

Report on the Community Law Centre's  
Participation in the 45<sup>th</sup> Ordinary Session  
of the African Commission on Human and  
Peoples' Rights  
Banjul, The Gambia  
13 - 27 May 2009

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## Introduction

In line with the inter-project programme of the Community Law Centre (CLC), a representative of CLC<sup>1</sup> attended the 45<sup>th</sup> ordinary session of the African Commission on Human and People 's Rights (ACHPR or the Commission) held in Banjul, The Gambia from 13 to 27 May 2009. Due to time and budgetary constraints it was not possible to attend the NGO Forum prior to the Commission's session. Logistical arrangements also resulted in the CLC representative arriving in Banjul on the 13<sup>th</sup> of May and thus attendance of the Commission's public session commenced on the 14<sup>th</sup> of May 2009 until 19 May 2009 as the closed session started on 20 May 2009.

## Structure of the Report

This report will not reflect in detail on the numerous statements and submissions made by commissioners, states, national human rights institutions, and non-governmental organisations in the course of the 45<sup>th</sup> Ordinary Session. Moreover, despite the availability of a clearly structured agenda for the session, the chairperson, for a variety of reasons, did not follow the sequence of the agenda strictly and moved between items as particular delegates became available. Please see Appendix 1 for a copy of the agenda. This report will rather reflect on particular themes and issues of note to CLC, as well as the defined activities of CLC in respect of its interactions with the ACHPR.

## The Composition of the Commission

The membership of the Commission is set out in Table 1 as well as the special responsibilities of Commissioners.

Table 1

Ms. Sanji Monageng, Chairperson	Botswana		Lesotho, Liberia, Mauritius and Mozambique
Ms. Angela Melo, Vice-Chairperson	Mozambique	Chairperson of the Working Group on ECOSOC Rights in Africa	Angola, Cape Verde, Equatorial Guinea, Guinea Bissau, and Principe and Sao Tome
Ms. Catherine Dupe Atoki	Nigeria	Chairperson of the Follow-up Committee of the Robben Island Guidelines (RIG)	Djibouti, Egypt, Ethiopia, Somalia, and Sudan

<sup>1</sup> Lukas Muntingh, Project Coordinator of CSPRI, was the representative.

Ms. Musa Ngary Bitaye	The Gambia	Chairperson of the Working Group on Indigenous Populations/Communities in Africa	Ghana, Nigeria, Sierra Leone, and Zimbabwe
Ms. Reine Alapini-Gansou	Benin	Special Rapporteur on Human Rights Defenders in Africa	Cameroon, Democratic Republic of Congo, Mali, Senegal, Togo and Tunisia
Ms. Zainabo Sylvie Kayitesi	Rwanda	Chairperson of the Working Group on the Death Penalty	Algeria, Burkina Faso, Burundi, Cote d'Ivoire and Mauritania
Ms. Soyata Maiga	Mali	Special Rapporteur on Women	Central African Republic, Gabon, Guinea, Libya and Niger
Mr. Mumba Malila	Zambia	Special Rapporteur on Prisons and Conditions of Detention in Africa	Kenya, Malawi, Tanzania and Uganda
Mr. Bahame Tom Mukirya Nyanduga	Tanzania	Special Rapporteur for Refugees, Asylum Seekers, IDPs and Migrants in Africa	Botswana, Eritrea, Rwanda, Seychelles and <u>South Africa</u>
Ms. Pansy Tlakula	South Africa	Special Rapporteur on Freedom of Expression in Africa	Namibia, The Gambia, Swaziland and Zambia
Mr. Yeung Kam John Yeung Sik Yuen	Mauritius	Focal Point on the Rights of Older Person	Benin, Chad, Comoros, Madagascar, and Saharawi Arab Democratic Republic

## Statements by CLC

Two statements were delivered to the Commission by the CLC representative. The first was delivered under agenda item number 4(e) "Statements by NGOs" and dealt with the right to food in Africa. A copy of the statement, which was delivered in full, is attached as Appendix 2. It is difficult to assess the impact of the statement as the general discussions in the course of the session was dominated by other

issues, such as the rights of sexual minorities and the indictment of the Sudanese president by the International Criminal Court (ICC). This should, however, not detract CLC from pursuing socio-economic rights and interacting closely with the Working Group on Economic and Social Rights under Commissioner Angela Melo. Only one other NGO, North-South 21 focussed on the right to food in one of their statements to the Commission. In view of future statements by CLC to the Commission, it may be useful to, depending on the particular focus of the CLC statement, to interact with the relevant Commissioner(s) in preparation of the session to identify specific foci. Participation in the NGO Forum prior to the session may also assist in developing useful support from this sector for the CLC focus.

