

Malawi African Association and Others v. Mauritania, African Commission on Human and Peoples' Rights, Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000).

54/91: Malawi African Association vs/Mauritania;

61/91: Amnesty International vs/Mauritania;

98/93: Ms. Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO vs/Mauritania;

164/97 à 196/97: Collectif des Veuves et Ayants-droit vs/Mauritania;

210/98: Association Mauritanienne des Droits de l'Homme vs/Mauritania

Rapporteur: 17th session: Commissioner Blondin Beye

18th session: Commissioner Ondziel-Gnelenga

19th session: Commissioner Ondziel-Gnelenga

20th session: Commissioner Ondziel-Gnelenga

21st session: Commissioner Ondziel-Gnelenga

22nd session: Commissioner Ondziel-Gnelenga

23rd session: Commissioner Ondziel-Gnelenga

24th session: Commissioner Ondziel-Gnelenga

25th session: Commissioner Ondziel-Gnelenga

26th session: Commissioner Ondziel-Gnelenga

27th session: Commissioner Ondziel-Gnelenga

Summary of facts:

1. These communications relate to the situation prevailing in Mauritania between 1986 and 1992. The Mauritanian population, it should be remarked, is composed essentially of Moors (also known as 'Beidanes') who live in the North of the country, and various black ethnic groups, including the Soninke, Wolofs and the Hal-Pulaar in the South. The Haratines (freed slaves) are closely associated with the Moors, though they physically resemble the Black population of the South.

2. Following a coup d'état that took place in 1984, and which brought Colonel Maaouya Ould Sid Ahmed Taya to power, the government was criticised by members of the Black ethnic groups for marginalising Black Mauritians. It was also criticised by a group of Beidanes who favoured closer ties with the Arab world.

3. Communication 61/91 alleges that in early September 1986, over 30 persons were arrested in the aftermath of the distribution of a document entitled "Le Manifeste des negro - mauritaniens opprimés" (Manifesto of the Oppressed Black Mauritians). The document provided evidence of the racial discrimination to which the Black Mauritians were subjected and demanded the opening of a dialogue with the government. Twenty-one persons were found guilty of holding unauthorised meetings and pasting and distributing publications that were injurious to the national interest, and of engaging in racial and ethnic propaganda. They were convicted and imprisoned, after series of trials that took place in September and October 1986. The accused had been held in custody for a period that was longer than provided for in the Mauritanian law. They did not have access to their lawyers before the trials started. The lawyers, therefore, did not have time to prepare the cases, for which reason they withdrew, leaving the accused without defence counsel. The president of the tribunal considered that the refusal of the accused to defend themselves was tacit acknowledgement of their guilt. The trial was conducted in Arabic, even though only three of the accused were fluent in the language. The accused were thus found guilty on the basis of statements made to the police during their time in custody. They however pointed out to the tribunal that some of these statements had been given under duress. The sentences ranged from six months to five years imprisonment with fines, and five – ten years of house arrest.

4. The accused filed an appeal, claiming unfair trial, stating that they were not charged in due time; and that they did not have the opportunity to be defended. On 13 October 1986, the Court of Appeal upheld the sentences, even though the public prosecutor had not contested the appeal.

5. In September 1986, another trial against Captain Abdoulaye Kébé took place before a special tribunal presided by a military officer; and no appeal was permitted. Captain Kébé was charged with violating military regulations by providing statistics on the racial composition of the army command, which were then quoted in the “Manifeste des negro - mauritaniens opprimés”. He was held in solitary confinement before his trial, with no access to lawyers, and did not have sufficient time to prepare his defence. He was sentenced to two years imprisonment and twelve years house arrest.

6. In October 1986, a third trial relating to the Manifesto was brought against 15 persons. They were charged with belonging to a secret movement, holding unauthorised meetings and distributing tracts. Three of them were given suspended sentences and the others acquitted.

7. After the 1986 trial, there were protests against the conviction of the authors of the Manifesto. These brought about further arrests and trials.

8. In March 1987, 18 persons were charged before a criminal court for arson. They were not allowed family visits during the five months that their detention lasted. Many of them were alleged to be members of the support committee, established after the first trial relating to the Manifesto, to provide material and moral support to the families of the detainees. Most of the detainees were beaten during their detention. After the trial, nine accused were found guilty and sentenced to prison terms ranging from four to five years. The evidence was based almost exclusively on statements made to the police during their time in custody. They tried in court to retract these statements, arguing that they had been given under duress. Apparently, the tribunal did not try to clarify these facts.

9. At the end of April 1987, six persons were charged with distribution of tracts. Just before their trial, arson charges were added to the list of offences with which they were being accused. The lawyers, once again, did not have sufficient time to prepare the defence of their clients. All of the accused were found guilty by the court and sentenced to four years imprisonment. The Supreme Court later confirmed the sentences, regardless of the irregularities that occurred during the course of the trial.

10. On 28 October 1987, the Mauritanian Minister of Interior announced the discovery of a plot against the government. In reality, all those accused of taking part in this plot belonged to the Black ethnic groups from the South of the country. Over 50 persons were tried for conspiracy by the special tribunal presided by a senior army officer who was not known to have a legal training. He was assisted by two assessors, both of them army officers. No appeal was provided for. The accused were kept in solitary confinement in military camps, deprived of sleep during their interrogation. They were charged with “endangering State security by participating in a plot aimed at deposing the government and provoking massacres and looting among the country’s inhabitants”. A special summary procedure was applied, under the pretext that they had been caught in flagrante delicto. This procedure provides for a trial without any prior investigation by an investigating magistrate. It restricts the rights of the defence as well as access to lawyers and allows the court to pass judgement without any obligation on the part of the judges to indicate the legal bases for their conclusions. Such a procedure is not normally applied in cases relating to a conspiracy or an attempted crime. It is applicable to an already consummated crime. Those who were convicted on 3 December 1987 did not have the right to file appeal. Three lieutenants were sentenced to death and executed three days after. The executions were said to have been stretched out in a manner as to subject the convicts to a slow and cruel death. To put an end to their suffering, they had to provoke the executioners to kill them as quickly as possible. The other accused were sentenced to life imprisonment.

