



**REPORT ON THE COMMUNITY LAW CENTRE'S PARTICIPATION IN THE 43<sup>RD</sup>  
ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'  
RIGHTS**

**EZULWINI, SWAZILAND**

**7 – 22 MAY 2008**

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## 1. Introduction<sup>1</sup>

The experience of attending the 43<sup>rd</sup> Ordinary Session of the African Commission on Human and People's Rights (Commission) reinforced the importance of participating in the activities and processes of regional treaty organisations which advance the cause of human rights. As an organisation that is premised on the advancement of human rights on the African continent, the Community Law Centre (CLC) must of necessity have knowledge of and where appropriate, be involved in the activities of the Commission. The status of the Commission and the recognition of the important work which it undertakes in advancing civil and political and socio-economic rights on the continent was evident by the number of international advocacy organisations which participated in the Session.<sup>2</sup> Not only does this signify the esteem with which the Commission is held in the international community, but it also emphasises the leading role which it plays in shaping the human rights dialogue in Africa. The CLC is strategically positioned as a research institute to inform this dialogue in a meaningful manner.

The extent to which South African civil society was represented at the Session also underscores the importance of our participation. Key non-governmental organisations and academic institutions such as the Centre for Human Rights (University of Pretoria), The Treatment Action Campaign, The Open Society Initiative and The Legal Resources Centre (granted observer status at the Session) amongst others, participated in the Session. As an active member of civil society, CLC has the opportunity to create a niche in respect of some of the key issues deliberated on by the Commission. While many of the NGO submissions were focused on human rights violations which were substantiated by statistics and well-documented complaints, not many of the submissions propose appropriate policy responses to deal with these issues. The Commissioners are therefore appreciative and open to receiving substantive research and recommendations on how to address the issues raised at the Session. The

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<sup>1</sup> This report was compiled by Annette Christmas and Jamil Majuzi, researcher with the Local Government Project and Doctoral researcher with the CSPRI of the Community Law Centre, respectively.

<sup>2</sup> See: Final Communiqué of the 43<sup>rd</sup> Ordinary Session of the African Commission on Human and People's Rights at para 6. The United Nations High Commissioner for Human Rights organised a meeting in Ezulwini on 6 May 2008 on the Modalities of the Elaboration on an African Human Rights Strategy as envisaged by Resolution A/61/296 of the UN General Assembly. Also see the list of participants which includes organisations such as the International Committee of the Red Cross (Switzerland), The Foreign and Commonwealth Office, UNICEF, UNDP etc. Prominent NGO's, such as the Danish Institute for Human Rights, Save the Children Sweden, amongst others, also participated in the Session.

approachability of the Commissioners also allows the CLC to not only participate in proceedings, but to raise issues new issues for debate, thereby contributing to setting the agenda of the Commission.

## **2. Overview:**

The CLC has had observer status with the African Commission since 2005. In an effort to effectively utilise this observer status, CLC was represented at the 43<sup>rd</sup> Ordinary Session of the African Commission which took place in Ezulwini, Swaziland from 7 – 22 May 2008. Jamil Mujuzi and Annette Christmas represented CLC from the 7 – 10 and from 10 – 15 May, respectively. This report covers two issues: the preparatory meeting that was organised by the Human Rights Institute for South Africa (HURISA), and the observations of CLC's representatives at the 43<sup>rd</sup> Ordinary Session. The report also suggests ways through which CLC can better utilise its observer status.

## **3. The HURISA meeting:**

From 30 April to 1 May 2008, HURISA organised a preparatory meeting at Willow Park Conference Centre in Kempton Park. The meeting was primarily for the partner organisations from various Southern Africa Development Community countries that were registered to attend the 43<sup>rd</sup> Ordinary Session of the African Commission. Jamil Mujuzi represented CLC at that meeting. Participants at the meeting dealt with a number of issues which coincided with the Agenda for the Session. The issues which formed the basis for discussion included;

1. The establishment and functions of the African Commission;
2. The need for NGOs with observer status to submit their annual reports to the African Commission;
3. The necessity of NGOs working hand in hand with the African Commission to ensure that their recommendations to governments are implemented;
4. The importance of NGOs working closely with the Secretariat of the African Commission to obtain guidance on how to engage their governments in the promotion and protection of human rights.

Participants were encouraged to call upon partner NGOs that have yet to apply for observer status with the African Commission, to consider doing so. Participants resolved that research must be conducted on

how organisations can effectively participate in the work of the African Union especially through the newly established Economic, Social and Cultural Council of the African Union (ECOSOC). The Statute and Draft Rules of Procedure of ECOSOC provide for and encourage NGOs, especially those dealing with human rights, democracy and governance, to participate in the activities of the African Union.

NGO representatives from the countries of Mozambique, Malawi, Zambia, Swaziland, Angola, and Zimbabwe made statements on the situation of human rights in their respective countries.

#### *Swaziland*

Representatives from Swaziland highlighted the government's violation of the rights of the media. Furthermore, the right to freedom of assembly was violated when the government declared it a criminal offence to hold a political rally. A dangerous precedent of disrespect for the independence of the judiciary has also been demonstrated by the executive.

#### *Mozambique*

Representatives from Mozambique highlighted the government's failure to respect its obligations under international treaties. With the result, people have generally lost confidence in the criminal justice system, resorting to taking the law into their hands. Crimes of human trafficking, torture and arbitrary executions, as well as the violation of the right to freedom of expression are commonplace.

#### *Malawi*

The Malawian participants reported that the government shows scant regard for the rule of law. This is demonstrated by its continued violation of press freedoms, its tacit consent of unlawful child labour practices and the government's unwillingness to submit its initial report to the African Commission. A positive development, however, is that the High Court has declared the mandatory death penalty unconstitutional.

#### *Zambia*

The Zambian participants raised police brutality, including the use of torture and the increasing number of unnatural deaths in detention facilities and prisons, as a key area of concern. While primary education is mandated as free, certain schools charge sports and or construction fees with the result that pupils who cannot pay these fees, drop out of school. The condition of health care facilities in most parts of the country is deplorable. The independence of the judiciary is not guaranteed especially at the Supreme

Court level where judges are appointed on a temporary basis. The lack of enforceable socio-economic rights in the Constitution compounds the difficulty experienced by citizens in accessing and enforcing these rights.

#### *Angola*

The Angolan participants expressed concern about the fact that only 5% of the national budget is allocated to health care and furthermore that only 35% of the population has access to medical care. This situation is problematic as 2.5% of the national population is HIV positive. In respect of press freedom, the prohibition against private broadcasters is a particularly restrictive tool engaged by the government.

#### *Zimbabwe*

The Zimbabwean participants, as well as international NGOs and NGOs from several African countries highlighted many issues of grave concern in respect of the human rights situation and current political climate in Zimbabwe. These include extrajudicial executions, forced disappearances, the blatant violation of the right to property, harassment of lawyers and human rights defenders, the lack of respect for the independence of the judiciary and, flawed electoral processes with particular emphasis on the March 2008 presidential and parliamentary elections. The lack of an impartial national human rights commission was also raised.

#### **4. Overview of proceedings of the 43rd Ordinary Session of the African Commission:**

This report excludes the speeches that were delivered at the opening ceremony of the 43<sup>rd</sup> Ordinary Session as this information is fully captured in the *Final Communique* that was released by the Commission at the end of the Session.<sup>3</sup> It covers the following processes as it took place at the Session:

- a) The general submissions made by state delegates;
- b) The statements of the national human rights institutions and NGOs who participated in the Session;
- c) The dialogue between state delegates, the Commissioners and NGOs in respect of issues raised;

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<sup>3</sup>The *Final Communique* is readily accessible on the African Commission's website at <http://www.achpr.org/english/communiques/Final%20Communique%20-%2043rd%20OS.pdf>. Accessed on 22 June 2008.

- d) The state reports by Sudan and Tanzania and the Commission's response thereto; and
- e) General comments made by the Commission.

In providing an over-view of the dialogue between the participants and the Commission we attempt to highlight the range of issues dealt with at the Session. This is done with a view to identifying possible avenues of intervention by CLC in drafting its statement to the Commission, as well as informing CLC's participation at the Session. Importantly, CLC need not limit its engagement to an issue which impacts South Africa directly, but is rather at liberty to comment on issues which generally fall within our research expertise.