The second statement was delivered under agenda item number 7(b)(i), the activity report of the Special Rapporteur on Prisons and Conditions of Detention in Africa. A copy of the statement is attached as Appendix 3. The statement focussed on private sector involvement in prisons in Africa and the sexual victimisation of prisoners. In both instances recommendations were made with regard to possible improvements.

## **The MOU between CLC and the ACHPR**

The CLC Inter-project programme working group on the ACHPR agreed that it would be desirable to enter into a memorandum of understanding (MOU) with the Commission with a view to facilitate closer cooperation and specifically avail the expertise of CLC to the Commission when and where this is possible. To this extent a number of communiqués were sent in 2008 to the Secretariat of the Commission but no response was received. On 14 January 2009 a meeting was held with Commissioner Mumba Malila in Lusaka to discuss, amongst other things, the MOU. He was supportive of the proposal and undertook to give it his special attention. In view of this a copy of a draft MOU was sent to Dr Eno at the Commission's Secretariat. See Appendix 4 for a copy of the draft MOU. At the session, the MOU was again brought under the attention of Commissioner Malila and Dr Eno during private conversations initiated by the CLC representative. In follow-up discussions, Commissioner Malila stated that he will place the MOU on the agenda of the Commission's private session. The outcome of the Commission's discussions is awaited.

## **Rules of Procedures of the Commission**

The Interim Rules of Procedure was recently made available on the website of the Commission and comments are due 31 May 2009. At the 45<sup>th</sup> Session it was evident that the working methods are in need of revision to create a more efficient system. The session stretches over two weeks, lengthy inputs are made by states and commissioners, interactions between the states parties and commissioners continue for hours, and few reports from states or commissioners are available in advance. In this regard the working methods of UN treaty monitoring bodies may be of assistance. Given the comprehensive nature of the African Charter it may indeed be a challenge to strike a balance between

efficiency and thoroughness. The requirement in Article 62 of the Charter that states must report every two years may also be a factor adding to the increasing workload of the Commission. At the 45<sup>th</sup> Session the Commission dealt with only three periodic reports, but if all states were indeed reporting on time, the Commission will have to deal with 13 periodic reports at every session. This will, under the current system, not be possible.

There is little doubt that the international and regional human rights systems to which states are party, place demanding reporting obligations. The result is that there are at present only nine African states that are fully compliant in respect of their reporting obligations to the ACHPR. In respect of UN reporting obligations by African states, the situation may in fact be worse.

Commissioner Kayitesi is the commissioner responsible for overseeing the re-drafting of the Rules of Procedures and she reported, in the course of her activity report under agenda item number 7(b), that comments were received from five states and four non-governmental organisations (NGO). South Africa is not one of the states that submitted comments. The NGO North-South 21 urged the Commission, in their statement to Commissioner Kayitesi's report that there needs to be broader consultation on the redrafting of the Rules of Procedure. It would indeed be a regrettable situation if the Commission restricts the comments to the nine in-puts received.

In view of the above, it is recommended that CLC gives priority to making a submission on the Interim Rules of Procedure.

## Side events

### NGO Forum

The NGO Forum was held during the three days preceding the 45<sup>th</sup> Ordinary Session in Banjul and a statement from the forum was delivered at the opening of the Commission's Ordinary Session. See Appendix 5 for a copy of the statement. The following are noteworthy points from the statement:

- Concern was expressed about gross human rights violations in the Central African Republic, DRC, Eritrea, Guinea Bissau, Guinea Conakry, Kenya, Madagascar, Somalia and The Sudan.
- The Commission was acknowledged for its efforts in respect of Kenya and Zimbabwe and urged the Commission to appeal to the AU to call on the government of Zimbabwe to meet its obligations under the Charter.
- Concern about press freedom was expressed in respect of Angola, Lesotho, Swaziland, The Sudan and Zimbabwe.
- A general concern was noted in respect of human rights defenders in Africa and the violations that they are subjected to in various countries.
- Particular attention was paid in the statement to the rights of lesbian, gay, bi-sexual, transgender and intersex individuals (LGBTI) and violations that persist in this regard.

