

THE GLOBAL CAMPAIGN FOR PRETRIAL JUSTICE AFRICA REGIONAL RETREAT

3-5TH December 2010

Johannesburg - South Africa

Summary Retreat Report

This is a summary of the full report – please contact Kersty McCourt at the Open Society Justice Initiative kmccourt@justiceinitiative.org for more information.

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INTRODUCTION

The retreat brought together 30 organisations from ten countries in Sub-Saharan Africa as well as a number of international and regional organisations (see annex 3). It was convened by the Open Society Justice Initiative and the OSF Global Criminal Justice Fund as part of the ongoing Global Campaign for Pretrial Justice.

The timing of the retreat coincided with a critical juncture for the Campaign: based on initial consultations a number of research and pilot projects are underway to document the scale and consequences of the problem and demonstrate innovative, low-cost solutions; as the preliminary results emerge the consolidation and evolution of the Campaign is critical. The retreat aimed to address a number of questions specifically linked to this evolution:

- To what extent can the Campaign further contribute to individual programme goals and learn from the specific challenges faced in particular countries and regions?
- How can the Campaign develop further at the national and regional level?
- In what ways can we build regional resources, research initiatives and focal points?
- What strategies are needed to jointly target governments and donors and ensure complementary messages?

IN BRIEF

The retreat built on the strong energy, commitment and interest amongst organisations. Individuals noted that the Campaign objectives are closely linked to the practicalities of their day to day work and there was strong enthusiasm to build on this emerging forum of exchange and support. A number of specific trends can be identified:

- The SWOT analysis revealed organisations to have consistently built strong programmes and institutional relationships at the local level. Difficulties were faced when trying to access national level decision makers and thus address systemic problems.
- Momentum is developing at the regional level. Clear trends can be identified and changes are having an impact beyond national boundaries. Draft legal aid policies are, for example, being discussed for the first time in a number of countries and governments are increasingly recognising the problems of overcrowding and deplorable conditions of detention.
- A vast amount of information is being tracked and accumulated by organisations. How to effectively systematise this information and use it to influence policy makers presents more of a challenge.

The retreat covered a number of areas primarily:

- The operating environment
- The links between pretrial detention and torture, corruption, health and socio-economic development
- Litigation

- Documentation and developing advocacy materials
- Partnerships and planning

THE OPERATING ENVIRONMENT

Key points that emerged from the SWOT analysis:

- Organisations appreciate the dynamic and flexible way in which they are able to work.
- Many organisations identified the strong institutional relationships developed at the local level: they also recognized, however, that a lot of their work is dependent on individuals and that significant effort goes into continuously building new relations as personnel change.
- By contrast more difficulties were identified in accessing national level stakeholders and this impacted on the ability to effectively raise systemic problems.
- Across the board organisations found the prison service to be a strong ally but significant difficulties were faced with the police leading in some cases to stunted programme implementation.
- A lack of trust amongst some civil society organisations was identified as an obstacle to building strong advocacy coalitions.
- Challenges were faced in relation to donor priorities and funding modalities in particular the fact that civil society funds are increasingly being channelled through justice sector institutions.
- Law reform and policy making processes provide opportunities for civil society to bring evidence and policy ideas to the evaluation and drafting processes.

The retreat looked at a number of current reform processes: the Draft Law on Legal Aid in Sierra Leone; the new Kenyan Constitution; and an ongoing study on Access to Justice and Legal Aid in East Africa.

PRETRIAL DETENTION AND TORTURE, CORRUPTION, HEALTH AND SOCIO-ECONOMIC DEVELOPMENT

Papers on these four themes were commissioned as part of the Global Campaign for Pretrial Justice and were authored by leading experts in each respective field. The papers seek to demonstrate the spiralling consequences of excessive and arbitrary pretrial detention and engage allied communities. They are designed to be a starting point to spark further research, advocacy and action. A number of ideas emerged during the discussion:

- The papers provide a good basis for international advocacy and can be used effectively to support/complement national advocacy and project proposals. Many organisations identified the need for national level contextualization incorporating national legislation, current practices and identified gaps and specific advocacy oriented recommendations.
- Specifically on the socio-economic paper it would be useful to look at experiences and ways to engage economists and decision makers in the Ministry of Finance. Budget monitoring processes from other sectors might be instructive.
- Different approaches to introduce the concepts and findings to different audiences were discussed: serialised extracts for the media; concrete actions for training manuals and toolkits etc.
- Whilst recognising the merits of desegregating the issues many intersections were identified: the socio-economic dimension of corruption; bribes linked to threats of torture; the medical

complications arising from torture etc. A short document that articulates the interconnections and thus the full gravity of the problem would be useful.

