

PRINCIPLES AND GUIDELINES ON HUMAN AND PEOPLES' RIGHTS WHILE COUNTERING TERRORISM IN AFRICA

**AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS**





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FOREWORD



The present *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* were adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015).

The *Principles and Guidelines* were developed on the basis of Article 45(1)(b) of the African Charter, which mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation. They are based on African regional treaty law; the case law, standards, and resolutions of this Commission; and international human rights treaty law and U.N. Security Council resolutions. The *Principles and Guidelines* also give consideration to other international and regional human rights decisions and special mechanisms, U.N. General Assembly resolutions, including the U.N. Global Counter-Terrorism Strategy of 2006, and the views of the Office of the United Nation High Commissioner for Human Rights.

The *Principles and Guidelines* were conceived of and drafted after African Union institutions and its Member States had passed resolutions and put in place various mechanisms to respond to grave acts of terrorism and violent extremism. Most prominent amongst these are the OAU Convention on the Prevention and Combating of Terrorism and its Protocol. At this same time, the African Union has emphasized the need for Member States to respect the rights of the African Charter on Human and Peoples' Rights and other regional and international human rights instruments.

The Commission, for its part, passed Resolution 88 (2005) on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism, which reaffirmed that "African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum."

African Union institutions and Member States have also recognized that the root causes to such violence need to be addressed in a comprehensive manner, including through mechanisms that respect human rights, and through strategies that empower civil society organizations, including religious leaders, women, and youth, as well as vulnerable groups.

In light of those considerations, the Commission adopted its *Principles and Guidelines* to assist States to implement their human rights obligations while countering terrorism and other forms of violent extremism. In the current environment acts of terrorism and associated human rights abuses can touch almost every walk and facet of life and impact all types of rights, whether civil and political; economic, social and cultural; or group rights.

These *Principles and Guidelines* are special in the sense that they contain “Explanatory Notes” which point the reader to the source of authority on which they are based. They therefore provide a set of fourteen General Principles, such as non-discrimination and the obligation to provide reparations, and guidance on specific issues that this Commission regarded as being particularly relevant to the protection of human rights while combating terrorism. The Commission therefore recognizes that while some issues may not be expressly covered in the *Principles and Guidelines*, they should nonetheless be covered by the fourteen General Principles and by human rights instruments found elsewhere.

To provide States with guidance that would be most effective for respecting and ensuring their human right obligations while combating terrorism, the *Principles and Guidelines* set out to meet four specific objectives:

- **Focus on Victims:** The Commission recognized that victims of terrorism are too often marginalized from the discussions that States and intergovernmental organizations have to prevent and combat terrorism. For this reason, the *Principles and Guidelines* devote considerable time to the need to prevent and punish acts of terrorism, and to provide assistance to the victims of terrorism.
- **Contextualization of the Phenomenon of Terrorism:** The *Principles and Guidelines* reflect the reality that acts of terrorism and associated human rights abuses do not exist in a vacuum. Rather, an effective strategy requires institutional and structural reforms that address their root causes. This is in keeping with the Communiqué of the Peace and Security Council’s 455th meeting on terrorism and violent extremism in Africa on 2 September 2014, in which it was agreed that States need to “address all conditions conducive to the spread of terrorism and violent extremism, including prolonged unresolved conflicts, lack of rule of law and violations of human rights, discrimination, political exclusion, socio-economic marginalization and poor governance,” and that poverty eradication, job creation and development may be key components to a successful strategy.
- **Responding to Emerging Issues:** The *Principles and Guidelines* address a broad set of human rights issues, including emerging issues that are unfortunately commonly associated with preventing and combating terrorism and violent extremism. To this end, the *Principles and Guidelines* contain both general and specific rules that apply to the right to life; deprivation of liberty, humane treatment, and fair trials; rendition and transfers; anti-terrorism laws and “watch lists”; interstate cooperation; private security contractors; statelessness and citizenship; human rights defenders; the right to privacy and access to information; and human security.
- **Underlining the Importance of Cooperation and Implementation of these Principles and Guidelines:** Cooperation amongst African Union institutions to respect human rights while combating terrorism and the need to implement the content of the *Principles and Guidelines* constitute the last pillar on which the latter are based. The success of the *Principles and Guidelines* in achieving respect for human rights while combating terrorism, as well as using human rights to reduce its prevalence, will be measured by the extent to which they are known and implemented by States Parties to the African Charter.

The African Commission on Human and Peoples’ Rights calls on all stakeholders to use the *Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa* to inform their work in strengthening human rights protections and preventing terrorism and violent extremism.

The African Commission on Human and Peoples' Rights will continue the dialogue at the international, continental, sub-regional, and national levels with all the stakeholders and will share ideas on opportunities to promote strategies that respect and ensure human rights while combating terrorism and violent extremism.

This document, as confirmed by readers and all those who work with the Commission, is a well-informed contribution to the work package created to anchor the African Charter of Human and Peoples' Rights in all African states. It is therefore yours and I wish you good use of it in what needs to be done: so that life and human dignity are forever protected on our beloved continent.



Madam Reine Alapini-Gansou

Special Rapporteur on Human Rights Defenders in Africa

Former President of the African Commission on Human and Peoples' Rights



EXPLANATORY NOTES

The *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* are accompanied by instructive Explanatory Notes. These Notes provide supporting material for the *Principles and Guidelines* and include sources from African regional treaty law, the case law of the African Commission on Human and Peoples' Rights, the *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, the *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, and the *Global Principles on National Security and the Right to Information* ("*Global Principles*" or "*Tshwane Principles*"), as well as international human rights treaty law and U.N. Security Council resolutions. The *Principles and Guidelines* were also drafted with consideration given to other international and regional human rights decisions and special mechanisms, United Nations General Assembly resolutions, including the United Nations Global Counter-Terrorism Strategy of 2006, and the views of the Office of the United Nations High Commissioner for Human Rights. Where the supporting materials for the *Principles and Guidelines* are obvious, Notes are not provided.



PREAMBLE

The African Commission on Human and Peoples' Rights;

Convinced that acts of terrorism are deplorable and cannot be justified under any circumstances; that terrorism constitutes a serious violation of human rights and a threat to peace, security, development, and democracy; and that it is imperative for African States to take all necessary measures to protect their populations from acts of terrorism and to implement all relevant continental and international humanitarian and human rights instruments;

Explanatory Note: See, *Protocol to the OAU Convention on the Prevention and Combating of Terrorism*, Preamble.

Reaffirming our support for the *Organization of African Unity Convention on the Prevention and Combating of Terrorism* of July 1999 and its 2004 protocol; and strongly rejecting and condemning the payment of ransom to terrorist groups;

Explanatory Note: For the rejection of ransom see, Communiqué of the Peace and Security Council of the African Union, at its 455th meeting on the prevention and combating of terrorism and violent extremism in Africa on 2 September 2014, para. 24.

Bearing in mind the definition of "terrorism" contained in Article 28(G) of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights; and relevant United Nations Security Council resolutions on combating terrorism, in particular Resolution 1373 (2001);

Bearing also in mind that the root causes of terrorism are complex and all conditions conducive to the spread of terrorism and violent extremism need to be addressed, including prolonged unresolved conflicts, lack of rule of law and violations of human rights, discrimination, employment and educational disadvantage, political exclusion, socio-economic marginalization, and poor governance, stressing however that none of these conditions can excuse or justify acts of terrorism;

Explanatory Note: See, Communiqué of the Peace and Security Council of the African Union, at its 455th meeting on the prevention and combating of terrorism and violent extremism in Africa on 2 September 2014, para. 29.

Stressing that these root causes need to be addressed in a comprehensive manner, including through de- and counter-radicalization mechanisms that respect human rights, and through strategies that empower civil society organizations, including religious leaders, women, and youth, as well as vulnerable groups;

Explanatory Note: See, Communiqué of the Peace and Security Council of the African Union, at its 455th meeting on the prevention and combating of terrorism and violent extremism in Africa on 2 September 2014, para. 29.

