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African Commission on Human & Peoples' Rights

Commission Africaine des Droits de l'Homme et des Peuples

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*Concluding Observations on the Second Periodic Report of the Republic of Zimbabwe
Presented to the 41st Ordinary Session of the African Commission on Human and Peoples' Rights
16th to 30th May 2007,
Accra, Ghana*

I. Introduction

1. The Republic of Zimbabwe ratified the African Charter on Human and Peoples' Rights (the African Charter) on 30th May 1986.
2. The Republic of Zimbabwe submitted its Initial Report to the African Commission on Human and Peoples' Rights (ACHPR) in October 1992 and its First Periodic Report in 1996 (which was presented in 1997).
3. The present Report, the Second Periodic Report of the Republic of Zimbabwe combines all five overdue Reports owed by Zimbabwe since 1999.
4. The African Commission notes with satisfaction that the presentation of the Second Periodic Report of the Republic of Zimbabwe took place in an atmosphere of frank and constructive exchange between the delegation of the Republic of Zimbabwe and Members of the ACHPR.
5. The present concluding observations draw from this constructive dialogue and give an account of the positive factors identified in the Report, the factors restricting the effective enjoyment of human and peoples' rights as stipulated by the African Charter, the areas of concern, and recommendations made by the ACHPR to the Republic of Zimbabwe.

II. Positive factors outlined in the Report

6. The African Commission highly appreciates the efforts deployed by the government of the Republic of Zimbabwe to ensure the enjoyment of the rights and freedoms enshrined in the African Charter on Human and Peoples' Rights, in particular:
 - a. The various legislations adopted and policy measures taken to implement the African Charter, including affirmative action, political representation, economic empowerment, and the endorsement of the

- SADC Declaration on Gender 1998, which enjoins the representation of women in all decision making processes;
- b. The process initiated to ratify the Convention Against Torture (CAT);
 - c. The introduction and wide use of community service which is aimed at curbing overcrowding in prisons;
 - d. The process of formulating the Pre-Trial Diversion policy which is expected to divert young offenders from the ordinary criminal processes into more rehabilitative programmes;
 - e. The identification of the discriminatory practice which requires women to adopt their husband's surnames, particularly when attempting to obtain vital documents such as passports and birth certificates for their children;
 - f. The measures taken with respect to accommodating the peculiarities of female prisoners;
 - g. The efforts by the Government to sensitise judges and magistrates on human rights principles with a view to ensuring their application in the delivery of judgments by the courts;
 - h. The education programmes on inheritance laws to sensitise the general public;
 - i. The setting up of a Ministry to specifically deal with corruption;
 - j. The process initiated towards the adoption of a Public Service Gender Policy, which is expected to pave the way for the provision of support facilities such as childcare centres within the workplace;
 - k. The adoption of the Orphan and Child Care Policy of 1999, which provides support to orphans and vulnerable children, including free health care and food subsidies;
 - l. The measures initiated to reform the marriage law, as well as the proposed law on domestic violence which is expected to outlaw harmful cultural practices;
 - m. The process initiated to establish a National Human Rights Commission; and
 - n. The ratification of various international and regional human rights instruments.

III. Factors restricting the enjoyment of the rights enshrined in the African Charter

7. The African Commission notes the high cases of HIV/AIDS reported, the high rate of emigration, as well as the increase in poverty which continue to negatively affect the general population and the effective enjoyment of the rights guaranteed in the African Charter;
8. The travel bans imposed on some Zimbabweans and "travel alert" announcements against the Republic of Zimbabwe by some European countries and the United States of America;
9. Despite Zimbabwe's wealth, poverty, political instability and economic uncertainty continue to obstruct the effective enjoyment of the rights and liberties protected and guaranteed by the African Charter;
10. The economic sanctions imposed on the country by certain states has resulted in severe consequences on the enjoyment of human and peoples' rights;

