



STATEMENT AT THE 52nd SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS – YAMOOUSSOUKRO 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.

Guideline 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.

Principles and Guidelines on Access to Legal Aid

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