



Zimbabwe
HUMAN RIGHTS
N G O F o r u m

**Report on the Zimbabwe Human Rights NGO Forum's
Participation in the 44th Session of the African
Commission on Human and People's Rights**

November 2008

A report by the Zimbabwe Human Rights NGO Forum

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1. Summary

1.1 The 44th Session of the **African Commission on Human and People's Rights (ACHPR)** was held in Abuja in the Federal Republic of Nigeria from 10 to 24 November 2008. As has become the tradition, the session was preceded by the **Forum on the Participation of NGOs in the 44th Ordinary Session of the African Commission on Human and Peoples' Rights** (hereinafter referred to as the NGO Forum) and the 18th African Human Rights Book Fare that was held from 7 to 9 October 2008.

1.2 Zimbabwean civil society was well represented having one of the largest delegations. The delegation was comprised of both locally-based and regionally-based representatives. The following were part of the delegation:

- Blessing Gorejena and Chenai Matshaka of the Zimbabwe Human Rights NGO Forum
- Dzimbabwe Chimnga and Zvikomborero Chadambuka of Zimbabwe Lawyers for Human Rights (ZLHR)
- Dzikamai Machingura and Buhlebenkosi Moyo of Media Monitoring Project of Zimbabwe (MMPZ)
- Nyasha Nyakunu of the Media Institute of Southern Africa (MISA)
- Hilton Zvidzai of the Media Alliance of Zimbabwe (MAZ)
- Blessing Chimhini of UNDP
- Arnold Tsunga of the International Commission of Jurists
- Gabriel Shumba of the Zimbabwe Exiles Forum
- Lloyd Kuvheya of the South African Litigation Center
- Solomon Sacco Interrights

1.3 The Government of Zimbabwe delegation was headed by Ms Margaret Chiduku, the Director for Policy and Legal Research in the Ministry of Justice Legal and Parliamentary Affairs and also comprised of

- Mr Lawrence Murasi
- Mr Stewart Nyakotyo

- Mrs. Muchena

1.4 According to the Final Communiqué¹ of the African Commission, a total of four hundred and ninety seven (497) participants attended the 44th Ordinary Session, including thirty one (31) States Parties to the African Charter, nine (9) National Human Rights Institutions, seven (7) International and Inter-Governmental Organizations, and two hundred and seventy five (275) African and International NGOs.

1.5 This report highlights the activities undertaken by the **Zimbabwe Human Rights NGO Forum** (hereinafter referred to as the Forum) delegation at the 44th Session of the African Commission and NGO Forum.

2. Background

2.1 The Forum took part in the 44th Ordinary Session of the African Commission against a background of gross human rights violations that took place in the country prior to and after the 29 March Harmonised Elections. The Forum's participation in the 44th Session was not only significant in highlighting these human rights abuses but also in lobbying the African Commission and state parties to the African Charter to push for an end to the political impasse and the humanitarian crisis in Zimbabwe.

3. The Forum on the Participation of NGOs in the 44th Session of the

African Commission of the African Commission on Human and People's Rights

3.1 The **African Centre for Democracy and Human Rights Studies** organized the NGO Forum. None of the members of the locally - based Zimbabwean civil society delegation arrived in Abuja in time for the opening of the NGO Forum. This was due

¹ The Communiqué is available on the African Commission website <http://www.achpr.org/english/communiqués/Final%20Communique%20-%2044th%20OS.pdf>

to some logistical problems. However, all the participants managed to attend the remaining two days of the session.

3.2 The NGO Forum discussed the human rights situation in Africa, with a report presented on each of the regions. It was alarming to note the dire state of human rights and democracy in all the regions of Africa. Highlighted as areas of great concern were the situations in the Democratic Republic of the Congo (DRC), Somalia, Gambia and Zimbabwe among others.

3.3 A seminar on *Accountability to Gender Equality under the African Union Protocol* was held on the second day of the NGO Forum. It was noted that there was a need to take the protocol more seriously as it is by Africans for African women. The need to create awareness and to measure the effectiveness of the implementation on the protocol was also underscored as an important factor in the promotion and protection of the rights of women in Africa.

3.4 A panel discussion on the *Improved Promotion and Protection of Children's Rights*, jointly organized by **IHRDA, Plan International and Save the Children** was also held. The panelist included the chairperson of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and the Special Rapporteur on the Rights of Women in Africa, Commissioner Soyata Maiga. Highlighted in this discussion was the need to protect children from harmful cultural and religious practices. A shocking incident of a 13 year old girl who was stoned to death in Somalia under Sharia law, on allegations of committing adultery, was told and served as a reminder of the amount of work that still needs to be done in Africa to protect children from these harmful cultural and religious practices.

