REPORT

OF

THE PROMOTIONAL MISSION

TO

THE REPUBLIC OF SOUTH AFRICA

25th to 29th SEPTEMBER 2001

September 2001
INTRODUCTION


Under the African Charter, the African Commission is mandated to promote the observance of the African Charter, monitor its implementation, ensure the protection of the rights and freedoms set out in the Charter across the continent, interpret the African Charter and advise on its implementation.


A BRIEF POLITICAL BACKGROUND OF SOUTH AFRICA

Various groups of people have inhabited in southern Africa for thousands of years. The original inhabitants of South Africa were, however, hunter-gatherers known as the San and Khoikhoi. While members of the Khoisan language groups are the oldest surviving inhabitants of the land, only a few are left in South Africa today. Most of the black South Africans belong to Bantu language group, which migrated south from central Africa settling in Transvaal region sometime before AD 100.

European settlements started in South Africa with the Portuguese around 1488. Then came the French, the Dutch and the Germans. The present day white populations of South Africa, known as the Afrikaners, derive from these migrants. The establishment of these European settlements had far reaching social and political effects on the groups already settled in the area leading to upheaval in these societies, to subjugation and discrimination of indigenous people of South Africa by the settlers.

In the fourth quarter of the Eighteenth Century, the European settlements increased resulting in several wars being fought for dominion. As such, the Dutch and the Xhosa, the Zulus and the Afrikaner farmers (Boers), and the British and the Afrikaners fought at various times. Particularly, the fall of Cape of Good Hope to British control at the end of 18th Century and the subsequent British settlements and rule marked the beginning of a long conflict between the British and the Afrikaners. Beginning 1836, many Afrikaner farmers undertook a northern migration that came to be known as the “Great Trek” (themselves then called Voortrekkers, people of the Great Trek) and this brought them into contact and conflict with the African groups, of which the Zulus proved to be the most formidable. The Zulus, under their powerful leader Shaka, conquered most of the territory between the Drakensberg Mountains and the sea (now KwaZulu-Natal). Later, the Zulus defeated the British at the historic battle of Isandhlwana before they themselves were finally conquered in the late Nineteenth Century.
Following the Anglo-Boer Wars of 1880-81 and 1899-1902, during which the British forces prevailed, the Union of South Africa was formed in May 1910 as a self-governing dominion of the British Empire. As the Union was based on a constitution that kept all political power in the hands of whites effectively marginalizing the African groups, it soon led to the birth, in 1912, of an organised opposition in the form of the South African Native National Congress, which eventually came to be known as the African National Congress (ANC).

The Union became a sovereign state within the British Empire in 1934 and 1948 saw the coming to power of the National Party (NP) that worsened the already deplorable situation of the black population. It adopted and formalised an even stricter policy of which domination and racial separation known as “apartheid” (separateness) that was backed by oppressive and discriminatory legislation applied with might. Its policies segregated racial groups into Africans, Coloureds, Indians (Asians) and Whites. It applied social, political, economic, residential, and employment restrictions. It banned such movements as the ANC, the Pan African Congress (PAC), the South African Communist Party (SACP) and later convicted and imprisoned Nelson Mandela and many other anti-apartheid leaders, forcing the movements to go underground and fight through guerrilla warfare and sabotage.

South Africa declared itself a Republic in 1961. There was an increased international protest over its policy of apartheid and it withdrew from the Commonwealth in 1968. The government tried to soothe local protests by allowing Coloureds and Asians a limited role in the national government and control over their own affairs in certain areas through a constitution of 1984. Still, all power remained in the hands of Whites while Blacks remained effectively disenfranchised.

The bitter national liberation struggle that survived the brutal fangs of apartheid, and the huge international pressure brought home to some members of the NP the need for change, that the hardships, loss of human dignity, oppression and suffering could not continue. The government was forced to heed these calls and the process of dismantling apartheid commenced in 1989 when President F. W de Klerk unbanned the ANC, PAC and all other anti-apartheid groups, and released Mandela from prison. Repressive laws such as the Group Areas Act, Land Acts, and the Population Registration Act (the last of the so-called “Pillars of Apartheid”) were abolished in 1991, and a new Interim Constitution was promulgated into law in 1993 following negotiations involving all sides. The Republic held its first ever non-racial and democratic elections in April 1994 leading to the installation of Nelson Mandela as President of the Government of National Unity. It rejoined the Commonwealth in the same year. In 1996, Mandela signed into law a new Constitution, which was drafted by a Constituent Assembly and certified by the Constitutional Court. He stepped down after the end of his term and a second election was held in June 1999. The National Assembly elected Thabo Mbeki as President.

POST APARTHEID SOUTH AFRICA

After the first non-racial elections, in 1994, the government of South Africa committed itself to reforming the country. The new Constitution of 1996 provided the framework for programmes of healing South Africa’s divided society, and
establishing a society based on democratic values, social justice and fundamental human rights. The task was, however, formidable as the new system inherited a legal system, an education system, a social welfare system, a health system, and a socio-economic system that was designed to implement colonialism and later institutionalised apartheid system.

South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the President and Parliament. The President is the head of the Executive. He/she is also the Head of State and is elected to a 5-year term by the National Assembly (NA)-one of the two Chambers of the Parliament. He/she must be a member of the NA before the latter elects him, by a majority vote, into the Presidency, and then must resign his/her seat. The NA consists of 400 seats elected on the basis of proportional representation, of which the ANC currently holds about 266 seats. The other house of Parliament is the National Council of Provinces (NCOP), which consists of 54 permanent members and 36 special delegates and aims to represent provincial interest in the national sphere of government. South Africa is divided into 9 administrative regions/provinces. They are: Eastern Cape, Free State, Gauteng, Kwazulu-Natal, Mpumalanga, North-West, Northern Cape, Northern province, and Western Cape. The delegation from each province in the NCOP consists of 10 representatives.

There are two further tiers of government at the provincial and the local level. Subject to the Constitution, there is also recognised the institution, status and role of traditional leadership which rules according to customary law. The Constitution also mandates the establishment of Houses of Traditional Leaders by means of provincial or national legislation. There is already established, by legislation, a National House of Traditional Leaders. This advises the Government on the role of traditional leaders and on customary law.

Elections are held every five years. So far, South Africa has had two all-inclusive democratic national and provincial elections. The first was in April 1994 and the second in June 1999 which brought the current leadership. The Independent Electoral Commission is tasked to oversee all elections and referendums in the country at all three spheres of government. The voting age is 18.

GENERAL INFORMATION ABOUT SOUTH AFRICA

The Land and People

Situated on the southern tip of Africa, South Africa has a surface area of 1.2 million sq km with a terrain of plateau, savanna, desert, mountains and coastal plains. Its geography and climate varies widely. It is bounded by the Atlantic Ocean to the west and the Indian Ocean to the east. The Kingdom of Lesotho finds itself entirely surrounded by South Africa while the Kingdom of Swaziland is partially within South Africa’s boundaries. To the north, South Africa shares borders with Botswana, Mozambique, Namibia and Zimbabwe.
By the year 2000, the population of South Africa was estimated to be 43.5 million, of which women account for about 51%. The annual growth rate stands at 1.5%. Ethnically, about 77% are African (Blacks), 11% Whites, 8% Coloured, 2% Indians(Asians) and the rest others. Coloureds are a mixed race people primarily descending from the earliest settlers and the indigenous people. Approximately 48% of the population lives in urban areas. South Africa has a young population – 15% of the total population is aged 5 years or younger while another 21% is aged 6-14 years. Generally, those who are 19 years and younger constitute 46.7% while those between 20 to 39 years inclusive make up 31.1% of the population. Infant mortality stands at 24.6 per 1000 live births. Life expectancy for men is 62 years while it is 52 for women.

South Africans are predominantly followers of the Christian religion. Hinduism, Islam and Judaism are also practised. About 15% of the population are ancestor worshipers. Language wise, the 1996 Constitution provides for eleven official languages. They are Afrikaans, English, Ndebele, Pedi, Sotho, Swati, Tonga, Tswana, Venda, Xhosa and Zulu. There are also other languages spoken by 2% of South Africans.

Virtually all-adult whites are literate while close to a quarter of adult Africans are illiterate. The literacy estimates for 1991 has it that 82% of South Africans are literate. A further statistical breakdown shows that 77% of Africans, 91% of Coloureds, 95% of Indians, and 100% of whites are literate. There is compulsory schooling for all children of 7-15 years of age. There is a chronic level of unemployment particularly amongst the previously disadvantaged population groups, a depressing legacy of apartheid.

South Africa has the largest economy in Southern Africa. In 2000, the Gross National Product (GDP) was US$126 billion. The primary sector consists mainly in agriculture, mining and quarrying which together account for 9% of the GDP. Except for petroleum products, South Africa is endowed with almost all natural resources. Economic indicators show that the per capita of the GDP for South Africans is US$2,900. Yet, it is characterised by extremes of wealth distribution. The vast majority of the people are poor of which 95% are African.

THE PROMOTIONAL MISSION

Mr Andrew Ranganayi Chigovera is the Commissioner responsible for promotional activities in the Republic of South Africa. The Commissioner intended to undertake a mission to the country from 23rd – 28th July 2001. This, however, had to be changed to 25th – 29th September 2001 during which the Commissioner undertook the mission. Mr Nega Girmachew from the secretariat assisted the Commissioner on the mission.

The Ministry of Justice and Constitutional Development and the Ministry of Foreign Affairs coordinated the arrangements for the mission. They were in constant contact with the secretariat of the African Commission and the Commissioner responsible. The secretariat of the African Commission, in consultation with the departments prepared the programme.
The objectives of the mission and which the officials met were informed of were:

1. To promote the African Charter, exchange views and information on import and implementation of the Africa Charter;

2. To raise awareness of the visibility of the African Commission and its functions especially among the relevant government departments and institutions and in civil society;

3. To lobby for the ratification, by South Africa, of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples Rights;

4. To encourage a closer relationship between the African Commission and the Republic of South Africa.

Ms Gugu Ncongwane from the Ministry of Justice and Constitutional Development received the delegation, assisted and accompanied them to all of the appointments.

The delegation undertook the mission and met various personalities in Pretoria, Johannesburg, and Western Cape. The scheduled meetings with the following officials were cancelled for reasons beyond the delegation’s control:

- Dr. Penuell Maduna, Minister of Justice and Constitutional Development;
- Dr. Dudu Khosa, Chief Director, Human Rights Unit, Department of Foreign Affairs;
- Ms Nxasana, Department of Land Affairs; and
- Commissioner Linda Mté, Correctional Services.

MEETINGS

Chairperson of the South African Human Rights Commission

The first meeting scheduled was with the Chairperson of the South African Human Rights Commission, Commissioner Barney Pityana. The objective of the particular meeting was to discuss on the possible issues that Commissioner Chigovera may need to raise with the various personalities he was to meet. Based on the draft programme for the delegation, Dr. Pityana explained briefly the works of some of the offices and the issues that may be of interest to the delegation. He also elaborated on the overall pressing issues in the country and whom to talk to on particular concerns.

Justice College

At the meeting with the Chief Director of Justice College, Ms. Cecille van Riet, which was attended by Ms Jakkie Wessels of the Civil Judicial Training Section of the College and Ms. Lebo Malepe, South African Project Manager, Canada-South Africa Justice Linkage Project, Commissioner Chigovera introduced the African Commission delegation, and informed them of the African Commission, its members, and its function in terms of the African Charter. He mentioned that the South African

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Constitution was on all fours with respect to human rights and that the Commission deemed training institutions important arms contributing to the promotion and protection of human rights. He briefed them about the purpose of the promotional mission being a means of sensitisation, encouraging institutions within State Parties to promote the Charter and a forum for information exchange. He went on to explain about the communications procedure, which he said enabled victims of human rights violation to approach the Commission for redress. He pointed out, however, that the Commission did not have enforcement power and that the only power it wielded was to report to the OAU Assembly of Heads of State and Government (now the Summit of the African Union).

The Chief Director briefed the delegation on the work of the Justice College and mentioned that the College provided training for magistrates, judges, prosecutors, interpreters, and the police. South African Judiciary still faced the old practices at the bench inherited from apartheid and she, in particular, expressed her concern regarding the functioning of the lower courts. She added that they also provided magistrates’ training on main constitutional legislation such as the Right of Access to Information Act and the Land Reform Legislation and that, in collaboration with the Canadian government, they were training magistrates on human rights. She stated that they had plans to extend their training to judges from Anglophone and Francophone Africa.

As for the Commissioner’s concern that racism still existed in the judiciary to which judges are appointed for life and whether the college was doing anything about it, the Chief Director explained that they had what were called special context books and trainings dealing with these issues. Judges needed to be trained. She lamented, however, that the judges were opposed to training as any training was taken negatively. She further noted that another aspect of the problem was the composition of the judiciary in which judges were still largely white male and there were few women. She also mentioned the need to instil lawfulness and to bring legitimacy to the judiciary, and the necessity of change in the bench. There was a need to transform the judges without compromising their independence.