The report that follows is lengthy. For the sake of convenience, we have summarised the dialogue between state delegates, the Commissioners and NGOs (see para 7 below) under various headings. This will hopefully enable the reader to have a quick over-view of the issues debated at the Session. Commissioners in addition, also read statements during the public session and reported on activities undertaken since the previous Session.

## **5. General statements by state delegates:**

**Kenya:** The Kenyan delegation informed the African Commission that the political violence which erupted after the presidential and parliamentary elections had ended. The delegation, added that a commission, headed by a retired South African judge, will be established to investigate the causes of the violence and will thereafter make appropriate recommendations on how to deal with the post-violence situation.

**Ethiopia:** The delegation informed the Commission that the government is committed to implementing its obligations under the African Charter on Human and Peoples' Rights and other regional and international human rights treaties to which it is party. To this end the government undertakes to ratify outstanding regional and international treaties in the near future. The government is in the process of compiling its overdue reports and collecting data throughout the country to facilitate this process. The African Charter has been translated into three local languages. It is happy to report that the recently held elections were free and fair. The government is furthermore ready to facilitate the African Commission's promotional mission to the country in June 2008.

**Lesotho:** The delegation informed the African Commission that Parliament recently enacted the Speedy Trial Act and the Sentence Guideline Act. Government furthermore adopted the 10-point plan to reduce overcrowding in prisons. A human rights desk was established to promote and protect human rights in the correctional services. The HIV/AIDS pandemic has had a devastating impact on the country's population to the extent that there was a decline from 2 million to 1.8 million people. The government has also accepted assessment under the Peer Review Mechanism of the African Union. Domestically, a national commission on human rights will be established soon.

**Egypt:** The delegation informed that African Commission that the government is committed to strengthening its national human rights structures and has adopted a national human rights strategy to achieve this objective. Principle constitutional amendments were effected to mainstream the principle of equality between men and women. The government invited the African Commission to conduct a promotional mission to the country at any time to assess the situation of human rights.

**Libya:** The government attaches great importance to African unity and is willing to do anything to defend the continent, much in the same way that it fought against Nazism and Fascism. The delegation emphasised that in the past, Africans were abused by their colonial masters and those who resisted colonialism and oppression were labelled as terrorists. In view of this history, there is now only one voice in Libya, that of the people. As a result there is no conflict in the country. The delegation added that the "Green Book" contains everything about human rights. The right to land is protected through equal distribution of land.

The Libyan government alleges that the international community is responsible for many, if not all, of the conflicts in Africa. The Libyan government will furthermore not tolerate those who attempt to destabilise the continent. Without freedom and peace we cannot talk about human rights. No country should dominate another. Countries with weapons of mass destruction should disarm and invest that money into health care and food production, amongst other things. The delegation concluded that women and men should have the same rights and duties.

**Tanzania:** The delegation informed the African Commission that the President of Tanzania, acting in his capacity as the Chairman of the African Union, played an instrumental role in solving the political problems that plagued Kenya after the contested December 2007 elections. The government supports all regional efforts to promote and protect human rights. The international community must be made aware of the fact that Africa is serious about securing peace and political stability on the continent, as is evidenced for example, by the initiatives taken to end the conflict in Darfur.

**Uganda:** The delegation informed the African Commission that its periodic report covering the period 2006 – 2008 was ready for submission and that they were willing to have it considered at the Session. The Commission thanked the delegation for the report but informed them that it can only be considered at the next session due to its late submission. In order for periodic reports to be considered at a particular session it must be posted on the African Commission’s website prior to that session to allow members of civil society to study it and possibly prepare comments thereon. The delegation commended the Commission on the concluding observations made on their 2001 – 2005 periodic report as they served as very useful guides for the preparation of the 2006-2008 report.

**Mauritania:** The delegation informed the African Commission that the government has made progress in implementing the recommendations of the Commission in respect of the previous periodic report and other communications of the Commission. The delegation reported that refugees returning to the country were being resettled. Parliament enacted a law against slavery as part of a number of strategies adopted at the national level to eradicate slavery. The living conditions of the people of Mauritania are being improved and the government adopted several measures to deal with the food crisis. The government urged the Commission to put measures in place that will ensure that Africans are protected from the effects of globalisation.

**South Africa:** The delegation informed the African Commission that the government is committed to the eradication of poverty. It furthermore fully supports the continental structures in place to eradicate poverty and to promote and advance the protection of human rights. The South African Constitution has a Bill of Rights which includes enforceable socio-economic rights. The right to sexual orientation is expressly guaranteed in the Constitution and the Civil Union Act further seeks to regulate the solemnisation and registration of civil unions by way of either marriage or a civil partnership and to provide for the legal consequences of the solemnisation and registration of civil unions.

The government is committed to the protection and promotion of women’s rights. In many government departments, women comprise 45% of employees, many of whom occupy senior positions. The government views the protection of children’s rights as of paramount importance. To this end, these rights are entrenched in the Constitution and are further protected in various other legislative texts. To deal with the increasingly high crime rate and more particularly, the impact it has on the victims of crime, a Victims Charter was adopted. The government has also established a Legal Aid Board which renders legal services to accused who cannot afford to pay for legal representation. The government has facilitated public dialogue through gatherings (Imbizos), where the general public have the opportunity to express

their views on major political issues. The government invites members of civil society to work hand in hand with it to promote democracy in the country.

**Senegal:** The delegation informed the African Commission that the government recently concluded the Headquarters Agreement with the United Nations High Commission for Human Rights. This Agreement enables the UN Commission to establish its Western Africa regional offices in Dakar, the capital city. The delegation was pleased to announce that a peace agreement between Sudan and Chad was recently signed in Senegal. The signing of this peace agreement has contributed to the normalisation of the hitherto strained relationship between the two States. The delegation commended all the African countries that have recently been reviewed under the Universal Peer Review Mechanism, and undertook to continue to work with the African Commission to promote and protect human rights in the country.

Youth and women enjoy special status in relevant government laws and policies. The government furthermore respects people's right to freedom of religion and worship. The government recently hosted the Organisation of Islamic Conference.

The government deplored the current food crises in Africa. As the right to food is protected under the Universal Declaration of Human Rights, the government called on the international community to immediately work together to find a solution to the current food crisis. The Senegalese president launched a campaign highlighting the food crises in the world and calling upon Senegalese to grow more food and store as much food as possible.

**Botswana:** The delegation observed that the African Commission will only be able to carry out its mandate effectively if it is well-resourced and therefore called upon the African Union to continue funding its activities. The delegation criticised the African Commission for at times deviating from its own rules of procedure. The government recommended that the Commission consult states parties to the African Charter when revising its Rules of Procedure. The Commission was furthermore criticised for failing to finalise their communications expeditiously, an action they allege, which has resulted in delayed justice.

The delegation reported that Botswana was unable to submit its initial periodic report because it lacked the necessary expertise (or even access to individuals who have that expertise) to advise the government on the report-writing process. The Commission was called upon to help countries in this regard. The delegation recognised that the Commission had in many communications found the Botswana to have violated human rights. Many of the recommendations in this regard have been implemented.

**Nigeria:** The government has taken a number of significant measures to ensure the independence of the judiciary. The independence of the judiciary is guaranteed in the Constitution as well as a number of other policies. In so-doing, government hopes to ensure that no individual or institution is capable of influencing judges in reaching their decisions. The government recently hosted an international conference on HIV/AIDS and Malaria to the benefit of many African countries who shared their views and experiences on how to deal with these diseases. The government re-iterated its support of the mandate of the African Commission and pledged to continue to contribute substantially to the budget of the African Union.

**Zimbabwe:** The delegation informed the African Commission that in line with its recommendations, many laws which previously violated people's rights have been amended and that the majority of the population participated in this process. Commenting on the March 2008 presidential and parliamentary elections, the delegation pointed out that both SADC and AU observers held that the election which took place was free and fair. No presidential candidate obtained more than the required 50%, as such, the run-off is currently being organised by the Electoral Commission in accordance with electoral law. Furthermore the political climate in Zimbabwe is conducive for a free and fair election.