11. Some presumed members of the Ba’ath Arab Socialist Party were also imprisoned for political cause. In September 1987, 17 supposed members of the party were arrested and charged with belonging to a criminal association, participating in unauthorised meetings and abduction of children. Seven of the accused were sentenced to a seven-month suspended term of imprisonment. On 10 September 1988, in another trial before the State security section of the special tribunal, 16 presumed Ba’athists were charged with disturbing the internal security of the State, having contacts with foreign powers and recruiting military personnel in a time of peace. Thirteen of them were found guilty, mainly on the basis of statements that they sought to withdraw during the trial, on the basis that they had been made under duress. The accused were held in solitary confinement in a police camp and did not have the right to consult their lawyers until three or four days before the trial. Communication 61/91 avers that the accused were arrested and imprisoned for their non-violent political opinions and activities.

12. Communication 61/91 also alleges that their conditions of detention were the worst and cites many examples to prove these allegations. Thus, from December 1987 to September 1988 those detained at Ouatala prison only received a small amount of rice per day, without any meat or salt. Some of them had to eat leaves and grass. The prisoners were forced to carry out very hard labour day and night, they were

chained up in pairs in windowless cells. They only received one set of clothes and lived in very bad conditions of hygiene. As from February 1988, they were regularly beaten by their guards. From the time of their arrival in the detention camp, they only received one visit. Only the guards and prison authorities were authorised to approach them. Between August and September 1988, four prisoners died of malnutrition and lack of medical attention. After the fourth death, the civilian prisoners in Ouatala were transferred to the Aïoun-el Atrouss prison, which had medical infrastructure. Some of them were so weak that they could only move on all fours. In the Nouakchott prisons, the cells were overcrowded. The prisoners slept on the floor without any blankets, even during the cold season. The cells were infested with lice, bedbugs and cockroaches, and nothing was done to ensure hygiene and provision of health care. The Black prisoners, from the South of the country, complained of discrimination by the guards and security forces, who were mainly of the Beidane or Moorish ethnic group, supposedly Whites. They could not receive visits from their families, doctors or lawyers, except when the Ba'ath party supporters, all of them Beidanes, were in the same prison.

13. All these communications describe the events that took place in April 1989, simultaneously with the crisis that nearly caused a war between Senegal and Mauritania. The crisis was caused by Mauritania's expulsion of almost 50,000 people to Senegal and Mali. The government claimed that those expelled were Senegalese, while many of them were bearers of Mauritanian identity cards, which were torn up by the authorities when they were arrested or expelled. Some of them seemed to have been expelled mainly because of their relationship with the political prisoners or due to their political activities. Many of those who were not expelled were on the run to escape the massacres. Though the borders were later reopened, no security was assured those who desired to return, and they had no means by which to prove their Mauritanian citizenship. Many had been living in refugee camps since 1989, in extremely difficult conditions.

14. The main victims were Black Mauritanian government employees suspected of belonging to the Black opposition, and Black villagers from the South, mainly from the Hal-Pulaar or Peul ethnic group. The Haal-Pulaars traditionally live in the River Senegal valley where the land is fertile.

15. The complainants allege that thousands of people were arbitrarily detained. They state that the detentions were followed by expulsion, such as in the case of political opponents, people who had resisted the confiscation of their property, not to mention the cases that followed the incursions of [returning] refugee groups. This last category of arrests seems to have been carried out as a generalised reprisal, to the extent that there was no evidence of contacts between the detainees and the refugees who were returning to Mauritania. This type of retaliation and reprisal is contrary to Mauritanian law. Some of the detainees were released in early July 1990.

16. The communications allege also that there was daily persecution of villagers in the South between 1989 and 1990. Many identity-card checkpoints where the Hal-Pulaar had to show their identity cards and prove they were of Mauritanian origin. Their goats and sheep were confiscated by the security forces. Sometimes the villagers had to obtain military authorisation to take out their livestock to pasture, to go fishing or to work their fields. Nevertheless, such authorisation did not protect them from arrest.

17. The security forces are accused of surrounding the villages, confiscating land and livestock belonging to the Black Mauritians and forcing the inhabitants to flee towards Senegal, leaving their property for the Haratines to take or to be destroyed. The Haratines who possessed the land of those who had been expelled were armed by the authorities and were expected to arrange their own defence. So they formed their own militia, which had no foundation in law, but which seemed to work in close collaboration or under the supervision of the army and internal security forces. Communication 96/93 provides a list of villages all or almost all of whose inhabitants were expelled to Senegal. Communication 98/93 provides a list of villages that were destroyed.

18. These communications also point to various incidents and extra-judicial executions of Black Mauritians in the South of the country. Following the mass expulsions, some refugees in Senegal carried out incursions into the villages inhabited by the Haratines. Generally, after these raids, the Mauritanian army, the security forces and the Haratine militia would invade the villages reoccupied by the original inhabitants, and identified victims, generally Hal-Pulaar. The communications mention many cases of summary executions. On 10 and 20 April, for instance, military and Haratine patrols arrested 22 people. They were later found dead, with their arms tied up. Some of them had been shot, others had their skulls smashed with stones. On 7 May 1990, Dia Bocar Hamadi, for example, was killed while he was searching for livestock taken from him by Haratines. When his brothers protested to the police, they were arrested

and detained until early July. On 12 April 1990, Thierno Saibatou Bâ, a religious leader, was shot dead, on his way to meet his pupils.

19. A curfew was imposed on all villages in the South. Anyone who broke it was shot at sight, even if there was not proof that they were engaged in acts that endangered the lives of other inhabitants. Communication 61/81 mentions a specific case where the victims were arrested, tied up, and taken to a location where they were executed. According to the complainants, the army, security forces and Haratines enjoy total impunity. Many villagers who were not expelled had to flee in order to escape the massacres.

20. Whenever the villagers protested, they were beaten and forced to flee to Senegal or simply killed. Many villagers were arrested and tortured. A common form of torture was known as "Jaguar". The victim's wrists are tied to his feet. He is then suspended from a bar and thus kept upside down, sometimes over a fire, and is beaten on the soles of his feet. Other methods of torture involved beating the victims, burning them with cigarette stubs or with a hot metal. As for the women, they were simply raped.

21. In September 1990, a wave of arrests took place, ending between November and December 1990. Thousands of people were arrested. These were essentially Hal-Pulaar members of the armed forces or civil servants. All those arrested were from the South of the country. Later, the authorities alleged that there had been an attempt to unseat the government; but no proof was ever given. The accused were never put on trial, but were kept in what communication 96/93 describes as "death camps", in extremely harsh conditions.