IV. Areas of concern

11. The African Commission is concerned that Zimbabwe still maintains laws that restrict the effective enjoyment of freedom of expression, access to information and the right to assembly;
12. The continued application of corporal punishment particularly on male juvenile offenders and male pupils which is at variance with the principles of human dignity, physical integrity, and the prohibition against inhuman treatment enshrined in the African Charter;
13. Despite laudable efforts being made to decongest prisons in Zimbabwe, overcrowding remains an area of concern;
14. **The prevalence of harmful traditional practices**, in particular forcing widows to marriage the relatives of their deceased husbands;
15. The extension of the period of detention from 48 hours to 21 days before a suspect of economic crimes is brought to court under the amended Criminal Procedure and Evidence Act;
16. The geographic limitation of the Legal Aid Directorate, which has only one centre in Harare thereby limiting access to those persons outside Harare and who do not have sufficient means to obtain the services of legal practitioners from their own resources;
17. The restriction on some Zimbabweans to travel, including leaving Zimbabwe;
18. The reported failure of the government to enforce court judgments;
19. The continued discriminatory practice of requiring women to adopt their husband's surnames in such instances as obtaining vital documents including passports and birth certificates for their children;
20. The adverse effect on the enjoyment of the rights guaranteed under the African Charter following the implementation of Operation Restore Order (Murambatsvina), which was reportedly aimed at decongesting the highly populated areas of the cities, as well as to remove illegal structures and unlicensed trading premises that had proved to be a strain on sanitation facilities;
21. The lack of constitutional recognition of socio-economic rights which appears to deny their justiciability, thereby obstructing their enjoyment by all Zimbabweans despite Zimbabwe being a signatory to the African Charter and the International Covenant on Economic, Social and Cultural Rights (ICESCR);
22. The increasing use of hate language, violations with impunity by the Police and other security agents, government restrictions on the right to movement inside and out of the country and the apparent counter-reaction manifesting itself in the use of petrol bombs, all of which have resulted in the deterioration of the enjoyment of the rights guaranteed in the African Charter;
23. The continued impasse to resolve the land issue in the country which seems, according to the Government of Zimbabwe, to underpin most difficulties in the country;
24. The report does not sufficiently indicate the measures taken to avoid the recurrence of political violence in the elections scheduled for 2008;
25. The report seems to attribute the cause of most of the human rights problems the country is experiencing on the opposition and some countries in the west alone, failing in that respect to re-examine and take responsibility for its legislative and other actions which may have contributed to the human rights problems;
26. The situation of vulnerable groups in general and that of women, children, religious minorities and human rights defenders in particular, remains of concern to the African Commission;

27. The report does not provide sufficient information on the measures taken to assist those people affected by Operation Order Restore (Murambatsvina);
28. The report does not provide information on the measures taken by the authorities to deal with excesses of the police and other security agents and to put an end to the deteriorating situation in Zimbabwe.

V. Recommendations

29. The African Commission recommends the following to the Government of Zimbabwe:
 - a. Continue to pursue the institutional reforms aimed at establishing or strengthening a culture of human rights and the rule of law;
 - b. Expedite the process of establishing a National Human Rights Commission in accordance with the “Paris Principles to the Status of National Institutions” [UN Commission on Human Rights Resolution 1992/54];
 - c. Incorporate socio-economic rights provisions in its constitution and laws in line with the provisions of the African Charter in order to strengthen the interdependence and indivisibility of the rights and their immediate enjoyment and implementation;
 - d. Undertake a comprehensive review of laws that restrict the enjoyment of freedom of expression, access to information and freedom of assembly;
 - e. Continue to put in place the necessary reforms to strengthen the judiciary, prison services and law enforcement agencies with a view to promoting and protecting the human rights of all;
 - f. Ensure that the conditions of arrest, preliminary interrogation and detention of suspects comply with the principles of the Robben Island Guidelines;
 - g. Adopt a holistic approach to prison decongestion and conditions of detention in the prisons, and ensure that the planned policy on Pre-Trial Diversion aimed at young offenders does not compromise one’s right to be presumed innocent;
 - h. Abolish the death penalty;
 - i. Take adequate measures in combating insecurity, violence, and police and law enforcement excesses, and to ensure respect for the provisions of the African Charter;
 - j. Eradicate police violence and extrajudicial killings and immediately investigate such reports and bring those responsible to justice and put in place mechanisms to adequately compensate victims;
 - k. Undertake a comprehensive review of the application of statutory and customary laws in the country with a view to ensure that adequate safeguards are in place to protect the human rights of women and girls from discriminatory practices and to ensure fair dispensation of justice;
 - l. Repeal laws that sanction the application of corporal punishment;
 - m. Decentralize the provision of Legal Aid to reach those outside the capital Harare;
 - n. Take adequate measures to ensuring the enforcement of court judgments;
 - o. Encourage the government of Zimbabwe to ratify international and regional human rights instruments, including the Additional Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, the Additional Protocol to the African Charter on Human and Peoples’ Rights on the

Establishment of an African Court on Human and Peoples' Rights, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the African Union Convention on Preventing and Combating Corruption;

- p. Ensure that policies, laws and all administrative measures taken by the government take into consideration the views of all, including opposition political parties, civil society organizations and interest groups;
- q. Forward, as soon as possible, to the Secretariat of the African Commission, its written responses to the unanswered questions posed by Members of the African Commission during the examination of the Report;
- r. Take appropriate measures to ensure the timely submission and presentation of the next Periodic Report of Zimbabwe to the African Commission in May 2009, having consulted, in its preparation and content, as many ministries, departments, agencies and non-governmental agencies, as possible.

Accra, 29 May 2007