

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

Luanda Guidelines

Toolkit



AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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

**Luanda Guidelines
Toolkit**

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Foreword



The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) were adopted by the African Commission on Human and Peoples' Rights (the Commission) during its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014. Articles 2, 3, 5, 6 and 7 of the African Charter on Human and Peoples' Rights (the African Charter) sets out States' obligations to provide all people with the rights to life, dignity, equality, security, a fair trial, and an independent judiciary. The Luanda Guidelines promote the implementation of these obligations by State Parties to the African Charter in the specific context of arrest, police custody and pre-trial detention.

The Guidelines are an authoritative interpretation of the African Charter and were developed by the Commission in accordance with its mandate in Article 45(1) of the Charter to formulate standards, principles and rules on which African Governments can base their legislation. They provide guidance to policy makers and criminal justice practitioners with the aim of strengthening day-to-day practice of arrest, and through a comprehensive consultation process prior to their adoption, reflect the collective aspiration of our States and their stakeholders for a rights-based approach to this critical but often overlooked area of criminal justice.

At its 59th Ordinary Session from 21 October to 4 November 2016 in Banjul, Islamic Republic of The Gambia, the African Commission approved the publication of this Luanda Guidelines Implementation Toolkit as an additional resource for State Parties to the African Charter in their efforts to reduce arbitrary and prolonged arrest, police custody and pre-trial detention. The effects of excessive or prolonged pre-trial detention contribute to overburdening criminal justice systems, cause and compound human rights violations, and have profound socio-economic impacts on detainees, their families and communities.

The Toolkit contains a series of resources to assist States in integrating the Luanda Guidelines into their national legal frameworks and justice sector working methods. The resources include checklists to assist States to assess the extent to which current frameworks and practices align with the Luanda Guidelines; model forms and templates that can be adapted for use in national contexts; reporting templates to strengthen State reporting on justice related matters in accordance with Article 62 of the African Charter; and awareness raising materials to promote disseminate of the Guidelines and their underlying principles.

The Toolkit was subject to a consultation process, where the views and experiences of States and their stakeholders were incorporated into the documents to ensure the relevance of this Toolkit to the challenges facing our respective criminal justice systems. Best practices were also shared and incorporated into this Toolkit. As Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, I was particularly impressed with the innovative and unique approaches shared by stakeholders across the continent

in addressing this area of criminal justice. By consolidating these best practices and other learnings into this Toolkit, the African Commission hopes to promote a the positive reform of pre-trial justice systems, and to strengthen human rights observance at this critical stage of the criminal justice process.

I extend my sinere gratutide to the African Policing Civilian Oversight Forum and the Open Society Foundations for their support to the development of this Toolkit, and to the experts and States who provided their feedback on the draft document.

I also encourage States to take steps to ensure that the African Charter and the Luanda Guidelines are reflected in pre-trial detention systems at the national level. The African Commission is committed to providing the technical assistance required by States to achieve a more rational and proportionate use of pre-trial detention. The publication of this Toolkit is an important step in that process.



Honourable Med SK Kaggwa

Commissioner of the African Commission on Human and Peoples' Rights and Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

Introduction

Background to the Luanda Guidelines

The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) were adopted by the African Commission in response to its concern that the unnecessary and arbitrary use of arrest and pre-trial detention is a major contributing factor to prison overcrowding in Africa. The Commission was also concerned about the impact of arrest and detention on corruption, the risk of torture, and socio-economic consequences for detainees, their families and communities. The African Commission mandated the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (‘the Special Rapporteur’) to develop a set of practical guidelines on arrest and detention. A number of background studies, regional consultations and expert group meetings led to the final adoption of the Luanda Guidelines during the African Commission’s 55th Ordinary Session in Luanda, Angola in May 2014.

The Guidelines provide an authoritative interpretation of the African Charter on Human and Peoples’ Rights (‘the African Charter’) and offer specific detail on measures that State Parties to the African Charter should take to uphold, promote and protect the rights of people in an arrest, police custody and pre-trial detention environment. In doing so, the Guidelines reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and a more rational and proportionate use of pre-trial detention. This enables a more effective use of human and financial resources, for example targeted towards legal aid and crime prevention.

The Guidelines trace the process from the moment of arrest until trial, focusing on the decisions and actions of the police, correctional services, the judiciary and other criminal justice sector actors. They contain nine key sections, covering the framework for arrest and police custody, important safeguards and measures to ensure transparency and accountability, and ways to improve coordination between criminal justice sector institutions. The Guidelines are set out as follows:

- Part I: Arrest – covers grounds for arrest, procedural guarantees and the rights of suspects and arrested persons, including the requirement that they be notified of their rights.
- Part II: Police Custody – provides a framework for decision making on police bail or bond, and details safeguards for persons who are subject to police custody, including access to legal services, limitations on the use of force and restraints, safeguards during questioning, and the recording of confessions.
- Part III: Decisions on Pre-Trial Detention – includes safeguards for accused persons who are subject to a pre-trial detention order, review procedures and mechanisms to minimise prolonged pre-trial detention.
- Part IV: Registers – this section is designed to improve efficiency in management of detainees to facilitate compliance with human rights standards. It provides guidelines on the type of information that should be recorded in all forms of record keeping,

including arrest registers, and those used in police custody and pre-trial detention facilities.

- Part V: Deaths and Serious Human Rights Violations in Custody – sets guidelines for the procedures that should be followed in the event of a death or serious human rights violation in police custody or pre-trial detention.
- Part VI: Conditions of Detention – includes conditions of detention in police custody and pre-trial detention, and specific safeguards that apply to these places of detention such as the separation of categories of detainees, and limitations on the use of force, restraints and solitary confinement.
- Part VII: Vulnerable Groups – covers groups identified by the African Charter as being at risk or having special needs within the criminal justice system, including women, children, persons with disabilities and a range of non-national categories.
- Part VIII: Accountability and Remedies – includes a range of measures such as judicial oversight, right to challenge lawfulness of detention, independent complaints, investigations and monitoring mechanisms, data collection and dissemination, and provision for redress.
- Part IX: Implementation – highlights steps for implementation through monitoring, transposition, training and oversight.

The adoption of the Luanda Guidelines by the African Commission was an important first step in the Commission’s work to promote a rights-based approach to arrest, police custody and pre-trial detention. The success of the Guidelines in reforming criminal justice processes and practices across the continent will be measured by the extent to which they are implemented by stakeholders, including in the ordinary work of the African Commission, by States, National Human Rights Institutions and civil society.

