



STATEMENT AT THE 52nd SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS – YAMOUSSOUKRO OCTOBER 15 2012

Madam Chair, honorable Commissioners, state delegates, ladies and gentlemen thank you for this opportunity to address the 52nd Session of the African Commission on Human and Peoples' Rights (the African Commission). I am making this statement on behalf of organizations and in particular APCOF, Legal Resources Foundation and the Centre for Human Rights and Rehabilitation working on the Global Campaign for Pretrial Justice. Together we also take this opportunity to recognize the past 25 years of work of the African Commission on Human and Peoples' Rights and the progress made during this period.

At previous sessions we have addressed the Commission on the issue of pretrial detention and the devastating situation across the continent - where large numbers of detainees have never appeared before a judge and many spend months or even years in pre-trial detention. We have also raised concerns around the often arbitrary actions of the police which in turn lead to many people being charged and detained without sufficient legal and procedural guarantees.

Guidelines on the use and conditions of police custody and pre-trial detention in Africa

During this 52nd session we have taken the opportunity to analyse ways in which the use and conditions of police custody and pre-trial detention in Africa can be improved. These sessions confirmed the pressing need to articulate a set of guidelines aimed at minimizing the risk factors associated with excessive and arbitrary arrest and detention. While many of these obligations are contained in various instruments collating these in a single instrument and outlining practical measures would be of significant value.

- The police are key players and often the first experience people have with the criminal justice process. Their actions and non actions have a significant impact on the use of pretrial detention and on subsequent steps in the criminal justice chain;

- guidelines will provide a ready to use template for state parties, NHRIs and civil society observers for reporting on the issue to the African Commission;
- guidelines will provide an authoritative reference point for further support including training materials and reporting tools.

Accordingly we call on the African Commission to:

- 1) to start the process of developing a guideline on the use and conditions of police custody and pre-trial detention for Africa (the Guidelines), including supporting tools for its effective implementation through its Special Rapporteur on Prisons and Conditions of Detention (the Special Rapporteur);
- 2) encourage state delegates and key justice sector stakeholders to engage with the process and provide substantive inputs.

We believe the development of these guidelines can mirror another important development on early access to justice.

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

In April 2012 the United Nations Commission on Crime Prevention and Criminal Justice adopted a set of Principles and Guidelines on Access to Legal Aid in the Criminal Justice System. This is a ground-breaking step as it represents the first international instrument on access to legal aid. Significantly these UN Principles and Guidelines originated in the Lilongwe Declaration adopted in Malawi in 2004 by a group of government, academic and civil society experts. The Declaration was subsequently adopted by the African Commission on Human and Peoples' Rights in 2006 and inspired by these regional developments the United Nations embarked on a process to develop an international instrument. The final document recognises that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and brings us a step closer to ensuring universal access to human rights—rights that remain illusory if they are only accessible to those with financial means.

The Principles highlight a number of key elements including:

- Prompt access to legal aid at all stages of the criminal justice process;
- The involvement of a diversity of legal aid providers including lawyers, university legal clinicians and paralegals; and
- The development of a nationwide legal aid system that is sufficiently staffed and resourced.

Work across the region has shown that providing basic legal assistance at police stations and in prisons is not only a critical element in ensuring the right to a fair trial – but also in

ensuring that alternatives to detention are fully considered and that detention is only used as a last resort. Thus access to legal aid is a key factor in contributing to a more rationale use of detention in turn reducing overcrowding in prisons.

We congratulate the ACHPR and experts across the region for having led the way in recognizing the critical role of legal aid and encourage the Special Rapporteur on Prisons and Conditions of Detention in Africa and other Commissioners to continue this work by:

- encouraging member states to take steps to implement the Lilongwe Declaration and the new UN Principles and Guidelines;
- reporting on implementation and taking urgent action, in particular when a lack of access to legal assistance and legal aid results in a violation of the right to a fair trial.

We believe that these two processes, supported by a strong call for implementation will greatly improve access to justice in the region.

We thank you for your attention and look forward to continued collaboration.

Sean Tait

APCOF

African Policing Civilian Oversight Forum (APCOF) www.apcof.org.za

APCOF is a network of African policing practitioners drawn from state and non state institutions. It is active in promoting police reform through civilian oversight over policing. It believes that the broad values behind establishment of civilian oversight is to assist in restoring public confidence, develop a culture of human rights, integrity and transparency within the police and promote good working relationships between the police and the community. It achieves its goal through raising awareness and sharing information on police oversight and providing technical assistance to civil, society, police and new and emerging oversight bodies in Africa.

African Centre for Justice and Peace Studies (ACJPS) www.acjps.org

The African Centre for Justice and Peace Studies is a non-profit, non-governmental organisation based in Africa, London and New York and devoted to promoting human rights in Sudan.

Centre for Human Rights and Rehabilitation Malawi

The Centre for Human Rights and Rehabilitation (CHRR) was founded in 1991. CHRR strives to enhance knowledge and observance of human rights, through education and training, research and documentation, legal aid, exchange of information and experience, advocacy and networking.

The Catholic Justice and Peace Commission Liberia

The Catholic Justice and Peace Commission a human rights, public interest, and peace building organizations in Liberia and is working together with the American Bar Association African Rule of Law Initiative (ABA) to improve access to justice for indigent defendants in Liberia, in particular through a programme in Monrovia Central Prison.