Stressing also that whereas the spread of terrorism may, in some circumstances, be intensified by the use of the Internet and social media, the Internet and social media are tools which can be used to combat the spread of terrorism and should not be viewed as a threat in itself;

Explanatory Note: See, U.N. General Assembly, *Resolution 60/288: United Nations Global Counter-Terrorism Strategy*, Section II, para. 12.

Recalling that the *Convention on the Prevention and Combating of Terrorism* states that nothing in that convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights; and that the United Nations Global Counter-Terrorism Strategy of 2006 recognizes that "development, peace and security, and human rights are interlinked and mutually reinforcing";

Explanatory Note: See, *Organization of African Unity Convention on the Prevention and Combating of Terrorism*, Article 22(1); and U.N. General Assembly, *Resolution 60/288: United Nations Global Counter-Terrorism Strategy*, Preamble and Section IV.

Reiterating in its determination to rid Africa of the scourge of terrorism and violent extremism, terrorism cannot and should not be associated with any religion, nationality, civilization or group and that the curtailment of human rights can create greater unrest; that States must give consideration to the gender dimensions of terrorism and counterterrorism, that women and children are too often the direct and indirect victims of terrorism and counterterrorism, and that human rights must be respected and protected at all times; that the use of children as instruments of terrorism must be condemned; and that States must not use combatting terrorism as a pretext to unlawfully and arbitrarily restrict fundamental freedoms, in particular freedom of assembly, expression, association, religion, and movement, and the right to privacy and property;

Explanatory Note: See, Communiqué of the Peace and Security Council of the African Union, at its 455th meeting on the prevention and combating of terrorism and violent extremism in Africa on 2 September 2014, paras. 6 and 28; Comms. 143/95-150/96, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (November 1999), para. 33; ACHPR, *Resolution 283: Situation of Women and Children in Armed Conflict; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, A/64/211, 3 August 2009; and Explanatory Note to Principle 1(I), Fundamental Freedoms and Principle 1(M), *Non-Derogations and Restrictions on Human Rights and Freedoms*.

Recognizing the duties that States have to bring about justice for the victims of terrorism and to provide support for the physical and psychological care and social rehabilitation of these victims;

Explanatory Note: See, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ben Emmerson, A/HRC/20/14, 4 June 2012, paras. 61-62.

Recalling that the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* calls on the Peace and Security Council to seek close cooperation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and mandate and that the African Commission on Human and Peoples' Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Peace and Security Council;

Recalling also the request by the Peace and Security Council, at its 455th meeting that the Commission on Terrorism and Violent Extremism in Africa work closely with the African Commission on Human and Peoples' Rights to further support Member States' efforts to promote and ensure the respect for human rights and international humanitarian law while preventing and combating terrorism;

Recalling further the Commission's mandate under Article 45(1)(b) of the *African Charter on Human and Peoples' Rights* is "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";

Recognising that it remains necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to human rights protections in the context of human rights and countering terrorism;

Recalling that Article 1 of the *African Charter on Human and Peoples' Rights* requires States to recognize the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative or other measures to give effect to them; and that Article 26 requires States to guarantee the independence of the Courts and to allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter;

Reaffirming Resolution 88 on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism and recognizing that these *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* should be read in conjunction with the African Charter on Human and Peoples' Rights, the *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, the *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, the *Global Principles on National Security and the Right to Information* ("*Global Principles*" or "*Tshwane Principles*"), and any other existing or future documents of relevance to terrorism and countering terrorism; and

Solemnly proclaims these *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* and urges that all necessary measures are taken by States parties and other stakeholders in the area of human and peoples' rights so that they become generally known to everyone in Africa; are promoted by State authorities at all levels; are incorporated into domestic legislation and respected; and are afforded the necessary resources for their effective implementations.

PART 1

GENERAL PRINCIPLES



- A. Obligation to Refrain from Terrorism:** States shall refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly. The obligation to refrain from terrorism shall be carried out in accordance with the State's obligations under international human rights, humanitarian, and refugee law.

Explanatory Note: See, Organization of African Unity Convention on the Preventing and Combating of Terrorism, Articles 4(1) and 22(1); U.N. Security Council, Resolution 1373, para. 2(a); Constitutive Act of the African Union, Article 4(o); Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 3; U.N. General Assembly, Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 October 1970; Protocol to the OAU Convention on the Prevention and Combating of Terrorism, Preamble; Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Article 3(f); and U.N. General Assembly, Resolution 60/288: United Nations Global Counter-Terrorism Strategy, Section IV.

- B. Obligation to Prevent Terrorism:** States shall take the necessary steps to prevent the commission and financing of terrorist acts, including by providing early warning to other States by exchange of information; denying safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens; and preventing those who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against other States or individuals in other States. To ensure that States fulfil their obligation to prevent terrorism, States must provide the responsible authorities the necessary specialized training and technical and material assistance. States must also adopt, as needed, non-punitive counter-radicalization and de-radicalization policies and programs that include engaging and working with the media, civil society organizations, community leaders, religious authorities, women and victims of terrorism, formal and informal educational institutions, as well as legislative reforms, prison rehabilitation programs, and building national capacities, to ensure effective implementation and sustainability of these related measures. The obligation to prevent terrorism must be carried out in accordance with the State's obligations under international human rights, humanitarian, and refugee law.

Explanatory Note: See, U.N. Security Council, Resolution 1373, paras. 1(a) and 2(a-d); Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, Preamble, para. 4; Organization of African Unity

Convention on the Preventing and Combating of Terrorism, Article 22(1); Protocol to the OAU Convention on the Prevention and Combating of Terrorism, Preamble; Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Article 3(f); U.N. General Assembly, Resolution 60/288: United Nations Global Counter-Terrorism Strategy, Section IV; Peace and Security Council, Report of the Chairperson of the Commission on Terrorism and Violent Extremism in Africa, 455th Meeting at the Level of Heads of State and Government, Nairobi, Kenya, 2 September 2014, paras. 74, 80, and 83.

- C. Obligation to Protect from Terrorism:** States shall, in accordance with their obligations under international human rights, humanitarian, and refugee law, protect the people in their territory or under their jurisdiction against unlawful violence, including acts of terrorism. States shall similarly protect terrorist suspects, their families, and associates from harassment, other attacks, and vigilante justice.

Explanatory Note: See, Comm. 245/02, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (May 2006), para. 143; Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (October 1995), para. 20; *Organization of African Unity Convention on the Preventing and Combating of Terrorism, Article 22(1); Protocol to the OAU Convention on the Prevention and Combating of Terrorism, Preamble; Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Article 3(f); and U.N. General Assembly, Resolution 60/288: United Nations Global Counter-Terrorism Strategy, Section IV(2).*

- D. Obligation to Ensure Accountability:** States shall effectively investigate and publicly disclose information about human rights abuses, and bring to justice, including through prosecution, perpetrators of human rights abuses. An order from a superior officer or a public authority may not be invoked as a justification or lawful excuse for a human rights abuse. This rule applies to human rights abuses resulting from acts of terrorism and counterterrorism.

Explanatory Note: See, U.N. Security Council, *Resolution 1373*, para. 2(e); *African Charter on Human and Peoples' Rights, Article 1; International Covenant on Civil and Political Rights, Article 2(2); U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 2(1), 2(3), and 4(1); U.N. Convention for the Protection of All Persons from Enforced Disappearance, Article 4 and 6(2); Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, Guideline 11; Code of Conduct for Law Enforcement Officials, Article 5; Comm. 288/2004, *Gabriel Shumba v. Republic of Zimbabwe* (May 2012), footnote 16; Comm. 245/02, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (May 2006), para. 143; Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (October 1995), para. 20; and see also Explanatory Note to Principle 12(A), *Right of Access to Information and the Right to Truth*.*

- E. Obligation to Provide an Effective Remedy:** When a State, or any other entity, violates an individual's human rights, the State shall provide an effective remedy that is available, effective, and sufficient. The remedy is considered available if the individual can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is sufficient if it is capable of redressing the complaint. This rule applies in the context of human rights abuses resulting from acts of terrorism and counterterrorism.

