



**GLOBAL
DETENTION
PROJECT**

ASGI

Associazione
per gli Studi Giuridici
sull'Immigrazione

MAURITANIA

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW, 37th
SESSION OF THE UPR WORKING GROUP,
JANUARY/FEBRUARY 2021

IMMIGRATION DETENTION

Joint submission from:

Global Detention Project (GDP)

1-3 rue de Varembé,
1202 Geneva,

W: www.globaldetentionproject.org
E: admin@globaldetentionproject.org
T: +41 (0) 22 548 14 01

**Association for Juridical Studies on
Immigration (ASGI)**

Via S. Gerdil n. 7,

10152, Torino, Italy

W: <https://www.asgi.it/>
E: sciabacaoruka@asgi.it
T: +39 3894988460

ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

ABOUT THE ASSOCIATION FOR JURIDICAL STUDIES ON IMMIGRATION

The Association for Juridical Studies on Immigration (ASGI) is a membership-based association focusing on all legal aspects of immigration. Its "Sciabaca" project aims to respond to policies at the national, European and international levels restricting freedom of movement and the right to asylum. The main goal is to provide highly specialized tools, useful for the proposition of strategic litigation before domestic, European and International courts.

MAURITANIA

Submission to the Universal Periodic Review 37th Session of the UPR Working Group, January/February 2021

Immigration detention

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

The Association for Juridical Studies on Immigration (ASGI) is a membership-based association focusing on all legal aspects of immigration. Its “Sciabaca” project aims to respond to policies at the national, European, and international levels restricting freedom of movement and the right to asylum. The main goal is to provide highly specialised tools, useful for the proposition of strategic litigation before domestic, European, and International courts.

This submission focuses on human rights concerns relating to Mauritania’s policies concerning the detention of refugees, asylum seekers, and migrants.

1. CONTEXT

1.1 Situated astride an important migration route, Mauritania has traditionally been a transit country for migrants attempting to reach Europe. The country has seen large numbers of migrants and asylum seekers transiting in order to make the perilous journey to Spain’s Canary Islands, often from the port city of Nouadhibou. In recent years, the numbers attempting the journey have dropped—in large part due to stepped up monitoring operations along the coast—however in the past 12 months the numbers attempting the journey have reportedly risen. In January 2020, arrivals in the Spanish Canary Islands were reported to be 18 times higher than in January 2019—an increase that has been attributed to the tightening of Morocco’s borders. Many of these arrivals appear to have made the journey from Mauritania.¹

1.2 As of May 2020, Mauritania also hosted some 63,213 refugees—the majority of whom are from neighbouring Mali, displaced by the political, institutional, and security

crisis and many of whom now live in Mbera refugee camp in the south-east of the country.² Importantly, despite its at times welcoming posture towards refugees, Mauritania has not yet adopted an organic national asylum law (a draft law has been pending since 2014)—a fact that monitoring bodies and external observers have urged the country to address.

1.3 Since the 2000s, the country has come under significant pressure from the EU—and in particular Spain—to combat irregular flows by reinforcing external border control policies, gaining it a reputation as the “testing ground for European policies of migration.”³ In July 2003, Spain and Mauritania signed an Agreement on Immigration. Under the agreement, Spain can request that Mauritania readmit not only Mauritanian migrants but also migrants from third countries.⁴ According to Article IX of the agreement, Mauritania agrees to accept nationals from third countries who have not fulfilled immigration requirements and are “presumed” to have transited Mauritania en route to Spain.

1.4 In March 2006, Mauritania signed an additional agreement with Spain to conduct joint surveillance operations along the Mauritanian coast.⁵ As part of the agreement, Spain sent four naval boats, a helicopter, and 20 specially trained civil guards (*guardia civil*) to help the Mauritanian authorities patrol the coast and conduct interdiction operations at sea⁶.