To this, the Commissioner advised that they could also use the method of interaction with judges, like organising seminars with judges on ratification of regional treaties by South Africa and the effect of such treaties on the South African legal system and the courts during which judges could participate as presenters as well. They may also look at various treaties, which were ratified such as the African Charter or the International Convention on the Elimination of all forms of Racism. He suggested, in addition, that they could contact international organizations (such as the International Law Commission) so that the latter would send speakers to share their experiences on supervision and implementation. He also referred to the need to make the judiciary aware of the African Commission’s communication procedure, which he said was a kind of quasi-judicial process wherein the Commission made decisions and expressed its opinion on whether or not rights were actually violated. It would be good for the College to bring members of the African Commission as speakers. He mentioned that a member of the African Commission, Dr. Barney Pityana, was a South African who could easily be contacted for that purpose of exchange.
In discussion, Commissioner Chigovera pointed out that the College could also involve judges in seminars and conferences on new legislation. The examination of the import of such legislations, what it embraces, what it requires, and how the courts should interpret it could be helpful in building the desired relationship with the bench. To ensure participation by the judges, such exercises could be labelled as seminars and conferences, etc as opposed to training.

To the Commissioner’s inquiry on the existence of victims-friendly courts, the other representative of the College joined Ms Riet in asserting that there indeed existed such courts. They mentioned that the College had piloted a study wherein the whole concept was developed and that there were then 20 courts established across the country. To back that with legislation, the SA Law Commission was drafting two laws particularly relating to victim protection and evidence handling. But they pointed that the said courts were not going to be established all over the country and that in some areas, there was only the idea than the reality of the court.

They also elaborated on a CIDA-funded Canadian-South African Justice Linkage Programme, which was set up in 1997 under the initiative of inculcating the culture of human rights in the judiciary with a general focus on judges and the bench. The project had expanded through the years and had run training courses for prosecutors as well. The project had enabled them to prepare a manual on children’s rights and one on policy for judges and prosecutors.

Commissioner Chigovera responded positively to the invitation by members of the College to participate in some of their training courses and encouraged them to contact the Commission on any matter of common interest.

Legal Aid Board

Commissioner Chigovera introduced the delegation and briefly outlined the purpose of the promotional mission. He stated that the Commission used various methods of ensuring implementation of the Charter by Member States. It considered State Reports during which it held dialogue with states and exchanged views and that it had a communications procedure, which enabled the Commission to basically deal with complaints by individuals and groups of violations of their rights by states. The Commission undertook promotional visits to member states as well. These visits were aimed at promoting the African Charter. Traditionally, states reserved foreign relation matters to their respective foreign affairs offices while the departments concerned in complying with international regulations were not just foreign affairs. During its promotional missions to member states, the Commission first and foremost filled the void where foreign affairs failed to inform departments of their international obligations. Such missions also enabled it to have fruitful dialogues with departments and acquire information on various aspects of states’ compliance with the African Charter.

The Chief Executive Officer of the Legal Aid Board, Mr Ashley Ally on his part explained to the delegation the work of the Board in providing legal aid to the public and the problems it faced. He stated that the Board was an independent statutory body both in terms of statutes and in terms of its operations. He stated that the system currently was burdened with more than 250 000 requests for legal assistance, which
he said could lead to its collapse with a liability close to 1 billion. He added that there was agreement to transform the system into a public defender system thus moving away from a judicare one. The focus areas for Legal Aid were women, children and the landless. The Board was in effect a public defender with cooperation agreements with a number of NGOs and that though it was moving at a very slow rate, it had managed to do a lot. He disclosed, however, that foreigners were generally unable to get legal aid and that the Board had a section dealing with refugees and the policy concerning them.

To the Commissioner’s inquiry on the status of legal aid in criminal proceedings and if the law allowed for the provision of the same in all courts, whether the said provision was carried out objectively, whether there was the capacity to provide for everyone, and whether the system hired private legal practitioners, Mr Ashley responded that in the system, everyone under criminal prosecution was provided for depending on the discretion of the judge or magistrate. Despite there being deficiencies in the system, it had the capacity to cater for everyone, and that it still hired private legal practitioners for more complex and specialized matters. He added that having justice centres across the country would enable it respond to requests more quickly. Unless a person chose not to be represented, he/she was entitled to enjoy the right under the law, and that the system followed the means-need-basis to cater for the requests.

With respect to the traditional chiefs’ courts, he mentioned that the Board did not have formal relationship at that level. And with respect to the problem of overcrowding in the prisons and the problem regarding the whole system, Mr Ashley added that the board remained concerned and that it had appointed key persons at various prisons to monitor the situation.

As a suggestion, the Commissioner indicated that the Board could call for the attention of the courts as that could possibly move the stakeholders to take appropriate action. The Commissioner, however, feared that the problem could be aggravated if the Courts didn’t take the initiative in alleviating the situation. To this, Mr Ashley agreed and added that they were also introducing class actions as alternative means, and reviewing their overall working methods to ensure progress. Commissioner Chigovera stated that nobody expected miracles from the system and that we are trying to encourage the system to bring changes as quickly as possible.

The Commissioner raised concern that there still existed unequal treatment of offenders in justice system which needs urgent attention, like blacks being ignored while whites enjoyed all the attention and care. He also asked how sentencing by the judiciary of different racial groups was carried out. Mr Ashley acknowledged the problem and added that the judiciary sometimes meted out ridiculous sentences against blacks.

Regarding the possible relationship the board could have with the African Commission, Commissioner Chigovera mentioned that the African Commission encouraged national institutions to have access to the Commission, exchange views with it, and involve it in various programmes including training. He explained that the Commission had two separate tiers of relationship with national human rights institutions and NGOs, which he encouraged all those he met to take advantage of.
He stated that the Commission provided for affiliate status to national human rights institutions while NGOs enjoyed observer status. In particular, the Commissioner appreciated the fact that a member of the South African Human Rights Commission was a member of the African Commission and that the Board could easily gather information on how the Commission settled matters of interest or relevance to it, which could be employed to sensitise the courts in local proceedings. The Commissioner indicated that the Board could assist some of the beneficiaries to lodge complaints with the Commission after exhausting domestic remedies. Mr. Ashley promised to liaise with Commissioner Pityana in trying to find out how the Board could get involved in the work of the Commission.

To the question on how the establishment of the new African Union affected the Commission and its work, Commissioner Chigovera respondent that the establishment of the AU didn’t affect the Commission. He admitted that the AU establishing Act was rushed through and makes no mention anywhere in it of the Commission. Yet, there are provisions in the Act allowing for the continuation of some of the organs of the OAU under the new AU. He stated that the matter was still being shaped up and institutions would be kept intact. He concluded by emphasising the importance of coordination.

**Lawyers for Human Rights**

At the meeting with Dr. Vinod Jaichand, National Director of Lawyers for Human Rights, Commissioner Chigovera introduced the mission, how the Commission worked and the promotional mission under its mandate. The mission also aimed at finding out the role of non-governmental institutions in the promotion and protection of human rights and their impact thereof. He stated that protection was another aspect of the activity of the Commission, an approach adopted in urgent or crisis situations. With respect to NGOs, the Commissioner stated that the Commission granted observer status to NGOs, working in the human rights field to enable them better contribute to the work of the Commission in the promotion and protection of human rights. The NGOs concerned need, of course, to apply for such status with the Commission.

Dr. Jaichand, on his part, stated that LHR had observer status with the Commission but had failed to send a report and to attend the ordinary sessions of the Commission because of lack of funds. He informed the delegation that they trained paralegals, the police, and etc. They have also been engaged in publication of materials in human rights and provided direct legal services to church groups, women’s groups, and schools. Their motto was: “Making rights real.” They were also engaged in streamlining the work of the public prosecutor through workshops, information packages and seminars. He advised that LHR had a defined role and that it was among the first NGOs to publish the Charter in South African context. He went on to say that they were considering requests from Ghanaian and Swazi lawyers to set up LHR offices there. LHR intended to have an African NGOs forum so that they could speak up on behalf of many African human rights NGOs. He stated that one of the areas for democracy to thrive was to enable NGOs and let them act freely. NGOs, however, remained vulnerable both financially and politically.
The Commissioner interjected saying that NGOs should also be concerned with how they were perceived in their society. They needed to prove that they were there not just to promote individual interests and that they are not opposition groups to governments. They had thus three challenges to face: financial, with respect to their objectives and the fear not to be regarded subverts to the system. He stated that their task was daunting and that they needed to balance the challenges to the best of their ability. He added that in South Africa, he has perceived a challenge between the laws (regarded as tools of oppression) and the system (regarded as tool for the preservation of oppression). There would be needed a huge effort to throw new light on this understanding which seemed to have the support of blacks and other disadvantaged groups. Commissioner Chigovera recalled a debate he had with a South African delegation at the WCAR, who divided past beneficiaries of the system into two - the young who were more amenable to change and the old who could not change and saw the new system as an imposition and yet could not propagate the dispensation of the past and have gone into a kind of self-denial.

The Commissioner wanted to know how far the efforts of LHR have supplemented the legal assistance to the indigent and if it faced any constraints in that regard. Dr. Jaichand replied that they have restructured their services and had undertaken a study after which they decided that for a fixed amount of money, they would provide legal aid to the needy on behalf of the state. He mentioned that they intended to review the system at the end of the year and that they had seven regional offices for the sole purpose of legal aid in the country. He added that they also had single service type legal aid clinics on children, HIV/AIDS, and gender/women. He mentioned that they were going to appeal to the profession for its social responsibility in light of public interest litigation so that it would provide lawyers as a backup to the poor. He concluded that legal representation was a fundamental means for the implementation of Constitutional provisions including human rights.

The Commissioner raised the matter of Lindela Repatriation Centre wherein illegal immigrants were kept before deportation. He wondered if LHR had taken any interest in it and what it thought of the allegation that the state had delegated its international obligation of protecting immigrants to private companies, as was the case with Lindela. Dr Jaichand responded that their refugee section was dealing with it and that they had undertaken a study in collaboration with the South African Human Rights Commission, and that they had taken them to court. He disclosed that the Department of Home Affairs was consulting with them on such issues and that the running of Lindela by a private concern followed an American Model from which SA incorporated the practice. He related that four years ago, there were about 27,000 Southern African citizens detained in such centres on suspicion of being foreigners-dubbed “blacker than black.” Incidents of South Africans being arbitrarily detained in such centres were reported. He added that there was once a black South African lady whose deportation was interrupted because she swore in Afrikaans, the language the officer deporting her could understand.

To the Commissioner's reference to the Protocol on the Establishment of the African Court, Dr. Jaichand mentioned that he was following the process of its ratification. He mentioned that the South African position was similar to that of the US to the
International Criminal Court. He urged the Commissioner to raise this matter up with the Ministry of Justice and Constitutional Development. He wondered if the rest of Africa was ratifying the same.

The Commissioner responded that he would indeed raise the matter of the Protocol in his discussions with the Ministry of Justice and Constitutional Development. With regard to the ratification by the rest of Africa, the Commissioner mentioned that the progress was slow. He added that the Commission could be of help in coordinating between the Ministries of Justice and Foreign Affairs of the various countries for the purpose of ratifying the Protocol. In conclusion, he encouraged LHR to submit its report soon.

Judge President and Chairperson of Magistrates Commission, Pretoria High Court

At the meeting with Judge President Bernard Ngoep, Chairpeson of Magistrates Commission, Commissioner Chigovera introduced the delegation and briefed the Judge President on the purpose of the mission.

The Commissioner explained how the Commission examined the Initial Report of South Africa. He elaborated on the promotional function of the Commission, which aims at getting more information from governments on how they live up to their Charter commitments and how they formulate their policies in that regard. Its mandate included examination of state reports for compliance, receiving complaints from various bodies, and protection activities, which address crisis type situations.

Commissioner Chigovera informed the Judge President that the mission wanted to meet the judiciary due to the latter’s importance in any jurisdiction in the promotion and protection of human rights and in an effort to find out how far the judiciary has taken note of international human rights instruments in its proceedings – civil and criminal alike.

The Judge President acknowledged the importance of the Commission’s mission and stated that he was aware of the Commission’s existence but did not know much about it and had only vague ideas of the level of South African participation in its work. The Commissioner informed him that the South African government had been actively participating in the work of the Commission both at governmental and non-governmental level, in debates, and through its national organizations. In terms of participation, the South African government was one of the regular participants in the Commission’s works enabling the African Commission to have access to South African decisions of relevance on human rights. He added that there was no communication filed against South Africa before the Commission. He wondered if the judiciary in African nations took into account the African Charter in dispensing justice, and if the work of the Commission was taken into account by the judiciary in dispensing justice. He encouraged the judiciary to have access to the Commission’s decisions that showed its views though these might not be as impressive as national court judgments.