22. Communication 61/91 contains a list of 339 persons believed to have died in detention. Some detainees were said to have been executed without trial. Thirty-three soldiers were hung, without trial, on 27 and 28 November 1990. Others were buried in sand to their necks and left to die a slow death. Many however died as a result of the torture they underwent. The methods used include the so-called 'Jaguar' mentioned above, electric shocks to the genital organs, as well as burns all over their bodies.

23. In February 1991, detainees in the J'Reida military camp were undressed, hands tied behind their backs, sprayed with cold water and beaten with iron bars. The 'Jaguar' torture was also utilised. The detainees were burned with coal embers, or they had some powder spread on their eyes, causing a terrible burning sensation. Their heads were plunged in dirty water to the point of suffocation; some were buried in sand to their necks. They were permanently chained in their cells, without toilet facilities. Some were kept in underground cells or dark cells where it got very cold at night.

24. In March 1991, the government announced the release of a number of political prisoners who had been convicted, as well as of other persons detained since November and December 1990. In April, other detainees were released, and President Maaouya Ould Taya announced that all those arrested had been released. However, there was never any response to the reports referring to people who had been killed in detention. Nor on the unknown fate of many detainees. Communication 61/91 provides a list of 142 peoples whose deaths are confirmed and another 197 who were not released and are probably dead.

25. According to communication 61/91, the government set up a commission of inquiry, but did not indicate either its prerogatives or the extent of its field of action. It is essentially composed of military men. And even if one were to believe that the commission has finished its work, no report ever made its conclusions public.

26. Communication 54/91 alleges that there are over 100,000 Black slaves serving in Beidane houses. And that though 300,000 had bought their freedom, they remain second-class citizens. Besides, Blacks do not have the right to speak their own languages. According to communication 98/93, a quarter of the population (500,000 out of 2,000,000 inhabitants in the country) are either slaves or Haratines (freed slaves). The freed slaves maintain many traditional and social links with their former masters, which constitutes a more subtle form of exploitation.

27. Amnesty International, Union Interafricaine des Droits de l'Homme and Rencontre Africaine pour la Défense des Droits de l'Homme made statements at the 19th session, reiterating the facts already presented. Amnesty International stated in writing that an amicable settlement could only be possible if the government set up an independent commission of inquiry to shed light on these violations, brought the authors to justice according to the internationally respected rules regarding fair trial, without using the death penalty; tried all other political prisoners according to international norms, and compensated the victims in a satisfactory manner.

The Government's Response:

28. The government's response to these allegations was that Amnesty International had taken sides in the conflict between Senegal and Mauritania. The government admits that there had been what it calls "incidents" in late 1990, but that the "necessary measures had been taken to restore order as soon as

possible and to limit the damage". It also declares that administrative sanctions were imposed on some army officers. The government maintains that a new pluralist Constitution was adopted, and that Mauritania is now a democratic State that respects the norms of the African Charter on Human and Peoples' Rights.

29. At the 19th session of the Commission, the Mauritanian government representative in attendance did not contest the complainants' allegations, claiming that graves and massive human rights violations had been committed between 1989 and 1991. He expressed his governments wish to work together with the Commission to assist the victims, making it clear that the country's economic could not allow them all to be compensated. He further declared that it would be difficult to verify the situation of each one prior to the 1989 events, which would make their resettlement impossible. He continued, saying that all those displaced could return to their native villages. Besides, the Mauritanian government representative categorically denied that the Black ethnic groups did not have the right to speak their languages. He reiterated his government's official position, that slavery had been abolished in Mauritania during French colonial days. Provisions of the Charter Alleged to have been Violated:

The communications allege violation of 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.

Procedure:

30. Communication 54/91 is dated 16 July 1991 and was submitted by Malawi African Association, a non-governmental organisation.

31. The Commission was seized of it on 14 November 1991 and the Mauritanian government was notified and called upon to make its observations known. No response was received from it.

32. At the 19th session held in March 1996, the Commission heard Mr. Ahmed Motala, representative of Amnesty International, Mr. Halidou Ouédraogo of UIDH, Mr. Alioune Tine and Mr. C. Faye of RADDHO, as well as the representative of the Mauritanian government. Mr. Ahmed Motala then sent the Commission a letter dated 31 March 1996.

33. At the end of the hearings, the Commission held the view that the government did not seriously contest the allegations brought against it. The Mauritanian delegate admitted that human rights violations had indeed been committed. He did not try to explain the circumstances in which they had taken place. He requested the Commission to give its assistance in finding a solution to the problem. He further added that his government was ready to receive a delegation from the Commission to that end. Following this, the Commission reiterated its decision to send a mission to Mauritania to try and obtain an amicable settlement. It was also decided that the mission would be composed of the Chairman of the Commission and Commissioners Rezag-Bara and Ondziel-Gnelenga, as well as the Secretary to the Commission.

34. The mission was effected from 20 to 27 June 1996.

35. At the 20th session held in Grand Baie, Mauritius, the Commission considered the mission's report and deferred the decisions on the communications to its 21st session.

36. On 7 February 1997, the Secretariat wrote to the complainants explaining to them that the mission report would be sent to the government for its observations by the end of February and that they would subsequently have the chance to make comments on the said report.

37. At the 21st session held in Nouakchott in April 1997, the Commission deferred its decision on this communication to the 22nd session, pending its receipt of the Mauritanian government's reaction to the mission report.

38. Communication 61/91 was submitted by Amnesty International on 21 August 1991.

39. The Commission was seized of it at its 10th session, held in October 1991.

40. The Mauritanian government was notified about it by the Secretariat on 14 November 1991.

41. At the 15th session, the Commission decided to compile all the communications filed against Mauritania.

42. From that date, the procedure for the present communication became identical to that for communication 54/91.

43. Communication 96/93 was submitted on 12 March 1993 by Ms. Sarr Diop on behalf of the victims.

44. The Commission was seized of it at its 13th session held in April 1993. Notification of it was sent to the accused State, asking it to forward its observations to the Secretariat. No response was received.

45. At the 15th session held in March 1994, it was decided to combine all the communications filed against Mauritania.

46. From that date, the procedure for the present communication became identical to that for the above-mentioned communication 54/91.

47. Communication 98/93 was submitted on 30 March 1993 by two NGOs, Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO, African Association for the Defence of Human Rights) and Union Interafricaine des Droits de l'Homme (UIDH, Inter-African Human Rights Union). The Commission was seized of them at its 13th session.