Explanatory Note: See, *African Charter on Human and Peoples' Rights, Articles 1 and 7(1) (a); Comms. 147/95 and 149/96, Dawda Jawara v. The Gambia* (May 2007), para. 32; *African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Section C ("Right to an Effective Remedy"); Committee Against Torture, General Comment 3 on Implementation of Article 14 by States Parties, para. 5; Comm. 245/02, Zimbabwe Human Rights NGO Forum v. Zimbabwe* (May 2006), para. 143; Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (October 1995), para. 20; and Explanatory Note to Principle 12(A), *Right of Access to Information and the Right to Truth*.

- F. Obligation to Provide Reparation:** States shall provide full and effective reparation to individuals who have suffered physical or other damage or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism. Full and effective reparation should include, where applicable and in light of the damages, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. To facilitate this responsibility, States are encouraged to, in accordance with regional and international human rights standards, establish a funding mechanism to compensate victims of terrorist acts. (See, Principle 10(D), Definition of Terrorism Victim.)

Explanatory Note: See, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Ten areas of best practices in countering terrorism)*, Martin Scheinin A/HRC/16/51, December 2010, para. 25; Committee Against Torture, *General Comment 3 on Implementation of Article 14 by States parties*; U.N. General Assembly, Resolution 60/147: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Section IX (Reparation for harm suffered), paras. 15-23; *Protocol to the OAU Convention on the Prevention and Combating of Terrorism*, Article 3(1)(c); and Explanatory Note to Principle 12(A), *Right of Access to Information and the Right to Truth*.

- G. Prohibition of Discrimination:** Every individual shall be equal before the law and is entitled to equal protection of the law. Every individual shall be entitled to the enjoyment of their human rights and freedoms without adverse distinction of any kind whatsoever, including but not limited to race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or disability. States shall ensure that counterterrorism measures do not target individuals on a discriminatory basis.

Explanatory Note: See, African Charter on Human and Peoples' Rights, Articles 2 and 3; *African Charter on the Rights and Welfare of the Child*, Article 3; *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, Article 2; *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, Article 4(a); *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Article 4; *International Covenant on Civil and Political Rights*, Article 4(1); U.N. *Convention on the Rights of the Child*, Article 2; *International Covenant on Economic, Social and Cultural Rights*, Article 2(2); U.N. *Convention on the Elimination of All Forms of Discrimination against Women*, Article 1; and U.N. *Convention on the Elimination of All Forms of Racial Discrimination*, Article 1. See, also ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* and Explanatory Note to Principle 6(D), *Criminalization of Membership/Association*.

- H. Special Measures:** Special measures must be designed to respect and protect the rights of persons with special needs who are affected by terrorism and counterterrorism activities. Such measures shall not be discriminatory or applied in a manner that is discriminatory. In particular, States shall ensure that legislation, procedures, policies and practices are designed to respect and protect the rights and special status and distinct needs of women and children who are victims of terrorism or subject to counterterrorism measures, including but not limited to searches and investigations, all forms of detention, trials, and sentencing.

Explanatory Note: See, by analogy, ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 30.

- I. Fundamental Freedoms:** States shall not use combatting terrorism as a pretext to restrict fundamental freedoms, including freedom of religion and conscience, expression, association, assembly, and movement, and the right to privacy and property with due regard to Principle 1(M), *Non-Derogations and Restrictions on Human Rights and Freedoms*.

Explanatory Note: See, Comm. 266/03, *Kevin Mgwanga Gunme et al v. Cameroon* (2009), paras. 136 and 138; *African Charter on Human and Peoples' Rights*, Articles 8, 9, 10(1), 11, 12, and 14; *International Covenant on Civil and Political Rights*, Article 17; and Explanatory Note to Principle 1(M), *Non-Derogations and Restrictions on Human Rights and Freedoms*.

J. Judicial Independence: States shall protect and guarantee the independence of judges and Courts.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Article 26; Comms. 143/95-150/96, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (November 1999), paras. 30 and 33; East Africa Court of Justice, *James Katabazi & 21 Others v Secretary General of EAC & Another*, 01/2007, November 2007; and Comms. 143/95-150/96, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (November 1999).

K. Principle of Legality: No one may be condemned for an act or omission which did not constitute a legally punishable offence under national or international law, as defined by clear and precise provisions in the law, at the time it was committed. Such offenses must be made accessible to the public and non-discriminatory. Punishment is personal and can be imposed only on the offender in respect to his or her own conduct. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Article 7(2); throughout the *African Charter on Human and Peoples' Rights*, States may only restrict the rights and freedoms of individuals when provided for by law as found in Articles 6, 7, 8, 10, 11, 12, and 14; *International Covenant on Civil and Political Rights*, Article 15(1); Comms. 48/90-50/91-52/91-89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan* (November 1999), para. 59; *United Nations Human Rights Committee*, General Comment 29, para. 7; *United Nations Human Rights Committee*, General Comment 27, para. 13; ECtHR, *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49; and Explanatory Note to Principle 1(G), *Prohibition of Discrimination*.

L. Extraterritoriality: States are bound by their human rights obligations while conducting counterterrorism operations abroad, including in times of armed conflict during which times international humanitarian law is also applicable.

Explanatory Note: See, Comm. 227/99, *Democratic Republic of Congo v. Burundi, Rwanda, Uganda* (May 2003), paras. 79-80.

M. Non-Derogations and Restrictions on Human Rights and Freedoms: The *African Charter on Human and Peoples' Rights* does not allow for derogations. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest. Only in exceptional circumstances may States restrict certain human rights and freedoms. The justification for any restriction must be prescribed by law, strictly proportionate with and absolutely necessary for addressing a legitimate need as set forth under the *African Charter on Human and Peoples' Rights*, and in accordance with regional and international human rights law. A limitation may not erode a right such that the right itself becomes illusory. It must be possible to challenge the lawfulness of restrictions on rights before a court.

Explanatory Note: See, Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (1995), para. 21; *African Charter on Human and Peoples' Rights*, Articles 5, 6, 10(1), 11, 14, and 27(2); Comms. 140/94, 141/94, 145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria* (1999), paras. 41-42; Comm. 276/03, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya* (November 2009), para. 214; and ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section R ("Non-Derogability Clause").

N. The *Principles and Guidelines*: These *Principles and Guidelines* supplement existing standards, in particular the *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, the *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, and the *Global Principles on National Security and the Right to Information* (“*Global Principles*” or “*Tshwane Principles*”). Nothing in the *Principles and Guidelines* shall be construed as restricting or derogating from rights protected under regional and international human rights, humanitarian, and refugee law. If conflicts between provisions of the *Principles and Guidelines* and other international and regional human rights standards arise, the more protective provision takes precedent.



PART 2

ARBITRARY DEPRIVATION OF LIFE AND USE OF FORCE

A. Right to Life: Human beings are inviolable. Every human being shall be entitled to respect for his or her life and the integrity of his or her person. No one may be arbitrarily deprived of this right. This applies in the context of human rights abuses resulting from acts of terrorism and counterterrorism.

Explanatory Note: See, African Charter on Peoples' and Human Rights, Article 4; Constitutive Act of the African Union, Article 4(o); Comm. 245/02, Zimbabwe Human Rights NGO Forum v. Zimbabwe (May 2006), para. 143; and Comm. 74/92, Commission nationale des droits de l'Homme et des libertés v. Chad (October 1995), para. 20.