LITIGATION

Three presentations that looked at individual cases and public interest cases inspired the session:

- What is strategic interest / public interest litigation
- Litigation on torture cases
- Combining service delivery with public interest litigation

DOCUMENTATION

This interactive session was premised on the '*advocacy feedback loop*'. How can we ensure that the information and lessons learnt from project implementation effectively contributes to policy change? Can the Global Campaign act as a catalyst in this process? The retreat collectively determined the type of information / 'ideal' information collected through client forms and what is done with this information.

A variety of information is being recorded either through open questions or standard tick boxes that enable a uniform assessment of responses e.g. re levels of education. This includes:

- Client information and contact details
- Case status, stage, assistance to date
- Family contacts / sureties
- Education / literacy
- Economic status
- Health status
- Questions re treatment / torture
- Specific questions re minors

ADVOCACY MATERIALS

Three groups put together outlines for: a country fact sheet on pretrial justice; a project summary; and a success story. For further information see the full retreat report.

PARTNERSHIPS

The discussions reflected a variety of ongoing partnerships as well as a need to think more innovatively about different ways to approach key target groups:

Communities: ongoing education and outreach initiatives include information sessions, radio programmes and the development of posters and materials that address common fears and misconceptions. In Uganda, for example, paralegals work with the police on a regular talk-back radio show that utilises the free airtime that the police receive. Particularly in close knit communities it is important to ensure that both accused and victims receive support whilst at the same time avoiding conflicts of interest – one way is through outreach activities and partnerships with community based paralegals or mediators.

Police: we need to better understand the policing discourse in order to identify the most effective entry points. As civil society organisations we rarely applaud the police or stand up for their rights. We need to look for change makers, utilise the skills of the police (e.g. during paralegal training sessions), and see how to use oversight mechanisms and existing codes of conduct (see planning sessions for work being coordinated by APCOF).

Government /Justice Sector: some organisations – particularly those that represent or host a network or justice / paralegal organisations – sit as a civil society representative at justice sector stakeholder meetings. This provides opportunities to input into planning processes, propose civil society consultations, raise ongoing challenges and gain a fuller perspective of the challenges faced by government.

The role of civil society in relation to the government was also discussed:

- Is it better to engage in service delivery or should we keep open a watch dog role?
- If we build collaborative partnerships with government how do we also maintain the independence of legal aid services?
- What kinds of coalitions can we build in order to raise issues that an individual organisation might not be able to raise on their own?
- How should organisations shift as governments take increasingly responsibility and what happens if services become bureaucratised or mediocre? Again the role of watchdog organisations comes into play i.e. the cycle of reform has to be continuously revisited.

Donors: challenges were identified re changing donor priorities, funds being channelled through government and difficulties to access the right people in donor agencies either at country or headquarters level. The group also discussed how as organisations we need to be more creative in our engagement with donors – beyond a proposal/reporting relationship. We need to better understand the constraints donors face, provide information that is relevant for future planning and utilise the potential convening power of like minded donors and initiatives such as the Global Campaign.

OUTCOMES AND NEXT STEPS

The retreat reflected a great richness of experience and identified many upcoming opportunities. Organisations are keen to take an active role in the activities and development of the Global Campaign - one group identified it as a *'think tank'* to support national level efforts, others saw a convening role to build a more open donor dynamic, bolster organizational efforts and help strategize at a regional level.

A number of **short to medium-term initiatives** emerged:

- Country 'Pretrial Justice' fact sheets
- Programme summaries / advocacy success stories
- National supplements to the linking papers including specific advocacy recommendations
- Specific advocacy oriented questions that can be incorporated into client intake forms
- Regular updates on the operating environment (building on the table at annex 4).