The delegation commented that regional bodies in Africa, like the African Commission, are well placed to deal with the situation of human rights on the continent. Countries outside of Africa should therefore abstain from making statements that undermine the Zimbabwean leadership as they are not qualified to do so.

At the end of the Zimbabwean delegation's statement, the Commissioner who chaired the session commented that the African Commission was seriously concerned about the situation of human rights in Zimbabwe and hoped that SADC Guidelines on free and fair elections will be followed in the run-off elections.

**Sudan:** The delegation informed the African Commission that it is concerned about the illegal transfer and movement of small arms in the region as it makes for a lethal recipe of instability and human rights violations in the region. The government and the opposition recently agreed on the Election Bill which allocates 25% of the seats in Parliament to women. The delegation stated that the Commission and all interested NGOs are welcome to visit Sudan and see how progress is being made in the promotion and protection of human rights.

**Swaziland:** The delegation informed the African Commission that the government respects the rule of law, human rights and democracy. In this spirit, the new Constitution which contains a very progressive

Bill of Rights, was enacted. The Constitution was enacted following wide consultation with the general public. Swaziland has never had a poor human rights record even prior to the new Constitution being enacted. This is largely attributable to the fact that the government is committed to the promotion and protection of human rights. It has ratified various regional and international human rights treaties. The new Constitution furthermore guarantees the independence of the judiciary and establishes a national human rights commission. The delegation informed the Commission that government has faced numerous challenges which include poverty, HIV/AIDS, and Malaria.

**Tunisia:** The delegation informed the African Commission that the government is keen to see the equal advancement and enforcement of socio-economic rights *vis a vis* civil and political rights. This advancement should be evident in laws and policies which are adopted. The Commission was invited to conduct a promotional mission to the country in June 2008. The delegation reported that the government is in the process of finalising the programme for that visit.

The delegation was pleased to report that the government is seriously considering implementing all of the recommendations made by the Commission on the previous periodic reports. The government is committed to implementing its obligations under the international treaties which it has ratified. For this reason, the government has agreed to be reviewed in terms of the Universal Peer Review Mechanism. The death penalty has also been abolished. Representatives of the International Committee of the Red Cross, Human Rights Watch and the United Nations recently visited the country to assess the situation of human rights. The government is furthermore, in the process of implementing the recommendations made by the relevant UN treaty bodies like the Committee on the Elimination of All Forms of Discrimination against Women.

**Saharawi Republic:** The delegation was pleased to inform the African Commission that the government adopted a new Constitution in 2007. The new Constitution includes fundamental democratic principles like respect for the rule of law, separation of powers and the independence of the judiciary. Parliamentary elections have just been concluded in which 36% of the general population cast their votes. The government expressed concern that Morocco has continued to illegally occupy part of its territory for more than 30 years.

**Burundi:** The delegation informed the African Commission that while the government is dealing with a very challenging post-conflict situation, it is nevertheless doing all it can to ensure that human rights are promoted and protected. The rights of indigenous people and more particularly their right to land, is protected. The government is in the process of adopting a law to criminalise torture while the process of

establishing the Truth and Reconciliation Commission is also underway. Amongst the many challenges facing the government, inadequate infrastructure is a key problem. Despite this, a few years ago the President declared that basic education, antenatal care, and healthcare for all children below the age of five should be free services. These services are therefore freely available throughout the country. In respect of gender presentation, many government offices are occupied by women. The government is in the process of finalising its periodic report. The sporadic attacks undertaken by the rebels in certain parts of the country are however, likely to make it difficult for the government to conduct the forthcoming elections in a free and fair manner.

#### **6. Statements by National Human Rights Institutions:**

Of the four national human rights institutions that attended the Session, only the South African Human Rights Commission (SAHRC) made a statement. The representative of the SAHRC informed the African Commission that the South African government participated in both regional and international human rights monitoring mechanisms such as the African Peer Review Mechanism and the Universal Periodic Review Mechanism. There are many pressing challenges which the government of South Africa faces. Amongst these, is the scourge of xenophobia. The SAHRC continues to work hand in hand with the government to combat and address this problem. Prevailing conditions of poverty, HIV/AIDS and violence are other key issues of concern in the country.

The representative reported that there has been an increase in the perpetration of human rights violations by non-state actors. In respect of escalating food prices, the SAHRC established a desk to advise the government on how deal with the food crisis in the country. While the South African government is committed to addressing global warming, greater efforts have to be undertaken by South Africa and other African countries. The SAHRC expressed concern about the human rights situation in Darfur, the Democratic Republic of Congo, Zimbabwe and Kenya.

#### **7. Statements by Non-Governmental Organisations:**

Several organisations made statements on the situation of human rights in Africa. Below are some of the issues that were addressed in those statements.

***The Rome Statute of the International Criminal Court:***

African countries are encouraged to ratify the Rome Statute of the International Criminal Court. The government of Sudan in particular, is encouraged to cooperate with the ICC in handing over alleged war criminals to stand trial. Swaziland is yet to accede to the ICC Statute. The African Commission should in addition, consider appointing a Special Rapporteur on Justice and Immunity. (Coalition for the International Criminal Court and Amnesty International).

***The state of human rights in North African Countries:***

The human rights situation in many North African countries such as Algeria, Morocco, Tunisia and Libya is rapidly deteriorating. For example, elections, when they are held, are not free and fair. Torture is a serious problem, with many people detained incommunicado. Terrorism suspects are even flown from other countries to be tortured in these countries (rendition). NGOs and human rights defenders are often persecuted at the hands of the state. Media freedom is almost non-existent. Sharia (Islamic) law is interpreted and misconstrued to facilitate the violation of women's rights in these countries. Extrajudicial killings are common in Egypt. In Libya it is an offence for any person to attempt to start an NGO. (Institute for Human Rights Studies, Cairo).

***The state of human rights in SADC countries:***

The advancement of human rights and democracy is not satisfactory in many SADC countries. Many SADC countries fail to submit their periodic reports to the African Commission timeously. Botswana and Malawi have failed to submit even a single report. Elections in SADC countries are rarely free and fair, especially in Zimbabwe and Swaziland. SADC countries should furthermore repeal all laws that violate children's rights (Human Rights Institute of South Africa).

***The state of human rights in the Democratic Republic of Congo:***

There are reports of serious and sustained human rights violations in the Democratic Republic of Congo. This includes torture and rape, two crimes which are used as weapons of war to terrorise the civilian population. Thousands of prisoners are awaiting trial. There are over 200 prisoners on death row. The government persecutes human rights defenders. There is no clear separation of powers, as the executive threatens the independence of the judiciary. (International Federation of Human Rights, FIDH).

***State of human rights in Malawi:***

Malawi has failed to submit even a single periodic report to the African Commission. Malawi is also yet to ratify the Protocol Establishing the African Court. The executive threatens the independence of the judiciary by intimidating judicial officers. The Malawian government has dismissed the idea of holding

local government elections. Prison conditions are appalling and are characterised by overcrowding, poor medical care, and inadequate nutrition. The African Commission is called upon to urge the government to address the above problems as a priority (Centre for Human Rights and Rehabilitation- Malawi).

***State of human rights in Mauritania-refugee rights:***

Mauritania is urged to sign an agreement with Mali and the UNHCR to ensure that refugees returning from Mali are provided with the necessities needed to resettle in the country. (Institute for Human Rights and Development in Africa).

***The state of human rights in Nigeria:***

The recently concluded presidential elections in Nigeria were not free and fair. Many people in Nigeria are disenfranchised, making the right to free and fair elections virtually unrealisable. (Constitutional Rights Project).

The enjoyment of human rights is still far beyond the reach of many ordinary Nigerians. Less than 30% of Nigerian lawyers understand human rights. Less than 20% of university students in Nigeria understand or have knowledge of human rights. The situation is even worse at primary and secondary school level, where pupils know nothing about human rights and no effort is made to include it in the curriculum. The African Commission is encouraged to draft a resolution calling on African countries to include human rights studies in school curriculums. (Nigeria Bar Association).