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Commissioner Chigovera also touched upon the status of the ratification of the protocol on the establishment of an African Court for Human and Peoples' Rights, which many states signed but not ratified. He stated that South Africa had not ratified the same and that it was important for all governments to be encouraged by the judiciary in this regard. The Judge President interjected saying that the Commission could perhaps assure states that the decisions of the African Court were not binding. The Commissioner stated that the protocol was the same document the states themselves adopted and that there was no conflict with national courts whatsoever.

On his part, the Judge President recounted developments at the domestic front. He stated that there were attempts to improve the magistracy. He said the main drive should come to the high courts where they still had problems. He admitted that they did not know but assumed that judges were conversant with and supportive of human rights. But sometimes, based on their judgments, the public questioned if they were really committed to human rights. He pointed out that, from the point of view of the public, the judiciary had a long way to go although he did not agree with that pessimism and thought that the judiciary was not failing. He said that it was not easy to change everything at once as there were entrenched attitudes and that the most important issue was for the judiciary to be restructured in such a way to address human rights questions. The South African Constitution provided for the protection of human rights and it only needed human mind to effect the Constitution. He wondered how indigenous their thinking was in respect of human rights and whether they were being taken over by the second phase of colonization through beliefs and ideas imported from elsewhere. He said they expected the Commission to assist them to find themselves, their own stance on issues of human rights.

The Commissioner stated that the Charter took into account the social and cultural identity in Africa. The question was whether Africa had developed a culture in that line, which remained to be a challenge. The Commission was modelled more or less in line with the UN Committees. He admitted however, that there was a problem in the orientation of Commissioners. He stated that the Commission also appreciated its own shortcomings. Commissioners have to bear in mind their identity, be very conscious of these issues of an indigenous nature.

In agreeing with Commissioner Chigovera's statement quoting the Ministry of Justice and Constitutional Development, which had stated that the ineffectiveness of the judiciary to serve the populace could be traced to past experience, pointing at racism in the judiciary and racism within the bench as the sources of the same inefficiency, the Judge President mentioned that such a statement should not be dismissed outright as there was, for example, a subconscious discrimination, which could lead to the other conclusions that would otherwise not have come. For instance, there were tendencies to always believe a very senior white police man, a white woman coming next, with black men and black policemen taking the last row. There were subtle racist implications (that white men were racist, blacks criminals and Indians cheats). That the judiciary was racist could be one of such subtle subconscious prejudices. He nevertheless said that there were efforts but the problem was vast. Sometimes, some interpretations of the courts were more inclined to address the issue and he suggested that they could be exemplary jurisprudence for the Commission.

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Commissioner Chigovera agreed that the judgments by the courts could be useful to the African Commission. He raised concern on the independence of South African magistrates because of the manner of their appointment that was highlighted by a recent court judgment regarding the same. The Judge President explained that the said judgment dealt with the internal concern that was there all along in the magistracy. Contrary to the Constitution, the Ministry of Justice and Constitutional Development had a lot of say in the judiciary (magistrates). The bench had asked the Ministry to relieve itself of the duty to appoint magistrates so that it would be left with only judicial functions. The recent judgment formalized the demand. In as much as the Ministry had control on the magistracy, the Judge President concurred with the recent judgement.

To the Commissioner’s question on the collaboration between the bench and Justice College in the training of judges, the Judge President informed the delegation that there were problems underlying the manner the training was presented, which was not in an orderly fashion. That sort of hardened the position of the judiciary. Still, judges were not against training and they welcomed judicial education. For number of reasons, they liked to control and run the matter themselves. All the judges did not like was for the training to be handled by the Ministry of Justice and Constitutional Development.

In suggesting possible solutions, Commissioner Chigovera stated that the better approach when dealing with judges would be to allow them to take the initiative after which there could be an exchange of views, and what they would like to participate in. He mentioned that it would be best for the Ministry to merely provide them with infrastructure, etc. With respect to separation of powers, the Commissioner noted that it would indeed appear as an imposition on the independence of the judiciary wherein suggestions from the other sectors seem to be imposed on them.

South African Police Services

In the meeting with Mr Peter Cronjie, Director of the Human Rights Unit of South African Police Services, Commissioner Chigovera introduced the delegation and the purpose of the mission. He further stated that he attached great importance to the visit to Mr Cronjie’s office as law enforcement agencies in many countries were a major violator of human rights. The police had duties to educate its members and to further train them in human rights.

The Director welcomed the delegation and stated that there was an obligation to protect, promote, respect and fulfil human rights under the SA Constitution, which was loosely based on international instruments. He stated that the Unit started its work in 1995. He informed the delegation that they had developed a training manual dealing with various issues, a storybook which has been translated into six languages, and a basic sensitisation course. Out of the 120000 Police Officers in SAPS, they have managed to train 25000 since 1999. He said that the main thrust of their programmes was sensitisation and that this year, they have started with a programme on xenophobia and racism and are trying to sensitise the police about rights of immigrants. They helped the government to ratify the UN Torture Convention and in May this year they developed Code of Conduct for the police force in SADC.
The Commissioner wondered if the training had any impact so far. The Director replied that they got money from Sweden to do a study on an impact of their programmes but, in general, the police have been sensitised and could still do their jobs effectively, without getting soft on criminals, although they preferred to be called good policing than "human rights training". He added that there were various participants including 36 NGOs assisting the section and that there was good coordination among them and a commendable working relationship with the main NGOs and others. He stated that their collaborative work in Africa stretched as far as Kenya and Tanzania.

To the Commissioner's concern on the existence of corruption in SAPS, the Director agreed saying that any effort to sensitisate the police would not yield any meaningful results unless backed by a parallel sensitisation of the community/society as a whole through such mechanisms as community policing.

The Commissioner emphasised the role of civil society in this regard stating that a society got a police it deserved and that if it proved to be active then the police would be kept under constant check.

Office on the Status of Women

At the meeting with Ms Susan Nkomo, the Acting Director of the Office on the Status of Women under the President's Office, Commissioner Chigovera gave a brief overview of the African Commission, its mandate, tasks and purpose of the promotional mission. He stated that the membership of the African Commission did not accord with gender distribution.

To the Acting Director's question regarding the Protocol on the Rights of Women in Africa, Commissioner Chigovera stated that the Commission's role was basically one of initiator or facilitator and that it worked with NGOs to come up with a final draft. They have submitted a draft to the OAU Secretariat for onward transmission to the states. Once the principles get accepted, the document would be taken as a working document to be examined by the legal experts from states parties who deliberate on it and make suggestions to the Council of Foreign Ministers. There was a clear understanding that the Commission's involvement ended at the stage where it sent the draft to the Summit.

Lamenting on the fact that during such high level discussions as on the women's protocol, States tend to send legal officers only from the ministries of Justice and not from other Departments, Ms Nkomo stated that there was no reason why that should be the case. She argued that the tendency to do so would be limiting the impact of human rights as if it were tied only with Ministry of Justice. She added that the involvement should go beyond the Ministries of Justice in the various countries. With respect to the deliberations on the women's protocol, she stated that the OAU should have consulted the SADC gender unit and other relevant bodies so that the domestication of the protocol in the various member states would be facilitated. In this connection, she regretted that the Commission failed to call them to participate in an upcoming meeting regarding women in which the impact of the restructuring of the OAU would be discussed.
After briefing her on the Commission’s mechanism of special rapporteur on the rights of women in Africa, the Commissioner assured her that the delegation had taken note of this fact and that this would be reflected in the report of the Mission and orally presented to the Commission at the presentation of the same. He alluded to the shortcomings of the inter-governmental systems and hoped there would be improvements for the better. He added that most external communications with states were through the Ministries of Foreign Affairs that do not relay it well into the national arena. He stated that the purpose of the meetings were to reach these national governmental and non-governmental institutions. He further noted that NGOs needed to work with governments as the latter bore the ultimate responsibility to implement human rights.

On Ms. Nkomo’s concern that governments had the tendency to mistrust NGOs and regard them as anti-government, Commissioner Chigovera added that sometimes governments and NGOs needed to try and agree on the objectives of their actions though they may differ on the various routes they respectively would take. He said that their relationship was dictated by history and that the attitude has been that these were institutions that were financed from outside and hence deemed as interference routes in the internal affairs. He hoped to raise most of the concerns with the officials he was scheduled to meet.

Ms. Nkomo also wondered why the Commission did not take up matters by itself when they presented themselves. The Commissioner replied saying that indeed the Commission had taken up matters upon its own initiatives. For instance the problems in Algeria and Tunisia regarding which it had passed resolutions. And in so far as the Commission was concerned, he informed her that it operated through diplomatic channels, which, he said, was all the more problematic. Travel problems in Africa were also a concern for the conducting of promotional missions to member states.

In light of the new developments involving the African Union, the Commissioner informed the Acting Director that the Act was not widely debated and that the process was rushed with the push having been motivated by other considerations. He added that the question on how the organs of the OAU would be operational remained a concern. How the new structures would fare and how the Commission relates to them was yet to be seen. For instance, it was clear to which body of the Union (the Parliament or the Summit) it has to do its reporting.

**Correctional Services**

The delegation was initially scheduled to meet the Provincial Commissioner, Mr Zack Modise who fell ill and got hospitalised before the delegation could meet him. Instead Ms. Jabu E. Sishuba, Deputy Commissioner, received the delegation. Also present at the meeting and during the tour of the Pretoria C-Max Section was the area manager, Mr. Monama ZK.

At the meeting, the Commissioner introduced the African Commission, its function, mandate and outlined the purpose of the mission. He additionally elaborated on the mechanisms of special rapporteurs for the African Commission, in particular the one on Prisons and places of detention in Africa.

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He then expressed his concern over the reports in South Africa of prison overcrowding. The Deputy Commissioner presented the figures saying that by that time, the prisons had the capacity to hold 102,000 but actually contained 170,000 out of whom 51,559 were awaiting trials. She added that there were only 34,000 staff in the system, which gave a 1:7 prison officer to inmates ratio. She elaborated on the efforts made to alleviate this problem. Accordingly, she said that they have come up with an Integrated Justice System that brings in other actors like the various ministries so that they would be able to coordinate their respective efforts. They also have decided to release those fined to pay less than 1000 South African Rands but still imprisoned, and those fined and paroled. With respect to the composition of the staff, she said that presently women constituted 18% of the staff as against 13% in previous years. She said that their objective in the system was rehabilitation of inmates that involved safe custody and humane incarceration emphasising on the goal that they would come out of prison as changed good citizens.

With respect to the Integrated Justice System, the Commissioner mentioned that the need for incarceration was tainted with past prejudices that were not helpful in anyway to alleviate prison overcrowding. He said that the effort to address these problems needed to stretch deep into the motive of crimes and the social situation prevailing in the community. Community service should also be considered as one of the alternative ways out of this problem. Ms. Sishuba said that South Africa applied community service but not in the same manner and scale as was being done in Zimbabwe.

Visit to C-Max Section of Pretoria Prison

The C-Max facility is the section of Pretoria Prisons wherein are kept the country's most dangerous criminals. It has presently a population of 227 inmates. In addition to this facility, Pretoria Prison has various other sections including those for women and children. In the C-Max, prisoners go through various phases of treatment and restrictions depending on the day-to-day behavioural changes they demonstrate. Their daily routine includes three meals per day, opportunity to complain and make requests including medical attention, exercise and shower. They are allowed visitors and they could make calls to relatives for ten minutes per week. Those under "phase one", which is highly restrictive, are kept in their cells almost for 23 hours each day with one hour allowed for showering and exercise. They are not allowed to mix with other prisoners. Those under the other phases are allowed to mix with each other during exercise.

The Commissioner wondered who decided to transfer any inmate to be put into any phase and under which criteria. The delegation was informed that for each phase, there was a panel or a Case Management Committee for evaluation and determination of the degree of restriction that were to be imposed on each inmate. The panel was constituted of persons from various fields including social workers and psychologists. They informed the delegation that presently there were 52 inmates kept under the most restrictive phase in the C-Max section of Pretoria Prison.

The delegation noticed that this particular section of Pretoria Prison left a great deal to be desired. For instance, in handling the prisoners under this section, the police kept them handcuffed and shackled. There was a prison officer on stand by who wore
Protective clothing near riot gear with full-face visor equipped helmet and carried a portable high voltage-shock device. It is noted here that such a constant presence of a near riot gear could foster confrontational attitudes on the part of the inmates in this section.

The delegation also noticed that there was no any programme of meaningful activity in the Section, which could enhance the personality of the prisoners and positively influence them by way of preparing them for eventual reintegration in the society. Although security considerations would preclude many types of activity in this section, some activities within the confines of the section should be possible. The delegation took note of the fact that the system could unnecessarily instil aggressive behaviour against self and others, and that the inmates could regress or withdraw from any social contact.

The Centre for Human Rights, University of Pretoria

The meeting with the Director of the Centre, Professor Christof Heyns was also attended by Professor Frans Viljoen, the Deputy Director, Mr Norman Taku, and students of the LL.M. 2001 class of the Centre (Human Rights and Democratisation in Africa 2001).

