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## Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa

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## PREAMBLE

**The African Commission on Human and Peoples' Rights (the Commission) meeting at its 55<sup>th</sup> Ordinary Session, held from 28 April to 12 May 2014 in Luanda, Angola:**

**Recalling** its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

**Recalling** the Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52<sup>nd</sup> Ordinary Session in October 2012;

**Recognising** the mandate provided to the Special Rapporteur on Prisons and Conditions of Detention in Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52<sup>nd</sup> Ordinary Session in October 2012;

**Recalling** the Resolution 100 on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System adopted at its 40<sup>th</sup> Ordinary Session in November 2006;

**Noting** Articles 2, 3, 4, 5, 6, 7 and 26 of the African Charter on Human and Peoples' Rights on the rights to life, dignity, security, fair trial, and the independence of the judiciary;

**Noting further** its mandate under Article 45(1)(b) of the African Charter on Human and Peoples' Rights "*to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation*";

**Concerned** by arbitrary, excessive, and at times abusive recourse to police custody and pre-trial detention prevalent in several States Parties to the African Charter on Human and Peoples' Rights, characterized by weak criminal justice systems;

**Acknowledging** the vast differences between states in terms of legal systems, political and historic influences on the use and conditions of detention, socio-economic and geographical conditions;

**Acknowledging** that individuals in police custody and pre-trial detainees in many African countries experience arbitrary limitations on their rights, poor health conditions and are subject to torture, inhuman and degrading treatment or punishment;

**Noting** that pre-trial detention disproportionately impacts the vulnerable and marginalised who are unlikely to have the means to afford legal representation and assistance or comply with conditions of police bail or bond, and who in some cases may be detained through the justice system in psychiatric hospitals, departments or institutions both inside and outside of prisons and detention centres;

**Recognising** that police custody and remand facilities in many African countries lack appropriate infrastructure and budget and provisions for providing to the essential needs of detainees during custody;

**Recognising further** that arrest, detention and conditions of police custody in many African countries are characterized by lack of accountability, poorly paid and under-resourced police, malfunctioning of administration of justice, including the lack of independence of the judicial service system, the excessive and disproportionate use of force by the police, the lack of registration and monitoring systems for keeping track of police detention, systemic corruption and the lack of resources, all of which contribute to the absence of the rule of law;

**Concerned** by the lack of effective and/or appropriate monitoring mechanisms and independent policing oversight agencies;

**Recognising** the need to formulate and lay down principles and guidelines to further strengthen the criminal justice system in States Parties with regards to police custody and pre-trial detention, and to ensure compliance with international norms and principles by the police and other law enforcement agencies;

**Hereby adopt** the following Guidelines on the use and conditions of police custody and pre-trial detention in Africa:

## **I ARREST**

### **1. General provisions**

- a. For the purpose of these Guidelines, ‘arrest’ refers to the act of apprehending a person for the alleged commission of an offence, or to the action of a competent authority to arrest and detain a person as otherwise authorised by law.
- b. Everyone has the right to liberty and security of the person. Detention must always be an exceptional measure of last resort. No one shall be subjected to arbitrary or unlawful arrest or detention.
- c. Where appropriate, particularly for minor crimes, efforts should be made to divert cases away from the criminal justice system and utilise recognised and effective alternatives that respect applicable international law and standards. Alternatives to arrest and detention should be promoted under a framework that includes reasonable accommodation for persons with disabilities, and a framework that promotes the best interests of children in conflict with the law.

### **2. Grounds for arrest**

- a. Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.
- b. Arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.

### 3. Procedural guarantees for arrest

- a. Arrests shall only be carried out by police or by other competent officials or authorities authorised by the state for this purpose, and shall only be carried out pursuant to a warrant or on reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.
- b. Officials conducting an arrest must clearly identify themselves and the unit to which they belong by showing an official identity card which visibly displays their name, rank and identity number. Any vehicles used shall have clearly visible number plates and any other required or legally prescribed identity markers or numbers.
- c. The lawful use of force and firearms shall be a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest. If the use of force is absolutely necessary in the circumstances:
  - i. The level of force must be proportionate and always at the most minimal level necessary;
  - ii. Additional restrictions on the use of firearms shall be prescribed by law and require that their use be strictly limited to the arrest of a person presenting an imminent threat of death or serious injury; or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest; and
  - iii. The use of force shall be strictly regulated under national law and in conformity with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- d. Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:
  - i. For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the suspect.
  - ii. Inform suspects of the reason for the search prior to the conduct of the search.
  - iii. Make a written record of the search, which is accessible by the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.
  - iv. Provide a receipt for any items confiscated during the search.