Supporting the Implementation of the Luanda Guidelines

In the two years since their adoption, the Luanda Guidelines have been commended by stakeholders on the extent to which they provide a detailed and practical guide for the implementation of the African Charter in terms of arrest, police custody and pre-trial detention, which, if implemented by States, have the potential to deal with systemic challenges across the criminal justice chain.

To support the implementation of the Luanda Guidelines, the Commission has published this set of implementation tools, which aim to provide further practical guidance to States and their stakeholders on a range of measures to promote a rights-based approach to this critical area of criminal justice. The utility of this approach is in promoting consistency in the interpretation and application of the African Charter and the Luanda Guidelines provisions, and to promote a shared framework for monitoring the implementation of the Guidelines at a national level.

Based on feedback received from stakeholders during the consultations on the draft Luanda Guidelines in 2013, and further research regarding good practices, the Implementation Toolkit is comprised of the following documents:

- Model Training Manuals for Law Enforcement Personnel
 - Trainer’s manual
 - Trainee’s manual
 - PowerPoint Presentations
- Model Checklists for Monitoring the Implementation of the Luanda Guidelines
 - Checklist 1: Legal and Policy Framework for Arrest, Police Custody and Pre-Trial Detention.
 - Checklist 2: Measuring the Effectiveness and Efficiency of Pre-Trial Detention Systems.
 - Checklist 3: Treatment of Detainees in Police Custody and Pre-Trial Detention.
- Model Forms and Registers
 - Individual Detainee Intake Form
 - Individual Detainee Injury Form
 - Individual Detainee Custody Register
 - Individual Detainee Property Receipt
 - Station or Unit Lock-up Book
 - Station or Facility Property Register
- Model Letters of Rights
 - Model Letter of Rights for Arrest
 - Model Letter of Rights for Pre-Trial Detention
- Guidance Note for State Parties on incorporating the Luanda Guidelines into reporting to the African Commission
- Communication and Advocacy Tools
 - Summary of the Luanda Guidelines
 - Sample Press Release for Africa Pre-Trial Detention Day (25 April)
 - Sample Short Article: The Rights of Accused Women and Girls
 - Luanda Guidelines Briefing Note for National Contexts
- Legal Referencing for the Luanda Guidelines.

The draft tools were subject to an expert review by stakeholders from State and non-state criminal justice institutions from across Africa. That consultation, which was held in Johannesburg, South Africa on 28 February to 1 March 2016 with the support of the Open Society Foundations and the African Policing Civilian Oversight Forum, aimed to ensure that the toolkit is relevant and adaptable to a variety of national contexts, taking into account the different legal systems in operation across the continent.

The tools have been developed as ‘generic’ or ‘model’ tools, and State Parties are encouraged to consider their use in a number of ways. For example, individual tools can be adapted for use in national contexts, or be used as the basis against which to review and revise existing national forms, registers and training manuals.

CHECKLISTS FOR MONITORING COMPLIANCE

EXPLANATORY NOTE

Monitoring compliance with the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') is an important aspect of promoting and monitoring the implementation of the African Charter on Human and Peoples' Rights and the Guidelines at the national level. Three checklists have been developed for use at a **national level** to monitor the extent to which the Luanda Guidelines are being implemented at the law and policy, administrative and station/facility levels:

- Checklist 1: Measuring the extent to which national legislative and policy framework for arrest, police custody and pre-trial detention comply with the Luanda Guidelines (pages 2–23).
- Checklist 2: Measuring the extent to which the Luanda Guidelines are implemented in practice in terms of arrest, police custody and pre-trial detention (pages 24–33).
- Checklist 3: Monitoring conditions of detention in police custody and pre-trial detention (pages 34–38).

These three checklists incorporate measurement indicators that draw on the requirements of the African Charter and the Luanda Guidelines. They are intended for use at the national level by States, National Human Rights Institutions and civil society organisations as part of monitoring and evaluation work.

The checklists have been developed as a generic example, and will need to be adapted for the national context to take into account national legislation, regulations and policies, and the national structure of law enforcement and criminal justice.

The African Commission acknowledges that not all African States have in place the data collection and dissemination systems that will allow for the collection of information as contemplated in these checklists. However, the checklists have been developed as a 'good practice' example of the type of information that States should be collecting and disseminating to promote effective monitoring and evaluation of the pre-trial detention system. Further, they have been designed to support the type of data collection that will inform the development of reform policies and programmes that are evidence-based and targeted at known and quantifiable challenges within the system. The checklists can therefore be used as a guide for State Parties in the development of effective data and information collection systems, or for National Human Rights Institutions and civil society in their advocacy for strengthened criminal justice system data collection, dissemination and reform.

CHECKLIST 1: Legal and policy framework for arrest, police custody and pre-trial detention

EXPLANATORY NOTE

This checklist concerns the legal and policy framework for arrest, police custody and pre-trial detention. It is primarily intended for use by legal officers within relevant State Ministries and Institutions – for example, the Ministry of Justice, the National Police Service or the National Correctional Service – to provide an overall assessment of the extent to which the national legislative, policy and administrative framework for arrest, police custody and pre-trial detention in a State is compliant with the Luanda Guidelines. However, National Human Rights Institutions and civil society organisations may also find this checklist relevant to their work in monitoring national legal frameworks, or as an advocacy tool to promote strengthened legal protections for arrest, police custody and pre-trial detention at the national level.

The Luanda Guidelines encourage State Parties to adopt legislative, administrative, judicial and other measures to give effect to the Luanda Guidelines and ensure that the rights and obligations contained therein are always guaranteed in law and practice (Guideline 44). By completing this checklist, States will have an indication of the extent to which national legal and policy frameworks provide for a rights-based approach to arrest, police custody and pre-trial detention, and which further action in terms of legislative and policy form is required to achieve compliance.

The Checklist is divided into four categories:

- Category 1: Legislative, policy and administrative framework for Arrest
- Category 2: Legislative, policy and administrative framework for Police Custody
- Category 3: Legislative, policy and administrative framework for Pre-Trial Detention

Checklist 1 is a generic tool, and will need to be adapted by State Parties for application in a national context.

