



## **‘From Law to Practice: Implementing Criminal Justice Standards’**

### **Report on side event held during the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice**

**Doha, Qatar**

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Important international and regional standards have been adopted over the last few years, with a particular focus on practical standards that aim to improve access to justice as the entry point to the criminal justice system. The Open Society Justice Initiative (‘OSJI’), together with partners from the African Policing Civilian Oversight Forum (‘APCOF’), Fair Trials International, the Latin American Network for Pretrial Justice (Red Regional para la Justicia Previa al Juicio), and the Human Rights Implementation Centre at the University of Bristol (collectively, ‘the Project Partners’), held a side event at the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice to discuss these developments.



The event was chaired by Martin Schönteich (OSJI), with presentations by Professor Malcolm Evans (University of Bristol and Chairperson of the United Nations Sub-Committee for the Prevention of Torture), Commissioner Med S.K. Kaggwa (African Commission on Human and Peoples’ Rights), Florence Simbiri-Jaoko (APCOF/University of Nairobi), Javier Carrasco Solis (Red Regional para la Justicia Previa al Juicio) and Jago Russell (Fair Trials International).

The side event was well attended by a range of stakeholders from Member States of the United Nations and civil society. What follows is a summary of each speakers' presentation. More information about the presentations is available from the Project Partners.

### **Martin Schönteich – Open Society Justice Initiative (Chair)**

Martin Schönteich (OSJI) provided an overview of the recent developments in international and regional law. This includes the European Union's Directives on Procedural Rights; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; the African Commission on Human and Peoples' Rights Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention; and the Inter-American Commission for Human Rights' Report on the use of pre-trial detention in the Americas.

Mr. Schönteich observed that the drafting and adoption of these standards has renewed interest in the challenges to rights-based criminal justice reform, and affirmed the critical need for all stakeholders to focus their attention on sustained implementation efforts. Mr. Schönteich introduced a brochure produced by the Project Partners entitled 'International & Regional Standards: 10 Steps Towards Change'. This brochure sets out the purpose, context and content of new standards, identifies the stakeholders responsible for implementation, and makes specific recommendations to the Executive, Parliament, Courts and Judiciary, Oversight Bodies/NHRIs/Professional Associations and Civil Society, and international and Regional Bodies.

Mr. Schönteich reflected on the global overuse of pre-trial detention, drawing on OSJI research that demonstrates clear links between the overuse of pre-trial detention and other human rights abuses, such as torture and ill-treatment. Following a video presentation on pre-trial detention (see <https://www.youtube.com/watch?v=gDf8GbIt5Mg>), he concluded by giving context for the discussions to follow, noting that the side event offers an opportunity to discuss how the growing body of regional and international norms can be used to promote reform of pre-trial detention practices worldwide.

### **Professor Malcolm Evans, University of Bristol and Chairperson of the United Nations Sub-Committee for the Prevention of Torture**

Professor Evans made his presentation on the role of the United Nations Sub-Committee for the Prevention of Torture ('UN SPT') in the implementation of the diverse body of international standards relating to the criminal justice process.

Professor Evans began by outlining the unique mandate of the UN SPT, which includes unannounced visits to places of detention, publication of confidential reports and practical dialogue with States Parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT'). This methodology is designed to promote harmonisation between normative standards and practice.

He expressed concern that although States Parties to the OPCAT should be encouraged to ratify and adopt international standards, they often shelter behind the commitment to these formal standards as though they also exist in practice, which is often not the case. He cautioned that the standards should not be lowered, but that innovative approaches to implementation are required to ensure that States Parties meet these standards in practice.

The role of the UN SPT in achieving this was described as multi-faceted. First, rather than generate statements of standards, the UN SPT focuses on working with the standards that are already in place to bring them into an operational context. Second, the UN SPT does not limit its recommendations to improving poor practices, but seeks to understand the barriers that exist within the criminal justice system (and why these barriers exist), and devise detailed recommendations for implementation of standards based on the unique context of each State Party.