***The state of human rights in South Africa- refugees and human rights defenders:***

The Human Rights Institute of South Africa (HURISA) expressed concern about the recent arrest of Zimbabwean protesters outside of the Chinese embassy in Pretoria. The protesters were peacefully demonstrating against the shipment of arms which was *en route* from China to Zimbabwe. The arrest and immediate transfer of the protesters to the Lindela Repatriation Centre is not in keeping with international standards on the protection of refugees and human rights defenders. This is not an isolated incident but is rather part of a growing number of incidents where human rights defenders have been arrested and are awaiting deportation at the Centre. The arrests and subsequent deportation is often made without due consideration to the danger which awaits detainees on arrival in Zimbabwe. (HURISA)

***The state of human rights in Sudan:***

Serious human rights violations, including rape, are perpetrated in many African countries such as Somalia (by the Ethiopian troops and Somali warlords), Chad, Democratic Republic of Congo, and Sudan. The African Commission should pressurise Sudan to respect human rights in Darfur and allow the

deployment of troops. Furthermore, justice as opposed to impunity should be the basis of lasting peace in Sudan. (FIDH).

***The state of human rights in Swaziland:***

The Constitution of Swaziland was drafted without the participation of the majority of the population. The Bill of Rights in the Constitution is, in addition, very weak. The forthcoming elections should be held in line with SADC Guidelines on elections and should be free and fair. (Lawyers for Human Rights, Swaziland).

***The state of human rights in Tanzania:***

In Tanzania, the Bill of Rights emphasises civil and political rights only. Jurisdiction to hear cases dealing with human rights violations is limited to the high courts. The result is that very few individuals can access these courts because of the expenses involved. The law furthermore requires a quorum of three high court judges to hear cases involving allegations that human rights protected under the Constitution, have been violated. There are however, very few high court judges in the country. The few judges that serve on the bench are furthermore too busy with other cases to preside over these cases. Raising a quorum to hear a human rights case is therefore very difficult. The judiciary was commended however, for declaring certain electoral laws unconstitutional. (Legal and Human Rights Centre of Tanzania).

***The state of human rights in Zimbabwe:***

Organisations who made statements about Zimbabwe tried to describe the wide-spread decline of respect for human rights and the rule of law in Zimbabwe.

There is an election crisis in Zimbabwe. The judiciary is partial and the army is interfering in politics. There is an urgent need for a fact finding mission to Zimbabwe. (Zimbabwe Lawyers for Human Rights).

Torture is widespread in Zimbabwe. There are many instances of extrajudicial executions. The government is systematically displacing people who have voted for the opposition. African leaders are called upon to condemn all leaders on the continent who violate human rights. (Media Monitoring Project, Zimbabwe and Zimbabwe Human Rights).

Intimidation and torture of opposition party supporters is commonplace in Zimbabwe. The government routinely uses ungazetted detention centres for this purpose. People are forced to attend the ruling party's meetings. Police are harassing and illegally arresting people throughout the country. (Human Rights Watch and Amnesty International).

***Torture:***

The Association for the Prevention of Torture would like to see a torture-free Africa. To this end, it has worked hand in hand with the African Commission to adopt the Robben Island Guidelines. In a disturbing trend, post-electoral violence in many African countries is characterised by torture. Many countries do not allow citizens to peacefully assemble and demonstrate. African countries should domesticate and implement regional and international human rights instruments to combat torture especially the Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and the Optional Protocol to CAT. There is need for African governments to cooperate with NGOs and the African Commission to eradicate torture on the continent. The food crisis is also an issue of concern that must be addressed by all countries. (Association for the Prevention of Torture).

While many countries have ratified the CAT and some have even enacted laws that prohibit torture, the reality is that these laws are rarely enforced (World Organisation against Torture).

***Legal Aid and the Death Penalty:***

The African Commission should promote the Lilongwe Declaration on Legal Aid. All African countries should place a moratorium on executing death penalties and should move towards abolishing it. (Penal Reform International).

***The challenges which human rights defenders and NGOs face:***

Human rights defenders face numerous obstacles to their work, which often includes regular harassment. Many African countries have furthermore enacted laws that make it impossible for non-governmental organisations to register and operate in their country. Where NGO's are in existence, these governments often treat them with suspicion and interfere with their work, making it difficult for them to pursue their activities. (International Service on Human Rights).

***The rights of minority groups in Africa:***

Minority groups in many African countries are marginalised. The African Commission should strongly encourage countries on the continent to promote and protect the rights of minorities. A step in the right direction, saw a conference on minority rights held in Ezulwini two days prior to the start of this Session. It was attended by participants from 14 African countries (Minority Rights International).

***Xenophobia:***

African countries should lobby the UN to facilitate a follow-up to the Durban Conference on Xenophobia. The African Commission should publicly express its support for such a follow-up conference. African countries should support one candidate for the post of UNHRC which will soon be vacant (North – South 21).

***The rights of gay and lesbian people:***

Lesbian and gay people are harassed in many African countries like Kenya, Uganda, South Africa, Nigeria, and Rwanda. African countries should repeal all laws that discriminate against people who have different sexual orientations.(African Lesbian Coalition).

***The advancement of woman's rights:***

Many women in South Africa continue to live in conditions of abject poverty. Many lack access to even basic education. Violence against women has reached epidemic proportions in South Africa and Swaziland. The African Commission is commended for adopting resolutions that recognise women's rights. The South African and Swaziland governments should be encouraged to adopt and implement policies aimed at eradicating discrimination against women (People Opposing Women Abuse).

Many women in prisons in Africa are petty offenders on whom non-custodial sentences should have been imposed (Penal Reform International).

***Freedom of the media:***

Media laws in certain African countries such as Lesotho, Swaziland, and Zimbabwe can be described as draconian. In South Africa, the ANC has made attempts to interfere with the freedom of the media in order to have effective control over the SABC, the national broadcaster. (Media Institute for Southern Africa).

***Collaboration with the Centre for Human Rights:***

The Centre for Human Rights, University of Pretoria, has worked hand in hand with the African Commission for quite some time; all the LLM students attended the Session and many publications were available for whoever was interested. The Chairperson of the Session thanked the Centre for coming and for having supported the African Commission with their research for many years.

**Miscellaneous:**

Some organisations simply outlined the various activities which they have been engaged in since their establishment. (Like Women's Lawyer of Cote D'voire). The Commissioners reminded them to concentrate on the situation of human rights in either their home countries or any other African country.

**7. State delegates' response to allegations made by NGOs:**

**Sudan:** Sudan is not a party to the Rome Statute of the International Criminal Court and, as such has no duty under international law to implement the obligations imposed by that treaty. The ICC Statute does not amend the UN Charter which recognises the sovereignty of States and the principle of non-interference by states in the internal affairs of any state. The ICC indictment against alleged Sudanese war criminals was motivated by the political interests of those countries that do not support the government of Sudan. The situation in Darfur is calm and not as volatile as described in the exaggerated reports made by the media and NGOs. The statement by Amnesty International merely generalised the human rights situation in Darfur and failed to suggest what should be done to remedy the alleged violations.

**Libya:** The allegations that Libya has violated human rights are baseless and unfounded. Those who made the allegations should be more serious and truthful and should furthermore, not revert to using the African Commission as a platform to parade lies against governments. Every country understands democracy differently and its leaders know best how its people should be ruled. Countries like the United States of America, France and Britain have no right to impose their understanding of democracy on other countries, a fact which is recognised in the Constitutive Act of the African Union, the UN Charter and the African Charter on Human and Peoples' Rights. Political power in Libya is in the hands of all the people who are represented in local committees. President Ghadafi is one of the most committed leaders to the promotion and protection of human rights and as such, is respected throughout the world. He has furthermore, initiated various projects and programmes to fight against diseases and poverty in Africa.

**Kenya:** The allegations that the government violated human rights are baseless. Rather, it is the rebels based in Mt Elgon, who violate human rights in Kenya, and particularly in that area. The government is committed to the promotion and protection of human rights.

**Ethiopia:** The allegations by the NGOs that human rights are being violated in the country cannot be substantiated. Ethiopian troops are trained in human rights and international humanitarian law and as such, the allegation that they violated human rights in Somalia is baseless.

**Swaziland:** NGOs should respect the rules of procedure of the African Commission and desist from using disparaging and insulting language against state parties. The allegation that the constitution-making process in Swaziland was not consultative and participatory is unfounded. In as much as democracy should substantially be the same in all countries, each government should be allowed to govern its people in the manner it chooses, provided that such government respects fundamental democratic principles.

