

# SCHRPA ACTIVITY REPORT



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A report for the Commission on Human Rights & Public Administration

## PRESENTATION OF A REPORT ON THE STATE OF PROLONGED DETENTION PERIODS FOR TRIAL AWAITING DETAINEES IN THE KINGDOM OF ESWATINI

### Introduction to the assessment

#### Background

The Commission on Human Rights and Public Administration/Integrity (CHRPA) is mandated to investigate complaints concerning the alleged violation of fundamental rights and freedoms under the Constitution. In pursuing this mandate, the Commission received complaints from 133 trial awaiting detainees from seven correctional facilities around the country, who were concerned that they had spent unreasonably long periods in custody whilst awaiting the finalization of their cases.

In order to ascertain the causes and the magnitude of this problem, the Commission undertook an investigation which commenced in November 2016 and concluded in March 2018. Subsequent to the investigation, an assessment report was prepared with the support of various key stakeholders who were consulted on the issues that were raised by the complainants.

The Chief Justice, Judiciary, Registrar of the High Court, Director of Public Prosecu-

tions, Attorney General and the Ministry of Justice (MoJ) were consulted and made contributions to the draft report. Alongside this process, the Office of the Chief Justice was engaged to provide immediate redress to the complainants and since the process started, significant progress was noted as many of the cases were finalized and some of the bottlenecks addressed. For instance, the Magis-

cases, only 46 remained unresolved. The findings were incorporated in the main report which was then validated on the 5<sup>th</sup> of July 2018 by various stakeholders which included Civil Society Organizations (CSOs). This report presents the events of the



**Commissioner Sabelo Masuku during his welcoming address**

trate officers were ordered to visit inmates in remand centres to assess their cases and ensure that they were finalized.

As a way of tracking progress, the Commission undertook a follow-up visit in March 2018, where it was noted that out of the 133

meeting with stakeholders and also captures a way forward for this project.



**Dignitaries : From left—DPP Phila Dlamini, PS Loraine Hlophe, Minister of Justice Senator Edgar Hillary & Commissioner Sabelo Masuku.**

“to contribute to enhanced human rights perspectives in the administration of justice”

#### Objectives of the meeting

*The purpose of the event was to validate the report, consolidate further inputs, promote better coordination of the criminal justice stakeholders, and to contribute to enhanced human rights perspectives in the administration of justice in the country.*

#### Opening Remarks - Commissioner Sabelo Masuku

The meeting was opened by the Commissioner and chairperson of the Commission, Mr Sabelo Masuku who thanked the various stakeholders who contributed to the report and further appreciated the support that was received from the Correctional Services during the assessment of the seven correctional facilities. Mr Masuku noted that, trial-awaiting detainees were faced with numerous challenges which results to prolonged detention and

violation of their rights to a speedy hearing. He further expressed that the right to a fair hearing was protected by the Constitution and other international human rights instruments which were signed and acceded to by the country. He reaffirmed the concluding observations of the United Nations Human Rights Committee of 23 August 2017 wherein the Committee urged the country to pass legislation on the provision of legal aid.

The Commissioner fur-

#### Noted key officials during the event

- Minister of Justice
- Representative of Chief Justice
- Deputy Attorney General
- Director of Public Prosecutions
- Principal Secretary MoJ
- Under Secretary MoJ
- Assistant Commissioner General - Correctional Services
- Assistant National Commissioner – Police Services
- Commissioners – Human Rights Commission
- Principal Magistrates Registrar of the High Court
- Directors and officials from CSOs
- Media Personnel



ther urged the participants to work collaboratively with the Commission in finding a sustainable solution to the access to justice challenges and further assured that the Commission working around the clock to provide redress for the affected inmates. He then expressed appreciation to the European Union (EU) and the Coordinating Assembly of Non-Governmental Organizations (CANGO) for their generous support in providing resources for the meeting and welcomed the participants.

## Report presentation – Mr Phumlani Dlamini

The report was presented by the Commission's Legal Advisor, Mr Phumlani Dlamini who said that the purpose of the exercise was to assist the effected institutions to develop and strengthen their systems to ensure that cases are finalized within the shortest possible time and thereby ensuring that the right to a speedy hearing becomes a reality for detained persons.

Mr Dlamini said that the inmates who were interviewed during the assessment stated both legislative and institutional challenges which were attributable to the delayed trials. For instance with regard to inmates in the Criminal Mental Health Centre, it was observed that the Criminal Procedure and Evidence Act 67 of 1938 inhibited inmates with a mental disability from accessing justice since it did not provide for processes to be fol-

lowed in dealing with mentally disabled suspects after they have recovered.

