


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
<small>48, Kairaba Avenue, P. O. Box 673, Banjul, The Gambia Tel: (220) 4392 962; Fax: (220) 4390 764 E-mail: achpr@achpr.org; Web www.achpr.org</small>		

**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 (the 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 the deliberations.
3. The following Members attended and participated in the session.
 - Commissioner **Angela Melo – Vice Chairperson;**
 - Commissioner **Catherine Dupe Atoki;**
 - Commissioner **Musa Ngary Bitaye;**
 - Commissioner **Reine Alapini-Gansou;**
 - Commissioner **Bahame Tom Mukirya Nyanduga;**
 - Commissioner **Soyata Maiga;**
 - Commissioner **Mumba Malila;**

- Commissioner **Kayitesi Zainabo Sylvie**;
 - Commissioner **Pansy Tlakula**;
 - Commissioner **Yeung Kam John Yeung Sik Yuen**.
4. A total of Four hundred and forty nine (449) participants attended the Session of the African Commission, including four (4) National Human Rights Institutions, three (3) International and Intergovernmental Organisations, one hundred (100) African and International NGOs, and twenty seven (27) States Parties.
 5. The Session was preceded by the meetings of the African Commission's Working Group on the Death Penalty and that of the Working Group on Indigenous Populations / Communities, both of which were held in Manzini, from 4 to 5 May 2008.
 6. The Office of the United Nations' High Commissioner for Human Rights (OHCHR) also organised a meeting in Ezulwini on 6 May 2008 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.
 7. 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 3 to 5 May 2008. 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.
 8. 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.

9. The Forum 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. It also 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.
10. The Vice Chairperson of the African Commission, Dr Angela Melo read a statement on behalf of the African Commission.
11. In her statement, she expressed gratitude to His Excellency Absalom Themba Dlamini, The Right Honourable Prime Minister of the Kingdom of Swaziland for agreeing to open the Session. She also thanked His Majesty, **King Mswati III**, the Government and People of the Kingdom of Swaziland for accepting to host this Session.
12. The Vice-Chairperson congratulated His Majesty, **King Mswati III** on the occasion of his 40th birthday and the 40th Independence Anniversary of the Kingdom.
13. The Vice-Chairperson stated that the Kingdom was celebrating forty years of self rule, as it prepares for election later in the year. In that regard she underscored the linkage between development, peace, and human rights.

14. The Vice Chairperson 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 which 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.
15. 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.
16. After the Vice Chair concluded her statement, His Excellency Absolom Themba Dlamini was officially invited to open the Session.
17. 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 Dlamini thanked

Members of the African Commission for choosing the Kingdom of Swaziland to hold the Session of the African Commission.

18. 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.
19. 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, and stated that the Government of Swaziland has taken some new measures to ensure the enjoyment of human rights.
20. His Excellency 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.
21. Recalling the promotional mission undertaken to the Kingdom of Swaziland by the African Commission in 2006, His Excellency stated that the Government will be submitting its comments on the Report of the African Commission shortly. In that regard he also said that the Government is finalising its periodic human rights report to the African Commission.

22. 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 Session, which is a reflection of the main human rights concerns and challenges on the continent.
23. Speaking on behalf of the AU Member States, the Honourable Mathias 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, while 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, which will give the various stakeholders the opportunity to exchange views in an open manner.
24. 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.
25. Honourable Chikawe also called on States Parties to comply with their obligation to submit their Periodic Reports, as the reporting procedure enables States Parties to engage in a constructive dialogue with the African Commission on the human rights situation in their countries.
26. He welcomed the fact that the African Commission and the African Court on Human and Peoples' Rights are revising and formulating their Rules of Procedure respectively – an exercise that will improve their work.

27. On the **Draft Single Legal Instrument** on the Merger of the African Court on Human and Peoples' Rights with the African Court of Justice, Honourable 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 African 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.
28. The Executive Director of the Network of African National Human Rights Institutions, Mr Gilbert Sebihogo, in his statement stated that the Network was established only seven months prior to the holding of this Session. He said that the Network was a strategic partner of the African Commission in the promotion and protection of human rights in Africa.
29. He said that the Session was being held at a time Africa was facing many challenges on its efforts to achieve good governance. He said that National Human Rights Institutions in Africa are conscious of these challenges and pledged that they shall play their role in addressing them. He recalled that democracy can only be realised through transparency, good governance, peace and respect for human rights, and urged governments to support their work.
30. The Representative of the Non-Governmental Organisations (NGOs), Mrs. Hannah Forster, Executive Director for the Centre for Democracy and Human Rights Studies remarked that since the last Ordinary Session of the African 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.

