

AFRICAN UNION

الاتحاد الأفريقي

African Commission on Human & Peoples' Rights



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Commission Africaine des Droits de l'Homme & des Peuples

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**FINAL COMMUNIQUE OF THE 43rd ORDINARY SESSION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS
HELD IN EZULWINI, THE KINGDOM OF SWAZILAND
FROM 7 TO 22 MAY 2008**

1. The African Commission on Human and Peoples' Rights (African Commission), held its 43rd Ordinary Session in Ezulwini, The Kingdom of Swaziland, from 7 to 22 May 2008.
2. Honourable Commissioner Justice Sanji Mmasenono Monageng, Chairperson of the African Commission, chaired most of the deliberations of the 43rd Ordinary Session.
3. The following Members attended and participated in the 43rd Ordinary Session:
 - Commissioner **Angela Melo – Vice Chairperson;**
 - Commissioner **Catherine Dupe Atoki;**
 - Commissioner **Musa Ngary Bitaye;**
 - Commissioner **Reine Alapini-Gansou;**
 - Commissioner **Bahame Tom Mukriya Nyanduga;**
 - Commissioner **Soyata Maiga;**

- Commissioner **Mumba Malila**;
 - Commissioner **Kayitesi Zainabo Sylvie**;
 - Commissioner **Faith Pansy Tlakula**;
 - Commissioner **Yeung Kam John Yeung Sik Yuen**.
4. Twenty six (26) States Parties, three (3) National Human Rights Institutions, five (5) International and Inter-Governmental Organisations and thirty one (31) African and International NGOs were represented at the 43rd Ordinary Session of the African Commission. Four hundred thirty five (435) delegates altogether participated at the 43rd Ordinary Session.
 5. Several parallel activities were organized in Manzini and Ezulwini The Kingdom of Swaziland. The 43rd Ordinary Session was preceded by a meeting of the African Commission's Working Group on Death Penalty that was held from 4 to 5 May 2008, at Manzini, and the Working Group on Indigenous Peoples in Manzini, in the Kingdom of Swaziland, which also took place from 4 to 5 May 2008. Prior to the Session, the Office of the United Nations' High Commissioner for Human Rights (OHCHR) organised a meeting on the Modalities of the Elaboration of an African Human Rights Strategy as envisaged by Resolution A/61/296 of the UN General Assembly Strategy.
 6. As is customary, the Session was preceded by the Forum of Non-Governmental Organizations (NGOs), organized by the African Centre for Democracy and Human Rights Studies, which was held from the 3rd to 5th November 2007. The NGO Forum examined the human rights situation in African countries and expressed concern over the situation of the rights of women and of human rights defenders on the Continent.

7. In her address to the Forum, the Vice-Chairperson of the African Commission stated that at a time when democracy in Africa is facing serious challenges it is imperative that NGOs and civil society in collaboration with the African Commission should send a clear message of a strong commitment to the rights and freedoms guaranteed in the African Charter, including a society free from violence, especially violence against women.
8. It also expressed concern regarding the escalating human rights violations in Zimbabwe in the aftermath of the March 2008 elections and the plight of refugees, asylum seekers and migrants in South Africa. The Forum urged the African Commission to establish new special mechanisms, including one on poverty eradication and on minority rights in view of the situation on the Continent.
9. The 43rd Ordinary Session was opened by the Vice-Chairperson, Dr Angela Melo.
10. In her statement, the Vice-Chairperson of the African Commission on behalf of the Members and Staff of the African Commission, and on her own behalf, expressed gratitude to His Excellency Absolom Themba Dlamini, The Right Honourable Prime Minister of the Kingdom of Swaziland for presiding over the opening of the 43rd Ordinary Session of the African Commission, despite his very busy schedule. The Vice-Chairperson congratulated His Majesty, **King Mswati III** on the occasion of his 40th birthday and the 40th Independence Anniversary of the Kingdom.

11. The Vice-Chairperson of the African Commission stated that as the Kingdom celebrates forty years of self determination, it must also take stock, especially as the Kingdom is preparing for election later in the year. She underscored that there is a lesson to be learnt that development and peace are closely linked and related to human rights.

12. The Vice-Chair recalled that the last decade of the twentieth century has been a time of momentous change in all parts of the world. Africa, in particular, has witnessed unprecedented expansion of democratic space and major socio economic changes and reforms have transformed the political landscape across the continent. She stated that at the centre of these changes lies the quest for a lasting entrenchment of, and respect for human rights, as well as the search for the most viable and effective systems of democratic governance in societies committed to the respect of the rule of law. She stated that though major strides have been made, Africans have continued to agitate for the right to determine how they are governed. She implored Governments across Africa to take seriously the synergy between democracy, peace, security, development and human rights if Africa is to achieve prosperity.

