

## Slavery and Criminal Law in Some Modern Islamic Countries: A Survey

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**Abstract:** Slavery is often considered as a phenomenon of the past: people are reluctant to admit that still today, all over the world, it is possible to observe a number of behaviours that are in all respects ascribable to slavery. This paper discusses the idea of slavery and criminal law in some modern Islamic countries. This paper highlights different approaches taken by Islamic countries in dealing with the issue of slavery.

**Key words:** Slavery • Criminal law • Islamic countries • Geneva convention • Islamic law

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### INTRODUCTION

What marks the difference between slavery in ancient times and today is the general attitude of the law towards this institute: in the past, i.e. until the abolitionist World Wide campaign launched by Great Britain<sup>1</sup> at the beginning of XIX century, slavery was generally accepted in almost every culture as one of the ways to provide workforce for domestic as well as industrial or agricultural activities: there were markets to sell and buy human beings, there were rules related to their (possible) manumission and slavery was considered a legal institute among others, perhaps widespread in different manners (continental Europe was not like the USA, Islamic world was not like Far East countries), but, in general, accepted and recognized.

The abolitionist campaign first and, later, the international Conventions have, on the contrary, underlined the deep inhuman dimension of slavery, its being a condition incompatible with the concept of human dignity and, of course, with freedom “as a birthright of every human being”<sup>2</sup>.

But what do we mean when we speak about slavery?

**Status of Slavery:** The 1926 Geneva Convention against Slavery states that “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (art. 1). The emphasis on the concept of property marks the distinction between slavery and other forms of exploitation of a man by another man and it is what, in the dictionaries, characterizes the meaning of the word slave. In fact, in Arabic the concept of slavery is expressed by the Qur’anic phrase *mā malakat aymanukum* (-hum), “that which your (their) right hands possess”. Another passage of the Qur’an (XVI, 75) refers to the *‘abd<sup>m</sup> mamlûk<sup>m</sup>* who, according to Brunschvig, «is to be regarded in the light of [the quoted] formula: it should properly be rendered “a slave, who is (himself) a piece of property”» [1]. In the Oxford dictionary of English language, a slave is “(especially in the past) a person who is the legal property of another and is forced to obey them”; the same happens in other languages so that we can argue that there is a general understanding on the meaning of the term: this is

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<sup>1</sup>“Britain was at the centre of a great network of treaties which made her, as far as the slave trade went, the undisputed policeman of the high seas. No other nation had such far-reaching powers, or for that matter had assumed such responsibilities”; Miers R., *The end of slavery in Africa*, Madison, 1988, pp. 15. And, even though, as Brunschvig [Brunschvig, R., s.v. «‘abd», *Encyclopaedia of Islam*, vol. I, pp. 24-40, p. 36] states, “She may be accused of having more than once let her maritime and colonial interests dictate her interventionary zeal or, on other occasions, the mildness of her actions. Yet, when all is said, she stands out as a great pioneer of abolition over the whole surface of the earth, including the lands of Islam”.

<sup>2</sup>First ‘Considering’ of the Preamble of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

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important because, as we will see, in some cases the legislator gives provisions on slavery without properly defining the conduct and, as a consequence, we must deduce the exact object of the rule through the mere use of the word slave/slavery.

After defining what is slavery, the 1926 Geneva Convention sets its aims in: on one side “to prevent and suppress the slave trade”; on the other side “to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”. The Convention urges Member States to “adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves”. The Supplementary Slavery Convention of 1956 binds “States Parties to this Convention [to] take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of” not only slavery as defined by art. 1 Conv. 1926, but also other conducts identified in ‘debt bondage’, ‘serfdom’, ‘any institution or practice’ that allows: the giving of an unmarried woman, against her will, as a bride on payment of a consideration; the selling of a married woman; the acquisition *mortis causa* of a married woman and, finally, ‘any institution or practice’ that results in the deliverance of a person under 18 years of age “with a view to the exploitation of [...] the person or of its labour”.

It must be noted that none of the two Conventions expressly impose on States the duty to criminalize the slave conduct. In other words, the State parties are obliged to abolish the slavery as a ‘legal’ institute, i.e. an institute regulated by the law, but they are not obliged to adopt criminal dispositions against it, as it is also demonstrated by the fact that both the Conventions do not envisage any kind of State responsibility arising from the non-implementation of their dispositions.

