



Report of the 41st Session of the African Commission on Human and Peoples' Rights, held at the Accra International Conference Centre, Accra Ghana from the 16th to 30th May 2007, including 41st NGO Forum Session held in Accra from the 12th May to the 14th May 2007 at Coconut Groove Hotel, Accra Ghana

1. Introduction

The 41st session of the African Commission on Human and Peoples Rights (hereinafter referred to as the Commission) began in earnest on the 16th of May 2007 to the 30th May 2007. As is the tradition, the NGO Forum preceded the session of the Commission. The NGO Forum session began on the 12th to the 14th of May 2007. This report aims to cover proceedings from both meetings and also to give a brief of the press conference on Zimbabwe which was held on the 15th of May 2007.

The delegation from the ***Zimbabwe Human Rights NGO Forum***¹ comprised the following, Tafadzwa Mapfumo-Muvingi, Brian Penduka, Arnold Tsunga and Tor Hugne Olsen. The civil society delegation comprised Blessing Chimhini, Solomon Sacco both from ***SAHRIT***, Dzimbabwe Chibga, Irene Petras, and Otto Saki from ***ZLHR***², Abel Chikomo from ***MMPZ***³, Wilbert Mandinde from ***MISA***⁴, Jacob Mafume and Itai Zimunya ***from Crisis in Zimbabwe Coalition***, Xolani Zitha from the ***Bulawayo Agenda***, Primrose Matambanadzo from ***Zimbabwe Doctors for Human Rights***, Masimba Nyamanhindi and Promise Mukwananzi both from the ***Students Solidarity Trust***, Gabriel Shumba, Allison and Michel Majuru

¹ Hereinafter affectionately referred to as the Forum

² Zimbabwe Lawyers For Human Rights

³ Media Monitoring Project Zimbabwe

⁴ Media Institute of Southern African

from the ***Zimbabwe Exiles Forum*** and Obert Chinhamo ***UNDP*** Uganda. The ***Government of Zimbabwe (GoZ)*** delegation, which the Honourable Minister of Justice, legal and Parliamentary Affairs headed was the largest ever, comprising 11 members, including the Honourable Minister and his Permanent Secretary Mr. D Mangota, Ms. Margaret Chiduku, Ms. Jill Makarati, Mr. Lawrence Murasi, Messrs. Tapfumaneyi and Stewart Nyakotyo from the ***Ministry of Foreign Affairs***, the Ambassador of Zimbabwe to Ghana and most notably the spokesperson for the Zimbabwe Republic Police, Assistant Commissioner Wayne Bvudzijena. The Minister, in the private hearing on Zimbabwe, justified the size of delegation stating that he needed them to aid him in responding to queries by the Commission on the *State Party Report*, which was being considered later at this session.

2. REPORT ON THE FORUM OF PARTICIPANTS OF NGOS IN THE 41ST ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The N.G.O Forum, which is the traditional curtain raiser to the Ordinary Sessions of the Commission began on the 12th of May 2007 with an opening ceremony graced by the Minister of Justice and Attorney General of Ghana Mr. Joe Ghartey. In his address the Minister confessed his bias to NGOs, noting that he still considered himself a member of civil society having presented the first Shadow Report on Ghana. He further emphasised the importance of ratifying the ***Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*** and gave his assurance that his country had made advanced steps in doing the same.

A copy of the programme for the opening ceremony is attached hereto and marked Annexure "A" for ease of reference. Marked Annexure "B" is the programme for the opening day. Important to note on Annexure "B" in the section-marked "*discussants*", is the update on the human rights situation in Southern Africa, focusing on Zimbabwe. Despite the large delegation of Zimbabweans at the Forum, the organisers felt it appropriate to have a South African NGO present on the human rights situation on Zimbabwe. In her

presentation Clare Doube from **CIVICUS** highlighted some of the human rights abuses that took place in Zimbabwe from the beginning of the year, including the 11th March 2007⁵ events and the subsequent assault on members of civic society, opposition leaders and supporters. Her presentation gave the impression that the information that it was relying on was from secondary sources and lacked accuracy in the figures.

