



African Policing and Civilian
Oversight Forum



African Commission on Human and
Peoples' Rights



Danish Institute for Human Rights

Report of the Side event

On

Police and Human Rights in Africa

Role of the African Commission

23 October 2013

Kairaba Hotel, Banjul, Gambia

This side event launched the 3rd Newsletter from the African Commission on Human and Peoples' Rights on 'Police and Human Rights in Africa', which focuses on the role of the African Commission in addressing police and human rights in its protection and promotion mandate. The event explored this issue further with the Commission and interested stakeholders.

1. Introduction – Lisbet Ilkjaer, The Danish Institute for Human Rights

The project partners welcome the publication of the third edition of the African Commission's newsletter, 'Police and Human Rights in Africa', which includes valuable contributions from three Commissioners – Commissioner Soyata Maiga, Commissioner Reine Alapini Gansou and Commissioner Lucy Asuagbor. The two previous editions of the newsletter included contributions from Commissioners Med Kaggwa and Maya Sahlil-Fadel. The Commission is an obvious forum for promoting a culture of human rights for the continent's police services, and since the 50th Ordinary Session, it has established both a Focal Point for Policing within the Secretariat (Mr. Tem Fuh) and this newsletter.

Policing and human rights is relevant to a number of Commission mandates and the attendance of Commissioner Kaggwa at this side event, as Special Rapporteur of Prisons and Conditions of Detention, Commissioner Sahlil-Fadel as Special Rapporteur on Refugees, Asylum Seekers, Migrants and IDPs in Africa, and Commissioner Lucy Asuagbor, Chairperson of the Committee of the Rights of Person Living with HIV/AIDS, highlights the extent to which this is a cross-cutting issue. Commissioner Kaggwa is working directly on policing issues in relation to his development of Guidelines on the Use and Conditions of Police Custody and Pre-Trial Detention. Policing issues have also increasingly featured in country missions and state reporting, which also contributes to making the challenge of rights based policing more visible.

2. Integrating police and human rights in the promotion and protection mandate of the ACHPR - Commissioner Maya Sahlil-Fadel, ACHPR Special Rapporteur on Refugees, Asylum Seekers, Migrants and IDPs in Africa

The object of today's side event is to discuss the role of the police in promoting and respecting human rights, and the role of the Commission in promoting policing that is human rights compliant.

Human rights and policing is a discussion that is usually had at the local level. At the international level, the issue is one of the rule of law: at the heart of the rule of law is the role played by police, and a discussion about the rule of law is a discussion about human rights. It is obvious to us that police who respect the rule of law are trained in human rights. The police are also at the heart of the criminal justice system, so when we talk about criminal justice procedures, we are talking about the role of police as community actors who have a mandate to promote and respect the human rights of each individual.

The Commission can play a number of roles in promoting policing that promotes and respects human rights:

- Promotion missions: these enable Commissioners to meet with government and police authorities to discuss the policing situation (including issues of training, working conditions and the role of the police).
- Thematic studies in accordance with article 45 of the African Charter: a study on the role of the police is part of the Commission's mandate. A study also includes interpreting the provisions of the Charter in terms of the role of police, which assists in the development of guidelines for policing that accords with the Charter. The Commission can also establish awareness raising operations to benefit the police in support of its thematic studies.
- Special Mechanisms: the Commission can deal with issues concurrently through the role of Special Mechanisms. There is a mechanism that deals indirectly with policing, namely the Special Rapporteur on Prisons and Conditions of Detention in Africa.
- State reports to the Commission: when Member States present their reports to the Commission, the Commission does not hesitate to ask for clarifications about key issues, such as the rule of law and the role of the police. Through the reporting process, the Commission can call upon States to strengthen the rule of law and policing, with a particular focus on human rights.

3. The role of NHRIs in promoting human rights compliant policing – *NGALIM Eugene Nyuydine, Commissioner, National Commission on Human Rights and Freedoms, Cameroon*

National Human Rights Institutions (NHRIs) generally refer to bodies established by governments to aid in the promotion and protection of human rights within their respective countries through: handling of complaints, conducting research, advocacy, and educational programs. As such, their mandate covers police compliance with human rights.

In Africa, NHRIs are grouped under the umbrella of the Network of African National Human Rights Institutions (NANHRI) created in 2007, with its Secretariat in Nairobi, Kenya. NANHRI supports, coordinates, facilitates, raises awareness, conducts research, and builds the capacity of NHRIs in areas of torture, business and human rights, conflict prevention, management and peacebuilding, equality rights issues and non-discrimination. Torture, in particular, is an important area in promoting human rights compliant policing, which stands out as a clear mandate for NHRIs.