48. The Commission was seized of them at its 13th session.

49. On 12 April 1993, notification of it was sent to the accused State, asking it to address its observations to the Secretariat of the Commission.

50. At the 15th session held in March 1994, it was decided to combine all the communications filed against Mauritania.

51. From that date, the procedure for the present communication became identical to that for the above-mentioned communication 54/91.

52. At the 22nd session held in Banjul from 2 – 11 November 1997, the representative of Mauritania pointed out that his government was in the process of considering the mission report of the Commission and expected to have its observations ready before the 23rd session. The Commission thus decided to defer consideration of all the communications filed against Mauritania to its following session, while bearing in mind that they had been pending before the Commission for quite a long time now.

53. At the 23rd session held in Banjul (The Gambia) from 20 – 29 April 1998, the Commission decided to combine it with the procedure ongoing for communications 164/97 to 196/97 as well as n° 210/98. In addition, three notes verbales were addressed on 25 April, 9 and 10 July 1998 respectively to the Mauritanian Ministry of Foreign Affairs to inquire about the government's reaction. They have remained without reply to date.

54. Communications no. 164/97 – 196/97 allege that between September and December 1990, there was a wave of arrests in Mauritania directed at specific sectors of the population. Those arrested were mostly military men and public servants belonging to the Hal-Pulaar ethnic group and other ethnic groups from the South of the country. Some time after this wave of arrests, the government announced, without providing any proof, that there had been an attempted coup d'état.

55. The accused were never brought before a court of law according to communications 164/97 – 196/97, about a dozen of the accused were tortured and executed in the military camps of Inal, J'réida, Tiguint and Aleg between November and December 1990. Most remarkably, most of the communications allege that the victims were beaten to death.

56. The widows and mothers behind the present communications, have previously brought their complaints before the Mauritanian national authorities, both civilian and military, in particular the Minister of Interior, the head of the national army, the National Assembly, the Senate, the Special Court of Justice, the Nouakchott Criminal Court, the President and the Minister of National Defence. In all these cases they were either ignored or chased away.

57. On 14 June 1993, the Mauritanian government issued an enactment, no. 023 93, granting amnesty to those accused of perpetrating the series of murders for which the beneficiaries of the victims are hereby claiming compensation of injuries suffered.

Provisions of the Charter Alleged to have been Violated:

58. The communications allege a series of grave and massive violations of articles 2, 3, 4, 5, 6, 7, 16 and 26 of the African Charter.

Procedure:

59. Communications 164/97 – 196/97 were received by the Secretariat in April 1997. They were all submitted by the beneficiaries of the alleged victims.

60. On 6 October 1997, the Secretariat received a note verbale dated the 1st of the same month, with reference number 075/MAEC communicating the Mauritanian government's reaction to the accusations made against it. The gist was that Mauritania called on the Commission not to be seized of the said communications for the reason that they "deal with a naturally deplorable, but peculiar and exceptional situation [...] that has in any case since been surmounted...".

61. On 9 October 1997, the Secretariat acknowledged receipt of the said note, pointing out that the fact that the Mauritanian State had paid compensation to the beneficiaries of the victim of the alleged violations (which are in any case not denied by the State) cannot invalidate the Commission's deliberations.

62. At the 23rd session, the Commission adjudged on the admissibility of the communications, decided to combine the procedure followed for the present communications with those for communications 54/91, 61/91, 96/93, 98/93, 198/97 and 210/98 and referred the dossiers for consideration as to merit at its 24th session.

63. Communication 210/98 was submitted by the Association Mauritanienne des Droits de l'Homme (AMDH, Mauritanian Human Rights Association), on behalf of the Collectif des Rescapés, Anciens Détenus Civils Torturé (CRADPOCIT, Collective of Survivors, Ex-Civilian Detainees and the Tortured) vs/Mauritania. It alleges that during the bloody political events that troubled Mauritania between 1986 and 1991, those who have now joined together under the umbrella of CRADPOCIT were arrested, along with other Mauritanian citizens of black African stock and detained in the Nouakchott civil prison, and later transferred to various gaols where they were subjected to torture and other inhuman and degrading forms of treatment; this is alleged to have led to the death of some of their co-detainees.

64. After more than fifteen days of detention, some of them were released, while others were charged to court and held in the civilian prisons.

65. Following a number of court cases, some of those on remands were released, others given suspended sentences, while others were sentenced to prison terms varying from three months to five years. These verdicts were aggravated with loss of civic rights, heavy fines and banishment after release.

66. In 1993, members of the armed forces who had been subjected to the same treatment as those who came together under CRADPOCIT were granted pension benefit coupons. Imbued with the hope raised by this measure, they addressed a letter to the President of the Republic on 3 November 1993 in which they demanded their rehabilitation, in line with what had been provided to their compatriots of Arabo-Berber origin and the military personnel of black African origin. This move yielded no results.

67. Two years later, they addressed a second letter to the Head of State, with the same demands, without achieving any better results than in 1993. It was after this second failure that they decided to constitute themselves into a collective in order to better defend their rights. Application for the official recognition of the said collective (CRADPOCIT) was addressed to the Ministry of Interior. At the same time, its founding documents were sent to the Head of State, the Presidents of the Senate and the National Assembly, as well as the Mediator of the Republic, with the same demands annexed in all cases.

68. The complainant claims that as of the time of the arrest of the members of CRADPOCIT, the majority of them were civil servant who had each accumulated ten to twenty years of service. And that at present they are subject to the most precarious living conditions, aggravated by unemployment and onerous family responsibilities; some of them have seen their homes broken following divorces that they were unable to prevent!

Procedure

69. The communication was received by the Secretariat of the Commission on 26 January 1998.

70. At the 23rd ordinary session, held from 20 – 29 April 1998 in Banjul (The Gambia), the Commission decided :

a) – to notify the Mauritanian government representative at the session of the communication (with signed acknowledgement);

b) – to combine it with the ongoing procedure for communications 54/91, 61/91, 96/93, 98/93 and 164/97 to 196/97. It took the view that the reaction of the Mauritanian government to the various Notes Verbales from the Secretariat, as contained in note n° 075/MAEC, dated 1st October 1997, was valid for the case under consideration.

c) – to defer the communication to its 24th session for consideration of its merit.