However the fact that the organisers of the Forum had put on the agenda a specific item on Zimbabwe speaks volumes. It was an acknowledgement by African NGOs that there were human rights abuses in Zimbabwe and that there was a need for information on the situation to be disseminated.

On the second day the Forum participants were divided into Working Groups. Our Mr. Brian Penduka joined the Working Group on Torture and Ms Tafadzwa Mapfumo-Muvingi took part in the Working Group on Economic Social and Cultural Rights.

2.1 Meeting with the Chairperson of the Working Group on the Robben Island Guidelines

The Working Group on Torture was chaired by Commissioner Sanji Monangeng⁶. This presented an opportunity for us to brief her on the situation in Zimbabwe with regards to torture. Mr. Penduka managed to show the Commissioner a clip of *A Criminal State*, a DVD by **Solidarity Peace Trust**. The DVD, which was also aired at a press conference on Zimbabwe, highlights events of the 11th of March and the weeks that followed. Further, Mr. Penduka presented a detailed account on torture from the beginning of the year. This turned out to be the only opportunity for the statement to be made due to the strategic decision by the NGOs from Zimbabwe not to make statements following the remarks by the Minister of Justice⁷ to the African

⁵ Save Zimbabwe, is an umbrella body of civic organizations in Zimbabwe, which on the 11th March 2006 organised a prayer meeting in the suburb of Highfields that was brutally quashed by the Zimbabwe Republic Police.

⁶ Commissioner Sanji Monangeng is the Chairperson of the Working Group of the Robben Island Guidelines.

⁷ *infra*

Commission, during the public session. Commissioner Monangeng made suggestions on what to include as recommendations to the Commission on the situation in Zimbabwe. The recommendations included that

1. The Commission follows up on letters of appeal it has written to the Government of Zimbabwe, to ensure that the letters were received and to push for a response. Upon deliberation we later on realised that the recommendation could not be acted upon as members of civic society were not privy to communications between the Commission and the Government of Zimbabwe .
2. The Commission takes cognizance of the fact that there have been cases of torture in Zimbabwe and to continue to monitor the situation. The Commissioner indicated that the best way to achieve this was to provide her with accurate, up-to-date information on the situation in Zimbabwe with regards to torture cases, which our Mr. Penduka undertook to do.
3. The recommendations of the Fact Finding Mission to Zimbabwe in 2002 be implemented, and
4. The NGO Forum organise a workshop or event and invite her into the country preferably after June as she was tied up with other commitments until July 2007. She also noted that she was unlikely to get an invitation from the Government of Zimbabwe so the onus was on civic society to initiate a visit.

2.2 Meeting with Special Rapporteur on Prisons

Ms Tafadzwa Mapfumo-Muvingi participated in the group on Economic Social and Cultural Rights. This was necessitated by the fact that the group on prisons failed to constitute a quorum. However the Special Rapporteur on Prisons and Prison Conditions, Mumba Malila, was reminded of the state of prisons in Zimbabwe and how those conditions now constitute inhuman and

degrading punishment. Some of the information shared was used by the Commissioner in formulating questions on prisons and prison conditions that were posed to the state during the examination of the State Party Report.

2.3 Resolution on Zimbabwe

The NGOs at the Forum also adopted a resolution on Zimbabwe. This was despite efforts by an NGO led by a Sierra Leonean Minister, urging the NGO Forum to side with the Government of Zimbabwe. The Forum condemned the Zimbabwean police's brutality after receiving the report of the abduction and murder of freelance cameraperson Edward Chikomba and the arrest, torture and harassment of opposition political leaders and supporters as well as lawyers and journalists.

