

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme & des Peuples</i>
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Thirty-Eighth Ordinary Session

21 November – 5 December 2005, in Banjul, The Gambia

Consideration of Reports submitted by States Parties under the Terms of Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on the First Periodic Report of the Republic of South Africa

I- Introduction

1. The Republic of South Africa (South Africa) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified it on 9 July 1996.
2. The present Concluding Observations follow from the presentation and examination of the First Periodic Report of the Republic of South Africa.
3. The Report was submitted to the Secretariat of the African Commission on Human and Peoples' Rights on 14 May 2005 and was examined at the 38th Ordinary Session of the African Commission on Human and Peoples' Rights (the African Commission or the Commission) held in Banjul, The Gambia, from 21 November to 5 December 2005.
4. The Report was presented to the African Commission by Honourable Mrs. Bridget Mbandla, Minister of Justice and Constitutional Development of South Africa, and Head of Delegation of South Africa to the 38th Ordinary Session of the African Commission.
5. The present Concluding Observations give an account of the positive aspects identified in the Report. These Concluding Observations also

include a list of issues for which the African Commission requests additional information and outlines areas of concerns drawn from the contents of the Report and information provided during the presentation of the Report. The Concluding Observations further provide recommendations formulated after the dialogue that ensued from the presentation of the Report.

II - Positive Aspects

The African Commission :

6. Appreciates the presence of a high-ranking Delegation directly involved in the implementation of the African Charter which allowed for a fuller assessment of the State Party's compliance with its obligations under the African Charter;
7. Further appreciates the quality of the Report of South Africa;
8. Also appreciates the constructive, open and frank dialogue it had with the Delegation of South Africa and welcomes the positive reactions to the suggestions and recommendations made during the discussion;
9. Appreciates the additional information provided by the Delegation during the examination of the Report, and further appreciates the answers to its questions and the undertaking made by the Delegation to provide the African Commission, at a later stage, with answers to those questions for which additional information was not readily available;
10. Welcomes the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women;
11. Further welcomes the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of An African Court on Human and Peoples' Rights;
12. Also welcomes the establishment in 2003 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities mentioned in the State's Initial Report as one of the Institutions supporting Democracy in the country;

13. Appreciates the fact that most of the reformative draft legislations mentioned in the Report have now been passed as a law;
14. Notes that South Africa is one of the few African countries to develop a National Action Plan and Strategy for the promotion and protection of Human Rights in 1998 and a National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance following the World Conference on Racism in 2001. The African Commission also welcomes the setting up of a National Consultative Forum on Human Rights (NCFHR) responsible for coordinating all human rights issues in the country with the Ministry for Justice and Constitutional Development as a convener;
15. Also appreciates the fact that South Africa is one of the few African countries that provides for justiciable socio-economic rights in its constitution and in spite of its limited resources it has taken some steps to ensure the realization of these rights. The African Commission welcomes the decision to provide free Anti-Retroviral drugs to HIV positive pregnant women;
16. Notes with interest the fact that South Africa guarantees more rights than those guaranteed in the African Charter, including for example, the right to sports and leisure; and
17. Further welcomes the use of the African Charter by South Africa in its bilateral as well as multi-lateral relations, including on issues of negotiations.

III - Areas of Concern

While recognising the efforts of the Government of South Africa to promote and protect human rights and to create awareness on the principles and provisions of the African Charter, the African Commission remains concerned:

18. By the fact that the report was submitted almost four years after it was prepared making most of the information and statistics therein outdated during the time of examination by the African Commission;
19. With the lack of involvement of various state institutions involved in the promotion and protection of civil, political and socio-economic rights, and of civil society participation in the preparation of the Report. The

Commission notes in this regard that reports required under Article 62 of the African Charter should be shared with all sectors of the society to give them an opportunity to contribute in its preparation or to react thereto;

20. That in some sections of the Report, the State Party simply provides a general description of the provisions of the African Charter and the legislation and/or policy put in place, without indicating how these measures have contributed in enhancing the rights of the persons under its jurisdiction;
21. With the lack of details on the measures taken by the State Party to eradicate the phenomenon of xenophobia directed towards African migrants in particular;
22. At the high incidence of sexual violence against women and children; and
23. That professional groups; children, parents, and the public at large, are generally not sufficiently aware of the African Charter and the African Commission.

IV – Matters for Follow-Up from the Report

24. The African Commission welcomes the undertaking made by the Delegation of South Africa to furnish it with additional information and updated statistics on issues the Commission sought further clarification. These include among others the following issues – Family matters, HIV/AIDS, Sexual offences, Child Justice and others:

Family Matters

- a.* The recognition of rules of Islamic and customary Law relating to marriage and related matters published on 30 May 2000;
- b.* The Harmonisation of common law and indigenous law tabled in Parliament on 29 May 2000, in particular the status of the Application of Customary Law Bill; and
- c.* Confidentiality enquiry into maternal deaths.

HIV/AIDS

25. Aspects of the law and policy relating to HIV/AIDS and the HIV/AIDS Strategic Plan; in particular the status of the Interim reports on pre-employment HIV-testing and discrimination in schools and the status of the Compulsory HIV-Testing of Sexual Offenders Bill.

Violence and Sexual offences

26. Matters related to *Sexual offences* such as bail for sexual offenders, making it easier for victims of sexual offences to testify in court, and the sentencing of persons convicted of sexual offences, etc.

Juvenile Justice

- a. The status of the Review of the Child Care Act, 1983 (Act 74 of 1983);
- b. The Children's Broadcasting Forum; and
- c. The South African Law Commission Report on Juvenile Justice.

Others

- a. The status of the Public Interest and Class Actions Bill;
- b. The status of the Immigration Bill, 2001; and
- c. The Patients' Rights Charter.

V - Recommendations

The African Commission recommends that the Government of South Africa should:

27. The Commission notes the difficulties in ensuring the effective enjoyment of the rights in the Charter mentioned by the State Party and to this end urges civil society organizations and the international community to work closely with the State Party to ensure the effective implementation of the National Plan of Action on Human Rights;
28. Ensure that the provisions of the African Charter are widely known and understood by adults and children alike, in both rural and urban areas. In

this regard, it encourages the State Party to intensify efforts for the effective implementation of the African Charter and make it available in local languages;

29. Consider lifting the reservation made on Article 6 (d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
30. Take appropriate administrative measures to ensure the speedy consideration of the applications for asylum seekers;
31. Undertake studies with a view to designing and implementing appropriate policies and measures, including care and rehabilitation, to prevent and combat the sexual exploitation of children;
32. Take all appropriate measures to ensure that the rights of children belonging to minority groups, including the Khoi-Khoi and San, are guaranteed, particularly those rights concerning culture, religion, language and access to information;
33. Take the necessary measures to fully implement the recommendations of the African Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa;
34. Intensify efforts to interact more with members of civil society organizations;
35. Make the declaration under Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of An African Court on Human and Peoples' Rights;
36. Take the necessary steps to ensure that the anti-terrorism legislation is in conformity with human rights standards and practices set forth by

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relevant human rights instruments ratified by the State, including the African Charter;

37. Take appropriate steps to present its next Periodic Report in conformity with Article 62 of the African Charter;

38. Inform the African Commission, in its next Periodic Report, of the steps it has taken to address the areas of concern, as well as how it has implemented the recommendations in this Concluding Observations.

Adopted at the 38th Ordinary Session of the African Commission on Human and Peoples' Rights held from 21 November to 5 December 2005 in Banjul, The Gambia.