At the distance of almost 90 years from the Convention of 1926, slavery has been abolished almost everywhere as an authorized or legal condition of a human

being, but, at the same time, it still exists, *de facto* if not *de jure*: almost everywhere, in Europe, in Asia, in America and Africa it is possible to observe situations where people is obliged to work, or is exploited in plenty of forms that are ‘new’ only because each of them has now a specific name: ‘sexual slavery’, ‘forced labour’, ‘child abuse’, ‘domestic servant’ etc., all these terms referring to illegal practices that are, or should be, fought by the States.

As Botte [2] observes, the law is able to abolish a certain juridical statute but not to get rid of the conditions that, under any sky and on any land, make possible to earn a profit on the work and the lives of other persons. The cultural environment is therefore crucial to understand the general attitude of a State toward a specific problem: if a society does not recognize a fact as particularly dangerous for the civil coexistence, it is likely that the response of the State will be less resolute in fighting that conduct. That is precisely the purpose of criminal law: to indicate the seriousness and antisocial dimension of a behaviour and punish those who do not respect the prohibition. It must be noted, however, that the absence of a criminal disposition does not mean that the State officially allows a certain behaviour; nevertheless it implies that the State is not able to fight the phenomenon in the proper way, thus resulting unable to offer a true and comprehensive protection to the victim<sup>3</sup> and, at the end, tolerating the misconduct.

**Slavery and the Criminal Law in Islamic World:** It is a well-known fact that slavery has been for centuries an institute recognized and regulated by Islamic law (*sharġa*)<sup>4</sup>: to detain a slave, to buy or sell him, to manumit him were all rights recognized to the owner by the *sharġa*, even though a general favour toward freeing the slave was encouraged by the Law, which considered manumission as a good *kaffġara* (expiation) in cases when a Muslim had committed a sin (or even a crime: *kaffġara* was a duty when it came to involuntary homicide or personal injury).

<sup>3</sup>An important example of this schizophrenic behaviour of the State can be seen in the case of torture. Despite the existence of an International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that obliges Each State party to take effective legislative, administrative, judicial or other measures to prevent acts of torture; and although the prohibition against torture must be considered as absolute and must be upheld also in a state of war and in other exceptional circumstances (article 2); and notwithstanding that Each State party shall ensure that acts of torture are serious criminal offences within its legal system (article 4); countries like Italy and USA still don’t have a serious rule against torture, which explains the occurrence of serious incidents brought to the attention of the public by the press but difficult to be dealt with by the juridical system.

<sup>4</sup>For a first and general introduction to the concept of slavery under the Islamic law, see Brunschvig, R., s.v. ‘abd’, Encyclopaedia of Islam, vol. I, pp. 24-40. See also Abu Ilyġss Muhammad Diakho, 2004. L’esclavage en Islġm: entre les traditions arabes et les principes de l’Islġm, Paris, Albouraq.

Despite the social and economic relevance of slavery in the Islamic law, the process of abolition has affected the Islamic world almost since the beginning of the abolitionist campaign guided by Great Britain<sup>5</sup>. As Brunschvig[1] underlines, «As early as 1830, the Ottoman sultan had enfranchised *en bloc* those white slaves of Christian origin who remained true to their religion, while expressly keeping the Muslims in slavery. [...] To Tunisia [in 1846] belongs the honour of having been the first to promulgate a general edict of emancipation for black slaves (*ipso facto*, of Muslim slaves: there were practically no white slaves in the Regency). [...] The preamble to this decision, which was approved by the two highest dignitaries of the Hanafi and Maliki rites in the country, is worth dwelling on: in it, slavery is declared to be lawful in principle but regrettable in its consequences. Of the three considerations particularized, two are of a religious nature, the third political (*maslaha siyasiyya*): the initial enslaving of the people concerned comes under suspicion of illegality by reason of the present-day expansion of Islam in their countries; masters no longer comply with the rules of good treatment which regulate their rights and shelter them from wrong-doing. It is therefore befitting to avoid the risk of seeing unhappy slaves seeking the protection of foreign authorities. [...] At Istanbul, the first imperial firmans against the slave-trade date from the period of the Tanzimat, under ‘Abd al-Madjid and especially from the years of close understanding with France and Great Britain: Oct. 1854 for the whites, Feb. 1857 for the blacks (a religiously-inspired reservation exempted the Hidjaz from the reform). [...] The Constitution of 1876, guaranteeing the personal liberty of all subjects of the empire remained a dead letter until it was put in force by the Young Turks in 1908. At this time there were only a very few slaves, all of them domestic, in the capital and those provinces under the effective control of the central power».