“(We) call upon the government of Zimbabwe to desist from harassing, intimidating, assaulting, arresting and detaining human rights defenders, including members of the legal profession who protect and promote the rights of human right defenders,⁸”

A resolution on the situation of Freedom of Expression in Africa was also adopted. In that resolution, African NGOs expressed concern over the situation of journalists and freedom of expression activists in Africa especially in Zimbabwe, Eritrea, the Gambia, Ethiopia, Sierra Leone and Somalia and called upon these and various other African states to respect provisions in the African Charter, the Declaration of Principles on Freedom of Expression in Africa and their various constitutions on the right to freedom of expression.

3. Press Conference on the human rights situation in Zimbabwe held at the Accra International Press Conference on the 15th of May 2007.

The NGO Forum being scheduled to end on the 14th of May 2007 and the Ordinary Session of the Commission to start on the 16th of the same month,

nothing was scheduled for the 15th of May 2007. Given the opportunity created by the schedule, the Forum with the help of Symposium of Episcopal Catholic Bishops for Africa (**SECAM**), organised a press conference whose intention was to give the media and the people of Ghana a first hand experience of the situation in Zimbabwe and to launch the Shadow Report.

All of the civic society organisations from Zimbabwe were present. In addition, there were 17 individuals from the different newspapers and newsrooms in Accra. The press conference kicked off by showing a clip of the DVD by the **Solidarity Peace Trust** on the events of the 11th of March 2007. Thereafter there were presentations from Otto Saki (ZLHR) on the current human right situation in Zimbabwe and then Tafadzwa Mapfumo-Muvingi (the Forum) launched the Zimbabwean Shadow Report. The panel for the press conference also included Primrose Matambanadzo (ZADHR) and Abel Chikomo (MMPZ). The questions from the participants showed some understanding of the human rights situation with most of the reporters being aware of the events of the 11th of March 2007. It was apparent, listening to the questions raised by the reporters, that their sources of information differed. In some questions the government driven land and sanctions issue were evident. However the majority of the reporters seemed very well informed.

4. Public Sessions of the African Commission⁹

The 41st session of the African Commission kicked off at the Accra International Conference Centre in Ghana on the 16th of May 2007. In a rich opening ceremony punctuated by cultural presentations and a brass band, what was of importance were two presentations highlighted below. In her speech made on behalf of African NGOs, Ms Hannah Fosters emphasised that although strides had been made in the promotion and protection of human rights, certain situations in many African states remained of concern. She mentioned the situation of human rights in Zimbabwe, in particular the right

⁸ extracted from the Resolution of the NGO Forum

⁹ Attached to this report as Annexure “C” is the Final Communiqué of the 41st Ordinary Session of the African Commission on Human and Peoples’ Rights

to assemble and associate, the freedom of the media and violations against human rights defenders. A copy of the resolution from the NGO Forum is attached hereto as Annexure “D”.

The Minister of Justice Legal and Parliamentary Affairs the Honourable Patrick Chinamasa was given the opportunity to speak on the Human rights Situation in Africa on behalf of the AU Members of State. A copy of the statement is attached and marked Annexure “E”. He began his presentation by noting the strides that the continent had made in the promotion of human rights since the last Session of the Commission, particularly in the areas of children’s and women’s rights.

The Honourable Minister went on to note that there was need to support the work of and indeed the Commission itself. Further that there was need to be wary of the fact that the universality of human rights is a process not an event and that the process was being hampered by a lack of funds. This lack of funds he further noted was forcing players to resort to foreign funds. In his view a generation of NGOs had emerged which is western sponsored, which has a western ideology. In concluding, he urged the Commission to act in an impartial manner and to separate fact from fiction.

4.1 Human Rights Situation; Presentation by the Minister of Justice, Legal and Parliamentary Affairs.

Speaking under agenda 4, the Minister of Justice Legal and Parliamentary Affairs gave a declaration on the human rights situation in Zimbabwe. The Minister’s speech was strong and abrasive and had a chilling effect, not only on Zimbabwe civil society representatives but on other NGOs participating in the public sessions. In it, he mentioned that the story of Zimbabwe is distorted by the NGOs who work in cahoots with Britain, USA and the opposition MDC to effect an illegal regime change in Zimbabwe.