Professor Heyns introduced the Commissioner and his delegation to the students. Commissioner Chigovera then briefed the students on the Commission and its work. He explained the work of the Commission and its task of supervising the implementation of the African Charter within Member States. He said that the primary tool for doing so was State Reporting. In this regard, he stated that the Commission encouraged states to report regularly. Promotional missions also helped the implementation of the same by the States. It sensitised states and their institutions on the basic activities of the Commission, what kind of relationship they could have with it and the benefits of the same, and on questions of lodging complaints before it. He stated that promotional missions extended to all parties, governmental and non-governmental institutions alike. During missions, he added that Commissioners tried to access certain infrastructures related to human rights and met with a number of NGOs in an effort to understand their workings and problems, and their relationship with governments. He reminded the students, that the promotional mission did not fall under protective missions. He admitted, however, that sometimes promotional mission did not fall under protective missions. He further made the admission that sometimes the missions failed as was demonstrated by the Bosch case against Botswana.

The Commissioner then answered questions raised by students. His replies are summarised as follows:

To the question if the Commission planned to publish its decisions and if there was a website for it, the Commissioner responded saying that the Commission indeed published its decisions once the Assembly of Heads of State and Government adopted them and that the construction of a web site for the Commission was being finalised by the secretariat in Banjul.
To the question regarding the relationship between the Commission and the new African Union, the Commissioner stated that the coming into life of the African Union did not affect the organs of the Organisations of African Unity. He added that the AU also had its own organs like a parliament. He, however, mentioned that it was not clear at that stage if the AU affected the Commission. He went on to say that while the Commission reported to the Summit of Heads of State and Government it was not clear what the eventual forum for reporting would be as there were two potential supervisory bodies under the AU – its parliament and the Summit. He added that it was not clear what kind of relationship the Commission would have with the other organs of the AU either.

To a question regarding the preparation underway for the African Court, Commissioner Chigovera reported that the Protocol establishing the African Court on Human and Peoples’ Rights had been adopted but had not come into force yet. He said that it needed ratifications, the lobbying of which was also one purpose of the promotional missions. He said that more remained to be done in light of the prevailing change since the time of signing of the protocol by states. He hoped that it would be operational before long.

With respect to a question on the detention and deportation of alleged illegal immigrants from South Africa and the problems involving Lindela Repatriation Centre, Commissioner Chigovera informed the students that the Commission expected states to treat detainees in a humane manner in line with international standards and domestic human rights provision under the South African Constitution. He added that he would also be able to raise some of the concerns regarding immigrants when he gets to visit Lindela Repatriation Centre in the course of the mission.

Concerning the main challenges the Commission faced in its endeavour to carry out its responsibility, the Commissioner responded saying that the challenge lay in ensuring that all African countries complied with their obligations under the African Charter. He added that the Charter dealt with all categories of rights in the same document and that it was difficult for the Commission to develop jurisprudence on the various rights in a hurry.

Professor Heyns wanted to know the main problems of efficiency in the Commission’s work. The Commissioner replied that the Commission needed to bring all member states under its supervision – that states submit all their reports on a timely basis and for the Commission to examine the same in light of the information contained therein. He said that most of the state reports tend to narrate what was in the laws than inform the Commission on the practical reality on the ground and how the African Charter was implemented. He added that once that relationship was established, it would enable the Commission to recommend to and assist the concerned states by various means, including providing it with expert advice or appealing on its behalf for donors to help it in specific projects. He said, therefore, that the key for the efficiency of the Commission was the establishment of that kind of relationship and the positive response of states directly based on their respective
situation. The Commission had encouraged states to participate in its sessions and that this had increased over the years. NGOs and universities also played a very important role in providing the Commission with much needed information and in training the authorities and others. This has had an impact on the justice systems particularly with the police, judiciary and legal aid centres.

The Commissioner reminded the students, however, that the Commission still had to go through diplomatic channels as any other intergovernmental institution to undertake its mandate. He mentioned, for instance, that the Commission could not go in a member state on any kind of mission without permission from the concerned member state. Missions were subject to prior acceptance by host governments. In this regard, there still are problems of getting timely responses from states for its requests but there has been some improvement in that regard as the Commission has undertaken a number of promotional missions in the recent past. He said that missions were carried during the inter-session periods. With respect to the availability of Commissioners to undertake the Commission’s work, Commissioner Chigovera informed the students that Commissioners were in full time employment in their respective countries and they need to reconcile their home commitments with the demands of the Commission.

To a question on concluding observations the Commission issues after considering state reports at its sessions, the Commissioner said that there is now a consensus to issue the same and that the rapporteur for the state report would draft concluding observations that would be presented to the Commission for adoption. These are publicised in the same way decisions of the Commission are publicised after adoption by the Assembly of Heads of State and Government of the OAU. He said that the issuing of concluding observations need not be sanctioned under the African Charter but the Commission, however, had to discuss it before sending it out.

On the matter of South Africa’s reluctance to ratify the Court Protocol, the Commissioner stated that he hoped to raise the matter during his meetings with the relevant authorities. He added, however, that he did not believe the Protocol conflicted with the jurisdiction of national courts. Basically, the African Court decisions would be binding in a similar fashion to that of the ICJ to which many African States including South Africa were parties. He said that the issue of sovereignty that was raised as a concern by some in that regard should be treated as is done before the ICJ.

To a possible contradiction the Court may cause with respect to socio-economic rights, which South African Constitution subjects to the availability of resources, the Commissioner said that no government in Africa would be able to provide fully all these rights as these rights themselves were subject to the availability of resources. He said that the African Commission was aware of such challenges faced by its Member States. He hoped to raise the matter of the ratification of the Court Protocol with the Chairperson of the Parliamentary Justice Committee of the National Assembly whom he was scheduled to meet.
Independent Complain Directorate

The meeting with Advocate Karen D McKenzie, Executive Director, Independent Complaints Directorate (ICD), was also attended by Mr Shadreck Mahlangu, Regional Director, Gauteng Province, Mr Mike Kakana, Chief Director, Monitoring and Development, Dr. Johan Snyman, Director, Legal Services, and Mr Julian Snitcher, Director, Investigations. Ms. McKenzie introduced the ICD saying that it investigated police criminality and misconduct and that it had offices in each province. The ICD operated in three distinct areas. Firstly, it received, registered, and checked the genuineness of complaints by members of the public against members of the South African Police (SAPS). Secondly, it ensured that all complaints received and allocated for active investigation were indeed investigated efficiently and effectively. And thirdly, it monitored the progress of cases referred to SAPS for investigation and undertook researches on various issues. It faced budgetary constraints and has a huge backlog of cases. She said that the reason for its establishment was that there still continued brutalities committed by the police.

With respect the mandate of the ICD, Mr Julian Snitcher stated that the power of the ICD did not extend beyond the Police. It gave priority to cases of corruption, femicide, rape, spousal abuse, racism, excessive use of force, and death in police custody. When arresting members of the police for alleged misconduct, the ICD respected the procedural rights of the detainee. It reported to the Parliament.

The Commissioner in turn introduced the delegation, and explained the work of the Commission and the purpose of the promotional mission. He elaborated on the complaints procedure of the Commission – how complaints get received, processed and finally examined by the Commission at its sessions. He wondered what would happen in the event that the Director of Prosecutions decides not to prosecute a police officer against whom there was complaint as investigated by the ICD.

Ms. McKenzie replied that they did not have control over the office of the prosecutor and that they could not be judges and executors of their own cases at the same time. They respected the independence of the other bodies and expected them to do their part. But at times, however, the ICD made representations to the Director of Prosecutions and even went on to take matters further up to the National Director of Public Prosecutions. Such issues may also be raised in Parliament when the ICD made its reports to Parliament. She added that they made use of the media as well.

Community Law Centre, University of Western Cape

In the meeting with the members of the Community Law Centre, the delegation held discussions with Mr. Johann Mettler, Democracy and local Government Project, Ms Sandra Liebenberg, ECOSOC Project, Ms Jackie Gallinetti, Children’s Rights Project, Prof. De. Vielliers, Professor of Law, and five other participants.

Commissioner Chigovera introduced the mission, the commission and explained the purpose of the promotional mission. He stated that missions by the Commission were aimed at exchanging views with actors in the domestic arena, raising issues with relevant authorities, and encouraging NGOs to work with the Commission. He appreciated the role played by universities.
Ms. Sandra Liebenberg introduced the Centre and its ECOSOC Rights Project, which advocated for the implementation of various international instruments on ECOSOC rights. She stated that the Centre carried out research and community training in these areas. She informed the delegation that the South African Human Rights Commission had a constitutional mandate in implementing socio-economic rights in South Africa. She added that the Community Law Centre runs joint LL.M. programme on Human Rights and Democratisation in Africa with the Universities of Ghana, Makerere (Uganda) and the Centre for Human Rights at the University of Pretoria.

Ms. Jackie Gallinetti talked about the projects the team of Children’s Rights Project was undertaking, and in particular, as it related to the juveniles and Child Care Act. She stated that the project published a quarterly paper on juvenile justice concentrating mainly on such departments as Justice and Constitutional Development. It was distributed to officials and other relevant bodies like magistrates and judges who work with children on a day-to-day basis. The process also tried to ensure participation of children themselves.

The Gender Project of the Centre operated based on four themes: violence against women, reproductive rights, women in difficult circumstances like commercial sex workers, and gender information and outreach. The project was involved in the drafting of South Africa’s new Domestic Violence Act, drafting of national direction or guidelines for social workers, policy development, and collaborative efforts with other NGOs in areas of education and training. The project was also trying to develop a network within Africa particularly based on the importance of the Protocol on the Rights of Women in Africa. It worked with Namibia in the latter’s development of its own Domestic Violence Act.

Mr Johann Mettler added that the Democracy and Local Government Project had three aims: the development of entrepreneurial democracy at the level of local government with emphasis on community participation, training of councillors, officials and organs of civil society in the local government, and policy development by working with municipalities, provinces, national and local governments. To this, Professor De Vielliers added that with respect to land use, the position of traditional leaders in governance remained a problem as they used to administer land matters in the past. The Professor added that the problem stretched beyond that as there also existed the inequality between the sexes in the possession of land.

Commissioner Chigovera on his part stated that the Commission has not developed much jurisprudence so far in its work. Touching upon the State Reporting procedure, the Commissioner stated that the problem in the past had been that nothing came out of the dialogues in the form of feedback. This, however, has changed and the Commission has developed the adoption of concluding observations similar to those issued by the United Nations bodies. The Commission’s concluding observations indicate clearly its views, recommendations, and interests. He regretted that the Commission had not developed this practice when South Africa’s Initial Report was considered in 1998.
With respect to the Communications procedure, the Commissioner informed the members of the Centre that the procedure could be an important area for the development of jurisprudence on the rights protected under the African Charter. Currently, the Commission is in the process of developing a systematic way of handling communications. He stated that the distribution and publication of the Commission’s work formed one of the agenda items that are discussed at the Commission’s Sessions.

Regarding efforts to address human rights problems deeply entrenched in the beliefs of the society, the Commissioner said that there could be a dilemma on how to go about it as deterrence by punishment could only be addressing the consequences rather than the causes thereof. The issues needed to be approached carefully and the main thrust of the efforts should be re-education of the society.

To a question on the possibility of the Commission issuing general comments similar to those of the UN on the various provisions of the African Charter and prevalence of submission of shadow reports by NGOs, the Commissioner responded saying that given the present organisation of the Commission it would be difficult, if not impossible, for Commissioners to get their acts together and issue general comments on the provisions of the African Charter. Regarding NGOs’ reports and the utilisation of the same by the Commission, the Commissioner underlined that the Commission has been lucky in having partners in NGOs who were constantly sending it their reports on various themes including the human rights situations in their respective countries. He said that the Commission preferred those reports demonstrating proper investigative work that assist the Commission in appraising it of the situation in the concerned states. He nonetheless mentioned that the Commission encouraged shadow reports by NGOs.

On the Centre’s not having acquired observer status with the African Commission, the Commissioner outlined the various benefits that could accrue from such an arrangement. NGOs could get audience on various issues before the Commission, get access to publications of the Commission, and be able to participate in the Commission’s sessions. He encouraged the Centre to apply for Observer Status with the Commission.

Department of Justice and Constitutional Development

The meeting with Ms Cheryl Gillwald, Deputy Minister of the Department of Justice and Constitutional Development was attended by Ms Elsabe Wessel, Special Advisor to the Deputy Minister, Mr Enver Daniels, Chief State Law Advisor for the Department, and Mr Blendyn Williams, Legal Officer at the Deputy’s Office.