Therefore history demonstrates that at the eve of XIX century the Islamic world was ready, as well as European nations, to formally cancel slavery as a legal institute [3];

but, was it also ready to make slavery a crime? We will see that the answer changes from state to state, but it is probably due to the fact that slavery “is lawful in principle but regrettable in its consequences” that it is not so easy to find in the criminal codes of Arab-Islamic countries a specific provision against this practice.

We can divide the 57 State members to the Organization of the Islamic Conference (which can, therefore, be considered ‘Islamic’), in three main groups with reference to their attitude toward the criminalization of slavery. The first group, to which belong some Arab States like Morocco, Tunisia, Algeria, Lebanon, Syria, Saudi Arabia, do not foresee any explicit provision against slavery and slave trade. As previously mentioned, such an attitude can become a problem when a slave conduct takes place in the country, because the State is not able to punish it properly and to protect the victim.

To the second group belongs those countries whose criminal laws does not provide for a specific disposition against slavery as such but; nonetheless, they offer other criminal dispositions that can be used (at least partially) to fight some peculiar behaviours that can be traced back to slave practices.

This is the case, for example, of Nigeria and Sudan. The twelve Islamic states of Northern Nigeria [4, 5, 6, 7] have enacted, in the period 1999-2001, new criminal codes based on the *shari‘a* which are all modelled on the code of Zamfara, the first of the Northern Nigeria states to Islamize its criminal system: these codes, while not regulating slavery *strictu sensu*, provide rules for “procurement of minor girls or women”, “importation from outside the state” of girls and women, “buying or selling for immoral purposes” of minor or unsound minded, “unlawful compulsory work” and “traffic in women”<sup>6</sup>. In describing the specific conducts object of regulation, the law insists particularly on the exploitation of the victims, especially referring to sexual use and abuse of girls and women. The law does not consider the slavery as an autonomous crime, nor the trade as an organized practice, the only exception being the provision related to

<sup>5</sup>The first treaties against the slave trade signed by the Great Britain and the Omani dynasty of Al-Bu Saidi date back to 1822 (the so-called Moresby Treaty), while the conventions with Egypt and Ottoman Empire date, respectively, 1877 and 1880 and the treaty with Persia dates 1882.

<sup>6</sup>“Procurement of minor girl or woman”: Whoever, by means of whatsoever, induces any girl or woman to go from any place or to do any act with intent that such girl or woman may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with himself or another person (art. 234); “Importation of girl or woman from any place outside the State”: Whoever imports into the State from any place outside the State any girl or woman with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse (art. 235); “unlawful compulsory labour”: Whoever unlawfully compels any person to labour against the will of that person (art. 238); “traffic in women”: Whoever, in order to gratify the passions of another person, procures, entices or leads away, even with her consent, any woman or girl for immoral purpose (art. 239).

“buying or selling minor or unsound minded person for immoral purpose”, where, however, the attention of the legislator is once again focused only on the sexual purpose of the deal (prostitution and any unlawful or immoral purpose)<sup>7</sup>.

A similar strategy is adopted by the Sudanese criminal code of 1991 whose only disposition of some interest is art. 136 on forced labour stating that: “whoever commits forced labour on any person by unlawfully compelling him to work against his will, shall be punished with imprisonment for a term not exceeding one year or with a fine or with both”. It is obvious that, under a similar article, it’s almost impossible to include the conduct of detaining a person as a property, or the fact of buying and selling a human being as a *res*. It is therefore not surprising that in Sudan [8.9], still today, the human rights observers have traced examples of slave trade regarding mainly the inhabitants of the Darfur region as well as people from the regions of the south, at least until the creation of the new State of South Sudan.

Finally, the Mali penal code of 1961 does not contain an explicit provision regarding slaves and slavery but it places under the headings of “Crimes against persons: illegal detention and kidnapping” the trade of human beings defined as the action of who signs an agreement aimed to alienate, either gratuitously or for a consideration, the freedom of another person; this conduct shall be punished by five to ten years of hard labour (art. 189). Money, goods and other valuables received as execution of the agreement or as a deposit of a future agreement will be confiscated. The same penalty will be applied to the fact of introducing in the Republic of Mali individuals that will constitute the object of the said agreement, or to the fact of removing or attempt to remove individuals of the Republic in order to close abroad the agreement. The penalty is increased (up to twenty years of hard labour) if the person object of the agreement, either inside or outside of Mali, is a child under fifteen years. The economical dimension of the trade is the object of the law, that deals also with the case of people used as a pawn. Art. 190, in fact, states that “Pawning people for whatever reasons is prohibited. It is considered as a pledge any agreement, regardless of its form, concomitant to marriage and relating to the fate of offspring of this marriage. The punishment for the convict is the imprisonment from six months to two years and a fine”.

