



COMMUNITY LAW CENTRE  
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PROJECT PROGRAMME ON THE ACHPR

# African Commission on Human and People's Rights

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## **FINAL COMMUNIQUÉ ON THE 45<sup>TH</sup> ORDINARY SESSION OF THE ACHPR**

The African Commission on Human and Peoples' Rights (ACHPR), held its 45th Ordinary Session in Banjul, Republic of The Gambia, from 13 to 27 May 2009. The Session was chaired by the Chairperson of the African Commission, Commissioner Sanji Monageng. As the Vice-Chairperson, Commissioner Angela Melo, was absent from the session, Mr. Tom Nyanduga was elected as Acting Vice-Chairperson for the 45th Session of the African Commission. The following highlights some of the key issues from the Final Communiqué; the full text is available on the Commission's website.

In her opening address Commissioner Monageng reflected on progress made as well challenges faced regarding human rights in Africa. She noted that millions of Africans continue to suffer chronic poverty in dehumanising conditions, living with hunger, HIV and AIDS and isolated from adequate public services and social security systems. She remarked that without strengthening people's capacity to access and effectively utilise established democratic systems and processes - at the local, national and international levels - to further the goals of social justice, the continent's vision of a united democratic Africa will continue to be elusive. Speaking under the theme of '*Strengthening the Rule of Law in Pursuit of Justice and Democracy*', the Chairperson reminded the Session that many African communities have been battered by war and torn

asunder by conflicts, and many of the perpetrators of some of the most heinous crimes of war have seemingly gone unpunished! She said that these communities need not only peace, but they need justice as well! She emphasised the important role of civil society and human rights actors in holding governments accountable to the standards they have subscribed to.



*Chairperson of the African Commission, Justice Sanji Monageng, delivering the Opening Speech during the 45th Ordinary Session*

Mr. Gilbert Sebihogo, Executive Secretary of the Network of African National Human Rights Institutions, noted the many human rights challenges faced across Africa and pleaded for a collective approach in addressing human rights concerns as depicted by the ACHPR's slogan "Human Rights, Our Collective Responsibility". In the statement on behalf of NGOs to the Commission, Ms Hannah Foster of the African Centre for Democracy and Human Rights Studies, lamented the serious and persistent human rights challenges faced in Africa and emphasised the widespread use of torture, the use of the death penalty, children's rights violations and discrimination against

lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals.

At the 45<sup>th</sup> ordinary session 33 State Parties, eight National Human Rights Institutions, 20 African and International Organisations and Intergovernmental Organisations and 135 African and International NGOs were represented. Altogether a total of 419 participants attended the Session.

Three state parties presented their periodic reports, namely Benin, Uganda and Mauritius. Concluding observations in respect of these three reports were adopted and will be made available on the website. The Commission also adopted concluding observations on the periodic report of Sudan. Although not mentioned specifically in the Final Communiqué, the status of reporting by states parties is far from the requirement with less than 15% of states parties being fully up to date with their periodic reports.



*Acting Chairperson of the African Commission, Commissioner Tom Nyanduga, delivering the closing speech during 45th Ordinary Session*

The Commission granted observer status to eleven NGOs which bring the total number of NGOs with observer status to 403. A South African NGO, Coalition for African Lesbians, applied for observer status but the application was deferred to the 46<sup>th</sup> session as the Commission wished to discuss a paper entitled *Sexual Orientation in Africa* during its private session. It was apparent from the discussions that the rights to freedom of sexual orientation was a sensitive one and that especially states parties and some of the Commissioners felt that this needed more thorough deliberations.

The Commission adopted three resolutions of which one dealt with internal management of the Commission. The

second resolution changed the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities in Africa. The Commission also appointed the working group consisting of two Commissioners and three members to the working group. Commissioner Yeung Kam John Yeung Sik Yuen (Mauritius) was appointed as Chairperson of the Working Group with a two-year mandate. The third resolution deals with cooperation between the Commission and the African Committee of Experts on the Rights and Welfare of the Child and called for a formal relationship between the Commission and the Committee, with the view to enhancing cooperation between the two mechanisms. The Commission also designated the Special Rapporteur on the Rights of Women in Africa to collaborate closely with the States Parties, Intergovernmental Organisations, and Non Governmental Organisations working on the rights of the child in Africa. The Special Rapporteur on the Rights of Women in Africa will also be responsible for reporting to the Commission on the extent of cooperation between the two structures.

In respect of communications received the Commission considered 79 communications. It was seized with five new communications and considered 21 on the Merits and 53 on Admissibility and one review.

The next ordinary session will be held from 11 -25 November 2009 at a venue still to be determined.

## **CLC STATEMENTS TO THE ACHPR**

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. The second statement was in response to the activity report of the Special Rapporteur on Prisons and Conditions of Detention in Africa.

### **Statement on food security**

Food insecurity in Africa remains a major problem. Ingrained and persistent poverty on the Continent has been exacerbated by recent soaring food prices caused by the current global recession. Africa, as a result of

structural poverty, war, internal conflicts and poor governance, remains more susceptible to the ravages of a global recession, like the one we currently face.