- v. Ensure that strip searches and internal body searches are only conducted in private.
  - vi. Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order.
- e. Arresting authorities shall maintain, and provide access to, an official custody register in strict accordance with Part IV of these Guidelines.

#### **4. Rights of an arrested person**

The following rights shall be afforded to all persons under arrest:

- a. The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.
- b. The right to be informed of the reasons for their arrest and any charges against them.
- c. The right to silence and freedom from self-incrimination.
- d. The right of access, without delay, to a lawyer of his or her choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions.
- e. The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody.
- f. The right to contact and access a family member or another person of their choice, and if relevant consular authorities or embassy.
- g. The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.
- h. The right to information in accessible formats, and the right to an interpreter.
- i. The right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court.
- j. The right to challenge promptly the lawfulness of their arrest before a competent judicial authority.
- k. The right to freely access complaints and oversight mechanism.
- l. The right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities.

## **5. Notification of rights**

At the time of their arrest, all persons shall be informed of the rights set out in section 4, orally and in writing, and in a language and format that is accessible and is understood by the arrested person. Authorities shall provide the arrested person with the necessary facilities to exercise the rights set out in section 4, above.

## **II POLICE CUSTODY**

### **6. General provisions**

- a. Detention in police custody shall be an exceptional measure. Legislation, policy, training and standard operating procedures shall promote the use of alternatives to police custody, including court summons or police bail or bond.
- b. States should establish measures to promote transparency with regard to police custody, including inspections by judicial authorities or an independent body and lay visiting schemes involving local community representatives and legal and health personnel.

### **7. Safeguards for police custody**

- a. All persons detained in police custody shall have a presumptive right to police bail or bond. States shall ensure that competent authorities and officials within the state's criminal justice system authorised to grant police bail or bond make decisions based on the criteria set out in Part III of these Guidelines.
- b. If detention in police custody is determined by the competent authority to be absolutely necessary:
  - i. All persons arrested and detained have the right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond.
  - ii. The maximum duration of police custody, prior to the obligation to bring the arrested person before a judge, shall be set out in national law that prescribes time limits of no more than 48 hours extendable in certain circumstances by a competent judicial authority, consistent with international law and standards.
- c. Persons in police custody shall have access to confidential and independent complaints mechanisms while in custody.

### **8. Access to legal services**

- a. States should establish a legal aid service framework through which legal services for persons in police custody and pre-trial detention are guaranteed.
- b. Legal services may be provided by a number of service providers including lawyers, paralegals and legal clinics, depending on the nature of the work and



the requisite skills and qualifications. States should take steps to ensure sufficient access to quality legal services and, in particular, that sufficient lawyers are trained and available.

- c. Reference in these Guidelines to services provided by persons other than lawyers shall not in any way be a substitute for the right to access to and assistance by a qualified lawyer. Where the services of a lawyer are not available, States shall make every effort to ensure that services available from suitably qualified legal service providers can be accessed by detainees under conditions that guarantee the full respect of the rights of the detainees as set out in international law and standards.
- d. All persons detained in police custody enjoy the following rights in relation to legal assistance:
  - i. Access without delay to lawyers and other legal service providers, at the latest prior to and during any questioning by an authority, and thereafter throughout the criminal justice process.
  - ii. Confidentiality of communication, including meetings, correspondence, telephone calls and other forms of communications with lawyers and other legal service providers shall be respected. Such communications may take place within the sight of officials, providing that they are conducted out of the hearing of officials. If this confidentiality is broken any information obtained shall be inadmissible as evidence.
  - iii. Detainees shall be provided with the means to contact a lawyer or other legal service provider of their choice or one appointed by the state. State legal assistance should be provided if the detainee does not have sufficient means or if the interests of justice require, for example given the gravity, urgency or complexity of the case, the severity of the potential penalty, and/or the status of the detainee as vulnerable or otherwise protected under Part VII of these Guidelines.
  - iv. The right to access case files and have adequate time and facilities to prepare a defence.
  - v. Access to lawyers or other legal service providers should not be unlawfully or unreasonably restricted. If access to legal services is delayed or denied, or detained persons are not adequately informed of their right to access providers of legal services in a timely manner, then States shall ensure that a range of remedies are available, in accordance with the principles set out in Part VIII of these Guidelines.
  - vi. Legal service providers should possess the requisite skills and training as required under national law for the provision of legal assistance and services. Depending on the system in place this includes lawyers, and where appropriate also other legal advisors, legal assistants, paralegals and those running legal clinics.