B. Use of Lethal and Non-Lethal Force: The use of force shall be strictly regulated under national law and in conformity with international standards. State authorities may not use force unless doing so is strictly necessary and done only to the extent required for the performance of their duty. The use of lethal force shall be regarded as an extreme measure. Lethal force should not be used except when in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest an individual presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of force may only be made when strictly unavoidable in order to protect life. When non-lethal force is used it must also be necessary and proportionate to the threat, such that the least harmful form of force is used, and never for purposes of punishment. International human rights law prohibits targeted killings and extrajudicial, summary, or arbitrary executions. With respect to the use of lethal and non-lethal force, States shall, in particular, take into account the following:

- (i) **Planning and Preparation:** Counterterrorism operations must be narrowly tailored and strictly proportionate to the aim of protecting individuals against violence and be planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal or non-lethal force, as required by the principle on *Use of Lethal and Non-Lethal Force* above.
 - (ii) **Obligation to Report, Investigate, and Prosecute:** Where injury or death is caused by the use of force, officials shall report the incident promptly to the competent authorities. In instances where a human rights violation may have resulted from any use of force, States have a responsibility to act in accordance with Principle 1(D), *Obligation to Ensure Accountability*; Principle 1(E), *Obligation to Provide an Effective Remedy*; and Principle 1(F), *Obligation to Provide Reparation*.
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(iii) **Medical Assistance:** States shall ensure that assistance and medical aid are rendered to any injured or affected individuals at the earliest possible moment. States shall also ensure that relatives or close friends of the injured or affected individuals are notified at the earliest possible moment.

Explanatory Note to **Use of Lethal and Non-Lethal Force:** See, ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 3(c)(iii); Comm. 266/03, *Kevin Mgwanga Gunme et al v. Cameroon* (2009), paras. 136 and 138; *Code of Conduct for Law Enforcement Officials*, Article 3; *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Articles 5(a-b) and 9; Comm. 288/2004, *Gabriel Shumba v. Republic of Zimbabwe* (May 2012), footnote 16; *Code of Conduct for Police Officials adopted by the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)*, Article 3; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Study on targeted killings)*, Philip Alston, A/HRC/14/24/Add.6, May 28, 2010, paras. 10 and 32-33; ACHPR, *Resolution 227: on the expansion of the mandate of the Working group on Death Penalty in Africa*; Comms. 54/91-61/91-96/93-98/93-164/97_196/97-210/98, *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v. Mauritania* (2000), para. 120; and Explanatory Note to Principle 3(D)(i), *Prohibition of Torture* and Principle 3(D)(ii), *Prohibition on Disappearances*.

Explanatory Note to **Planning and Preparation:** See, ECtHR, *McCann v UK*, 27 September 1995, Application No. 18984/91, para. 193; *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Article 10; and Comm. 288/2004, *Gabriel Shumba v. Republic of Zimbabwe* (May 2012), footnote 16.

Explanatory Note to **Report, Investigate, and Prosecute:** See, *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Article 6; commentary to *Code of Conduct for Law Enforcement Officials*, Article 3; Comm. 288/2004, *Gabriel Shumba v. Republic of Zimbabwe* (May 2012), footnote 16; and Explanatory Note to the Principle 1(D), *Obligation to Ensure Accountability*, Principle 1(E), *Obligation to Provide an Effective Remedy*, and Principle 1(F), *Obligation to Provide Reparation*.

Explanatory Note to **Medical Assistance:** See, African Charter on Human and Peoples' Rights, Article 16; Comm. 250/02, *Liesbeth Zegveld and Mussie Ephrem v. Eritrea* (November 2003), para. 55; ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa-*, Guideline 31; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(2)(e) ("Rights Upon Arrest"); *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Article 5(c-d); *Code of Conduct for Law Enforcement Officials*, Article 6; Comm. 288/2004, *Gabriel Shumba v. Republic of Zimbabwe* (May 2012), footnote 16; and *Code of Conduct for Police Officials adopted by the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)*, Article 5.

PART 3

LIBERTY, ARREST, AND DETENTION



A. Prohibition of Arbitrary Detention: Every individual shall have the right to liberty and to the security of his or her person. No one shall be subject to arbitrary or unlawful arrest or detention. Arrest and detention shall only be carried out strictly in accordance with provisions of the law that are clear, public, and precise and shall be enforced by competent officials or persons authorized for that purpose, pursuant to a warrant, or on reasonable grounds to suspect that a person has committed an offense or is about to commit an arrestable offense.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(1) ("Right to liberty and security"); *African Charter on Peoples' and Human Rights*, Article 6; Comms. 54/91-61/91-96/93-98/93-164/97_196/97-210/98, *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v. Mauritania* (2000), paras. 113-114; *International Covenant on Civil and Political Rights*, Article 9(1); U.N. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principles 3 and 4; ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 2 and 3; and *Principles in Relation to Deprivation of Liberty of Persons Accused of Acts of Terrorism*, U.N. Working Group on Arbitrary Detention, A/HRC/10/21, February 19, 2009, Principle 53.

B. Rights of an Individual Arrested or Detained: Any individual arrested or detained shall be treated in accordance with relevant regional and international human rights standards, in particular the *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*. This includes, but is not limited to:

- (i) **Notification of Rights:** Any individual arrested or detained shall be promptly notified of his or her rights at the time that the arrest or detention takes place and prior to any questioning. The notification shall be carried out by the appropriate authority in a language that the individual can understand.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(2)(b and d) ("Rights upon arrest") and Section N(2)(b) ("Right to counsel").

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- (ii) **Notification of Reasons for Arrest or Detention and Notification of Charge:** Any individual arrested or detained shall be informed, at the time of arrest or detention and in a language he or she understands, of the reason for his or her arrest or detention and shall be promptly informed, in detail, in a language he or she understands, of the nature and cause of any charges filed against him or her.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(2)(a) ("Rights Upon Arrest") and Section N(1)(a-b) ("Notification of charge").

- (iii) **Right to Legal Representation:** Any individual arrested or detained, or who is not deprived of liberty but who is suspected of, or charged with, an offence, has the right to defend him or herself through legal representation of his or her choosing at all stages of a criminal, administrative, or any other form of legal proceeding. The accused shall have a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused if he or she does not have sufficient means to pay for it. These above rights apply from the moment of arrest or detention and prior to and during any questioning. States shall not block access to legal representation, and must meaningfully facilitate legal representation of the individual's choosing. States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Explanatory Note: See, *African Charter on Peoples' and Human Rights*, Article 7(1)(c); ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section H(a-b) ("Legal Aid and Legal Assistance"), Section I(b-c) ("Independence of Lawyers"), Section N(2) ("Right to counsel"), and Section N(3)(a) and N(3)(e)(1-2) ("Right to adequate time and facilities for the preparation of a defence"); *Organization of African Unity Convention on the Prevention and Combating of Terrorism*, Article 7(3); and ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 31.

- (iv) **Right to Non-Self-Incrimination:** 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.

Explanatory Note: See, ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 9(b).

- (v) **Right to Promptly Challenge Detention:** Any individual who is deprived of liberty in any situation, by or on behalf of a governmental authority at any level including detention by non-state actors that is authorized by domestic law, has the right to take proceedings before a competent, independent, and impartial court in that State's jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty without delay and receive without delay appropriate and accessible remedies. The court should guarantee the physical presence of the detainee before it, especially for the first hearing of the challenge to the arbitrariness and lawfulness of the deprivation of liberty and every time that the person deprived of liberty requests to appear physically before the court. The detainee has the right to challenge his or her detention periodically. If the judicial authority decides that the detention is unlawful, individuals have the right to release without delay.

Explanatory Note: See, U.N. Working Group on Arbitrary Detention, *Draft Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court*, Principles 3, 6, and 11; and ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 35.

(vi) Medical Examination and Assistance: Any individual arrested or detained shall have access to medical services and assistance, and the right to an independent medical examination. At the time of arrest, a person should also undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Medical care and treatment shall be provided free of charge. No detained person shall, even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health. All medical care and examinations shall be carried out with respect for human dignity and with due respect for medical confidentiality.