71. At the 24th session held in Banjul, The Gambia, from 22 – 31 October 1998, it was decided that the members of the Commission who had undertaken the mission to Mauritania should consider the communications, taking into account the response of the Government of Mauritania to their mission report. Consideration of these communications was thus deferred to the 25th session.

Provisions of the Charter Alleged to have been Violated:

72. Members of CRADPOCIT are complaining of discriminatory practices on the part of the Mauritanian government, which they accuse of operating “a policy of double standards”, since the officials of Arabo-Berber origin who had been subjected to the same situation had been reintegrated into their various workplaces, while the members of the collective who are of Black African origin saw their pleas rejected.

73. They further point out that while they were in detention, in September 1987, when about fifteen pro-Iraqi Ba’athist Arabo-Berber military men (charged for belonging to a criminal organisation, participation

in unauthorised meetings and kidnapping of children) joined them in the same prison, their arrival led to a notable improvement in their conditions of detention. They claim that they were then allowed to take walks within the prison courtyard, a “privilege” that was previously denied to them. However, they were still denied visits as a policy, while their Arabo-Berber compatriots had the right to receive anyone, including their spouses.

74. Immediately after the release of the Arabo-Berbers, the black Africans were thrust back to the difficult gaol conditions to which they had previously been subjected, which consisted, remarkably, of keeping them chained in pairs during the whole day, with all inconveniences arising from such a situation, hard labour, fetching water, etc. These inhuman prison conditions, coupled with poor alimentation and lack of hygiene are said to be the cause of the above-mentioned deaths of four of their co-detainees (two military and two civilians).

75. The Mauritanian Human Rights Association claims violation of the following provisions of the African Charter of Human and Peoples’ Rights:

a - article 2: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status”;

b - article 4: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”;

c - article 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”;

d - article 15: “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work”;

e - article 16: 1. “Every individual shall have the right to enjoy the best attainable state of physical and mental health;

2. “States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”;

f - article 19: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another”.

LAW:

Admissibility

76. Communications 54/91, 61/91, 98/93, 96/93, 164/97 – 196/97 and 210/98 allege cases of grave and massive violations of human rights attributed to the Mauritanian State.

77. In the African Charter on Human and Peoples’ Rights, admissibility is governed by article 56, which defines all the conditions that communications must meet in order to be considered. These criteria are applied with due regard to the specificity of each communication. The case under consideration, of which the Commission was seized through the present procedure, is a combination of four communications which it decided to consider together in view of the similarity of the facts related. The Commission had previously taken the same decision regarding communications submitted against Benin, Zaïre and Rwanda (Cf. decisions on communications 16/88, 17/88, 18/88, 25/89, Legal Assistance Group vs/ Zaïre, and 27/89, 46/91, 49/91, 99/93 World Organisation against Torture, International Association of Democratic Jurists, International Commission of Jurists and Inter-African Human Rights Union vs/ Rwanda. All these communications were submitted by non-governmental organisation and they all allege various violations that are inter-related and similar.

78. Article 56,1 of the Charter demands that anyone submitting communications to the Commission relating to human and peoples’ rights must reveal their identity. They do not necessarily have to be the victims of such violations or members of their families. This characteristic of the African Charter reflects sensitivity to the practical difficulties that individuals can face in countries where human rights are violated. The national or international channels of remedy may not be accessible to the victims themselves or may be dangerous to pursue.

79. In the above-mentioned decisions, the Commission recognised that in a situation of grave and massive violations, it may be impossible to give a complete list of names of all the victims. It will be noted that article 56,1 demands simply that communications should indicate the names of those submitting and not those of all the victims of the alleged violations.

80. Article 56,5 of the Charter demands that the complainants must have exhausted internal remedies, where these exist, before the Commission can be seized of a communication. The Commission maintains that one of the justifications for this demand is that the accused State should be informed of the human rights violations it is being accused of, to provide it with an opportunity to redress them and save its reputation, which would be inevitably tarnished if it were brought before an international jurisdiction. This provision also enables the African Commission on Human and Peoples' Rights to avoid playing the role of a court of first instance, a role that it can not under any circumstances arrogate to itself.

81. The Mauritanian State was informed of the worrying human rights situation prevailing in the country. Particular attention, both within the national and international communities, was paid to the events of 1989 and succeeding years. Even if it were to be assumed that the victims had instituted no internal judicial action, the government was sufficiently informed of the situation and its representative, on various occasions, stressed before the Commission that a law known as the "general amnesty" law, dealing with the facts arraigned was adopted by his country's parliament in 1993. The Mauritanian government justified the said law with the argument that "the civilians had benefited from an amnesty law in 1991, and consequently the military wanted to obtain the same benefits; especially as they had given up power after allowing the holding of presidential (1992) and legislative (1993) elections".

82. The Commission notes that the amnesty law adopted by the Mauritanian legislature had the effect of annulling the penal nature of the precise facts and violations of which the plaintiffs are complaining; and that the said law also had the effect of leading to the foreclosure of any judicial actions that may be brought before local jurisdictions by the victims of the alleged violations.

83. The Commission recalls that its role consists precisely in pronouncing on allegations of violations of the human rights protected by the Charter of which it is seized in conformity with the relevant provisions of that instrument. It is of the view that an amnesty law adopted with the aim of nullifying suits or other actions seeking redress that may be filed by the victims or their beneficiaries, while having force within Mauritanian national territory, cannot shield that country from fulfilling its international obligations under the Charter.

84. Also, the Islamic Republic of Mauritania, being a party to the African Charter on Human and Peoples' Rights, has no basis to deny its citizens those rights that are guaranteed and protected by an international convention, which represents the minimum on which the States Parties agreed, to guarantee fundamental human freedoms. The entry into force of the Charter in Mauritania created for that country an obligation of consequence, deriving from the customary principle *pacta sunt servanda*. It consequently has the duty to adjust its legislation to harmonise it with its international obligations. And, as this Commission has previously had to emphasise, "contrary to other human rights instruments, the African Charter does not allow for derogation from obligations due to emergency situations. Thus, even a situation of civil war [...] cannot be cited as justification for the violation by the State or its authority to violate the African Charter" (cf. communication 74/92, para. 36).