## 9. Questioning and confessions

- a. Prior to the commencement of each questioning session, all persons detained in police custody, and other persons subject to police questioning, shall be afforded the following rights:
  - i. The right to be informed of the right to the presence and assistance of a lawyer or other legal service provider (such as a suitably qualified paralegal) during questioning where a lawyer or other legal service provider is not present.
  - ii. The presence and assistance of a lawyer or, where relevant, other legal service providers, during questioning.
  - iii. The right to a medical examination, with the results of each examination recorded in a separate medical file, access to which is governed by the normal rules on medical confidentiality.
  - iv. The presence and the services of an interpreter, and access to accessible formats, if the arrested person does not understand and speak the language in which the questioning will take place or has a disability.
- b. The right of persons undergoing questioning to remain silent shall be respected at all times. It shall be prohibited to take undue advantage of the situation of a detained person for the purpose of compelling or inducing him or her to confess, to incriminate himself or herself, or to testify against another person.
- c. No detained person while being questioned shall be subject to torture or other ill-treatment, such as violence, threats, intimidation or methods of questioning which impair his or her capacity of decision or his or her judgment.
- d. Confessions should only be taken in the presence of a judicial officer or other officer of the court who is independent of the investigating authority. The burden of proof lies with the prosecution to prove that confessions were obtained without duress, intimidation or inducements. Confessions by children are to be recorded in the presence of a judicial officer, and their parent, guardian or independent advocate, lawyer or other legal services provider.
- e. The following information about every questioning session shall be recorded by the authority carrying out the questioning:
  - i. The duration of any questioning session.
  - ii. The intervals between questioning sessions.
  - iii. The identity of any officials who conducted the questioning and of any other persons present.
  - iv. Confirmation that the detained person was availed the opportunity to seek legal services prior to the questioning, was provided with a medical

examination, and had access to an interpreter (including sign language for the hearing impaired) during questioning and any accommodations necessary to ensure the detainee's understanding of and participation in the process.

- v. Details of any statements provided by the detained person, with verification from the detained person that the record accurately recounts the statement he or she provided.
- f. Detaining authorities shall maintain, and provide access to, an official custody register, in strict accordance with Part IV of these Guidelines.
- g. States shall make provision for the audio and audiovisual recording of questioning sessions and the provision of confessions.

### **III PRE-TRIAL DETENTION**

#### **10.**

#### **General provisions**

- a. For the purpose of these Guidelines, 'pre-trial detention' refers to the period of detention ordered by a judicial authority pending trial.
- b. Pre-trial detention is a measure of last resort and should only be used where necessary and where no other alternatives are available.
- c. Persons charged with a criminal offence that does not carry a custodial penalty shall not be subject to a pre-trial detention order.
- d. All persons shall have the right to a fair trial, within a reasonable time, in accordance with international law and standards, including the principles set out in the African Commission on Human and Peoples' Rights' Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
- e. Pre-trial detainees shall be provided with information on court sessions and any adjournments of court sessions.
- f. Pre-trial detainees shall only be held in a formally recognised and gazetted place of detention. Information on the gazetted places of police custody and pre-trial detention should be readily accessible.
- g. Pre-trial detainees should be held in detention facilities as close to their home or community as possible, taking account any caretaking or other responsibilities.

#### **11. Safeguards on pre-trial detention orders**

- a. Judicial authorities shall only order pre-trial detention:
  - i. On grounds that are clearly established by law and which are consistent with international standards, and not motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language,

religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status; and

- ii. If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, and there is a danger that he or she will abscond, commit further serious offences or if there is a danger that the release of the accused will not be in the interests of justice.
- b. If pre-trial detention is ordered, judicial authorities shall ensure that the least restrictive conditions are imposed that will reasonably ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community and any other person.
  - c. Judicial authorities shall clearly demonstrate in the reasons for their decisions that they have considered alternatives before making a pre-trial detention order.
  - d. Judicial authorities shall provide written reasons for decisions to order pre-trial detention. This should include clear demonstration that alternative to pre-trial detention were considered.
  - e. Persons subject to pre-trial detention orders shall have the right to challenge the lawfulness of their detention at any time and to seek immediate release in the case of unlawful or arbitrary detention, and compensation and/or other remedies as set out in Part VIII of these Guidelines.
  - f. At all hearings to determine the legality of an initial detention order, or of an order extending or renewing pre-trial detention, detainees have the right to be present, the right to assistance of a lawyer or other legal service provider, the right to access all relevant documents, the right to be heard, and the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.
  - g. The burden of proof on the lawfulness of initial detention orders, and the lawfulness and necessity of extended or continued pre-trial detention, lies with the State.

