexual harassment, sexual assault, rape, nonconsensual virginity tests, and human trafficking for sexual exploitation or slavery.¹

Zina: Consensual sexual relations outside of marriage, criminalized under Mauritanian law.²

¹ African Commission on Human and Peoples’ Rights, Guidelines on Combating Sexual Violence and its Consequences in Africa (ACHPR Guidelines) adopted during the Commission’s 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May, 2017, http://www.achpr.org/files/instruments/combating-sexual-violence/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf, art. 3.1 (accessed July 30, 2018).

² Penal Code, art. 307.

Summary

In July 2016, 15-year old “Rouhiya” fled her sexually abusive father and sought refuge at the house of a 23-year-old man who had promised to marry her.³ Soon after, she said, the man locked her up, drugged her, and gang-raped her with three other men. Rouhiya remained captive for two weeks until the police found her and returned her to the home from which she had tried to escape. In her report to the police, Rouhiya disclosed that she knew one of the perpetrators. Police arrested her and sent her to the national women’s prison on charges of engaging in sexual relations outside marriage (*zina*). “I asked them, ‘Why? What did I do?’,” Rouhiya said. “They told me to keep quiet and not to ask questions.”

Few survivors of sexual assault dare to speak out in Mauritania. Those, like Rouhiya, who report it to the authorities must navigate a dysfunctional system that discourages victims from pressing charges, can lead to re-traumatization or punishment, and provides inadequate victim-support services.

This report documents the institutional, legal, and social obstacles that survivors face in reporting incidents of sexual assault to the police, seeing perpetrators brought to justice, and obtaining medical and psycho-social support. Human Rights Watch interviewed 12 girls and 21 who described one or more incidents of sexual assault. Researchers also visited the national women’s prison and interviewed three women who were detained on charges of *zina*, two of whom said they were victims of sexual violence.

Social pressure and stigma, both in the home and community, can be major obstacles to overcome for survivors of sexual violence. Mariama reported being raped by a taxi driver when she was 20 and too worried to tell her parents about the assault: “When I was eight months pregnant, my mother realized it, and asked me how it happened. That’s when I told her about the rape,” said Mariama. “My father got very angry. He took me to the police station and told policemen that his daughter should be locked up because she had slept with a man, that he didn’t want her anymore in his house.”

³ To respect the confidentiality of women and girls who shared their stories, all names used to identify survivors throughout the report are pseudonyms.

Despite the 2017 adoption of a new law on reproductive health and of a General Code on Children’s Protection, Mauritanian law does not adequately define and criminalize sexual violence. The lack of a definition of rape and other forms of sexual assault in domestic law and the criminalization of consensual sexual relations heightens the risk for survivors that they themselves may be prosecuted: if women and girls cannot convince judicial authorities that a sexual act was nonconsensual, they can find themselves transformed from accuser into accused.

Mauritania also lacks state-funded programs and care facilities to ensure and support survivors’ safety, legal action, and recovery. The government has not created or funded shelters offering accommodation options to survivors who want, or are forced, to leave their home after an assault, or for women leaving prison who have nowhere to turn after being convicted of *zina*.

In addition to societal pressure to remain silent about sexual assault, survivors confront institutional barriers that include police and judicial investigative procedures that are not gender-responsive, do not ensure privacy or confidentiality, and can turn into a probe of the moral character of the complainant. Zahra, a woman in her twenties, reported being raped by a neighbor who lived in the same informal settlement as her family and who threatened to kill her. The social worker who supported her throughout the course of legal action recalled the demeanor of the state prosecutor who met with Zahra after the assault: “He asked her: ‘If you didn’t consent, why didn’t you tell your parents? Did you know him?’,” she said. “When Zahra opened up, he responded: ‘That’s not true. All the things you are saying are lies, you did this willingly.’”

Lack of forensic expertise and of standardized evidence collection protocols for both law enforcement and health professionals can weaken a survivor’s case in court. Most public hospitals and health centers offer limited emergency care and often refuse medical examinations of survivors without a police referral. Some health professionals seem reluctant to examine survivors, fearing retaliation by alleged perpetrators if their medical assessment leads to prosecution or conviction. Follow-up medical consultations are rare because many survivors cannot afford emergency or long-term medical care. Some families cannot even afford the cost of transportation to medical facilities. Abortion is criminalized and legal only when the woman’s life is at risk.

Survivors of sexual assault who wish to press charges also risk being prosecuted for *zina*, which not only punishes victims but also deters them from reporting sexual assault to the police in the first place. A person charged with *zina* can be placed in pre-trial detention and, if convicted and sentenced to flogging or death by stoning, face indefinite prison time because Mauritania has observed a moratorium on executions and corporal punishments provided by Islamic law since the 1980s. While under Mauritanian law, *zina* charges only apply to “adult Muslims,” some prosecutors also prosecute girls for *zina*, especially if they are pregnant, even when they report their pregnancy was due to rape. Girls can end up in pre-trial detention or serve jail time in the same facilities as women detainees, a violation of the principle of separation guaranteed under international law.

In addition to breaching the right to privacy, *zina* charges are applied in a way that discriminates on the basis of sex because pregnancy serves as “evidence” of the offense, even when women and girls may report it was the result of rape. Mauritanian lawyer Aichetou Salma El Moustapha, who represents women and girls supported by the Mauritanian Association for the Health of the Mother and the Child, told Human Rights Watch: “For rape cases where the complainant is a minor, when the girl becomes pregnant, she’s convicted for *zina* because according to the judge’s reasoning, if a girl becomes pregnant, her body is mature—she can conceive a child and is thus, legally speaking, an adult.”

Mauritania has in recent years moved towards improving the legal landscape for women, girls, and survivors of sexual violence. In March 2016, the government approved a draft law on gender-based violence—still pending before parliament—that would define and punish rape and sexual harassment, create specific sections in criminal courts of first degree to hear sexual violence cases, consolidate criminal and civil court proceedings to favor prompt compensation of survivors, and allow civil society organizations to bring cases on behalf of survivors.

However, while a step in the right direction, the current draft falls short of international standards in several ways: it includes a restrictive definition of rape; fails to criminalize other forms of sexual assault; includes an explicit provision that criminalizes consensual sexual relations outside marriage; and fails to repeal domestic law provisions criminalizing abortion.

International human rights law obligates Mauritania to protect individuals within its jurisdiction from all forms of violence, including by taking appropriate measures to prevent, punish, investigate, or redress harm to an individual's rights whether the harm stems from acts by private individuals and entities, or state employees and institutions.

The government's ongoing prosecution for *zina* and its failure to ensure access to justice, effective remedies, and care facilities for sexual violence survivors—predominantly women and girls—violate several human rights. These include their right to nondiscrimination—as sexual violence affects women disproportionately—as well as their right to bodily integrity and autonomy, their right to privacy, and their right to an effective remedy.

To better protect women and girls from sexual violence and to comply with its international human rights obligations, Mauritania should:

- Impose an immediate moratorium on prosecuting and detaining individuals for *zina*;
- Immediately release all individuals currently in detention on *zina* charges and move towards abolishing this criminal offense;
- Pass a law on gender-based violence that defines the offense of rape, criminalizes all other forms of sexual violence, imposes adequate and proportionate sentencing for alleged perpetrators, decriminalizes consensual sexual relations, creates specialized prosecutorial units and shelters throughout the country equipped to house women and children on a short, medium, and long-term basis, and allocates adequate funding to implement such reforms;
- Increase its capacity to provide survivors safe spaces beyond the few emergency accommodation options currently offered by civil society organizations;
- Craft gender-responsive investigative trainings and require law enforcement officials to take them periodically, and ensure that they, along with judges and health professionals, follow forensic protocols specific to sexual assault cases; and
- Ensure greater access to medical care for survivors, including psychological support.

Recommendations

To the National Assembly

- Review and adopt the draft law on gender-based violence, after amending its provisions to comply with Mauritania’s international human rights obligations, ensuring it adequately takes all feasible measures to prevent and deter gender-based violence, protect survivors, and prosecute perpetrators including by:
 - Repealing provisions in the Penal Code criminalizing consensual sexual relations, other “moral crimes,” and abortion.
 - Criminalizing all forms of sexual assault (both perpetrated and attempted) and gender-based violence, including female genital mutilation and early, child, and forced marriages.
 - Providing clear definitions of notions such as sexual assault, attempted rape, rape (including marital rape and penetration with an object), gender-based violence, consent, and inhumane practices, in line with international standards (see below).
 - Providing for mandatory, periodic, and institutionalized training and awareness-raising programs on gender-based violence and adequate institutional responses for law enforcement officials, judges, and health professionals.
 - Providing for the creation of special prosecutorial units specialized in gender-based violence while ensuring witness protection and preventing stigmatization of sexual violence survivors.
 - Providing funding for the implementation of measures within the law, particularly for the creation of shelters providing short-, medium-, and long-term accommodation options to sexual violence survivors, awareness-raising campaigns, new means of forensic testing including DNA evidence, and specialized police, prosecutorial units, and court sections to investigate and hear cases of sexual violence.
 - Clarifying how the draft law will interact with other existing laws such as the General Code of Children’s Protection, the law on reproductive health and the Penal Code.

- Repeal article 306 of the Penal Code prohibiting, among other things, offenses to public decency and Islamic morals; these charges are sometimes used as a fallback provision to punish consensual sexual relations outside marriage.
- Repeal article 307 of the Penal Code, which criminalizes consensual sexual relations outside marriage (*zina*).
- Repeal article 293 of the Penal Code and article 22 of the 2017 law on reproductive health criminalizing abortion.
- Amend article 309 of the Penal Code to define rape either as a physical invasion of a sexual nature of any part of the body of the victim with an object or sexual organ without consent or under coercive circumstances and explicitly criminalize marital rape or by providing for a broad offense of sexual assault, defined as a violation of bodily integrity and autonomy, graded based on harm, and providing for aggravating circumstances including but not limited to the age of the survivor, the relationship of the perpetrator and the survivor, the use of threats or violence, the presence of multiple perpetrators and the gravity of long-term mental and physical consequences of the assault.
- Criminalize other non-penetrative forms of sexual assault.

To the Ministry of Social Affairs and Family

- Create or fund the creation of shelters where women and children who survived sexual violence can receive comprehensive support services, including legal assistance, psycho-social counseling and accommodation options, in both urban and rural areas, accessible to all.
- Increase financial support and oversight of existing centers providing direct support services to sexual violence survivors run by civil society organizations to improve their:
 - Accommodation capacity, including overnight stay and services; and
 - Ability to protect both survivors and support staff from threats of retaliation.
- Develop or fund the development of specific services, including safe housing, to support women and girls who are unwilling or unable to return home or to reside with their extended families as a result of being ostracized as victims of sexual assault, for perceptions of so-called moral transgressions, or risk of harm in the home. Women and girls in safe housing should have freedom to come and go and be provided with assistance to seek educational and employment opportunities.

- Support the development of transition centers and services adapted to the special needs of women and girls coming out of prison.
- Develop awareness-raising campaigns about the various forms of sexual violence. Such campaigns should target the general public, law enforcement, and judicial officials, health professionals, and religious leaders who may influence public opinion. Such campaigns should seek to erode the social stigma surrounding sexual assault and rape survivors, to challenge victim-blaming, and to promote available resources for survivors to seek protection and remedies.
- Adopt national standardized protocols of data collection of sexual violence incidents and complaints in coordination with the Ministries of Health, Justice, Interior and National Office of Statistics at a minimum disaggregated by sex, gender, age (of the survivor and, if known, of the perpetrator), language spoken by the survivor, and type of violence. Better data collection is a step toward developing tailored public policies on preventing and responding to sexual violence.
- Undertake studies into the prevalence of sexual violence against men and boys.

To the Ministry of Health and its National Program on Reproductive Health

- Adopt forensic guidelines on documenting and treating sexual violence in line with the World Health Organization's (WHO) guidelines, including the standard form on such documentation, prohibiting the use of "virginity tests," and emphasizing doctors and other health workers' obligation to provide medical assistance and forensic testing if sought by the survivor, without requiring the survivor to obtain a police referral.
- Support the forensic training of health professionals who can provide both medical treatment and conduct forensic examinations and testing during a single consultation, including doctors, nurses and midwives, to increase survivors' access to professional evidence collection and increase the reliability of such evidence in court.
- Prioritize the recruitment of female doctors and healthcare professionals to increase access of sexual violence survivors to female practitioners.
- Support the development of sexual violence units in public hospitals and health centers, and make their therapeutic care and forensic testing services available free of charge or affordable to all regardless of means, compliant with WHO

guidelines on medico-legal responses to sexual violence, building upon the expertise of the special unit established at the public hospital “Mother and Child” (*“Hôpital Mère et Enfant”*) in Nouakchott.

To the Ministry of Interior

- Create or fund and require the participation in periodic trainings on gender-responsiveness and sexual violence and other forms of gender-based violence of law enforcement officials, particularly police officers, to avoid re-traumatization of survivors in police responses and address implicit biases in investigative procedures.
- Create or fund and require participation in specific trainings to handle cases of sexual violence against children. The trainings should be required of law enforcement officials, particularly those working in police stations that only take on cases involving children (*brigades des mineurs*).
- Promulgate written protocols for police that would require, in cases of gender-based violence:
 - Carrying out risk assessments, recording the complaint, advising the complainant of her rights, filing an official report, arranging for transport for medical treatment, and providing other protection;
 - Ensuring that women complainants have the option to speak and submit their complaint to female officers;
 - Ensuring that a social worker be available to assist women who file a complaint with the police;
 - Interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely; and
 - Monitoring and accountability for law enforcement officials who do not abide by such protocols.
- Increase efforts to recruit and promote female police officers and national guards by addressing and eliminating discrimination, direct and indirect in the recruitment process, and conducting significant and ongoing recruitment and professional development campaigns for them.

To the Ministry of Justice

- Create or fund and require participation by prosecutors and judges in periodic trainings on gender-responsiveness and sexual violence and other forms of gender-based violence to reduce re-traumatization of survivors and address implicit biases in prosecutorial practices and court proceedings.
- Create or fund and require participation of Mauritanian prosecutors and judges in specific trainings to handle cases of sexual violence against children.
- Impose an immediate moratorium on prosecuting and detaining individuals for *zina* and immediately release all individuals currently in detention on *zina* charges.
- Establish specialized prosecutorial units to investigate cases of sexual and gender-based violence, provide adequate funding and specialized training for prosecutors, in order to develop expertise in this area, increase the number of cases investigated, and improve the efficiency of the investigative process for complainants.
- Ensure that prosecutors and investigative judges urge police officers under their supervision to respond to, investigate, and diligently collect evidence in all cases of gender-based violence.
- Continue to fund and require participation of Mauritanian prosecutors and judges in regular training programs on the international and regional human rights instruments that Mauritania is obliged to enforce and implement domestically, particularly the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Convention on the Rights and Welfare of the Child.
- Ensure that evidentiary documents in court cases such as medical reports which are in a language other than Arabic, which is the official language of the courts, are translated and notarized to minimize translation issues that may arise during the fact-finding phase of court proceedings.
- Ensure that all complainants are given the opportunity to seek compensation from the defendant in the course of a criminal legal action via the mechanism of "*partie civile*," and by urging police officers, prosecutors, and judges to inform complainants about their right to seek compensation for the alleged damage endured and provide guidance regarding the procedural steps to follow.

To the Ministry of Islamic Affairs and Fundamental Teachings

- Urge the Ministry of Interior and Ministry of Justice to immediately release all individuals serving indefinite jail time as a result of a conviction for *zina*.
- Mobilize religious leaders and scholars (*ulema*) to support awareness-raising campaigns about sexual violence in Mauritania, particularly condemning sexual assault and rape and encouraging survivors to speak out and if desired, to seek judicial accountability.
- Support the adoption of a draft gender-based violence law compliant with international human rights law standards.

To the United Nations, the African Union, and International Donors

- Urge Mauritanian authorities to release individuals detained on *zina* charges.
- Support the Mauritanian government to conduct research on the scope of the issue of sexual violence and the treatment of survivors by the justice and social welfare systems that would provide the basis for new national action plans and policies.
- Call on the Mauritanian government to prioritize the adoption of a gender-based violence law compliant with Mauritania's obligations under international law, the repeal of articles 293, 306, and 307 of the Penal Code, and reforms to laws that discriminate against women.
- Support women's rights and the elimination of sexual violence in Mauritania, through political, technical, and economic support. Priorities under such a commitment should include:
 - Stable, long-term assistance for civil society organizations providing direct support services to sexual violence survivors, to enable them to provide accommodation, free legal aid, and psycho-social counseling to sexual violence survivors;
 - Support for the government to create "open" shelters throughout the country, providing safe short-, medium-, and long-term housing options and rehabilitation services for women and girls who survived sexual violence, and women and girls transitioning out of prison;
 - Creation of a national emergency helpline for survivors of sexual violence to report incidents and seek help;

- Psycho-social services and counseling for women and girls in detention;
and
- Large-scale national awareness-raising campaigns advising women and girls about their rights and explaining how any sexual violence survivors can get help.

Methodology

This report is based on interviews conducted by Human Rights Watch researchers during three trips to the capital Nouakchott, and a trip to the southern city of Rosso, on October 17-23, 2017, January 20-February 12, 2018, and April 20-28, 2018. The researchers interviewed women at the women’s prison in Nouakchott on January 20, 2018, with permission granted by the Directorate of Criminal Affairs and Prison (*Direction des affaires pénales et de l’administration pénitentiaire*).

Human Rights Watch interviewed 12 girls and 21 women—eight women who recounted the story of a relative below 18, and 13 women who recounted a personal story—who reported enduring one or more incidents of sexual assault. Some of the women were under 18 at the time of the assault that they recounted. The research team conducted all interviews individually, in a safe and private space, with some exceptions. Some interviews of children were conducted in the presence of a parent or an adult relative.