These activities have multiple purposes: to share more detailed information amongst our organisations, to profile successful initiatives, to support specific advocacy oriented activities and to feed into the development of national advocacy plans.

From the planning sessions a number of **Africa regional events** emerge as good targets for advocacy:

- The sessions and NGO forums of the African Commission on Human and Peoples Rights and the specific work of the Special Rapporteur on Prisons and Places of Detention. Partnering with APCOF for these events would build on the police/pretrial nexus (see planning sessions).
- The meeting of the African Correctional Services Association in Kampala – to use this as an opportunity to profile solutions and build a core constituency amongst reform minded leaders.

See further information in Annex 1 or in the full retreat report.

The Global Campaign is working to develop ways to facilitate and **promote information sharing**. In February 2011 CSPRI will start a newsletter similar to the [30 Days/Dae/Izinsuku](#) focused on pretrial justice. We will also start a list-serve to maintain communication amongst the retreat participants.

All of these activities require proactive inputs. Some require minimal financial investment and build on current programmes – others require more structured development for example:

- incorporation of the Global Campaign in individual organisational strategies
- planning and budgeting for cross regional advocacy initiatives
- development of joint project proposals
- development of national advocacy plans

The Campaign will continue to grow organically based on experience and inputs. The ideas and energy emerging from the retreat are thanks to everyone's commitment and we look forward to an exciting 2011 where we are collaboratively work to raise the voice of pretrial justice.

At the end of the retreat organisations adopted a statement in preparation for Human Rights Day 2010 on the global theme: Stand Up Stop Discrimination (see annex 2).

Annex 1: Regional and International Advocacy Opportunities 2011

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
REGIONAL												
CURE REGIONAL CONFERENCE – ABUJA												
AFRICAN COMMISSION SESSIONS / NGO FORUMS / SIDE MEETINGS												
ACSA REGIONAL MEETING UGANDA												
10 TH ANNIVERSARY OF THE SARPPCCO CODE OF CONDUCT												
REGIONAL '30 DAYS' PRETRIAL JUSTICE NEWSLETTER												
INTERNATIONAL												
ICPA CONFERENCE SINGAPORE												
UNODC - COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE												
UNODC – EXPERT MEETING AND INTERGOVERNMENTAL MEETING ON UN GUIDELINES ON LEGAL AID IN CJS												
UN - WORKING GROUP ON ARBITRARY DETENTION SESSIONS												
UN - COMMITTEE AGAINST TORTURE (CAT) SESSIONS												
UN - HUMAN RIGHTS COUNCIL												
20 TH ANNIVERSARY OF THE WORKING GROUP ON ARBITRARY DETENTION												
INTERNATIONAL HUMAN RIGHTS DAY												
SOME AFRICA RELATED GLOBAL CAMPAIGN ACTIVITIES (in addition to those above)												
PUBLISH AND LAUNCH LINKING PAPERS @ DIFFERENT EVENTS												
PRELIMINARY FINDINGS FROM RESEARCH IN MALAWI & SIERRA LEONE												
PILOTS IN MALAWI, NIGERIA AND SIERRA LEONE												
PUBLISH HUMAN RIGHTS & PTD REPORT												
COUNTRY STUDIES ON THE SOCIO-ECONOMIC IMPACTS OF PTD												
PRETRIAL JUSTICE UPDATE												

Annex 2: Human Rights Day Statement



PRETRIAL DETENTION AND DISCRIMINATION

As we celebrate Human Rights Day 2010 an estimated three million people around the world are behind bars awaiting trial. During the course of 2010 this daily cohort will likely have amounted to over nine million people many of whom will have spent months or even years in detention typically languishing under worse conditions than those convicted of crimes and sentenced to prison.