31. 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, Sahrawi Democratic Republic, and Burundi.
32. Statements were also made by the representatives of Intergovernmental and International Organisations.
33. In his intervention, the representative of the International Committee of the Red Cross (ICRC) emphasised the relevance of international customary law, especially customary humanitarian law in Africa because the continent suffers from numerous non-international armed conflicts.
34. 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 human rights challenges facing 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.
35. 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 made 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.

36. The UN Representative informed the African Commission that the UN Human Rights Council commenced its Universal Periodic Review this year, and that 12 African Countries are undergoing the review. 14 more African States are scheduled to undergo the same process in 2009. He also informed the African Commission of progress made in the implementation of the UN decennial programme for the reinforcement of the capacity of the African Union.

37. In conformity with Article 62 of the African Charter on Human and Peoples' Rights, the Periodic Reports of the Republic of Sudan and the United Republic of Tanzania were presented to and examined by the African Commission. The African Commission adopted Concluding Observations on the Periodic Reports of the United Republic of Tanzania, Tunisia and Algeria, but deferred to the 44th Ordinary Session the Concluding Observations on the Republic of Sudan.

38. Commissioners presented reports of the activities they undertook during the intersession as members of the African Commission and in the context of their various Special Mechanisms and Mandates. The following Reports were presented on:

◇ The Rights of Women in Africa,

◇ Prisons and Conditions of Detention,

- ◇ Human Rights Defenders,
- ◇ Freedom of Expression and Access to Information,
- ◇ Refugees, Asylum Seekers and Internally Displaced Persons and Migrants
- ◇ The Working Group on the Implementation of the Robben Island Guidelines
- ◇ The Working Group on Indigenous Populations /Communities,
- ◇ The Working Group on Economic, Social and Cultural Rights in Africa
- ◇ The Working Group on Specific Issues Relevant to the Work of the African Commission,
- ◇ The Working Group on the Death Penalty and
- ◇ The Focal Point on the Rights of Older Persons.

39. The African Commission did not receive any application for Affiliate Status by any National Human Rights Institution (NHRI) during the Session. Hence the number of NHRI with Affiliate Status with the African Commission remains at 21.

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

- Legal Resources Centre, South Africa (LRC);
- 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.

41. Save the Children Sweden was granted Observer Status on the condition that it submitted proof within two months to the African Commission that it operates in Africa.

42. This brings the number of NGOs with Observer Status with the African Commission to 380.
43. The African Commission examined and adopted the following Reports on
- ◊ The 42nd Ordinary Session of the Commission;
 - ◊ The Promotion Mission to Egypt in 2006;
 - ◊ Experts Reports on the Situation of Indigenous Populations / Communities in the Republic of Uganda and the Central African Republic requested by the African Commission.
44. 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 African Commission, including the follow-up efforts on the construction of the Headquarters of the African Commission in Banjul, The Gambia.
45. The African Commission held a meeting with a team from the African Union during which legal, administrative and financial matters relating to the work of the African Commission were discussed.
46. The African Commission adopted the following Resolutions:
Resolution on the Situation of Migrants in South Africa, and a Resolution on the Forthcoming Run off Election in Zimbabwe.
47. The African Commission considered 80 Communications: seven (7) on Seizure; forty four (44) on Admissibility; twenty eight (28) on the Merits and One (1) on Review. The African Commission finalized three

Communications and decided to defer the rest to its 44th Ordinary Session for further consideration.

48. 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 are scheduled to take place in Egypt, from 27 June to 1 July 2008.
49. The African Commission decided to hold its 44th Ordinary Session in Abuja, Federal Republic of Nigeria, from 10 – 24 November 2008.
50. The African Commission expresses its sincere appreciation and profound gratitude to **His Majesty, King Mswati III**, His Majesty's Government and to the People of the Kingdom of Swaziland, for the warm welcome accorded to the participants and excellent facilities placed at its disposal, all of which contributed immensely to the excellent outcome and success of the deliberations of its 43rd Ordinary Session.
51. The Closing Ceremony of the 43rd Ordinary Session took place on the 22nd May 2008 in Ezulwini, the Kingdom of Swaziland.
52. The Chairperson of the African Commission held a Press Conference after the Closing Ceremony.

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