MODEL CHECKLIST

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Right to liberty and security of the person</p> <p>The right to liberty and security of the person in Article 6 of the African Charter on Human and Peoples' Rights is guaranteed by law (Luanda Guideline 1)</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Lawful arrest</p> <p>The law provides that an arrest can only be carried out pursuant to a warrant or where the arresting official has <i>reasonable grounds</i> to suspect that a person has committed an offence or is about to commit an arrestable offence (Luanda Guidelines 2 and 3(a))</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Officials authorised to arrest</p> <p>The law provides that an arrest can only be carried out by a law enforcement official or by other competent officials or authorities authorised by the law for this purpose (Luanda Guideline 3(a)).</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Lawful use of force during arrest</p> <p>The use of force and firearms by law enforcement officials during an arrest is provided for in law and policy (Luanda Guideline 3(c)(iii), and is consistent with the following requirements:</p> <ul style="list-style-type: none"> • The use of force and firearms is a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest (Luanda Guideline 3(c)(i)). • If the use of force is absolutely necessary, the level of force must be proportionate and always at the most minimal level necessary (Luanda Guideline 3(c)(ii). • The use of firearms is strictly limited to the arrest of a person presenting an imminent threat of death or serious injury, or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest (Luanda Guideline 3(c)(ii). 	<p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Rights of an arrested person</p> <p>The law provides the following protections for all persons under arrest (Luanda Guideline 4), and a requirement that arrested persons are notified of these rights at the time of their arrest, both orally and in a language and format that is accessible and understood by the arrested person (Luanda Guideline 5):</p> <ul style="list-style-type: none"> • The right to be free from torture and other cruel, inhuman or degrading treatment or punishment. • The right to be informed of the reasons for arrest and any charges. • The right to silence and freedom from incrimination. • The right of access, without delay, to a lawyer of choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provided by state or non-state institutions. • The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody. 	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<ul style="list-style-type: none"> • The right to contact and access a family member or another person of their choice, and if relevant, to consular authorities or embassy. • The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities. • The right to information in accessible formats, and the right to an interpreter. • The right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court. • The right to challenge promptly the lawfulness of arrest before a competent judicial authority. • The right freely to access complaints and oversight mechanisms. • The right to reasonable accommodation, which ensures equal access to substantive and procedural rights for persons with disabilities. 	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>		
<p>Searches prior to, during and after arrest</p> <p>The law provides that searches are carried out in a manner that is consistent with the inherent dignity of the person and the right to privacy and, in conducting searches, officials are subject to regulations or standing orders that ensure (Luanda Guideline 3(d)):</p>		<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<ul style="list-style-type: none"> ● For all types of searches, including pat-down searches, strip searches and internal body searches, the official is the same gender as the suspect. ● Suspects are informed of the reason for the search prior to the official conducting the search. ● A written record of the search is made, and is accessible to the person searched, his or her lawyer or other legal service provider, family members and oversight authorities. ● Provide a receipt to the suspect for any items confiscated during the search. ● Strip searches and internal body searches are always conducted in private. ● Internal body searches are only conducted by a medical professional and only upon informed consent of the suspect, or by a court order. 	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>		
<p>Arrest and custody registers</p> <p>The law and regulations require arresting authorities to maintain, and provide access to, an official arrest and custody register in accordance with Part 4 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 1: ARREST

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Availability of alternatives to arrest</p> <p>The law provides alternatives to the use of arrest, particularly for minor crimes (Luanda Guideline 1(c)).</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Protecting the rights of vulnerable persons and persons with special needs during arrest</p> <p>The law provides for measures to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender and sexual identity, persons with disabilities, refugees and asylum seekers, other non-citizens, stateless persons, and racial or religious minorities in accordance with the provisions of Part 7 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Complaints and oversight mechanisms</p> <p>The law provides for the establishment and operation of complaints and oversight mechanisms for law enforcement in terms of Luanda Guidelines 37, 38, 41 and 42.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Police custody as a measure of last resort</p> <p>The law provides that police custody is an exceptional measure of last resort, and provides for alternatives to police custody, including court summons or police bail and bond (Luanda Guidelines 6(a)).</p>	Source:	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Separation of categories of detainees</p> <p>The law provides that children are held separately to the adult population, and that women are held separately from the male population.</p>	Source:	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Safeguards for persons in police custody</p> <p>The law provides the following safeguards for all persons in police custody (Luanda Guidelines 7 and 27):</p> <ul style="list-style-type: none"> ● Presumptive right to police bail or bond. ● Prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond. ● Maximum duration of police custody, prior to the presentation of a suspect to a competent judicial authority, of no more than 48 hours. 	<p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<ul style="list-style-type: none"> • Access to appropriate facilities to communicate with, and receive visits from, families at regular intervals, and subject to reasonable restrictions on supervision as are necessary in the interests of security. • Access to confidential and independent complaints mechanisms while in police custody. 	<p>Source:</p> <p>Source:</p>		
<p>Access to legal services for persons in police custody</p> <p>The law provides for the establishment of a legal aid service framework through which legal services are provided free of charge for suspects or accused persons who are unable to afford a lawyer (Luanda Guideline 8(a)).</p> <p>The law provides that all persons detained in police custody have the following rights in relation to legal assistance (Luanda Guideline 8(d)):</p> <ul style="list-style-type: none"> • Access without delay or restriction to lawyers and other legal service providers, at the latest prior to and during any questioning by an authority, and thereafter throughout the criminal justice process. • Confidentiality of communication between legal service providers and accused persons. 	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<ul style="list-style-type: none"> The means to contact a lawyer or other legal service provider of choice, or state-sponsored free legal assistance if the accused person cannot afford a lawyer. The right to access case files and have adequate time and facilities to prepare a defence. 	<p>Source:</p> <p>Source:</p>		
<p><i>The rights of an accused person during questioning and confessions</i></p> <p>The law, regulations and standing procedures provide for the following rights of an accused person during questioning and confession (Luanda Guideline 9):</p> <ul style="list-style-type: none"> Freedom from torture and other cruel, inhuman or degrading treatment or punishment. To be informed of the right to the presence and assistance of a lawyer or other legal service provider during questioning. To a medical examination, with the results of each medical examination recorded in a separate medical file, access to which is governed by rules of medical confidentiality. The presence and services of an interpreter, if required. The right to remain silent. 	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>The law provides that information about every questioning session be recorded by the authority carrying out the questioning, and includes information about the duration of questioning, intervals between questioning, identify of the officials carrying out the questioning, and confirmation that the detained person was availed the opportunity to seek legal assistance or a medical examination.</p> <p>The law provides for the audio or audiovisual recording of questioning and confessions.</p>	<p>Source:</p>		
<p>Conditions of detention in police custody</p> <p>The law provides minimum standards for conditions of detention in police custody, including standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, religious observance, reading materials, support services, and reasonable accommodation, in accordance with the Mandela Rules (Luanda Guidelines 24 and 25(g)).</p> <p>The law provides for physical and mental health assessment screenings, and a process provided in regulation or policy for the diversion of persons to mental healthcare facilities if required (Luanda Guideline 25(h)).</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p><i>Use of force, restraints and punishment against persons in police custody</i></p> <p>The law provides that the use of force against persons in police custody is a measure of last resort, and limited to circumstances in which it is strictly necessary, proportionate and always at the minimum level necessary (Luanda Guidelines 3(c)(i), 3(c)(iii) and 25(b)).</p> <p>The law provides for the regulation of the use of permissible restraints, and the type of restraints, consistent with the presumption of innocence and inherent dignity of the person (Luanda Guideline 25(d)).</p> <p>Disciplinary measures against persons in police custody are set out in policy or standard operating procedures, and consistent with the inherent dignity of the person, humane treatment, and limitations on the use of force (Luanda Guideline 25(e)).</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p><i>Transfer of detainees between police facilities and other places of detention</i></p> <p>The law provides that any transfer of detainees is only permitted in accordance with the law, and that detainees are only moved between official gazetted places of detention, and their movements recorded in an official register (Luanda Guidelines Part 4 and 25(i)).</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 2: POLICE CUSTODY