## **12. Reviews of pre-trial detention orders**

- a. Regular review of pre-trial detention orders shall be provided for in national law. Judicial authorities and detaining authorities shall ensure that all pre-trial detention orders are subject to regular review.
- b. In making a pre-trial detention order, or in extending or renewing pre-trial detention, judicial authorities shall ensure that they have thoroughly considered the need for continued pre-trial detention and shall give consideration to the following issues:
  - i. Assess whether sufficient legal reasons exist for the arrest or detention and order release if they do not exist.

- ii. Assess whether the investigating authorities are exercising due diligence in bringing the case to trial.
  - iii. If the individual is suspected of a criminal offence, assess whether in the circumstances of the case of the individual, the detention pending trial is necessary and proportionate. In such assessment, among other things, responsibilities as primary caretakers should be taken into consideration.
  - iv. Enquire about and take means necessary to safeguard the well-being of the detainee.
- c. Judicial authorities shall provide written reasons for orders to extend or renew pre-trial detention.

**13. Provision for delays in investigations and judicial proceedings**

- a. Anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time.
- b. Judicial authorities shall investigate any delay in the completion of proceedings which could substantially prejudice the prosecution, the pre-trial detainee or his or her lawyer or other legal service provider, the State or a witness. In considering the question of whether any delay is reasonable, the judicial authority shall consider the following factors:
  - i. Duration of the delay.
  - ii. The reasons advanced for the delay.
  - iii. Whether any person or authority is responsible for the delay.
  - iv. The effect of the delay on the personal circumstances of the detained person and witnesses.
  - v. Actual or potential prejudice caused to the State or the defence by the delay.
  - vi. The effect of the delay on the administration of justice.
  - vii. The adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued.
  - viii. Any other factor which in the opinion of the judicial authority ought to be taken into account.
- c. If the judicial authority finds that the completion of the proceedings is being delayed unreasonably by the State or its agents, the judicial authority may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order to

release the accused if the length of his or her detention is inconsistent with the right of detained persons to trial within a reasonable time. In such cases, however, release may be accompanied by any proportionate and necessary safeguards.

#### **14. Safeguards for persons subject to pre-trial detention orders**

- a. Pre-trial detention orders shall be carried out in strict accordance with the law shall not be not motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.
- b. Pre-trial detainees shall only be held in an officially recognised place of detention.
- c. Pre-trial detainees shall have regular and confidential access to lawyers or other legal service providers. Detainees must be provided with information about the availability of lawyers and, where appropriate, other legal service providers, the means to access them, and the facilities to prepare their defence.
- d. Detaining authorities shall maintain, and provide access to, an official custody register in strict accordance with Part IV of these Guidelines.

### **IV REGISTERS**

#### **15. General provisions**

- a. All arrests and detentions shall be recorded at the earliest possible time following arrest or detention in an official register with sequentially numbered pages.
- b. Access to the register shall be provided to the arrested or detained person, his or her lawyer or other legal service provider, family members, and any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of their liberty.

#### **16. Information to be recorded in arrest, custody and pre-trial detention registers**

All registers shall contain the following information, as a minimum:

- a. The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable.
- b. The date, time and place that:
  - i. the person was arrested or detained;
  - ii. the person was notified of the reasons for arrest or detention;
  - iii. a record of the arrest or detention was made in the register; and
  - iv. notification of the arrest or detention to a third person of the arrested person's choice took place.

- c. The identity of the officers involved in the arrest or detention.
- d. Observations on the state of the mental and physical health of the arrested or detained person (including any visible physical injuries), and whether they requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality.
- e. An itemised account of any personal items belonging to the detained person taken by the arresting or detaining authority.
- f. The date, time and place of any transfers, and the identity of the official(s) responsible for, and involved, in that transfer.
- g. Any complaints raised by the arrested or detained person.

#### **17. Additional information to be recorded in arrest registers**

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official arrest registers shall also set out:

- a. The reason for the arrest.
- b. The date and time that the arrested person was notified of the reasons for his or her arrest, in terms of sections 4 and 5 of these Guidelines, and the identity of the official who performed the notification.
- c. The date and time that the arrested person or an official notified a third person of the arrested person's choice about the arrest.

#### **18. Additional information to be recorded in police cell custody registers**

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official custody registers for police cells shall also set out:

- a. The time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal.
- b. The date and time that the detained person was notified of the charges brought against him or her, the right to seek release, the reason for the refusal to grant release, and the identity of the official who performed the notification.

#### **19. Additional information to be recorded in pre-trial detention registers**

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official pre-trial detention registers shall also set out:

- a. The name of the authority supervising the pre-trial detention.
- b. The time and date of the pre-trial detention order, and the name of the judicial authority who ordered initial, extended and continuing pre-trial detention.

- c. The next date of review of the pre-trial detention orders by the relevant judicial authority.