While researchers found it difficult to find survivors of sexual violence willing to share their experience, 33 women and girls aged from 13 to 42, did so willingly. Women and girls who accepted to participate in the research were *Haratine* (black Moors, i.e. of Arab-Berber descent) or Afro-Mauritanian (*Négro-mauritaniennes*), from relatively poor backgrounds. The research team identified interviewees thanks to referrals by Mauritanian women’s rights groups operating centers providing direct support services to sexual violence survivors throughout the country.

During the visit of the women’s prison, Human Rights Watch interviewed individually three women who were charged with or convicted of *zina* and who, at the time of the interview, were either in pre-trial detention or serving a long-term prison sentence. Interviews took place in a private room, in the presence of an interpreter working with the research team, and away from prison guards.

Interviews were conducted in Hassaniya, classical Arabic, Pulaar, Wolof and French, usually with the aid of a woman interpreter. Many of the survivors interviewed courageously shared their experiences, saying they wanted the world to know their stories, but many requested that Human Rights Watch recount it in a manner that fully concealed

their identity. For this reason, all names used to identify survivors throughout the report are pseudonyms. We have also omitted locations mentioned in their accounts.

Human Rights Watch also interviewed 23 activists, leaders of nongovernmental organizations (NGO), social workers, lawyers, a psychologist, and journalists affiliated with eight Mauritanian NGOs, including three that operate women's centers providing direct services to sexual violence survivors, and four international NGOs. The research team also met with both Mauritanian institutional actors and representatives of multilateral organizations, including then Minister of Social Affairs and Family, Ms. Maimouna Mint Taghi, the president of Mauritania's National Human Rights Commission, Irabiha Abdel Wedoud, and representatives of the United Nations Population Fund's country office, the United Nations Children's Fund's country office, the Office of the High Commissioner for Human Rights, the European Union Delegation office, and embassies and development agencies of France, Germany, Spain, and the United States.

The research team provided no remuneration or other inducement to any of the interviewees. In each case, Human Rights Watch explained to the interviewee the purpose of the interview, how it could be used and distributed, that their participation was voluntary, and discussed the degree of confidentiality and anonymity the interviewee would be most comfortable with and obtained consent to include their experiences. Human Rights Watch advised all interviewees that they could stop or decline to answer questions at any time in the interview and sought to minimize the risk of further traumatization of those interviewees who had experienced physical or sexual abuse.

While the research team limited its interviews to two major cities, the report makes more general observations about national trends based on the field experience of partner civil society organizations with offices in every region (*wilaya*), analysis of multilateral organizations operating throughout the country, and a review of available case law.

On July 12, 2018, we submitted a letter to various ministries of the Mauritanian government with questions based on our preliminary findings and did not receive any response. The letter is reprinted in the appendix to this report.

I. Background

Mauritania's ethnic diversity reflects the country's geographical location, bridging the Maghreb and sub-Saharan West Africa. The population consists of three main ethnic groups, though important cultural distinctions and social hierarchies nuance each. The vast majority across ethnic lines are Sunni Muslim.

The first two of these groups speak the local dialect of Arabic known as Hassaniya. The first group of Hassaniya-speakers are known as "Beidans," descended from Arabs and Berbers who migrated from the north and east. Beidans dominate the country's political and economic elite.⁴ "Haratines" form the second and larger group of Hassaniya-speakers. They are composed mostly of darker-skinned former slaves and their descendants. The third population group is often referred to as "Afro-Mauritians" or "*Négro-mauritaniens*" and is comprised of several ethnic groups whose native tongues are sub-Saharan African languages rather than Arabic.⁵ The Halpulaar are by far the most numerous subgroup of Afro-Mauritians, followed by the Soninké and smaller populations of Wolof and Bambara speakers.

Women's Rights

In May 2001, Mauritania acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, with a reservation regarding provisions it deems contrary to Islamic law (Sharia) and Mauritania's Constitution.⁶ The same year, Mauritania codified key principles of family law through the adoption of a Personal Status Code.⁷ Since its adoption, the Code has been criticized for discriminating against women, especially with respect to equal rights with men to enter into marriage, rights during marriage, and at its dissolution, inheritance, and in the transmission of nationality to one's offspring (along

⁴ UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, Visit to Mauritania, A/HRC/26/49/Add.1, May 7, 2014, <http://www.ohchr.org/Documents/Issues/Trafficking/A.HRC.26.49.Add.1.pdf>, para. 5 (accessed June 12, 2008).

⁵ "*Négro-mauritanien*" and "Afro-Mauritanian" are misnomers insofar as they generally are understood to exclude Haratines, even though the latter, despite some mixing with Beidans, have the same sub-Saharan origins as the region's non-Hassaniya-speaking groups.

⁶ Office of the United Nations High Commissioner for Human Rights, Status of Ratification, Interactive Dashboard, Mauritania, <http://indicators.ohchr.org/> (accessed June 12, 2018).

⁷ Law No. 2001-52 creating a Personal Status Code, July 19, 2001.

with the Nationality Code of 1961 which also sets discriminatory criteria in the transmission of nationality).⁸

Mauritania subsequently adopted legal reforms and national strategic plans intended to strengthen women's rights and eliminate slavery and sexual exploitation.⁹ In December 2005, Mauritania acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), without reservations.¹⁰ In 2006, the country adopted an Order (*ordonnance*) reserving 20 percent of seats to women in municipal elections and requiring electoral lists to include a minimum number of women varying depending on the electoral district in legislative elections.¹¹

In 2017, Mauritania undertook two steps to align its domestic law with international human rights standards. In October 2017, the National Assembly passed a new law on reproductive health recognizing it as a universal fundamental right, authorizing family planning in public and private hospitals and health centers and prohibiting all forms of sexual violence and abuse.¹² In December 2017, it adopted a new General Code on Children's Protection, broadening children's rights protections and strengthening the provisions of the 2005 landmark Order on the Penal Protection of the Child.¹³ In early 201-, the executive branch also approved a new draft law on gender-based violence that, if amended to comply with international human rights standards, would significantly

⁸ Law No. 61-112 creating a Nationality Code, June 12, 1961. See also Law No.2010-023 repealing and replacing certain provisions of the Nationality Code, February 11, 2010. See e.g. UN Committee on the Elimination of All Forms of Discrimination Against Women, "Concluding observations on the combined second and third periodic reports of Mauritania," U.N. Doc. CEDAW/C/MRT/CO/2-3, July 24, 2014, <http://undocs.org/CEDAW/C/MRT/CO/2-3>, para. 14 (accessed June 10, 2018).

⁹ See e.g. Law No. 2007-048 criminalizing slavery and suppressing practices similar to slavery, September 3, 2007; 2012 Constitutional Reform No. 2012-015 recognizing slavery as a crime against humanity; Law No. 2013-011 criminalizing slavery and torture as crimes against humanity, January 23, 2013; Law No. 031/2015 criminalizing slavery and imposing criminal sentences to people who practice it, September 10, 2015; Law No. 2012-034 promoting women's access to electoral mandates and elective offices, April 12, 2012; Law No. 2010-021 criminalizing illegal trafficking of migrants, February 10, 2010. See also 2005-2008 National Strategy on the Promotion of Women, 2007 National Strategy against Female Genital Mutilation, 2008 and 2009-2012 National Plans of Action for Rural Women, and 2015 National Gender Strategy (accessed June 10, 2018).

¹⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, Mauritania acceded to the treaty on December 14, 2005.

¹¹ Order No. 2006-029 creating an Organic Law regarding the Promotion of Women's Access to Electoral Mandates and Positions, August 22, 2006. See also Law 2012-034 promoting women's access to elective terms and elective positions, April 11, 2012.

¹² Law No. 2017-025 on Reproductive Health, November 15, 2017.

¹³ Order No. 2005-15 on the Penal Protection of the Child, December 5, 2005.

improve support services and means of legal recourse available to survivors. The draft law was approved by Mauritania’s Senate in 2016 (an institution that has been dissolved since) but later rejected by the National Assembly and was awaiting a second vote by the same chamber at the time of writing.

Despite legislative and institutional progress achieved over the last two decades, Mauritanian women remain economically, politically, and socially marginalized, with significantly lower literacy rates, professional mobility, and financial security than men.¹⁴ According to the Mauritanian National Office of Statistics, in 2015, 27 percent of Mauritanian women said that a husband has the right to be physically violent with his spouse(s) if she goes out without telling him, if she neglects children, if they argue, if she refuses to have sexual relations with her husband, or if she burns the meal.¹⁵

While recent statistics on the incidence of gender-based violence are not publicly available, Mauritanian NGOs and institutional actors report that it is widespread. According to a 2017 report from the National Human Rights Commission, several common factors hinder the elimination of violence against women in the country, including the “inadequacy of existing implementation measures [...] such as awareness-raising campaigns, training programs for law enforcement officials and the lack of financial and human resources of mandated institutions; [...] women’s poverty and low literacy rates, the lack of knowledge of their right[s], their fear to bring cases before courts, and their lack of access to information.”¹⁶

¹⁴ United Nations Development Programme (UNDP), Human Development Report 2016 (New York: United Nations Development Programme, 2016), Briefing note for Mauritania, http://hdr.undp.org/reports/global/2005/pdf/HDR05_HDI.pdf (accessed May 17, 2018).

¹⁵ National Office of Statistics, Multiple Indicator Cluster Survey (2015), Key Results, November 2016, https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Mauritania/2015/Final/Mauritania%202015%20MICS_French.pdf, (accessed June 12, 2018), pp. 23, 34.

¹⁶ National Human Rights Commission (NHRC), Thematic Report on Women’s Rights in Mauritania, July 2017, http://www.cndh.mr/images/rapport_thematique_de_la_cndh_sur_les_droits_des_femme_2017.pdf (accessed June 12, 2018), p. 21.



Awareness-raising poster in French on gender-based violence sponsored by the UN Children's Fund, Doctors of the World and the Mauritanian government, displayed at a support center for women and girl survivors of gender-based violence, run by the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, Mauritania, January 23, 2018.
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form of female genital mutilation (FGM) or excision in the past, with significantly higher rates in rural than urban areas (79 percent compared to 55 percent). Of women with daughters, more than half reported that at least one of their daughters aged 14 or under had gone through a form of FGM or excision.

In 2015, 28 percent of women and girls aged 15 to 19 were married (versus 0.8 percent of males of the same age), with rates of early and child marriage twice as high in rural than in urban areas. In addition, 16 percent of girls and women aged 15 to 49 years-old were married before the age of 15.¹⁷ While the Personal Status Code provides that men and women must be 18 or older to consent to marry,¹⁸ the Code also allows the legal guardian of an “incapable” girl (broadly interpreted as orphan girls or girls without legal guardians) to marry her “if he identifies an obvious interest” to do so.¹⁹ The Code also provides that “the silence of any young girl means consent to marry.”²⁰ Further, the General Code of Children’s Protection provides sentences from five to 10 years of prison and a fine for a guardian who marries a child “in the exclusive interest of the guardian,” without defining what that phrase means.²¹

In 2015, two thirds of women and girls aged 15 to 49 reported having gone through a

¹⁷ National Office of Statistics, Multiple Indicator Cluster Survey (2015), Key Results, November 2016, https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Mauritania/2015/Final/Mauritania%202015%20MICS_French.pdf, (accessed June 12, 2018), pp. 23, 33.

¹⁸ Personal Status Code, art. 6, para. 1.

¹⁹ Ibid., art. 6, para. 2.

²⁰ Ibid., art. 9, para. 2. See also National Human Rights Commission, Annual Report, 2016, http://www.cndh.mr/images/rapport_cndh_2016.pdf (accessed June 12, 2018), p. 35.

²¹ General Code of Children’s Protection, art. 17.



Awareness-raising poster in Arabic on gender-based violence by Sisterhood is Global Institute Jordan, sponsored by the UN Population Fund, the European Union and Oxfam displayed at a support center for women and girl survivors of gender-based violence, run by the Association of Women Heads of Family, Nouakchott, Mauritania, January 23, 2018. © 2018 Candy Ofime/Human Rights Watch

In 2017, Mauritania formally and unconditionally criminalized the practice of FGM in the newly adopted General Code of Children’s Protection and law on reproductive health.²² For many years, this practice could only lead to criminal sanctions if it led to health complications.²³

Over the last few years, the government has attempted to address the issue more proactively by adopting national strategies, establishing national and regional councils on gender-based violence and FGM with the aim to progressively eradicate this harmful practice. The Ministry of Social Affairs and Family and its partners prompted doctors to

²² Ibid., art. 79 and 80; Law on Reproductive Health, art. 11 and 22.

²³ Order on the Penal Protection of the Child, art. 12.

adopt a national declaration condemning the adverse effects of FGM, and Islamic scholars issued a “fatwa” (a religious edict that provides a non-binding legal interpretation of Sharia) declaring that the practice lacked a religious basis.²⁴

Sexual abuse and violence in the context of domestic relations remains taboo and a blind spot in the studies and activities coordinated by institutional actors addressing gender-based violence, according to both the National Human Rights Commission and Mauritanian women’s rights groups.²⁵

Overall, the lack of gender-sensitive indicators and tools for data collection of sexual violence creates opacity about the number of cases authorities ought to respond to and about the scale of the phenomenon, and thus hinders the design of adequate public policies.²⁶ A representative of the Spanish NGO *Médicos del Mundo* told Human Rights Watch that, “until recently, Mauritania’s Ministry of Health tallied sexual violence incidents under the category of accidents on public thoroughfares (*accidents de la voie publique*) or victims of intentional assault and battery (*victimes de coups et blessures volontaires*).”²⁷

Similarly, a representative of the United Nations Population Fund’s Mauritania country office told Human Rights Watch that “only civil society organizations report data on this issue. And their data is alarming.”²⁸

²⁴ NHRC, Annual Report 2016, p. 34. See also NHRC, Report on Women’s Rights 2017, p. 21.

²⁵ Ibid., p. 35.

²⁶ UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights on his mission to Mauritania, A/HRC/35/26/Add.1, March 8, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/053/81/PDF/G1705381.pdf?OpenElement> (accessed June 12, 2017), para. 63. See also NHRC, Annual Report 2016, pp. 38,39 and52; NHRC, Report on Women’s Rights 2017, p. 14.

²⁷ Human Rights Watch interview with Amparo Fernández del Río, Mauritania country office coordinator, and Dr. Amadou Kane, medical coordinator of the Spanish NGO Médicos del Mundo (MdM), Nouakchott, February 5, 2018. See also: MdM and UNICEF, Diagnosis of care provided to sexual violence survivors in Nouakchott, March 2016, p. 10 and following.

²⁸ Human Rights Watch interview with Khadijetou Cheikh Ouedrago, gender specialist at the United Nations Population Fund (UNFPA)’s Mauritania country office, Nouakchott, January 23, 2018.



Poster for a 24/7 emergency hotline operated by the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, Mauritania, January 30, 2018. © 2018 Candy Ofime/Human Rights Watch

In 2017, the Mauritanian NGO Association of Women Heads of Family (*Association des Femmes Chefs de Famille*) reported intervening in 428 cases of rape, 128 child marriages, and 1,623 domestic conflicts, some including sexual violence. The same year, the Mauritanian Association for the Health of the Mother and the Child reported supporting 260 women, girls, and boys survivors of sexual assault nationally and 40 women and girls who endured domestic violence.²⁹

²⁹ 2017 Shadow Report of the Coalition of Mauritanian Human Rights Organizations in response to the State Party (Mauritania) Report to the Committee on the Elimination of all Forms of Racial Discrimination, p. 14.; 2017 Annual Report, Mauritanian Association for the Health of the Mother and the Child, pp. 5, 15.

II. Barriers to Redress

Rouhiya

Rouhiya was 5-months pregnant from her father, for the second time, when she shared her story with Human Rights Watch. She was 17 but showed a strikingly composed demeanor.

“My father treated me like his wife. I never told anyone, but I wanted to flee. [...] When I spoke about it with my mother, she told me not to tell anyone. My father threatened to kill me. He does the same thing to my [toddler] sister.

I tried to flee with a 23-year old young man who wanted to marry me. I met him in the street.”

Rouhiya said that in July 2016, she joined the young man at his house, where he locked her up, drugged her and, along with three other men, repeatedly gang-raped her for two weeks.

Rouhiya’s parents called the police, who broke into the man’s house and found her traumatized. Her father took her to a police station the next day to bring charges against the four men.

“The next day, we went to the prosecutors’ office. [...] He asked me questions about my experience, while the four men were with me in the same office. The prosecutor asked me why I had left with this friend. I explained that I was scared of my father—but I did not admit that he had been raping me.”

While the four men were placed in pre-trial detention, the police also arrested Rouhiya and prosecuted her for having engaged in sexual relations outside marriage (*zina*). She spent a few weeks at a juvenile justice facility, before the police transferred her to the national women’s prison in Nouakchott.

“I asked them why [are you arresting me]? What did I do? They told me to keep quiet and not to ask questions,” Rouhiya recalled.

In the hours following her arrival at the prison, Rouhiya fainted in her cell. Within 24 hours, a women’s rights organization obtained her release on health grounds.

Outside prison, women’s rights organizations assisted Rouhiya but none had the capacity to shelter her over the medium term. Rouhiya had no choice but to return to her abusive home.

She returned to the center in 2017 run by the organization that had facilitated her release from prison, when she was six months pregnant from her father. “I gave birth,” she said. “But the child was stillborn.”