Professor Evans concluded by reaffirming the role of the UN SPT as focusing on local contexts and challenges, and identifying and addressing the drivers to the problems in each country context, whether it is the legal framework, corruption, lack of training, a dearth of political will, inadequate transport for detainees, etcetera. The role of the UN SPT is therefore a practical contribution to the implementation debate – it provides local knowledge, focused context, close working relationships with local actors, and real partnerships – and takes the normative framework as a given. This is complementary to, and necessary for, other stakeholders' implementation efforts.

**Commissioner Med S.K. Kaggwa, Special Rapporteur on Prisons and Conditions of Detention, African Commission on Human and Peoples' Rights**

Commissioner Kaggwa made his presentation on the recently adopted African Commission Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines'). The Guidelines were adopted during the 55<sup>th</sup> Ordinary Session of the African Commission in May 2014 in response to growing concern about human rights abuses and poor conditions of detention in police custody and pre-trial detention across Africa. Commissioner Kaggwa noted that rights violations at the earliest stages in the criminal justice process have profound consequences for the rest of the criminal justice chain.

The Commissioner reported on the support this initiative has received from State Parties to the African Charter and civil society, and affirmed that the Guidelines are a reflection of the collective aspirations of stakeholders based on the extensive consultations undertaken by the Commission during its drafting. He also affirmed that the Guidelines are a progressive and innovative approach to improving justice outcomes, and seek to address the challenges faced at every stage of the criminal justice process.

The Commission's implementation strategy was introduced, which includes a range of technical support to stakeholders. Commissioner Kaggwa outlined the Commission's plan to provide oversight for the implementation of the Guidelines by State Parties, including through State reporting mechanisms and through the work of the Commission's special procedures. He concluded by provided detail on implementation work already started in selected countries, including Uganda, Tanzania, Malawi, Ghana, Côte d'Ivoire and Tunisia, which involves baseline studies, high-level dialogue and the development of strategic plans for national implementation.

**Florence Simbiri Jaoko – African Policing Civilian Oversight Forum (Board Member) and University of Nairobi**

Ms. Simbiri-Jaoko's presentation continued the discussion on the Luanda Guidelines, with a focus on the methodology for the development of the text, and a detailed description of the Guidelines' contents.

She cited figures on the scale of pre-trial detention across the world. The implications of excessive and arbitrary pre-trial detention affect over three million people on any given day, and 14 million people pass through pre-trial detention in the course of a year. She noted the indirect consequences for detainees' families, which makes the figures for impact significantly higher. She went on to present pre-trial detention numbers for Africa, broken down by region and country, noting that Africa has the highest number of pre-trial detainees expressed as a proportion of the general prison population of any continent in the world, at 41.3 percent.

Noting the various adverse impacts of excessive and arbitrary pre-trial detention in Africa, Ms. Simbiri-Jaoko detailed the consequences of pre-trial detention, including prison overcrowding, miscarriages of justice, reduced trust in the criminal justice system, and diversion of development funding. She also highlighted a number of drivers of excessive and arbitrary arrest and pre-trial detention, including poor investigation procedures, perverse incentives and arrest targets, poor case management, lack of access to legal aid, and corruption.

Participants were then taken through the contents of the Guidelines, which include arrest, police custody, decisions on pre-trial detention, custody registers, deaths in custody, conditions of detention, vulnerable groups, accountability and remedies, and implementation.

Ms. Simbiri-Jaoko concluded by identifying the advantages of adopting the Luanda Guidelines (uniformity for oversight agencies and reporting mechanisms, and ease of reference for police and prison officials), and the challenges to implementation (including lack of access to key services such as legal aid, and access to information). She called on all stakeholders to make concerted efforts at national and regional levels to create awareness of the Guidelines.

#### **Javier Carrasco Solis - Red Regional para la Justicia Previa al Juicio**

Mr. Solis' presentation shifted focus from the African continent to give insight into how abstract legal concepts are translated into reform in the Latin American context. Commencing with an overview of activities in Mexico and across Latin America, Mr. Solis went on to sensitised participants on recent developments in Inter-American standards and their implementation.