1.5 Such efforts have been paralleled by the presence of the EU External Border Agency (Frontex), which since 2006 has reinforced its work in West Africa through its *Hera* operation,⁷ developed at the request of Spain. The operation seeks to limit irregular migration flows from west African countries, including Mauritania, to the Canary Islands. The operation’s scope is twofold: on the one hand, it supports the readmission of third country nationals from the Canary Islands to West African countries with which Spain signed readmission agreements, including Mauritania; on the other, it carries out joint sea patrols in cooperation with Mauritanian and Senegalese authorities to prevent boats from leaving these countries’ shores or continuing their journey towards the Canary Islands.⁸

1.6 Alongside efforts to block irregular migration flows, in 2006 Spain’s Agency for International Development Cooperation provided assistance to Mauritania to set up the country’s first dedicated detention centre for unauthorised migrants—a facility that appeared to lack an official name but which some detainees nicknamed “El Guantanamito.”⁹ Located in Nouadhibou, the centre—which the Global Detention Project categorises as an ad hoc facility because it operated without any apparent legal mandate—was opened in 2006 in a former school in which classrooms were fitted with bunk beds and transformed into detention cells. The facility was intended to confine non-nationals—who authorities claim intend to make the journey to Spain—prior to their expulsion from the country.

1.7 However, the detention of persons on the grounds that they plan to depart the country irregularly lacks legal basis: Mauritanian legislation does not criminalise attempts to leave the country illegally. The only reference to the departure of non-

nationals in Mauritanian law is provided in the Aliens Act, which provides that foreign nationals who wish to leave the country must present identification documents to the authorities at exit points. Yet, according to Mauritanian authorities, the police are authorised to apprehend people caught attempting to embark clandestinely by sea.¹⁰

1.8 During removal processes, non-nationals are offered no opportunity to appeal their expulsion as, reportedly, Mauritania's policy is to remove migrants as quickly as possible to Mali or Senegal. As well as the expulsion of migrants apprehended in the Nouadhibou region, others are also expelled from Nouakchott upon their return by Spain to the country from the Canary Islands, within the framework of the 2003 agreement between Spain and Mauritania, and supported by Frontex.¹¹ Moreover, in 2019 reports of round-ups and forced expulsions of Malian migrants emerged.¹²

1.9 Shortly after its opening, the Nouadhibou facility became the subject of intense criticism. In 2008, Amnesty International reported allegations of abuse and theft by security forces during arrest; the arbitrary arrest of non-nationals who were not making plans to try to reach Europe irregularly; overcrowded detention conditions and "deplorable hygiene conditions"; the confinement of children alongside unrelated adults; beatings by guards; and a lack of access to legal redress or right of appeal. Due to the lack of legal oversight of the centre, it was also reported that there was no limit to the duration of detention, which may extend from one or two days to a week or more, until the police are able to organise transport to remove the migrants.¹³

1.10 Since then, however, very little information has been made publicly available regarding the operating status—and conditions inside—the facility. Questions have also arisen regarding who controls the facility. Officially, the Mauritanian National Security Service appeared to manage the centre, yet in 2008 officials stated that Mauritanian authorities performed their jobs at the express request of the Spanish government.¹⁴

1.11 The question of jurisdiction with respect to Spain's activities in Mauritania was addressed in the UN CAT's *Marine I* Case, which involved a different *ad hoc* detention facility—this one located in an abandoned fish-processing facility in Nouadhibou—used by Spain after it aided passengers aboard a smuggling boat that had lost power in international waters off the coast of West Africa in 2007.¹⁵ While the UN CAT ultimately ruled that the case itself was inadmissible because the complainant, a Spanish citizen working for a human rights NGO, did not have standing, it nevertheless rejected claims by Spain that the incidents covered in the case occurred outside Spanish territory. Citing its General Comment No.2., which provides that a state's jurisdiction includes any territory where it exercises effective control, the Committee found that Spain: "[M]aintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place in Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant *de facto* control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the

present communication is concerned.”¹⁶

1.12 Despite the lack of information regarding the Nouadhibou facility, it is clear that non-nationals continue to be apprehended and detained in the country. According to the UN Human Rights Committee, refugees and asylum seekers in Mauritania face arbitrary arrest, arbitrary detention, and expulsion,¹⁷ while the UN Committee on Migrant Workers has reported that migrants and refugees apprehended due to their administrative status are detained in penal establishments alongside ordinary prisoners, and that female migrants are often detained in police or gendarmerie stations that are supervised by male guards.¹⁸