Institutional and Social Obstacles to Redress

Stigma and Social Exclusion of Sexual Violence Survivors

“Culturally, people prefer not to raise [incidents of sexual assault]. It is a shame upon the family. [...] Socially, it is frowned upon. The social reaction in the environment from which the survivor comes is difficult.”³⁰

— Khadijetou Cheikh Ouedrago, Gender Specialist, UNFPA country office

Social pressure and stigma, both in the home and community, can be the first obstacles for survivors in Mauritania who wish to file a police report. Five women who said they had been raped, four of whom were under 18 at the time of the incident, told Human Rights Watch that they did not speak about the rape until their pregnancy became physically noticeable. Mariama, 20, who said a taxi driver raped her when she was 17, recalled:

When I was eight months pregnant, my mother realized it, and asked me how it happened. That’s when I told her about the rape. My father got very angry, he took me to the police station, and told the policemen that his daughter should be locked up because she had slept with a man, that he

³⁰ Human Rights Watch interview with Khadijetou Cheikh Ouedrago, Nouakchott, January 23, 2018.



Nezha, rape survivor, Nouakchott, Mauritania, February 8, 2018. © 2018 Human Rights Watch

didn't want her anymore in his house. I spent a night in police custody.³¹

Mauritania's NHRC has found that the taboo surrounding sexual violence “doubles survivors' victimization.”³² According to a 2017 report on women's rights in Mauritania, the NHRC observed that “survivors are rejected by society, their families do not support them and the judicial path to regain their rights is not easy.”³³

The Mauritanian lawyers who Human Rights Watch interviewed all said that social stigma inhibits survivors' willingness to seek help and to pursue legal action. Lawyer Jemal Abbad, who represents survivors of sexual assault supported by the Mauritanian women's rights NGO Association of Women Heads of Family, explained: “Sexual crimes are taboo [...] in Mauritanian society. There are parents who refuse to talk about it. They think it will harm the family's honor.”³⁴

³¹ Human Rights Watch interview with Mariama, Nouakchott, January 25, 2018.

³² NHRC, Annual Report 2016, p. 40.

³³ Ibid.

³⁴ Human Rights Watch interview with lawyer Jemal Abbad, Nouakchott, January 31, 2018.



Jemal Abbad, Mauritanian lawyer who represents survivors of sexual assault on behalf of the Association of Women Heads of Family, Nouakchott, Mauritania, February 12, 2018. .

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Lawyer Ahmed Ould Bezeid El Mamy, from the same group, also noted that such pressure affects women from different ethnic groups and socio-economic backgrounds in different ways. According to Bezeid, sexual violence is particularly taboo among wealthy, prominent families, explaining that women who have been raped often travel to Senegal to give birth discreetly when they can afford it. He also observed that early marriages are a common way to “save the honor of the family.”³⁵

Sexual assault, particularly for single women and girls, scars them socially in a way that limits their acceptance in their community and makes their marital prospects more difficult. Marie-Charlotte Bisson, head of the Swiss NGO *Terre des Hommes*-Lausanne’s Mauritania country office, has observed that “social exclusion and stigma associated with

³⁵ Human Rights Watch interview with lawyer Ahmed Ould Bezeid El Mamy, Nouakchott, January 25, 2018.

sexual assault often leads the survivors' whole family to move to a different neighborhood.”³⁶

Like in other countries, value is still placed on the myth that an intact hymen indicates virginity. Fatimata M'Baye, the first female lawyer in Mauritania who founded and heads the Mauritanian Human Rights Association, said: “It is essential to understand the social assessment of the hymen. Our patriarchal society requires women to be ‘intact’ when they marry. If a woman is not, she must have been with someone else.”³⁷

Overview of the Criminal Procedure

To set a legal action in motion, a survivor has to report the incident to the police. Police officers must notify the state prosecutor of the complaint, undertake a preliminary investigation, and provide the state prosecutor with a police report and preliminary case file, including the survivor's medical certificate.³⁸ In criminal cases, police officers operate under the supervision and follow the instructions either of a state prosecutor or an investigative judge.

Police officers can arrest suspects and place individuals against whom they have “serious and consistent” evidence in police custody for 48 hours, a period that can be renewed once with the state prosecutor's authorization.³⁹ The state prosecutor determines whether to open a criminal investigation and to refer the case to an investigative judge, who will oversee the fact-finding phase leading to trial, or decide to drop the case (*ordonnance de non-lieu*).⁴⁰ If the state prosecutor decides to drop the case, they must notify the complainant within eight days of the decision.⁴¹

³⁶ Human Rights Watch email correspondence with Marie-Charlotte Bisson, *Terre des Hommes*-Lausanne's head of delegation in Mauritania, July 25, 2018.

³⁷ Human Rights Watch interview with lawyer Fatimata M'Baye, Nouakchott, January 24, 2018.

³⁸ Code of Criminal Procedure, art. 22.

³⁹ *Ibid.*, art. 57.

⁴⁰ *Ibid.*, art. 36.

⁴¹ *Ibid.*, art. 46 and following.

Before trial, the investigative judge can decide to grant defendants provisional liberty under judicial control or place them in pre-trial detention.⁴² Investigation and sentencing procedures can be expedited if the defendant is deemed to have been caught in the act (*flagrant délit*).⁴³

If the investigative judge finds that there is enough evidence for a case to go to trial, they refer it to the criminal court that has jurisdiction to rule on the case.⁴⁴

Poor Police Responses and Prosecutorial Practices

When women and girls overcome societal pressure and come forward to report incidents of sexual assault to the authorities, they often face additional obstacles created by the way police handle complaints and by how state prosecutors lead investigations of sexual violence cases.

Reporting the assault to the police is the first step survivors must take if they are to seek institutional protection and judicial accountability. Twenty-three out of 25 interviewees who were children at the time of their assault said they reported the incident to the police. However, only 4 out of 8 women who were adults at the time of their assault reported it to the police. The Mauritanian Association for the Health of the Mother and Child, a women's rights NGO operating centers providing direct services to sexual violence survivors throughout the country, said that women tend not to report sexual violence incidents to the police because of stigma and risk of prosecution for *zina*. As a policy, the NGO advises women not to report sexual assaults incidents to the police to avoid the risk for survivors that they themselves be prosecuted.

No standardized protocols exist at the regional or national levels for police officers to respond to sexual violence cases. After hearing and taking notes of the complainant's account, a police officer can issue a referral for a forensic medical examination by a doctor at a public hospital or health center. In public health facilities, obstetrician-gynecologists

⁴² Ibid., art. 138.

⁴³ Ibid., art. 61 – 67.

⁴⁴ Code of Criminal Procedure, art. 177 – 183.

usually perform medical examinations and forensic testing simultaneously and issue medical certificates directly sent to the police to add to the complainant's case file.

In the capital, Nouakchott, three police stations exclusively take on cases involving children (*brigades des mineurs*),⁴⁵ as either accused or complainant. These police stations accommodate on-site social workers mostly employed by civil society organizations, but not all stations provide them a private office space.⁴⁶ The social workers also periodically visit police stations without a juvenile unit to identify new cases of sexual violence and can help survivors navigate interactions with their family and third parties, take legal action, and access medical and psychological support. Social workers Human Rights Watch spoke to were critical of the constraints of their role in police stations. Since most social workers do not have a formal accreditation and are allowed into police stations only informally, they can be required to leave the premises at any time.

Social workers usually attend children's police hearings alongside a lawyer and can assist both children and adults in undertaking the various steps of medical and legal procedures. The director of a women's rights center providing direct services to sexual violence survivors in Nouakchott told Human Rights Watch: "When the social worker receives a new case at the police station, she distinguishes between: (1) women whom we advise not to press charges because of the risk to be prosecuted for *zina* and (2) minors whom we advise to seek legal action."⁴⁷

⁴⁵ See Order on the Penal Protection of the Child, art. 101.

⁴⁶ Human Rights Watch interview with Aminetou Mint Ely, president of the Association of Women Heads of Family, Nouakchott, January 21, 2018; Human Rights Watch interview with Aichetou M'Bareck, director of one of the centers supporting sexual violence survivors operated by the Mauritanian Association for the Health of the Mother and the Child, January 23, 2018. See also MdM 2016 report, p. 14.

⁴⁷ Human Rights Watch interview with Aichetou M'Bareck, director of one of the centers supporting sexual violence survivors operated by the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, January 23, 2018.



Aichetou M'Bareck [right], director; and staff of a support center for women and girl survivors of gender-based violence run by the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, Mauritania, January 23, 2018. © 2018 Candy Ofime/Human Rights Watch

In many of the interviews Human Rights Watch conducted, when survivors were above 18 or had a pre-existing relationship with the perpetrator, it appears police officers refused to investigate incidents of sexual violence. Khoulood who said she had become pregnant from rape by her former husband, told Human Rights Watch: “When I approached police officers, they told me that it was none of their business, that it was not part of their job, and that I should go speak to NGOs.”⁴⁸

According to a UNFPA representative, “Much more needs to be done in order to create special procedures [for sexual assault cases] in police stations. Most police stations are full of men.”⁴⁹ All women and girls interviewed who said they reported to the police that they had been assaulted mentioned that they found themselves interacting mostly with

⁴⁸ Human Rights Watch interview with Khoulood, Nouakchott, January 30, 2018.

⁴⁹ Human Rights Watch interview with Khadijetou Cheikh Ouedrago, Nouakchott, January 23, 2018.

male officers and that the police officers on duty never offered them the option to speak to a female officer.

They also went through in-take procedures that did not respect their privacy and confidentiality: officers usually asked questions in open spaces in the presence of several colleagues and family members. 15-year-old Fatimata, who reported being raped by a co-tenant of the apartment where her family lives, recounted: “At the police station, there were a lot of police officers in the room [where I was interviewed], my father, my uncle, my friend Aicha [who was assaulted by the same man], her father, and her uncle. A few women officers were present, but men were the only ones asking questions.”⁵⁰

Survivors told Human Rights Watch that police officers asked them to narrate the incident. Officers then incorporate the survivor’s account into a police report that combines police officers’ observations, statements of the complainant, and police actions taken in relation to the incident reported.⁵¹ Police officers send the report to the state prosecutor who can call the complainant and the alleged perpetrator for a hearing. Depending on the circumstances of the assault, the degree of physical violence involved, the survivor’s age and relationship with the alleged perpetrator, some police officers and state prosecutors seem to offer their own moral assessment of the incident reported. Human Rights Watch met Zahra, a woman in her twenties, and her 7-month-old daughter, Sakina. In 2016, Zahra said her neighbor—who lived in the same informal settlement as her and her relatives—raped her, threatening to kill her with a knife. “He used to woo me, he had told me he would marry me one day,” Zahra said.⁵² One night he got home late from work, while Zahra and her sister-in-law were home alone. “He asked me to bring him water, but then he put his hand on my mouth, pulled out a knife, and closed the door. I wanted to scream but he threatened me with his knife and told me that if I screamed, he would cut my throat.” Zahra became pregnant from the rape and reported the assault to the police six months into her pregnancy. While the perpetrator was placed in pre-trial detention, she was also charged with *zina* and placed under judicial control. A social worker from the Association of Women Heads of Family who assisted Zahra throughout the course of the legal procedure told Human Rights Watch:

⁵⁰ Human Rights Watch interview with Fatimata, Nouakchott, January 25, 2018.

⁵¹ Code of Criminal Procedure, art. 23.

⁵² Human Rights Watch interview with Zahra, Nouakchott, January 26, 2018.

The hearing before the state prosecutor usually lasts an hour. The prosecutor asked Zahra: “If you did not consent, why didn’t you tell your parents? He kept provoking her with those kinds of questions. [...] He asked her “Did you know him?” When Zahra opened up, he responded, “That’s not true. All the things you are saying are lies, you did this willingly.” He was asking leading questions but only took note of her answers.⁵³

Limited Access to Therapeutic Care and Inadequacies of Forensic Testing

Police Referrals

Survivors, social workers, and NGO leaders interviewed reported that doctors practicing in public hospitals and health centers, who perform both medical examinations and forensic testing, will often only examine survivors in the immediate aftermath of an assault if there is a formal written police referral (*réquisition*) or if an emergency medical intervention is required.⁵⁴ 10-year old Faroudja was raped in an abandoned house by a relative a few weeks before speaking to Human Rights Watch. The same night, her mother took her to a public hospital in Nouakchott where a doctor informed her that he could not examine her unless she obtained a police referral.⁵⁵ Requiring such a referral prevents survivors who are not willing to report to the police from accessing immediate medical care and collection of forensic evidence in a timely fashion.

Forensic Examinations

There is only one practicing forensic doctor in Mauritania and forensic medicine is not regulated by law.⁵⁶ The lack of forensic expertise is exacerbated by the absence of specialized forensic doctors and established uniform protocols that doctors should follow when collecting forensic evidence. Conventional obstetrician-gynecologists end up performing non-standardized forensic examinations of sexual violence survivors. The state does not permit midwives to perform forensic examinations, despite calls for them to be allowed to do so by nongovernmental organizations because there are more female midwives than female doctors. According to the coordinator of the Spanish NGO *Médicos*

⁵³ Human Rights Watch interview with a social worker from the Association of Women Heads of Family, Nouakchott, January 26, 2018.

⁵⁴ See also MdM report, p. 31.

⁵⁵ Human Rights Watch interview with Aziza, Nouakchott, January 25, 2018. See also MdM 2016 report, p. 29.

⁵⁶ Human Rights Watch interview with Aichetou M'Bareck, Nouakchott, January 23, 2018. See also MdM 2016 report, p. 33.

del Mundo in Mauritania, in most public hospitals and health centers, the doctor who examines and performs forensic testing on sexual violence survivors is likely to be a man.⁵⁷

Moreover, patients often have to wait hours to see a doctor after an assault due to the general shortage of doctors in Mauritania. In 2014, the Ministry of Health estimated that only 239 family practitioners (that is one per 14,729 residents) and 329 specialists (that is one per 9,301 residents) were available nationally to provide care to a population of some 3.5 million.⁵⁸ To attain high coverage of skilled birth attendance (80 percent), the World Health Organization (WHO) estimates that an average of 2.3 skilled health workers (doctors, nurses, and midwives) per 1,000 population is necessary, far above Mauritania's current level.⁵⁹ "The victim can wait a whole day. The chief doctor oversees surgeries, birth deliveries... If the victim comes back in the afternoon, she has often already taken a shower or has urinated," thus weakening the forensic evidence, said Aminetou Mint Ely, president of the Association of Women Heads of Family, which runs centers providing support to sexual assault survivors throughout the country.⁶⁰

⁵⁷ Human Rights Watch interview with Amparo Fernández del Río and Dr. Amadou Kane, Nouakchott, February 5, 2018.

⁵⁸ Ministry of Health, National Healthcare Map of Mauritania, 2014.

⁵⁹ World Health Organization, Health Workforce Requirements for Universal Health Coverage and the Sustainable Development Goals, Human Resources for Health Observer Series No. 17, October 2016: <http://apps.who.int/iris/bitstream/handle/10665/250330/9789241511407-eng.pdf;jsessionid=D861BBFEFo28193A70F8FB86AF12C7E8?sequence=1> (accessed June 29, 2018).

⁶⁰ Human Rights Watch interview with Aminetou Mint Ely, Nouakchott, January 21, 2018.



Aminetou Mint Ely [center, holding phone], president of the Association of Women Heads of Family and staff of a support center for survivors of gender-based violence, run by the association, Rosso, Mauritania, February 7, 2018. © 2018 Candy Ofime/Human Rights Watch

Fear of retaliation also dissuades doctors from performing forensic examinations and issuing medical reports that may be used to prosecute alleged perpetrators. Doctor Amadou Kane, coordinator for *Médicos del Mundo*, told Human Rights Watch, “Health professionals do not want to interfere with [legal] action when they risk being called to testify. Being identified as the doctor who examined a victim engaged in litigation creates security risks. [...] Certain health professionals are worried that they may cause the perpetrator’s incarceration” and fear reprisals by them or their relatives.

Survivors interviewed who had seen a doctor in the immediate aftermath of the assault were confused about the medical examination they went through. Both children and adults were alone when they met the doctor who simultaneously conducted a forensic examination and provided medical treatment. Some patients had only limited understanding of the tests performed. “I don’t know what kind of exams the doctor

performed. The doctor did not explain to me what she was doing,” said 17-year-old Rouhiya, whose story is relayed above.⁶¹

Most first-response medical examinations involve the collection of vaginal swabs, semen analysis, and testing for sexually transmitted infections (STI).⁶² While doctors often prescribe emergency birth-control pills if they find traces of vaginal penetration, they rarely prescribe post exposure prophylaxis treatment for HIV and other STIs.⁶³ DNA tests are not available in the country.⁶⁴ Meanwhile, “the state of the women’s hymen is the first thing families are worried about,” explained Amparo Fernández del Río, coordinator of the Spanish NGO *Médicos del Mundo’s* Mauritania country office. Human Rights Watch reviewed several medical certificates prepared by doctors who forensically examined victims of sexual assault. They were all handwritten and brief. Each answered three points: whether or not the doctor observed traces of physical violence on the patient, the type of STI tests performed, and the state of the survivor’s hymen.

The current practices are not in line with the World Health Organization’s guidelines on forensic reporting on sexual violence. These guidelines provide that, among other things, “treating a victim of sexual assault with respect and compassion throughout the examination will aid her recovery,” and require that “all parts of the examination should be explained in advance; during the examination, patients should be informed when and where touching will occur and should be given ample opportunity to ask questions. The patient’s wishes must be upheld at all times.” They also provide that ideally the same practitioner should provide the forensic examination and health services at the same visit, which is currently the case in Mauritania, and that authorities should ensure “that female nurses or physicians are available whenever possible. If necessary, efforts to recruit female examiners should be made a priority.”⁶⁵ The WHO has stressed similar

⁶¹ Human Rights Watch interview with Rouhiya, Nouakchott, January 26, 2018.

⁶² Human Rights Watch interview with Amparo Fernández del Río and Dr. Amadou Kane, Nouakchott, February 5, 2018.

⁶³ MdM 2016 report, p. 36.

⁶⁴ *Ibid.*, p. 33.