**Uganda:** The government ratified The Rome Statute of the ICC and is in the process of passing the enabling legislation that will allow for its domestic application. The process for enacting this enabling legislation must however be undertaken with great caution so as not to derail the ongoing peace negotiations between the government and the rebels. The majority of Ugandans because of their cultural and religious beliefs, do not support same-sex relationships and the Constitution specifically prohibits marriages between people of the same sex. There are laws in place to penalise same-sex relationships. The arrest, detention and punishment of people in same- sex relationships should however, be conducted within the parameters of the law.

**Zimbabwe:** The presidential election run-off will be held according to the law because the Electoral Commission, tasked with over-seeing the election, is independent. The alleged violation of human rights by the government, is not true. When former farm owners mistakenly believed that the opposition had won the presidential elections, they came back to forcibly take control of the already distributed farms. This led to skirmishes between these former farm owners and the new farm owners.

The British government still interferes with the internal affairs of Zimbabwe. It recently donated over three million US dollars to NGOs to support the opposition. All NGOs in Zimbabwe and even outside of Zimbabwe are following the agendas of western countries which explains why they continuously make baseless allegations against the government.

In respect of human rights defenders, people who break the law cannot be shielded from the consequences of breaking the law, irrespective of whether they claim to be human rights defenders. The government of Zimbabwe respects the rights of citizens to level criticism at it. It is however, wary of the claims made by so-called human rights defenders because many of them, like the NGOs, are paid to make the allegations they make against the government.

In respect of the arms shipment *en route* from China, the government is surprised at the debate which it has generated. Zimbabwe is not under an arms embargo. The shipment of arms was ordered as far back as 2006. The fact that it was scheduled to arrive near the time of the elections is merely a co-incidence.

In response to allegations raised by the Media Monitoring Group of Zimbabwe that Zanu PF has dominated the press coverage allotted to political parties in the run-up to the elections, state delegates explained how 93.5% of the public broadcaster's time was allocated to Zanu PF. All political parties were designated the same amount of broadcasting time. The rest of the time was up for sale and any political party had the right to purchase that time. Zanu PF therefore simply took at advantage of the opportunity and bought the remaining air-time.

In response to the question as to why BBC, CNN and ETV had been banned from Zimbabwe, the state delegates explained that these broadcasters had failed to comply with local media requirements for authorisation.

The Commission observed that Zimbabwe refuses to recognise any of the allegations of human rights violations leveled against it by civil society. Zimbabwe is not a lawless country. It therefore raises serious questions about the extent to which the law reflects the will of the people.

**Algeria:** Many of the allegations made by NGOs are not supported by evidence and as such do not deserve a response. NGOs that allege that the government has violated or is violating human rights should adduce evidence to that effect.

The Commissioner who chaired the Session interjected and told the Algerian delegation that the African Commission has for a long period of time worked closely with NGOs and as such, esteems them as serious partners in the promotion and protection of human rights. State delegates are therefore expected to respect NGOs. Conversely, if states believe that the allegations made by NGOs are baseless, they should adduce evidence to that effect.

**Nigeria:** Human rights education is being provided in Nigeria, especially in universities.

**Lesotho:** The government delegation refuted allegations that the elections were not free and fair. The opposition political parties simply refused to concede defeat when they had clearly lost the elections. In respect of freedom of the media, there are a number of private radio stations and newspapers in existence in Lesotho, which disproves the allegations that freedom of the media and press is violated.

**South Africa:** The South African government condemns any form of violence against women and children. The Department of Correctional Services has the mandate to rehabilitate prisoners and has executed this mandate properly. Prisoners are also allowed to remain in touch with their family members and friends. Section 16 of the Constitution guarantees freedom of the media. The government adopted the

Media Framework with a two-fold purpose, to strengthen the media and, to regulate the media to ensure that ordinary people's rights are not violated.

In response to the allegations relating to the arrest of human rights defenders, the South African government acknowledges that Zimbabwean protesters were arrested, but denies that all of those arrested can be classified as human rights defenders. South Africa has a duty to protect and prevent breaches of security in respect of all embassies and was as such, entitled to take the action of arresting the protesters. Furthermore, the arrest and deportation of foreigners who are illegally in South Africa, is done within the ambit of the Refugee Act. Refugees are furthermore informed of the decision to deport them and have the right to appeal against that decision.

The Commission accepted the acknowledgement by the South African delegation that the arrest of Zimbabwean protesters had taken place. However, grave concern was expressed about the blanket deportation of those arrested. International law is clear that where the impact of deportation is detrimental to deportees or poses harm in any significant manner, the deportation *cannot* proceed. This situation is not unique to South Africa. In a number of African States, human rights legislative texts have been overtaken by other law and are often shaped to suit the prevailing context. States need to be wary of using obsolete instruments to protect human rights. Particularly in the case of human rights defenders, States should pursue appropriate protective mechanisms to ensure that their civil and political rights are protected and that the principles of democracy are upheld.

**Tanzania:** The delegation commended the Tanzanian-based NGO for its work in the promotion and protection of human rights in Tanzania and for the constructive criticism of the government's human rights record. However, the delegation disputed reports that it was difficult for victims of human rights violations to approach the High Court to seek remedy. Additional judges were recently appointed to enable the High Court to deal with as many cases as possible, including those alleging human rights violations. The delegation also thanked the Tanzanian-based NGOs for working hand in hand with the government in preparation of the state periodic report that was to be considered at the 43<sup>rd</sup> Ordinary Session.

## **8. Cooperation between the NGOs and the National Human Rights Institutions with the African Commission**

Under this agenda item the African Commission called upon NGOs and NHRIs to highlight issues which they believed would make their cooperation with the Commission on the promotion and protection of human rights more effective. Only one NGO and one NHRI made statements under this item:

**SAHRC:** The African Commission should develop general guidelines to regulate the manner in which NHRIs work closely with the Commission to protect and promote human rights in their respective countries. The Commission should establish a specialised unit on NHRIs which could act as a link between the Commission and NHRIs. This unit would ensure that issues and concerns of NHRIs are given sufficient attention. The Commission's Rules of Procedure should acknowledge the independence of NHRIs as stipulated in the Paris Principles. NHRIs who wish to submit communications to the African Commission should do so in their own name. In order to retain their independence, NHRIs should not be part of the state delegation at the Sessions of the African Commission. NHRIs should in addition, not contribute to writing state parties' periodic reports to the African Commission.

**Nord Sud XX1 (North- South 21):** The African Commission should put in place mechanisms that enable it to respond to questions and other communications from NGOs timeously. The Commission should not adopt its rules of procedure without consulting NGOs. The draft rules of procedure should be posted on the Commission's website for NGOs to comment on. It is regrettable that the African Commission delayed in handling certain communications and at times handed down confusing decisions in respect of the same communications.

**African Commission:** Of the 365 NGOs with observer status, only 131 complied with the requirement of submitting their annual activity reports and audited financial reports to the African Commission. The Commission urged NGOs to submit those reports because their relationship with the Commission was not only limited to making statements on the situation of human rights in Africa but also to informing the Commission about their activities and their financial standing. The Commission may need to put in place measures to guarantee that statements by NGOs were not abusive and derogatory towards state parties.

## **9. Periodic State Reports- Sudan and Tanzania:**

The two state reports examined at the Session were that of Sudan and Tanzania.

### **9.1 State report of Sudan:**

The African Commission gave the state delegation 45 minutes within which to summarise the content of their state report, copies of which, had been posted on the Commission's website at least three months prior to the 43<sup>rd</sup> Ordinary Session. The state delegation summarised the content of the periodic report (see copy on the African Commission website).

#### **9.1.1 Questions put to the delegation of Sudan by the Commission:**

After the summary, the Commissioners asked the government delegation to clarify a number of human rights issues as highlighted below. Unless otherwise indicated, all the following questions were raised by Commissioner Catherine Dupe Atoki, the Commissioner responsible for Sudan.