1.13 Decree 65.046 of 1965 provides penalties for violating immigration norms. Article 1 provides for a fine between 10,000–300,000 francs and two to six months’ imprisonment for, *inter alia*, entering or remaining in Mauritania in violation of immigration law. Articles 2 and 3 provide for up to one year’s imprisonment for using or providing false identity documents. Many current immigration and detention practices are established in a 2005 government decree on refugees as well as in the two agreements signed with Spain. Under the 2005 degree, which incorporated refugees’ rights into domestic law and established asylum application procedures, Mauritania can only expel refugees for security reasons. In addition, the decree states that refugees are allowed to travel abroad with travel permits.

1.14 Mauritania has not made significant efforts to eliminate trafficking, and at present no system is in place to screen and identify victims of trafficking amongst immigration detainees. In 2018, the country’s Ministry of Interior deported 5,091 foreign nationals to their countries of origin without screening for any trafficking indicators.¹⁹

2. RECOMMENDATIONS DURING THE 2ND CYCLE OF UPR

2.1 During the 2nd cycle of the Universal Periodic Review of Mauritania (23rd session, November 2015), several state recommendations relevant to the country’s immigration detention practices were accepted by Mauritania.²⁰ These included the following:

- Ensure that the recently established national prevention mechanism receives the necessary resources to conduct its work (Australia) (para. 126.7)
- Adopt a law on the National Preventive Mechanism and enact it as soon as possible (Slovenia) (para. 126.8)
- Urgently accelerate the establishment of a national mechanism to combat torture, as well as guarantee its independence and the availability of the necessary resources to enable it to perform its functions (Kuwait) (para. 126.9)
- Finalise the implementation of a national preventive mechanism against torture (France) (para 126.10)

- Establish an independent body with the mandate to conduct investigations into any acts of torture and the ill-treatment of all persons in detention (Ghana) (para. 126.11)
- Take further measures to end the use of torture and other forms of inhuman and degrading treatment, and ensure that allegations of torture, ill-treatment or excessive use of force by police and security forces are investigated, prosecuted and convicted in line with international standards (Sweden) (para 126.35)
- Investigate all allegations of torture and ill-treatment in prisons and places of detention and prosecute persons responsible (Slovenia) (para. 126.37)
- and efforts in combating human trafficking (Ethiopia) (para. 126.56)
- Continue and strengthen its efforts in implementing the action plan to combat trafficking in persons so that all perpetrators of trafficking in persons are brought to justice and victims are provided with adequate protection and rehabilitation (Indonesia) (para. 126.58)

3. RECOMMENDATIONS FROM OTHER HUMAN RIGHTS BODIES AND CURRENT CONCERNS

- 3.1** Since Mauritania's second review, several human rights monitoring bodies have continued to identify a number of on-going concerns in Mauritania's treatment of non-nationals.
- 3.2** In 2016, the UN Committee on the Protection of All Migrant Workers and Members of Their Families recommended that Mauritania refrain from detaining migrants for infringing migration legislation other than in exceptional cases and as a measure of last resort, and to ensure that immigration detainees are segregated from ordinary offenders. The committee also urged Mauritania to ensure that female detainees are held separately to men, and that children are separated from unrelated adults. With regards to victims of trafficking, the committee recommended that authorities improve the training of police officers and border guards, amongst others, regarding means of combatting trafficking, and to provide protection and assistance to all victims of trafficking.²¹
- 3.3** In its 2018 Concluding Observations, the UN Committee on the Elimination of Racial Discrimination recommended that Mauritania expedite the adoption of the bill on the right to asylum, and to ensure that it meets international standards.²²
- 3.4** The call to adopt the bill on asylum was reiterated in 2019 by the UN Human Rights Committee, when it emphasised the need to facilitate access to refugee status determination processes that guarantee fairness and transparency and to enable the establishment of procedures to ensure that the principle of non-refoulement is respected. Further, the committee recommended that the country guarantee that "all detainees, whatever the charges brought against them, benefit from the fundamental legal safeguards provided under Act No.2015-033, from the outset of their deprivation of liberty, and ensure that penalties are imposed for non-compliance with this obligation."²³