⁶⁵ World Health Organization, Guidelines for medico-legal care for victims of sexual violence (2003), http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/ (accessed July 19, 2018), p. 19, 30. See also: WHO and United Nations Office on Drugs and Crime (UNODC), “Strengthening the medico-legal response to sexual violence,” Toolkit, November 2015, <http://www.who.int/reproductivehealth/publications/violence/medico-legal-response/en/> (accessed July 19, 2018) and WHO, Health care for women subjected to intimate partner violence or sexual violence, A clinical handbook - field testing version, November 2014, <http://www.who.int/reproductivehealth/publications/violence/vaw-clinical-handbook/en/> (accessed July 19, 2018).



Amparo Fernández del Río, Mauritania coordinator of the Spanish NGO *Médicos del Mundo*, Nouakchott, Mauritania, February 9, 2018. © 2018 Human Rights Watch

considerations for children and adolescents who have been sexually abused, including where possible, they should be offered the choice of a male or female examiner and should be examined by someone trained.⁶⁶

Moreover, the WHO has said that “there is no place for virginity testing; it has no scientific validity and is humiliating for the individual,” noting that “the hymen is a poor marker of penetrative sexual activity or virginity in post pubertal girls.”⁶⁷ It has called for a thorough physical examination of sexual assault survivors noting that not all sexual assault survivors will have genital injuries that are visible, including of the hymen, and that this does not disprove their claim.⁶⁸

⁶⁶ WHO, “Clinical Guidelines on responding to children and adolescent who have been sexually abused,” 2017, <http://www.who.int/reproductivehealth/publications/violence/clinical-response-csa/en/>, p. 3.

⁶⁷ WHO and United Nations Office on Drugs and Crime (UNODC), “Strengthening the medico-legal response to sexual violence,” Toolkit, November 2015, <http://www.who.int/reproductivehealth/publications/violence/medico-legal-response/en/> (accessed July 19, 2018), p. 30.

⁶⁸ WHO 2003 Medico-legal Guidelines, p. 49



Fatimata M'Baye, Mauritanian lawyer and president of the Mauritanian Association for Human Rights, Nouakchott, Mauritania, February 10, 2018. © 2018 Candy Ofime/Human Rights Watch

While judicial investigations, court proceedings and decisions are rendered in Arabic, medical records included in a complainant's case are written in French, which can lead to inaccurate translation in the course of legal proceedings, according to lawyers Human Rights Watch consulted. Lawyer M'Baye told Human Rights Watch:

I once observed a prosecutor who speaks Arabic review a medical certificate drafted in French including the following mentions “touching, introduction of an object in the complainant’s vagina, blood on the inner lips.” His interpreter explained to him that the medical certificate said, “minor caressing.”⁶⁹

⁶⁹ Human Rights Watch interview with lawyer Fatimata M'Baye, Nouakchott, January 24, 2018.

Medical Treatment for Sexual Violence Survivors, Criminalization of Abortion, and Related Costs

Mauritania's 2017 law on reproductive health declared that the right to reproductive health is a "universal fundamental right, guaranteed to all, at any stage of life."⁷⁰ However, the law bans abortion, punishing those who provide and receive the procedure, except where the pregnancy poses a "threat to the mother's life."⁷¹ The law prohibits abortion even in cases of sexual violence. The WHO has shown that restrictive laws, stigma, and poor availability of services can lead to women and girls with unwanted pregnancies to resort to unsafe abortion, sometimes forcibly.⁷² In cases where sexual violence results in a pregnancy that a woman wishes to terminate, the WHO calls for women to be referred to legal abortion services.⁷³

29-year-old Khoulood, who was raped by her former husband, told Human Rights Watch: "When he learned that he had gotten me pregnant, he brought two pills [for abortion]. He put one in my mouth, another one in my vagina. After that, I went to the bathroom and blood came out of my body, I was dizzy. When I tried to report the incident to police officers, they told me it was none of their business. They told me: 'We can speak to him and tell him to provide for your kids but for your pregnancy, you should go speak to NGOs.'"⁷⁴

Medical care in the aftermath of an assault, including emergency interventions and forensic examinations, carry a cost that none of the survivors Human Rights Watch spoke to could afford. Some families could not even afford the cost of transportation to medical facilities.⁷⁵ All medical costs of survivors interviewed were covered by social workers who said they sometimes had to pay survivors' medical expenses out of their own pockets when they exceeded the stipend allocated by the NGO they work for.

⁷⁰ Law on Reproductive Health, art. 7.

⁷¹ *Ibid.*, art. 22. For criminal sanctions, see Penal Code, art. 293.

⁷² According to the World Health Organization, "unsafe abortion occurs when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both." See WHO website, Preventing Unsafe Abortions: <http://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (accessed July 19, 2018).

⁷³ WHO 2003 Medico-legal Guidelines, p. 63

⁷⁴ Human Rights Watch Interview with Khoulood, Nouakchott, January 30.

⁷⁵ On the high cost of medical services, see MdM 2016 report, p. 35.

In June 2017, the first and only sexual violence unit at a Mauritanian public hospital was inaugurated, at the Mother and Child Hospital in Nouakchott (*Unité Spéciale de Prise en Charge*). Within its first year of operations, the unit supported 184 survivors of sexual violence in Nouakchott.⁷⁶ It provides obstetrical and gynecological consultations, emergency surgical interventions, and STI screenings free of charge to survivors, regardless of whether or not the patient obtained a police referral, with an automatic follow-up appointment a month after the first consultation. Since May 2018, the unit has also been offering free psychological counseling to all new patients through the assistance of a psychologist on staff at the hospital, supported by the Ministry of Health. The hospital staff and doctors have received training on best practices to handle cases of sexual violence and have received protocols on how to record new sexual violence incidents and how to perform forensic medical examinations in a way that overall complies with WHO guidelines.⁷⁷ Depending on the complainant's place of residence in Nouakchott, police referrals do not systematically direct survivors to this unit to complete a forensic examination.

Many of the survivors interviewed reported experiencing emotional reactions such as sobbing, shame, fear, and mutism weeks after the assault. According to the WHO, such emotions are direct psychological consequences of sexual assault, although they vary from person to person.⁷⁸ Beyond the initial psychological screening offered by some women's rights groups, survivors interviewed received no psychological support following their assault. In 2016, the NGO *Médicos del Mundo* counted only four practicing psychiatrists and fifteen psychologists in Mauritania, most of them working for public hospitals in the Nouakchott area.⁷⁹

⁷⁶ Human Rights Watch email correspondence with Amparo Fernández del Río, July 15, 2018.

⁷⁷ WHO 2003 Medico-legal Guidelines; WHO and UNODC 2015 Medico-legal Toolkit; WHO 2014 Clinical Handbook; WHO 2017 Clinical Guidelines for children. See above, footnote 65 for full citations.

⁷⁸ WHO 2003 Guidelines, pp. 13 and following.

⁷⁹ MdM 2016 report, p. 42.

Legal Obstacles and Criminalization of Survivors

Weak Domestic Legal Standards

The Penal Code criminalizes rape but does not define it. Under article 309, unmarried defendants convicted of rape risk a sentence of *hadd* (prescribed by God) and flogging, while married defendants must be sentenced to death.⁸⁰

Rape is the only form of sexual violence explicitly prohibited under the Penal Code and the only basis for legal recourse by adult survivors of sexual assault.

New Law on Reproductive Health

Mauritania's 2017 law on reproductive health prohibits "all forms of sexual violence and abuse, particularly affecting children and teenagers." However, it does not define sexual violence or abuse or set out penalties, referring instead to articles 309 (prohibiting rape) and 310 (providing for aggravating circumstances for a rape offense) of the Penal Code.⁸¹ Further, it reaffirms the ban on abortion, with no exception for pregnancies resulting from sexual assault (see above).⁸²

Special Substantive and Procedural Protections of Children

Article 24 of the 2005 Order on the Penal Protection of the Child provides specific rights and protections to children under criminal law. The Order criminalizes rape perpetrated against a child, defined as a person under the age of 18 under Mauritanian law,⁸³ but again does not define rape, defaulting to provisions of the Penal Code (articles 309 and 310).⁸⁴ It punishes rape committed against a child with *hadd* sentences (prescribed offenses under Islamic Law) or five to 10 years' imprisonment.⁸⁵ Articles 25 and 26 of the Order also criminalize sexual harassment of a child and "sexual assaults other than rape" against children and provides from two to four years' imprisonment and a fine without defining the

⁸⁰ Penal Code, art. 309.

⁸¹ *Ibid.*, art. 11.

⁸² Law on Reproductive Health, art. 21.

⁸³ Order on the Penal Protection of the Child, art. 1. See also General Code of Children's Protection, art. 2.

⁸⁴ Order on the Penal Protection of the Child, art. 26.

⁸⁵ *Ibid.*

offense of sexual assault.⁸⁶ Article 26, section 2 also provides that any form of sexual touching performed on a child amounts to pedophilia and must be punished by a five-year prison sentence.

General Code of Children’s Protection

Mauritania’s 2017 General Code on Children’s Protection expanded the criminalization of sexual violence against children by criminalizing any sexual abuse perpetrated against a child. The new law defines sexual abuse of a child as “the child’s submission to sexual contacts by a person who has a relationship of authority, trust or dependence over the child.”⁸⁷ Under the Code, touching or inciting the child to touch oneself, him or herself, or a third party directly or indirectly with a body part or sexual object amounts to “sexual contact.”⁸⁸

Further, the Code formalizes the duty of any person, including individuals under a professional duty of confidentiality, to report to local authorities “any threat to a child’s health, development, physical or moral integrity.”⁸⁹

The Code also provides that in the absence of specific juvenile detention centers, children must be separated and isolated from adults in detention facilities.⁹⁰

Moral Crimes and Criminalization of Consensual Sexual Conduct

Article 306 of the Penal Code prohibits offenses to public decency and Islamic morals. The 2018 amended version of article 306 also prohibits violations of God’s prohibitions. Article 307 criminalizes consensual sexual relations outside marriage. Both provisions, lawyers said, have been used to prosecute survivors of sexual violence and have dissuaded other survivors from reporting their assault.

⁸⁶ Order on the Penal Protection of the Child, art. 25 and 26. Article 25 defines sexual harassment of child as “the use of orders, threats or coercion by a person abusing the authority derived from her position/function, in order to obtain sexual favors.”

⁸⁷ General Code of Children’s Protection , art. 73.

⁸⁸ Ibid.

⁸⁸ Ibid., art. 87.

⁸⁹ Ibid., art. 135.

Article 306(1) is a catch-all provision sanctioning “any person who would commit an offense to public decency or Islamic morals, or violate one of God’s prohibitions or help to violate them.”⁹¹ An offender risks three months to two years of prison and a fine.

Article 307 criminalizes *zina*, commonly defined as consensual sexual relations between a man and a woman, outside marriage. Under Mauritania’s Penal Code, the crime of *zina* applies only to an “*adult* Muslim of either sex” [emphasis added]. While the term adult suggests that the offense only applies to individuals who are 18 and above, Human Rights Watch has documented cases where children were charged with *zina*. Article 307 specifies that *zina* can be established by the testimony of four witnesses, or by confession of the defendant. If the defendant is a woman, pregnancy suffices to establish *zina*.⁹² If the defendant is single, they risk a sentence of a hundred lashes, to be carried out publicly, and one year in prison. But if the defendant is married, they may be sentenced to death by stoning (*Rajoum*).

Article 308 prohibits homosexual conduct between Muslim adults and punishes it with death for males.⁹³

Mauritanian authorities do not presently carry out death sentences or corporal punishments provided by Islamic law (Sharia). A de facto moratorium on executions has been in effect since the 1980s.

Restrictive Interpretation and Application of Existing Laws

Four lawyers told Human Rights Watch that judges tend to apply a narrow definition of rape. For adult survivors, “they only look for evidence of physical brutality,” said lawyer Bezeid.

⁹¹ Penal Code, art. 306.

⁹² Penal Code, art. 307.

⁹³ Penal Code, art. 308.



Ahmed Bezeid, Mauritanian lawyer who represents survivors of sexual assault on behalf of the Association of Women Heads of Family, Nouakchott, Mauritania, February 9, 2018. © 2018 Human Rights Watch

Consent is the factor that distinguishes the offense of rape and *zina* (sexual relations outside marriage).⁹⁴ However the notion of consent is not clearly defined under Mauritanian law. According to lawyer Bezeid, courts find it difficult to apply this distinction, which explains why “judges often fall back on article 306, a catch-all provision that punishes ‘offenses to public decency and Islamic morals,’ to avoid applying article 307 [*zina*] and article 309 [rape]. The issue is that the law is unclear, both in relation to children and adult victims. [Provisions] only mention the sanction, but don’t provide a definition.”⁹⁵ Applying article 306 allows judges to punish extramarital sexual behavior without having to address the question of whether or not the act was consensual—an element that often requires weighing the words of the complainant against those of the defendant.⁹⁶

⁹⁴ Cherif Mohamed Barry, Caselaw book, “Collection of Mauritanian juvenile criminal justice cases,” 2017, Cases of Maata (2011), and Merzough (2015), p. 103, 77.

⁹⁵ Human Rights Watch interview with lawyer Ahmed Ould Bezeid El Mamy, Nouakchott, January 25, 2018.

⁹⁶ MdM 2016 report, p. 44.

According to lawyer El Moustapha, when a girl reaches puberty, judges often take the position that she can consent to sex with an adult man.⁹⁷

According to lawyer M'Baye, “virginity tests are automatic in forensic exams performed in rape cases, and rape is usually only recognized when a girl’s hymen broke as a result of the assault.” This is problematic given that the status of the hymen is not a definitive indicator of virginity or sexual assault (see above section on forensic examinations). In the few court cases dealing with sexual assault that Human Rights Watch reviewed, the written judgement did not explicitly refer to what evidence in the case record the judge relied upon to decide whether or not rape had occurred.

Most children interviewed who had taken legal action reported that when identified by the authorities, the perpetrator had been placed in pre-trial detention; some were convicted of rape and sentenced to jail time. Human Rights Watch was unable to access court records and case law to assess the average length of prison terms of convicted rapists.

The UN Office on Drugs and Crime has recommended ensuring that sentencing policies on violence against women should take into consideration, among other factors, holding offenders accountable for their acts and denouncing and deterring violence against women. It recommends that courts should hand down punishments that are commensurate with the severity of the offense and the impact on victims and their family and help to stop violent behavior. In addition, it also calls for states to provide victims with the “right to seek restitution from the offender or compensation from the State,” and that in assessing the victim’s actual damages and costs incurred as a result of the crime, states should consider “assessing physical and mental damage; lost opportunities, including employment, education and social benefits; material and moral damages; measures of rehabilitation, including medical and psychological care, as well as legal and social services.”⁹⁸

⁹⁷ Interview with lawyer Aichetou Salma El Moustapha and the staff of the NGO Mauritanian Association for the Health of the Mother and the Child, Nouakchott, January 24, 2018.

⁹⁸ United Nations Office on Drugs and Crimes (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” April 2014, https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf (accessed July 19, 2018) pp. 18, 86.

According to lawyers Human Rights Watch interviewed, Mauritanian judges seldom seem to go beyond imprisonment. “Compensation is never ordered. There’s no prejudice. For them, [rape] is a crime but they’ve never considered that the damage can be quantified. I’ve never seen a rape case where a [defendant] was sentenced to pay damages to the person who was harmed, I’ve only seen sentences depriving the defendant of liberty,” Bezeid El Mamy said.⁹⁹

While domestic law offers complainants the ability to claim compensation in the course of a criminal case for the damage they endured (*partie civile*),¹⁰⁰ none of the survivors we interviewed received monetary or material compensation either from the state or from a convicted perpetrator for the harm they suffered. Human Rights Watch was nonetheless able to review one court decision from 2012 involving a sexual assault perpetrated by a man against a girl where a children’s court convicted the defendant to a two-year prison sentence and granted monetary compensation to be paid by the perpetrator to the family for the psychological damage endured by their child and to cover the costs of care incurred in the aftermath of the assault.¹⁰¹

Evidentiary Issues Limiting a Complainant’s Case in Court

There’s an evidence issue. DNA tests are not available. If a victim of sexual violence accuses someone, she will not be able to prove it in a court. Any [defense] lawyer would advise their client to deny [the facts], which in turn can become evidence against the victim [herself].

— Aichetou Salma El Moustapha, lawyer for the Mauritanian Association for the Health of the Mother and the Child

Although DNA testing cannot solve all evidentiary and consent issues in sexual assault cases, survivors and social workers interviewed criticized its unavailability in Mauritania. In cases where forensic evidence is available, if the survivor knows or can easily identify the alleged perpetrator, DNA testing could provide scientific evidence to support the complainant’s statement.

⁹⁹ Human Rights Watch interview with lawyer Ahmed Ould Bezeid El Mamy, Nouakchott, January 25, 2018. See also MDM report, p.45.

¹⁰⁰ Code of Criminal Procedure, art. 75 and following.

¹⁰¹ Case of Chagar (2012), Decision No. 12/2012, Caselaw book, p. 54.

In addition, the lack of protocol on collection of forensic evidence and its use in court use gives judges broad discretion to interpret or disregard medical records during criminal trials.¹⁰²

Limitations of Legal Assistance and Resort to Alternative Dispute Resolution

Khouloud

29-year old Khouloud was born in Mauritania but grew up in Senegal, where she went to school until her last year of primary school. She and her two toddlers live at her sister's home in Nouakchott.

When she spoke to Human Rights Watch, Khouloud was pregnant with her third child after her former husband had raped her. Her fatigue was tangible. "I'm worried about my children, who are sick sometimes and who I cannot feed, and about my current pregnancy."