85. Finally, the Commission interprets the provisions of article 56,5 in the light of its duty to protect human and people's rights as stipulated in the Charter. The Commission does not believe that the condition that internal remedies must have been exhausted can be applied literally to those cases in which it is "neither practicable nor desirable" for the complainants or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims. The gravity of the human rights situation in Mauritania and the great number of victims involved renders the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process is "unduly prolonged". In addition, the amnesty law adopted by the Mauritanian parliament rendered obsolete all internal remedies.

For these reasons, the Commission declares the communications admissible.

Merits:

86. In June 1996, the Commission sent a good-offices mission to Mauritania. The delegation met with members of the government and non-governmental organisations to discuss the overall human rights situation in the country.

87. The mission was undertaken at the initiative of the Commission in its capacity as promoter of human and peoples' rights. It was not an enquiry mission; and while it permitted to the Commission to get a better grasp of the prevailing situation in Mauritania, the mission did not gather any additional specific information on the alleged violations, except on the issue of slavery. The present decision is therefore based on the written and oral declarations made before the Commission over the past six years.

88. In the case under consideration, no indication from the government, with the exception of the issue of slavery, seeks to refute the facts adduced in the communications. The representative of the government, who appeared before the Commission at the 19th session and subsequent sessions, admitted that the communications of which the Commission was seized “deal with a naturally deplorable, but peculiar and exceptional situation [...] that has in any case since been surmounted...”. And according to the government, “most of the issues raised have already been resolved, others are in the process of being settled”. It claims, as regards the ex-prisoner civil servants that “the démarches undertaken by those who have constituted themselves into a collective are the result of manipulations of the opposition...” with the aim of countering government action.

89. Though the above-mentioned declaration by the government representative could have constituted a basis for an amicable solution, such a solution could only take place with the agreement of the parties. However at least one of the complainants has clearly indicated that a resolution can only be reached on the basis of some specific conditions, of which none has so far been met to its satisfaction. While it appreciates the government’s good will, and hopes to collaborate with it in future to ensure the effectiveness of the settlement of the damages suffered by all the victims of the events described above, the Commission has an obligation to adjudge on the clearly stated facts contained in the various communications. More so as it does not consider acceptable the position of the government that the atrocities and other assassinations committed within the military institution were “an internal affair of the army; that the army had conducted its own inquiry, following which appropriate sanctions were meted out to those military men who were found guilty”.

90. Article 7 of the Charter stipulates that:

Every individual shall have the right to have his cause heard. This comprises:

- a) The right to appeal to competent national organs against acts violating his fundamental rights...;
- b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
- c) the right to defence, including the right to be defended by counsel of his choice;
- d) the right to be tried within a reasonable time by an impartial court or tribunal.

91. Mauritania ratified the African Charter on 14 June 1986, and it came into force on 21 October 1986. The September trials, thus, took place prior to the entry into force of the Charter. These trials led to the imprisonment of various persons. The Commission can only consider a violation that took place prior to the entry into force of the Charter if such a violation continues or has effects which themselves constitute violations after the entry into force of the Charter (cf. decision taken on communication 59/91, p. 28). The Commission should therefore have the competence to consider these trials with a view to ascertaining whether the incarcerations that resulted from them constitute a violation of article 6 of the Charter.

92. The government did not give any substantial response to the allegations that the said trials were arbitrary. Consequently, in conformity with its well-established jurisprudence, the Commission (cf. decisions taken on communications 59/91, 60/91, 64/91, 87/93 and 101/93), shall adjudge based on the elements provided by the complainants.

93. The State Security Section of the Special Tribunal does not provide for any appeal procedure. Two specific cases mentioned in the communications took place in September and October 1987 (see paras. 10 and 11) and no appeals were authorised. One of the trials ended in the execution of 3 army lieutenants.

94. Furthermore, even when an appeal was allowed, as in the first case in the "Manifesto" (paras. 3 and 4), on 13 October 1986, the Court of Appeal confirmed the verdicts, even though the accused had contested the procedure of the initial trial, and the Public Prosecutor’s office did not contest the complaints of the accused. From all indications, the Court of Appeal simply confirmed the sentences without considering all the elements of fact and law. Such a practice can not be considered a genuine appeal procedure. For an appeal to be effective, the appellate jurisdiction must, objectively and impartially, consider both the elements of fact and of law that are brought before it. Since this approach was not followed in the cases under consideration, the Commission considers, consequently, that there was a violation of article 7,1 (a) of the Charter.

95. In the judgement of early September 1986 (para. 3), the presiding judge declared that the refusal of the accused persons to defend themselves was tantamount to an admission of guilt. In addition, the tribunal based itself, in reaching the verdicts it handed down, on the statements made by the accused during their detention in police cells, which statements were obtained from them by force. This constitutes a violation of article 7,1 (b).

96. In most of the cases brought up in these communications (paras. 3,4,5,9,10,11), the accused either had no access or had restricted access to lawyers, and the latter had insufficient time to prepare the defence of their clients. This constitutes a violation of article 7,1(c) on the right to defence.

97. The right to defence should also be interpreted as including the right to understand the charges being brought against oneself. In the trial on the September Manifesto (para. 3), only 3 of the 21 accused persons spoke Arabic fluently, and this was the language used during the trial. This means that the 18 others did not have the right to defend themselves; this also constitutes a violation of article 7,1(c).

98. The Section responsible for matters relating to State Security in the Special Tribunal is headed by a senior military officer who is not required to have a legal training. He is assisted by two assessors, both military men. The Special Tribunal is itself presided by an army officer. In the joint procedure on communications 139/94, 154/96 and 161/97 (International Pen. Constitutional Rights Project, Interights and Civil Liberties Organisation vs/ Nigeria), the Commission reached the conclusion that the "Special Military Tribunals ...constituted a violation of article 7,1 (d) of the Charter by the very virtue of their composition, which is reserved to the discretion of the executive organ". Withdrawing criminal procedure from the competence of the Courts established within the judicial order and conferring onto an extension of the executive necessarily compromises the impartiality of the Courts, to which the African Charter refers. Independent of the qualities of the persons sitting in such jurisdictions, their very existence constitutes a violation of the principles of impartiality and independence of the judiciary and, thereby, of article 7,1 (d).

99. Article 26 of the Charter states that:

States parties to the present Charter shall have the duty to guarantee the independence of the Courts...

100. By establishing a section responsible for matters relating to State security within the Special Tribunal, the Mauritanian State was reneging on its duty to guarantee the independence of the courts. The Commission therefore concludes that there has been violation of article 26.