3.5 The delegates to the NGO Forum later broke into Special Interest groups for more detailed discussions as well as to come up with draft resolutions and recommendations to the African Commission. The Forum delegates took part in the Special Interest group on the Prevention and Prohibition of Torture in Africa and on the African Court. Both groups were merged with other interest groups. The group on torture merged with the group on prisons and prison conditions in Africa and the

group on the African Court merged with the group on the International Criminal Court.

4. Special Interest Group on the Prevention and Prohibition of Torture in Africa/Special Interest Group on Prisons and Prison conditions in Africa.

4.1 The group's discussions were chaired by the Chairperson on the Working Group for the Promotion of the Robben Island Guidelines Commissioner Dupe Catherine Atoki. Also in attendance was the Vice Chairperson of the working group. The Commissioner began by giving a brief background of the Robben Island Guidelines as well as an update of the activities of the African mechanism on torture during the last intersession.

4.2 Commissioner Atoki reported that the Follow - up Committee on the Robben Island Guidelines had held two workshops on the implementation of the Guidelines which drew participants from all over Africa. The participants were drawn mainly from state institutions such as the army, police and prisons. A follow - up workshop was also done in Liberia, where the Commissioner and her team saw a lot of commitment from the officials there to implement the Robben Island Guidelines.

4.3 The combined interest group's members also shared various experiences from their different countries. Countries that were represented in the group included Nigeria, Tanzania, Algeria and Zimbabwe. It was the general feeling among the participants in the group that one of the first steps that needed to be taken by African states for the eradication of torture is the criminalizing of torture as well as prison reform.

4.4 The Commission did not adopt the draft resolutions that were compiled by the group during the 43rd Session and it was decided that the same resolutions with additions would be forwarded to the African Commission for consideration.

4.5 Commissioner Atoki then challenged NGOs to seriously consider what they can do to assist the African Commission in its work rather than to continuously request the Commission to act on various issues. Each organization was then tasked to consider ways in which they can work to promote the Robben Island Guidelines in their countries. A draft document of the recommendations and resolutions ²of the group was presented to the drafting committee.

5. Special Interest Group on the African Court on Human and Peoples Rights and International Criminal Court

5.1 The group was chaired by Mr. Lloyd Kuvheya from the **Southern African Litigation Center (SALC)**. Mr. Kuvheya gave a brief background to the establishment of the African Court on Human and Peoples Rights (hereinafter referred to as the Court) and the on going process of merging the Court with the African Court of Justice.

5.2 The group expressed concern over the limitations facing the Court such as the slow pace of ratification of the protocol establishing the Court and also the fact that member states are reluctant to make Declarations allowing NGOs and individuals access to the Court. It was noted that only two countries, that is Burkina Faso and Mali, have issued the Declaration. It was therefore agreed that there was urgent need for state parties to open up access to the court through accepting and subscribing to the competence of the court or alternatively state parties might need to consider amending the Protocol to eliminate the limitations.

5.3 The group also expressed concern over delay in finalizing the process of harmonizing the Court's rules of procedure with those of the African Commission on Human and Peoples Rights.

5.4 The combined interest group's members which comprised representatives from Zimbabwe, Nigeria, Sudan and Angola, also shared views on what could be done at

² Resolutions by the working group on torture Appendix 1

country level to try and lobby governments to ratify the Protocol and issue a declaration to open up access to the court by individuals and NGOs. All the countries represented except Nigeria are yet to ratify the Protocol. Recommendations were that organizations work closely with the Coalition for an Effective African Court on this task.

5.5 A Draft resolution incorporating the above issues was prepared and presented before the drafting committee.

6. Workshop on International Litigation organized by ICJ -Kenya

6.1 During the NGO Forum a parallel workshop organized by ICJ Kenya on international litigation was held. Ms Blessing Gorejena attended the second day of the workshop. The objective of the workshop was to review and analyze the positive jurisprudence of the African Commission and the Regional Courts with a view to developing strategies for the enforcement of positive human rights obligations placed upon states in various jurisprudence, touching on Economic, Social and Cultural Rights, the Right to fair Trial and Abolition of the Death Penalty.

6.2 The jurisprudence has been generated in these cases as a result of public interest litigation on the part of African human rights lawyers and NGOs. It was therefore critical for the Forum to participate in the workshop which created an opportunity for lawyers and scholars to share and review the product of decades of litigation with a view to finding a practical application of the jurisprudence generated for the advancement of human rights in Africa.