## **V PROCEDURES FOR SERIOUS VIOLATIONS OF HUMAN RIGHTS IN POLICE CUSTODY AND PRE-TRIAL DETENTION**

### **20. State responsibility to account for death and serious injury in police custody and pre-trial detention**

Given the control that the State exercises over persons held in police custody or pre-trial detention, States shall provide a satisfactory explanation, and make available information on the circumstances surrounding custody or detention, in every case of death or serious injury of persons who are deprived of their liberty.

### **21. Deaths in police custody and pre-trial detention**

- a. If a person under arrest, in police custody, pre-trial detention, or in the process of transfer dies, a prompt, impartial and independent inquiry into the cause of death shall be undertaken by a judicial authority. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. The investigating authority shall have access to all necessary information and persons to conduct a thorough, impartial and independent inquiry.
- b. The detainee's next of kin shall be promptly informed the death, be provided with regular updates by the authority investigating the death, and have access to information about the detainee and the investigative process in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.
- c. On completion of all examinations essential to the investigation, the body of the deceased shall be returned to the family, in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay. The investigating authorities should hand over to the next of kin a complete death certificate as soon as possible after the death. The personal belongings of the deceased should be returned to the next of kin as soon as possible.

### **22. Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention**

- a. All persons deprived of their liberty shall have the right to lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations in a manner consistent with the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.
- b. If there are reasonable grounds to believe that an act of torture and other cruel, inhuman or degrading treatment or punishment, or another serious human



rights violation has taken place, States shall ensure prompt investigation by independent and impartial authorities.

## **VI CONDITIONS OF DETENTION IN POLICE CUSTODY AND PRE-TRIAL DETENTION**

### **23. General provisions**

Persons deprived of their liberty shall enjoy all fundamental rights and freedoms, except those limitations which are demonstrably necessary by the fact of detention itself.

### **24. Physical conditions**

Conditions of detention in police custody and pre-trial detention shall conform with all applicable international law and standards. They shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.

### **25. Procedural and other safeguards**

States should have in place, and make known, laws, policies and standard operating procedures, which accord with Member States' obligations under the African Charter on Human and Peoples' Rights and other international law and standards, to:

- a. Reduce overcrowding in police custody and pre-trial detention facilities, including through the use of a variety of alternatives to detention, including the use of measures that do not require resort to judicial proceedings, providing that these measures are consistent with international law and standards.
- b. Limit the use of force against persons in police custody or pre-trial detention to circumstances in which force is strictly necessary for, and proportionate to, the need for maintenance of security and order within the detention facility, or when personal safety is threatened.
- c. Limit the use of firearms for reasons of self-defence or the defence of others against the imminent threat of death or serious injury.
- d. Limit the permissible use of restraints, and the type of restraints, to ensure consistency with the presumption of innocence, treatment of detained persons that accords with respect for the inherent dignity of the person.
- e. Set out the use of disciplinary measures against persons in police custody or pre-trial detention in law, policy and standard operating procedures, consistent with the inherent dignity of the person, humane treatment, limitations on the use of force.
- f. Ensure that the use of solitary confinement is restricted, and that methods to anticipate crisis situations and de-escalate them without the need to resort to

seclusion, restraint or forced treatment are developed and ingrained among law enforcement personnel.

- g. Provide legislative, budgetary and other measures for the provision of adequate standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental health care, contact with the community, religious observance, reading and other educational facilities, support services, and reasonable accommodation, in accordance with international law and standards.
- h. Have in place measures, including health assessment screenings, to reduce suicide and self-harm, such as alternatives to custody, diversion to mental health care, promotion of family support, drug treatment and detoxification, and training for officials to identify and address persons who are at risk of suicide and self-harm.
- i. Ensure that any transfer of detainees is authorised by law, that detainees are only moved to and from official gazetted places of detention, that movements are recorded in a register in accordance with Part IV of these Guidelines, and that detainees' next of kin, legal representatives are informed about the transfer prior to the transfer taking effect.
- j. Ensure that there is adequate and efficient staffing in places of detention, and that staff are trained in terms of these Guidelines, including special training on the provisions for vulnerable persons and subject to effective oversight and accountability mechanisms.

## **26. Separation of categories of detainees**

The State shall ensure that detaining authorities hold pre-trial detainees separately from the convicted prison population. They shall also ensure that detaining authorities take the necessary measures to provide for the special needs of vulnerable groups/persons, in accordance with Part VII of these Guidelines.

## **27. Communication**

Detainees in police custody and pre-trial detention shall be provided with appropriate facilities to communicate with, and receive visits from, their families at regular intervals, subject to reasonable restrictions and supervision as are necessary in the interests of security. Such contact shall not be denied for more than a few days.

