



AFRICAN REGIONAL ORGANISATION OF THE
INTERNATIONAL TRADE UNION CONFEDERATION
ITUC-AFRICA



SOUTHERN AFRICA
LITIGATION CENTRE



STATEMENT AT THE 51st SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS – BANJUL 18 April 2012

Madam Chair, honorable Commissioners, state delegates, ladies and gentlemen thank you for this opportunity to address the 51st Session of the African Commission on Human and Peoples' Rights.

You will recall from our inputs at the 50th session, that 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.

We focussed specifically on issues around arrest and police detention.

In your address, to a seminar we organised on the margins of the 50th session, Madam Chair you noted that police detention was the starting point of the criminal justice chain and that misuse, including arbitrary arrest, poor conditions of detention and disregard for the rule of law complicated later justice processes.

It was evident in your opinion that much more needs to be done to stem arbitrary arrests: this would require greater internal oversight and accountability by the police, coupled with independent oversight by domestic institutions such as National Human Rights Institutions and regional and continental bodies such as the Commission and the UN bodies.

You noted that the Commission in its oversight visits often comes across the blatant misuse of the rules around the maximum length of time a person can be kept in custody before being brought to court. This could be addressed by better oversight, improved management and better training. It would require working with and dialoguing with the police on how challenges can be addressed. Citizens need to be educated and empowered to uphold their rights and police provided with basic investigation techniques which take into consideration the resource scarce conditions of many African police forces.

In a number of countries visited by the UN Working Group on Arbitrary Detention, police lacked understanding about their role in carrying out arrest and were under the impression that they could both receive and give orders to carry out arrests on any basis – including orders from administrative authorities to arrest without suspicion of criminal activities or the production of an arrest warrant.

In a recent study conducted by APCOF into the legislative and procedural safeguards for police arrest and detention it was found that while arrest may have a legal basis in domestic law, domestic legal frameworks do not always accord with international standards.

Common drivers in the disparity between international and domestic standards of criminal justice include:

- high rates of criminality resulting in a 'get tough on crime' approach to policing and the articulation of police mandate and powers
- racial discrimination
- anti-terrorism legislation, states of emergency and administrative detention
- expansive, imprecise and discriminatory laws

Further, the reliance by police on arbitrary arrest (that is, arrest in contravention of domestic law) is also prevalent and has a number of identified drivers, including:

- Political interference;
- Reliance on confessions as the basis for criminal convictions;
- Racial and other forms of discrimination;
- Arbitrary interpretation of imprecise laws;
- Police corruption;
- Protection and punishment in the context of non-criminal events; and
- Inadequate oversight of police.

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 pre-trial detention, we call upon the African Commission to develop guidelines that will: guide police agencies in their work; and serve as a template for state parties to report to the Commission and conduct oversight visits.

Critical elements of such a set of standards should include:

- Arrests must be carried out on grounds that are clearly established by law, in accordance with international standards. Arrests must not be motivated by discrimination of any kind (including but not limited to, race, gender, nationality or political views);
- The subsequent decision to detain an individual must also be based on grounds that are clearly established in law in accordance 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 systems more broadly, must observe procedural safeguards;
- Conditions of detention in police cells must accord with the right to life and should respect the inherent dignity of the human person. Conditions should be in line with international and regional standards and detainees must have the right to protection from ill-treatment and torture.

We have had the opportunity between the 50th and 51st session to consult on the development of such guidelines and should the Commission so wish we are in a position to make available a preliminary drafts for consideration by the Commission in its private session.

We further call on the Commission to ensure all aspects of the police/ human rights interface is a specific and consistent theme of state reporting and country visits.

Sean Tait, Coordinator APCOF, sean@apcof.org.za

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.

Association for the Prevention of Torture (APT) www.apr.ch

The APT is an international non-governmental organisation (NGO) which envisions a world in which no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment.

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.

Cleen Foundation www.cleen.org

The CLEEN Foundation (formerly known as Centre for Law Enforcement Education) is a 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.

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 defend, 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.omdh.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.

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 (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 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.

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.

West African Civil Society Institute (WACSI) www.wacsi.org

WACSI's mission is to strengthen the institutional and operational capacity of Civil Society Organisations to engage in policy intervention and the promotion of democratic values and principles in West Africa. The Vision is to strengthen civil society organisations as strategic partners for the promotion of democracy, good governance and national development in the sub region. The role of WACSI is to serve as a resource centre for training, research, experience sharing and dialogue for CSOs in West Africa.

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).