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Protecting the rights of vulnerable persons and persons with special needs in police custody</p> <p>The law provides for measures to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender and sexual identity, persons with disabilities, refugees and asylum seekers, other non-citizens, stateless persons, racial or religious minorities in accordance with the provisions of Part 7 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Complaints and oversight mechanisms</p> <p>The law provides for the establishment and operation of complaints and oversight mechanisms for law enforcement in terms of Luanda Guidelines 37, 38, 41 and 42.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Custody registers</p> <p>The law and regulations require custodial authorities to maintain, and provide access to, an official arrest and custody register in accordance with Part 4 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Tick one selection</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 3: PRE-TRIAL DETENTION

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Pre-trial detention as a measure of last resort</p> <p>The law provides that pre-trial detention is a measure of last resort, and only to be used where necessary and where no other alternatives are available (Luanda Guideline 10(b)).</p>	<p>Source:</p>	<p>Circle one option</p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Procedures and safeguards for pre-trial detention orders by judicial authorities</p> <p>The law provides that judicial authorities shall only order pre-trial detention (Luanda Guidelines 10(c) and 11(a)):</p> <ul style="list-style-type: none"> ● On grounds that are clearly established in law and not motivated by discrimination of any kind. ● If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, and there is a danger that he or she will abscond, commit further serious offences, or if the release of the accused will not be in the interests of justice. <p>The law provides that if pre-trial detention is ordered, judicial authorities impose the least restrictive conditions that will reasonably ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community or any other person (Luanda Guideline 11(b)).</p>	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>	<p>Circle one option</p> <p>Compliant</p> <p>Partially compliant</p> <p>Not compliant</p>	

CATEGORY 3: PRE-TRIAL DETENTION

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>The law provides that judicial authorities provide written reasons for their decision, and to demonstrate that they have considered alternatives prior to making a pre-trial detention order (Luanda Guidelines 11(c) and (d)).</p> <p>The law provides that the burden of proof on the lawfulness of pre-trial detention orders and any subsequent extensions lies with the State (Luanda Guideline 11(g)).</p> <p>The law provides for a process for the regular and systematic review of pre-trial detention orders in accordance with Luanda Guideline 12.</p> <p>The law provides for pre-trial detention custody limits, and makes provision for the delay in legal proceedings in accordance with Luanda Guideline 13.</p>	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>		
<p>Safeguards for persons who are subject to pre-trial detention orders</p> <p>The law provides that persons who are subject to pre-trial detention orders are provided with information on court sessions and any adjournment of court sessions (Luanda Guideline 10(e)), and have legal representation at all court hearings (Luanda Guideline 11(f)).</p>	<p>Source:</p>	<p>Circle one option</p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 3: PRE-TRIAL DETENTION

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>The law provides that all persons have the right to a fair trial, within a reasonable time, in accordance with the provisions of the African Commission on Human and Peoples' Rights Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Luanda Guideline 10(d)).</p> <p>The law provides that pre-trial detainees are only held in formally recognised and gazetted places of detention, and that they are placed in facilities as close to their home or community as possible (Luanda Guidelines 10(f) and (g)).</p> <p>The law provides that pre-trial detainees have regular and confidential access to lawyers or other legal service providers (Luanda Guideline 14(c)).</p>	<p>Source:</p> <p>Source:</p> <p>Source:</p>		
<p>Conditions of detention in pre-trial detention</p> <p>The law provides minimum standards for conditions of detention in pre-trial detention, including standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, religious observance, reading materials, support services, and reasonable accommodation, in accordance with the Mandela Rules (Luanda Guidelines 24 and 25(g)).</p>	<p>Source:</p>	<p>Circle one option</p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 3: PRE-TRIAL DETENTION

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>The law provides for physical and mental health assessment screenings, and a process provided in regulation or policy for the diversion of persons to mental healthcare facilities if required (Luanda Guideline 25(h)).</p>	<p>Source:</p>		
<p>Use of force, restraints and punishment against persons in pre-trial detention</p> <p>The law provides that the use of force against persons in pre-trial detention is a measure of last resort, and limited to circumstances in which it is strictly necessary, proportionate and always at the minimum level necessary (Luanda Guidelines 3(c)(i), 3(c)(iii) and 25(b)).</p> <p>The law provides for the regulation of the use of permissible restraints, and the type of restraints, consistent with the presumption of innocence and inherent dignity of the person (Luanda Guideline 25(d)).</p> <p>Disciplinary measures against persons in pre-trial detention are set out in policy or standard operating procedures, and consistent with the inherent dignity of the person, humane treatment, and limitations on the use of force (Luanda Guideline 25(e)).</p>	<p>Source:</p> <p>Source:</p> <p>Source:</p> <p>Source:</p>	<p><i>Circle one option</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