## **28. Recreational, vocational and rehabilitation services**

States shall ensure that persons in police custody and pre-trial detainees have access to adequate recreational, vocational, rehabilitation and treatment services.

# **VII VULNERABLE GROUPS**

## **29. General provisions**

- a. Legislative, administrative and other measures that apply to persons under arrest, in police custody and in pre-trial detention shall be consistent with international law and standards.
- b. In addition to the principles set out in these Guidelines, and the rights afforded to persons with special needs under the African Charter on Human and Peoples' Rights and relevant international law, States shall take measures to ensure that the special protections set out in Part VII are provided in relation to persons with special needs.
- c. States should provide for access to intermediaries to assist with capacity and communication, and should be provided for on the grounds of age or incapacity. Intermediaries should be subject to a state registration process and be neutral and independent.

### **30. Special measures are not discriminatory**

- a. Measures designed to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender identity, refugees and asylum seekers, non-citizens, stateless persons, racial or religious minorities, or other categories of persons with special needs shall not be considered discriminatory or applied in a manner that is discriminatory.
- b. Special measures shall be applied in accordance with the law, and shall be subject to periodic review by a competent, independent and impartial authority.

### **31. Children**

- a. General Principles
  - i. The principle of the best interests of the child shall be paramount in any decision making and action taken in relation to child suspects and detainees.
  - ii. For the purposes of these Guidelines, a 'child' means every person below the age of 18 years.
  - iii. If there is uncertainty regarding the age of an arrested or detained person, but reason to believe that the person may be under the age of 18, the State must ensure that the person is to be treated as a child if and until such time as his or her age is determined to be 18 years or older. States shall have in place a process of age assessment for children.
  - iv. A child may only be detained in police custody or pre-trial detention as a measure of last resort and for the shortest possible period of time.

- v. Every child deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons of his or her age.
- b. Diversion and alternatives to pre-trial detention
- i. States shall enact laws and establish policies, that prioritise non-custodial alternatives and diversion programmes for children in conflict with the law. Where possible, pre-trial detention shall be replaced by alternative measures.
  - ii. States shall have in place a process of preliminary inquiry to establish whether the case can be diverted from the criminal justice system and, if it can, what diversion option (for example, care, guidance and supervision orders, counseling, foster care, education and vocational training, or other alternatives to institutional care) is suitable for the child, taking into account the best interests of the child.
  - iii. The preliminary inquiry process shall consider factors such as the estimated age of the child, any previous convictions or diversions, whether the child is in need of care and protection and whether the child was used by an adult to commit the offences. The preliminary inquiry process shall take place within the first 48 hours of the child's arrest, and shall take account of the right of children and their parent(s) or guardian(s) to full participation in proceedings.

c. Safeguards for arrest

If the arrest of a child is absolutely necessary, then upon arrest:

- i. The child's parent(s) or guardian(s) and the authority charged with the welfare of the child shall be immediately notified where such notification is in the best interests of the child.
- ii. The child and, unless it is not in his or her best interests, the child's parent(s) or legal guardian(s), must be informed promptly and directly of the charges against him or her, his or her rights as a criminal accused and his or her rights to an interpreter (including language and sign interpreters where necessary), a lawyer or other legal service provider.
- iii. The child must be given access to a lawyer or other legal services provider and the opportunity to consult freely and confidentially with him or her.

d. Safeguards for police custody and pre-trial detention

If police custody or pre-trial detention of a child is absolutely necessary:

- i. Detention shall be for the shortest possible period of time.

- ii. Children shall be detained separately from adults, unless it is in their best interest to be kept with family members also detained. Female children shall be held separately from male children unless it is in their best interest to be kept with family members also detained.
- iii. Children shall be guaranteed the right to the presence of a parent or guardian at all stages of the proceedings, unless it is considered not to be in the best interests of the child.
- iv. While in custody, children shall receive care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance they may require.

e. Right to be heard

In all judicial proceedings affecting a child, the child shall have an opportunity to be heard either directly or through a representative of his or her choice. The child's views shall be taken into account by the relevant authority.

f. Alternatives to pre-trial detention

Where possible, pre-trial detention shall be replaced by alternative measures such as close supervision, intensive care or placement with a family, in an education setting or home, or other place of safety.

g. Legal assistance

Children shall be guaranteed the right to the presence of lawyer, or other legal service provider, of their choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process. Legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child.

h. Conduct of officials

Contact between law enforcement agencies and child suspects shall be managed in such a way as to respect the legal status of the child and promote his or her wellbeing, ensure the child's privacy, and avoid harm to him or her.

i. Specialised units

The State shall ensure that, where possible, specialised units be established in law enforcement agencies that frequently or exclusively deal with children who are in conflict with the law.

j. Access to third parties

The State shall ensure that children have reasonable access to parents, guardians or statutory authorities responsible for the care and protection of children.