Commissioner Chigovera introduced the delegation and explained the purpose of the promotional mission. He went on to remind the Deputy Minister that South Africa’s periodic report was late and hoped it would be submitted to the Commission for presentation at the 31st ordinary session. The Deputy minister promised that she would pass the concerns of the Commission to the Minister in her report to him.
The Commissioner stated that when the Commission considered South Africa’s Initial Report, there was no practice of issuing concluding observations, which inform the state about the Commission’s reactions to the report and its presentation, the Commission’s expectations, and its recommendations based on the dialogue held with State representatives. The Commissioner also pointed out that the South African government was yet to ratify the Protocol establishing the African Court on Human and People’s Rights. Although the government has been very much human rights sensitive, the Commissioner added that it was failing in that regard.

The Commissioner also raised the unique position of the South African Constitution when it recognised 11 official languages, though this was not indicative of the totality of the languages in South Africa. He inquired of position of the rest of the languages in regard to whether there were special programmes to recognise and preserve the languages and culture of those languages. This, he said, could be done by encouraging the use of such languages at the community level, allowing schooling of children in their own languages in addition to the official ones, and by allowing them airtime on radio and television. In this connection, he touched upon the current trend to give priority to indigenous peoples and their social development for fear that the latter may be driven into extinction which was a problem in every country. This was demonstrated more at the last World Conference Against Racism, held in Durban, South Africa in August 2001. At the Commission, this issue has been given due attention and there existed a Working Group on indigenous peoples.

The Deputy Minister replied that there was an effort to preserve and cultivate literature in the eleven official languages. There was even an effort to have annual reports of the various ministries in the cabinet issued in some of the official languages. She, however, admitted that she was not aware of any endeavour in respect of the rest of the languages. In order for this endeavour to bear fruit at the level of the government, she added that the government should encourage Parliamentarians to speak in their own native languages at its sessions. With respect to the issue of indigenous peoples and minorities, she said that recent South African history proved that even a majority could be discriminated against. She regretted the WCAR was hijacked by political wrangling to the detriment of the real issues.

To the Commissioner’s question on the ratio of racial representation in the Department of Justice and Constitutional Development, the Deputy Minister replied that the legacy of long years of discrimination and exclusion was still observed and remained a challenge to the government. In exemplifying this, she recalled that before 1994, there was little or no visibility of blacks in the magistracy. The situation of female graduates was even worse as 50% of them from law schools were not taken in and ended up in the corporate sector. Although a swift change to all of this would not be possible, she stated that the government had the primary objective to gradually bring about change. For instance, South Africa has a Constitutional Court with an exemplary set of representativity. She lamented, however, over the situation in the Supreme Court and High Courts that needed to embrace more blacks particularly black female judges. As judges were appointed for life, change would not be forthcoming in a hurry. This was true with the new Supreme Court nominees who were all whites with no blacks as there were no qualified blacks to take up positions there.
The Commissioner acknowledged the challenge the government of South Africa was facing in this regard but reminded the Deputy Minister that there still remained much work to be done. He then referred to his discussion with officials of the Department of Correctional Services and raised the concern that prisons in South Africa remained congested, with over 51,000 awaiting trial and most of them having been incarcerated for more than a year. He wondered if the problem was beyond the government’s capacity to resolve. He also enquired about the ability of the prosecution to cope up with and speed up its handling of the growing indictments before it.

To the problem of congestion in the prisons, the Deputy Minister explained that most suspects could not afford to pay bail and hence remained in jail. To sustain the prison population, the government spent about 84.50 South African Rands per day per prisoner. The increasingly higher numbers of cases that were being filed before the courts aggravated the situation. She indicated bottlenecks in the criminal justice system which include a very little investigative culture in the police units, and disorganised preparations of charges for indicting suspects lingered to bog down progress in the sector. The problem extended to affect as they form part of the congested prison population, though kept separately.

She stated that in order to curb the problem of overcrowding in the prisons, the government had tabled before parliament amendments to the Correctional Services Act. The amendments would enable the Correctional Services to release unsentenced prisoners. In addition to that, a draft Bill on Plea Bargaining would soon be tabled with the aim of improving the delivery of justice and prison congestion.

With respect to the prosecution’s ability to efficiently manage its duties, the Deputy Minister emphasised that the Ministry had a dynamic prosecution department that undertook prosecution only and led investigation similar to those in Civil Law Systems. In some cases, she added that the based courts like the Sexual Offences Court enabled the investigator, forensics, and prosecutor to work together from the moment of complaint till the resolution of the case thereby resulting in speedy administration of justice.

Similarly, to the Commissioner’s concern on the operation of the traditional or customary courts in South Africa, the Deputy Minister disclosed that the Constitutional Court had supervised those courts and that in one of its decisions had ruled the procedure used before them to be unconstitutional. This demonstrated that even though the South African system allowed their operation with special procedures, they had to be in line with the Constitution. She added that various statutes also checked the constitutionality of such courts.

The Commissioner explained how other jurisdictions limited the possible impact of such traditional courts on individual rights saying that the latter were either devoid of criminal jurisdictions or down graded to deal only with petty offences.

**Cape Town High Court**

At the Cape Town High Court, the delegation met with Judge M. Hlophe, Judge President and Judge P. Jeannette Traverso, Deputy Judge President, Cape Town High Court.
The Commissioner introduced the African Commission, which was neither a court nor a judicial organ but handled complaints similar to those before national courts. He briefed the Judge President and his Deputy on the purpose of the promotional mission and the composition of the Commission. He stated that promotional missions were aimed at, among other things, sharing experience with domestic actors in the field of human rights, sensitising domestic actors about the work of the African Commission, appreciating and holding dialogues with authorities on the performance of states in living up to the expectations of the African Charter and, more specifically, persuading states to ratify important human rights instruments like the Protocol on the establishment of the African Court on Human and People's Rights.

The Commissioner then raised issues pertaining to racial imbalances in the judiciary of the Republic of South Africa. To the Commissioner’s concern on the equitable racial representation of judges on the bench, the Deputy Judge President stated that there was an Equality Bill being deliberated before Parliament and she hoped it would come out at the end of that year. The Judge President agreed that the problem of under representation needed to be seriously addressed and that the government should improve on the pool of judges for appointment. He elaborated on some of the tricky problems the judiciary faced in this respect. He enquired about the work of the Commission in respect of communications.

The Commissioner briefed the Judges on the process of handling communications before the Commission. He touched upon the problems the Commission sometimes faced in its relation with member states, for instance, when states totally ignore its interventions and go ahead with their business to the detriment of guaranteed rights under the African Charter. On the other hand, the Commissioner mentioned some of the success stories in the Commissions work in this area, including the halting of the extradition of a certain Sekunda from Namibia to Angola.

To the Deputy Judge President’s emphasis that the Commission should have a web site of its own, Commissioner Chigovera stated that that was being worked upon by the Secretariat of the Commission in Banjul and would be finalised before the end of 2001. He requested the Judges to kindly consider forwarding to the Commission some of their judgments that have to do with human rights.

Speaker of the National Assembly

Advocate Mukesh Vassen, Researcher to the Speaker, attended the meeting of the delegation with Dr. Frene Ginwala, Speaker of the National Assembly.

The Commissioner introduced the mission and explained the purpose of the promotional mission. He mentioned that promotional missions aimed at facilitating exchange of information, establishing links taking up issues with the authorities of the country concerned, and liaising with NGOs and governments in search of remedies to specific human rights violations. In this connection, the Commissioner wondered why South Africa found it difficult to ratify the Protocol Establishing the African Court on Human and Peoples' Rights. He added parliaments played a significant role in making sure the translation and application of international human rights instruments in the domestic context.

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The Parliamentary Speaker in response stated that the delay in ratifying the said Protocol was not due to lack of interest on the part of the South African government. She said that the problem was more technical in nature than political. In this regard she expressed her fear that South Africa could have problems once the African Union was properly put in place.

The Parliamentary Speaker then went on to brief the Commissioner about the various activities of the South African Parliamentary Committee. It had contributed to the International Parliaments Union Directive for Parliamentary Dimensions of International Law and in the African Union Act. She added that parliamentary bodies played a role in ensuring compliance with human rights instruments like the CEDAW. She mentioned that Parliament, however, needed a specific committee that would look at all legislations touching upon human rights.

With respect to the Commissioner's concern on the degree of participation of the general public in the activities of Parliament, the Speaker stated that the involvement of the public in this regard was very low. Parliament also allowed the participation of NGOs in its work. She revealed the concern on how to reach the poor and the disadvantaged that were bound by custom, religion and norms, among others. She raised the wide spread problem of violence against women and urged the Commission to use its status and influence in establishing a mechanism for the protection of women in Africa.

Commissioner Chigovera acknowledged the necessity for the Commission to play a greater role in this regard saying that equality was a desirable African value that should be promoted and that the Commission has been and would continue to advocate for the promotion and protection of women's rights. However, he mentioned the Commission's shortcomings in this regard that individual Commissioners may not be able to contribute much to this end as they were part timers and worked under a Commission that was under resourced.

**Institute for Democracy in South Africa (IDASA)**

Commissioner Chigovera introduced the mission and explained the purpose of the promotional mission to Mr. Paul Graham, Executive Director of the Institute. He stated that promotional missions of the Commission are aimed at establishing links with local actors, promoting the African Charter and promoting the smooth working relationship between NGOs and governments. In his discussions with the various officials and personalities, the Commissioner recounted that he had raised issues concerning the ratification of the Protocol Establishing the African Court on Human and Peoples' Rights, equality and representation, rights of immigrants, and the proper training of the judiciary.

He added that as a Commissioner, he had been trying to encourage the participation of NGOs in the work of the Commission, as the former remain to be the Commission's information base. They also assist in lodging complaints before it on behalf of individuals and groups of people, and undertake advocacy on human rights issues.
Mr. Graham introduced the Institute to the delegation saying that it was a primarily South African NGO concerned with democratisation in the country. It has tried to engage with policy makers on various issues. He stated that problems in politics disabled the primary actors to adopt proper policies such as those affecting immigrants to the country. As an example of disorganisation due to politics, he mentioned that the Department of Home Affairs took Parliament to the Constitutional Court for not passing a law dealing with refugees and immigrants to the country. The problem of immigrants and the manner it was being handled by the concerned authorities, in particular, has resulted in wide discontent in the society.

With respect to its operation, he said that although it has a strong working relationship with the government, it remained independent. It had an open door policy to work with counterpart NGOs in other parts of Africa. In this regard, however, he expressed his fear that they may be regarded as internationalist at the expense of local work.

The Commissioner elaborated on the procedure before the Commission in granting observer status to NGOs. He encouraged the Institute to apply for one. He informed Mr. Graham that their application should reach the Secretariat three months before an upcoming session but should they need further information, he assured him that the Secretariat of the Commission would assist them. He added that working in collaboration with international actors would be to the benefit of all and they should not fear being accused of neglecting their local work as such collaboration would in effect enhance their effectiveness at the local level.

In evaluating the possibilities of collaboration, Mr Graham stated that this could assist in popularising the Commission in South Africa through their educational radio programmes. The Institute’s publications could also be forwarded to the Commission. He cautioned, however, that the Institute had tended not to embrace legal or complaint related work.

The Commissioner expressed his concern over the fact that there were private businesses that ran detention centres in South Africa, including Lindela Repatriation Centre. He said that the said arrangement could be viewed as a possible abrogation of a State’s obligations especially its obligation to protect foreign nationals on its soil. He wondered who would take responsibility when the profit-guided business contravened international human rights laws. He also raised the issue that South Africans were themselves victims of rushed detentions and deportations through the same institutions.

Mr. Graham responded saying that the debate with respect to the involvement of private concerns in the administration of justice was beyond the issue of privatisation as it relates to the poor treatment of foreigners, and in particular immigrants in South Africa. He added that generally South Africans had a poor view of visitors and outsiders. There have been, efforts to improve on this by various institutions including the South African Human Rights Commission. He emphasised that sensitisation of the society through education was the only means to bring about lasting change.
To the Commissioner’s concern that South Africa still needed to ratify the Protocol Establishing the African Court on Human and People’s Rights, Mr Graham stated that South Africa needed to ratify the Protocol and that it would be wise for the Commission to tactically enlist the help of South African NGOs to lobby the Government to do the same.

Parliamentary Justice Portfolio Committee

The meeting with the Chairperson of the Parliamentary Portfolio Committee, Advocate Johhy de Lange was attend by Mr. Warren Radhold, ANC Researcher.

The Commissioner introduced the mission. He explained that the Commission regarded Parliamentarians as important institutions in the implementation of human rights. He went on to say that one of the issues he expected to raise in the present promotional mission was the ratification of the Protocol on the Establishment of the African Court on Human Peoples’ Rights. He mentioned that his preceding discussions with the various authorities and personalities on this topic indicated that the Parliamentary Portfolio Committee had important bearing on its being ratified. He wondered if the Chairperson was aware of the inclination of the government in that regard.