A third group of OCI Members is composed of those States that have addressed the issue of slavery openly, like Turkey, Pakistan, Somali and Mauritania. The palm of the best result in the criminalization of slavery goes to Turkey whose new penal code, enacted on 2004, deems the issue of slavery in the light of the international Conventions to which Turkey is part and among which must be counted also those promoted by the Council of Europe. As a consequence, in Turkey “forcing a person to live as a slave” is considered an international offence and, specifically, an offence against humanity: (art. 77, al. 1, c) and the convict will be sentenced to imprisonment for not less than eight years. The code, in the same chapter, rules also the human trade, stating that “Persons who provide, kidnap or shelter or transfer a person (s) from one place to another unlawfully and by force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of control power on helpless persons in order to force them to work or serve for others or to send them away where he is treated almost like a slave, are sentenced to imprisonment from eight years to twelve years and punished with punitive fine up to ten thousand days” (art. 80, al. 1). It is worth noting that in the Turkish penal system slavery is considered an odious crime, qualified among those against humanity and, as such, an international crime: such a classification allows Turkey to offer a wide protection to the victim and to eventually prosecute the crime even if committed in a third country.

The wording used by the law reflects the intensity of the protection offered by the state and also the scale of importance assigned to each conduct; under this point of view, it is interesting to observe the criminal dispositions against slavery contained in the Pakistan penal code. It must be remembered, in fact, that the actual Pakistan was once part of the British Empire together with India: the British drawn up a penal code for the colonies in 1860 and this is the code that, although amended several times in the past 150 years, is still in force in the country. The code clearly reflects the British mentality of the time: even though it lacks of a general disposition that defines the conduct of slavery in modern terms, the code provides that “Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description [with or

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<sup>7</sup>“Buying or selling minor or unsound minded person for immoral purpose”: Whoever buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person under the age of fifteen years or any person of unsound mind, with intent that such person shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose (art. 237).

without forced labour] for a term which may extend to seven years and shall also be liable to fine” (art. 370). The punishment is most severe for those who *habitually* deal in slave: “Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, shall also be liable to fine” (art. 371). As it can be seen, the attention of the law is mainly directed toward the trade of people, being the condemnation of slavery *per se* a mere consequence, albeit worthy of note, of the prohibition of human trafficking. The Pakistan penal code contains a further provision that addresses a specific customary practice spread in the country and that results in true slave practice: the new formulation of art. 310<sup>8</sup> on the compounding of *qisās* (retaliation) in case on involuntary homicide provides that “a female shall not be given in marriage or *otherwise* in *badal-i-sulh*”. This provision became necessary because the customary law (followed by a large part of the Pakistan population despite the existence of a statute law in the country) allows the giving of a woman belonging to the convict’s family as *badl-i-sulh* (composition) for the crime of homicide. The woman, often a very young girl, can be offered as a wife (but without giving her the *mahr*, the nuptial gift paid by the groom to the bride) or, as usually happens, as a domestic slave: she has no rights and no protection against the abuses (sexual and not) to which she is exposed. It must be noted that this form of composition is in contrast with the principle of personal responsibility for criminal offences clearly affirmed by the *sharīa*, violates the rights of the women as recognized by the *sharīa* and represents also a good example of exploitation of a human being as defined by the 1956 Supplementary Convention. It is therefore more than welcome that the Pakistani legislator, in the view of the islamization of the criminal system, has taken the opportunity to provide a sanction against the giving of a woman as *badal-i-sulh*, hopefully a first step toward the eradication of this custom.