Explanatory Note: See, ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 20(b); *Report of the Special Rapporteur on the question of torture*, Theo van Boven, E/CN.4/2003/68, 17 December 2002, para. 26(g). U.N. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 24; and ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 9(a)(iii) and 16(d).

(vii) Outside Communication: Any individual arrested or detained shall be provided meaningful access to his or her choice of legal assistance, family members, representatives, or other persons having a legitimate interest, and in the case of a foreign national, his or her embassy or consular post or relevant international or regional organization. For foreign nationals, the detaining State has an obligation to promptly inform the detainee's embassy or consular post.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(1)(c) and (e) ("Rights Upon Arrest"), Section M(1)(7) (a) ("Right to be detained in a place recognised by law") and Section M(8) ("Supervision of places of detention"); ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 31; and *Organization of African Unity Convention on the Prevention and Combating Terrorism*, Article 7, Sections 2-3.

C. Pre-Trial and Pre-Conviction Deprivation of Liberty: There is a presumption of liberty and pre-trial detention shall be an exceptional measure that shall be used as a means of last resort, and alternatives to pre-trial detention shall be employed at as early a stage as possible. Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with the administration of justice, or posing a clear and serious risk to others, States must ensure that they are not kept in custody prior to, or pending, the final outcome of their trial. If a court grants bail/provisional release, any refusal by the executive to implement that order undermines the independence of the judiciary. Expectant mothers and mothers of infants shall not be kept in custody pending their trial.

Explanatory Note: See, *African Charter on Peoples' and Human Rights*, Article 6; U.N. *Standard Minimum Rules for Non-custodial Measures* (the "Tokyo Rules"), U.N. General Assembly, *Resolution 45/110*, 14 December 1990, Rule 6 (*Avoidance of pre-trial detention*); ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(1)(e-f) ("*Right to Liberty and Security*"); Comms. 143/95-150/96, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (November 1999), para. 30; and EACJ, *James Katabazi & 21 Others v. Secretary General of EAC & Another*.

D. Humane Treatment of Individuals Deprived of Liberty: All persons detained or whose liberty is being restricted shall be treated in accordance with relevant regional and international human rights standards. This includes, but is not limited to:

- (i) **Prohibition of Torture:** No individual shall be subject to treatment that violates his or her right to dignity. Torture and cruel, inhuman or degrading treatment or punishment are prohibited. No exceptional circumstances whatsoever may be invoked as a justification for violating these prohibitions. States shall take effective legislative, administrative, judicial, or other measures to prevent all acts of torture, and cruel, inhuman, or degrading treatment by their agents and all such acts that occur in their territory or under their jurisdiction. This includes ensuring that all acts of, and attempts to commit, torture are offences under criminal law. In instances where torture or cruel, inhuman or degrading treatment or punishment occurs, States have a responsibility to act in accordance with Principle 1(D), *Obligation to Ensure Accountability*; Principle 1(E), *Obligation to Provide an Effective Remedy*; and Principle 1(F), *Obligation to Provide Reparation*.

Explanatory Note: See, generally, *Africa Charter on Human and Peoples' Rights*; *African Charter on the Rights and Welfare of the Child*; *U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*; ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*; and *International Covenant on Civil and Political Rights*.

- (ii) **Prohibition on Disappearances:** No individual shall be subject to enforced disappearance. No exceptional circumstances whatsoever may be invoked as a justification for violating this prohibition. States shall take effective legislative, administrative, judicial, or other measures to prevent all acts of disappearances by their agents and all such acts that occur in their territory or under their jurisdiction. This includes ensuring that enforced disappearance constitutes an offence under criminal law. In instances where a disappearance occurs, States have a responsibility to act in accordance with Principle 1(D), *Obligation to Ensure Accountability*; Principle 1(E), *Obligation to Provide an Effective Remedy*; and Principle 1(F), *Obligation to Provide Reparation*.

Explanatory Note: See, *U.N. Convention for the Protection of All Persons from Enforced Disappearance*, Article 1, 2, 3, 4, 8(2), and 24; *Comm. 204/97, Movement Burkinabé des Droits de l'Homme et des Peuples/ Burkina Faso* (2001), para. 44; and *Comm. 250/02, Liesbeth Zegveld and Mussie Ephrem v. Eritrea* (November 2003), para. 55.

- (iii) **Prohibition of Secret Detention:** There shall be no secret detentions and any individual deprived of liberty shall be registered and held in an officially recognized place of detention. Upon arrival at an official detention center the detainee's basic information shall be recorded and made available to family members, the detainee's representatives or counsel, or to other persons having a legitimate interest in the information with due regard for the detained individual's rights, in particular his or her right to privacy. The detention center should be subject to independent oversight to ensure compliance with international standards.

Explanatory Note: See, *Comm. 250/02, Liesbeth Zegveld and Mussie Ephrem v. Eritrea* (November 2003), para. 55; *Comm. 204/97, Movement Burkinabé des Droits de l'Homme et des Peuples/ Burkina Faso* (2001), para. 44; *U.N. Convention for the Protection of All Persons from Enforced Disappearance*, Article 17; *Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances*, Human Rights Council, A/HRC/13/42, 26 January 2010, para. 17; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(1)(a-b) ("Right to be detained in a place recognised by law"); ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guidelines 40-41; and Explanatory Note to Principle 3(B)(vii), *Outside Communication*.

(iv) Conditions of Detention and Imprisonment: States shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human person. This includes the protection of physical and mental health as well as appropriate provisions for living accommodation, personal hygiene, clothing and bedding, food, religious practices, exercise and sport, and medical service. States shall prohibit practices that violate human dignity such as solitary confinement, using instruments of restraint as punishment, and withholding as punishment or otherwise food, water, and other such items necessary for respecting humanity and dignity.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section M(7)(a) (“Right to humane treatment”); ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 33; Comm. 250/02, *Liesbeth Zegveld and Mussie Ephrem v. Eritrea* (November 2003), para. 55; U.N. *Standard Minimum Rules for the Treatment of Prisoners*, Rules 9-26 and 31-34; *African Charter on Human and Peoples’ Rights*, Article 8; U.N. *Basic Principles for the Treatment of Prisoners*, A/RES/45/111, Principles 7 and 9; *Code of Conduct for Law Enforcement Officials*, Article 6; *The Istanbul Statement on the Use and Effects of Solitary Confinement*, A/63/175, annex, paras. 77 and 83; and *Interim Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E. Méndez, A/66/268, paras. 87 and 88.



PART 4

RIGHT TO FAIR TRIAL

A. Fair Trial: Any individual arrested or detained shall be granted the right to a fair trial in accordance with relevant international human rights standards, in particular the *African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Articles 3 and 7(1); and, generally, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.

B. Military of other Special Tribunals: Military Courts shall not in any circumstances whatsoever have jurisdiction over civilians. The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel. Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to ordinary judicial bodies. While exercising their function, Military Courts shall be required to respect fair trial standards enunciated in the *African Charter and in the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section A(4)(e) ("Independent Tribunal") and Section L (Right of Civilians not to be tried by Military Courts); and Comms. 54/91-61/91-96/93-98/93-164/97_196/97-210/98, *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v. Mauritania* (2000), paras. 93-100.

C. Evidence

(i) **Use of Evidence:** Statements, confessions, or other evidence obtained by any form of coercion or force, in particular, through torture and cruel, inhuman, and degrading treatment or punishment, incommunicado detention, disappearance, the absence of basic procedural guarantees, or other serious violations of internationally protected human rights shall not be used as evidence in any proceedings, except when used as evidence against an individual accused of those above abuses. Such evidence may also not be considered as probative of any fact in a proceeding, including in sentencing.

Explanatory Note: See, Comm. 334/06, *Egyptian Initiative for Personal Rights and Interights v. Egypt* (2011), paras. 212-213 and 218; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section N(6)(a) and (d)(1) ("Rights during a trial"); ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 29; and *U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 15.

