



Promoting penal reform worldwide



STATEMENT AT THE 50th SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS – BANJUL 25 OCTOBER 2011

Madam Chair, honorable Commissioners, state delegates, ladies and gentlemen thank you for this opportunity to address the 50th Session of the African Commission on Human and Peoples' Rights. I am making this statement on behalf of several organisations active in the fields of pretrial justice and policing.

The decision to detain someone before he or she is found guilty of a crime, is one of the most draconian a State can make. The decision is made in an instant, but the results are long lasting, severe and adverse. The person detained loses their liberty and may also lose their home, job, income, family and community ties.

At the last session we 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 pretrial detention. They are not subject to the same levels of judicial oversight as the general prison population and experience a variety of rights violations – typically they are detained in conditions far worse than those for sentenced inmates and are most at risk of violence, torture inhuman and degrading treatment and corruption.

In addressing this 50th session we would like to take one step back in the criminal justice chain and bring to your attention issues around arrest and police detention.

According to figures compiled by the International Centre for Prison Studies the prison population in Africa totals 857,994 inmates. 36.3% are in pretrial detention, but this does not include those in secret or non-gazetted places of detention and nor does it include those in police detention. The percentages also vary enormously across the continent reaching 80-90% in some countries.

We'd like to address three stages, the actual arrest, police detention and the pretrial decision.

Firstly the arrest stage – in numerous instances arrests are either illegal or arbitrary: either because there is no legal basis in domestic legislation for the arrest - or because the domestic legislation is incompatible with regional and international standards. For example across the region many countries still have archaic, colonial era laws that enable the police to arrest people for crimes such as 'loitering' or 'vagrancy'. To look further at the problem APCOF – the African Policing Civilian Oversight Forum recently carried out a study to identify and examine the drivers that push the police to make arbitrary arrests. A number of key drivers were identified including, political interference; minimal capacity for forensic investigations; corruption; discrimination; and institutional targets that are based on the number of arrests.

All of these factors lead to large numbers, primarily of poor and marginalised people getting caught up in the criminal justice system – and once arrested they enter an abyss that is more or less impossible to exit.

Secondly looking at police detention - in most countries across the continent, the police may only detain people for up to 48 hours. Only in exceptional circumstances, set out by law, can this be extended. At the regional level the African Charter on Human and Peoples' Rights provides that:

Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

However despite a relatively strong legal foundation the practice is very different. A recent study in Zambia, conducted by the Open Society Foundations found that at 9 police stations, housing at the time of the research 242 suspects, many of the suspects had been held for 1 – 2 weeks and the longest period reported was 2 years. The report details entirely inadequate and overcrowded conditions, in cells that were built prior to independence.

Thus police custody is often no longer used as a precautionary measure, aimed at preventing the escape of persons suspected of having committed a serious crime, but serves as a type of preliminary punishment for all criminal suspects who lack funds to access legal assistance or to pay bond.

Thirdly looking at the pretrial decision unfortunately in most countries prosecutors, judges and magistrates often lack understanding of the purpose of detention and the way in which it relates to the presumption of innocence and thus rely on pretrial detention as the rule, rather than the exception.

Alternatives to pretrial detention do exist, for example, through community supervision programmes, bail conditions and people standing surety. In a number of countries paralegals are providing frontline legal assistance and assisting with bail applications. Yet despite positive results judges and magistrates remain excessively cautious and continue to commit thousands of suspects to detention when more suitable alternatives could have been utilised.

Compounded with poor record keeping and intolerably slow justice systems suspects find themselves being held in pretrial detention for lengthy periods and often without any knowledge of the crimes they are accused of.

At its 33rd session the African Commission on Human and Peoples Rights adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, The guidelines make reference to pre-trial detention . This includes

that unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.

At its 40th session, the African Commission on Human Peoples' Rights called on State Parties of the African Charter to "take measures in terms of article 1 and 5 of the African Charter to ensure that police forces respect the dignity inherent in the individual, during the discharge of their duties in the maintenance of law and order".

In order to further help address the challenges faced by Africa's police forces in achieving a rights-based approach to policing and to minimise the drivers that promote the excessive use of police and pretrial detention we call upon the African Commission to deepen this resolution and adopt a set of measures and indicators that will: guide

police agencies in their work; and serve as a template for state parties to report to the Commission and to conduct oversight visits.

Critical elements of such a set of standards should include;

Arrest must be carried out on grounds that are clearly established in law and which accord with international standards for arrest and must not be motivated by discrimination of any kind (including but not limited to, race, gender, nationality or political views).

Detention must be effected on grounds that are clearly established in law and which accord with international standards for detention, and must not be motivated by discrimination of any kind. Detention should be an exception rather than a rule and for as short a time period as possible. Police and the justice system broadly, must observe procedural safeguards,

Conditions of detention in police cells must accord with the right to life and treatment with humanity and respect for the inherent dignity of the human person. Standards of police conduct must be commensurate with the right to life and dignity Conditions of detention must accord with the right to a fair trial. Detainees must have the right to protection from ill-torture and treatment.