6.3 Among the Communications under review were;

- the Bosch case, *Interrights et al. vs. the Government of Botswana*, Communication 240/01, wherein the Government of Botswana proceeded to execute the Complainant despite the Commission's request for stay of execution;
- the Kemal al-Jazoul case, *International PEN vs. the Government of Sudan*, Communication 92/93;

- *The Zimbabwe Human Rights NGO Forum vs. the Government of Zimbabwe*, Communication 245/02.

6.4 Ms Gorejena was able to share with the participants information on the status of Communication 245/02 highlighting the work that has been done by the Forum in engaging both the Government of Zimbabwe and the African Commission on the implementation of the recommendations. It is however unfortunate to note that despite such efforts the government is reluctant to honor its obligations to the Charter.

6.5 Another parallel workshop organized by the **International Service for Human Rights** with the Special Rapporteur on Human Rights Defenders was held. The workshop was a 10th year anniversary reflection on the declaration on Human Rights Defenders.

6.6 The Forum delegates also attended a panel discussion on the African Court of Justice and Human Rights held on the 12 November 2008. The meeting was organised by **Alliances for Africa (AfA)**. The discussions featured an interactive debate on the African Human Rights System, ratification campaigns for the African Court Protocol and discussion on the new protocol on the African Court of Justice and Human Rights.

7. The Coalition for an Effective African Court on Human and Peoples' Rights (The Coalition)

7.1 The Coalition, a network of NGOs and national human rights institutions, also held its meeting on 10 November 2008. The purpose of the meeting was to elect the executive committee and the regional focal points. The Forum was one of the nominees for the Southern African focal point. Ms Gorejena made a presentation on the work of the Forum and the reasons why it is necessary for the Forum to be the focal point. Elections were held and the Forum won. Our member organisation, Zimbabwe Lawyers for Human Rights was elected onto the executive committee.

8. Side Meeting.

8.1 The Forum delegation had planned to hold a side meeting to discuss the human rights challenges in Zimbabwe with particular reference to the unity talks that were going on during the time. The objective was to engage the Commission, in particular the Commissioner responsible for Zimbabwe, Commissioner **Musa Ngary Bitaye**. Unfortunately Commissioner Bitaye had prior engagements and was not able to meet with the Zimbabwe delegation as planned. However the delegation managed to arrange for a private meeting with him that was held on 14 November 2008. Among the issues discussed at the meeting were the worsening human rights situation and the humanitarian crisis in Zimbabwe. A draft resolution was prepared in that regard and adopted by the Commission.³

9. 44th Ordinary Session of the African Commission on Human and Peoples' Rights

9.1 The 44th Ordinary Session of the African Commission on Human and People's Rights was officially opened with a colorful ceremony at the Abuja International Conference Center. The attending Commissioners at the 44th Ordinary Session were:

- Commissioner **Sanji Monageng- Chairperson**
- Commissioner **Angela Melo – Vice Chairperson;**
- Commissioner **Catherine Dupe Atoki;**
- Commissioner **Musa Ngary Bitaye;**
- Commissioner **Reine Alapini-Gansou;**
- Commissioner **Soyata Maiga;**
- Commissioner **Mumba Malila;**
- Commissioner **Kayitesi Zainabo Sylvie;**
- Commissioner **Pansy Tlakula;**
- Commissioner **Bahame tom Mukuriya Nyanduga;**
- Commissioner **Yeung Kam John Yeung Sik Yuen;**

9.2 Hon. Odein Ajumogobia, the Minister of State for Petroleum in the Federal Republic of Nigeria, gave the opening statement on behalf of the President of the Federation. In his address he noted the challenges being faced by African governments in ensuring the full protection and promotion of human rights and went on to elaborate that some of these challenges are a result of the policies and attitudes of some governments. He further noted that the promotion and attainment of the Millennium Development Goals (MDGs) should be the priority of all African governments. He reiterated the Nigerian government's commitment to ensuring peace and stability on the continent as well as to promote and protect human rights.

9.3 The Chairperson of the African Commission, Commissioner Sanji Monageng, in her opening remarks expressed gratitude to the government of the Federal Republic of Nigeria for hosting the 44th Ordinary Session of the African Commission. She also highlighted the inroads that have been made in the field of human rights in Africa as well as the consultations made to try and improve the relationship between the African Commission and its partners. She called upon all stakeholders to work together to improve the human rights situation in Africa.⁴

9.4 Commissioner Monageng expressed deep concern over the situation in the DRC and Somalia and called upon these state parties to the African Charter to honor their commitments under the Charter. She also called for an immediate end to the political impasse in Zimbabwe.

9.5 She acknowledged the internal and external developments that have created both challenges and opportunities for the promotion and protection of human rights. Commissioner Monageng also acknowledged that more could and should be done to create an Africa that promotes and protects human rights.