- (ii) **Secret Evidence:** The essential elements of a fair hearing include adequate opportunity to prepare a case, present arguments and evidence, and to challenge or respond to opposing arguments or evidence. The accused shall have a right to all relevant information held by the prosecution or other public authorities that could help the accused exonerate him or herself, or cast doubt on the State's case against him or her. Before judgment or sentence is rendered, the accused shall have the right to know and challenge all the evidence which may be used to support the decision. It is the duty of the competent authorities to ensure lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable those lawyers to provide effective legal assistance to their clients.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section A(2)(e) ("Fair Hearing") and Section N(3)(e)(3, 4, 6, and 7) ("Right to adequate time and facilities for the preparation of a defence").

- (iii) **Unlawfully Obtained Evidence:** Where the suspect or the accused raise doubts that the evidence was unlawfully obtained, the burden of proof is on the State to demonstrate that the evidence was not so obtained.

Explanatory Note: See, Comm. 334/06, *Egyptian Initiative for Personal Rights and Interights v. Egypt* (2011), para. 218.

- (iv) **Accountability for Unlawful Evidence:** When officials come into possession of evidence described in *Use of Evidence* above, they must inform the appropriate judicial body and the State shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section F(I) ("Role of Prosecutors"); and Explanatory Note to Principle 1(D), *Obligation to Ensure Accountability*, Principle 1(E), *Obligation to Provide an Effective Remedy*, and Principle 1(F), *Obligation to Provide Reparation*.

- D. Second Trial for Same Offence Prohibited:** No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section N(8) ("Second trial for same offense prohibited"); and *International Covenant on Civil and Political Rights*, Article 14(7).

PART 5

TRANSFERS OF INDIVIDUALS

- A. Transfers:** A State may not “transfer” [e.g., deport, expel, remove, extradite] an individual to the custody of another State unless it is prescribed by law and in accordance with due process and other international human rights obligations. All transfers are subject to the principle of non-refoulement. Transfers shall not be a justification for loss or revocation of nationality or to make an individual stateless. Deportation, expulsion, and removal cannot be used to circumvent criminal justice processes, including extradition procedures. Extraordinary rendition, or any other transfer, without due process is prohibited.

Explanatory Note: The forced transfer of an individual from the custody of one State to another entity necessarily requires the deprivation of liberty. For this reason, the process through which the transfer takes place must be provided for by law and not arbitrary. See Principle 3(A), *Prohibition of Arbitrary Detention; Organization of African Unity Convention on the Prevention and Combating of Terrorism*, Articles 8(1) and 11; and Explanatory Note to Principle 5(A)(ii), *Non-Refoulement* and Principle 9(A), *Prohibition against Statelessness*.

- (i) **Judicial Oversight:** A State shall provide for all individuals that it wishes to transfer to the custody of another State an effective, independent, impartial, and individualized judicial oversight or review procedure prior to transfer, including but not limited to addressing non-refoulement concerns.

Explanatory Note: See, *Agiza v. Sweden*, Comm. 233/2003, May 2005, para. 13.8; Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counter-terrorism* (Fact Sheet No. 32); and Explanatory Note to Principle 5(A)(ii), *Non-Refoulement*.

- (ii) **Non-Refoulement:** No State shall, for any reason, transfer (as defined above) any individual to the custody of another State where there are substantial grounds for believing that there is a real risk of serious human rights violations. States shall place no restrictions on this rule.

Explanatory Note: See, *U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3; *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Article 2; *U.N. Convention Relating to the Status of Refugees*, Article 33 (prohibition of expulsion or return [“refoulement”]); ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 15; *African Model Anti-Terrorism Law*, Article 61; Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counter-terrorism* (Fact Sheet No. 32); and Explanatory Note to Principle 1(M), *Non-Derogations and Restrictions on Human Rights and Freedoms*.



PART 6

CRIMINALIZATION AND SANCTIONING OF TERRORISM

A. Accountability: Individuals who engage in terrorism-related criminal activity may be prosecuted under domestic law and must be held criminally liable for serious human rights abuses, in particular, but not limited to, murder, torture, sexual violence, kidnapping and hostage taking, forced recruitment, war crimes, and crimes against humanity, or may be extradited to face trial in another jurisdiction. The criminalization and sanctioning of terrorism-related activities must be done in accordance with international human rights law.

Explanatory Note: See, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/20/14, 4 June 2012, para. 67(b).

B. Clarity and Specificity of Law: Any criminalization of, or other punishment for, acts of terrorism must abide by Principle 1(K), *Principle of Legality*. In particular, States must ensure that their laws criminalizing acts of terrorism are accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, and non-retroactive. Any criminalization of, or other punishment for, acts of terrorism must be directed only against acts done knowingly and with intent and in accordance with international law, including human rights law.

Explanatory Note: See, U.N. General Assembly, Resolution 64/168: Protection of Human Rights and Fundamental Freedoms while Countering Terrorism; and Explanatory Note to Principle 1(K), Principle of Legality and Principle 1(G), Prohibition of Discrimination.

C. Indirect Criminal Responsibility: Laws sanctioning indirect criminal responsibility for terrorist acts must be accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, non-retroactive, and targeted at principle acts of terrorism. Such acts must be sanctioned only when there is intent and knowledge to carryout, support, plan, or facilitate a terrorist act.

Explanatory Note: See Explanatory Note to Principle 1(K), Principle of Legality; Principle 1(G), Prohibition of Discrimination; and Principle 6(B), Clarity and Specificity of Law.

D. Criminalization of Membership/Association: Criminal responsibility for acts of terrorism shall be individual, not collective. Individuals shall not be criminally responsible solely for membership in an organization, or association with an individual or organization, that is suspected of, or has been banned, sanctioned, accused, or punished for, engaging in acts of terrorism. States shall be prohibited from

targeting an individual 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.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Articles 7(2) and 10(1); Comms. 48/90-50/91-52/91-89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan* (November 1999), para. 59; see generally, ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*; Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, para. 227; and Explanatory Note to Principle 1(G), *Prohibition of Discrimination*.

- E. Assistance in Accessing Human Rights:** The act of providing assistance, in any form, that has the purpose of enabling an individual or entity suspected, accused, charged with, convicted of, or otherwise legally determined to be a terrorist, terrorist entity, or involved in terrorist-related activities to receive, protect, or assert their human rights or to live in dignity shall not be sanctioned.

Explanatory Note: Whereas the *African Charter on Human and Peoples' Rights*, as well as other human rights treaties, aim to provide and protect the rights and freedoms of individuals and groups, making punishable acts that allow individuals and peoples to pursue, receive, or assert those rights and freedoms, such as the provision of legal assistance, access to redress, medical care, education, employment, or any other right or freedom under human rights law, is in fundamental opposition of the *raison d'être* of the African human rights system.

- F. Proportionality of Punishment:** Punishment shall be proportionate to the seriousness of the crime and individual criminal responsibility. Courts shall be afforded the opportunity to take fully into account the circumstances of the crime and the individual, including mitigating circumstances. In imposing a sentence of imprisonment, Courts shall deduct the time, if any, previously spent in detention in connection with conduct underlying the crime.

Explanatory Note: See, ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section N(7) ("Right to benefit from a lighter sentence or administrative sanction") and Section N(9)(b) ("Sentencing and punishment"); *African Commission on Human and Peoples' Rights Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa*, Activity Report of the Vice-Chairperson, 51st Session of the ACHPR, paras. 16 and 18; *U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 4(2); *U.N. Convention for the Protection of All Persons from Enforced Disappearance*, Article 7; *Rome Statute of the International Criminal Court*, Article 78(1-2) ("Determination of the Sentence"); *International Criminal Court Rules of Procedure and Evidence*, Rule 145 ("Determination of Sentence"); and *International Criminal Court Regulations of the Office of the Prosecutor*, Regulation 64 ("Mitigating and Aggravating Factors").