13. On the human rights situation in Kenya and Zimbabwe following Presidential and Legislative Elections in December 2007 and March 2008, the Vice-Chairperson said that it was a matter of grave concern to the African Commission that democracy seems to have been undermined. The African Commission, she said, has a responsibility to defend the rights of all Africans.

14. The 43rd Ordinary Session was opened by His Excellency Absalom Themba Dlamini, the Right Honourable Prime Minister of the Kingdom of

Swaziland. The Prime Minister, on behalf of His Majesty King Mswati III and the Queen Mother, the Government and People of Swaziland welcomed the Members of the African Commission and the participants to The Kingdom of Swaziland. His Excellency Absolom Themba thanked Members of the African Commission for choosing the Kingdom of Swaziland to hold the 43rd Ordinary Session of the African Commission. His Excellency stated that since the transformation of the OAU into the AU, many changes have taken place in Africa in the area of democracy, good governance and human rights. He said that there still is room for improvement, as democratic institutions are still weak, and in some cases non-existent, and that in certain parts of the Continent respect for human rights and free and fair elections are still not a reality.

15. He reiterated the commitment of the Kingdom of Swaziland to collaborate with and support the activities of the African Commission in the promotion and protection of human rights. His Excellency, the Right Honourable Prime Minister stated that the Government of Swaziland has taken some new measures to ensure the enjoyment of human rights. He informed the Commission that Swaziland's new Constitution adopted after a lengthy participatory and inclusive process, contains a Bill of Rights guaranteeing human rights for all citizens and measures are now being taken for the establishment of a National Human Rights Commission.

16. Recalling the promotional mission undertaken to the Kingdom of Swaziland by the African Commission in 2005, His Excellency stated that the Government will be submitting its comments to the Report of the Commission shortly. In that regard he also said that the Government is finalising its initial human rights report to the African Commission. His

Excellency emphasised the need to respect human rights in Africa and commended the African Commission for the important issues on the agenda of the 43rd Session, which is a reflection of the main human rights concerns and challenges on the Continent.

17. Speaking on behalf of the AU Member States, the Honourable Matt Chikawe, Minister for Justice and Constitutional Affairs of the United Republic of Tanzania recognised the important role of the African Commission's Sessions which he likened to a mirror through which Africa sees itself, as well as evaluating its achievements and challenges in the promotion and protection of human rights. He said that the agenda of the Session includes many pertinent human rights issues on the continent, including debates on the human rights situation in Africa, which will give the various stakeholders the opportunity to exchange views in an open manner. He acknowledged the important role of National Human Rights Institutions and NGOs in the promotion and the protection of human rights. He said that the cooperation between the Commission and these organisations can only enhance the enjoyment of human rights on the Continent. Honourable Matt Chikawe called on State Parties to comply with their obligation to submit their Periodic State Reports, as the reporting procedure enables State Parties to engage in a dialogue with the Commission on the human rights situation in their countries.

18. He welcomed the fact that the Commission as well as the African Court on Human and Peoples' Rights is also revising its Rules of Procedure – an exercise that will improve its work. Speaking about the Draft Single Legal Instrument on the Merger of the African Court on Human and Peoples' Rights with the African Court of Justice, Honourable Matt Chikawe noted that there will be two different Sections within the new merged Court, a

General Affairs Section and a Human Rights Section. He informed the Commission that the Draft Single Legal Instrument will be presented to the Policy Organs of the AU at the forthcoming AU Summit in June - July 2008.

19. During the Session, the Commission heard statements relating to the human rights situation in Africa from the representatives of States Parties, including Kenya, Ethiopia, Lesotho, Egypt, Libya, Tanzania, Uganda, Mauritania, South Africa, Senegal, Botswana, Nigeria, Zimbabwe, Tunisia, SADR, and Burundi.
20. Statements were also made by the representatives of Intergovernmental and International Organisations, by the Network of National African Human Rights Institutions as well as the National Human Rights Institutions in Africa and Non-governmental organisations (NGOs).
21. In his intervention, the representative of the International Committee of the Red Cross (ICRC) emphasised the relevance of customary law, especially customary humanitarian law in Africa because the continent suffers from numerous non-international armed conflicts.
22. The representative of the Office of the United Nations' High Commissioner for Human Rights (OHCHR) reiterated the support of his Office to the African Commission in its efforts to make human rights a reality in Africa. The OHCHR representative asserted that there are two new main challenges regarding human rights on the continent: flawed electoral processes, and the escalating increase in the prices of basic commodities. He said that if these are not quickly and adequately addressed, the small gains being made will be eroded.