- The Commission was urged to apply pressure on states to criminalise torture and abolish the death penalty.
- An appeal was made for the Commission to establish a working group on natural resources to formulate strategies to deal with environmental depletion which contribute to displacement and poverty.
- The persistent violation of women's rights, including girls, was brought to the Commission attention and states were urged to develop effective measures to address these.
- The forum called for closer cooperation between the Commission and the Committee of Experts on the Rights and Welfare of the Child.
- The Forum acknowledged the entry into force of the Protocol to the African Charter relating to the Rights of Women in Africa and congratulated all 27 states that have ratified the Protocol.

### **Briefing by the African Union Commission on its Gender Policy**

On 16 May 2009 the Commission was briefed on the gender policy developed by the African Union Commission (AUC). The AUC representative, Ms Terriba, gave an overview of the policy document and did not describe its content in detail due to time constraints. From the discussions and questions raised by the Commissioners it was evident that there has been little cooperation to date between the Commission and the AUC, even though both are structures of the African Union (AU). Indicative of this was that the ACHPR had apparently not made any in-puts into the development of the policy document. Moreover, the AUC had either not invited or it was not possible for the Special Rapporteur on the Rights of Women to attend events aimed at discussing the gender policy document. The Commission and the AUC representative agreed that this needs improvement.

Despite this consensus, a lively discussion ensued between the Commissioners on the desirability of numerical targets in the advancement of women's participation in the economic sector and the employment of women in government. It was evident that there exist fundamental differences between Commissioners on the most appropriate response to advancing women's participation in the economy.

### **International Justice and Africa, seminar hosted by FIDH**

On 15 May 2009 at 15:00 the International Federation for Human Rights (FIDH) hosted a panel discussion on international justice and Africa. The programme listed the ACHPR chairperson, Ms S. Monageng, as the chairperson for the panel discussion but this was objected to by the representative of the Republic of Sudan during the session in the light of the recent indictment of the president of Sudan by the ICC as well as the recent appointment of Ms Monageng as a judge to the ICC. The panellists were:

- Mr. Mabassa Fall (FIDH representative to the AU)

- Mr Sidiki Kaba (Hon President of FIDH)
- Ms Fatou Bensouda (Dep. Prosecutor of the ICC)
- Mr Dismas Kitenge (Pres. of Groupe Lotus, DRC and vice pres. of FIDH)
- Mr Amir Suleiman (Dir. Khartoum Centre for Human Rights and Environmental Development)

The panellists focussed in broad terms on the meaning of ‘justice’ in an African context and what this would mean in the fight against impunity. Numerous examples were cited of gross violations of human rights where the perpetrators of these violations have not been brought to account. Ms Fatou Bensouda emphasised that the creation of the ICC was indeed very well supported by African states and that the overwhelming majority of African states supported the Rome Statute and many have adopted domestic legislation to give effect to their obligations under the Rome Statute. The emphasis on African support for the ICC must be seen as a response to allegations that the ICC is selective in its indictments and that Africa is being targeted while other leaders suspected of war crimes and crimes against humanity outside Africa have not been indicted. In this regard Israel, the United States and the UK were named by participants from the floor as states that are suspected of war crimes and crimes against humanity but that their leaders have not been indicted by the ICC. Ms Bensouda emphasised that the international tribunals established in respect of Sierra Leone and Rwanda were established at the requests of those states and that it was not something enforced on them.

A further theme raised was the achievement of peace and justice in conflict situations and situations where gross violations were committed. One view holds that peace is more important than ‘justice’ and that the prosecution of those suspected of gross violations may indeed jeopardise peace. In this regard the situation in The Sudan and the indictment of its president was cited and it was argued that his indictment will not assist in bringing peace to the region. The opposing view is that such an approach would effectively result in impunity.

A further important issues raised in the discussions was the interests of victims of gross violations. While much effort is made on an international level to bring perpetrators of violations to justice, it appears that the victims are frequently left behind. Redress for victims, at all its levels, is frequently left to the individual states to attend to.

## **State party periodic reports**

Three state party periodic reports were received and reviewed during the 45<sup>th</sup> Session, being Mauritius, Uganda and Benin. The reports as well as the Commission’s Concluding Remarks will be placed on the Commission’s website and it is not necessary to deal with the content here in detail. Based on the questions from the Commission a number of noteworthy issues emerged in respect of each of the periodic reports.