- G. Listing:** States shall respect the principle of legality, non-discrimination, and procedural protection standards when it designates and sanctions an individual or entity as a terrorist. These standards include, but are not limited to:

- (i) **Intent:** The sanctions against an individual or entity shall be based on reasonable grounds to believe that the individual or entity had knowingly and with intent carried out, supported, participated in, or facilitated a terrorist act.
- (ii) **Notification:** States shall promptly and fully inform the individual or entity of the accusations or charges; States shall provide the individual or entity with any decision taken and the reasons for that decision; and States shall inform the individual or entity of the consequences of the accusations or charges. If relevant, the listing State shall also promptly and fully inform the State to which the individual or entity belongs.

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- (iii) Appeal and De-Listing:** States shall permit the listed individual or entity the right to apply for non-implementation or de-listing of the sanctions and a right to an independent, impartial adjudicative body to review the decision resulting from such application, with due process rights applying to such a review, including being able to provide a meaningful defense and ensuring that rules concerning the burden of proof are commensurate with the severity of the sanctions. If relevant, the listing State shall also promptly and fully inform the State to which the individual or entity belongs if de-listing occurs.
- (iv) Reparations:** States shall provide reparation for any violation of an individual's rights associated with listing laws and procedures.

Explanatory Note for all of Principle 6(G), *Listing*: See, ECtHR, *Nada v. Switzerland*, 12 September 2012, Application No. 10593/08, para. 207; Council of Europe, *Resolution 1597 (2008): United Nations Security Council and European Union Blacklists*, paras. 4-5; U.N. Security Council, Resolution 1989 (2011) S/RES/1989 (2011); and *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Ten areas of best practices in countering terrorism)*, Martin Scheinin, A/HRC/16/51, December 2010, para. 35.



PART 7

COUNTERTERRORISM COOPERATION

A. Obligation to Cooperate: States shall cooperate among themselves in preventing and combating terrorism and counterterrorism-related human rights violations. States shall respect their human rights obligations when fulfilling their obligation to cooperate in combating terrorism. States shall withhold cooperation that would result in violations of international human rights, humanitarian, or refugee law.

Explanatory Note: See, Organization of African Unity Convention on the Prevention and Combating of Terrorism, Article 5; U.N. Security Council, Resolution 1373, para. 2(f); Comm. 245/02, Zimbabwe Human Rights NGO Forum v. Zimbabwe (May 2006), para. 143; Comm. 74/92, Commission nationale des droits de l'Homme et des libertés v. Chad (October 1995), para. 20; Algiers Declaration, Thirty-Fifth Ordinary Session of OAU/Third Ordinary Session of AEC, 12-14 July 1999, AHG/Decl. 1 (XXXV); International Law Commission, Responsibility of States for Internationally Wrongful Acts, Article 16; and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, para. 420.

B. Commission of Internationally Wrongful Acts: States shall ensure that foreign States do not carry out internationally wrongful acts on their territory or under their jurisdiction, including but not limited to unlawful killings, torture, sexual violence, child recruitment, disappearances, and other forms of arbitrary detention. States shall take all practical steps to determine whether foreign entity activities on, and movements through, their territory involve such practices. In addition, States shall not assist or support another State in the commission of an internationally wrongful act.

Explanatory Note: See, International Law Commission, Responsibility of States for Internationally Wrongful Acts, Articles 16 and 17; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, para. 420; and Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism (Fact Sheet No. 32).

C. Cooperation amongst African Union Bodies and Civil Society: In recognition of African Union bodies having a role in cooperating with each other and harmonizing efforts relating to the situation of human rights, terrorism, and counterterrorism, civil society shall be permitted to address the African Commission on Human and Peoples' Rights on issues relating to the situation of human rights, terrorism, and counterterrorism.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Articles 45(1)(a and c) and 45(2); *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Article 3; and *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Articles 19 and 20.



PART 8

PRIVATE SECURITY CONTRACTORS (PSC)

A. Accountability of Private Security Contractors: States shall seek to ensure respect for regional and international human rights, humanitarian, and refugee law by private security contractors (military and non-military) they contract. In particular, States must ensure that private security contractors are adequately vetted and regulated; the identity of private security contractors and their functions, powers, and immunities are publicly known; their personnel are adequately vetted and trained, including in applicable standards of international human rights, humanitarian, and refugee law; appropriate measures are taken to prevent any violations; contractors and their personnel are compelled to promptly report to the competent authorities instances where a human rights violation may have occurred; and those responsible for any violations are held to account through administrative, disciplinary, or judicial sanctions, where required or as appropriate.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Article 1; Comms. 147/95 and 149/96, *Dawda Jawara v. The Gambia* (May 2007), para. 32; Comm. 245/02, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (May 2006), para. 143; Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (October 1995), para. 20; *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, Article 3(1)(H); International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, Articles 8 and 9; and *Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*, Part I(A)(3). *The provision from the *Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* reflects "existing legal obligations of States and PMSCs and their personnel."

PART 9

STATELESSNESS



A. Prohibition against Statelessness: States shall ensure that no one is exposed to statelessness solely as a form of punishment, in a discriminatory manner, or on the basis that an individual is suspected of, accused or charged with, convicted of, or otherwise determined to be a terrorist or involved in terrorist-related activities. No one shall be arbitrarily deprived of his or her right to nationality. In all nationality matters, States shall afford due process guarantees in line with international human rights standards and States shall protect stateless individuals within their national territory in line with international law, including international human rights law.

Explanatory Note: See, ACHPR, *Resolution 234: on the right to nationality (2013)*; *1961 Convention on The Reduction of Statelessness*, Preamble; *1954 Convention Relating to the Status of Stateless Persons*, Preamble; *Universal Declaration of Human Rights*, Article 15; and Explanatory Note to Principle 1(G), *Prohibition of Discrimination*.



PART 10

HUMAN RIGHTS DEFENDERS, VICTIMS, WITNESSES, JOURNALISTS, INVESTIGATORS, JUDGES, AND OTHERS

A. National Human Rights Institutions: States shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of human rights and freedoms guaranteed under international and regional human rights law. This applies in particular to national institutions that promote and respect human rights in the context of terrorism and countering terrorism.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Article 26.

B. Protection by the State: States shall ensure that witnesses and victims of terrorism and counterterrorism-related human rights abuses; others who provide information to authorities; those conducting any investigation into human rights abuses; judicial officers; journalists and media practitioners; other human rights defenders; and their family members, in particular women and children, are protected from violence, threats of violence, or any other form of intimidation or reprisal from a State agent, suspected terrorist or terrorist group, or other private individual. Where victims of terrorism or counterterrorism-related harm have provided information to the authorities, or are called upon to provide testimony during legal proceedings, their rights to life, physical security, and privacy must be fully protected, subject to safeguards to ensure that any protective measures adopted are compatible with the accused person's right to a fair and public hearing. This may require States to institute robust systems for witness protection.

Explanatory Note: See, *African Charter on Human and Peoples' Rights*, Article 1; Comms. 272/03, *Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon* (November 2009), paras. 87-88; Comm. 245/02, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (May 2006), para. 143; Comm. 74/92, *Commission nationale des droits de l'Homme et des libertés v. Chad* (October 1995), para. 20; ACHPR, *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Guideline 49; U.N. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Article 23; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section I(b), (e), and (f) ("Independence of Lawyers"); U.N. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Annex Article 4; and *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ben Emmerson, A/HRC/20/14, 4 June 2012, para. 67(g);

ACHPR, *Resolution 62: on the Adoption of the Declaration of Principles on Freedom of Expression in Africa; and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, A/64/211, 3 August 2009, paras. 29, 31, and 40.

