

Written version of the oral statement made on 1 September 2014 by Ulrik Spliid, Senior Legal Advisor, Danish Institute for Human Rights, at the Global Consultation on the Right to Challenge the Lawfulness of Detention before Court, 1-2 September 2014 in Geneva

The Danish Institute of Human Rights (DIHR) is Denmark's A-accredited National Human Rights Institute. Quite uniquely among NHRIs, the Danish Institute for Human Rights is mandated to work globally in addition to its work in Denmark.

The Danish Institute for Human Rights has worked with the African Commission on Human and Peoples' Rights for many years. Currently, we are in a partnership with the African Commission on human rights and police, also including the African Policing and Civilian Oversight Forum (APCOF), an African NGO. In that respect the Danish Institute for Human Rights was involved in preparing Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa. These Guidelines were adopted at session in May of this year. During October 2014 they will be available in English, French, Arabic and Portuguese. The English version has been shared with the Working Group on Arbitrary Detention.

The Guidelines deal with many of the issues discussed today. They set out clearly the right to *habeas corpus*. In addition the Guidelines clarify many of the safeguards important to make *habeas corpus* a reality, such as the right to legal assistance, to translation, to be informed of the reason for detention etc. The Guidelines also make certain demands of the judicial decision, such as setting out a duty to give clear reasons for the judicial decision.

In general, the Guidelines have many interesting provisions, including with regard to *habeas corpus*. Since the Guidelines are so new – by far the most recent of soft law documents dealing with this issue – and were drafted in a most inclusive manner, involving states and civil society in addition to the African Commission and with support from e.g. UNDP, we would encourage to Working Group to take inspiration from them. Also, many efforts were put into ensuring that the Guidelines reflect and are fully compatible with the various legal systems and traditions in Africa, systems and traditions mirroring most of the systems and traditions on global level. In our view therefore, even as a Northern European NHRI, the Guidelines are eminently relevant for the present work of the Working Group.

There is already close cooperation between the UN human rights system and the African Commission, e.g. between Special Procedures at the two levels. It will be a further encouragement to the African Human rights system if the work being done at the African level is seen to feed directly into global standard setting.

I wish to highlight one thing that is not found in many documents of this nature: The Guidelines not only refer to lawyers but also mention "other legal service providers". In many countries there

are simply not enough lawyers. Or the lawyers are not prepared to do this kind of work. To be realistic, paralegals are needed to play a role. Without minimizing the importance of lawyers, the use of paralegals are thus acknowledged and encouraged by in the Guidelines. We would hope that the work to elaborate guidelines and principles on *habeas corpus* takes the same pragmatic approach.

Further, to follow on Mr Nowak's presentation, the Guidelines underline that the judicial authority shall specifically consider and pronounce on whether alternatives to detention have been considered. This would also seem to be directly relevant to the present work of the Working Group.

Finally, to follow up on Mr Pollard's presentation, the Guidelines set out, quite similar to Mr Pollard's recommendations, a fairly exhaustive list of remedies.

Thank you.