



**Thirty Eighth Ordinary Session
21 November - 5 December 2005**

**Consideration of Reports submitted by State Parties under 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**

INTRODUCTION

1. The present concluding observations follow the presentation and examination of the First Periodic Report of the Republic of South Africa, a State Party to the African Charter on Human and Peoples' Rights (the African Charter) since 1998.
2. The Report was submitted to the Secretariat of the African Commission on Human and Peoples' Rights (the African Commission) on 14 May 2005 and was examined at the 38th Ordinary Session of the African Commission held in Banjul, The Gambia, from 21 November to 5 December 2005.
3. The Report was presented to the African Commission by Honourable Mrs. Bridget Mabandla, MP, Minister of Justice and Constitutional Development of the Republic of South Africa, Head of Delegation of the Republic of South Africa to the 38th Ordinary Session of the African Commission.
4. The African Commission appreciates the fact that the presence of a high-ranking delegation directly involved in the implementation of the African Charter allows for a fuller assessment of the State Party's compliance with its obligations under the African Charter.

5. The African Commission appreciates the quality of the Report of the Republic of South Africa and the constructive, open and frank dialogue it had with the delegation of the State Party and welcomes the positive reactions to the suggestions and recommendations made during the discussion.
6. The African Commission also appreciates the additional information provided by the Delegation of the State Party during the examination of the Report, and further appreciates the answers to its questions and the undertaking made by the Delegation of the State Party to provide the African Commission, at a later stage, with answers to those questions for which additional information was not readily available.
7. The present observations give an account of the positive factors identified in the Report. It also includes issues for which the African Commission requests additional information and outlines areas of concerns drawn from the contents of the Report and information provide during the presentation of the Report. The observations further provides recommendations formulated after the dialogue that ensued from the presentation of the Report.

PART I- THE POSITIVE FACTORS

8. The African Commission welcomes the ratification by the State Party of the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women.
9. The African Commission further welcomes the ratification by the State Party of the Protocol to the African Charter on Human and Peoples' Rights relating to the Establishment of an African Court on Human and Peoples' Rights.
10. The Commission further 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 Party's Initial Report as one of the Institutions supporting Democracy in the country.
11. The Commission welcomes the fact that most of the legislative reforms mentioned in the Report have now been made part of the law and policies of the State Party.

12. The African Commission notes that the State Party 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 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 convener.
13. The African Commission also appreciates the fact that the State Party is one of the few African countries that provides for justiciable socio-economic rights in its constitution and in spite of its limited resources has taken some steps to ensure the realization of these rights. The African Commission welcomes the State Party's decision to provide free Anti-Retroviral drugs to HIV positive expectant women.
14. The African Commission notes with interest the fact that the State Party guarantees more rights than those guaranteed in the African Charter, including for example, the right to sports and leisure.
15. The African Commission further welcomes the use of the African Charter in its bilateral as well as multi-lateral relations of the Member State, including on issues of negotiations.

PART II- PRINCIPAL AREAS OF CONCERN

16. The African Commission is concerned 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.
17. The African Commission is concerned at 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 should be shared with all sectors of the society to give them an opportunity to contribute in its preparation or to react thereto.

18. The African Commission notes that in some sections of the Report, the State Party simply provides a general description of the provisions of the 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.
19. The lack of details on the measures taken by the State Party to eradicate the phenomenon of xenophobia directed towards African migrants in particular.
20. While noting the efforts of the State party to implement legislation, policies and programmes to prevent and combat the sexual exploitation of children and violence against women, the African Commission remains concerned at the high incidence of sexual violence against women and children.
21. While recognizing the efforts of the State Party to promote awareness of the principles and provisions of the Charter, the African Commission remains concerned that professional groups, children, parents, and the public at large are generally not sufficiently aware of the Charter and the African Commission.

PART III MATTERS FOR FOLLOW – UP FROM THE REPORT

22. The African Commission welcomes the undertaking made by the delegation of the State Party to furnish it with additional information and updated statistics on issues the Commission sought further clarification. These include among others: – Family matters, HIV/AIDS, Sexual offences, Child Justice and others:
 - a. the recognition of rules of Islamic and customary Law relating to marriage and related matters published on 30 May 2000;
 - b. the proposed bill on 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.
23. 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;

24. Matters related to Sexual violence against women and 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.
 - 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.

25. The African Commission would also need information on:
 - 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.

RECOMMENDATIONS

26. The African 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.

27. The African Commission recommends that greater effort be made to ensure that the provisions of the 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 on Human and Peoples' Rights and make it available in local languages.

28. The African Commission also recommends that the State Party intensifies efforts to interact more with members of its civil society organisations,

29. The African Commission recommends further that appropriate measures are taken to ensure that anti-terrorism legislation is in conformity with human rights standards and practices set forth by relevant human rights instruments ratified, including the African Charter.

30. The African Commission recommends that the State Party makes the declaration under Article 34 (6) of the protocol to the African Charter on Human and Peoples' Rights relating to the establishment of an African Court on Human and Peoples' Rights.

31. The Commission further recommends that the State Party considers 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.
32. The Commission urges the State Party to take appropriate administrative measures to ensure the speedy consideration of the applications for asylum seekers.
33. The Commission recommends that the State Party undertakes 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.
34. The Commission notes the establishment of the Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities and notes the steps taken by government to recognize the rights of indigenous populations. However, the Commission recommends that the State party undertake 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.
35. The Commission notes the measures the State Party has taken to improve the conditions of persons deprived of their liberty. The Commission however recommends that the State Party should take the necessary measures to fully implement the recommendations of the Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa.
36. The African Commission finally recommends that appropriate steps be taken to present the next Periodic Report of the State Party in conformity with Article 62 of the African Charter.

Adopted at the 38th Ordinary Session of the ACHPR held from 21 November to 5 December 2005 in Banjul, The Gambia.