- C. Duties to Victims:** States shall, in addition to their other duties to victims set out in these *Principles and Guidelines*, seek out justice for the victims of terrorism through effective official investigations whenever individuals have been killed or seriously injured as the direct or indirect result of an act of terrorism, with a view to securing accountability and learning lessons for the future. States shall also ensure that victims of terrorism have the right to form representative organizations whose rights to freedom of association and expression must be fully guaranteed.

Explanatory Note: See, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ben Emmerson, A/HRC/20/14, 4 June 2012, paras. 67(c) and 67(j).

- D. Definition of Terrorism Victim:** The following persons are to be considered as victims of terrorism: (a) individuals who have been killed or suffered serious physical or psychological injury through the commission of an act of terrorism (direct victims); (b) the next-of-kin or dependants of a direct victim (secondary victims); (c) innocent individuals who have been killed or suffered serious injury indirectly attributable to an act of terrorism (indirect victims); and (d) potential future victims of terrorism.

Explanatory Note: See, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ben Emmerson, A/HRC/20/14, 4 June 2012, para. 16.

PART 11

RIGHT TO PRIVACY



- A. Privacy and Surveillance:** Measures used to counter terrorism that interfere with privacy (in particular body searches; house and property searches; bugging; telephone tapping; surveillance of correspondence and metadata; electronic monitoring; use of undercover agents; and receipt, collection, access, use, storage, maintenance, examination, disclosure, destruction, and intra- and interstate dissemination and sharing of privacy information, including through the use of databases) must be provided for by law, strictly proportionate with and absolutely necessary for achieving a legitimate goal, conducted in a manner consistent with human dignity and the right to privacy, and as otherwise permitted under international human rights law. No one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. The legal framework concerning any interference with privacy, as well as their procedures, should be accessible to the public. Such measures taken shall be subject to judicial oversight, and there must be the possibility to effectively challenge the lawfulness of these measures before a court.

Explanatory Note: See, Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counter-terrorism (Fact Sheet No. 32)*, pg. 45-46; ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guideline 3(d). See, also, *International Covenant on Civil and Political Rights*, Article 17; Council of Europe, *Guidelines on Human Rights and Fight Against Terrorism*, Article 6(1); *African Charter on the Rights and Welfare of the Child*, Article 10; and *Global Principles on National Security and the Right to Information ("Global Principles" or "Tshwane Principles")*, Principle 10(E)(1). Components of the right to privacy are also inferred within the *African Charter on Human and Peoples' Rights*, via the concept of state non-interference, notably in Articles 8, 10, 11, 12(1), 13(1), 14, and 18. *The *Tshwane Principles*, issued on 12 June 2013, reflect international and national law and practice, and were endorsed by, amongst others, the three special rapporteurs on freedom of expression of the United Nations, African Commission on Human and Peoples' Rights, and the Organisation of American States, as well as by the U.N. Special Rapporteur on Counter-Terrorism and Human Rights and the OSCE Representative on Freedom of the Media. On 24 June 2013, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe unanimously adopted a resolution expressing support for the Principles.

PART 12

RIGHT OF ACCESS TO INFORMATION AND THE RIGHT TO TRUTH



A. Right of Access to Information and the Right to Truth: Everyone shall have the freedom to seek, receive, use, and impart information. This includes information held by or on behalf of public authorities, or to which public authorities are entitled by law to have access. It shall be for the requested authority to demonstrate that the necessity to restrict access to information threatens to cause harm that is greater than any benefit to the public interest served by the disclosure. States shall not withhold information regarding gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, and systematic or widespread violations of the rights to life, personal liberty, and security. Such information may not be withheld on national security grounds in any circumstances. State authorities shall also not withhold information for the purpose of precluding accountability of States or individuals, or to preclude victims from securing a remedy to gross human rights violations or serious violations of international humanitarian law. Any refusal to disclose information shall be subject to, at a minimum, a judicial review mechanism. In making the determination to disclose information, due regard shall be given to rules pertaining to restrictions of rights.

Explanatory Note: See, *African Charter on Human and Peoples' Rights, Article 9*; *International Covenant on Civil and Political Rights, Article 19(2)*; *Universal Declaration of Human Rights, Article 19*; *African Model Law for African States on Access to Information, Preamble and Articles 2(1)(e) and 36*; U.N. Human Rights Council, *Resolution 12/12: on the Right to the Truth*; OHCHR, *Study on the Right to the Truth* (February 8, 2006), para. 59; ECtHR, *El Masri v. Macedonia*, 3 December 2012, Application No. 39630/09, paras. 191-94; *Gomes Lund (Guerrilha do Araguaia) v. Brazil*, IACtHR, Judgment of November 24, 2010, para. 201; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section A(3)(a) ("Public hearing"), Section C(b)(3) ("Right to an Effective Remedy"), and Section D(a); Committee Against Torture, *General Comment 3 on Implementation of article 14 by States parties* ("Satisfaction and the right to truth"), paras. 16-17; *Global Principles on National Security and the Right to Information* ("*Global Principles*" or "*Tshwane Principles*"), Principle 27(b) ("*General Judicial Oversight Principle*"); and see also Explanatory Note to Principle 1(M), *Non-Derogations and Restrictions on Human Rights and Freedoms*. *The *Tshwane Principles*, issued on 12 June 2013, reflect international and national law and practice, and were endorsed by, amongst others, the three special rapporteurs on freedom of expression of the United Nations, African Commission on Human and Peoples' Rights, and the Organisation of American States, as well as by the U.N. Special Rapporteur on Counter-Terrorism and Human Rights and the OSCE Representative on Freedom of the Media. On 24 June 2013, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe unanimously adopted a resolution expressing "support" for the Principles.



PART 13

HUMAN SECURITY

- A. Human Security:** States have a responsibility to protect the human security of its people and peoples and to address the underlying conditions conducive to the emergence and spread of terrorism. The protection of human security and effective counterterrorism strategy in Africa requires a commitment to development and the promotion of economic, social, and cultural rights.

Explanatory Note: See, African Union Non-Aggression and Common Defence Pact, Article 1(k); Secretary General's Report on High-level Panel on Threats, Challenges and Change, paras. 145 and 148; and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/6/17, 21 November 2007, para. 69.

PART 14

IMPLEMENTATION



- A. Implementing Measures and Reviews:** In accordance with Article 1 of the *African Charter on Human and Peoples' Rights*, States shall adopt legislative, administrative, judicial and other measures to give effect to these *Principles and Guidelines* and ensure that the rights and obligations contained herein are always guaranteed in law and practice, including during armed conflict and states of emergency. This shall include a review of existing legislative, administrative and other provisions to assess compatibility with the *Principles and Guidelines*. States shall also take efforts to address terrorism in compliance with their human rights obligations through the cooperative mechanisms being implemented by the African Centre for the Study and Research on Terrorism.
- B. Dissemination:** States shall ensure that these *Principles and Guidelines* are widely disseminated, including to counterterrorism authorities, 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 counterterrorism institutions and activities.
- C. Training:** States shall ensure that all officials who are involved in counterterrorism measures are properly trained in relation to the provisions of these *Principles and Guidelines*. The provisions of these *Principles and Guidelines* and other relevant guidelines developed by the African Commission on Human and Peoples' Rights pursuant to the *African Charter* shall be fully incorporated into the curricula of all basic and in-service training and, as appropriate, done in consultation with the African Centre for the Study and Research on Terrorism.
- D. Reporting:** States parties to the *African Charter on Human and Peoples' Rights*, in their periodic reports to the African Commission on Human and Peoples' Rights and in accordance with their other reporting responsibilities to relevant regional and international bodies, shall provide information, including relevant information on the implementation of legislation, policies and court decisions, on the extent to which counterterrorism measures are consistent and in compliance with these *Principles and Guidelines*.

Explanatory Note: This section on "Implementation" reflects a similar section set forth in the ACHPR, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, Guidelines 44-47, and recognizes the role for a cooperative relationship between the Commission and the African Centre for the Study and Research on Terrorism.