Seven months into her pregnancy, she came to the conclusion that reporting her former husband to the police would lead nowhere. Khouloud and he were married for several years and had two children before he suddenly left the family and filed for divorce. Khouloud and her children soon fell into poverty. Her relationship with her former husband deteriorated and he became abusive:

When I called him to inform him that children were sick or to ask for child support, he told me that he wouldn't give me anything. One day he came back and told me he wanted to marry me again and I said, "No, you did not take care of us." When I refused, he raped me.

When he learned that he had gotten me pregnant, he brought two pills [for abortion]. He put one in my mouth, another one in my vagina. [...] When I tried to report the incident to police officers, they told me it was

¹⁰² MdM 2016 report, p. 47.

none of their business, that it was not part of their job and that I should go speak to NGOs.

Khouloud decided to report the incident to a center providing direct support services to sexual violence survivors in Nouakchott, hopeful that they could help her purchase a paternity test:

They told me that paternity tests are expensive and that they only provide them in Europe. They told me that [my former husband] denied the pregnancy and that it would be in my best interest not to speak about the incident to a judge. Otherwise, they would accuse me of *zina* and lock me up.¹⁰³

Social workers dissuaded Khouloud from taking legal action against her former husband. Instead, they attempted to mediate the dispute by securing an out-of-court settlement (*conciliation*) in which her former husband committed to pay her child support monthly.

The center's lawyer had the capacity to pursue legal action but did not do so in order to protect Khouloud. She believed there was no likelihood of legal action succeeding: "Our lawyer stopped us from pressing charges because Khouloud risked being detained for *zina*," explained Amadou Sy, social worker for the center of the Mauritanian Association for the Health of the Mother and the Child who oversaw Khouloud's settlement.

In 2015, Mauritania adopted a law institutionalizing "judicial aid," for indigent complainants and defendants in both civil and criminal matters.¹⁰⁴ In theory, eligible parties may receive financial assistance to cover all costs associated with one ongoing case before a court of first degree or on appeal, including lawyers' fees and translation fees when required.¹⁰⁵

¹⁰³ Human Rights Watch interview with Khouloud, Nouakchott, January 30, 2018.

¹⁰⁴ Law No. 2015-030 on Legal Aid, September 10, 2015.

¹⁰⁵ *Ibid.*, art. 13.

None of the survivors Human Rights Watch interviewed could afford to hire a lawyer and none benefited from the newly adopted judicial aid program despite their apparent eligibility. A small number were able to secure legal representation through the assistance of a center providing direct services to sexual violence survivors. Women’s rights groups interviewed reported bearing most of the costs of legal action of the survivors they support.

Social stigma, the cost of legal action, the unlikelihood of court-ordered compensation, the risk of prosecution for *zina*, and financial precarity are all factors that push numerous families to favor out-of-court settlements (*conciliation* or *arrangement*) over seeking justice in criminal courts. Mint Ely told Human Rights Watch: “Poor people submit to the pressure [of settlement offers]. Given their financial insecurity they favor monetary compensation.”¹⁰⁶

If the defendant is over 18, the state prosecutor has to oversee the settlement between the parties and a judge must certify the settlement agreement.¹⁰⁷ If the defendant is under 18, the settlement agreement must be in writing, a representative of child protection services must review it, and a judge must approve it.¹⁰⁸

According to one social worker, “police officers suggest settlements to perpetrators in order to get a cut for themselves, through under-the-table arrangements. They take advantage of any instance when social workers are absent to push for settlements.”¹⁰⁹

Prosecution of Women and Girls for Zina

Zina offenses are applied in a way that discriminates on the basis of sex because pregnancy serves as “evidence” of the offense. Men can deny the act of *zina*, whereas women are less able to do so if they are found to have miscarried or are pregnant. Moreover, hospital staff members can report women who have miscarried or are pregnant outside of marriage to the police.

The UN Committee on the Elimination of All Forms of Discrimination against Women—the committee responsible for monitoring and reporting on CEDAW (the CEDAW Committee)—

¹⁰⁶ Human Rights Watch interview with Aminetou Mint Ely, Nouakchott, January 21, 2018.

¹⁰⁷ Order No. 2007-36 amending Order No. 83-163 creating a Code of Criminal Procedure, July 8, 1983, art. 41.

¹⁰⁸ See Order on the Penal Protection of the Child, art. 155–157.

¹⁰⁹ Human Rights Watch interview with a social worker for the Association of Women Heads of Family, Nouakchott, January 26, 2018.

and the UN Committee on the Rights of the Child—the committee of experts responsible for monitoring and reporting on the CRC (the CRC Committee)—have both expressed concerns about the lack of definition of rape in Mauritanian law, and the criminalization of consensual sexual relations.¹¹⁰

Here, the problem is the conflation of rape and *zina*, and the conflation of other forms of sexual assault and offenses to public decency.

—Zeinabou Taleb Moussa, President of the Mauritanian Association for the Health of the Mother and the Child

Community organizers, activists, social workers, and lawyers told Human Rights Watch that advocacy efforts conducted over the last two decades have reduced, but not eliminated the convictions for *zina* or offenses to public indecency of girls and women who claim to have been raped or assaulted sexually.

On February 6, 2018, Human Rights Watch met with then Minister of Social Affairs and Family, Maimouna Mint Taghi, who stated that “There was a time when any woman who reported a rape [incident] was incarcerated for *zina* along with the perpetrator. Today, no civil society organization can pretend that judges requalify rape as *zina*. All rape cases reported are prosecuted as such.”¹¹¹

By contrast, Human Rights Watch interviewed both girls and women prosecuted, convicted and imprisoned for *zina*, a number of whom reported being raped. While *zina* charges apply to both men and women, recent cases we documented signal that the prospect of *zina* charges can deter women and girls survivors of sexual violence who seek judicial accountability from reporting.¹¹²

¹¹⁰ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined second and third periodic reports of Mauritania, CEDAW/C/MRT/CO/2-3, July 14, 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MRT/CO/2-3&Lang=En (accessed June 12, 2018), para. 26-(b); UN Committee on the Rights of the Child, “Consideration of reports submitted by State parties under article 44 of the Convention, Concluding Observations: Mauritania,” CRC/C/MRT/CO/2, June 17, 2009, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MRT/CO/2&Lang=E (accessed May 17, 2018), para 79

¹¹¹ Human Rights Watch interview with then-Minister of Social Affairs and Family, Maimouna Mint Taghi, Nouakchott, February 6, 2018.

¹¹² See e.g. Khouloud’s case below. The police refused to take her complaint, and the center supporting sexual violence survivors that she consulted declined to support her legal action, advising her instead to opt for an out-of-court conciliation to avoid the risk of prosecution for *zina*.



Zeinabou Taleb Moussa [first row, center], president; Aichetou Salma El Moustapha [first row, right], lawyer; and staff of the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, Mauritania, January 24, 2018. © 2018 Candy Ofime/Human Rights Watch

Human Rights Watch interviewed two girls who said they were raped and who were prosecuted for *zina*. 17-year old Rouhiya reported being gang-raped at the age of 15 and prosecuted for *zina* after reporting the assault to the police. She spent some time at a juvenile justice center before being transferred to the women’s prison in Nouakchott, despite the requirements that children remain in separate facilities than adult convicts when separate facilities exist to accommodate them.¹¹³ Because of her critical health condition, Rouhiya was provisionally released from the women’s prison within 24 hours. At the time of writing, social workers supporting her were unsure what the next steps in her case would be.

In another case, 16-year old Zeina traveled to Mauritania from Mali at the age of 14 in the hands of sexual traffickers. She said she was repeatedly raped at the age of 15 by a man

¹¹³ Human Rights Watch interview with Rouhiya, Nouakchott, January 26, 2018.

with whom she had sought refuge after escaping from the traffickers who brought her to Mauritania. Zeina became pregnant, was prosecuted for *zina* after giving birth and placed under judicial control. She was required to check in weekly at a police station when she spoke to Human Rights Watch.¹¹⁴

Lawyers and activists Human Rights Watch interviewed all agreed that currently, girls are less frequently prosecuted for *zina* than women, although the risk of prosecution is higher for pregnant girls since pregnancy is sufficient evidence under domestic law to establish *zina*. The fact-finding steps the investigative judge eventually takes depend largely on what precise charges the state prosecutor chooses to bring.

Lawyer Kaber Ould Imejen, who used to represent women detained in Nouakchott for an international NGO called the Noura Foundation, told Human Rights Watch: “If a woman is pregnant and isn’t married, she’ll most certainly be charged with *zina*, especially if she hasn’t [immediately] reported that she was a victim of sexual violence.”¹¹⁵

Lawyer El Moustapha told Human Rights Watch: “For rape cases where the complainant is a minor, when the girl becomes pregnant, she’s convicted for *zina* because according to the judge’s reasoning, if a girl becomes pregnant, her body is mature—she can conceive a child and is thus, legally speaking, an adult.”¹¹⁶ In such cases, judges appear to ignore the fact that Mauritanian law defines a child as anyone under the age of 18.¹¹⁷

Lawyer Abbad told Human Rights Watch: “[Sexual assault] cases where women are not prosecuted for *zina* are rare. At the investigative phase, judges usually place the woman in pre-trial detention or occasionally at provisional liberty but under judicial control. Then [sentencing judges] generally order prison sentences from three to six months; the prison sentence is sometimes suspended.”¹¹⁸

Lawyers told Human Rights Watch that the lack of a definition in domestic law of the crime of rape and the presence of so-called “moral” crimes in Mauritanian criminal law leaves

¹¹⁴ Human Rights Watch interview with a social worker supporting Zeina, Nouakchott, January 25, 2018.

¹¹⁵ Human Rights Watch interview with lawyer Kaber Ould Imejen, Nouakchott, February 6, 2018.

¹¹⁶ Human Rights Watch interview with lawyer Aichetou Salma El Moustapha, Nouakchott, January 24, 2018.

¹¹⁷ Order on the Penal Protection of the Child, art. 1, See also: General Code of Children’s Protection, art. 2.

¹¹⁸ Human Rights Watch interview with lawyer Jemal Abbad, Nouakchott, January 31, 2018.

room for interpretation and a degree of wide discretion to judges at the expense of victims. According to lawyer M'Baye, “[Some] judges don’t render decisions by weighing inculpatory and exculpatory evidence, but rather with the mindset of, ‘If you know the perpetrator, you consented.’”¹¹⁹

Judicial Control for *Zina*

As an alternative to pre-trial detention, which should be imposed only exceptionally, under international human rights law, judges can release defendants while keeping them under judicial control until trial. Judicial control may involve a spectrum of constraints including travel restrictions, mandatory medical treatment, and weekly check-ins with law enforcement officials.¹²⁰ When judges order suspended sentences, they can extend restrictive measures imposed under judicial control.

Human Rights Watch spoke to five women and girls who said they had been raped but who were prosecuted for *zina* after reporting their assault to the police. Those to whom the court granted provisional pre-trial liberty were placed under judicial control and required to check in weekly at a designated police station. Reporting rape in itself is an admission that sexual relations took place, such that even if the complainant withdraws her rape accusation, the state prosecutor can continue to prosecute the complainant for *zina*.

¹¹⁹ Human Rights Watch interview with lawyer Fatimata M'Baye, Nouakchott, January 24, 2018.

¹²⁰ Penal Code, art. 124. See also Human Rights Committee, General comment No. 35, para. 37.



Entrance to women's prison, Nouakchott, Mauritania, February 11, 2018.

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Detention for *Zina*

Hissa

"I've been uncomfortable since my arrival [in prison]," confided Hissa, 26, who was imprisoned for *zina* in December 2017. She looked drained and disillusioned in her long and dark *melahfa*—traditional robe—through which one could make out the fact that she was eight months pregnant. She spoke to Human Rights Watch sitting on the floor across from sewing machines in the activities room of Nouakchott's women's prison.

Before she was put behind bars, Hissa lived in Nouakchott and earned money styling women's hair and crafting *melahfas*. She described how she knew her perpetrator:

"He was a friend, we used to hang out, he would pick me up from high school. [...] We asked for my grand-mother's permission to get married, but it was not possible."

One night before the start of the Muslim holy month of Ramadan in May 2017, he drove Hissa to a place she did not know and raped her: “It happened more than once,” she said. Afraid of her family’s reaction, Hissa did not speak about the incident to her relatives for months but realized later that she was pregnant. In December 2017, Hissa was about seven months pregnant and told her family about the rape. Her older brother immediately took her to the police to report the assault and to a hospital where a doctor confirmed that she was pregnant.

Soon after she reported the incident, a judge placed the alleged perpetrator in custody for several days. “At the police station, both my family and his were present. He was looking for an [out-of-court] settlement. At that moment, I discovered that he already had a wife, and I refused to settle.”

The alleged perpetrator denied all charges brought against him and claimed that Hissa consented to their sexual relation. The state prosecutor decided to prosecute them both for *zina* and to place them in pre-trial detention.

“I don’t know why I’m here, or for how long. I have regrets. Even though my relatives call me, it’s hard for me to speak to my own family,” she told Human Rights Watch.

A week after her interview, Hissa gave birth inside the prison facility. She took care of her newborn in the prison for almost two months before a judge decided to grant her and the alleged perpetrator provisional pre-trial liberty in April 2018.

In 2010, Mauritania opened the first Center for Social Rehabilitation of Children in Conflict with the Law (*Centre de Réinsertion Sociale des Enfants en Conflit avec la Loi*, CARSEC).¹²¹ At CARSEC, convicted children attend classes, vocational training, and recreational

¹²¹ See “*Centre de réinsertion des enfants en conflit avec la loi, d’El Mina L’ONG « Terre des hommes » au chevet des jeunes détenus*,” May 25, 2012, https://www.noorinfo.com/Centre-de-reinsertion-des-enfants-en-conflit-avec-la-loi-d-El-Mina-L-ONG-Terre-des-hommes-au-chevet-des-jeunes-detenus_a3847.html (accessed June 12, 2018).

activities as an alternative to detention.¹²² The international NGO *Terre des Hommes*-Italy has been supporting the center since 2012 and estimates that from August 2015 through April 2018, 201 children aged 13 through 18 (included) stayed at the center.¹²³ The average length of stay was 5.25 months.¹²⁴ Five girls resided at the center from 2015 through 2018, two of them charged with *zina* (one of whom Human Rights Watch interviewed), one charged with infanticide, one with theft, and one with drug and alcohol consumption. For the same time period, boy residents had been charged with rape, assault and theft, homicide, drug and alcohol consumption, and vagrancy. A similar center with a much smaller accommodation capacity opened in the northern city of Nouadhibou in November 2016. From its opening to July 2018, 54 children stayed at the center, including three girls, none of whom had been charged with *zina*.¹²⁵

On February 1, 2018, a Human Rights Watch delegation visited the women's prison in Nouakchott. The prison director, Hamidou Cissokho, said that at the time, 22 women were detained, 9 of them prosecuted for or convicted of *zina*. Human Rights Watch interviewed three of them. The inmates included 17 Mauritians, three Senegalese, and two Moroccans. The Noura Foundation, an international NGO providing legal, psycho-social support to women in detention and women transitioning out of prison estimated that from January 19 through December 29, 2017, 64 women and girls were detained in the women's prison in Nouakchott, 26 of them prosecuted for or convicted of *zina*. Human Rights Watch did not have access to data about Mauritania's other prison holding women, in Nouadhibou.

Human Rights Watch observed that the facility in Nouakchott contained no separate space for girls nor special accommodations for pregnant women and that the guards were exclusively men.

¹²² UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mauritania, A/HRC/34/54/Add.1, December 13, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/432/86/PDF/G1643286.pdf?OpenElement> (accessed June 19, 2018), para. 69.

¹²³ Human Rights Watch interview with Stefano Perosino, head of *Terre des Hommes*-Italy's Mauritania country office, Nouakchott, April 24, 2018.

¹²⁴ Pluri-annual Statistics of the Center for Social Rehabilitation of Children in Conflict with the Law in Nouakchott provided by *Terre des Hommes*-Italy, April 2018.

¹²⁵ Pluri-annual Statistics of the CARSEC in Nouadhibou provided by the NGO *Terre des Hommes*-Italy, June 2018.

Two of the three women interviewed had a lawyer representing them. Announcements from NGOs offering to assist women with legal representation were displayed on the wall of the activity room of the prison. All the detainees interviewed were aware that they faced *zina* charges. Human Rights Watch was not able to determine whether they had all experienced sexual violence.

Article 309 of the Penal Code imposes 100 lashes and one year of prison on any Muslim adult who commits *zina* and death by stoning on any married or divorced Muslim adult who commits *zina*. Flogging and death by stoning are no longer applied in practice and when imposed on a defendant, may be converted into a prison sentence if the defendant successfully challenges the decision before the High Council of Fatwa and Pleas for Clemency (*Haut Conseil de la Fatwa et des Recours Gracieux*) created in 2012.¹²⁶ According to lawyers Human Rights Watch spoke to, the commutation requires the intervention of Muslim legal scholars to find that the sentence conversion that the defendant is seeking would be compatible with Sharia jurisprudence.¹²⁷

Until formal commutation, women cannot estimate their expected time in detention. Human Rights Watch spoke to Aissata, 21, who had been serving time in prison for over a year for committing *zina*, with no definite release date at the time of her interview.

Aissata

“I want to get out of here, quickly!” Aissata told Human Rights Watch while sitting on the floor of the women’s prison in Nouakchott. At the time of her interview, 21-year-old Aissata had been detained for one year and two months.

A social worker who visits Aissata at the prison said: “Aissata arrived [here] around December 2016. She was sentenced to death by stoning for *zina* and infanticide. Because Mauritania does not apply the punishment of stoning, Aissata was being

¹²⁶ See Communiqué of the Council of ministers, Mauritanian National Information Agency, May 24, 2012: <http://fr.ami.mr/Depeche-17796.html>. See also: Commentary, Case of Mlle. Zena (2010), Caselaw book, p. 101.