## 32. Women

### a. General principles

States shall develop legislation, procedures, policies and practices that are designed to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.

### b. Safeguards for arrest and detention

If arrest, custody and pre-trial detention is absolutely necessary, women and girls shall:

- i. Only be searched by female law enforcement officials, and in a manner that accords with women or girls' dignity.
- ii. Be held separately from male detainees.
- iii. If they have caretaking responsibilities for children, be permitted prior to or on admission to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interest of the children.
- iv. Be provided with the facilities necessary to contact their families, including children, their children's guardians and legal representatives.
- v. Be provided with the facilities and materials required to meet their specific hygiene needs, and offered gender-specific health screening and care which accords with the rights to dignity and privacy, and the right to be seen by a female medical practitioner.
- vi. Not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants.
- vii. Have access to obstetric and pediatric care before, during and after birth, which should take place at hospitals or other appropriate facilities, and never be subject to physical restraints before, during and after childbirth.

### c. Accompanying children

States shall establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in the place of detention, in a manner consistent with the rights of the child, and the best interests of the child, and in accordance with the recommendations of the African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 1 on Children Imprisoned with their Mothers.

### 33. Persons with disabilities

#### a. General principles

- i. For the purpose of these Guidelines, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
- ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.
- iii. Every person with a physical, mental, intellectual or sensory disability deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.
- iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programs and other services available to others, including voluntary engagement in activities and community release programs. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.
- v. States shall ensure that disciplinary actions take account of a person's disability.

#### b. Legal capacity

Persons with disabilities shall enjoy full legal capacity, access to justice on an equal basis with others, equal treatment before the law, and recognition as a person before the law.

#### c. Access to justice

States shall ensure that persons with disabilities are informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authority and who are appropriately qualified.

#### d. Accessibility and reasonable accommodation

State shall take measures to ensure that:

- i. Persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority. Accessibility should also take into account the gender and age of persons with disability, and equal access should be provided regardless of the type of impairment, legal status, social condition, gender and age of the detainee.
- ii. The physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with physical, mental, intellectual or sensory disabilities, and that the detention of persons with disability does not amount to inhuman or degrading treatment.
- iii. Communication with and by persons with disabilities in custody or detention on an equal basis with others.
- iv. The provision of reasonable accommodation, procedural and substantive due process.
- v. The right of persons to informed consent to treatment is upheld.
- vi. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives shall be provided.

#### **34. Non-nationals**

##### **a. Refugees**

- i. Refugees shall be informed of their right to contact consular officials and relevant international organisations, such as the United Nations High Commissioner for Refugees, and be provided with the means of contacting those authorities without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact or provide access to the consular authority or relevant international organisations about the arrest and detention of a person who is a refugee if the person so requests.
- ii. All decisions and actions in relation to refugees below the age of 18, whether accompanied or unaccompanied, shall be consistent with the principle of the best interests of the child, and shall accord with the special protections afforded to children in section 31 of these Guidelines.



b. Non-citizens

Non-citizens shall be informed of their right to contact consular officials and relevant international organisations, and be provided with the means to contact the relevant authority without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons.

c. Stateless persons

Stateless persons shall be informed of their right to contact a lawyer or other legal service provider who can address their needs, and relevant international organisations, and be provided with the means to contact them without delay. Detaining authorities must provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact relevant international organisations about the arrest and detention of a person who is stateless if the person so requests.

## VIII ACCOUNTABILITY AND REMEDIES

### 35. Judicial oversight of detention and *habeas corpus*

All persons in police custody and pre-trial detention shall have the right, either personally or through their representative, to take proceedings before a judicial authority, without delay, in order to have the legality of their detention reviewed. If the judicial authority decides that the detention is unlawful, individuals have the right to release without delay.

### 36. Standards of individual conduct for officials

- a. States should have in place, and make known, laws, policies and standard operating procedures to set enforceable standards of conduct for police officers, prison officials and other law enforcement or judicial officers that are consistent with internationally recognised standards of conduct for law enforcement personnel and other law enforcement officials responsible for the care or supervision of persons who are in conflict with the law and deprived of their liberty.
- b. Non-compliance with the rules on arrest and custody should be a disciplinary offence, subject to disciplinary and, where appropriate, criminal procedures, that accord with international law and standards on procedural fairness.

### 37. Complaints mechanisms

- a. States shall establish, and make known, internal and independent complaints mechanisms for persons in police custody and pre-trial detention.