CATEGORY 3: PRE-TRIAL DETENTION

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Transfer of detainees between pre-trial detention facilities and other places of detention</p> <p>The law provides that any transfer of detainees is only permitted in accordance with the law, and that detainees are only moved between official gazetted places of detention, and their movements recorded in an official register (Luanda Guidelines Part 4 and 25(i)).</p>	<p>Source:</p>	<p><i>Circle one option</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Complaints and Oversight Mechanisms</p> <p>The law provides for the establishment and operation of complaints and oversight mechanisms for pre-trial detention facilities in terms of Luanda Guidelines 37, 38, 41 and 42.</p>	<p>Source:</p>	<p><i>Circle one option</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Protecting the rights of vulnerable persons and persons with special needs in pre-trial detention</p> <p>The law provides for measures to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender and sexual identity, persons with disabilities, refugees and asylum seekers, other non-citizens, stateless persons, racial or religious minorities in accordance with the provisions of Part 7 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Circle one option</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	

Legislative, policy and/or administrative requirement of the Luanda Guidelines	Source of the requirement in national law, regulations or policy (identify specific provisions in national law)	Level of compliance of national law, regulation or policy with the requirements of the Luanda Guidelines	Further observations or commentary
<p>Separation of categories of detainees</p> <p>The law provides that children are held separately to the adult population, and that women are held separately from the male population, in accordance with Part 7 of the Luanda Guidelines.</p>	<p>Source:</p>	<p><i>Circle one option</i></p> <p><input type="checkbox"/> Compliant</p> <p><input type="checkbox"/> Partially compliant</p> <p><input type="checkbox"/> Not compliant</p>	
<p>Custody registers</p> <p>The law and regulations require pre-trial detention authorities to maintain, and provide access to; an official custody registers in accordance with the Luanda Guidelines Part 4.</p>	<p>Source:</p>		

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

EXPLANATORY NOTE

This checklist is meant to help states measure the extent to which a **national** pre-trial detention system is meeting the overall objective of the Luanda Guidelines: a rights-based approach to pre-trial detention that respects the rights of persons in relation to arrest, police custody and pre-trial detention, while also promoting efficiency, effectiveness and confidence in the criminal justice system. This checklist includes six categories, with sub-categories, to guide the collection and analysis of data capable of measuring progress over time. The categories are:

- Risk to liberty, movement and privacy
- Duration of pre-trial detention
- Compliance with conditions of release
- Effectiveness and efficiency of the criminal justice system
- Conditions of detention
- Community confidence in the effectiveness and efficiency of the criminal justice system

The categories allow for analysis of the effectiveness, fairness and validity of current law enforcement practices. For example, if there are significant disparities between the number of arrests versus the number of people held in pre-trial detention, this will raise questions about whether the police are using their arrest powers appropriately, and whether alternatives to arrest and custody are in place and being used. Similarly, analysis of data on the number of persons held in pre-trial detention beyond maximum time limits invites an examination of the factors that may be contributing to delays in the trial process, such as delays in investigations, constraints on human and financial resourcing within the court system, or lack of access to legal services for defendants. If there is a significant proportion of pre-trial detainees who are receiving non-custodial sentences, or terms of imprisonment that are less than time spent in pre-trial detention, this can raise issues in relation to the appropriateness of pre-trial detention orders and the affordability and appropriateness of measures imposed on detainees. Measuring community perceptions of the effectiveness and efficiency of the criminal justice system also provides an important indicator of whether measures are improving, and the extent to which the expansion of non-custodial measures, such as police bond and bail, may be received by the community.

The African Commission acknowledges that not all States collect the data contemplated by this checklist. However, the African Commission considers the collection of data an important tool in the effective monitoring and evaluation of pre-trial detention at the national level. However, measuring the performance of the criminal justice system effectively, ensuring adequate budgetary allocations to relevant departments and institutions, and developing interventions and reform that is evidence-based, requires accessible, reliable and disaggregated data. States should therefore consider, and be supported in, development and implementation of data collection and analysis systems if they are not already in place.

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Risk to liberty, movement and privacy					
Number of people arrested over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number of people charged over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number of people held in police custody over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Number of people held in pre-trial detention over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Duration of pre-trial detention					
Average length of pre-trial detention	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number of defendants currently held in pre-trial detention in excess of the maximum time period stipulated by law	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, department, state institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Compliance with conditions of release					
Proportion of defendants over a 12-month period who were granted police bond, bail or other conditions of release who complied with those conditions	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Effectiveness and efficiency of the criminal justice system					
Number and proportion of pre-trial detainees who had legal representation at all stages of their criminal proceedings in a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number and proportion of detainees who were acquitted in a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, department, state institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Number and proportion of pre-trial detainees who had their matters withdrawn in a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number and proportion of pre-trial detainees who had their matters struck off the court roll in a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number and proportion of pre-trial detainees who were convicted and received a non-custodial sentence over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, department, state institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Number and proportion of pre-trial detainees who were convicted and received a custodial sentence shorter than the duration of their pre-trial detention over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Conditions of detention					
Number and proportion of police custodial facilities in which official occupancy capacity was exceeded over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number and proportion of pre-trial detention facilities where official occupancy capacity was exceeded over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 2: Measuring the effectiveness and efficiency of pre-trial detention systems

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, department, state institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Number and proportion of police custodial facilities that meet minimum national standards for accommodation, hygiene, clothing/bedding, nutrition, access to health, communication and recreation in a 12-month period.	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Community confidence in the effectiveness and efficiency of the criminal justice system					
Number of contact crimes reported over a 12-month period	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

Category of measurement	Information is currently collected by the State	Statistical information available, including information that is disaggregated by age, gender, month, geography or other category	Source/s of the statistical information (e.g. ministry, department, state institution, oversight authority, reports to Parliament, etc.)	Change in statistical data from previous 12-month period (expressed as a percentage increase or decrease)	Comments and observations
Proportion of the population who report feeling safe	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Proportion of households who report satisfaction with police services in their area, and with the way in which courts deal with the perpetrators of crime	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				
Number of complaints against law enforcement officials received by oversight authorities	Tick one selection <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partially				

CHECKLIST 3: Treatment of detainees in police custody and pre-trial detention

EXPLANATORY NOTE

This checklist concerns the treatment of detainees in:

1. Police custody
2. Pre-trial detention, which is the period of detention ordered by a judicial authority pending trial (Guideline 10).

All places of detention should be subject to regular monitoring by independent oversight or monitoring authorities, and this checklist is intended for use by authorities or organisations in the conduct of detention monitoring activities. It covers general provisions, protection measures and conditions of detention.