## Mauritius

Mauritius submitted its initial report in 1994 and was now submitting its combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports. In August 2006 the ACHPR undertook a promotional visit to Mauritius and in 2007/8 Mauritius was the first country visited by the UN Sub-Committee for the Prevention of Torture (SPT) under the Optional Protocol to the Convention against Torture (OPCAT). The Commission noted that the periodic report was phrased in too general terms and the questions posed by the Commissioners attempted to address this. The responses provided by the Mauritian delegation were indeed very detailed and dealt with the questions competently. The following issues stood out in respect of the Mauritius report and the questions from Commissioners:

- The implementation of the Robben Island Guidelines and the establishment of a National Preventive Mechanism (NPM) under OPCAT. It should be added that torture has been criminalised under the Criminal Code of Mauritius (sections 73 and 78) and that it carries a punishment of Rs 50 000 or five years' imprisonment.
- Prisons conditions and efforts made by the state party to address problems identified by the SPT.
- Freedom of expression and access to information.
- Progress on protecting the best interests of the child. A new Children's Act is currently under development and should bring clarity in this regard.
- Legal clarity on marital rape. It was reported that a Sexual Offences Bill is under development and will address the issue.

## Uganda

The Ugandan delegation was led by the State Minister for Justice, Mr. Ruhindi. The report emphasised the legal framework of the country and little attention was paid to the practical situation and measures taken to promote the objectives of the Charter. It was against this background that the Commissioners asked numerous penetrating questions about the human rights situation in Uganda. The delegation was evasive in its responses on many of the issues. Several problem areas were attributed to 'historical reasons' or 'lack of resources' without providing substantive information on what measures are being taken to address the problem. In response to requests from Commissioners for statistics on various issues, the delegation invited the Commissioners to visit the website of the Uganda Bureau of Statistics and source the information there. This was not acceptable to the Commission and Commissioner Malila, the Rapporteur Commissioner in respect of Uganda, made it clear that such information must be supplied by the state party and that it is not appropriate for the Commission to undertake such activities.

The following issues stood out in respect of the Uganda report and the questions from Commissioners:

- The abolition of the death penalty in view of the decision by the Supreme Court in *Susan Kigula and 416 others v AG* in March 2009. The Commission sought clarification on the implementation of the Court's decision.

- The backlog of cases in the criminal courts and poor conditions in prisons with reference to access to water and nutrition. Questions were also raised in respect of the extremely low conviction rate in rape cases.
- The use of military tribunals where firearms were used in the commission of a crime e.g. armed robbery. The Commission noted that this may be in contravention of the Charter.
- The situation in northern Uganda in respect of socio-economic development and support services to victims of the Lord's Resistance Army. Questions were also raised in respect of the amnesty legislation and whether this would not result in impunity.
- The alleged *incommunicado* detention of a certain DRC rebel (Jean Baptiste) in Uganda. According to the delegation this individual has been repatriated.
- Employment equity in government in respect of gender.
- The lack of enabling legislation in respect of constitutional rights.
- Discrimination against sexual minorities and the criminalisation of homosexuality.
- The situation of the Batwa as indigenous group and ethnic minority in Uganda.

## Benin

The periodic report for Benin reflected on the period 2000 to 2008 and as a result of the visit by the SPT in May 2008 to Benin, particular attention was paid to measures undertaken to eradicate torture and cruel, inhuman and degrading treatment or punishment. Female Genital Mutilation (FGM) was a further issue focussed on by the Commission.

- The state delegation admitted that prison conditions are not at the desired standard but that a programme is in place to improve prison conditions.
- A draft bill is in progress that will criminalise torture.
- The Commission expressed concern about the fact that prisoners are being used to guard other prisoners. Concern was further expressed about the large number of traders and hawkers who conduct business inside prisons; a result of the fact that prisoners receive very limited food from the prison administration and supplement this with what they can buy from traders.

## Reports by Commissioners

Each of the Commissioners presented their activity reports and these will be made available on the ACHPR website in due course. It needs to be mentioned that Commissioner Malila, in his activity report, referred to the meeting between himself and CLC on 14 January 2009 in Lusaka and that he is positive about a working relationship between the Commission and the Centre.

## Logistics

The following are noted in respect of logistical matters in attending the 45<sup>th</sup> Session:

- Travel to West Africa is expensive and the flights totalled in excess of R14 000. It should also be noted that Air Senegal, on which two of the flights were originally booked (Dakar-Banjul) went out of service in early May 2009 and an alternative had to be found (Cape Verde Airlines) which may have further contributed further to the costs.
- The Gambia is an extremely traveller-friendly destination and a most suitable locality for the ACHPR. Wi-Fi internet access is available at most hotels although the connection may be slow and intermittent.
- Travel to The Gambia is time consuming (2 days) and requires a stop-over in Dakar. Due to the situation with Air Senegal and the availability of flights with Cape Verde Airlines, a stop-over of two nights were required on the return journey.
- Yellow fever vaccinations are required and monitored at Dakar airport.