3.5 Calls to protect asylum seeking, refugee, and migrant children were made by the UN Committee on the Rights of the Child in 2018. Noting that such children were being detained for immigration-related purposes, the committee recommended that Mauritania prohibit the detention of children, and to expedite the adoption of the draft asylum law to facilitate the access of asylum-seeking children to fair, efficient, and child-sensitive asylum procedures.²⁴

3.6 In addition to these concerns, the GDP and ASGI have identified the following on-going issues that may merit attention:

- The detention of persons on the grounds that they plan to depart the country irregularly lacks any legal basis.
- With no screening in place, victims of trafficking are vulnerable to detention and deportation.
- Conditions in detention—in both the country’s dedicated immigration detention facility, as well as in penal establishments—are substandard and marred by allegations of abuse, and detainees have poor access to procedural standards.
- Lack of clarity concerning the operating status of the Nouadhibou detention facility, and—given Spain’s externalisation policies within Mauritania (supported by Frontex), and in light of the UN CAT’s Marine I Case—uncertainty regarding under whose jurisdiction the facility falls.

SUGGESTED RECOMMENDATIONS

- To cease the arbitrary detention of non-nationals.
- To ensure that detention is only used as a last resort, when it is necessary and proportionate.
- To set a maximum time limit for detention.
- To avoid the immigration detention of children.
- To ensure that the rights of women are respected during detention.
- To ensure that victims of trafficking are protected by ensuring proactive screening is in place.
- To cease detention of refugees and, instead, ensure their protection by adopting asylum legislation.
- To ensure that no refugees are expelled in violation of the non-refoulement principle.
- To cease forced expulsions, and to provide non-nationals with the opportunity to appeal expulsion orders.
- To clarify the conditions and facilities in which non-nationals are held.
- To clarify under whose jurisdiction the Nouadhibou detention facility lies.

- To provide information on the operating status of Nouadhibou detention facility.
- To provide information on any other facilities that may be in use for immigration-related detention.
- To provide disaggregated data detailing the number of non-nationals detained for infringing migration law.
- To ensure systematic judicial review of detention orders.
- To investigate allegations of torture in places of detention and prosecute those responsible.

ENDNOTES

¹ Interior Ministry, “*Inmigración Irregular 2020*,” 2020, <https://bit.ly/3f8BSXn>; InfoMigrants, “Migrant Arrivals Increase in Spain’s Canary Islands,” 15 February 2020, <https://bit.ly/2BSgs2k>; InfoMigrants, “*Aux Canaries, les migrants face à la menace d’un renvoi en Mauritanie*,” 6 February 2020, <https://bit.ly/3ed1dOD>

² UNHCR, “Operational Portal: Refugee Situations – Mauritania,” 2020, <https://bit.ly/2O5YL1K>

³ F. Poutignat and J. Streiff-Fénart, “Migration Policy Development in Mauritania: Process, Issues and Actors,” *HAL*, October 2019, <https://halshs.archives-ouvertes.fr/halshs-00962124v2/document>

⁴ Acuerdo entre el Reino de España y la República Islámica de Mauritania en materia de inmigración, <https://www.boe.es/boe/dias/2003/08/04/pdfs/A30050-30053.pdf>

⁵ Amnesty International, “Mauritania: Nobody Wants to Have Anything To Do With Us.” Arrests and Collective Expulsions of Migrants Denied Entry Into Europe,” 2008, <https://www.amnesty.org/en/documents/AFR38/001/2008/en/>

