



Commemoration of the Africa Pretrial Detention day in the context of Covid -19

Press release

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The Network of African National Human Rights Institutions (NANHRI) is membership organisation of 46 National Human Rights Institutions in Africa (NHRIs). We support the establishment and strengthening of NHRIs in Africa to effectively discharge their human rights mandate as per the Paris Principles.

Today, April 25, 2020, the continent, led by the Network of African NHRIs, is commemorating the African Pre-trial Detention Day. Members of the Network of African NHRIs have been commemorating this day after the adoption of the Yaoundé Declaration¹ on October 23, 2015 during the 10th Biennial Conference held in Yaoundé, Cameroon. The Declaration was preceded by the adoption of the Guidelines on Arrest, Police Custody and Pretrial Detention, also known as the Luanda Guidelines, by the African Union Commission on Human and Peoples' Rights in 2014.

This fifth commemoration of the Africa Pretrial Detention Day happens when the globe is struggling to contain the novel Corona virus (Covid-19)- a highly infectious disease which emerged in December 2019.

As of April 23, 2020, Africa had reported 26,899 Covid-19 cases, with 7,350 recoveries and 1,265 deaths².

To combat further spread of this highly contagious disease, movement restriction measures have been put in place, with social distancing and personal hygiene being at the top of the list. In the practice of social distancing, governments have instituted curfews, states of emergency, and lockdowns. Suspected cases of Covid-19 have been isolated or quarantined. This has, however, been abused by security agents, who have beaten and tortured those found to be in violation of the movement restriction measures, with more others being treated as suspects for Covid-19 cases, therefore, forcefully quarantined.

¹ <https://www.nanhri.org/resource-centre/declarations-2/>

² <https://africanarguments.org/2020/04/23/coronavirus-in-africa-tracker-how-many-cases-and-where-latest/>

In line with these measures, visiting of prisons and detention areas have been suspended to prevent the spread of the virus into these facilities. This is, is however, not a lasting solution as most prisons and detentions in Africa remain congested.

The congestion is further exacerbated by petty offenders and pretrial detainees. In Africa, there are at least 296,098³ pre-trial detainees. Some of them have been under detention for months, and even years without trial or their cases are dragging in courts. Some of those in this situation are petty offenders at a time when most of these facilities are holding more than three times their recommended capacity.

The risk of holding such high numbers of people in detention when social distancing in a critical practice in defeating Covid-19 may derail the war against the pandemic. As critical players, NHRIs have a mandate of supporting the States in fulfilling their human rights obligations at all times including this moment of a health emergency.

Even as the measures instituted to combat Covid-19 are implemented, we urge the NHRIs in collaboration with State agencies to ensure:

1. No one is subjected to torture and other inhuman cruel and degrading treatment or punishment during these exceptional circumstances and emergencies threatening the continent;
2. That measures taken to combat Covid-19 in places of detention adhere to the “Do no Harm and “Equivalent of Care “principles. It is important that there is transparent communication to all persons deprived of liberty, their families and the media concerning the measures being taken and the reasons for them;
3. That national preventive mechanisms (NPMs) continue undertaking their mandates by also monitoring the implementation of the movement restriction measures. It is particularly important at this time that NPMs ensure effective measures are taken to reduce the possibility of detainees from being subjected to inhumane and degrading treatment;
4. That as per the [Optional Protocol](#) to the Convention Against Torture, people in quarantine are not treated as criminal detainees;
5. States to consider thoroughly screening and releasing petty offences pre-trial detainees unconditionally as one of the ways of decongesting these facilities;
6. Alternative solutions to taking to custody of petty offenders be instituted such as warning and free police bond and bail to limit congestion in these already strained facilities.

Further, we recommend that those under quarantine are:

- a) Treated at all times as free agents, except for the limitations necessarily placed upon them in accordance with the law and on the basis of scientific evidence for quarantine purposes;
- b) Held in well-spaced facilities to permit internal freedom of movement and a range of purposive activities and also reduce possibility of community transmission;

³ <https://www.prisonstudies.org/sites/default/files/resources/downloads/wptribl.pdf>

- c) Able to benefit from the fundamental safeguards against ill-treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of their being in quarantine, in a manner consonant with their status and situation while in this de facto form of deprivation of liberty,
- d) Not subjected to any form of marginalisation or discrimination, including once they have returned to the community;
- e) Offered appropriate psychological support during and after their period of quarantine;

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