To be free from hunger is a fundamental human right and food insecurity is one of the gravest affronts to human dignity. The right of everyone to food is guaranteed in many human rights treaties and the African Commission has found this right to be implicit in the African Charter. The right to food, as observed by the Africa Commission (*SERAC Case*) is essential for the enjoyment and fulfilment of other rights such as health, education, work and political participation. The right to food is realised, as stated by the UN Committee on Economic, Social and Cultural Right (General Comment 12, 1999), when everyone, individually or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

In the struggle for full realisation of the right to food and food security in Africa, CLC made the following recommendations in respect of Africa in general:

- The Commission should issue a firm statement and/or adopt a resolution on food security in Africa, with practical guidelines on addressing the challenges to food security and achieving food security, and encouraging states to effectively implement African regional and national strategies on food security.
- The African Commission should continue to follow up with states, Regional Economic Communities and other relevant stakeholders on the implementation of the Declaration of the Abuja Food Security Summit 2006 and make its annual report on the progress and challenges accessible to all.
- The Commission's Working Group on Economic, Social and Cultural Rights in Africa should pay particular attention to the realisation of the right to food and the corresponding state obligations in its principles and guidelines on economic, social and cultural rights.
- The Commission and the Working Group on Economic, Social and Cultural Rights in Africa should call on states to translate their commitments into reality by signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and

Cultural Rights, an important instrument in the fight against poverty and hunger.

- States that have not yet done so should respect their commitments made in 2003 in Maputo, which were affirmed in 2006 in Abuja, to allocate at least 10% of their national budgets to agriculture and rural development.
- States should implement the recommendations of the United Nations Special Rapporteur on the Right to Food with regard to building national strategies for the realisation of the right to adequate food based on a human rights framework. Moreover, States should refrain from pursuing policies that have a negative impact on the right to food, such as policies promoting the use of agrofuels.
- States should support small-scale farmers as a way of realising the right to food, including protecting and facilitating their access to land, natural resources such as water and basic agricultural inputs such as fertilizer and seeds, and should ensure that agricultural strategies are implemented within the framework of the Comprehensive Africa Agriculture Development Programme.
- States should facilitate education and skills training programmes in agricultural production, diversification and investment; and where possible, states should incentivise production for local markets so that the most vulnerable in society are able to access food at reasonable prices.

### Statement to the SR on Prisons

The second statement by CLC was delivered under agenda item number 7(b)(i), the activity report of the Special Rapporteur on Prisons and Conditions of Detention in Africa. The statement focussed on private sector involvement in prisons in Africa and the sexual victimisation of prisoners.

In recent years there has been a growing commitment among African states to transform and improve their prison systems. Reports from several African states in the past two years allude to infrastructure development, training of staff and other initiatives aimed at improving prison conditions. In the reform of African prison

systems, there is little doubt that private sector companies involved in imprisonment as a business will seek opportunities for expansion.

It is not CLC's position to categorically oppose private sector involvement in prison systems. The results of private sector involvement are mixed but there is growing list of cases where private sector involvement has gone wrong and resulted in human rights violations and poor services. For many commentators the involvement of the private sector in prisons is a moral issue and some find the idea of 'profits from prisons' objectionable. This may indeed be the case, but it is important that we deal with the realities of the situation, regardless of our views on the morality of private sector involvement in prisons. It is against this background that private sector involvement in prison systems must be approached with caution. Much has been written in the past 20 years about private sector involvement and the following are noted as guidelines:

- Contracts must be negotiated in a transparent manner to ensure that principles of good governance are maintained, with specific reference to the declaration of possible conflicts of interests.
- Terms of the contracts must not place an undue burden on state revenue and profits must be carefully structured.
- The duration of contracts should not be of an undue length and must be reviewable on a regular basis with punitive clauses.
- Civilian oversight and regular evaluations by independent authorities must form part of agreements.
- There must be a clear transference of skills between private operators and the state to the benefit of prisoners.

In respect of sexual victimisation in prisons, the CLC statement noted that many stakeholders find it difficult to admit that sex takes place between men in prisons whether by coercion or consent. Societal constructs of masculinity and common myths around male rape, also create a veil of secrecy around this issue, preventing it

from being addressed effectively through preventive measures and victim support services. In view of the above, the CLC made the following recommendations for the Special Rapporteur to take note of:

- Prison officials need to be sensitised on the issue of male rape and trained on appropriate and effective preventive measures as well as correct responses.
- Where necessary, legal reform needs to be undertaken to ensure that a gender neutral definition of rape is adopted in domestic legislation to enable the effective prosecution of perpetrators of male rape.
- Support services for victims of male rape need to be developed and/or made accessible to prisoners.
- Particular care needs to be taken to protect those vulnerable to male rape, such as children, gay and transgender individuals, first time prisoners, and prisoners of small physical stature. Prison administrations need to be encouraged to take proactive measures by providing information to newly admitted prisoners and, if possible, temporarily segregate new admissions until they have been properly orientated.
- Research on male rape in prisons needs to be encouraged and relied on to inform policy and practice.

## Note

*This newsletter is distributed internally to the staff of the Community Law Centre as an information service on the work of the ACHPR. If you have any comments or suggestions, please feel free to direct these to Lukas Muntingh ([lmuntingh@uwc.ac.za](mailto:lmuntingh@uwc.ac.za)) or Jamil Mujuzi ([jmujuzi@uwc.ac.za](mailto:jmujuzi@uwc.ac.za))*