We further call on the Commission to

- establish a focal point responsible for policing and human rights within the Commission and ensure policing is a specific and consistent theme of state reports and country visits. Such a focal point will include representation from the police, the state and civil society.
- convene a high level continental conference on policing and human rights. We offer the expertise of our networks to the Commission to deepen human rights compliant and effective policing in Africa.

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Amnesty International (www.amnesty.org)

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations. Until every person can enjoy all of their rights, we will continue our efforts. We will not stop until everyone can live in dignity; until every person's voice can be heard; until no one is tortured or executed. Our members are the cornerstone of these efforts. They take up human rights issues through letter-writing, online and offline campaigning, demonstrations, vigils and direct lobbying of those with power and influence.

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.

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.

Cleen Foundation (www.cleen.org)

The CLEEN Foundation (formerly know 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.

Commonwealth Human Rights Initiative (CHRI) (www.humanrightsinitiative.org)

CHRI is an independent, non-partisan, international NGO, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as in-country laws and policies that support human rights in member states. CHRI works closely with local partners in the Commonwealth and particularly recognises the importance of South-South cooperation.

CHRI has developed strong programmes on Access to Justice (police reform and prison reform), Access to Information and Strategic Initiatives (general advocacy). CHRI's efforts are focused on systemic reform while also acting as a catalyst for action.

Human Rights Law Service (HURILAWS)(www.hurilaws.org)

HURILAWS is also a public policy think-tank and pressure group working towards partnership with multi-sector development and change actors to promote accountable and transparent governance in Nigeria. HURILAWS is the driver of the multi sector law group (MSLG), which is a multi disciplinary network of actors and organizations for democratic change in Nigeria,

ITUC-Africa (www.ituc-africa.org)

The African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) is a pan-African trade union organisation created in November 2007 following the merger of two former African trade union organisations, namely ICFTU-Afro and DOAWTU. ITUC-Africa has 16 million declared members (2007 figures) and 90 affiliated trade union centres in 47 African countries. The headquarters of ITUC-Africa is based in Lome, Togo. Human and trade union rights are issues central to its operations and engagement. It is our shared and highly held conviction that peoples' and workers' rights are central to the attainment of individual, community and national wellbeing, freedom and progress. Therefore, the commitment to defence, protect and promote human and workers' rights at the community and workplaces levels is at the heart of our work. Currently, ITUC-Africa has human and trade union rights networks of trade unionists across the five Regional Economic Community monitoring, reporting and supporting solidarity intervention efforts on human and trade union rights in active collaboration with allied non-state actors.

Moroccan Organisation for Human Rights (OMDH)(www.ondh.org)

OMDH offers education about human rights, as well as an active contribution to the protection of these rights, especially in cases of violation. OMDH offers solutions to complaints of abuse, and assistance and rehabilitation to victims of torture.

Muslims for Human Rights (MUHURI)

Muslims for Human Rights (MUHURI) is a Non Governmental Organisation (NGO) 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.

Open Society Justice Initiative (<http://www.soros.org/initiatives/justice>)

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. The Justice Initiative fosters accountability for international crimes, supports criminal justice reform, combats racial discrimination and statelessness, addresses abuses related to national security and counterterrorism, expands freedom of information and expression, and stems corruption linked to the exploitation of natural resources. Since 2009, the Justice Initiative is developing a Global Campaign for Pretrial Justice to promote alternatives to pretrial detention, expand access to legal aid services, and deploy paralegals to intervene earlier in the criminal justice process. Justice Initiative staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo and Washington, D.C.

The Paralegal Advisory service Institute- Malawi

The Paralegal Advisory Service started in Malawi in May 2000 as a partnership of Penal Reform International (PRI) with four Malawian NGOs, to provide legal assistance to people awaiting trial in prison and defend their legal and constitutional rights. It is currently a nation-wide programme,

deploying trained paralegals to provide legal education, advice and assistance throughout the criminal justice processes, from arrest to appeal, which complement and facilitate the work of the lawyers. In August 2007, the Paralegal Advisory Service Institute (PASI) was registered as an independent Malawian legal entity. It was set up as a Trust, "to make justice accessible to all people in Malawi through improving efficiency and effectiveness of the justice system and making it responsive to the needs of all users, particularly the poor and vulnerable".

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.

Penal Reform International (www.penalreform.org)

Penal Reform International is an international non-governmental organisation promoting penal reform worldwide. We work with penal reform activists, NGOs and governments to implement international human rights standards in criminal justice and penal systems in many different countries. We aim to reduce the unnecessary use of imprisonment and promote the use of constructive non-custodial sanctions that support the social reintegration of offenders while taking into account the interests of victims.

'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.'

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).