-
- ⁶ Amnesty International, "Mauritania: Nobody Wants to Have Anything To Do With Us." Arrests and Collective Expulsions of Migrants Denied Entry Into Europe," 2008, <https://www.amnesty.org/en/documents/AFR38/001/2008/en/>
- ⁷ Frontex, "News Release - Longest FRONTEX Coordinated Operation – HERA, the Canary Islands," 2006, <https://bit.ly/2ZV3hFV>
- ⁸ Statewatch, "Analysis: Opaque and Unaccountable: Frontex Operation Hera," 2017, <https://www.statewatch.org/media/documents/analyses/no-307-frontex-operation-hera.pdf>
- ⁹ M. Flynn, "There and Back Again: On the Diffusion of Immigration Detention," *Journal on Migration and Human Security*, Vol. 2, N°3 (2014), <https://journals.sagepub.com/doi/pdf/10.1177/233150241400200302>
- ¹⁰ Global Detention Project, "Immigration Detention in Mauritania – 2010 Report," February 2010, <https://www.globaldetentionproject.org/countries/africa/mauritania>
- ¹¹ InfoMigrants, "Back to Mauritania: Frontex Repatriates Migrants Arriving on Canary Islands," 2 February 2020, <https://bit.ly/2W0JZxK>
- ¹² RFI, "*Mauritanie: expulsions de migrants maliens sans titre de séjour*," 22 April 2019, <https://bit.ly/38NfAYY>
- ¹³ Amnesty International, "Mauritania: 'Nobody Wants To Have Anything To Do With Us.' Arrests and Collective Expulsions of Migrants Denied Entry Into Europe," 2008, <https://www.amnesty.org/en/documents/AFR38/001/2008/en/>
- ¹⁴ European Social Watch, "Spain: The Externalisation of Migration and Asylum Policies: The Nouadhibou Detention Centre," 2010, National Report, http://www.socialwatch.org/sites/default/files/ESW2009_spain_eng.pdf
- ¹⁵ UN Committee against Torture (CAT), "J.H.A. v. Spain, no. 323/2007," 21 Nov. 2008, <https://www.refworld.org/cases,CAT,4a939d542.html>
- ¹⁶ UN Committee against Torture (CAT), "J.H.A. v. Spain, no. 323/2007," 21 Nov. 2008, <https://www.refworld.org/cases,CAT,4a939d542.html>
- ¹⁷ UN Human Rights Committee, "Concluding Observations on the Second Periodic Report of Mauritania, CCPR/C/MRT/CO/2," 23 August 2019, <https://bit.ly/2DqBV2P>
- ¹⁸ UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, "Concluding Observations on the Initial Report of Mauritania, CMW/C/MRT/CO/1," 31 May 2016, <https://bit.ly/3gJt7Dk>
- ¹⁹ U.S. Department of State, "2019 Trafficking in Persons Report: Mauritania," 2020, <https://bit.ly/31YE14f>
- ²⁰ UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Mauritania, A/HRC/31/6," 23 December 2015, <https://bit.ly/2VXhp6E>
- ²¹ UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, "Concluding Observations on the Initial Report of Mauritania, CMW/C/MRT/CO/1," 31 May 2016, <https://bit.ly/31ZOGvy>
- ²² UN Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Combined Eighth to Fourteenth Periodic Reports of Mauritania, CERD/C/MRT/CO/8-14," 30 May 2018, <https://bit.ly/2BW4WCW>
- ²³ UN Human Rights Committee, "Concluding Observations on the Second Periodic Report of Mauritania, CCPR/C/MRT/CO/2," 23 August 2019, <https://bit.ly/2BSgrvj>
- ²⁴ UN Committee on the Rights of the Child, "Concluding Observations on the Third to Fifth Periodic Reports of Mauritania, CRC/C/MRT/CO/3-5," 26 November 2018, <https://bit.ly/3fgQTXk>