23. He recalled that 10 December 2008 will be the 60th Anniversary of the adoption of the Universal Declaration of Human Rights. He called on Member States of the UN, including African States to carry out activities aimed at reinforcing the progress achieved in the field of human rights. He implored African States to ratify international and regional human rights instruments and to establish NHRIs in countries where such institutions do not exist.
24. The UN Representative informed the Commission that the UN Human Rights Council commenced its Universal Periodic Review this year, and that 12 African Countries are undergoing the review by the UN Human Rights Council. 14 more African States are scheduled to undergo the same process in 2009. He also informed the Commission of progress made in the implementation of the UN decennial programme for the reinforcement of the capacity of the African Union.
25. The Representative of the Non-Governmental Organisations (NGOs), Ms. Hannah Forster, Executive Director for the Centre for Democracy and Human Rights Studies remarked that since the last Ordinary Session of the Commission Africa has been characterised by ongoing human rights violations. She expressed a particular concern regarding the escalating human rights violations in Zimbabwe in the aftermath of the March 2008 elections, and called on the Commission to undertake a Fact-finding Mission to Zimbabwe.
26. In conformity with Article 62 of the African Charter on Human and Peoples' Rights, the Periodic Reports of the Republic of the Sudan and United Republic of Tanzania were presented to the Commission.

27. Members of the African Commission presented reports of the activities they undertook as members of the Commission, as well as reports of activities undertaken during the inter-session in the context of their various special mechanisms and mandates. The Reports of the Special Rapporteurs on the Rights of Women, the Report on Prisons and Conditions of Detention, the Report on Freedom of Expression and Access to Information, the Report on Refugees, Asylum Seekers and Internally Displaced Persons were presented, as were reports from the Chairpersons of the Working Group on the Implementation of the Robben Island Guidelines, the Working Group on Indigenous Peoples, the Working Group on Economic, Social and Cultural Rights in Africa, Report of the Working Group on Specific Issues Relevant to the Work of the African Commission, the Working Group on the Death Penalty and the Report of the Focal Point on the Rights of Older Persons.

28. The African Commission did not receive any application for Affiliate Status by any NHRI during the 43rd Ordinary Session. Hence the number of NHRI with Affiliate Status with the African Commission remains at 21.

29. The Commission considered the applications by NGOs for Observer Status and granted the said status to the following NGOs:

- Legal resources Centre, South Africa;
- Socio-Economic Rights and Accountability Project (SERAP), Nigeria
- Communautés des potiers du Rwanda (COPORWA ASBL), Rwanda
- Norwegian Refugee Council (NRC), Norway -
- Associacao Maos Livres, Angola, and
- Save the Children Sweden, Sweden.

30. The grant of Observer Status to Save the Children Sweden was made on the condition that this Organization avails to the Commission, within two months, evidence that it operates in Africa.
31. This brings the number of NGOs with Observer Status with the African Commission to 375.
32. The Secretary to the African Commission, Dr. Mary Maboreke, presented her Report to the African Commission. The report covered administrative, financial and other matters relating to the work of the Commission, including the follow-up efforts undertaken to ensure the construction of the Headquarters of the Commission in Banjul, The Gambia.
33. A team from the AU headquarters was invited to clarify some legal, administrative and financial matters relating to the work of the Commission. The team included the Director of Administration, Human Resources and Development, the Head of Programs and Budget, the Head of AUC Resource Mobilisation, and a Senior Legal Officer from the Office of the AU Legal Counsel.
34. The African Commission adopted the following Resolutions:
- Resolution on the
 - Resolution on the
 - Resolution on the

35. The African Commission considered ... Communications: it was seized with ... ; it considered ... on admissibility, ... on the merits and ... on review.
36. The African Commission adopted its Twenty fourth (24th) Activity Report which will be submitted to the 14th Ordinary Session of the Executive Council of the African Union and the 12th Summit of the Assembly of Heads of State and Government of the African Union, which is scheduled to take place in Egypt, June / July 2008.
37. The African Commission decided to hold its 44th Ordinary Session in the Federal Republic of Nigeria, from 10 - 24 November 2008 at a venue to be determined in due course.
38. The African Commission expresses its sincere appreciation and profound gratitude to His Majesty, King Msawti III, His Majesty's Government and to the People of the Kingdom of Swaziland, for the excellent facilities placed at its disposal, and for the warm welcome and hospitality accorded to the participants, all of which contributed immensely to the excellent outcome and success of the deliberations of its 43rd Ordinary Session.
39. The Closing Ceremony of the 43rd Ordinary Session took place on the 22nd May 2008 in Ezulwini, the Kingdom of Swaziland.
40. The Chairperson of the African Commission held a Press Conference after the Closing Ceremony.

Done in Ezulwini, the Kingdom of Swaziland, 22 May 2008

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