101. Article 9,2 of the Charter stipulates that:

Every individual shall have the right to express and disseminate his opinions within the law.

102. Communication 61/91 alleges that the trials on the Manifesto (paras. 3,4,5,6) and the other related cases (paras. 8 and 9) violate the right to freedom of expression and dissemination of ones' opinions, to the extent that the accused were charged with distributing a manifesto which provided statistics on racial discrimination and were calling for a dialogue with the government. The expression "within the laws" must be interpreted as reference to the international norms. To the extent that the Manifesto did not contain any incitement to violence, it should be protected under international law.

103. Once again, the government did not contest the facts adduced by the complainants. In view of the foregoing, the Commission shall base its argumentation on the elements provided by the complainants. (Cf. decisions 59/91 et al, cited in para. 89).

104. Considering that the trials in question in paragraphs 3, 4 and 5 took place prior to the entry into force of the African Charter, the Commission finds no violation of article 9,2 as regards these cases. However if the indictments constituted a violation of the African Charter, the detention which ensued from them would be arbitrary and violates article 6. The Commission is of the view that these cases would have led to violation of article 9,2 had they taken place after the entry into force of the Charter, and consequently the detention of the accused would have been a violation of article 6.

105. The cases mentioned in paragraphs 8, 9 and 10, which were heard after the entry into force of the Charter, are a violation of the rights stated and protected in article 9,2.

106. Article 10,1 of the Charter stipulates that::

Every individual shall have the right to free association provided that he abides by the law...

107. Some presumed supporters of the Ba'ath Arab Socialist Party were imprisoned for belonging to a criminal association. The accused in the 3rd case relating to the Manifesto (para. 6) were charged for belonging to a secret movement. The government did not provide any argument to establish the criminal nature or character of these groups. The Commission is of the view that any law on associations should include an objective description that makes it possible to determine the criminal nature of a fact or organisation. In the case under consideration, the Commission considers that none of these simply rational requirements was met and that there was violation of article 10,2.

108. Article 11 of the Charter stipulates that:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

109. The accused in the Manifesto case were charged for holding unauthorised meetings (paras. 3 and 6). The trial in question in para. 3 took place before the entry into force of the African Charter. Consequently, the Commission cannot consider that there was a violation of article 11 as regards this particular case. However, had the indictments constituted a violation of article 11, the detention that ensued from it would have been a violation of article 6, which prohibits arbitrary detention.

110. The presumed supporters of the Ba'ath Arab Socialist Party are equally accused of holding unauthorised meetings.

111. The government did not come up with any element to show that these accusations had any foundation in the “interest of national security, the safety, health, ethics and rights and freedoms of others”, as specified in article 11. Consequently, the Commission considers that there was violation of article 11 in the cases in question in paragraphs 3 and 11.

112. Article 6 of the Charter stipulates that:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

113. There were recurring violations of this article. The indictments and trials of September 1986 (paras. 3,4 and 5) were not in conformity with the provisions of the Charter. All those who were incarcerated in its wake were denied their rights as guaranteed in article 6. The imprisonment resulting from the other cases (paras. 6 and 8), and the two cases from November 1987 (para. 10) as well as the cases against the presumed members of the Ba'ath Arab Socialist Party (para. 11) are arbitrary, for the fact that they were not in conformity with international norms relating to fair trial.

114. The complainants allege that hundreds of people were detained in connection with the 1989 events (para. 15). They allege, further, that a wave of arrests at the end of 1990 resulted in the detention of hundreds of people without charge or trial. According to the complainants, some, and not all, of the detainees were released, adding however that the fate of many people remains unknown. The government did not deny that these arrests and detentions took place, but it maintained that such arbitrary detentions no longer exist. Even if that were the case, it would not annul the previous violations. The Commission considers, therefore, that there was massive violation of article 6.

115. Article 5 of the African Charter prohibits torture, cruel, inhuman or degrading punishment and treatment. This article also stipulates that “Every individual shall have the right to the respect of the dignity inherent in a human being”. All the communications detail instances of torture, and cruel, inhuman and degrading treatments. During their time in custody, the detainees were beaten (para 8), they were forced to make statements (paras 8 and 11), and they were denied the opportunity of sleeping (para 10). Both during the trial as well as the period of arbitrary detention, some of the prisoners were held in solitary confinement (paras. 5, 8, 10, 11 and 12).

116. The conditions of detention were, at the very least, bad. The prisoners were not fed; they were kept in chains, locked up in overpopulated cells lacking in hygiene and access to medical care (para. 12). They were burnt and buried in sand and left to die a slow death. Electrical shocks were administered to their genital organs and they had weights tied on to them. Their heads were plunged into water to the point of provoking suffocation; pepper was smeared on their eyes and some were permanently kept in small, dark or underground cells which got very cold at night (para 23).

117. Both within and outside the prisons, the so-called “Jaguar” position was the form of torture utilised, (see paras 20 and 22). The prisoners were beaten (paras 12 and 20) and their bodies burnt using various instruments (paras 20 and 22). The women were raped (para 20).

118. The government did not produce any argument to counter these facts. 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.

119. Article 4 of the Charter stipulates that:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

120. 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, burning 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 paras 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.

121. Article 16 of the Charter states that:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

122. The State's responsibility in the event of detention is even more evident to the extent that detention centres are of its exclusive preserve, hence the physical integrity and welfare of detainees is the responsibility of the 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 violation of article 16.

123. Article 18(1) states that:

The family shall be the natural unit and basis of society. It shall be protected by the State...

124. Holding people in solitary confinement both before and during the trial, and during such detention, which is, on top of it all, arbitrary, (paras 5,8,10, 11 and 12) depriving them their right to a family life constitutes a violation of article 18,1.

125. Article 12,1 states that:

Every individual shall have the right to freedom of movement and residence within the borders of the State provided he abides by the law.

126. Evicting Black Mauritians from their houses and depriving them of their Mauritanian citizenship constitutes a violation of article 12,1. The representative of the Mauritanian government described the efforts made to ensure the security of all those who returned to Mauritania after having been expelled. He claimed that all those who so desired could cross the border, or present themselves to the Mauritanian Embassy in Dakar and obtain authorisation to return to their village of birth. He affirmed that his government had established a department responsible for their resettlement. The Commission adopts the view that while these efforts are laudable, they do not annul the violation committed by the State.