The Chairperson responded saying that the South African government remained interested in the African Charter and what it stood for. He disclosed that the Protocol has been before the Committee but that when it was introduced there, the Department of Justice and Constitutional Development had indicated it was inconsistent with the South African Constitution. The Protocol bound states, which was contrary to the principle in the South African Constitution that declared that the Constitution was the supreme law. He added that the State Law Advisors also found it to be inconsistent with the Constitution and suggested that it would not be viable to go ahead and ratify it as it is. He said that given their suggestion, to ratify the Protocol would mean the amendment of Constitution. He said they were waiting for the final opinion of the State Law Advisors on the matter. The government was anxious to ratify the same but Parliament expected the Department and other bodies to come up with solutions before it does so. Parliament had already rejected suggestions for the ratification of the same with reservations, as that would mean flagging for others to follow suit and defeat the whole purpose of the Protocol, a wrong message that should be avoided as much as possible. He suggested the Commissioner raise this matter with the Minister of Justice and Constitutional Development, Dr. Penuel Maduna.

The Commissioner hoped that South Africa would ratify the Protocol soon. He said that Protocols within the Commission’s mechanism of promotion and protection of human rights in the continent help to clarify the African Charter and that the envisaged Court would assist in the development of African human rights jurisprudence.

Constitutional Court of South Africa

The delegation met with Justices Arthur Chaskalson, and Pius Langa, President and Deputy Presidents of the Constitutional Court of South Africa respectively. They were later joined by Justice Ackerman.
Commissioner Chigovera introduced the mission and explained the workings of the Commission. The promotional mission, he said was generally intended to popularise the African Charter among government institutions and other human rights players including NGOs and exchange information. He said that the mission also aimed at bringing closer NGOs and government that normally operate on parallel planes and, at times, with frequent discord. He mentioned that it was important to encourage government to implement human rights.

He briefed the Justices on the array of personalities he met and said that during the discussions that ensued, the issue of the ratification of the Protocol on the Establishment of the African Court on Human and People's Rights featured most frequently. He stated that there was a problem somewhere in the system that seemed to prevent the ratification of the Protocol. He stated in his view there would not be a conflict between the Court and national jurisdictions as the former dealt with only matters that had final pronouncements before domestic courts.

In explaining the reason why the mission wanted to meet the judiciary, Commissioner Chigovera informed the Justices that the Commission regarded the former as an important establishment in the implementation of human rights in the domestic front. He said that South Africa had a well-developed judiciary. With respect to the impact of the Commission's work in the various member countries, the Commissioner admitted that the Commission lacked ways of checking its impact in the domestic sphere. He wondered if the Commission's decisions reached the South African Constitutional Court.

To which Justice Arthur Chaskalson replied that very little of the Commission's decisions reached the Constitutional Court. He said that the African Commission had a low profile in the country. With respect to the litigation coming before the Constitutional Court, Justice Arthur Chaskalson stated that litigants consider the South African Constitution to be far more extensive than the African Charter and hence would not often cite from the latter. On its part, the Constitutional Court had referred to the Charter in some of its judgments though very sparsely. He lamented the lack of communication from the Commission appraising the public on the progress it has made in developing jurisprudence on specific issues and rights under the African Charter.

In acknowledging this fact Commissioner Chigovera stated that the African Commission had problems of getting its works including decisions and reports distributed and that it had done little more than reporting to the Assembly of Heads of State and Government of the OAU. He hoped the African Commission would try to make its decisions available to national courts.

To a question by Justice Langa on how the Commission worked regarding complaints, the Commissioner elaborated on the process a complaint goes through after having been received by the Commission from seizure, to admissibility, and eventually decision. He said that because of communications problems in Africa and
deliberate disregard by states of the Commission’s letters, there were witnessed considerable delays in bringing complaints to their conclusion. Lack of adequate support staff at the Secretariat of the Commission also played a role in undermining the efficiency of the Commission in that regard.

To the Commissioner’s concern over prison congestion and the inability of the system to cope with it, and to his suggestion that some prisoners could be released pending conclusion of investigation, Justice Langa remarked that there were inherent dangers in that arrangement and that the timing could not be less inconvenient where there seemed to be loud out cry against crime and criminals. Justice Chaskalson on his part added that the problem had also base in the processing of bail itself, as bail may have been set beyond the means of most inmates. Justice Ackerman put in the possibility that weaker government economies and policies could be contributing factors for the problem.

With respect to the possibility of collaboration between the Commission and the African Commission, Justice Chaskalson hoped that the new coming African Court would enable exchange of jurisprudence. As to the African Commission, he said that if they got hold of relevant decisions of the African Commission, they would try to refer to them in their judgments. Despite that, however, he lamented that the African Charter has yet to be put into simple ordinary language to enable its beneficiaries better understanding of their rights. Regarding the distribution of the decisions of the Constitutional Court, Justice Chaskalson stated that they had two ways for publicising the same: one by putting all the judgments on the court’s website, and two, by having it published on Constitutional Law Journals like the Butterworth Constitutional Law Reports. He suggested that the Commission could arrange with the court to secure the same.

Justice Ackerman on his part wondered to what extent the Commission would be able to act as port of communication for courts of Africa in obtaining each other’s materials.

The Commissioner agreed and promised that the Commission on its part would look into better ways of distributing its works to the public and national courts alike, and also see on how to coordinate the exchange of materials among national courts in Africa.

**Human Rights NGOs**

Organised by the Human Rights Institute of South Africa (HURISA), the delegation met representatives of the following human rights institutions, NGOs and civil society organisations:

1. Human Rights Institute of South Africa (HURISA)
2. African Independent Churches Programme
3. Electoral Institute of South Africa
4. Centre for the Study of Violence and Reconciliation
5. Human Rights Committee
Ms. Rea Simigiannis, the Executive Director of HURISA, introduced the delegation and briefed the audience on the works of HURISA. She stated that HURISA focused on the content and methodology of Human rights, and access to justice.

Professor Gutto from the Centre for Applied Legal Studies, University of Witwatersrand, chaired the meeting. He invited the participants to introduce themselves to the delegation. He briefly touched upon the work of the Commission and how Commissioners were assigned a number of countries wherein they would be responsible for the monitoring and promotion of the African Charter. He hoped that the exchange of information in the meeting between the Commission and various NGOs and Civil Society representatives would enable them to form strong ties with each other.

Commissioner Chigovera thanked HURISA for taking the initiative to organise the meeting. He briefly outlined what had obtained from the preceding meetings the delegation had with various personalities in government and civil society. He stated that the primary objective of promotional missions was to popularise the African Charter among the stakeholders in Africa – government offices, NGOs, and civil society. With respect to the government, he stated that the fact that foreign offices were aware of their obligations did not mean that the other offices and departments were equally aware. With that as an objective, the delegation had been holding discussions with other offices on the implementation by South Africa of the Charter and other international human rights instruments.

The Commissioner added that some of the discussions revolved around any outstanding human rights instruments that were yet to be ratified by South Africa, in respect of which he mentioned the Protocol on the Establishment of the African Court on Human and Peoples' Rights. Xenophobia, the problems around immigrants to South African, congestion in prisons, and equality featured in the discussions as well. He mentioned that the meetings with NGOs like the Centre for Human Rights (CHR) at the University of Pretoria, Lawyers for Human Rights (LHR), and the Institute for Democracy in South Africa (IDASA) helped the delegation appreciate the work of such NGOs working in the field of human rights, the extent they were assisting the implementation of the rights enshrined in the African Charter, their relationship with other NGOs to maintain their independence when collaborating with the government.

Regarding the mechanism of observer status for NGOs before the Commission, he encouraged the NGOs to apply for the same emphasising that the Commission needed liaisons in South Africa as focal points to monitor the implementation of the African Charter. The Commissioner then invited the participants to air their questions and comments.

*Item 10b, 33rd Ordinary Session of the ACHPR 15-29 May 2003, Niamey, Niger*
The representative of the World Conference Against Racism-NGO Forum recounted the process and problems in organisation and conduct of the last World Conference Against Racism that was held in Durban in August 2001. He stated that there were shortcomings that almost derailed the course to achieve the fine objectives of the Conference and political wrangling topped the list of such shortcomings. He, however, commended NGOs for the strong lobbying of rights and issues both before and during the Conference.

The representative of Legal Resources Centre (LRC) elaborated on the work of the LRC. He said that the LRC was an NGO set out to enforce human rights. With the aim of ensuring the justiciability of all the rights under the South African Constitution, he stated that his organisation had been involved in litigation involving socio-economic rights. He said that they heavily relied on the human rights jurisprudence from outside Africa but lamented the fact that there was very little African jurisprudence in this regard. He, however, stated that LRC would like to work with other NGOs on the continent and that it was trying to establish links with other NGOs in the sub-region. They hoped for a closer working relationship with the African Commission. He concluded wondering if the Commission addressed the question of the possibility of establishing a meaningful African Court on Human and Peoples’ Rights without the assistance from member states and without their commitment to respect human rights and to establish a minimum level of human rights culture.

In briefly explaining the work of the Human Rights Committee (HRC), the representative stated that her organisation dealt with many human rights issues including xenophobia and immigration. While her organisation was interested in the African Commission and the upcoming African Court, she advised that the Commission should try to reach deep into the society by having its work including the African Charter translated into local languages. She also emphasised the fact that Africa was a large continent with customary laws still playing a major role in respect to which the Commission needed to have the Charter circulated and widely understood. She wondered if the multiplicity of socio-legal systems and customary laws were affecting the parallel trend of harmonisation in Africa.

The representative of the African Independent Churches Programme acknowledged the importance of similar gatherings of NGOs and civil society in enabling them to interact and intervene in an informed manner in cases of human rights violation. He said that churches were also interested in the human rights of men, women and children alike. He stated that churches remained concerned with the increasing incidence of human rights violations, particularly in rural areas. He urged the participants to join hands in the struggle to secure the human rights for all.

The representative of the Centre for the Study of Violence and Reconciliation introduced her organisation. She said that the Centre dealt with issues involving gender, policing, correctional services, victims and their empowerment, health, refugees, and reconciliation. The main thrust of the Centre was on violence and reconciliation, which it handled also in the context of human rights. The overall objective of the Centre was to raise awareness so that violence would be reduced. Their eventual success depended on the politics of the day, particularly as it related to the wish of each party in power to implement human rights.
The representative of Article 19 explained the work of her organisation. She stated that the Southern African branch of the organisation was established in 1997 and covered Sub-Saharan Africa. Due to language problems, she admitted that the organisation could not reach francophone Africa. Rather than trying to impose their views from outside, she mentioned that her organisation preferred working with local partners in various countries. She wonder if the delegation found the officials it met to be well aware of the works of the African Commission.

The Youth Facilitator of HURISA appraised the delegation that the organisation also worked in the areas of women, youth, and children. In this regard, he wondered how the Commission was building awareness and disseminating its work especially as it related to the African Charter on the Rights and Welfare of the Child. In this connection, another representative of HURISA disclosed that they were to translate the Charter on the Rights of the Child into one local language, as it was difficult to address local concerns in foreign language.

The representative of the South African Commission on Gender Equality introduced her institution. She said that the Gender Commission was a Constitutional body dealing with an array of issues and collaborating with similar institutions like the South African Commission on Human Rights. She particularly mentioned her Commission’s work in relation to the practice of Virginity Testing in South Africa. She said that cultural practices severely affected the development of the girl child and have negative implications on her development. It was discriminatory and needed to be addressed as a cultural issue in Africa.

The Commissioner then addressed the particular concerns raised by the various representatives. To the problem of lack of adequate jurisprudence from the Commission, he stated that, among other things, insufficient resources at the disposal of the Commission, lack of experienced lawyers to assist Commissioners in research and production of scholarly documents, and the fact that Commissioners worked part time were to blame. He acknowledged the need to come up with some guidelines on the meaning and implications of every provision of the African Charter similar to the general comments of the UN Committees. The Charter was a catchall instrument trying to embrace all aspects of human rights, unlike those of the UN wherein existed various conventions for elaboration of various specific rights.

With respect to customary law and its status in Africa, the Commissioner stated that some countries accorded it equal status with that accorded to their statutes while others simply relegated it to something of lesser importance. He said there were several aspects of customary law that could not be accepted today as they caused injustices. Such provisions needed to be removed legislatively while leaving intact those that positively contribute to the well being of society. In relation to the multiplicity of legal systems and the need to harmonize them, the Commissioner stated that regional and international treaties particularly aim at harmonising discordant national regimes. He said that if all states were to ratify, comply with and earnestly implement such instruments, there would be some form of harmonised system applying across countries.
Regarding the translation and distribution of the Commission’s work, Commissioner Chigovera admitted that the Commission’s ability in that respect was limited and it heavily relied on its partners and countries that generously provided assistance. With respect to the African Charter on the Rights and Welfare of the Child, he stated that the work of raising awareness of the same and properly implementing it was at an early stage as the Committee envisaged under the Child Charter was yet to be put in place.