1. What methods are employed by the government in writing the periodic report? How many NGOs participated in the process?
2. Why did the government enact laws to grant immunity to certain politicians who violated human rights, many of which are expressly protected under the African Charter?
3. Under what circumstances is the death penalty imposed and executed? Have children been sentenced to death? How can the government justify the continued use of capital punishment in view of the fact that many people sentenced to death could have been tortured to confess to these offences? When is the government planning to abolish the death penalty? Are any steps being taken in this regard?
4. What does the government have to say about the allegations that law enforcement officers routinely conduct extrajudicial executions?
5. In its 2006 report, the US State Department report alleges that slavery is still commonplace in some parts of the country, is that true?
6. The government has not criminalised torture. There are reports of torture being committed in Sudan in both areas affected by the war and those that are not. Are there instances where the perpetrators of torture have been prosecuted and punished? The Evidence Act allows the admission of evidence obtained illegally. Does this not facilitate torture for purposes of extracting confessions? Sudan has yet to ratify CAT. What reasons are there to explain this failure? How are

the Robben Island Guidelines being used by the state in its policies on preventing and punishing torture?

7. Why is it that the report does not explain in any detailed manner the way in which the National Security Act empowers law enforcement officers to arrest people arbitrarily, and how it has been enforced? How many people have been arrested under that Act? Section 1 provides that a suspect arrested under the Act can be detained for nine months as an awaiting trial prisoner. How can nine months detention awaiting trial be justified in the light of the African Charter which obliges states parties to protect the right to fair trial including the right of the accused to be tried within a reasonable time?
8. There are reports that law enforcement officers fired shots at demonstrators at Merowe Dam and that some of them died in the process. Many other demonstrators were detained as awaiting trial prisoners for months. Can the state delegation explain whether the incident was investigated and what was the outcome? What happened to those who were detained?
9. The government is commended for establishing a Board in the Ministry of Interior responsible for improving the prisons conditions. How has that Board carried out its mandate? Are the reports of juvenile offenders are being detained in the same facilities as adult offenders true? Are the reports that juvenile offenders have been sexually abused by adult offenders true? What does the state delegation have to say about the allegations that NGOs are no longer allowed to visit prisons and places of detention?
10. Are there any available statistics to indicate the extent to which *habeas corpus* applications have been effective?
11. How many indigent accused have benefited from the Legal Aid Scheme? What is the criterion for an accused to benefit from the Legal Aid Scheme? Will the government consider amending the law which requires litigants to the Constitutional Court to pay exorbitant fees as a condition to petitioning that Court? Can the Legal Aid Scheme be extended to cover litigants to the Constitutional Court?
12. What is the gender composition of judicial officials?
13. Why has the government not found it necessary to ratify the Rome Statute of the ICC? How effective has the special courts established to bring to justice those who are alleged to have committed human rights and humanitarian law atrocities in Darfur been?

14. Why hasn't the government criminalised all forms of female genital mutilation? What is the percentage of women occupying government offices? What efforts were being taken to ensure that the rights of women in Darfur are being protected?
15. The government is commended for dedicating a sizeable part of the report to detailing how freedom of the media has been protected. Is it true that journalists who publish news items which the government does not agree with are arrested and detained and that furthermore, many newspaper issues of independent newspapers have been confiscated by state security agents? Is the requirement that any person working as a newspaper editor must be 40 years old and above, justifiable in a constitutional democracy?
16. (Commissioner Pansy Thlakula, Freedom of Expression): What guarantees are in place that freedom of expression will be protected in the forthcoming elections? Will political parties have equal access to government media? Are the reports that newspaper stories are censored true? Article 115 of the Criminal Act makes it an offence for any newspaper report to cover certain cases. Which type of cases are these? Does this not amount to a violation of the right to freedom of the media?
17. Are the allegations that non-Muslims should conform to Islamic standards true? What is the justification for compelling non-Muslim women to dress like Muslims?
18. The state is commended for reporting in detail on the measures taken to promote and protect the right to healthcare. What policies is the government implementing to curb the spread of HIV?
19. The government refutes the facts that thousands of innocent civilians have been killed in Darfur and that 2.5 million people have been displaced. What measures are being implemented to bring the war in Darfur to an end? As the African Commission's 43<sup>rd</sup> Session is held, government is bombing villages in Darfur, leading to the loss of hundreds of lives. The African Commission recommends that this war should come to an end immediately.

### **9.1.2 Dialogue between the delegation and the Commission:**

#### ***Conflict in Darfur:***

The state delegates acknowledged that mediation and political negotiation is needed to resolve the conflict in Darfur. The Abuja Agreement is the fruit of concerted effort by the government to find a solution to

this situation. The government condemns the loss of every life in the course of this conflict. The task of trying to navigate the conflict is however, immense as there are more than 27 rebel movements in Darfur.

The Ministry of Justice has quasi-judicial power which is subject to review by a Court of Appeal.

***The International Criminal Court:***

The ICC has no jurisdiction over Sudan. The government is doing its utmost to ensure that all cases are processed in courts of law within Sudan. Committees of Inquiry have been established to investigate claims and cases of human rights violations in Darfur.

The Commission was pleased to hear that the Sudanese government intends to revitalise the Committees of Inquiry which were instituted to investigate violence in Darfur. However, there is concern about why the work of these Committees was suspended in the first place.

The state delegates explained that the Committees together with three specialised courts are mandated to specifically deal with the human rights violations in Darfur. These courts were established on the basis of recommendations that were made by the Committee of Inquiry. The specialised courts were established by decree of the President in 2005. The jurisdiction of these courts is confined to incidents which occurred between 2003 and 2005.

The National Commission has recommended that three additional specialised committees be established. The committees collected evidence and heard the testimonies of victims and witnesses to the human rights violations. The Commission will be updated on the progress made by both the committees and the courts.

***Displaced people:***

Two million displaced non-muslims who were forced to live in Northern Sudan, for the sake of convenience, have opted not to return to the South.

***Death Penalty:***

The Commission while accepting some of the answers proffered by Sudan made further comments and recommendations. Sudan, due to the nature and complexity of the issue, chose not to respond to the question pertaining to the death penalty which is still in force. The Commission expressed the view that while Sudan may have much to consider in dealing with this issue it was not acceptable for state representatives to fully abstain from commenting. A brief comment or synopsis of the issues under

consideration would have been appropriate. The Commission stated that it was looking forward to receiving the full report by Sudan.

***Torture:***

The Commission questioned whether criminalisation extended beyond the Constitution to specific crimes with identifiable penalties which are enforceable by the courts. The Commission commended Sudan for taking the action to ratify the Convention against Torture without reserve.

The Commissioners asked whether the Robben Island Guidelines as adopted by the Commission had been used as tool by the State to prevent the use of torture by the Sudanese government, as no mention was made of this in its report.

***Extra-judicial killings:***

Extra-judicial killings are forbidden by law, both in terms of the Constitution and common law. This law binds everyone, including government agencies. In this regard, a newly enforced Criminal Procedure Act was successfully implemented. In March 2008 a judgment was delivered against law enforcing agents who used excessive force in the course of their duties. Earlier this year, the police were convicted for the use of excessive force that led to the death of a man.

The Criminal Procedure Act, together with section 10 of the Evidence Act renders confessions which have been made as a result of unlawful procedures, including the use of torture, as inadmissible in the courts of law.

***Detention centres and juveniles:***

The delegates extended a blanket invitation to the Commission as well as the Coalition of NGOs to visit the detention centres in Sudan. The allegations that juveniles are held together with adult detainees are false. The modality of arranging for journalists and UN observers to visit these centres is currently being discussed.

***Access to the Constitution and the justice system:***

The Commission expressed concern that both the English and Arabic text of the Constitution required broader circulation amongst the people of Sudan. While institutions in Sudan generally have access to the Constitution and constitutional interpretation, ordinary citizens generally do not seem to have that same right of access. Citizens should be able to easily invoke the Constitution as a basis of infringement of their rights.

The Sudan delegation stated that the Constitutional Court is available to every citizen and that the jurisdiction of the Constitutional Court furthermore mandates the Court to accept complaints from any citizen.

***Gender:***

*Female Genital Mutilation*

The National Strategic Plan towards eradicating FGM has been implemented in Sudan. The Health Act of 2007 prohibits the practice of FGM, while the Medical Council Law prevents medical practitioners from performing FGM. Criminalizing FGM was not pursued as the government believed that to do so would only encourage a black market for FGM which could result in more harm than good. It is however something that will be pursued in the foreseeable future.

