

**STATEMENT BY THE COMMUNITY LAW CENTRE SUBMITTED TO
THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
AT THE 51st ORDINARY SESSION, 18 April 2011, BANJUL, THE
GAMBIA.**

Introduction

We wish to express our sincere appreciation to the African Commission on Human and Peoples' Rights to make this submission. The submission deals with three issues being (1) compliance with the Robben Island Guidelines; (2) domestic oversight over places of detention; and (3) limiting the use of pre-trial detention.

Robben Island Guidelines

In 2002 the African Commission adopted the Robben Island Guidelines with the aim to provide specific guidance on the absolute prohibition of torture and measures to be taken by states to prevent and eradicate torture in Africa. This year, 2012, it will be ten years since the adoption of the Robben Island Guidelines by the African Commission. The ten year anniversary of the adoption of the Robben Island Guidelines presents the opportunity for renewed energy and vigour to rid the continent of the abhorrent practice of torture and other ill treatment. The Robben Island Guidelines represent an important achievement in the development and growth of the African human rights system and its goals should be actively pursued.

In view of the ten year anniversary of the Robben Island Guidelines, the Community Law Centre, as a partner to the Article 5 Initiative, proposes that the Commission prepares a situational analysis report on progress made towards state compliance with the Robben Island Guidelines. Such a report should reflect on progress made, highlighting good and promising practice that could be followed by other states. It should equally identify and assess the major stumbling blocks in respect of compliance with the Robben Island Guidelines and make recommendations to advance compliance with the Robben Island Guidelines.

The Community Law Centre, as a partner to the Article 5 Initiative, further encourages the African Commission to promote the Robben Island Guidelines through its work, and in particular when on in-country missions and when reviewing state reports. In this regard, we request that the Commission requires from states specific information on measures taken to prevent and eradicate torture and other ill treatment in their jurisdictions.

Domestic oversight over places of detention

Research undertaken by the Community Law Centre found that in a number of African countries there exists, at least in law, a nominal designation of an oversight mechanism over the prison system. In general, domestic law provides that certain persons who are independent from the prison system (e.g. judges, magistrates and members of parliament) may visit prisons and conduct inspections, and report their findings to the head of the prison and the commissioner of the prison service. It can thus be concluded that there is a broad acceptance of the principle that independent oversight by impartial persons is required for a well-functioning prison system. It is, however, also evident that very little information is available in the public domain on how these inspections are being conducted and what, if anything, is done with the recommendations made.

In view of the above, it is submitted that the Commission encourages states to use existing oversight mechanisms to promote transparency and accountability in prison systems as well as in respect of other places of detention. Even when states have not ratified the Optional Protocol to the UN Convention against Torture, it remains important that internal capacity is developed to conduct visits to places of detention so as to foster a culture of active monitoring and reporting. This is in line with state obligations contained in the UN Convention against Torture and the Robben Island Guidelines.

Pre-trial detention and outdated offences

It is unfortunately the case that there are large numbers of pre-trial detainees on the continent. Their situation warrants urgent action for a number of reasons.

- Conditions of detention in pre-trial detention centres are frequently well below what can be regarded as acceptable at a minimum level. Access to health care, adequate

nutrition and other support services are frequently less favourable than for their sentenced counterparts. Conditions of detention are frequently so poor that they are life threatening, and have been recognised by several international bodies as amounting to ill treatment.

- Pre-trial detainees often remain in custody for lengthy periods (sometimes as long as ten years) without having been convicted of any offence.
- Pre-trial detainees are particularly vulnerable to torture and other ill treatment. They are also vulnerable to corruption.
- Large pre-trial detainee populations contribute to prison overcrowding which has a number of negative consequences in respect of limited resources, conditions of detention, the separation of categories, and safety.
- The problem of pre-trial detention disproportionately affects poor and marginalized communities, whose members are more likely to be arbitrarily arrested and, unable to afford legal assistance, are most vulnerable to spending prolonged periods in pre-trial detention. When individuals are detained for excessive periods and lose their jobs, their families slip deeper into poverty, facing hunger and homelessness.¹

The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa of 2003 endorsed recommendations calling for reducing the size of prison populations in Africa. The Plan of Action recommended “Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents” as a strategy to reduce the prison population. Nearly a decade has passed and few countries have made any progress in implementing this strategy endorsed by the African Commission. Many of the offences identified by the African Commission as ripe for repeal amount to nothing more than the criminalisation of poverty, homelessness, unemployment, or previously having committed an offence.

Through its project “Promoting Pre-trial Justice in Africa” the Community Law Centre engages in a number of activities to reduce the use of pre-trial detention. We therefore call upon the Commission to urge states to engage in law reform and remove laws that are outdated and serve little other purpose than criminalising poverty and are open to abuse.

¹ Open Society Justice Initiative “Global Campaign on Pre-trial Justice”
http://www.soros.org/initiatives/justice/focus/criminal_justice/projects/globalcampaign

The Community Law Centre wishes to assure the Commission of its commitment to address the problems associated with detention and the torture and will assist the Commission in its endeavours wherever possible.

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