To the question on the level of awareness of the Commission’s work by actors in South Africa, the Commissioner responded that NGOs tended to be more familiar with the Commission than government officials. He emphasised the point, however, that NGOs and government officials needed to go beyond mere awareness of the Charter and the Commission and work for the implementation of the Charter on the ground. NGOs demonstrated their readiness to ensure the achievement of their objectives. He disclosed that on the part of all the actors in South Africa, there was no unified stance in the process of implementing human rights on the ground apart from the general desire to change things. Priorities seemed to be divergent. But he acknowledged the general will to improve the situation on the ground. He advised NGOs to put concerted efforts and to apply the necessary pressure to ensure improvement in the criminal justice system, treatment of refugees, and socio-economic rights.

To a question on the new African Union and the Commission, Commissioner Chigovera responded saying that the Act establishing the African Union was a political Act in respect of which the Commission was side tracked. He lamented the fact that the Commission was never consulted in the whole process leading to the establishment of the Union. The Union Act was rushed through for adoption and later ratified by national parliaments in such a record time that various sectors including the African Commission were still debating its implications. He emphasised that politics was beyond the purview of the Commission.

In response to a concern on the work of the various special rapporteurs of the Commission, the Commissioner explained that at present, the Commission has two functional special rapporteurs: one on Prisons and Places of Detention in Africa and the other on the Rights of women in Africa. A review of these mechanisms was underway at the Commission, which would arrive at a decision on various aspects of the same in the future. The Commission may decide to assign external experts as special rapporteurs and there would be no harm in doing so apart from strengthening the system. He hoped the introspection currently underway at the Commission would result in the resolution of all the related matters.

South African Human Rights Commission

Commissioner Barney Pityana, Chairperson, SAHRC, Commissioner Jody Collapen, Member, SAHRC, Commissioner Dr. Majodina, Member, SAHRC, and six other staff of the SAHRC attended the meeting at the South African Human Rights Commission.

Mr Collapen introduced the SAHRC to the delegation. He stated that the SAHRC was an independent establishment established in terms of the Constitution and set up under an Act of Parliament. It has eleven commissioners, eight full-time and three
part time. Its national office was located in Johannesburg while it has branch offices in Northern Province, KwaZulu Natal, Eastern Cape and Bloemfontein. Mr Collapen mentioned that when it was set up, there was not much of thought on the role and place of the Commission but it established itself as a focal point for human rights issues both as a watchdog and facilitator for human rights linkages in South Africa. Its wide mandate and structure enabled it to take things in its own hands.

In terms of its independence, Mr. Collapen stated that the manner of its establishment and its powers complied with the Paris Principles. There was concern, however, regarding its budget, which it got through the Ministry of Justice and Constitutional Development. He stated that this arrangement had implications on the independence of the SAHRC as the latter also was mandated to monitor the human rights performance of the Ministry.

He raised the problem of lack of feedbacks from government departments to the SAHRC’s reports. He said the commission was at times forced to subpoena Ministers for failure to respond. Failure to respond was also a problem on the part of the National Parliament to which the commission had submitted several reports informing it of policy decisions. Its findings were not binding as those of a court. Despite its shortcomings, however, he said that the commission had done a good job given its short life and inadequate staff.

Dr. Pityana on his part stated that the SAHRC followed up ratification of instruments by the government, and checked how government responded to international requests including to the African Commission.

To Commissioner Chigovera’s question on the need for South Africa to ratify the Protocol on the Establishment of the African Court on Human and Peoples’ Rights and there being contradictions with the South African Constitution, Dr. Pityana responded saying that the government had even ratified just recently the Rome Statute on the Establishment of an International Criminal Court, which posed similar problems as those posed by the African Court. Commissioner Chigovera on his part encouraged the SAHRC to follow up its application for affiliate status.

Press Conference

At the premises of the SAHRC, Commissioner Chigovera held a press conference. In attendance were two journalists from Business Day newspaper and one from the Sowetan. There was poor attendance of the press because, as the delegation was informed later, the press close for the weekend on Friday afternoons. However, the Commissioner went ahead and delivered the conference to the media that were present.

The Commissioner explained to the members of the press about the activities of the African Commission, its mandate and purpose of the present promotional mission. He briefly outlined the impressions he got of the situation of human rights in South Africa during the visit. He informed the press that he gained invaluable information on many issues and that his meetings with various stakeholders in the country were
fruitful. He added that he was able to exchange views with them on the implementation of the African Charter and the need for South Africa to ratify the Protocol on the Establishment of the African Court on Human and Peoples' Rights.

He stated that his discussions with various NGOs in South Africa were equally interesting and that he had encouraged the NGO community to look into ways to work with the African Commission, including being granted observer status before the Commission. The overall discussion he had in South Africa revolved around the Court Protocol, problems of equality and immigrants and refugees.

Informed them that the government of South Africa had welcomed and facilitated the mission to the country. At the end of the press conference, the Commissioner held an interview with the Sowetan Newspaper.

**Coordinating Body for the Refugee Community**

In the meeting with Mr Robert, representative of the Coordinating Body for Refugee Community, the delegation was also able to hold discussions with Commissioners Pityana and Majodina of SAHRC, Gora Ndoye of CBRC, and two more staff members of the SAHRC.

The representative of the CBRC explained the work of his institution and the problems it faced in handling refugee affairs. He mentioned that the Department of Home Affairs administered the matter of refugees in South Africa. He said, however, that refugees were confronted with a lot of problems including translation, corruption, arbitrary arrest, and denial of access to bank accounts. He singled out the Department of Immigration itself and the Police as the two institutions that remain to be misguided in managing refugee affairs in the country. He stated that the Department's issuance of very distinctive red identity cards to refugees with a blanket indication of their nationality as "refugee" was indicative of segregation.

To Commissioner Chigovera's intervention that this practice of handling refugees could cause huge problems in situations of disaster during which one may not be able to identify the nationality of persons for protection purposes and that it could be challenged on the ground that it was violative of the country's international obligations, Dr. Pityana expressed his agreement saying that the practice was insensitive and xenophobic towards refugees and was reminiscent of apartheid era practice wherein the nationality of blacks was arbitrarily categorised as "homelands" and not South Africa. He stated that the main culprit in this regard was the Refugees Act that made the situation of refugees in South Africa even worse. It even prohibited any work related engagement by refugees while the Department of Home Affairs was determining their case. There were about 64,000 refugees in South Africa with just over 20,000 of them having been accorded refugee status.

In admitting that South Africa has attained the unenviable label as the most hostile place for refugees in Africa, Dr. Pityana recounted several incidents in which refugees were ill treated both by the society and governmental institutions. He stated that at times the Police stayed behind in the face of ongoing violence against the lives and properties of refugees across the country. He stated that the South African Human
Rights Commission was involved in the effort to improve and protect the social and economic conditions of refugees, which included relocating them. It got an understanding with the Departments of Health and Education for the respect of refugees' rights of access to health and education. The SAHRC also undertook a campaign “Roll back Xenophobia” during which it sensitised various sectors of the society. He underscored the importance of educating all the relevant bodies and the society at large on the rights of refugees and the need to treat them as equals.

With respect to the problem of illegal immigrants detained at Lindela Repatriation Centre, the mission was informed that some detainees were kept in the Centre beyond the legally allowed period of 30 days. It was stated that detainees would be rearrested a few hours after their release on the 29th day and that most of the time the Police did not follow proper procedures in detaining immigrants. Some were also subjected to swift and arbitrary deportation right at the point of entry into South Africa without any concern that they could be genuine refugees fleeing persecution.

**Department of Home Affairs**

Prior to the visit to Lindela Repatriation Centre, the delegation attended a meeting at the offices of the Centre. In attendance were Dr. Majodina, member of the South African Human Rights Commission, Mr. J. R Chavalala, Chief Director of Migrations, Department of Home Affairs, Mr Diamb, Representative of Company operating Lindela, Mr James Malangani, Chief Immigration Officer, Mr Luis van Vuuren, Project Leader, Mr Daniel Mthembo, Director, Lindela Repatriation Centre, and Mr. Alfred from the Centre.

The meeting took place at the premises of the Lindela Repatriation Centre, Krugersdorp. Commissioner Chigovera informed the Centre's Officials about the African Commission, its mandate and the purpose of the promotional mission. He briefed them of his meetings with government officials and the issues of concern discussed with the latter. Particularly, he raised the problems involving immigrants, their treatment by law enforcement officials who were reportedly corrupt and often arbitrary in their arrest and detention of suspected illegal immigrants even to the detriment of South Africans themselves, the practice of detaining illegal immigrants beyond the legally prescribed period of 30 days and how the officials beat around the law to violate the same with a semblance of legality, and how irresponsible and rushed deportations often resulted in citizens and non-nationals being hoarded and shipped to neighbouring countries. In this connection, the Commissioner wondered if the running of the Lindela Repatriation Centre by a private company did not violate the laws of the country and its obligations under international law.

Responding to the Commissioner's concerns, the Chief Director of Migrations explained that Lindela Repatriation Centre was not a detention but a mere holding institution for immigrants pending the determination of their case by the Department of Home Affairs. He mentioned that the private company operating it did so only by providing the Centre with facilities to feed and keep them while their case was being heard at the Department. The Project Leader on his part added that the Repatriation Centre was a legally designated place for keeping illegal immigrants. He went on to
refer to the Centre as a “restricted hotel” for illegal immigrants boasting that the immigrants found everything necessary in the Centre and, compared to the shacks they used to live in, they were provided with meals, warm water, toilet and even access to a doctor.

The officials went on to assert that the police would not entertain pleas by illegal immigrants at the time of arrest to be allowed to fetch their documents from various places because of the problems of falsified Identity Cards and documents. With respect to South Africans detained on suspicion of being illegal immigrants, they maintained that they were released after the police ran their names and Identity Cards through the computer. They admitted that police often used the ability to fluently speak one of the local languages of South Africa as a means for checking the nationality of persons before arresting them for being illegal immigrants. They do not abuse their power in detaining anyone beyond the legally prescribed period of 30 days and that they never rearrested anyone after releasing them at the end of the said period. Those claiming to be refugees were sent to Bramfontein where their refugee status would be processed in terms of the Refugee Act. There were, however, problems of identifying if a person was a refugee or not. Generally, they claimed that persons coming from certain refugee producing countries would be treated as refugees.

As to the conditions at the Centre, they stated that they were paid frequent visits from various bodies including the media and that the Centre was constantly watched. The illegal immigrants held at the Centre would only have all their freedoms respected except that they could not move out of the Centre. If they claimed asylum status, they would be assisted in obtaining the same from the government. They were allowed visitors, had common TV sets for entertainment and sports facilities. In most cases, the mission was informed, that the illegal immigrants were better off at the Centre than outside. The Centre had the capacity to hold 2 500 occupants.

Regarding the problems they faced in administering and holding illegal immigrants, they mentioned that most embassies in the country were not willing to identify their nationals at the Centre and provide them with necessary travel documents to assist their deportation back to their respective countries. They admitted that there were frequent deportations of illegal immigrants to countries other than their own and that that was not a deliberate measure but a way to address the increasingly difficult task to properly identify the nationality of the immigrants. Illegal immigrants would be deported to countries they would be judged to have most likely come from.

Appreciating the officials’ efforts to clarify matters for the mission, Commissioner Chigovera informed them that the definition of the term refugee was broader than the understanding the officials had and that it would embrace those not necessarily coming from Sierra-Leone and Democratic Republic of Congo. They could be persons fleeing from political persecution in a country where there was no war, like Mozambique at present. With respect to South Africans mistakenly detained for days at the Centre for allegedly being illegal immigrants, Commissioner Chigovera wondered if they were informed of their rights and the possible avenues they might want to follow to redress their wrongful detention and violation of their rights.
Dr. Majodina of the South African Human Rights Commission, on her part, stressed that the proper management of legal and illegal immigrants remained to be a problem for the government. She stated that hoarding people on trains and getting them on the other side of the border would not bring the ultimate solution to the problem. She further noted that most immigrants fleeing their country did not carry documents and that they would not want the embassies of the very countries they run away from to identify them. She added that the arbitrary manner of operation by the immigration officials had often resulted in humiliation of South Africans themselves as some were often detained at the Centre as illegal immigrants in their own country and they were not allowed to get out despite having produced proper identification.

In concluding the exchange of view, Commissioner Chigovera suggested that the long term solution to the problem of illegal immigrants and particularly for economic immigrants could come from inter-governmental arrangements that would look into the overall situation and devise means to address it accordingly. He illustrated that governments could arrange, should there be a need for foreign workers, to properly manage the flow of the same into their respective jurisdictions. He emphasised that there was a need for a concerted effort to assess the problem of immigrants and to come up with a lasting solution accordingly.

Visit to Lindela Repatriation Centre

After the discussions with the officials of the Department of Home Affairs, the delegation was shown around the Lindela Repatriation Centre and its facilities. The Centre has separate sections for men and women with the latter having additional playroom and game packs for children. The Centre has a library for the detainees, a kitchen house wherein the daily meal for the detainees was prepared, and a canteen with a TV set. The delegation was informed that the office supervised the preparation of meals to ensure that it was nutritive and hygienic. The detainees were given two meals a day. Shower facilities in both sections were available.