People from the poorest and most marginalised sectors of society are most at risk: they are more likely to be arrested and detained and then face multiple layers of discrimination at the hands of law enforcement agents. Manfred Nowak, the outgoing United Nations Special Rapporteur on Torture, expressed particular concern regarding the inhuman and degrading conditions of many places of detention, noting that '*victims are often already marginalised members of society who face double discrimination when they are detained*'. In many countries minorities continue to form a disproportionate part of the detained population and where, for example, disabled or intersexual people are arrested, discrimination is compounded by a lack of appropriate conditions and frequent exposure to humiliation and abuse.

To address these and related issues organisations have come together to work at a national, regional and international level on a [Global Campaign for Pretrial Justice](#). The Campaign seeks to ensure a more rational use of pretrial detention and a respect for the rights and dignity of pretrial detainees. It promotes early access to legal aid, alternatives to pretrial detention and accessible, fair and transparent justice systems.

From 3-5 December 2010, thirty four organisations met in Johannesburg, South Africa, to further develop the Campaign at the continental level. We join human rights advocates across the globe in the struggle against discrimination and draw particular attention to the multiple layers of discrimination faced by many poor and marginalised individuals who are unnecessarily and arbitrarily held in pretrial detention.

Kenya: Kituo cha Sheria, Independent Medico Legal Unit, Legal Resources Foundation, and Muslims for Human Rights (MUHURI), Liberia: American Bar Association, and Catholic Justice and Peace Commission, Malawi: Catholic Commission on Justice and Peace and Paralegal Advisory Service Institute, Mozambique: Eduardo Mondlane Legal Aid Clinic, Mozambican Human Rights League (LDH), and Mozambican Legal Aid Board (IPAJ), Nigeria: Cure, PRAWA, Nigerian Bar Association, and Rights Enforcement and Public Law Centre (Replace), Rwanda: The Legal Aid Forum, Sierra Leone: Timap for Justice, South Africa: African Policing Oversight Forum (APCOF), Civil Society Prison Reform Initiative (CSPRI), Indiba Africa, Southern African Human Rights Defenders Trust, and Southern Africa Litigation Centre, Uganda: Foundation for Human Rights Initiative (FHRI), Paralegal Advisory Service (PAS), and Uganda Prison Service, Zambia: Prisons Care and Counseling Association (PRISCCA), Regional: Interights, The Danish Institute for Human Rights, Unicef, Open Society Foundations: Global Criminal Justice Fund, Open Society Justice Initiative, Open Society Initiative for East Africa, Open Society Initiative for Southern Africa, and Open Society Foundation for South Africa.

Annex 3: Participants

Name	Organisation
KENYA	
Gertrude Angote	Kituo cha Sheria
Hussein Khalid	Muslims for Human Rights (MUHURI)
Vincent Kodongo	Independent Medico Legal Unit (IMLU)
Jacqueline Mbogo	Open Society Initiative for East Africa (OSIEA)
Jedidah Waruhiu Wakonyo	Legal Resources Foundation (LRF)
LIBERIA	
Momolu Kandakai	Catholic Justice and Peace Commission
Anthea Zervos	American Bar Association Liberia
MALAWI	
Peter Chinoko	Catholic Commission on Justice and Peace (CCJP)
Clifford Msiska	Paralegal Advisory Services Institute (PASI)
MOZAMBIQUE	
Firoza Gani	Centre for Legal Practice/IPAJ
Nadja Gomes	Mozambican Human Rights League - LIGA
Pedro Sinai Nhatitima	Centre for Legal Practice/IPAJ
NIGERIA	
Uju Agomoh	PRAWA
Felicitas Aigbogun-Brai	Rights Enforcement and Public Law Centre (REPLACE)
Joseph Daudu	Nigerian Bar Association
Osita Okoro	Nigerian Bar Association
RWANDA	
Andrews Kananga	Rwanda Legal Aid Forum (LAF)
SIERRA LEONE	
Simeon Koroma	Timap for Justice
SOUTH AFRICA	
Leopoldo Amaral	Open Society Initiative for Southern Africa (OSISA)
Abeda Bhamjee	Southern Africa Litigation Centre
Louise Ehlers	Open Society Foundation for South Africa
Andrew Faull	Institute for Security Studies
Berber Hettinga	Civil Society Prison Reform Initiative (CSPRI)
Anil Naidoo	Indiba Africa (Facilitator)