Cleen Foundation www.cleen.org

The CLEEN Foundation (formerly known as Centre for Law Enforcement Education) is non-governmental organization established in January 1998 with the mission of promoting public safety, security and accessible justice through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government and civil society.

The Civil Society Prison Reform Initiative (CSPRI) www.cspri.org.za

The Civil Society Prison Reform Initiative (CSPRI) was established in 2003 as a project of the Community Law Centre. The Centre, linked to the Law Faculty of the University of the Western Cape, was established in 1990 with a view to engage in policy development, advocacy and educational initiatives through high-quality research, focusing on areas critical to the realisation of human rights and democracy in South Africa and Africa in general. The CSPRI focuses on prisons and places of confinement, with the aim of furthering constitutional and human rights imperatives within these settings. Much of the CSPRI's recent work has involved pre-trial detention the range of issues prevalent to the administration of justice from the time of arrest to sentencing.

The Global Campaign for Pretrial Justice www.pretrialjustice.org

The Global Campaign for Pretrial Justice was launched to focus attention on the entry point to the criminal justice system and aims to address systemic issues and rights violations before they are replicated and magnified further along the criminal justice chain. Particular focus is placed in rights on arrest, early access to legal assistance, alternatives to pretrial detention and open transparent justice systems.

The Independent Medico-Legal Unit (IMLU) Kenya

IMLU is a non-governmental organization that seeks a torture free society by promoting the rights of torture victims, survivors and protects all Kenyans from all forms of state perpetrated torture by advocating for policy reforms, monitoring government adherence to human rights, rehabilitating victims of torture and capacity building of key stakeholders.

Legal Resources Foundation Kenya

The Legal Resources Foundation was established in 1994 and works to raise legal, and human rights awareness among the young, underprivileged and the undereducated classes in Kenya. Its programmes consist of community-based paralegal training, theatre for civic education, strategic litigation and research and advocacy.

Mouvement Burkinabé des Droits de l'Homme et des Peuples (MBDHP)

Le combat pour l'amélioration des conditions de la détention, et singulièrement de la détention préventive a toujours été une préoccupation majeure pour le Mouvement Burkinabé des Droits de l'Homme et des Peuples (MBDHP) depuis sa création en 1989, en vue de l'accomplissement de ses triples missions de promotion, de protection et de défense des droits de l'Homme.

Muslims for Human Rights (MUHURI)

Muslims for Human Rights (MUHURI) is a Non-Governmental Organisation based at the Coast of Kenya. It began in 1997 to enhance the struggle for human rights with a view to contributing towards the national and international efforts to promote and protect the enjoyment of human rights and civil liberties by all.

The Paralegal Advisory Service Institute (PASI) Malawi

PASI was started in 2000 and focuses on training paralegals and ensuring the establishment of a permanent paralegal presence in Malawi's prisons and police stations. Paralegals provide frontline legal assistance, inform suspects of their rights, help with bail applications, assist in tracing sureties

and help facilitate camp courts. PASI has also worked with organisations in other countries including Uganda, Kenya and Bangladesh to share experiences and collaborate on training programmes.

Prisoners Rehabilitation and Welfare Action (PRAWA) www.prawa.org

PRAWA seeks to promote development, safety and security in African communities by creating a just, humane and effective criminal justice system. PRAWA promotes human rights of people in prisons, and works to help those who have survived their prison terms to successfully integrate into the community. The organisation provides support services to prisoners, ex-prisoners, youths-at-risks, torture victims and their families; it also engages with prison staff, the police, the judiciary, parliamentarians, legislators, and other relevant stakeholders in achieving its mandate.

The Rights Enforcement and Public Law Centre (REPLACE) www.replaceportal.com

REPLACE is a non-governmental organisation registered in 2006 under Nigerian laws. REPLACE envisages the establishment of a safe and secure society built on the twin foundations of effective public institutions and equality of opportunity to access justice delivery machineries and institutions. REPLACE is also committed to the creation and development of credible sources of data and information on criminal justice with transparent processes for accessing and managing these data by State and non-State actors. Since 2006, REPLACE's work has centred around the design and implementation of criminal justice reform strategies; notably the establishment of a Police Duty-Solicitor Scheme and the development of an electronic system for the management of criminal justice information. REPLACE's main partners include the Police, Judiciary, Prisons, Public Prosecutors and Legal Aid Council.

Southern African Litigation Session (SALC) www.southernafricalitigationcentre.org

The Southern Africa Litigation Centre (SALC) promotes and advances human rights and the rule of law in southern Africa, primarily through strategic litigation support and capacity building.

Zimbabwe Lawyers for Human Rights (ZLHR) www.zlhr.org.zw

ZLHR is a not for profit human rights law based organisation whose core objective is to foster a culture of human rights in Zimbabwe as well as encourage the growth and strengthening of human rights at all levels of society through observance of the Rule of Just Law. ZLHR was established in 1996 by human rights lawyers who identified a need to create an association of lawyers with interest and expertise in the promotion and protection of human rights. ZLHR is committed to upholding respect for the Rule of Just Law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms. The organisation has around 170 members. ZLHR holds Observer Status with the African Commission on Human and Peoples' Rights (ACHPR), forms the Secretariat of the Human Rights Committee of the SADC Lawyers Association, and has affiliate status with the International Commission of Jurists (ICJ).