Once a territory deeply involved in the trafficking of human beings and today still under observation because the internal situation of the State facilitate a lot of criminal affairs (including slavery), Somalia is potentially a virtuous state in the field of anti-slavery policy once the process of peace-building will succeed<sup>9</sup>. If we look at the laws enacted before the long war season, we can observe that both the constitution of 1960 and the criminal code of 1962 (currently not in force in the country) provide rules against slavery: in particular, article 17 of the 1960 constitution ruled on personal liberty, stating that subjection to any form of slavery or servitude shall be punishable as a crime; as far as I know, this is the only case (at least among Islamic countries) in which a constitutional provision not only declares illegal slavery, but also bind the State to determine a penal sanction for those who practice it. Obeying to this provision, the penal code of 1962 dedicates 4 articles to the issue, starting with the ‘dealing and trading in slaves’ that is punished with imprisonment from five to twenty years (art. 456). And since slavery is fought not only under the profile of trade but as a comprehensive phenomenon, the code criminalize also the ‘ordinary’ sale and purchase as well as the detention of slaves, so that whoever, other than in the cases referred to article 456, disposes of or transfer a person who is in a state of slavery or in a similar condition, or takes possession of or purchases or holds such person in such state shall be punished with imprisonment from three to twelve years (art. 457). All these crimes are punished even when the act is committed abroad to the prejudice of a Somali national, provided that the offender is within the territory of the state when criminal proceedings are initiated (art. 459).

A similar approach is adopted by the Yemeni criminal code of 1994, whose art. 248 forbids (and punishes with reclusion not exceeding ten years) the buying, selling, giving and dealing in any way on a human being.

Last but not least comes Mauritania<sup>10</sup>, known as the last country in the world in which a slave society has

<sup>8</sup>Amended in 1990 with the *Qisas and diya ordinance*.

<sup>9</sup>Currently Somalia is still a ‘failed state’ and, even though there are signs of a peace process (and the election on August of a new President of the Republic seems to certify the will for a new beginning), the government is not yet able to control the country and, what is more important, to administer the justice and provide for the rule of law

<sup>10</sup>On slavery in Mauritania see: Blanc, F.-P., 2000. L’esclavage à la lumière de la jurisprudence de la Cour suprême de Mauritanie. In *Les droits de l’homme et le suffrage universel. 1848-1948-1998*, Eds. Chianéa, G. and J.L. Chabot. Paris, L’Harmattan: pp: 355-362. Ould Ahmed Salem, Z., 2003. *Droit du statut personnel et équivalence citoyenne en République islamique de Mauritanie*. La Pensée, 336: pp. 37-53. Ruf, U. P., 1999. *Ending Slavery. Hierarchy, Dependency and Gender in Central Mauritania*, Bielefeld, Transcrit Verlag. Amnesty International, 2003. *Mauritanie: un avenir sans esclavage ?* Paris, Amnesty international. Villasante-de Beauvais, M., 2000. *Groupes serviles au Sahara : approche comparative a’ partir du cas des arabophones de Mauritanie*. Paris, CNRS. El-Arby Ould Saleck, 2003. *Les Haratins : le paysage politique mauritanien*. Paris, L’Harmattan. Lydon, G., 2005. *Slavery, exchange and Islamic law: a glimpse from the archives of Mali and Mauritania*. In: *African Economic History*, 33: 117-148.

survived until today. Although the political authorities deny the existence of slave practices in the country, plenty of reports and studies have demonstrated that slavery is still alive, being not a hidden phenomenon but an open hair practice that regard a particular social group, the haratin (also known as Black Moors).

The first attempt to end slavery in the country dates back to 1905, when Mauritania was under the French colonial rule, but it did not succeed for the policy was not strong enough to overrule a ancient and well rooted institute. For the next 75 years nothing happened even if, especially from the adoption by UN of the Supplementary Convention of 1956, Mauritania has been under special surveillance for the slave issue. Then in 1981 the government enacted the ordinance 81-234 on the Abolition of slavery whose article 1 provides that "Slavery in all its forms is definitely abolished throughout the territory of the Islamic Republic of Mauritania". Since the State was aware of the possible problems to be faced in the process of abolition, it ruled also that "in keeping with the *sharfa* law, this abolition will imply a payment of compensation to those entitled to such" (Article 2).