He stated that the Zimbabwean story has been misrepresented and mostly misunderstood. He said that human rights had to be taken in a context and for

Zimbabwe that meant taking it in context of the land reform question. He stated that the West was opposed to the land reform thus founded and funded the MDC and further created NGOs who were now unwitting tools for the regime change agenda. He said that the human rights abuses in Zimbabwe were exaggerated, so much that when one person died in Zimbabwe it becomes an international issue whereas elsewhere many die and not equally loud noise is made about it.

He stated that all the government wanted was objective assessment and the separation of fact from fiction. He then stated appropriate force would be used to deal with those involved in acts of illegal regime change. After this speech, NGOs then decided not to make statements. However various NGOs¹⁰ made interventions on Zimbabwe that assisted in deliberations on Zimbabwe. In particular, Civil Liberties of Nigeria made a plea to the African Commission to ensure that the safety of human rights defenders participating in the sessions was guaranteed. This appeal was repeated by the African Commission during the examination of the State Party Report.

4.2 Statements by NGOs

Statements by various NGOs spoke to the situation of human rights in Zimbabwe and statements by **HURISA, FIDH, Liga Mocambicana dos Directos Humanos (LDH), OMCT, Human Rights Watch, Amnesty International, Equality Now, Centre for Housing Rights Ghana**. All of these are attached as annexures F 1-8 (LDH)- in its statement noted that

“Zimbabwe is also a very important issue both for Mozambique and Angola as long it is in the region. The human rights situation of Zimbabwe is causing problems in our countries. Samora Machel once said that SADC will never be free if the people of Zimbabwe are not free. Under this voice of command we struggled for independence of Zimbabwe and for South Africa against apartheid. We fought for freedom in Zimbabwe and South Africa. We fought for love, peace and

justice in Zimbabwe. We would like to say to this commission that we and the people of Zimbabwe didn't fight for what is happening today in Zimbabwe. Because of that the number of Zimbabwean refugees in the region is increasing day by day. Our sisters from Zimbabwe serve as prostitutes in Machipanda, in Tete, Malawi and South Africa, criminality and vulnerability involving our brothers from Zimbabwe is there. We also can not stand by and say nothing when ordinary Zimbabweans are being openly tortured, beaten, harassed, forcibly displaced from their homes and denied their right to assemble and speak out for change."

4.3 Reply by GoZ

In his response to the statements from NGOs, Minister Chinamasa restated that the question of Zimbabwe is a colonial one. He restated that NGOs were being used as unwitting forces in the regime change agenda. He stated that NGOs were invited to participate in the State Report. However, he added, those that showed interest in the process were threatened with the withdrawal of donor funds by U.S Ambassador Christopher Dell and these included, **NGO Forum, Crisis Coalition, ZESN** among others.

On questions of torture, he said that Zimbabwe does not condone torture and where torturers are identified, they are punished. He accused NGOs of making generalised allegations. He stated that none of those alleging torture had given the names of the perpetrators to the police for prosecution. This ran contrary to the principle that the police have the mandate to investigate and bring to court perpetrators of human rights violations. He reiterated that the government was in the process of ratifying CAT. He further advised that the ZRP had established an internal unit whose mandate is to investigate torture cases. He noted that ZRP was a disciplined force, which participates in UN and AU Peacekeeping Missions.

As for the economic woes, he said these were a result of declared and undeclared sanctions. He noted that this siege is meant to cause disaffection

¹⁰ A list of the NGOs appear in the section headed Statements by NGOs

and those sanctions were one of the arsenals for regime change. On the displacement of 3 million Zimbabweans, he said these cross border traders are not basket cases but go to South Africa and Botswana as traders. He said Zimbabweans in USA, Canada, Ireland and other countries go there using Zimbabwean resources and send remittances home. On the question of letters of appeal from the Commission, he said the government was in the process of responding and would file responses in due course. He dismissed the fears of human rights defenders as unfounded and stated that NGOs participating in the 41st Session were interacting well with the government delegation.