MODEL CHECKLIST: Treatment of detainees in police custody and pre-trial detention

General

<input type="checkbox"/> Electricity supply	<input type="checkbox"/> Disabled access	<input type="checkbox"/> Adequate staffing numbers
<input type="checkbox"/> Access to water	<input type="checkbox"/> Registers	<input type="checkbox"/> Staff of same gender for searches
<input type="checkbox"/> Emergency evacuation procedures	<input type="checkbox"/> Surveillance system in place and regularly maintained	<input type="checkbox"/> Disciplinary procedures for staff, including zero tolerance for violence and sexual misconduct with detainees

Comments and observations: _____

Protection measures

<input type="checkbox"/> Accommodation, and regular assessment, of special needs, including: <input type="checkbox"/> Gender <input type="checkbox"/> Age <input type="checkbox"/> Audio impairment <input type="checkbox"/> Visual impairment <input type="checkbox"/> Physical impairment <input type="checkbox"/> Mental illness <input type="checkbox"/> Alcohol or drug-related impairment <input type="checkbox"/> Self-harm <input type="checkbox"/> Vulnerability to victimisation, including sexual violence <input type="checkbox"/> Previous criminal history <input type="checkbox"/> Other: _____	<input type="checkbox"/> Risk assessment procedure on admission <input type="checkbox"/> Registers are maintained <input type="checkbox"/> Safe custody procedure (self-harm) <input type="checkbox"/> System to monitor the duration of detention	<input type="checkbox"/> Procedure and use of permissible restraints <input type="checkbox"/> Access to complaints mechanisms <input type="checkbox"/> System to monitor court dates <input type="checkbox"/> Facility rules and disciplinary procedures against detainees are known by detainees
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Comments and observations: _____

Physical conditions of detention

Accommodation

<input type="checkbox"/> Cells at maximum capacity or less	<input type="checkbox"/> Cell lighting	<input type="checkbox"/> Cell call system procedure
<input type="checkbox"/> Satisfactory conditions of communal areas	<input type="checkbox"/> Separation of male and female detainees	<input type="checkbox"/> Separation of children from adult detainees
<input type="checkbox"/> Cells clean, well ventilated, reasonable temperature		

Hygiene

<input type="checkbox"/> Bathing facilities	<input type="checkbox"/> Toilet facilities	<input type="checkbox"/> Separate hygiene facilities for men and women
<input type="checkbox"/> Provision of sanitary items for women detainees		

Clothing/bedding

<input type="checkbox"/> Provision of individual bedding for every detainee	<input type="checkbox"/> Availability and reasonable quality of replacement clothing
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Food

<input type="checkbox"/> Meals provided	<input type="checkbox"/> Accommodation of special dietary requirements	<input type="checkbox"/> Access to food and water outside meal times
<input type="checkbox"/> Sufficiently good quality of meals		

Communication and recreation

<input type="checkbox"/> Information on rights available	<input type="checkbox"/> Access to landline telephones	<input type="checkbox"/> Time for exercise
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<input type="checkbox"/> Provision of interpreter when required	<input type="checkbox"/> Access to consular services when required	<input type="checkbox"/> Sufficient space and safety of outside communal area
<input type="checkbox"/> Access to reading and writing materials	<input type="checkbox"/> Facilities and provision of private visits from lawyer or other legal service provider, family, etc.	<input type="checkbox"/> Access to religious practitioners and ability to exercise faith

Access to health

<input type="checkbox"/> Treatment for persons with chronic illness or disease (e.g. HIV/AIDS, TB)	<input type="checkbox"/> Procedures for requests for medical assistance	<input type="checkbox"/> Clean and well-equipped medical facility
<input type="checkbox"/> Access to external medical support (including psychiatric services)	<input type="checkbox"/> Procedures for prescription medications	<input type="checkbox"/> Availability of first aid kit and professional medical assistance within acceptable response times

Comments and observations: _____

Model Forms and Registers

Forms and Registers for Individual Detainees

Individual Detainee Custody Register

EXPLANATORY NOTE

The purpose of the Individual Detainee Custody Register (Form 1) is to record the personal details of every person admitted into custody. Where possible, the law enforcement official responsible for completing Form 1 should explain to the detainee the reasons for being asked these questions and the importance of answering honestly and completely.

Form 1 should be completed at the time of admission and updated on a regular basis until the time of release to ensure information is accurate and up to date. If a person is admitted for a different offence following his or her release, a new Form 1 must be completed. (For example, if a person is arrested and detained in police custody overnight, Form 1 is completed. If the same person is arrested for a different offence the following week and placed in police custody, a **new** Form 1 must be completed). In this regard, the Individual Detainee Custody Register is offence-specific.

The law enforcement official responsible for conducting the intake of a specific detainee should be the person who completes Form 1. Given the amount of information requested, officials who conduct intake should be trained in how to complete Form 1 and in various protocols that are developed to respond to specific issues raised during the intake, including access to medical treatment. Due to the extensive rights implications associated with detention, it is imperative for officials to receive adequate training.

In terms of best practice, it is recommended that each place of detention maintain a filing area where active Registers are kept and sorted in alphabetical order. When a detainee leaves custody, and his or her associated Register is closed, the Register should be securely archived on site. Registers should not be disposed of or destroyed for at least seven years – and it is imperative that agencies develop comprehensive storage protocols and store documents securely.

Although it may be difficult for certain facilities to achieve the standard of best practice, the importance of capturing the types of information contained in Form 1 cannot be understated.

