



## Malawi African Association, et al. v. Mauritania

(2000) AHRLR 149 (ACHPR 2000); Communications 54/91, 61/91, 98/93, 164-196/97 and 210/98

**Country:** Mauritania

**Region:** Africa

**Year:** 2000

**Court:** African Commission on Human and Peoples' Rights African Commission on Human and Peoples' Rights

**Health Topics:** Diet and nutrition, Disasters and emergencies, Health care and health services, Prisons, Violence, Water, sanitation and hygiene

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of association, Freedom of expression, Freedom of movement and residence, Right to due process/fair trial, Right to family life, Right to favorable working conditions, Right to food, Right to health, Right to liberty and security of person, Right to life, Right to property, Right to work, Rights to the benefits of culture

### Facts

Six communications jointly alleged that the Mauritanian state committed numerous human rights violations from 1986 to 1992. Specifically, the communications alleged that the State violated articles 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 16, 18, 19, and 26 of the African Charter on Human and Peoples' Rights (the Charter), which came into force in Mauritania on 21 October 1986.

The Mauritanian population is composed of Moors and various Black ethnic groups. The communications alleged that Black Mauritians faced institutionalized racial discrimination following a coup d'état. For example, multiple people were arrested for distribution of publications, holding of unauthorized meetings, arson, conspiracy against the government and other political causes. The accused were denied their due process rights. Moreover, the communications also alleged that between 1989-1990, during the Mauritania-Senegal border crisis, black villagers faced daily persecution. Their land and livestock were confiscated. Protesting villagers were beaten, forced to flee, arrested, tortured, or killed. Thousands of black civil servants and armed forces members were arrested without trial, and sent to what communication 96/93 described as "death camps." Hundreds were believed to have died in detention, many as a result of torture; others were executed in extra-judicial killings.

Another communication made allegations about the conditions faced by those detained for political causes and other reasons. For example, it was alleged that presumed members of the Ba'ath Arab Socialist party were arrested for their non-violent political opinions. The accused were held in solitary confinement and denied access to their lawyers until a few days before trial. 13 were convicted before the State Security Section of the Special Tribunal based on statements they claimed were made under duress. The communications also alleged that the detention conditions were terrible; in the Nouakchott prison, detainees saw overcrowded cold cells with poor hygiene conditions, little food and no health care services.

The communications also made allegations about slavery practices. Communication 54/91 alleged that there were over 100,000 Black slaves. Those who were free remain second-class citizens, as many maintained traditional and social links with their former masters. The State asserted that slavery was abolished during the French colonial period. The communications also claimed that the Blacks did not have the right to speak their own language.

The State was notified multiple times about the allegations contained in the communications, which were submitted between 1991 and 1993. The State did not contest the allegations, except in regards to slavery. In 1996, the African Commission on Human and Peoples' Rights sent a delegation to Mauritania, but the State did not respond to its findings.

### Decision and Reasoning

The Commission held that the Mauritanian government violated articles 2 (right to be free of discrimination), 4 (respect for life and integrity of person), 5 (right to the respect of human dignity), 6 (right to liberty and security of person), 7(1) (due process rights), 9(2) (freedom of expression), 10(1) (freedom of association),

11 (freedom of assembly), 12(1) (freedom of movement and residence), 14 (right to property), 16 (right to health), 18(1) (right to family life), and 26 (independence of courts).

The admissibility of the communications was governed by Article 56(6) of the Charter, which stated that complainants must exhaust all local remedies before submitting communications to the Commission. However, the Commission held that in cases of mass human rights violation it was "neither practical nor desirable" for complainants to seek internal remedies for every violation committed. Therefore, the Commission declared the communications admissible in light of the gravity of the human rights situation in Mauritania and its duty to protect the rights stipulated in the Charter.

The Commission held that the State violated Article 2 (right to be free of discrimination), because black Mauritians were forced to flee or were arrested, detained, and killed due to their ethnicity.

The Commission held that the State violated Article 4 (respect for life and integrity of person) on the basis that the execution of three lieutenants in October 1987, the arbitrary executions in 1989 and 1990, and the deaths caused by torture and denial of food and medical attention in detention showed disrespect for life.