- b. Access to complaints mechanisms shall be guaranteed for all persons in police custody and pre-trial detention, without fear of reprisals or punishment.
- c. Detainees shall have the right, and be provided with the facilities, to consult freely and in full confidentiality with complaints mechanisms, subject to reasonable conditions to ensure security and good order in the place of detention.
- d. There shall be thorough, prompt and impartial investigations of all complaints and, where they are well-founded, appropriate remedial action shall be taken without delay.

### **38. Remedies**

All persons who are victims of illegal or arbitrary arrest and detention, or torture and ill-treatment during police custody or pre-trial detention have the right to seek and obtain effective remedies for the violation of their rights. This right extends to immediate family or dependents of the direct victim. Remedies include, but are not limited to:

- a. Restitution to restore the victim to the situation that would have existed had the violation of their right not happened.
- b. Compensation, including any quantifiable damages resulting from the right violation and any physical or mental harm (such as physical or mental harm, pain, suffering and emotional distress, lost opportunities including education, material damage and loss of actual or potential earnings, harm to reputation or dignity, and costs required for legal services or expert assistance, medicines, medical services, and psychological and social services).
- c. Rehabilitation, including medical and psychological care as well as legal and social services.
- d. Satisfaction and guarantees of non-repetition.

### **39. Data collection**

States shall establish processes for the systematic collection of disaggregated data on the use of arrest, police custody, and pre-trial detention to identify and address the over-use or inadequate conditions of police custody and pre-trial detention.

### **40. Access to information**

States shall establish, and make known, systems and processes to guarantee the right of access to information for persons in police custody and pre-trial detention, their families, lawyers and other legal service providers, in accordance with the principles set out in the African Commission on Human and Peoples' Rights Model Law on Access to Information.

### **41. Oversight mechanisms**

States shall establish, and make known, oversight mechanisms for authorities responsible for arrest and detention. These mechanisms shall be provided with the necessary legal mandate, independence, resources, and safeguards to ensure transparency and reporting, to ensure the thorough, prompt, impartial and fair exercise of their mandate.

#### **42. Monitoring mechanisms**

- a. States shall ensure access to detainees and places of detention for independent monitoring bodies or other neutral independent humanitarian organisations authorised to visit them.
- b. A detained person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with the above principle, subject to reasonable conditions to ensure security and good order.
- c. Access to places of detention shall also be provided to lawyers and other legal service providers, and other authorities such as judicial authorities and National Human Rights Institutions, subject to reasonable conditions to ensure security and good order.

#### **43. Inquiries**

States shall establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody, torture and other cruel, inhuman or degrading treatment or punishment, and other serious violations of the human rights.

### **IX IMPLEMENTATION**

#### **44. Implementation measures**

- a. In accordance with Article 2 of the African charter on Human and Peoples' Rights, States shall adopt legislative, administrative, judicial and other measures to give effect to these Guidelines and ensure that the rights and obligations contained herein are always guaranteed in law and practice, including during conflict and states of emergency. This shall include a review of existing legislative, administrative and other provisions to assess compatibility with the Guidelines.
- b. States shall ensure that these Guidelines are widely disseminated, including to justice sector actors, the community, and to National Human Rights Institutions, National Preventative Mechanisms, statutory oversight authorities and other institutions or organisations with a mandate to provide accountability, oversight or inspections to police stations, remand facilities and other relevant places of detention.

#### **45. Application**

States shall remain responsible for ensuring that the provisions of these Guidelines and other relevant guidelines developed by the African Commission on Human and Peoples' Rights pursuant to the African Charter on Human and Peoples' Rights, and other relevant international law and standards, are applied in places of detention, including those under the management of, or staffed by, private security organisations.

#### **46. Training**

- a. States shall ensure that all officials who are involved in the arrest, custody, interrogation and treatment of individuals subject to arrest, police custody and pre-trial detention are properly trained in relation to the provisions of these Guidelines. The provisions of these Guidelines and other relevant guidelines developed by the African Commission pursuant to the African Charter shall be fully incorporated into the curricula of all basic and in-service training.
- b. States shall ensure that where places of detention are under the management of, or staffed by, private security organisations, all personnel are properly trained in relation to the provisions, and implementation, of these Guidelines, the African Charter on Human and Peoples' Rights, and all other relevant guidelines developed by the African Commission and the United Nations.

#### **47. Reporting**

State parties to the African Charter, in their periodic reports to the African Commission on Human and Peoples' Rights, shall provide information on the extent to which national legislation, policy and administration pertaining to the use and conditions of arrest, police custody and pre-trial detention are consistent with these Guidelines.