Detainee name (first name, surname): _____

ID/Passport number: _____

Case number: _____

Date: _____ Time: _____ Officer: _____

Station ID: _____

PERSONAL DETAILS

D.O.B: _____ Gender: Male Female Other

Address (last known): _____

Vulnerable group? Child under 18 Woman Disability Non-national
 Older persons (over age 65)

If child, name and address of parent/guardian: _____

Language(s) spoken: _____

Interpreter/intermediary needed? Yes No

If 'yes', was interpreter/intermediary used during intake? Yes No

If 'no', why not? _____

PHYSICAL HEALTH STATUS

Does the detainee have any physical injuries? Yes [*complete Form 2*] No

Is the detainee complaining of any physical pain or injury? Yes No

If 'yes', please describe: _____

Has the detainee been offered medical treatment? Yes No

If 'no', please explain why medical treatment was not offered: _____

*** *If 'yes', please ensure that medical personnel have been contacted.* ***

If 'yes', describe medical attention provided to detainee: _____

Does the detainee have any existing medical conditions? Yes No

Details: _____

Does the detainee take regular medication? Yes No

Details: _____

If yes, does the detainee have his/her medication in possession? Yes No

If no, have steps been taken to get access to his/her medication? _____

MENTAL/EMOTIONAL HEALTH STATUS

Does the detainee appear to be suffering from any mental or emotional disabilities? Yes No

If 'yes', please describe: _____

Does the detainee appear to be a risk to self or to others? Yes No

If 'yes', please describe: _____

**** If 'yes', ensure that the detainee is monitored closely, kept separate from other detainees, and that relevant protocols for at-risk detainees are followed. ****

Is the detainee responsive to questions and/or instructions? Yes No

If 'no', please describe: _____

Does the detainee appear to be suffering from auditory or visual hallucinations?

Yes No

If 'yes', please describe: _____

Is the detainee behaving erratically, talking very fast, extremely upset, or struggling to sit and answer questions? Yes No

If 'yes', please describe: _____

**** If 'yes' to any of these questions, ensure that further screening and risk assessment is conducted by a mental health professional. ****

VULNERABLE GROUPS

Is the detainee a member of a vulnerable group?

Child under 18 Woman Disability Non-national Elderly

CHILDREN

Has a parent or adult guardian been notified that the child is in custody? Yes No

If no, why not? _____

Was the child told of his/her right to have a parent or guardian present during this intake process? Yes No

If no, why not? _____

Is the child being held separately from adults? Yes No

Is the child being held with other children of the same gender only? Yes No

WOMEN

Is a woman officer conducting this intake? Yes No

Name of officer: _____

If 'no', why not? _____

Is the detainee pregnant? Yes No

Is the detainee breastfeeding? Yes No

Does the detainee have any children with her? Yes No

**** Ensure that medical attention is provided to the detainee and/or children if needed, and that the detainee is provided with the opportunity to care for her children (i.e. breastfeed, change diapers, etc.). ****

Does the detainee take care of any children who are not with her? Yes No

If yes, has the detainee been allowed to contact someone to take care of those children while she is in custody? Yes No

If 'yes', who? _____

If 'no', why not? _____

Has the detainee been searched? Yes No

Name of officer who conducted search: _____

Was the officer who conducted the search a woman? Yes No

If 'no', why not? _____

PERSONS WITH DISABILITIES

Does the detainee have a physical, mental, intellectual, or sensory disability or impairment? Yes No

If 'yes', detail: _____

If 'yes', what accommodations or resources are needed? _____

Have those accommodations or resources been provided to the detainee (e.g. mobility aids, support person, interpreter, etc.)? Yes No

If 'no', why not? _____

NON-CITIZENS

Is the detainee a citizen of another country? Yes No

Which country? _____

Has the detainee been given the opportunity to contact the embassy or consulate from his/her home country to request assistance? Yes No

If 'yes', detail: _____

If 'no', why not? _____

Is the detainee a refugee? Yes No
 Is the detainee a stateless person? Yes No
 Has the detainee been given the opportunity to contact an organisation and/or institution to request legal assistance? Yes No

CIRCUMSTANCES OF ARREST/DETENTION

** To be completed only if the detainee is entering the custodial site following an arrest **

Name of officer who arrested the detainee: _____

Badge number of officer who arrested the detainee: _____

Date of arrest: _____

Time of arrest: _____

Place of arrest: _____

Was the arrest made pursuant to a warrant? Yes No

If 'yes', was the detainee presented with a copy of the warrant? Yes No

* If 'no', why not? _____

If the arrest was made without a warrant, did the arresting officer have reasonable suspicion that the detainee had committed a crime? Yes No

Please explain: _____

Reason for arrest: Alleged offence/charge of _____

Breach of bail Breach of probation/sentence

Other: _____

Has the reason for the arrest been explained to the detainee? Yes No

If 'no', why not? _____

If 'yes', was the explanation given to the detainee in a language that he/she understands? Yes No

If 'no', why not? _____

Was the detainee searched during his/her arrest? Yes No

If 'yes', was any property or evidence seized? Yes No

**** If 'yes', ensure that the arresting officer has completed the property and/or evidence registers and records. **** Was the detainee injured during the arrest? Yes No

If 'yes', please explain: _____

**** If injury is present or claimed, ensure it is recorded in 'Detainee Health' section. ****

DETAINEE RIGHTS

Has the detainee been read the Letter of Rights? Yes No

If 'yes', was the Letter of Rights read in a language the detainee understands?

Yes No

**** If 'no', you must read the Letter of Rights to the detainee in a language he/she understands as soon as possible. ****

Has the detainee been told that he/she has the right to legal assistance, and given the opportunity to call a lawyer or legal services organisation? Yes No

If 'yes', please explain: _____

If 'no', why not? _____

Has the detainee been allowed to contact a friend and/or family member to say that he/she is in custody? Yes No

If 'yes', details: _____

If 'no', why not? _____

Has the detainee been advised of their rights as regards bail? Yes No

If 'yes', details: _____

If 'no', why not? _____

CONDITIONS OF DETENTION

Is the detainee being held in a cell or holding area with other people? Yes No

If 'yes', how many people are being held in the same space? _____

How many people is the cell or holding area supposed to hold? _____

Is the detainee being held with other people of the same gender only? Yes No

If 'no', why not? _____

Was the cell or holding area cleaned before the detainee entered? Yes No

Does the detainee have access to clean drinking water? Yes No

Has the detainee been given food since his/her admission? Yes No

Does the detainee have access to adequate toilet facilities? Yes No

Does the detainee have access to bathing facilities? Yes No

Has the detainee been given toiletries? Yes No

Has the detainee been given clean bedding? Yes No

Was the detainee given a set of clean clothes upon admission, or allowed to wear his/her own clothes? Yes No

ACTION REQUIRED: e.g. if the person must be taken to court within 48 hours, or be given their medication, or released or charged, or etc. Legal status and special needs.

DATE _____

TIME _____

AUTHORISING OFFICER _____

Individual Detainee Injury Record

EXPLANATORY NOTE

The purpose of the Individual Detainee Custody Register Injury Record (Form 2) is to identify any physical injuries on the detainee at the time of his or her admission into custody. Making a note of any physical injuries that have occurred outside detention is important for two reasons: first, it promotes the right of access to health by creating a health record for every detainee; and two, it protects the detention facility against allegations of physical abuse.