5. Cooperation and Relationship with National Human Rights Institutions and NGOs

Of note was the granting of Observer Status to **ZADHR**, and **Zimbabwe Exiles Forum**. The latter is working on Zimbabwe while it is headquartered in South Africa. Four other NGOs were granted observer status bringing the number of NGOs with observer status to 366. NGOs were exhorted to file their activity reports according to the requirements of the African Commission.

6. Consideration of State Party Report

Minister Chinamasa presented the Zimbabwe State Party Report for the period 1996 to 2006. He again emphasised that violations in Zimbabwe have a context. He blamed the usual countries for supposedly interfering. He even mentioned that NGOs such as us, **ZESN**, **Crisis Coalition** among others, had not participated in the drafting of the report because of pressure from Ambassador Dell, who is alleged to have summoned the NGOs and threatened to withdraw funding if they participated in the drafting of the State Party Report. On the question of violations, he alleged lack of objectivity where Zimbabwe was in issue.

He was questioned on violence against the opposition and indeed all populace. He was also asked to answer to torture allegations. He was questioned on *Operation Murambatvina* particularly what figure the government has for

those it displaced. He was asked about the independence of the bench particularly his roles in the Gubbay and Blackie¹¹ cases. In fact the bulk of the questions in the Shadow report were used in questioning the human rights record of Zimbabwe. His answers were all politics and politicking but failed to answer to the violations averred. A list of some of the questions asked is attached as Annexure “G”.

7. Participation in the radio interview

The Forum, *MISA* and *ZADHR* participated in an independent radio interview where Minister Chinamasa was the main interviewee. He basically skirted the questions on human rights by averring the interference by the west, sanctions and regime change agenda by NGOs, the opposition and its supporters. Various callers were able to put questions during the live interview and the views were varied with some supporting the view by the Ministers while others opposing it. Our input was made through calls and sending questions via the short messages mode.

8. Communications

8.1 Communication 295/04

This Communication, which is on wrongful death, was scheduled to be argued on merits at this Session. However we held a pre-appearance meeting with the Zimbabwe delegation and it emerged that they had not submitted their arguments on the merits. Their indications were that, they would file the same before or immediately after the conclusion of the 41st Session. They further stated that we revert to the system of serving documents upon each other as per the dictates of the Rules of Procedure, particularly as they had taken this stance on the service of the private hearing notification.

8.2 Nixon Nyikadzino Communication

¹¹ Justice Gubbay is a former Chief Justice and Justice Blackie is a former judge of the High Court. Both judges retired from the bench under very contentious circumstances

The Forum filed a Communication on behalf of torture victim, Nixon Nyikadzino. The African Commission acknowledged receipt of this new Communication. It was before the African Commission and we were advised of the possibility that the Commission was going to be seized of it.

9. Recommendations

- It is recommended that all recommendations from members participation at any meeting, especially of the African Commission be implemented timeously.
- It is recommended that a delegation be sent to the African Union Summit set for end of June 2007, to follow up on the lobbying done at the Commission. There are plans to hold a side meeting on Zimbabwe during the Summit, in which we should take part, particularly the CSO/AU Forum, which is always interesting to attend.
- It is further recommended that we continue to send members of staff to international fora as this has a greater impact than sending a Board Member who might not have all the details of the issues relevant to the day to day activities of the Forum at their finger tips. For instance we managed to lobby two Commissioners at the NGO Forum because we could attend two different thematic groups.
- We further recommend that we follow-up on the recommendation by the ***Chairperson on the Working Group of the Robben Island Guidelines*** and invite her for a workshop which we can have in celebration or to mark our 10th anniversary in 2008.

Dated 2/July/2007