¹²⁷ Human Rights Watch interview with lawyer Kaber Ould Imejen, Nouakchott, February 6, 2018, and Human Rights Watch phone interview with lawyer Fatimata M’Baye, June 18, 2018.

held in prison with no fixed release date. When to free her is in the hands of the *ulema* (Muslim clerics).”

A mother of two, Aissata was detained after losing her third child. In 2016, she gave birth in a public hospital in Nouakchott and returned home the same day. Overnight, the newborn died of unknown causes, she said. The next day, Aissata returned to the hospital to seek assistance and has not since been allowed to return home. “They came to get me at the hospital and took me to the police station. I stayed at the police station for eight days after the child’s death,” she said.

As the criminal investigation progressed, the police realized that the deceased child was born out of wedlock. The state prosecutor filed both infanticide and *zina* charges against her.

A lower court judge ultimately found Aissata innocent in the death of her newborn but guilty of *zina*.

According to her current lawyer:

In the police report, Aissata admitted that she committed *zina*. A lower court sentenced her to death by stoning. On appeal, a judge held that Aissata should be released until her execution. The prosecutor’s office wrote to the President’s office to request the opinion of the *mufti* [Mauritania’s chief Islamic jurist]—we have been waiting for an official response for five months. Some judges still sentence defendants to stoning although it is no longer carried out in Mauritania.

The social worker who supports Aissata, who is affiliated with the Mauritanian Association for the Health of the Mother and the Child supporting women detained in Nouakchott, confirmed that this a common occurrence for *zina* convicts.¹²⁸

¹²⁸ Human Rights Watch discussion with a social worker from the Mauritanian Association for the Health of the Mother and the Child, Nouakchott, February 2, 2018.

Separated from her children and family who visit her occasionally, Aissata's frustration was tangible: "Here in prison, life is complicated. Sometimes it can be pleasant but when my fellow inmates leave, I get depressed. I used to cry a lot."

At the time of writing, Aissata was awaiting Muslim legal scholars to rule on her case.

III. Lack of Funding for Support Centers Run by Civil Society Organizations

Civil society organizations, particularly national women’s rights groups, play a leading role in supporting sexual violence survivors both financially and logistically throughout their recovery and legal action.

In Nouakchott, the government does not run any safe space or emergency shelter for survivors to seek refuge. All centers providing direct services to sexual violence survivors Human Rights Watch identified and visited in the capital were run by civil society groups whose financial and logistical means are limited, and the state either did not provide them with funding or only offered limited project-based grants.

Some centers had medical supplies that enabled them to perform basic physical examinations on site. None of the centers had the capacity to accommodate survivors overnight. In emergency scenarios, NGO leaders such as Mint Ely sometimes end up hosting survivors in their own homes. According to representatives of *Médicos del Mundo*, hospitalization can also be a strategy to protect the survivor from having to return to an unsafe setting.¹²⁹



Support center for women and girl survivors of gender-based violence run by the Association of Women Heads of Family, Nouakchott, Mauritania, January 29, 2018.

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¹²⁹ MdM 2016 report, pp. 28, 40.



Girls who survived gender-based violence taking a math class at a support center run by the Mauritanian Association for the Health of the Mother and Child, Nouakchott, Mauritania, February 8, 2018.

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Because most women’s rights NGOs rely mainly on project-based funding, primarily from international donors, they are not equipped to offer services on an ongoing basis. Centers supporting sexual violence survivors rely on volunteer staff and do not have the means to ensure the physical security of individuals they support. Social workers and activists supporting sexual violence survivors expressed a fear of reprisals against survivors and the staff supporting them.

Some women and girls who complete prison terms for “morality offenses” face difficulty in securing alternate accommodation if they are unable to return in security to their families or homes. The state does not provide transitional support for women leaving prisons. Human Rights Watch interviewed at least one survivor who had no choice but to return to her abusive home because of the lack of transitional accommodation options. The Noura Foundation, in Nouakchott, provides transitional support services to female ex-prisoners but urges the state to make such services more widely available.¹³⁰

¹³⁰ Human Rights Watch electronic correspondence with Lordienne Njouka, administrative and technical advisor at the Noura Foundation, July 24, 2018.

IV. Draft Gender-Based Violence Law: An Opportunity for Change?

On March 3, 2016, the Mauritanian government approved a draft law on gender-based violence (*projet de loi cadre relatif aux violences basées sur le genre*) that aims to “strengthen national measures to fight violence against women.”¹³¹ The draft law was approved by Mauritania’s Senate in 2016 (an institution that has been dissolved since) but later rejected by the National Assembly and was awaiting a second vote by the same chamber at the time of writing.¹³² Human Rights Watch met with Hafsa Kane, an active member of the Network of Mauritanian Women Parliamentarians, which has been advocating in favor of the draft law’s adoption and has hosted several town hall-style meetings with both civil society representatives and religious leaders. According to Kane, “one of the issues [we ran against] was the use of the term ‘gender.’ [...] In the word gender, [many MPs who voted against the project] saw questions related to homosexuality (in a country where it is proscribed by law). Drafters of the law used the word partner instead of spouse, people can’t relate to this kind of wording. They see this law as copied from abroad.”¹³³

¹³¹ Communiqué of the Council of ministers, Mauritanian National Information Agency, March 3, 2016, <http://fr.ami.mr/Depeche-34948.html> (accessed May 31, 2018).

¹³² “*Les sénateurs ratifient le projet de loi cadre relatif aux violences basées sur le genre*,” Mauritanian National Information Agency, December 22, 2016, <http://fr.ami.mr/Depeche-38893.html> (accessed July 19, 2018).

¹³³ Human Rights Watch interview with members of Network of Mauritanian Women Parliamentarians (*Réseau des Femmes Parlementaires Mauritaniennes*), Nouakchott, January 28, 2018.



Hafsa Kane [third MP from the left] and other members of the Network of Mauritanian Women Parliamentarians inside Mauritania's National Assembly, Nouakchott, Mauritania, February 12, 2018.
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At the time of writing, Human Rights Watch had reviewed several drafts of the law, but it was not clear which provisions would be voted on by the National Assembly. If adopted, the draft approved on March 3, 2016 by the executive branch would create new avenues for legal recourse and state-sponsored support services to survivors of gender-based violence, including sexual assault. It provides definitions and sentences for rape and sexual harassment, creates specific sections in criminal courts of first degree to hear sexual violence cases, allows complainants to consolidate criminal and civil court proceedings, and authorizes civil society organizations to bring cases on behalf of survivors.

The draft law also allows judges to issue protection orders (restraining orders against alleged perpetrators), exhorts judges to review forensic evidence to rule on sexual violence cases, allows for the introduction of DNA evidence, compels the government to collect data nationally on incidents of sexual violence, and exhorts the government to create shelters with short and long-term accommodation options, operated either by the state or by civil society organizations to whom the State will grant a formal permit.

However, the draft law still falls short of international human rights standards that Mauritania has committed to uphold. It also falls short of the recommended elements for legislation on violence against women set forth in the 2012 UN Women Handbook for Legislation on Violence against Women and the 2017 Guidelines on Combatting Sexual Violence and its Consequences in Africa, which apply to all member states of the African Union.¹³⁴

For instance, the law does not repeal provisions in the Penal Code which criminalize consensual sexual relations. While the draft law defines rape to include oral and anal penetration, it does not account for rape perpetrated with the use of an object and does not explicitly include marital rape. It does not criminalize other forms of sexual assault and attempted rape. The draft still includes provision of punishments such as death by stoning or flogging, which amount to cruel, inhuman, and degrading treatment.¹³⁵ The draft law also fails to define key terms that it refers to such as “gender-based violence,” “consent,” and “inhumane practices.” Defining these terms is necessary to make the law’s provisions actionable.

The draft excludes several other forms of gender-based violence from its scope, such as female genital mutilation, and early, child and forced marriages, and does not specify how it will interact with other existing laws such as the General Code of Children’s Protection or the Penal Code.

While the draft law provides for the creation of special courts and police forces, it fails to provide for mandatory, periodic, and institutionalized training of all law enforcement and judicial officials, or for health professionals, on gender-based violence, gender-responsiveness, and on Mauritania’s obligations under international law. Further, it does not include provisions for funding the measures in the law.

¹³⁴ UN Women, “Handbook on Legislation on Violence against Women,” 2012, http://www2.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502 (accessed July 19, 2018).

¹³⁵ UN Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 1992 (accessed July 19, 2018), para. 5.

V. Mauritania's Obligation Under International Law

Mauritanian law combines principles and procedural rules of civil law and Islamic law (Sharia), following rules of interpretation of the Maliki school of jurisprudence.

Mauritania's 1991 Constitution, last amended in August 2017¹³⁶ guarantees a number of fundamental rights and freedoms and underlines the country's attachment to "principles of democracy" as defined by "international conventions to which Mauritania" has subscribed.¹³⁷ Article 1 provides that all citizens are equal before the law, and article 13 guarantees due process and fair trial rights and recognizes both the "honor and private life of the citizen" and "the inviolability of the human person."¹³⁸

Sexual violence violates several core protected international human rights such as the right to life, security of the person, freedom from torture or other ill-treatment, and the highest attainable standard of physical and mental health.

Mauritania is party to two main treaties specifically on women's rights: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹³⁹ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).¹⁴⁰ It acceded to the Maputo Protocol without reservations.

Mauritania still retains a broad reservation to the CEDAW where it deems its provisions contrary to Islamic law (Sharia) and Mauritania's Constitution.¹⁴¹ In July 2014, Mauritania

¹³⁶ "Mauritanie : nette victoire du « oui » au référendum constitutionnel," *Jeune Afrique*, August 7, 2017, <http://www.jeuneafrique.com/464117/politique/mauritanie-nette-victoire-pour-le-oui-au-referendum-constitutionnel/> (accessed June 12, 2018); "Référendum en Mauritanie: le «oui» l'emporte, un taux de participation de 53,75%," *Radio France International*, August 7, 2017, <http://www.rfi.fr/afrique/20170807-referendum-mauritanie-le-oui-emporte-taux-participation-5375> (accessed June 12, 2018); "Les Mauritaniens approuvent la réforme de leur Constitution," *Le Monde*, August 7, 2017 : https://www.lemonde.fr/afrique/article/2017/08/07/les-mauritaniens-approuvent-la-reforme-de-leur-constitution_5169413_3212.html (accessed June 12, 2018); and "Sénat supprimé en Mauritanie," *VOA Afrique*, August 16, 2017, <https://www.voafrique.com/a/senat-supprime-en-mauritanie/3987741.html> (accessed June 12, 2018).

¹³⁷ Constitution of Mauritania, Preamble, para. 2.

¹³⁸ *Ibid.*

¹³⁹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, Mauritania acceded to the treaty on May 10, 2001.

¹⁴⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, Mauritania acceded to the treaty on December 14, 2005.

¹⁴¹ UN OHCHR, Status of Ratification, Interactive Dashboard, Mauritania, <http://indicators.ohchr.org/> (accessed June 12, 2018).

partially withdrew its reservation to confine it to article 13(a) providing for equal right of men and women to family benefits, and article 16 exhorting states to eliminate all forms of discrimination against women in all matters relating to marriage and family relations, disregarding the recommendations of the CEDAW Committee to withdraw it fully.¹⁴²

Mauritania is also party to numerous UN and African¹⁴³ human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)¹⁴⁴, the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁴⁵ the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and its optional protocol,¹⁴⁶ the Convention on the Rights of the Child (CRC) and its optional protocol on the sale of children, child prostitution and child pornography,¹⁴⁷ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁴⁸ and the Convention on the Rights of Persons with Disabilities.¹⁴⁹

“Having seen and examined the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, have approved and do approve it in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.”

¹⁴² CEDAW Committee, 2014 Concluding Observations on Mauritania, para. 9.

¹⁴³ For a full list of Mauritania’s regional treaty ratifications and accessions see ACHPR’s website: <http://www.achpr.org/states/mauritania/ratifications/> (accessed June 12, 2018).

¹⁴⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, Mauritania acceded to the treaty on November 17, 2004.

¹⁴⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976., Mauritania acceded to the treaty on November 17, 2004.

¹⁴⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, Mauritania acceded to the treaty on November 17, 2004 and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted December 18, 2002, G.A. res. A/RES/57/199, [reprinted in 42 I.L.M. 26 (2003)], entered into force June 22, 2006, Mauritania acceded to the treaty on October 3, 2012.

¹⁴⁷ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, Mauritania acceded to the treaty on May 16, 1991 and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted May 25, 2000, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), entered into force January 18, 2002, Mauritania acceded to the treaty on April 23, 2007.

¹⁴⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, Mauritania acceded to the treaty on January 22, 2007.

¹⁴⁹ Convention on the Rights of Persons with Disabilities, adopted December 13, 2006, G.A. Res. 60/232, [...], U.N. Doc. A/RES/61/106, entered into force May 3, 2008, Mauritania acceded to the treaty on April 13, 2012. For a full list of Mauritania’s UN treaty ratifications and accessions, see UN Office of the Human Commissioner for Human Rights’ (OHCHR) website: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=110&Lang=EN (accessed June 12, 2018).

Mauritania has also ratified the African Charter on Human and People’s Rights (ACHPR),¹⁵⁰ the African Charter on the Rights and Welfare of the Child (ACRWC).¹⁵¹

Both UN and African treaties that Mauritania has ratified affirm the rights articulated above, recognizing that women and girls have the right to live free from violence.

During Mauritania’s last Universal Periodic Review under the auspices of the UN Human Rights Council in November 2015, over 20 percent of the recommendations the state received related to its women’s rights record, six of them urging the State to better respond to the prevalence of sexual violence nationally, which Mauritania accepted it would work towards implementing.¹⁵²

Nondiscrimination Principle and Freedom from Sexual Violence

Mauritania is obligated to prevent and condemn all forms of discrimination, including on the basis of sex.¹⁵³ International bodies have established that gender-based violence against women, or “violence that is directed against a woman because she is a woman or that affects women disproportionately,” constitutes a form of discrimination. Article 2(e) of CEDAW compels states to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.” The CEDAW Committee has emphasized that states have due diligence obligations with regard to acts and omissions of non-state actors.¹⁵⁴

CEDAW obliges states to ensure that women enjoy the same fundamental freedoms and rights as men, including the rights to life and physical and mental health, and to guarantee their “full development and advancement.”¹⁵⁵

¹⁵⁰ African [Banjul] Charter on Human and Peoples' Rights (Banjul Charter), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Mauritania on June 14, 1986.

¹⁵¹ African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, Mauritania acceded to the treaty on December 14, 2005.

¹⁵² See UPR-info statistics and database, Mauritania: https://www.upr-info.org/database/statistics/index_sur.php?fk_sur=109&cycle=2 (accessed June 12, 2018).

¹⁵³ CAT, art. 2; CEDAW, art. 2; Maputo Protocol, art. 3 (4), 4 (a-d, f) and 8. See also ACHPR Guidelines, art. 2 and 3.

¹⁵⁴ UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women (1992), paras. 6 – 9. CEDAW Committee, General Recommendation No. 35, Gender-based violence against women, Updating General Recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (2017), para. 1, 20 – 26.

¹⁵⁵ CEDAW, art. 3.

Mauritania is also required under CEDAW and the Maputo Protocol to “combat all forms of discrimination against women through appropriate legislative, institutional and other measures.”¹⁵⁶ Article 3(4) of the Maputo Protocol, in line with other international human rights standards, provides that states must “implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.”¹⁵⁷ CEDAW specifically requires Mauritania to formulate “legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against women, whether perpetrated by State or non-State actors.”¹⁵⁸ In 2014, the CEDAW Committee called upon Mauritania to “establish a legal reform process aimed at amending or repealing legislation [discriminating against women], including the discriminatory provisions of its penal, personal status and nationality codes.”¹⁵⁹

Mauritania must protect the autonomy, bodily integrity, and freedom from violence of all persons, particularly those of children¹⁶⁰ and women.¹⁶¹ Article 4(1) of the Maputo Protocol provides that “every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”¹⁶² The CEDAW Committee has made clear that “Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.”¹⁶³

¹⁵⁶ Maputo Protocol, art. 2 and CEDAW art. 2.

¹⁵⁷ Maputo Protocol, art. 3(4), 22(b), and 23(b).

¹⁵⁸ CEDAW Committee, General Recommendation No. 35, para. 26.

¹⁵⁹ CEDAW Committee, 2014 Concluding Observations on Mauritania, para. 15.

¹⁶⁰ CRC, art. 19 and ACRWC, art. 16.

¹⁶¹ CEDAW Committee, General Recommendation No. 35. See also: Maputo Protocol, art. 4.

¹⁶² Maputo Protocol, art. 4(1).

¹⁶³ CEDAW Committee, General Recommendation No. 35, para. 15.

Harmful Cultural Practices and Prevention Measures

Under the Maputo Protocol, CEDAW, ACRWC, CRC, and the joint general recommendation of the CEDAW Committee and the CRC Committee, Mauritania has the obligation to address “social and cultural patterns of conduct of women and men [...] with a view to achieving the elimination of harmful cultural and traditional practices,”¹⁶⁴ affecting children’s health and development¹⁶⁵ and creating prejudices against young girls and women.¹⁶⁶

Article 21 of the ACRWC explicitly prohibits “customs and practices prejudicial to the health or life of the child” including the different forms of female genital mutilation (FGM) and the practice of child marriage.¹⁶⁷

The ACHPR Guidelines call on states to undertake awareness raising campaigns, particularly focusing on “preventing the consequences of sexual violence” and “combat[ting] the perception that such actions represent an offence to the honour of a person, their family or community.”¹⁶⁸

Coordination of Services and Data Collection

The CEDAW Committee and the CRC Committee have both expressed concerns about the absence of a mechanism to collect information on the incidence of violence against women and children and recommended that Mauritania undertake a comprehensive study to document nationally cases of sexual exploitation and abuse.¹⁶⁹

The ACHPR’s Guidelines on Combatting Sexual Violence and its Consequences in Africa (ACHPR Guidelines), a key standard-setting tool adopted by the Commission in May 2017, also require state parties to collect disaggregated data on sexual violence prevalence, to inform public policy.¹⁷⁰ The CEDAW Committee has emphasized that states must

¹⁶⁴ Maputo Protocol, art. 2(2).