In addition, a national plan aimed at eradicating violence against women has also been implemented. Women and children protection units have been established across Sudan with special concentration in Darfur.

*The rights of women living in Darfur:*

Many women and children in Darfur have chosen to remain in the refugee camps. Patrols have been established to protect women, reducing the level of violence against women to the lowest levels yet. The Criminal Procedure Act has been amended to provide treatment for women who have been the victims of crime. The UN health units have been allowed to medically treat women. One thousand tons of food, medicine and stock were allowed to enter Darfur. The government of Sudan is grateful to all of the UN agencies for their assistance. Levels of health and nutrition in the refugee camps in Darfur are currently better than that in the rest of Sudan.

The Commission was pleased to hear that the Sudanese government has recognised the acts of violence and particularly the wide-spread sexual violence perpetrated against women. The delegation reported that 1200 policeman have been deployed to protect women, a move which has seen a significant reduction in the level of violence against women. The government must however continue to urgently pursue measures that would not only reduce levels of violence but eradicate it completely. Of particular concern to the Commission is that it received reports that the perpetrators of this violence include government officials, which if true, is a serious violation of human rights.

In addition to physical security, the government must strive to meet the health, food economic and educational needs of women. The government of Sudan should try to actively engage women to determine their needs.

The Commission asked state delegates about the implementation of the Maputo Plan of Action on the reproductive health of women. The Commission strongly recommended that concerted effort be directed at implementing the plan or initiating policy to do so. These efforts are deemed to be of great significance to the Commission in implementing the Charter on Women's Rights. The delegates were required to respond to the Commission in writing.

*Participation of women in society:*

The government of Sudan has made concerted effort to increase the participation of women at all levels of society. For example, the Sudanese women's athlete team achieved gold and silver at the African Games.

Strides have also been made in the governance sphere. The legal advisor to the President is a woman. There are currently seven female ambassadors. Women are furthermore well-represented in the judiciary, with six female high court judges, seven appeal court judges and 52 legal councilors.

***Merowe Dam Project: Indivisibility of socio-economic rights:***

The Merowa Dam Project is the biggest development project currently underway in Sudan. It is the chief supplier of electricity and irrigation. While the project has been hi-jacked by political agendas the government has appointed a commission of inquiry and as also embarked on an investigation into police practices. The Ministry of Justice is awaiting the outcome of the investigation before proceeding.

Commissioner Atoke stated that while the Commission appreciates that the Merowa dam project is directed at achieving economic development, there is concern that the government of Sudan has not fully accept the indivisibility of socio-economic human rights and economic development. A clear link between socio-economic rights and economic development must be created. The Commission would like to work closely with Sudan in this regard and welcomes the invitation by Sudan to work closely on this long-term project.

***Freedom of the press:***

In response to the call by journalists to reduce the power of the Press Council to punish journalists, a new Act was recently promulgated. This Act despite acquiescing to the calls from the media, has generated much public debate because it makes the courts the final arbiter of disputes.

***Freedom of religion:***

The allegation by civil society organisations that Christians in Sudan are persecuted is baseless. Christians occupy a number of high ranking positions in the government. The Vice-President of Sudan as well as the Minister of Health amongst others is Christian. At state level, at least one representative is Christian. Christian women are allowed to wear blouses and skirts to work.

***NGO representation and participation in society:***

NGO members and human rights activists are now members of parliament.

***General comments by the Commission for Sudan:***

The Commission congratulated the government of Sudan for allowing it to visit Sudan. It was however surprised to hear the submission by the state delegates that the Commission is too far-removed from States. The Commission requested the delegates to inform the Commission of the kind of collaboration it is seeking.

The Commission thanked Sudan for their participation and for submitting their report. They requested that the report be submitted earlier to allow for appropriate translation. Written responses to the questions raised by the Commissioners as well as a copy of the Constitution and the laws mentioned in the report, was also requested.

**9.2 State report of Tanzania:**

**9.2.1 Dialogue between the delegation and the Commission:**

***Process undertaken in drafting the State report:***

The first draft of the report was prepared by the department of Constitutional Affairs and Justice. The report was widely circulated amongst NGOs and community-based organisations. The Human Rights Commission for Good Governance held a three-day workshop to consult on the report.

***Domestication of international and regional treaties and instruments:***

Tanzania follows a system whereby treaties and regional instruments are not automatically enforced domestically. Tanzania is pleased to report that the ICCPR, the ICESCR, the Protocol to the African Charter on Women and Children's Rights as well as the OAU Convention on Refugees in Africa, all have domestic application.

***Establishment of Human Rights Institution:***

In keeping with the Constitution, a Commissions Act was promulgated and the Human Rights Commission for Good Governance was established. The Chairpersons of the Commission are the Chief Justice of Tanzania who also serves as the Speaker of the House of Representatives as well as the Chief Justice of Zanzibar who also serves as the Speaker of the House of Representatives. The Commissioners serve for three years and are eligible for re-appointment only once. The Commission receives complaints and once processed, recommendations are sent to the offending institution. These recommendations are generally adopted and implemented. Thus far, the Commission received 3414 cases of which 852 are still to be processed.

***Gender equity:***

*Representation of women:*

Tanzania has made strides towards improving the representation of women at all levels of society. Out of 31 ambassadors, five are women. In the judiciary, 16 out of 61 judges are women, four of whom serve at the Supreme Court of Appeal. Of the 29 Chief Accountants in the different Ministries, 15 are women. In the public service, the Public Service Act promotes affirmative action with gender parity by the year 2010 as a key objective.

*Discrimination in the work place:*

Articles 22 to 24 of the Constitution ensure that women and men have equal rights. The Employment Equity Act gives further effect to this Constitutional principle by legislating equal employment opportunities for men and women.

*Property Rights:*

The Land Act of 1999 has reversed many discriminatory customary law practices. A review of property rights as it pertains to the law of marriage, inheritance and succession is a priority for Tanzania. In the next financial year the government plans to prioritise and canvass these issues for public debate. Efforts are also underway to develop law on marriage that will amongst others, define marital age as well as who is considered to be a child.

*Female Genital Mutilation:*

The crime of FGM has been prosecuted in Tanzania. However, there are challenges in prosecuting this crime as legislation in and of itself is insufficient as a deterrent to this practice. There is public controversy around the criminalisation of FGM. Highly respected members of the community have been

prosecuted for this crime resulting in public outcry. Broader programmes are therefore needed to address the culture of FGM and to create sensitisation around this issue.

*Domestic violence:*

Marital rape is not recognised. Assault and battery is however, criminalised and prosecuted.

***Children's Rights:***

*Corporal punishment*

Corporal punishment is currently administered in schools and will continue to be administered in the foreseeable future. Government has however, established pilot districts where corporal punishment is not administered. Best practice on how to administer alternate forms of discipline will be based on the experience in these districts.

*Education:*

The study of human rights has been included in the curriculum. One fifth of the national budget is allocated to education.

***Death Penalty:***

The last execution was carried out 13 years ago. As such, there has been an unofficial moratorium on the death penalty in Tanzania. The Law Reform Commission is currently in the process of conducting interviews and research to determine the will of the people in respect of the abolition of the death penalty. There are a number of religious groups within Tanzania who argue that the death penalty is a part of their fundamental religious beliefs.

Commissioner Malila commented that States parties need to be prudent in determining the course of action to be followed in deciding whether to retain the death penalty. There is a school of thought that elected representatives speak for the people and that ultimately the people exercise that choice. States have to question the extent to which public opinion can inform this decision *vis a vis* the role of their international and regional obligations in this regard.

***Prevention of Detention Act:***

The government is of the opinion the powers in relation to the enforcement of this Act should reside with the President. There are adequate checks and balances to ensure that it is exercised appropriately.

***Bail:***

Bail is available to the rich and the poor in respect of all but a limited number of offences, namely murder, robbery and rape. The government believes that the seriousness of these offences warrant the measure of not granting bail.

The Commission noted the crimes to which the condition of bail is not extended. It acknowledged that while there are serious considerations which come into play when dealing with the particularly violent crimes of murder, robbery and rape, states need to keep the broader purpose for bail in mind. Determining the parameters of bail on the sole basis of the seriousness of the offence is contrary to international norms, and defeats the purpose of this mechanism. Bail has three broad purposes, namely, to:

1. Prevent the threat of the accused absconding;
2. Protect the accused from the danger and/or public outcry; and
3. Prevent the accused from interfering with due process and intimidating witnesses where there are clear indications that he/she may do so.

