

PROMOTING A RIGHTS-BASED APPROACH TO POLICE ARREST AND DETENTION

52nd ACHPR SESSION, OCTOBER 2012, COTE D'IVOIRE

12 October 10am Room 205 Felix Houphouet Boigny Foundation, Yamoussoukro

The over-use and poor conditions of police custody and pretrial detention have been identified as a prevalent but overlooked area of criminal justice reform in Africa. In order to address the challenges faced by Africa's police forces in achieving a rights-based approach to the use and conditions of police custody and pretrial detention the African Policing Civilian Oversight Forum and the Global Campaign for Pretrial Justice are advocating a set of guidelines on policing and pretrial detention for possible adoption by the African Commission on Human and Peoples' Rights (ACHPR). This side event follows a series of events at previous ACHPR sessions and will look specifically at possible implementation strategies at the national level and the broader work of the Global Campaign for Pretrial Justice.

Introduction

Sean Tait, African Policing Civilian Oversight Forum

The Opportunities and Challenges of Domesticating and Implementing a Set of Guidelines: Examples from Malawi, Burkina Faso and Sudan

- Thombiano Prosper - Burkina Faso Movement for Human Rights (MBDHP)
- Timothy Mbtambo - Center for Human Rights and Rehabilitation Malawi
- Ali Agab - African Centre for Justice and Peace Studies Sudan

Discussion and links to the Global Campaign for Pretrial Justice

Introduction

Sean Tait welcomed everyone to the meeting on behalf of the host organizations and thanked the Open Society Foundations Defendant's Rights Fund for support.

The over-use and poor conditions of police custody and pre-trial detention have been identified as a prevalent but overlooked area of criminal justice reform in Africa.

The side event builds on a series of initiatives over the last two years including:

- a scoping study looking specifically at the drivers of arbitrary arrest and detention;
- three country studies in Burkina Faso, Niger and Uganda;
- side events at prior ACHPR sessions to comment on a draft set of guidelines; and
- a side event held the previous day which examined past experience on the use and application of soft law.

This side event discussed police custody and pretrial detention at the national level with a view to exploring what strategies can be put in place to address pretrial detention at domestic level.

Pretrial Detention in Burkina Faso - Thombiano Prosper - Burkina Faso Movement for Human Rights (MBDHP)

At a legislative and policy level Burkina Faso has safeguards in place to mitigate against the excessive use of pretrial detention and the penal code provides for certain procedural safeguards and minimum conditions of detention. However, severe challenges exist regarding implementation and in recent years new laws have been introduced, such as those to tackle banditry, that have resulted in further abuses within the system. Provisions have also been introduced that allow for 'garde à vue' (police custody) to be prolonged for up to 5 days.

MBDHP has documented cases where suspects spend months in police custody, and when eventually transferred to prison they lack the appropriate records and become 'invisible prisoners', languishing for years in the hope that someone will be alerted to their situation.

Mass arrests, the use of firearms by the judicial police and the lack of legal assistance were highlighted as other areas of concern.

Among the strategies being looked at to draw attention to the issue and to address concerns is a campaign to domesticate the Convention against Torture and the Optional Protocol (OPCAT), to criminalize torture and provide for systematic review of places of detention. An ACHPR guideline on policing and pretrial detention would assist domestic initiatives by providing additional spaces for advocacy and by focusing promotion and prevention efforts.

Pretrial Detention in Malawi - Timothy Mtambo - Center for Human Rights and Rehabilitation

Timothy recounted a personal experience of arrest as a student leader, recognizing that unlike the majority of Malawians he had the knowledge and means to bring attention to his case and secure his release. Continued challenges in Malawi include the limited geographic location of the high courts, shortages of personnel, excessive use of detention for petty offences, the prevalence of torture, case backlogs, limited oversight mechanisms and the lack of availability of legal aid.

Importantly Malawi has recently demonstrated the importance of political will in addressing systemic problems. For example the appointment of a new Inspector General of Police, who has supported the introduction, and roll out, of a system of lay assessors who visit and report on conditions of police custody.

Pretrial detention in Sudan - Ali Agab - African Centre for Justice and Peace Studies

Ali explained how provisions in the Sudanese criminal procedure code allow for unlimited police and pretrial detention. Detention periods can be continuously renewed, and in the final instance, can be renewed indefinitely. In practice there is also the use of a so-called 'revolving door' where people set free by the courts are re-arrested at the court door.

A number of reforms are required in order to ensure basic standards and a minimal use of pretrial detention including: the creation of an independent custody monitoring system; a mechanism to monitor, prevent and combat torture; legislative revisions to render ineffective confessions extracted under torture; systematic investigation of allegations of torture; and rigorous training for police and local judicial personnel.

Discussion

The discussion drew attention to some key similarities across countries which re-emphasized the utility both, of a Global Campaign, as well as the importance of continental bodies such as the ACHPR in encouraging states to address, what are known to be consistent drivers of abuse at the arrest and pretrial phase of the criminal justice process.

Innovations were also highlighted, such as the significant reduction in Malawi of the percentage of the prison population held in pretrial detention, and ways in which positive trends can be harnessed.

Building on the previous side event on the use and application of soft law standards a number of further suggestions were made:

- To carry out a power / constituency mapping. Who are the key actors that need to be further engaged? How can we enlist the support of these actors and of the NHRIs?
- To identify key elements in the proposed guidelines that intersect with various human rights issues and the work of other ACHPR Commissioners e.g. HIV/AIDS, torture, women etc.
- To look at how the guidelines address victims' rights? And how we can better influence public perceptions.

- To continue to build coalitions amongst academics and civil society and maximize on the use of ACHPR sessions and other forums to promote the guidelines and build further support.

The session continued with an [update on the Global Campaign for Pretrial Justice](#) – recent legislative developments, networking and innovations in different countries and moved into a planning session building on the side events and a recent meeting in Uganda.

Update

Following the advocacy efforts of the participants in the Global Campaign, the ACHPR adopted a resolution at its 52nd session empowering the Special Rapporteur on Prisons and Conditions of Detention to develop guidelines on conditions of police custody and pretrial detention in Africa and report to the 54th session. See the [final communique](#) of the 52nd session and a report of the meeting and developments on the [Open Society Voices](#).

Participants

Name	Organisation
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