The Commission also held that the State violated Article 5 (right to human dignity, prohibition of torture and cruel, inhuman, degrading punishment and treatment) on the basis that the communications showed evidence of the widespread use of torture and cruel, inhuman, and degrading treatment. Article 5 also prohibited exploitation and degradation of humans, especially in slavery. Communications 54/91 and 98/93 alleged that a majority of the population was engaged in slavery and that former slaves were still exploited by their masters. While the government maintained that slavery was abolished during French colonialism, the 1996 mission found that official abolition was not reinforced with effective measures, and that slaves could still be found. The Commission held that Article 5 was violated due to the existence of practices analogous to slavery, but that the evidence was insufficient to conclude that the practice of slavery existed.

The Commission further held that the State violated Article 6 (right to liberty and security of person). The trials listed in the communications were not conducted in accordance with international norms surrounding fair trials. Therefore, the trials and the resulting incarcerations were arbitrary.

The Commission also held that the State violated due process rights elaborated in Article 7(1) of the Charter on the grounds that the State Security Section of the Special Tribunal had no adequate appeal procedure, that decisions in several trials were made based on statements that appeared to have been made under duress, that the accused had no access or restricted access to their lawyers, and that the Special Military Tribunal was composed of military officers who were not necessarily trained in law.

The Commission also held that the State violated Article 9(2) (freedom of expression). The Commission found that the a distributed tract, for which persons had been arrested, contained no incitement to violence, and was therefore protected under international law.

The Commission held that the State violated the freedom of association and the freedom of assembly under Articles 10(1) and 11, respectively. Presumed Baath Arab Socialist Party supporters were charged with belonging to a criminal association, even though the government had not established the criminal nature of the groups. Similarly, the State charged several individual with holding unauthorized meetings, but failed to show how these meetings endangered the national security or the safety, health, ethics, and rights of others.

The Commission found that public officers evicted black Mauritians and deprived them of their citizenship. The State's subsequent efforts to allow the victims to return to Mauritania and regain their citizenship did not annul the violations. Therefore, the Commission held that the State violated Article 12(1) (freedom of movement and residence).

The Commission also found that the State was directly responsible for the health and welfare of detainees. Since some prisoners died as a result of the State's deprivation of food and medical services, the Commission held that the State violated Article 16 (right to health).

The Commission held that the State further violated Article 18(1) (right to family life) by keeping accused in solitary confinement, especially where arbitrary.

The Commission found that while the government itself was not responsible for the conflict between Mauritania and Senegal, it was responsible for protecting the victims. Therefore, the Commission held that the State violated Article 23 (right to national and international peace).

The Commission held that the State violated Article 26 (independence of the courts) by establishing the State Security section within the Special Tribunal violated the principle of independence.

The Commission held that the evidence was insufficient to conclude that the State violated Article 17 (right to culture). Communication 54/91 alleged that linguistic rights were violated but provided no further evidence. Finally, the Commission also held that there was insufficient evidence to establish a violation of Article 19 (right to equality), although the discrimination of Black Mauritians was deemed a result of "a negation of the fundamental principle of the equality of peoples."

In light of the Commission's decision, it made a number of recommendations to the State, including providing appropriate compensation to the victims and the establishing an independent enquiry to hold perpetrators accountable.

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## Decision Excerpts

"The State's responsibility in the event of detention is even more evident to the extent that detention centres are its exclusive preserve, hence the physical integrity and welfare of detainees is the responsibility of competent public authorities. Some prisoners died as a result of the lack of medical attention. The general state of health of the prisoners deteriorated due to the lack of sufficient food; they had neither blankets nor adequate hygiene. The Mauritanian state is directly responsible for this state of affairs and the government has not denied these facts. Consequently, the Commission considers that there was a violation of Article 16."  
Paragraph 122

"The conditions of detention were, at the very least, bad...Taken together or in isolation, these acts are proof of widespread utilisation of torture and of cruel, inhuman and degrading forms of treatment and constitute a violation of Article 5. The fact that prisoners were left to die slow deaths (para 10) equally constitutes cruel, inhuman and degrading forms of treatment prohibited by Article 5 of the Charter."  
Paragraphs 116-118

"Following the November 1987 trial, which already violated the provisions of Article 7, three army lieutenants were sentenced to death and executed (para 10). The trial itself constituted a violation of the African Charter. Furthermore, the Commission is of the view that the executions that followed the said trial constitute a violation of Article 4. Denying people food and medical attention, burying them in sand and subjecting them to torture to the point of death point to a shocking lack of respect for life, and constitutes a violation of Article 4 (see para 12). Other communications provide evidence of various arbitrary executions that took place in the villages of the River Senegal valley (see para. 18 and 19) and stress that people were arbitrarily detained between September and December 1990 (see para. 22). The Commission considers that there were repeated violations of Article 4."  
Paragraph 120

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