This is a key point: who are the persons entitled to the compensation? One can imagine that the ordinance is speaking about slaves: it is duty of the State to compensate them because it is its fault not having fight the slavery and having permitted and protected the continuation of it. On the contrary, the ordinance makes reference to the masters: the State must find a way to convince them to give up their rights of ownership and, according to the legislator, the only Islamic way to do it is to pay a compensation. Therefore another question arises: who must pay it? The *sharfa* states that manumission of a slave can be achieved by a unilateral decision of the master (without any consideration) or through a bilateral agreement between the master and the slave, in which case the slave has to pay for its own freedom a ransom. Is it reasonable, today, to imagine that the violation of a fundamental human right can result, for the person who has committed the violation (the master), in a gain, moreover paid by the victim (i.e. the slave)? It can be answered that, in an Islamic perspective - as the one

adopted by Mauritania declaring in the Constitution its being an Islamic state - there is no human rights violation, since slavery is permitted and regulated by *sharfa*; the issue, then, becomes another. To be entitled to the compensation, the master has to prove the legitimacy of his 'property': how is he become the owner of another human being? In which market the buying has occurred? And how has happened that a man/woman has become a slave? As a matter of fact, Islamic law admits only two possibilities: slavery by war (prohibited by the Geneva Conventions against slavery and by the 1929 Third Geneva Convention relative to the Treatment of Prisoners of War) and slavery by birth. In this second case, is it possible to trace in the civil laws of the State a legal disposition according to which the offspring of a slave must be considered as such? The State seemed to be unaware of all these problems, because the ordinance only affirms that "a national commission, composed of '*ulamā*', economists and administrators will be instituted by decree to study the modalities of the compensation. These modalities will be fixed by decree once the study is completed" (Article 3)<sup>11</sup>.

The content of the ordinance, even if questionable, remained dead letter: five years later it was a UN mission that confirmed the total absence of any kind of initiative by the authorities to end the slavery; this attitude of the State persisted disrespectfully of all the international campaigns, UN initiatives and activists alarms, until 2007 when the law n. 48 containing rules on the incrimination of slavery and repression of slave practices marked a new step in the history of Mauritania. Article 2 of the law defines slavery as "the exercise of property rights or of a part of them over one or more persons"; slave is defined as the person, male or female, minor or major, over whom are exercised the ownership powers described by the law. The law prohibits to reduce a person in slavery or to incite him/her to alienate his/her freedom or dignity, or that of a person in his charge or in his ward to reduce him/her as a slave; the punishment will be imprisonment of five to ten years and a fine. It is also prohibited and punished with reclusion and a fine the fact of violating the physical integrity of a person alleged slave.

<sup>11</sup>"In July 1980 the government officially abolished slavery. This was followed by a decree in 1981 which specified how this would take place. [...] what is significant about this legal abolition is that it was argued completely in terms of Islam and coincided with the imposition of sharia law [...] the national government invoked the religious reasoning that Islam had always intended to first convert non-believers (slaves) and then manumit them. The only slavery justified within Islam was slavery imposed as a result of jihad. And it was widely (although not unanimously) agreed among Mauritania's ulama (clerical scholarly community) that no slaves held in 1980 could be said to have been obtained in this way. Therefore, there was no justification for their continued enslavement". McDougall, E.A., 2005. Living the legacy of slavery. Between discourse and reality. In: Cahiers d'études africaines, 2005/3, n° 179-180, pp: 957-986, p. 963.

## CONCLUSIONS

This survey has shown a plurality of approaches to the issue of slavery in contemporary criminal law in the Islamic world. The first consideration to be made regards the Mediterranean region; for centuries it has been a key centre in the slave trade: pirates on the sea and slave markets on the land supplied galleys, houses, brothels with people of any race and colour; the Arabs were almost active in the slave trade and the caravan routes from the Black Africa ended often in the marketplace of Maghreb. However, this is also the area where the first radical initiatives against slavery were assumed, as we have seen, by Tunisia in 1846 and few years later by the Ottoman Empire. In the contemporary world, there is a sharp difference in the legal response offered by the States to the issue of slavery: the penal codes of Arab countries show a sort of indifference toward the criminal aspect of slavery. Such an attitude is in deep contrast with the high level protection offered by another great Mediterranean state, Turkey, whose criminal legislation has agreed to the most recent international trends in the field of slavery and human trafficking.

The second consideration regards Africa [10], the continent that has paid the higher price to the slave trade. In this area we have observed on one side the tendency to a legislation that, though not specifically directed against slavery, offers some instruments to contrast at least some of the behaviours that lie behind slavery, i.e. the trade of people. On the other side, the legislation of Somalia and its constitutional provision are interesting examples of what could be done by a country whose past is that of an important slave trade centre. Such an approach, if Somalia will succeed in peace process and will therefore be able to apply and enforce rules that currently exist only in theory, could be in the future compared with that of Mauritania, to see how the formal response of a State toward an issue (in this case: slavery) is welcomed by the society and 'interiorized' by those that until that moment have taken profit and benefits by it.

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