Depending on the mandate of the various NHRIs, human rights police compliance work can be achieved through unannounced visits to police cells, collaborating with the police in the promotion and protection of human rights, intervening on certain cases, or providing training to police on human rights.

The National Commission on Human Rights and Freedoms (NCHRF) is Cameroon's NHRI. Until 1989, Cameroon was a one party State. In 1990, the multi-party system was adopted, permitting the creation of Civil Society Organisations (CSOs) and the National Committee for Human Rights and Freedoms. In order to comply with the Paris Principles, the NCHFR was created by Law No. 2004/016 of 22 July 2004.

According to section 3 of the 2004 law, the NCHRF has a protection mandate which provides it with the powers to:

- Receive complaints about human rights violations (688 complaints registered in 2010, 933 in 2011 and 700 in 2012).
- Intervene and defend victims of human rights violations.
- Summon all parties and/or witnesses for hearings (196 out of 209 summons were respected in 2011).
- Conduct investigations into human rights violations and submit reports of these investigations to the President of the Republic (74 field visits in 2010 and reports published annually).
- Request competent authorities to carry out investigations on cases of human rights violations and require the production of any document or evidence to this effect under common law (835 complaints registered in 2011, 357 letters sent to respondents and 306 to authorities).
- Conduct mediation and conciliation between parties in non-penal matters (26 conciliations obtained out of 35 cases received at the head office in 2012).
- Provide legal assistance or arrange for the provision of any assistance in accordance with the law.
- Carry out systematic visits to prisons and detention centres in the presence of the State Council or his representative. These visits can result in written reports addressed to competent authorities (several prisons and detention areas visited in 2011, 2012).
- Seize the Minister of Justice on cases of human rights violations under his competence.

The NCHRF also has a promotion mandate, which provides it with a mission to study all questions related to the protection of human rights, recommend measures to be adopted by state officials, raise awareness and promote a human rights culture (e.g. seminars, conferences, education, publication of Born Free Magazine), cooperate with local and international stakeholders and human rights agencies.

NCHRF has made a number of achievements in the promotion of human rights compliant policing. It has carried out training workshops for more than 750 Judicial Police Officers in collaboration with the United Nations Centre for Human Rights and Democracy in Central Africa (UNCHRD) and the United Nations High Commissioner for Refugees (UNHCR). NCHRF has also conducted a number of visits to police stations (11 in 2010, 14 in 2011, and 9 in 2012) and prisons (5 each in 2010 and 2011), as well as carried out field investigations in various police stations and gendarmerie brigades. These investigations have resulted in the release of individuals who were illegally detained.

In terms of achievements through the promotion mandate, the NCHRF has drafted and submitted a National Action Plan on the Protection and Promotion of Human Rights to the Government, which is still under review. It has also participated in media programs and signed a memorandum of collaboration with Central African National Human Rights Institutions with the objective of improving the human rights situation in general, and to reinforce the security system in the region in particular.

There are also challenges. There is insufficient collaboration with government institutions, not enough communication on the role and missions of the Commission, and insufficient regional representation (with offices in only 8 of the 10 regions). Financial constraints persist despite an

increase in the annual budget, there are not enough staff members to carry out investigations in police stations to investigate illegal detention, torture, etc., and there is a lack of adequate infrastructure. There is also a need for the law to be modified to reduce the number of Commissioners and make their positions permanent.

Recommendations to strengthen rights compliant policing include the adoption and monitoring of a four year action plan on policing and human rights between Member States and the African Commission, and a memorandum of understanding between NHRIs and the African Commission on integrating policing and human rights into their respective mandates.

4. The role of NGOs in police oversight and accountability – *Sean Tait, Coordinator, African Policing Civilian Oversight Forum (APCOF)*

In 2006, the African Commission passed a resolution that urged states to establish independent civilian policing oversight mechanisms where they do not exist, which should include civilian participation.

Police accountability is built on human rights standards, and an agreed philosophy of policing, and aims to enhance and maintain police effectiveness. Principles of accountability include an agreed set of systems, mechanisms, processes and procedures through which police performance is measured, evaluated and regulated – this system not only covers issues of behaviour, misconduct and legality, but also equity, adequacy and performance. Combining internal and external processes is important, but dependent on resources, capabilities and political will within and outside the police (including the judiciary, legislature, executive and civil society).

It is generally understood that good policing is democratic policing. This concept of democratic policing is characterised by the extent to which the police protect rights, deliver on their mandate, interact with citizens and to which the police organisations that uphold the rights of their members. Democracy includes a system of checks and balance, and accordingly, a democratic policing institution is one that is accountable to multiple audiences at multiple levels. These multiple levels are the ‘spheres’ of oversight, and should include cooperation and interrelationship between internal, external and civil society oversight, both before and after the fact.