In view of the above, there have been cases which were wrongly decided and where bail was denied to the accused. States also need to recognise the disproportionate effect which high bail conditions have on the rich and the poor. It is necessary to avoid the situation where justice is more accessible to the rich. Of concern are cases where prosecutors have no objection to the accused being released on bail but, as a result of the high bail set by the magistrate, the accused is unable to afford it. This situation results in money being the determining factor of the process of justice.

***Allegations of misconduct by the police:***

An *ad hoc* presidential committee headed by a judge, investigates and decides if the police have acted within the bounds of their authority. Should their conduct be found to have exceeded their authority, criminal law procedures must be followed.

***Refugees:***

Tanzania is currently the host country to the largest refugee population in Africa. This has created a plethora of challenges to which the immediate or foreseeable solution is not clear. Amongst these challenges are:

- a) The degradation of the environment;
- b) An increase in sexual violence, robbery and violent crimes;
- c) The depletion of social amenities like schools and hospitals; and
- d) An increase on communicable diseases; and
- e) The infiltration of bad cultural practices.

Tanzania receives no assistance from the international community in this regard.

***Expulsion of citizens and unlawful expropriation of property:***

The government of Tanzania denies allegations that it orchestrated or alternately facilitated the expulsion of 8000 people. The government believes that it would have been aware of the exodus of such a vast number of people had it occurred. In response to questions by the Commission concerning the repatriation of these nationals, the government can therefore not respond.

The Commission highlighted the fact that it is possible for the alleged expulsion of 8000 people to have escaped the attention of Tanzanian authorities. The government of Tanzania has the duty to investigate these claims. The Commission expressed its willingness to share the information which it received in this regard with the delegatio

***Rights of indigenous people and minorities:***

The Commission cautioned that while much emphasis is placed on defining indigenous peoples it at times subsumes the discussion of minority groups. The delegation responded that the government of Tanzania at times has difficulty in defining indigenous groups as they no longer conform to the traditional way of living.

***Rights of older persons:***

Free health care is provided to all persons over the age of 65 years. Pension is only provided to retirees.

***Socio-economic rights:***

Socio-economic rights because they are subject to the limitation of “progressive realisation” are not considered to be justiciable by the government of Tanzania

***Poverty alleviation:***

Approximately 70% of the national budget is allocated to rural areas and local government. While it is not possible to ascertain how much of this goes to women, special provision is made to extend access to credit to women.

**10. General comments by the Commission:**

***Advancement of women:***

States in general, need to make policies that are directed at advancing the rights of women, much more visible. Budgetary allocations to programmes that advance women should be publicized. If a fund is established, where is the funding sourced? Programmes that advance the rights of women should in addition, be established by law.

***Elections:***

The Commission recommended that States respect the human rights and freedoms of its citizens, more particularly during election periods. The Commission questioned, why in Africa in particular, the holding of elections can almost automatically be equated with the loss of life. African countries have to collaboratively strive towards the occasion where elections are a normal occurrence within the political lives of citizens.

***Efficacy of human rights legislative texts:***

The Commission reiterated the need for States to ensure that human rights legislative texts are not overtaken by other law which is shaped to suit a given prevailing context. States need to be wary of using obsolete instruments to protect human rights. Particularly in the case of human rights defenders, States should pursue appropriate protective mechanisms to ensure that their civil and political rights are protected and that the principles of democracy are upheld.

***Rights of older persons in Africa:***

The Commission gave a brief report-back on the process of drafting a protocol on the rights of older persons in Africa. In keeping with the UN Principles on Older Persons (1991) and article 18 of the African Charter pertaining to the rights of the aged, the Commission resolved to draft a protocol on the rights of older persons at the 42<sup>nd</sup> Ordinary Session. To this end the Commission has embarked on a number of activities, including:

- a) Collecting information and data on the problems facing older persons in Africa;

- b) Identifying progressive measures adopted by States to protect the rights of older persons;
- c) Drafting provisions for the protocol;
- d) Drafting a recommendation for the OAU to consider a protocol to the African Charter on the Rights of Older Persons in Africa.

The Commission encouraged States to assist them with information or recommendations on how to take their efforts forward

***The right to freedom of expression:***

Commissioner Pansy reported on the collaborative project undertaken between the Commission and the Centre for Human Rights of the University of Pretoria. As part of an on-going project, students and researchers at the Centre are engaged in identifying and monitoring legislation enacted across Africa to advance freedom of expression. States and civil society are encouraged to contact and collaborate with the Commission in this regard.

**11. Point of impact for CLC:**

1. CLC's statement was well received. The theme of the submission echoed a very real concern about the extent to which South Africa has complied with its international and regional treaty obligations. This concern was shared with the South African Human Rights Commission which recently released a Development Report which emphasises South Africa's duties in this regard.
2. One of the two resolutions adopted at the Session is related to the treatment of migrants in South Africa. The Commission has subsequently condemned the xenophobic attacks perpetrated in South African communities.
3. In the final communiqué, the representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was quoted as saying that there "are two new main human rights challenges facing the continent: flawed electoral processes, and the escalating increase in the prices of basic commodities. He stated furthermore "that if these are not quickly and adequately addressed, the small gains being made will be eroded".<sup>4</sup> These human rights challenges have already had an impact on South Africa. The plight of the poor

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<sup>4</sup> Final Communiqué at para 34 pg 8.

in particular has been highlighted in the past few months with the high cost of living and the drastic increase in the cost of basic food commodities.

## **12. Way forward for CLC:**

1. There is a need for substantive research and well-formulated policy options to be presented to Commissioners- not only at the Sessions. In the final speech of the Chairperson of the African Commission on Human and People's Rights one of the key objectives of the Commission is described as, "developing norms and standards to guide and enrich national; and international jurisprudence", a task that CLC can readily contribute to.
2. Individual projects can identify areas of interest and establish relationships with the Commissioners, and in so-doing pass on research results, publications etc. This may serve the dual purpose of fulfilling the advocacy requirements of many of our funding contracts.
3. Practically, CLC needs to budget both time and money for developing a relationship with the Commission and other civil society organisations. Projects can determine the extent of their involvement in this process according to their field of interest. It is however important that more than one person or Project become familiar with the workings of the Commission and the civil society organisations that participate in this process. This would prevent the situation whereby CLC "loses" these ties when a particular person leaves the CLC.
4. There are many ways through which CLC can effectively use its observer status with the African Commission:
  - (a) CLC should make a statement on the situation of human rights either in South Africa or in any other African country at each Session it participates in. This statement should, where possible, be representative of all the projects of CLC. It thus has to be drafted as early as possible so that all Projects are given an opportunity to make their contribution.
  - (b) The African Commission assigns each Commissioner a number of countries he/she is required to constantly monitor. Commissioner Ton Bahame Nyanduga is the Commissioner responsible for South Africa and many other SADC countries. When any SADC country is presenting its periodic report to the African Commission, CLC can examine the report (which is always posted on the African Commission's website months before the next session) and

- bring to Commissioner Nyanduga's attention the issues which we believe the state in question should have addressed in the report.
- (c) CLC should constantly monitor the website of the African Commission to find out whether there any upcoming events in which it can participate.
  - (d) CLC has to establish, as soon as possible, a close working relationship with the Secretariat of the African Commission to try and explore ways in which we can assist the Commissioners with research.
  - (e) CLC also has to establish a close working relationship with the Commissioners or Special Rapporteurs responsible for the human rights issues that fall within our mandate. CLC should for example, try to establish how Commissioner Nyanduga can attend some of our annual functions, how we can establish working relationship with the Special Rapporteurs on Women, Prisons, etc
  - (f) Whenever a CLC project publishes a newsletter, report or any findings, at least five copies should be sent to the African Commission and where possible one copy should be addressed to Commissioner Nyanduga and another copy to the relevant Special Rapporteur.
  - (g) We should also explore ways in which to participate in other processes and activities of the African Union, especially the ECOSOC. There are many opportunities at this level (See ECOSOC Statute and Rules of Procedure).