¹⁶⁵ ACRWC, art. 21; CRC, art. 24(3).

¹⁶⁶ Maputo Protocol, art. 2(2); CEDAW, art. 5. See generally, CEDAW Committee, General Recommendation No. 31, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/1 (2014)

¹⁶⁷ See also: Maputo Protocol, art. 5, 6, 12(1) and 17.

¹⁶⁸ ACHPR Guidelines, para. 11(3).

¹⁶⁹ *Ibid.*, CEDAW Committee, 2014 Concluding Observations on Mauritania, para. 26(c); CRC Committee, 2009 Concluding Observations on Mauritania, para. 80(c).

¹⁷⁰ *Ibid.*, para. 76.

“[e]stablish a system to regularly collect, analyse and publish statistical data on the number of complaints about all forms of gender-based violence against women (...) disaggregated by type of violence, relationship between the victim/survivor and the perpetrator, and in relation to intersecting forms of discrimination against women and other relevant sociodemographic characteristics, including the age of the victim/survivor.”¹⁷¹

To that end, the UN Office on Drugs and Crimes 2014 Handbook on Effective Prosecution Responses to Violence Against Women and Girls (2014 UNODC Handbook) require that “prosecution agencies have a duty to collect statistical data as well as to share this data with others. The criminal administration data being generated by the prosecution agency should be disaggregated by sex and age, as well as other factors such as ethnicity.”¹⁷²

The ACHPR Guidelines also call for states parties to “ensure that there is good coordination and cooperation between the different stakeholders involved in protecting and supporting the victims of sexual violence, including between State services, civil society organisations [...], international organisations, and all relevant partners.”¹⁷³ As a result, Mauritania cannot exclusively rely on the activities offered by civil society organizations, but has to take a pro-active role in “fostering synergies between stakeholders.”¹⁷⁴

Likewise, the CEDAW committee has called on states parties to “develop and evaluate all legislation, policies and programmes in consultation with civil society organizations,” and called on them to “Set up a mechanism or body, or mandate an existing mechanism or body, to coordinate, monitor and assess regularly the national, regional and local implementation and effectiveness of the measures, including those recommended in this document [the General recommendation 35] as well as other relevant regional and international standards and guidelines, to prevent and eliminate all forms of gender-based violence against women.”¹⁷⁵

¹⁷¹ CEDAW Committee, General Recommendation 35, para. 34(b) and following.

¹⁷² UNODC Handbook on Effective Prosecution Responses to Violence Against Women and Girls, Criminal Justice Handbook Series, 2014, http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf (accessed July 2, 2018), p. 171.

¹⁷³ ACHPR Guidelines, para. 36.

¹⁷⁴ Ibid.

¹⁷⁵ CEDAW Committee General Recommendation No. 35, paras. 48, 52.

Right to Privacy and Bodily Autonomy

Criminalizing consensual sexual relations between adults (*zina* offenses, as outlined in the report) is contrary to a variety of human rights protected by international human rights law, including the rights to nondiscrimination, physical autonomy, physical and mental health, privacy, liberty, and security of the person.

Zina offenses discriminate on the basis of sex because pregnancy can serve as “evidence” of the offense (see above, section on prosecution for *zina*).

The CEDAW Committee has called for repealing legislation that criminalizes adultery or any other criminal provisions that affects women disproportionately including those resulting in the discriminatory application of the death penalty to women.¹⁷⁶

The Human Rights Committee—the committee responsible for monitoring and reporting on the ICCPR—also considers that under article 9 of the ICCPR, any person arrested or detained on a criminal charge shall be brought before a judge, able to review the legality and necessity of their detention, within 48 hours.¹⁷⁷

Further, subjecting girls to pre-trial detention and imprisonment with women for sexual activity violates the principles that the “best interest of the child” should govern the state’s actions toward children, and that children should only be detained as a last resort, separated from adults and for the shortest appropriate period of time.¹⁷⁸ Deprivation of liberty has a negative effect on children’s capacity to realize other fundamental rights, including the rights to education, health, and family unity.¹⁷⁹

¹⁷⁶ CEDAW General Recommendation 35, para. 31(a).

¹⁷⁷ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, paras. 32, 33.

¹⁷⁸ CRC, art. 3, 16, 37(b) and 37(c). See e.g. *Libya: A Threat to Society? Arbitrary Detention of Women and Girls for “Social Rehabilitation*, February 27, 2006.

¹⁷⁹ CRC, art. 37(c). See also: UN Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113 (1990), art. 38 and 49 (calling for detention centers to integrate children’s education and medical rehabilitation into the local community); c.f. *In The Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, February 28, 2018.

Right to Health, Medical Care and Forensic Examinations

Under article 12 of the ICESCR, Mauritania has the obligation to recognize everyone’s “right [...] to the enjoyment of the highest attainable standard of physical and mental health,” including sexual and reproductive health.¹⁸⁰

The ACHPR Guidelines call on states to train medical professionals to appropriately respond to incidents of sexual violence¹⁸¹ and requires that survivors have access to “high-quality test kits for HIV and all other STIs [...] at no cost.¹⁸² The CEDAW Committee emphasize that states must ensure “access to financial assistance, gratis or low-cost, high-quality legal aid, medical, psychosocial and counselling services (...)” and that “Health-care services should be responsive to trauma and include timely and comprehensive mental, sexual and reproductive health services, contraception and post-exposure prophylaxis against HIV.”¹⁸³

Further, Article 14 (2)(c) of the Maputo Protocol provides that states must, at a minimum, “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.”¹⁸⁴

The CEDAW Committee has characterized the forced continuation of pregnancy, criminalization of abortion, denial or delay of safe abortion and post-abortion care, as forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.¹⁸⁵ It also calls for repealing provisions that criminalize abortion and provision of “timely and comprehensive mental, sexual, reproductive health services.”¹⁸⁶ The CRC Committee has also urged States to “decriminalize abortion to ensure that girls have access to safe abortion and post-abortion

¹⁸⁰ ICESCR, art. 12 in conjunction with UN International Committee on Economic, Social and Cultural Rights, General Comment No. 22, Right to sexual and reproductive health (ICESCR, art. 12), U.N. Doc. E/C.12/GC/22 (2016), para 1. See also CRC, art. 24 in conjunction with UN Committee on the Rights of the Child, General Comment, Implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20 (2016), para. 60.

¹⁸¹ ACHPR Guidelines, paras. 14.1 – 15.

¹⁸² *Ibid.*, para. 33.

¹⁸³ CEDAW Committee, General Recommendation No. 35, para. 31(iii).

¹⁸⁴ Maputo Protocol, art. 12(2)(c).

¹⁸⁵ CEDAW Committee, General Recommendation No. 35, para. 27.

¹⁸⁶ CEDAW Committee, General Recommendation No. 35, paras 31(a), 40(c).

services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”¹⁸⁷

The ACHPR Guidelines call on states to “ensure that forensic and legal services apply international standards in gathering, using, preserving and archiving evidence related to acts of sexual violence” and to “take the necessary measures to extend training in evidence-gathering and enable certain types of medical personnel, such as nurses and midwives” to perform such tests taking into account the lack of medical personnel in certain areas.¹⁸⁸

The 2014 UNODC Handbook also provides that “prosecutors, to the extent possible, should ensure that the collection of medical and forensic evidence is done in a timely way [ideally 72 hours], free of charge and not done in a manner that causes secondary victimization to the victim. However, prosecutors should not rely on such evidence to move forward with the prosecution.”¹⁸⁹

Reporting and Duties of Police, Prosecutors, and Investigative Judges

The UN Office on Drugs and Crime 2010 Handbook on Effective Police Responses to Violence Against Women (2010 UNODC Handbook) recommends that in cases of sexual violence, police officers must take steps “to respect the victim, her privacy, [her confidentiality], and the trauma she has undergone, while minimizing the intrusion into her life.”¹⁹⁰ It provides that, “Ideally, police stations have private, quiet areas where victim interviews can be conducted.”¹⁹¹ It also provides that “Officers need to be aware that they are there to help, not to judge, and that the woman should be treated at all times without prejudice or discrimination.”¹⁹²

¹⁸⁷ CRC Committee, General Comment No. 20, para. 60.

¹⁸⁸ CEDAW Committee, General Recommendation No. 35, para 40.4. See generally: World Health Organization Guidelines for the medico-legal care of victims of SV (2003).

¹⁸⁹ 2014 UNODC Handbook, p. 102.

¹⁹⁰ UNODC Handbook on Effective police responses to violence against women, Criminal Justice Handbook Series (2010), https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf (accessed July 2, 2018), p. 55.

¹⁹¹ 2010 UNODC Handbook, p. 59.

¹⁹² *Ibid.*

In cases involving children, the 2010 UNODC Handbook provide that “Investigators are encouraged always to use simple language, taking into consideration the age, apparent maturity and intellectual development of the child in front of them, and to check if the child really understands every word they use.”¹⁹³

The 2014 UNODC Handbook also offers tailored guidelines to prosecution agencies and provides that “prosecutors should treat victims with courtesy, dignity, respect and particular sensitivity to the trauma they have experienced” and “must be able to assist and support traumatized victims and be able to make the appropriate referrals to other service providers.”¹⁹⁴ It makes clear that cases of gender-based violence are no exception: “once the victim reports to the police, the State has the responsibility to investigate the case, prosecute the offence where there is sufficient evidence and ultimately hold the offender accountable by punishing his criminal behaviour.”¹⁹⁵

In the course of the investigation, the 2014 UNODC Handbook emphasizes that “prosecutors should be ready to object to any evidence related to a victim’s “bad” character (for example, substance abuse) that does not directly relate to the incident being prosecuted” and make clear that “the failure of the victim to consent to an intrusive and lengthy forensic medical examination should not result in the automatic dismissal of the case.”¹⁹⁶

The 2014 UNODC Handbook further provides that “Prosecutors should be cooperating with the police in cases [of gender-based violence] to ensure that the efforts by police are focused on building a case rather than discrediting the victim.”¹⁹⁷ Moreover, “In sexual violence cases, when reviewing whether all available evidence is available, prosecutors need to determine whether the case centres on the issue of consent [to the relationship under legal scrutiny] versus identity [of the perpetrator].”¹⁹⁸

The ACHPR Guidelines further provide that States should adequately train personnel from “police, all state security forces, customs agents and intelligence units, firefighters, and

¹⁹³ 2010 UNODC Handbook, p. 63.

¹⁹⁴ 2014 UNODC, Handbook, pp. 42, 50.

¹⁹⁵ 2014 UNODC Handbook, p. 47

¹⁹⁶ 2014 UNODC Handbook, pp. 44, 109.

¹⁹⁷ 2014 UNODC Handbook, p. 72

¹⁹⁸ 2014 UNODC Handbook, p. 76.

personnel deployed in peacekeeping operations; judges, magistrates, court staff” to respond to sexual violence cases.¹⁹⁹ Likewise, the CEDAW Committee has urged states to “Provide mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators and health-care professionals, including in the area of sexual and reproductive health.”²⁰⁰ The ACHPR Guidelines also require States to “take the necessary measures to ensure that specially trained social workers have *permanent offices* at police stations and gendarmerie outposts to provide care and guidance to the victims of sexual violence” and encourage states to create specialized investigation and prosecutorial units [emphasis added].²⁰¹

Article 8(e) of the Maputo Protocol also requires that States ensure “that women are represented equally in the judiciary and law enforcement organs,” which includes police stations, national guard contingents, and judicial offices.

Survivors’ Effective Access to Courts and to Right to an Effective Remedy

Under article 14(1) of the ICCPR, Mauritania must assure fair trial guarantees to sexual violence survivors seeking judicial accountability.²⁰² Article 8 of the Maputo Protocol guarantees men and women’s “effective access to judicial and legal services, including legal aid.”²⁰³

The CEDAW Committee has called on states parties to “Ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and

¹⁹⁹ Ibid., para. 14.1 – 15.

²⁰⁰ CEDAW Committee, General Recommendation No. 35, para. 30(e).

²⁰¹ Ibid., paras 23, 40.2. See also: CEDAW Committee, General Recommendation No. 35, para. 30(e).

²⁰² ICCPR, art. 14; Maputo Protocol, art. 25. See also ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003; ACHPR, Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence adopted during the Commission’s 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007; UN General Assembly, Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (2006).

²⁰³ Maputo Protocol, art. 8.

expeditious manner and imposing adequate penalties.” They also called for the fees and court charges not to be imposed on victims/survivors.²⁰⁴

Throughout legal proceedings, the ACHPR Guidelines provide that “States must guarantee that any mention of the previous or subsequent sexual behaviour of the victim is inadmissible as evidence taken into account to determine whether sexual violence has taken place or as a mitigating circumstance, including any potential questions about virginity or arguments that the victim has delayed in reporting the violence.”²⁰⁵ Likewise, the UN General Assembly resolution on strengthening crime prevention and criminal justice response to violence against women also noted that “the introduction of the complainant’s sexual history in both civil and criminal proceedings should be prohibited where it is unrelated to the case; and no adverse inference should be drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting thereof.”²⁰⁶

The UN Women 2012 Handbook for Legislation on Violence against Women also calls for legislation to prohibit courts from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof. It notes that delays in the reporting of violence against women are often interpreted as demonstrating that the complainant is unreliable, however sexual violence survivors often delay in reporting the violation to public authorities due to a number of reasons, including fear of stigmatization, humiliation, not being believed, and retaliation; financial or emotional dependence on the perpetrator; and distrust in, and lack of access to, responsible institutions, resulting from geographically inaccessible courts and lack of specialized criminal justice personnel.²⁰⁷

Survivors’ right to an effective remedy is enshrined in several international human rights instruments by which Mauritania must abide.²⁰⁸ Article 12(1)(d) of the Maputo Protocol explicitly requires states to “provide access to counselling and rehabilitation services to

²⁰⁴ CEDAW Committee General Recommendation No. 35, para. 44. See generally: CEDAW Committee, General Recommendation No. 33, Women’s Access to Justice, UN Doc. CEDAW/C/GC/33 (2015).

²⁰⁵ ACHPR Guidelines, para. 40.5(b)(iii).

²⁰⁶ UN General Assembly, Resolution A/RES/65/228, Strengthening crime prevention and criminal justice response to violence against women, annex, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” 2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/228, (accessed July 30, 2018), para. 15(e).

²⁰⁷ UN Women, “Handbook on Legislation on Violence against Women,” 2012, para. 3.9.6.

²⁰⁸ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 8; ICCPR, art. 2; CRC, art. 39.

women who suffer abuses and sexual harassment.” The ACHPR General Comment No. 4. on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment urges states to adopt a “holistic approach to rehabilitation” and “victim-centered approaches to redress.”²⁰⁹

Similarly, the CEDAW Committee has urged states to “Provide effective reparations to victims/survivors of gender-based violence against women (...) including monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition.”²¹⁰ It has underlined that “Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.”²¹¹ To that end, the CEDAW Committee requires state to “provide specialized women’s support services, such as gratis helplines operating around the clock and sufficient numbers of safe and adequately equipped crisis, support and referral centres and adequate shelters for women, their children and other family members” and to “Establish specific funds for reparations or include allocations in the budgets of existing funds (...) for reparations to victims of gender-based violence against women.”²¹²

The ACHPR Guidelines, in line with the CEDAW Committee General Recommendation No. 35, warn against the common use of alternative dispute resolution methods, requiring “States to take measures to prohibit the use of alternative methods of conflict resolution, such as mediation or conciliation, in dealing with cases involving sexual violence before and during civil and criminal proceedings, when those methods do not respect the rights of victims, especially women and girls.”²¹³

²⁰⁹ ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) adopted during the Commission’s 21st Extra-Ordinary Session held from 23 February to 4 March 2017 in Banjul, The Gambia. See also: CEDAW Committee, General Recommendation No. 33.

²¹⁰ CEDAW Committee, General Recommendation No. 35, para. 33(a). See also: CEDAW Committee, General Recommendation No. 28, Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/GC/28 (2010); CEDAW Committee, General Recommendation No. 33, U.N. Doc. CEDAW/C/GC/33 (2015).

²¹¹ CEDAW Committee, General Recommendation No. 35, para. 33(a).

²¹² Ibid, paras. 31, 33(b).

²¹³ ACHPR Guidelines, para. 9.4. See also CEDAW Committee, General Recommendation No. 35, para. 32(b).

Acknowledgements

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Above all, we would like to thank the survivors of sexual violence and their family members, whose resilience and courage we respect and admire, who shared their difficult and often traumatic experiences with us in hopes that their stories would help prompt reforms to help others.

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Appendix I. Letter to Mauritanian Ministries with Preliminary Findings and Questions

July 12, 2018

Mr. Yahya Ould Hademine
Prime Minister
Nouakchott, Mauritania

Ms. Naha Mint Hamdi Ould Mouknass
Minister of Social Affairs, Childhood and Family

Mr. Dia Moctar Malal
Minister of Justice

Pr. Kane Boubacar
Minister of Health

Mr. Ahmed Ould Ehel Daoud
Minister of Islamic Affairs and Traditional Education

Mr. Mohamed Lemine Ould Sidi
Human Rights Commission

Re: Research on Sexual Violence

Dear Ministers, Dear Commissioner,

I would like to thank your government for the welcome our delegation received when we traveled to Mauritania from January to February 2018 and in April 2018 when we participated in the 62nd session of the African Commission on Human and Peoples' Rights held in Nouakchott. On

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February 6, 2018, we had the opportunity to meet with former Minister Mint Taghi to discuss our current research on sexual violence in Mauritania.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses in over 90 countries worldwide. Our recent work on Mauritania has focused on the [situation of human rights defenders](#), the [obstacles civil registration creates for children to access public schools](#), and women's rights.