The delegation was able to interview detainees at the Centre. When the detainees were brought to the Centre, they were issued ID cards for the purposes of the Centre indicating the date they were brought in and their respective nationality. Most of the detainees came from African countries and from Southern Africa in particular. The Commissioner was able to interview detainees from Ethiopia, Lesotho, Malawi, Nigeria, Somalia and Zimbabwe. He also talked to individuals claiming to have come as far away as Indonesia, Iraq, Malaysia and Pakistan.

Most of the detainees have been under detention for over one month, which is more than the 30 days period of maximum detention at the Centre as was explained to the delegation before hand. Some of the detainees alleged that at the time of detention they were forced to abandon their belongings and that the police confiscated valuable items. A couple of them reported to have been assaulted by the security at the Centre and showed the delegation bruises and skin marks. Some complained of physical and psychological abuse by the security and that they were refused access to the appropriate authority to report the same. A detainee stated that he was a genuine refugee but was detained and refused to fetch his documents and brought here. Another produced an apparently valid permit issued by the Department of Home Affairs.
Affairs allowing him to temporarily reside in South Africa. Some claimed to be asylum seekers and complained of denial of access to appropriate bodies for the determination of their status. They feared deportation to their respective countries without such a determination. Another claimed to be a South African having been brought to the Centre by the police who deliberately tore his South African ID. In regard to the detainee who claimed to be a South African national, the Commissioner asked the authorities to contract the detainee’s uncle to confirm the detainee’s claim. This was done in the presence of the delegation and confirmation was indeed obtained. Incidentally the uncle who was furious at the detention of his nephew, was not even aware that the nephew was in detention. The officials stated that the detainee would only be released the following Monday when his release papers would be processed. It is worth noting that this man had been detained because of his dark complexion.

As for the detainee who alleged that he had been seriously assaulted by the security officers at the Centre resulting in his hospitalisation, he showed the Commissioner unhealed wounds that were still in bandages and the medication he was still on. On the suggestion by the head of the guards that the injuries may have been inflicted on the detainee prior to his admission to the centre, the detainee established through Centre’s Identity Card that he had been detained since June 2001 and proved through his hospital cards and medication that he had been recently admitted in hospital for the injuries and was still receiving medication.

Commissioner Chigovera advised the detainees to raise their complaints with the Centre’s authorities who in turn should ensure access to their offices. He also suggested that they could pass on their complaints to the South African Human Rights Commission, which is a national human rights body paying frequent visits to the Centre. He advised the Centre’s authorities to refuse to admit anyone whom the police bring in without having properly investigated his/her case, lest it be a dumping ground for corrupt police practices. He also encouraged them to be more humane and buffer their negative attitudes towards the detainees. He reminded them that illegal immigrants were human beings and that they enjoyed human rights. He added that the Centre would do better if it adopted a policy of openness and readiness to accept positive comments and criticisms both from within and without, and he appealed to them to seriously look into the complaints.

Commissioner Chigovera also insisted that the South African National be released immediately and that consideration be given for compensating the man for unlawful detention and consequential pain and suffering. He also appealed to both the Centre administrators and the Immigration officials to ensure that police are brought in to investigate the serious assaults on the other detainee with a view to prosecuting the culprits. He further requested that investigations be also made into several other allegations of assault made by other detainees. Commissioner Dr. Majodina of the South African Human Rights Commission was also asked to follow up the matters.

As to the overall practice, the Commissioner expressed his concern that it was primarily blacks that were being hoarded to the Centre which could explain the existence of xenophobic and apartheid attitude in the system. He emphasised on the
need for the Police and the Department of Home Affairs to work closely and efficiently. He also stressed the importance of the sensitisation of the police and immigrations personnel on the rights of immigrants.

Conclusion

Except for four of the scheduled meetings with government officials that were cancelled, the delegation was able to meet and discuss with various government officials, non governmental personalities, judges, and detainees. The mission covered the regions of Johannesburg, Pretoria and Cape Town, which represented the seat of the judiciary, the government, and the legislature respectively. The major issues that formed the core of the discussions included the ratification of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' rights, equality, racial imbalance in various governmental departments, prisons and prison conditions, and rights of immigrants and detainees.

At all the meetings, the Commissioner shed light on the work of the African Commission, its mandate, its aspirations and shortcomings. The delegation also made it clear that the Commission was readily available for anyone desirous of working with it and participating in its efforts to implement the African Charter. It is hoped that the level of understanding that was achieved would be further nurtured and exploited to bring the African Charter closer to its beneficiaries.

The Mission would like to express its appreciation to the Government of the Republic of South Africa for accepting and facilitating the mission and in particular the Ministry of Justice and Constitutional Development for organising such an elaborate programme. Our special thanks got to Ms Gugu who accompanied the delegation to all meetings, for her tireless efforts in ensuring that the mission was a success. The professional manner with which she managed her assignments is highly commendable.

Special thanks also go to Dr. Barney N. Pityana for all the assistance he gave to the delegation, more particularly his briefing of the delegation on the current issues in the Republic of South Africa at the commencement of the Mission. Commissioner Dr. Majodina of the South African Human Rights Commission also deserves special mention for assisting the delegation to appreciate the problems of Lindela Detention Centre and accompanying the delegation on its visit to that centre.

Outcomes/Recommendations

1. The Government of the Republic of South Africa undertook to look into the delay in the submission of its Periodic Report to the African Commission;

2. The Government of the Republic of South Africa gave the impression that it was desirous of ratifying the Protocol on the Establishment of the African Court in Human and Peoples' Rights;

Item 10b, 33rd Ordinary Session of the ACHPR 15-29 May 2003, Niamey, Niger
3. The Mission recommends that the Government of the Republic of South Africa initiate extensive awareness programmes on human rights for members of the South African Police Service, immigration officials, prison officers, and border police. In particular, the Mission recommends to the Government of the Republic of South Africa to sensitise and advocate for the elimination of xenophobic attitudes in the society and the police forces towards foreigners and immigrants, including the provision of specialised training to the police in the handling of immigrants, asylum seekers, and refugees alike. Police who constantly come into contact with such vulnerable groups should be trained so as to enable them to adopt an appropriate attitude in their relations with those under their custody, and in particular, they should be trained to do away with any intimidating behaviour, and encouraged to cultivate their interpersonal communication skills;

4. The Mission recommends that the Government of the Republic of South Africa put in place appropriate mechanisms that would minimise the ill-treatment of alleged illegal immigrants at the time of apprehension, while in detention, and during deportation. The Findings of the Mission during its visit to Lindela Repatriation Centre demonstrates the urgent need for the improvement of conditions of detention and treatment of inmates. In this regard the Mission further recommends to the Government of the Republic of South Africa to make sure that alleged illegal immigrants are allowed to gather their belongings or hand over to a third party of their choice, to be allowed to make telephone calls to inform a person of their choice of their situation, to be allowed to fetch their documents and permits, and, in cases of asylum seekers, to be adequately provided with information on the procedure applicable to them;

5. The Mission recommends to the Government of the Republic of South Africa that under no circumstances should it allow the deportation of alleged illegal immigrants to countries of which they are not nationals;

6. The Mission recommends to the Government of the Republic of South Africa to reduce the alarming level of prison overcrowding as this could lead to unhygienic detentions, denial of privacy, and potential violence in prison cells. Accordingly, the Mission recommends that the relevant authorities redouble their efforts to develop and implement a multifaceted strategy to bring about a permanent end to prison overcrowding, which includes the increase in the means available to the Correctional Services to enable it effectively manage prisons;

7. The Mission recommends to the African Commission to endeavour to develop jurisprudence, and to strive to have general comments on specific Charter provisions;

8. The Mission recommends to the African Commission to ensure proper publishing and distribution of its works and decisions to national courts in Africa;
9. The Mission recommends to the African Commission to seek resources for the translation into various African local languages of the Charter and its distribution accordingly;

10. The Mission recommends to the African Commission to look into ways of collaborating with South African Human Rights institutions especially the Justice Training Centre in organising and coordinating seminars and trainings on themes of common interest;

11. The Mission recommends to the African Commission to look into ways of encouraging national courts in Africa to forward their respective judgements to it and to exchange the same among themselves;

12. The Mission recommends to the African Commission to ensure the dispatch of invitations to all interested bodies to participate at its workshops, seminars, and expert meetings.

Andrew Ranganayi Chigovera
Commissioner

Nega Girmachew
Legal Officer

September 2001
List of National Authorities and Non-Governmental Organisations with which the African Commission Delegation held Consultations

1. Department of Justice and Constitutional Development
   - Deputy Minister, Ms Cheryl Gillwald
   - Special Advisor to the Deputy Minister, Ms Elsabe Wessel
   - Chief State Law Advisor for the Department, Mr Enver Daniels
   - Legal Officer at the Deputy Minister’s Office, Mr Blendyn Williams

2. Department of Home Affairs
   - Chief Director of Migrations, Mr. J. R. Chavalala
   - Chief Immigration Officer, Mr. James Malangani
   - Project Leader, Mr. Luis van Vuuren

3. National Assembly
   - Speaker of the National Assembly, Dr. Frene Ginwala
   - Researcher to the Speaker, Advocate Mukesh Vassen

4. Parliamentary Justice Portfolio Committee
   - Chairperson of the Parliamentary Portfolio Committee, Advocate Johhy de Lange
   - ANC Researcher, Mr. Warren Radholt

5. Office on the Status of Women, the President’s Office
   - Acting Director, Ms Susan Nkomo

6. South African Police Services
   - Director of the Human Rights Unit, Mr Peter Cronjie

7. Correctional Services
   - Deputy Commissioner, Ms Jabu E. Sishuba
   - Area Manager, C-Max Section of Pretoria Prisons, Mr. Monama ZK

8. Independent Complains Directorate
   - Executive Director, Advocate Karen D McKenzie
   - Regional Director, Gauteng Province, Shadrack Mahlangu
   - Chief Director, Monitoring and Development, Mr Mike Kakana
   - Director, Legal Services, Dr. Johan Snyman
   - Director, Investigations, Mr Julian Snitcher

9. Lindela Repatriation Centre
   - Representative of Company operating Lindela, Mr Diamb
   - Director, Mr Daniel Mthembo
   - Mr. Alfred
10. Constitutional Court of South Africa
   - President, Justices Arthur Chaskalson
   - Deputy President, Pius Langa
   - Justice Ackerman

11. Pretoria High Court
   - Judge President Bernard Ngoep, Chairperson of Magistrates Commission

12. Cape Town High Court
   - Judge President, Judge M. Hlophe
   - Deputy Judge President, Judge P. Jeannette Traverso

13. South African Human Rights Commission
   - Chairperson, Commissioner Barney N. Pityana
   - Commissioner Jody Collapen
   - Commissioner Majodina
   - CEO and Head of Secretary, Ms. Lindwe Mukate
   - Executive Secretary, Mr. Pat Lawrence
   - Deputy Director of Finance, Ms. Mashudu Magaga
   - Assistant to the Chairperson, Robert Eno
   - Head of Advocacy Unit, Mr. J. B.
   - Head of Human Rights Training and Education Programme, Mr Andre Kiet
   - Head of Legal Services, Mr. M C Mulla
   - Head of Research Department, Mr. Sediso

14. Legal Aid Board
   - Chief Executive Officer, Mr. Ashley Ally

15. Justice College
   - Chief Director, Ms. Cecille van Riet
   - Civil Judicial Training Section, Ms Jakkie Wessels
   - South Africa Project Manager, Canada-South Africa Justice Linkage Project, Ms. Lebo Malepe

16. The Centre for Human Rights, University of Pretoria
   - Director, Professor Christof Heyns
   - Deputy Director, Mr. Norman Taku
   - Professor Frans Viljoen
   - LL.M. 2001 class of the Centre (Human Rights and Democratisation in Africa 2001)

17. Community Law Centre, University of Western Cape
   - Democracy and Local Government Project, Mr. Johann Mettler
   - ECOSOC Project, Ms. Sanda Liebenberg
   - Children's Rights Project, Ms Jackie Gallinetti
• Professor De Vielliers
• Five other participants

18. **Lawyers for Human Rights**
   • National Director, Dr. Vinod Jaichand

19. **Institute for Democracy in South Africa (IDASA)**
   • Executive Director, Mr. Paul Graham

20. **Coordinating Body for the Refugee Community**
    • Representative, Mr Robert
    • Gora Ndoye

21. **Human Rights NGOs**
    • Human Rights Institute of South Africa (HURISA)
    • African Independent Churches Programmes
    • Electoral Institute of South Africa
    • Centre for the Study of Violence and Reconciliation
    • Human Rights Committee
    • Article 19
    • Legal Resources Centre
    • Centre for Applied Legal Studies
    • Commission on Gender Equality
    • Open Society Initiative in Southern Africa

22. **Press Conference**
    • Business Day
    • The Sowetan