127. Article 14 of the Charter reads as follows:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

128. The confiscation and looting of the property of black Mauritians and the expropriation or destruction of their land and houses before forcing them to go abroad constitute a violation of the right to property as guaranteed in article 14.

129. Article 2 of the Charter states that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour...

130. The representative of the government as well as the authors of the communications declared that many Black Mauritians were forced to flee or were detained, tortured or killed because of the colour of their skin, and that the situation in Mauritania became explosive due to the extreme positions adopted by the francophone and arabophone factions that were in opposition to each other in the country.

131. Article 2 of the Charter lays down a principle that is essential to the spirit of this convention, one of whose goals is the elimination of all forms of discrimination and to ensure equality among all human beings. The same objective under-pins the Declaration of the Rights of People Belonging to National, Ethnic, Religious or Linguistic Minorities adopted by the General Assembly of the United Nations in resolution 47/135 of 18 December 1992. Article 1,1 of this document indeed stipulates that "States shall protect the existence and national or ethnic, cultural, religious or linguistic identity of the minorities within their respective territories and shall stimulate the establishment of conditions conducive to the promotion of such identity." From the foregoing, it is apparent that international human rights law and the community of States accord a certain importance to the eradication of discrimination in all its guises. Various texts adopted at the global and regional levels have indeed affirmed this repeatedly. Consequently, for a country to subject its own indigenes to discriminatory treatment only because of the colour of their skin is an

unacceptable discriminatory attitude and a violation of the very spirit of the African Charter and of the letter of its article 2.

132. Article 5 of the Charter states that:

All forms of exploitation and degradation of man particularly slavery ... shall be prohibited.

133. Communications 54/91 and 98/93 allege that a majority of the Mauritanian population is composed of slaves. The government states that slavery had been abolished under the French colonial regime. The communications also allege that freed slaves maintain traditional and close links with their former masters and that this constitutes another form of exploitation.

134. During its mission to Mauritania in June 1996, the Commission's delegation noted that it was still possible to find people considered as slaves in certain parts of the country. Though Edict N° 81-234 of 9 November had officially abolished slavery in Mauritania, it was not followed by effective measures aimed at the eradication of the practice. This is why, in many cases, the descendants of slaves find themselves in the service of the masters, without any remuneration. This is due either to the lack of alternative opportunities or because they had not understood that they had been freed of all forms of servitude for many years. From all appearances, some freed slaves chose to return to their former masters. From the Commission's point of view, the State has the responsibility to ensure the effective application of the Edict and thus ensure the freedom of its citizens, to carry out inquiries and initiate judicial action against the perpetrators of violations of the national legislation.

135. Independently from the justification given, by the defendant State, the Commission considers, in line with the provisions of article 23,3 of the Universal Declaration of Human Rights, that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. These provisions are complemented by those of article 7 of the International Covenant on Economic, Social and Cultural Rights. In view of the foregoing, the Commission deems that there was a violation of article 5 of the Charter due to practices analogous to slavery, and emphasises that unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being. It furthermore considers that the conditions to which the descendants of slaves are subjected clearly constitute exploitation and degradation of man; both practices condemned by the African Charter. However, the African Commission cannot conclude that there is a practice of slavery based on these evidences before it.

136. Article 17 of the Charter stipulates that:

2. Every individual may freely take part in the cultural life of his community.

3. The promotion and protection of morals and traditional values recognised by the Community shall be the duty of the State...

137. Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and in its activities. To deprive a man of such participation amounts to depriving him of his identity.

138. The government made it known that there exists in the country an institute of national languages, for over ten years now, and that this institute teaches those languages. However, a persisting problem is the fact that many of these languages are exclusively spoken in small parts of the country and that they are not written. Communication 54/91 alleges the violation of linguistic rights but does not provide any further evidence as to how the government denies the black groups the right to speak their own languages. Information available to the Commission does not provide it a sufficient basis to determine if there has been violation of article 17.

139. Article 23 of the Charter states that:

All peoples shall have the right to national and international peace and security.

140. As advanced by the Mauritanian government, the conflict through which the country passed is the result of the actions of certain groups, for which it is not responsible. But in the case in question, it was indeed the Mauritanian public forces that attacked Mauritanian villages. And even if they were rebel forces, the responsibility for protection is incumbent on the Mauritanian State, which is a party to the Charter (cf. Commission's decision in communication 74/92). The unprovoked attacks on villages constitute a denial of the right to live in peace and security.

141. Article 19 provides that:

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another...

142. At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against Black Mauritians is, according to the complainants (cf. Especially communication 54/91) the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its article 19. The Commission must however admit that the information made available to it do not allow it to establish with certainty that there has been a violation of article 19 of the Charter along the lines alleged here. It has nevertheless identified and condemned the existence of discriminatory practices against certain sectors of the Mauritanian population (cf. especially paragraph 164).

FOR THESE REASONS, THE COMMISSION:

Declares that, during the period 1989 – 1992, there were grave or massive violations of human rights as proclaimed in the African Charter; and in particular of articles 2, 4, 5 (constituting cruel, inhuman and degrading treatments), 6, 7.1(a),(b),(c) and (d), 9.2, 10.1, 11, 12.1, 14, 16.1, 18.1, and 26

Recommends to the government:

* To arrange for the commencement of an independent enquiry in order to clarify the fate of persons considered as disappeared, identify and bring to book the authors of the violations perpetrated at the time of the facts arraigned.

* To take diligent measures to replace the national identity documents of those Mauritanian citizens, which were taken from them at the time of their expulsion and ensure their return without delay to Mauritania as well as the restitution of the belongings looted from them at the time of the said expulsion; and to take the necessary steps for the reparation of the deprivations of the victims of the above-cited events.

* To take appropriate measures to ensure payment of a compensatory benefit to the widows and beneficiaries of the victims of the above-cited violations.

* To reinstate the rights due to the unduly dismissed and/or forcibly retired workers, with all the legal consequences appertaining thereto.

* As regards the victims of degrading practices, carry out an assessment of the status of such practices in the country with a view to identify with precision the deep-rooted causes for their persistence and to put in place a strategy aimed at their total and definitive eradication.

* To take appropriate administrative measures for the effective enforcement of Ordinance n° 81-234 of 9 November 1981, on the abolition of slavery in Mauritania.

The Commission assures the Mauritanian State of its full cooperation and support in the application of the above-mentioned measures.

Done at Algiers, 11 May 2000.