Jamil Mujuzi	Open Society Foundation for South Africa
Sean Tait	African Policing Oversight Forum (APCOF)
UGANDA	
Elinor Chemonges	Foundation for Human Rights Initiative / Paralegal Advisory Services Uganda
Robert Omita Okoth	Uganda Prison Service
ZAMBIA	
Godfrey Malembeka	Prisons Care and Counseling Association (PRISCCA)
<i>Philip Sabuni</i>	<i>Caritas Zambia</i>
REGIONAL	
Sylvester Uhaa	CURE
<i>Tito Byenkya</i>	<i>East Africa Law Society</i>
Bridget De Lay	UNICEF
<i>Alison Hannah</i>	<i>PRI</i>
Karol Limondin	The Danish Institute for Human Rights (DIHR)
Judy Oder	Interights
OSF	
Gene Guerrero	OSF-DC
Mary Miller-Flowers	OSF- Rights Initiatives
OPEN SOCIETY JUSTICE INITIATIVE	
Jamie Chandler	Justice Initiative
Madeleine Crohn	Justice Initiative
Marina Ilminska	Justice Initiative
Marion Isobel	Justice Initiative
Kersty McCourt	Justice Initiative
Zaza Namoradze	Justice Initiative
Denise Tomasini-Joshi	Justice Initiative
Martin Schönteich	Justice Initiative

(Those in italics were in the end unable to attend)

Annex 4: Country Summaries – The Operating Environment

	Constitutional Provision on Legal Aid	Legal Aid Policy	Legal Aid Law	Legal Aid Board	Public Defender Office	Number of Lawyers	Pro Bono Requirement	CS legal aid/paralegal network
MALAWI	Yes	Draft	New Law adopted 2011	Provided for in the Legal Aid Law	Yes	200	No	Informal networks around issues
MOZAMBIQUE	Yes	Yes	Yes	Yes	Yes	700 (100 full time)	No	Yes
SOUTH AFRICA	Yes	Yes	Yes. Paralegal regulation pending	Yes – Legal Aid South Africa	Yes	20,000 (1700 working for Legal Aid South Africa)	Yes	National Alliance for the Development of Community-based Advice Offices (NADCAO)
ZAMBIA	Yes	No	Yes	Yes	No	700	Under the Law Association of Zambia (not mandatory)	Paralegal Advice Network (PAN)
LIBERIA	Yes	Draft	No	No	Yes	550-600	No	Yes
NIGERIA	Yes	No – Legal Aid Council proposed a policy	Yes (the current law is under review)	Yes: Governing Council	Yes in some states – e.g. Lagos	73,000 +	Yes recently introduced by the Nigerian Bar Association	Several networks organised around themes
SIERRA LEONE	No	Yes	Legal Aid Bill should be adopted in 2011	No – but provided for in draft	No	200-250	No	Ad hoc initiatives around activities

KENYA	Yes 2010 Constitution (in criminal cases if substantial injustice)	Draft	Draft	No	Yes pilot through NAPEAP pilot projects	8066 (2009) 4200 hold practicing cert.	Yes (through the Law Society of Kenya but requirements not specified)	Paralegal Support Network (PASUNE)
RWANDA	Limited (in criminal proceedings to a fair and public hearing + all the necessary guarantees of defence)	No – process is starting	No	No	No (but draft appended to the law on the bar – may lead to a PDO once passed)	611	Yes (but requirements specified)	Legal Aid Forum
TANZANIA	No (right to a fair hearing – but no direct mention of legal assistance)	No	No	No	No	1118 (2009) 897 hold practicing certs. Zanzibar approx 40 hold a practicing certificate	Yes under the Tanzania Law Society but not mandatory and only for civil cases	Tanzania Legal Aid Providers (TANLAP) / Tanzania Paralegal Network (TAPANET)
UGANDA	Limited (criminal cases with death or life imprisonment)	Draft	No	No – but Uganda Law Council	Yes pilot through justice centres	3645 (2009) 1200 hold a practicing certificate	Yes pilot phase	Legal Aid Service Providers Network (LAPSNET)