In terms of civil society, this has broad meaning and includes not for profit organisations, unions, academia, media and other interests groups. Civil society plays an important role in stimulating debate, monitoring policing, ensuring information is disseminated, and encouraging participation. Often, progress on the oversight agenda is precipitated by an incident of abuse that rallies the public around the need for oversight, and the success of oversight will be the extent to which it is institutionalised within local communities.

Agenda issues for NGOs are diverse and include crime preventions, victim empowerment, women and children’s issues, activists on disability and the extractive industries, unions, political parties, etc. The strength of civil society is its ability to be aware of, document and bring attention to cases of police abuse, to advocate for reform and accountability, and to facilitate the democratic control of the police by acting as a means of both responding to, and preventing, police misconduct. However, this can be a double-edged sword, as civil society may also advocate for harsh or punitive

approaches to policing, particularly in places where there are high rates of violent criminality.

There are several elements of effective oversight mechanisms that require participation of civil society organisations, including community support – this is particular so where the police agency is not trusted. Civil society organisations can also play a role in oversight by receiving complaints, requesting information, referring matters to prosecution, and conducting and initiating their own investigations. Social media has also significantly expanded the role of civil society in police oversight.

Recommendations for the role of civil society in police oversight includes reactive measures (such as reporting abuses, and producing shadow reports for the UPR and African Commission) and proactive measures, such as:

- Advocating for effective police oversight.
- Advocating for standards of acceptable police conduct.
- Law reform.
- Shaping policing priorities.
- Support oversight bodies in their work, including in relation to research, disseminating challenges and successes, and legal literacy.

5. Discussion - Moderated by *Tem Fuh, Focal Point, Police and Human Rights, African Commission Secretariat*

Commissioner Med Kaggwa observed that often police receive low salaries, insufficient training and lack good morale. In Uganda, dialogue between human rights defenders and the military has resulted in gains in terms of openness and collaboration towards building a rights-based approach to security. The same can happen with police if stakeholders are persistent.

Commissioner Lucy Asuagbor spoke about the new Criminal Procedure Code in Cameroon, which aligns Cameroon law with international law on the subject, and the effectiveness of internal police oversight in the country, which is based on political will to promote accountability.

Feedback was received from the West African Network of Human Rights Defenders regarding the role of NGOs in strengthening the relationship between police and communities. They conducted a three year study to understand why police engaged in repressive behaviour, and found that the lack of awareness at all levels about human rights contributed to the breakdown in the relationship between police and communities, which is compounded by impunity for police misconduct and criminality. Building confidence between the police and communities is a long term struggle, and one which requires persistence from civil society organisations and NHRIs, and political will for reform.

It was also noted that across West Africa, NHRIs are in various stages of capacity to handle general human rights protections, particularly in relation to human rights and policing – more support and capacity is required to ensure that the region's NHRIs have the resources (in terms of personnel,

legal mandates, and financial resources) to play an oversight role.

The Commission on Human Rights and Good Governance, which is Tanzania's NHRI, reported that since they began building a relationship with the Tanzanian Police Force in 2004/5, they have come to recognise the importance of human rights training for the police.

A Tanzanian human rights lawyer reported that during their observation of policing practices, they have come to realise that there are three things to consider in terms of police monitoring: (1) to what extent is the police organisation autonomous from political leadership and responsive to external oversight; (2) how the police force is managed and trained; and (3) who should make the system accountable (i.e. are their layers of accountability).

The Independent Medico Legal Unit (IMLU), a Kenyan NGO, reported that the new Kenyan constitution provides a solid legal framework for democratic and rights based policing. However, since the passage of the National Police Act in 2011, not much has been done to improve vetting for police, which is an important issue in terms of holding police accountable for past misconduct. IMLU called on the African Commission to support the government, or push the National Service Commission, to ensure that the vetting is completed.

The Refugee Consortium of Kenya identified a neglected area of discussion as the psycho-social and trauma counselling provided to police. Policing can be dangerous and officer may have experiences that will traumatise them – therefore it is important to ensure that they are provided with the necessary support.

Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO), a Senegalese civil society organisation, called on the African Commission to establish clear guidelines for the police to assist in combating impunity for misconduct and brutality. The Commission could then make a program of work to assist states to implement those guidelines.

6. Conclusions and next steps - *Tem Fuh, Focal Point, Police and Human Rights, African Commission Secretariat*

It was noted that what had clearly come out of the discussion was that integrating human rights practices into policing through training is very important and that the Commission takes its mandate to promote and protect human rights seriously, and continues to make efforts to strengthen and develop its working methods to ensure that this thematic area is integrated into all aspects of the its work.

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