He explained that inmates who are certified as being mentally stable by medical practitioners were usually not considered for parole and end up languishing in jail for indefinite periods.

## Inefficient Judicial officers and Court staff

The report noted that some of the prolonged detentions were attributed to the absence or inefficiency of judicial officers and court personnel. In this regard, it was noted that fourteen (14) inmates complained that their cases were not finalized due to the failure by the prosecution to produce witnesses, whilst thirty one (31)

inmates complained that their cases were not proceeding due to the transfer, removal or death of the presiding officer.

According to the report, forty two (42) inmates had spent more than twelve (12) months waiting to be committed to the High Court for their cases to be processed. This was particularly the case for

inmates who are charged with serious offences like murder. Whilst it was noted that six (6) inmates were waiting for judgment and sentencing, it was observed that during the second phase of the assessment which took place in March 2018, this problem had been addressed

## More unfinished cases

Mr Dlamini explained however, that despite the positive improvement that was observed with regard to the 133 cases, the problem still persisted as the statistics had almost doubled when the second assessment took place.

The report made six recommendations which were addressed to different stakeholders and aimed at providing a holistic solution to the problem. The report urged for the strengthening of the criminal justice stakeholders' forum which brings together

institutions working on the administration of justice to address bottlenecks and emerging issues in the delivery of justice.



*A section of the participants during the presentation*

## **A call for the adoption of legal aid legislation**

The report recommended for a balanced recruitment of court officials and the provision of court rooms in order to ensure that matters are finalized within the shortest possible time. In light of the fact that judicial officers, particularly at the Magistrates Court level are usually transferred from time to time, it was recommended for the judiciary to develop a strategic way of effecting these transfers so as to ensure that part-heard cases are finalized.

In addition, the report also advocated for the

strengthening of the case management system in order to track overdue cases and ensure that inmates under remand detention access justice in a timely manner. Since many of the inmates who formed part of the assessment did not have legal representation, it was recommended that the ministry of justice should expedite the promulgation of a legal aid law which would guarantee that indigent persons have access to legal representation.



*Mr Phumlani Dlamini presenting.*



## Plenary & Way Forward – Moderated by Ms Linda Nxumalo – Commission Executive Secretary.

During the plenary session, the following issues emerged;

1. There is a need for the strengthening of the criminal justice stakeholders' forum to include the participation of CSOs and the establishment of a permanent secretariat to coordinate its activities.

2. The Ministry of Home Affairs did not form part of the stakeholders for the project yet it also plays a key role in the administration of justice especially for illegal immigrants who often languish in prison facilities pending deportation.

3. There is a strong need for strengthened collaboration between the Commission and CSOs in order to make up for capacity gaps and leverage on expertise and resources.

4. The Commission should

undertake a comprehensive assessment that will look into the treatment of inmates in the correctional facilities in future assessments.

5. The Correctional Services must allow CSOs to conduct assessments in detention centres; this should be the case especially for organizations working with inmates.

6. There is a need for the establishment of a Law Reform Commission in order to ensure the comprehensive review of the penal code and other legislations which offend the Constitution, regional and international human rights instruments. This is particularly relevant when addressing bail and surety issues which are usually determined at the discretion of the presiding officers.

7. The MoJ must expedite the promulgation of the Human

Rights and Public Administration Bill in order to ensure the effective operations of the Commission.

### Way Forward

1. The meeting agreed that the Commission will consolidate the recommendations and propose responsible institutions to implement the actions and then share the final report with all the participants.

2. It was agreed further that issues raised by the participants will be incorporated in the final report before printing and dissemination of the report with the criminal justice stakeholders' forum.

3. The Commission will conduct yearly assessments and continue to engage stakeholders.

## Minister for Justice pledges support

The minister commended the Commission on the report and acknowledged it as a milestone since it presented the extent of the challenges faced by the criminal justice system. He noted with appreciation the cooperation which was displayed by the various departments during the preparation of the report and implementation of some of the recommendations.

The minister further pledged support to facilitate the implementation of the recommendations and encouraged the stakeholders to take active participation in the criminal justice stakeholders' forum. He

then thanked EU and CANGO for supporting the event and assured that the ministry will continue with processes to ensure that the Legal Aid Bill is passed by the 11<sup>th</sup> Parliament.

In closing, the minister noted that the human rights situation in the country was improving and commended efforts and initiatives by development partners and CSOs which has contributed to the positive developments. He then thanked the participants for taking part in the event and pledged his full support in taking the recommendations forward.



**Minister of Justice Senator Edgar Hillary making closing remarks.**

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