We intend to publish later this year a report on the challenges that survivors of sexual violence face in Mauritania to receive medical, legal, and psychosocial support and to seek judicial accountability. We want to ensure that information and observations provided by the government are reflected in our final report. To that end, this letter provides you with our interim findings and concerns and invites your reply to a number of questions.

We look forward to receiving responses from the relevant government bodies to these questions and will ensure that your responses are reflected in our final report, so long as we receive these answers on or before August 6, 2018. We also would welcome the opportunity to return to Mauritania to discuss these issues with you in person.

Please do not hesitate to direct any questions or comments you may have to me at [REDACTED]@[REDACTED].

Sincerely,

[Signature]

Sarah Leah Whitson
Executive Director
Middle East and North Africa
Human Rights Watch

Summary of Findings

Human Rights Watch researchers conducted the interviews that form the basis of this study during three trips to the capital Nouakchott, and a trip to the southern city of Rosso. On January 20, 2018, the delegation interviewed women at the women's prison in Nouakchott, with permission granted by the Directorate of Criminal Affairs and Prison (*Direction des affaires pénales et de l'administration pénitentiaire*).

Overall, the delegation interviewed over 30 females who reported enduring one or more incidents of sexual assault and dozens of representatives of women's rights groups, centers providing direct services to survivors, lawyers, social workers, health professionals, activists, and community organizers. The delegation also met with members of Mauritania's Parliament. Our research has focused on incidents of alleged sexual assault and rape.

We take note of Mauritania's ratification of major international and regional human rights treaties and its constant engagement with human rights mechanisms and special procedures of the United Nations and the African Union. Human Rights Watch also welcomes the recent adoption of a law on reproductive health and the General Code on Children's Protection, which both advance children's and women's rights. We also welcome the government's approval of a draft law on gender-based violence in March 2016 that is pending before the National Assembly today.

Under international human rights law, Mauritania is obligated to protect individuals within its jurisdiction from all forms of violence including by taking appropriate measures to prevent, punish, investigate, or redress harm to individual's rights whether the harm stems from acts by private individuals and entities, or state employees and institutions. However, we found that women and girls who report being victim of sexual assault face institutional barriers to seeking judicial accountability and accessing comprehensive care and rehabilitation services. Such barriers raise concerns with regard to the rights of survivors to nondiscrimination, bodily integrity and autonomy, privacy, health, and an effective remedy.

Human Rights Watch was not able to identify standardized protocols that police in Mauritania follow when responding to complaints of sexual violence. We interviewed survivors who reported that, at police stations, the in-take procedures did not respect their privacy and confidentiality: they said officers usually questioned the complainant in open spaces, in the presence of colleagues and family members, usually without offering the complainant an opportunity to speak in privacy, or if available, with a female officer. Some survivors recounted that when police officers or state prosecutors heard them, some officials offered their own assessment of the incident reported, and some police officers refused to investigate their complaint.

We found that without a formal written police referral (*réquisition*), some doctors practicing in public hospitals and health centers refuse to examine survivors in the immediate aftermath of alleged sexual violence incidents. Only one forensic doctor seems available nationally to examine victims of sexual violence. Along with the scarcity of forensic expertise, there seems to be no uniform protocols doctors are required to follow when collecting forensic evidence. As a consequence, obstetrician-gynecologists may perform non-standardized forensic testing and reporting (often including the collection of vaginal swabs, semen analysis, and testing for sexually transmitted infections) that is not in line with the World Health Organization's guidelines on forensic reporting on sexual violence. The quality of forensic testing and health assessments can vary depending on the doctor, and health conditions relevant to criminal proceedings can be overlooked by some without proper training and guidance regarding standardized forensic testing.

Further, beyond the initial psychological screening offered by some centers providing support services to sexual violence survivors, women and girls interviewed reported receiving no psychological support following the assault. Medical care for survivors of sexual violence, including emergency interventions and forensic examinations, involves out-of-pocket expenses for the patient that none of the survivors Human Rights Watch spoke to said they could afford.

Human Rights Watch was not able to identify state-run shelters, providing care tailored to the specific needs of sexual violence survivors. Our delegation visited five centers providing support services to sexual violence survivors in Nouakchott and one in Rosso, all run by Mauritanian civil society organizations. They were only able to provide overnight

accommodation in extreme emergency scenarios, never exceeding a night or two, and had limited funding to expand the care and rehabilitations services offered to survivors.

Our research also found that Mauritania lacks a comprehensive legal arsenal to prevent and punish all forms of sexual violence, particularly sexual assault, and to protect survivors and support their access to an effective remedy. Social workers, women rights' activists, and practicing lawyers all reported that criminalization of consensual sexual relations outside marriage (*zina*) creates an additional serious risk of prosecution for survivors, particularly women and girls, who may go from accuser to accused in the course of legal action if they file a complaint about sexual assault and then cannot prove their own lack of consent. Risk of prosecution does not only punish victims but also deters women and girls from reporting sexual assault incidents to the police in the first place since reporting rape in itself is an admission that sexual relations took place. Human Rights Watch interviewed both women and girls charged with *zina* who were placed under judicial control, in pretrial detention, or in prison serving an indefinite term because of a conviction to a Sharia law sentence such as flogging, no longer applied in Mauritania. *Zina* charges breach rights to privacy and may also be discriminatory as the offense is easier to prove against women and girls, whose pregnancy can act as evidence of the offense, even where they may report that it took place as a result of rape.

Questions

We would welcome your comments on any of the preceding observations and appreciate your responses to the following questions:

- How is the government recording and monitoring incidents of sexual assault nationally, regionally, and locally?
- How many reports of sexual assault incidents did authorities record since 2014? Please disclose the types of statistics that authorities maintain on sexual assault and, if available, provide us with a breakdown by location of the incident, the age of the victim, and the type of offense alleged.
- What steps, if any, has the government taken to ensure that:
 - Law-enforcement and judicial officials conduct investigative procedures offering complainants the possibility to speak with officials of their preferred gender, respecting their right to privacy and confidentiality and

- ensuring their safety and protection from retaliation throughout investigative and court proceedings?
- Law-enforcement and judicial officials provide both a lawyer and a social worker to support children who have reported sexual violence to the police, and prioritize the child’s best interest throughout investigative and court proceedings?
 - There is guidance and protocols that prosecutors and judges should follow in responding to sexual violence incidents in a gender-responsive manner, ensuring women and girls’ right to nondiscrimination and access to an effective remedy under international human rights law?
 - Police forces and other law enforcement bodies (including the national guard) recruit women, and ensure their career progression?
- What kind of direct legal, medical, and psychosocial services does the government provide to survivors of sexual violence?
 - How is the government ensuring that children who are victims of sexual assault can get access to medical, psychological, and legal counseling, be supported by a social worker, and that alternative housing options are available if the child cannot return home?
 - Is the government directly operating or funding women’s and children’s shelters? If so, how many, where and what kind of services do they provide? How much funding is provided to existing centers providing support services to sexual violence survivors?
 - How many individuals have authorities charged with and/or detained for *zina* since 2014? Please provide us with a breakdown by sex and age of the defendant, and judicial district of the case.
 - How is the government ensuring that persons convicted of *zina* do not serve indefinite jail time when sentenced to Sharia law sentences that Mauritania no longer carries out, such as flogging or death by stoning?
 - What rules or protocols, if any, govern the collection of forensic evidence in sexual assault cases?
 - What rules of evidence ensure that judges hearing cases of sexual violence review medical records when available and take such evidence into account to rule on a case? How does the government ensure that Arabic-speaking judges can understand and review medical records often drafted in French?

- Has the government taken steps, if any, to ensure that the draft gender-based violence law is in line with international human rights standards, and will be promptly reviewed by the National Assembly?

Appendix II. Case File of a Woman who Reported Being Raped, Convicted of *Zina*

Complainant's Statement to the Police

شرف. أخاء. عدل

الجمهورية الإسلامية الموريتانية
وزارة الداخلية واللامركزية
الإدارة العامة للأمن الوطني
الإدارة الجهوية لولاية ن. ن. ش.
مفوضية الشرطة بتوجنين 4

محضر بحث ابتدائي
بتاريخ 2017

القضية
الك حرمات
تعالى.

نحن ولاية انواكشوط الشمالية وبمساعدة

تعا الشكاية المسجلة في سجل أحوال الجارية بمفوضيتنا في التتويه رقم
الذي يلاحقها ويهددها ويستعمل ضدها العنف والتحرش ويرغمها
إلى الذهاب معه إلى البيوت ويخذها كزوجته منذ أكثر من ثلاث سنوات لذا قدمت منه شكائتها و التقينا عليه
القبض ووضعناه قيد الحراسة النظرية بعد إبلاغ السيد وكيل الجمهورية وبدأنا بحفظ الموضوع

المساعد
فتح البحث

تبعاً لما سبق وهو صلة ليحتنا نستمع للضحية
عن الشهوية :
عن الموضوع :

المصريح
المساعد

تصريح
المشكبة
الموضوع :

[Redacted]

المصرح المساعد

[Redacted]

الحراسة
تأريخ

المشتبه فيه المساعد

[Redacted]

التسوية

المساعد

[Redacted]

بيانات
الإحالة

المساعد

[Redacted]

Medical Report in Response to a Police Referral

HOPITALE DE L'AMITIE

Service Gynécologie

[REDACTED] 2017

REPONSE A UNE REQUISITION

Suite à la réquisition N° [REDACTED] en date du [REDACTED]/2017 Commissariat de Police Toujounine 4, Je soussigné, Dr [REDACTED] certifie avoir examiné la Patiente [REDACTED] âgé de [REDACTED] ans, célibataire victime d'un viol.

Les faits se seraient déroulés [REDACTED]

La victime affirme avoir subi une agression sexuelle par un certain Monsieur [REDACTED] qui l'avait pris de force.

La victime aurait subi un contact génito-génitale avec pénétration et notion d'éjaculation

Examen : TA 12/8+-

ABEG, muqueuse colorées, mollets souples

Abdomen, souple, utérus ovoïde à grand axe longitudinale BDCF (+)

Vulve souillée de perte blanche, absence d'hymen, absence de signe de lutte et de signes inflammatoire.

Toucher bi digital possible et indolore, col long, post déhiscent.

Doigtai, souillé de pertes blanchâtres ----

Echo. Grossesse Unique intra-utérine évolutive de 30SA + 6 jours sans anomalies

CAT : 1 bilan NFS. GSRH. AGHBS, glycémie à jen.

2 suivie de grossesse

Dr [REDACTED]

[REDACTED]

Appendix III. Case File of a Girl who Reported Being Raped

Complainant's Statement to the Police

شرفا- أخاء- عدل

الجمهورية الإسلامية الموريتانية
وزارة الداخلية والأمن المركزي
الإدارة العامة للأمن الوطني
الإدارة الجهوية لولاية ن. ن. ش
مفوضية الشرطة بتوجنين 4

محضر بحث ابتدائي
2018

القضية :
تحرش
تاولة
تصاب

ية ضد:
المساعد

فتح البحث

عن الهوية :
عن الموضوع :

نحية :

م/ج :
م/ج :
م/ج :
م/ج :
المصرح
المساعد

عن الهوية :
الموضوع :

والد
نحية

Medical Report in Response to a Police Referral

République Islamique de Mauritanie
Honneur - Fraternité - Justice
Ministère de la Santé
Centre Hospitalier
Mère et Enfant
Nouakchott



الجمهورية الإسلامية الموريتانية
شرف - إخاء - عدل
وزارة الصحة
مركز الاستشفاء الأم والطفل
نواكشوط

RAPPORT MEDICAL

En réponse à la réquisition N° [redacted] du [redacted]/2018, je soussigne
Dr [redacted] certifie avoir examiné ce jour le [redacted]/2018
cette fille [redacted] âgée de 14 ans victime d'une violence sexuelle

EXAMEN PHYSIQUE

Pas de signe violence
Pas d'ecchymose
Pas de spermes
Pas de saignement
Hymen intact mais laissant passage au petit doigt

EXAMEN DEMANDE

- > AG-HBS NEGATIF
- > HIV NEGATIF
- > B-HCG PLASMATIQUE NEGATIF



Appendix IV. Police Referral for Medical Examination of a Woman who Reported Being Raped

REPUBLIQUE ISLAMIQUE DE MAURITANIE
MINISTÈRE DE L' INTERIEUR ET DE LA DECENTRALISATION
DIRECTION GENERALE DE LA SURETE NATIONALE
DIRECTION REGIONALE SURETE DE NOUAKCHOTT

Honneur Fraternité Justice

COMMISSARIAT DE POLICE DE SEBKHA 1

N°...11/.....

REQUISITION A MEDECIN

L'an Deux Mil.....
Et le.....
Nous.....
Commissaire de police de la ville de..... Officier de police
Judiciaire ; Auxiliaire de Monsieur le Procureur de la République

Vu les articles 141 à 150 du Code Pénal
Requérons Monsieur.....
Pour serment préalablement prêté entre nos mains ; précéder à l'examen des
blessures et contusions
de.....
Victime de.....

Et nous faire honneur et conscience son rapport écrit sur la nature des
blessures ; sur la durée probable de l'incapacité de travail et le danger que peut
courir la vie du blessé.

Fait à le.....

LE COMMISSAIRE DE POLICE



Appendix V. Court Order Placing a Girl Accused of *Zina* under Judicial Supervision

الجمهورية الإسلامية الموريتانية
محكمة ولاية انواكشوط الغربية
ديوان الرابع للتحقيق
المكلف بجرائم القصر

شرف - إخاء - عدل
رقم النيابة: 2016 / [REDACTED]
رقم التحقيق: 2016 / [REDACTED]
رقم محضر الضبطية: [REDACTED]
رقم الأمر: [REDACTED]

أمر بالوضع تحت المراقبة القضائية.

نحن : [REDACTED]
نظرا لإجراءات المتابعة القضائية في الملف ذي الرقم أعلاه ضد:
- [REDACTED] المولودة: 2000 في : انواكشوط ، لأبيها : [REDACTED] ، وأمها : [REDACTED]
جنسيتها: موريتانية ، المهنة : [REDACTED] : قاطن في : [REDACTED] ، الحالة العائلية : غير متزوجة ، السوابق
العدلية [REDACTED]

التهمة : " الزنا " .
الفعل المنصوص والمعاقب علي ارتكابه بالمادة : " 307 " من قانون العقوبات
• حيث : / المتهمّة اعترفت بالزنا
• وحيث : بن المتهمّة مرضع وإيداعها في السجن قد يتضرر منه الرضيع
• وحيث : ان الاجراء الأنسب للمتهمّة الوضع تحت المراقبة القضائية
لهذه الأسباب:

وتأسيسا على المادة 123 ، 124 ، وما بعدها في بابها من قانون الاجراءات الجنائية ، والمادة
113 ، 115 ، 118 ، 140 ، من ق ح ج ط ، والمادة 9 من مرسوم 69/2009 المتضمن الاجراءات
البديلة لحبس القصر
فإننا نأمر : أولا : بوضع المتهمّة - [REDACTED] - تحت المراقبة القضائية والالتزام بالتدابير التالية

- الحضور إلى المفوضية الخاصة بالقصر بنواكشوط الغربية كل خمسة عشر يوما ابتداء من يوم الخميس .
 - أن لا تخرج من حدود مدينة انواكشوط إلا بإذن من قاضي التحقيق .
 - استلام وثائقها الرسمية مقابل وصل
 - الاستجابة للإستدعاءات الموجهة إليهم من طرف السلطة المذكورة أعلاه
 - عدم التردد على الاماكن المشبوهة .
- ثانيا : تكليف ضابط الشرطة القضائية بمفوضية القصر / انواكشوط الغربية بمتابعة تنفيذ المتهمّة بتلك الالتزامات وموافاتها بنتائج ذلك طبقا للمادة 134 من قانون الاجراءات الجنائية .
و ثالثا : نأمر بتبليغ هذا الأمر إلى السيد وكيل الجمهورية
حرر بمكتبنا بتاريخ : [REDACTED] / [REDACTED] / 2017 / قصر العدل / انواكشوط الغربية



“They Told Me to Keep Quiet”

Obstacles to Justice and Remedy for Sexual Assault Survivors in Mauritania

Women and girls who report rape incidents to the Mauritanian authorities risk being prosecuted for engaging in sexual relations outside marriage (zina) and must navigate a dysfunctional system that discourages survivors from making complaints, can lead to re-traumatization or punishment, and provides inadequate victim-support services.

“*They Told Me to Keep Quiet*” finds that survivors of rape and sexual assault must confront police and judicial investigative procedures that are not gender-responsive, do not ensure privacy or confidentiality, and can turn into a probe of the moral character of the complainant. Lack of forensic expertise and of standardized evidence collection protocols for law enforcement and health professionals can weaken a survivor’s case in court. Most public hospitals offer limited emergency care, and often refuse medical examinations of survivors without a police referral. Rape survivors who become pregnant are not allowed to obtain an abortion, as Mauritanian law prohibits abortions except when the mother’s health is at risk.

The government has failed to create or fund shelters offering accommodation options to survivors who want, or are forced, to leave their home. Mauritanian law does not adequately define and criminalize sexual violence.

Human Rights Watch calls on the Mauritanian government to stop prosecuting and detaining people for zina, to decriminalize the offense, and release anyone being held under those charges. The government should move to amend and adopt a draft law on gender-based violence that is pending before parliament to include a comprehensive definition of the offense of rape, criminalization of all other forms of sexual violence, training of law enforcement and health professionals, creation of short and long-term shelters, and allocation of funding to carry out those reforms.



Rape survivors, NGO leaders, and activists supporting women’s and girls’ rights in Mauritania, Nouakchott, 2018.

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