Mr. Solis noted that most of Latin America is undergoing significant criminal justice reform, with a shift from written to inquisitorial/oral justice systems, which provides an opportunity to introduce alternatives to pre-trial detention for the first time. After sharing statistics on pre-trial detention (the proportion of the prison population who are pre-trial detainees in Latin America is, on average, 40 percent), he identified the challenges and causes of excessive pre-trial detention on the continent. The causes reflected those listed by the previous speakers, although there was some difference in terms of the drivers. Notably, Mr. Solis explained that pre-trial detention is sometimes used as an anticipatory punitive measure, and that the reform processes across the continent has not always adequately addressed pre-trial release, or contributed to pretrial detention by introducing non-bailable crimes (i.e. crimes for which pre-trial detention is mandatory).

Against this backdrop of challenges, Mr. Solis went on to highlight work by the Inter-American Commission for Human Rights on making recommendations for improving pre-

trial detention. The Commission has reaffirmed pre-trial detention as a procedural measure of last resort when there is a real risk of flight or obstruction of justice. The Commission's report on the use of pre-trial detention in the Americas enumerated 64 recommendations to support implementation of pre-trial detention reforms, including in relation to state policies, use of alternatives to pre-trial detention, legal frameworks, conditions of detention, access to legal defence, judicial independence, and the collection and dissemination of statistics.

Mr. Solis highlighted implementation strategies his organisation, the Instituto de Justicia Procesal Penal, has adopted to promote the Commission's report, including advocacy, legal reform, training, court monitoring, and the development of pre-trial detention indicators. He noted that his organisation is moving away from traditional methods of monitoring prison populations and has developed indicators that are being piloted in Mexico. He concluded by calling on civil society partners to participate in implementation of normative standards, as civil society often has the valuable expertise to share with state agencies, and can provide specific solutions to support reforms.

### **Jago Russell – Fair Trials International**

The final speaker was Mr. Russell, who provided the European perspective on implementation of regional and international normative standards by discussing why the European Union ('EU') is becoming involved in criminal justice matters, and the importance of the EU standards.

He began by acknowledging the potential influence of the Luanda Guidelines in the European context, as Europe begins a discussion about pre-trial detention standards. He went on to explain that the EU's interest in criminal justice matters stems from its core principle of freedom of movement across the continent. With the movement of people comes cross-border crime and the need to promote cross-border cooperation, evidence-sharing and joint operations. By establishing standards for criminal justice, the EU can provide a basis for this type of cooperation. One of the key areas of cooperation is extradition, and the EU has increasingly recognised that not all signatories to the European Convention on Human Rights ensure rights protections in this context, with Mr. Russell noting that there have been over 500 cases where EU countries have been found to have violated the right to fair trial by the European Court of Human Rights.

Mr. Russell detailed the directives set by the EU to facilitate a rights-based cooperative framework, including in relation to interpretation and translation, right to information and access to a lawyer, noting that additional directives in relation to children, legal aid and the presumption of innocence are being proposed.

At the centre of the implementation strategy is the Legal Experts Advisory Panel ('LEAP'), a network of civil society organisations, defence lawyers and academics who promote implementation at the national and supra-national level. As with the Luanda Guidelines, the implementation strategy adopted by LEAP began before the adoption of the directives, to ensure that the directives met local needs and to promote ownership and awareness of the directives from the outset. LEAP has produced an implementation strategy which has resulted in the development of approaches to effective implementation of the directives, linking this to key practical issues (e.g. quality of interpretation, letters of rights, access to case files, remedies). The strategy will focus on transposition into law, through contribution to national legislative discussions on transposing the directives; support for litigation using the

directives at the national and regional level and gathering data and case studies, to inform the European Commission (responsible for ensuring compliance with EU law).

Mr. Russell expressed his support for the recognition by EU institutions of criminal justice as a priority, and their commitment to implementation. Although the EU is seeking to expand the range of directives, Mr. Russell noted that it is important for the existing directives to be implemented. He concluded by expressing the hope that it is possible to engage local civil society (and, crucially, also the legal profession) across Europe to support effective implementation, as implementation will not work if it is purely a dialogue between domestic governments and regional institutions.