9.6 Mrs. Hannah Forster the Executive Director of the **African Center on Democracy and Human Rights Studies**, made a statement on behalf of the NGOs.

³ See Appendix 2 "The Resolution on the Human Rights and humanitarian situation in Zimbabwe.

⁴ See Appendix 3 The Chairperson's opening speech

She noted that Africa continues to face similar human rights challenges characterized by violence and poverty, noting the DRC, Ethiopia, Somalia, Kenya, Swaziland and Zimbabwe as areas of grave concern. She called upon the African Commission to seriously examine the situation of the media in Africa; gender based violence as well as the survival and development of children in Africa.

9.7 Mrs. Forster also highlighted the plight of human rights defenders in Africa as being in a dire state with arrest and harassment being perpetrated against human rights defenders in most African countries. A call for fact-finding missions to assess the situation of refugees in the DRC and Sudan was made. Mrs. Forster also expressed concern over the neglect of Economic, Social and Cultural Rights such as the right to education and reiterated the commitment of NGOs in working with the ACHPR.

9.8 Mr. Gilbert Sebihogo the Executive Director of the **Network of African National Human Rights Institutions** noted the importance of establishing national human rights institutions as well as building the capacity of these institutions. He further noted that there was a need for African human rights institutions to take an active part in the work of the African Commission. Mr. Sebihogo went on to express concern over what he described as the alarming situations in Zimbabwe and the DRC which are becoming a threat to continental stability. He called upon the parties involved in the hostilities in the DRC to immediately cease.

9.9 Speaking on behalf of the State Parties to the African Charter, Libyan Minister of Legal Affairs and Human Rights of the Great Peoples' Congress, Socialist People's Jamahiriya, Mr. Hosni Aliweshe, acknowledged the importance of the human rights discourse on the global agenda and to state parties in particular. He highlighted the role played by Libya in conflict resolution in the African region.

10. Statements by Governments, Intergovernmental Organisations, National Human Rights Institutions and NGOs

10.1 Cameroon, Uganda, Central African Republic, Senegal, South Africa and Sudan are among the states parties that made statements relating to the human rights

situation in Africa. Intergovernmental organizations, international organizations, national human rights institutions as well as NGOs also made statements. The Forum made statements on the human rights situation in Zimbabwe under agenda item 4(d) and on torture under agenda item 7b (vi)⁵. The Government of Zimbabwe delegation exercised the right to respond under this agenda item and made specific reference to the statement by the Forum. In its response the Government of Zimbabwe argued that the claims of politically - motivated violence involving members of the police and army were still being investigated and had not yet been substantiated and therefore it was improper for the Forum to raise these cases in such a forum.

10.2 The Government of Zimbabwe's representative also gave a background to the run-off election and highlighted that the inordinate delay in the holding of the run-off was due to logistical problems. He went on to mention that the Global Political Agreement signed by the two MDC formations and ZANU PF on 15 September 2008 was not a perfect document but reflected the will of all the parties to it. He also emphasized the availability of local remedies to deal with issues of politically motivated violence.

10.3 The Commission considered applications by NGOs and granted Observer Status to 14 NGOs including the **Coalition for an effective African Court on Human and Peoples' rights**.

11. Communications

The Forum has two Communications that are currently before the Commission:

11.1 Communication 340/07;- This is the Communication filed on behalf of Nixon Nyikadzino, a torture victim, by the Forum. Arguments on admissibility were filed at the 44th Session on the premise that there are no effective remedies available for torture victims in Zimbabwe.

⁵See Statement on the General Human Rights Situation in Zimbabwe under agenda item 4(d) and 7b (iv) Appendix 4a and 5a

11.2 **Communication 295/04;-** The is the Communication on politically motivated deaths. The Communication is ready to be argued. However the Forum was not able to argue the communication due to the failure by the Government of Zimbabwe to file its arguments. Discussions were held with Commissions' senior legal officer Dr Robert Eno and an assurance was given that the matters will be considered at the next ordinary Session of the ACHPR.

12. Conclusion.

The African Union remains a critical target for engagement. Attendance at the African Commission's Ordinary Sessions will help the Forum in not only remaining visible, but to get the opportunity to interact with the Commission and other African stakeholders who will in turn lobby their Heads of State. As a complement to the African Commission, other mechanisms like the EU and UN, should be engaged. With regard to Communications, the process for considering a Communication is slow and cumbersome but must be utilised. More work should be done in lobbying the Government of Zimbabwe to ratify the Protocol establishing the African Court and also encouraging it to issue the declaration allowing individual and NGO access to the Court. The Forum can take advantage of its involvement with the Coalition in its capacity as a member and the regional focal point for the Coalition in this task.

13. Appendices