It is imperative to note here that the Injury Record is not intended to replace a thorough medical examination and/or screening, but is rather meant to bring attention to injuries or ailments that may require immediate medical attention.

All injuries, whether obvious or suspected, should be recorded in the Injury Record – even pre-existing injuries that did not arise at the time of arrest or placement in custody of the detainee. The injuries marked on the Injury Record should correspond with the injuries recorded in the ‘Detainee Health’ section of the Individual Detainee Custody Register.

If the detainee appears to be suffering from a serious physical injury at the time of admission, he or she must receive access to medical treatment as a matter of urgency. In addition to identifying affected areas of the body on the attached diagram, photographs of the injuries should also be taken (provided that consent of the detainee is obtained) at the time of admission. In addition, if the detainee or another law enforcement official is able to provide information relating to the injuries, these details must be recorded and included as part of the intake record.

Detainee full name: _____

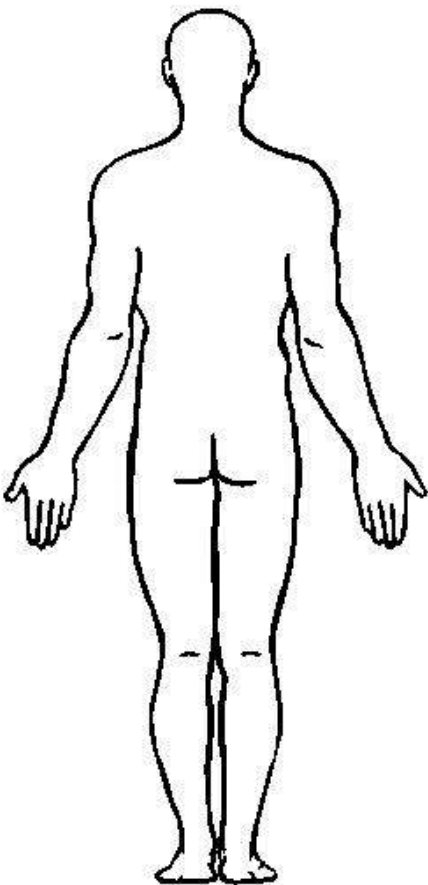
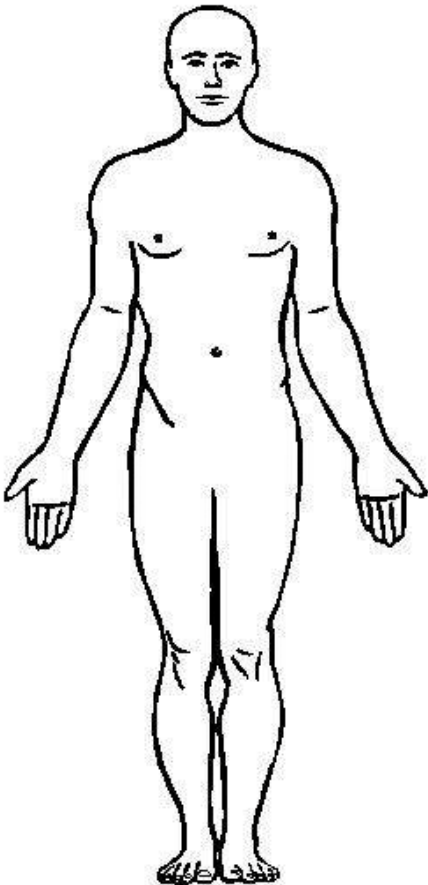
Custody ID/Number: _____

Date: _____ Time: _____

Custodial site: _____

Officer conducting intake: _____

Reasons for injuries (according to detainee): _____



Individual Detainee Property Receipt

EXPLANATORY NOTE

The Individual Detainee Property Receipt records the property that is found on or with the detainee at the time of his or her arrest or entry into custody. All items that are removed from the detainee's possession or person, but that are not evidence, must be recorded on this form. The officer completing this form, as well as the detainee, should sign at the bottom of this form.

This document should be printed in booklets with consecutive numbering of each Receipt in the booklet. Further, each numbered Receipt should be printed in duplicate, so carbon paper can be used to create a copy of the original. The original document is kept with the rest of the documents in the individual detainee's file, and the carbon copy is provided to the detainee. In practice, this may mean that the carbon copy is placed with the detainee's property, in a locked and monitored property holding area in the place of detention. However, in detention situations where detainees are allowed to have papers and other property in their cell, they should be given the opportunity to keep the carbon copy with them.

Individual Detainee Property Receipt

Detainee full name: _____

Custody ID/Number: _____

Date: _____ Time: _____ Officer: _____

Custodial site: _____

PROPERTY

Record each individual item taken from the detainee.

For items such as bags, wallets, etc., describe contents.

Any currency should be recorded as a separate entry.

No.	Item description	Officer responsible
1		
2		
3		
4		
5		
6		
7		
8		

Items received by:

Name: _____

Date: _____

Items taken from:

Name: _____

Date: _____

Station/Facility/Unit Lock-up Book

EXPLANATORY NOTE

The purpose of the Detainee Lock-up Book is to **track the movement of inmates at each detention facility**. Detention facilities may include police stations, watch houses, jails and prisons, as well as any other place where detainees are held by the state, or agents of the state, regardless of the length of time for which they are kept. Large detention facilities with multiple units and/or wings should have separate Detainee Lock-up Books for each unit and/or wing.

Activities to be recorded in the Detainee Lock-up Book **include any movements by the detainee in and out of lock-up**, including, but not limited to, attendance at medical appointments, consultations with legal representatives, interviews with police officers, meetings with family and friends, appearances in court, as well as sanctioned actions, such as placements in solitary confinement, transfers to different units and/or wings within the detention facility, appearances before disciplinary boards, etc. Movements are to be recorded in sequential order by the officer in charge of checking detainees in and out of lock-up. At the end of each shift, the shift supervisor is responsible for reviewing the Detainee Lock-up Book to ensure the accuracy of the information contained therein, which is then confirmed by initialing the last column. Ideally, this person is the Custody Manager or the next most senior official.

Each Detainee Lock-up Book should be in bound form and include page numbers. When a Detainee Lock-up Book becomes full, it should not be destroyed or disposed of, but rather safely and securely stored in accordance with comprehensive storage protocols.

In addition to serving as a model for good record-keeping, the Detainee Lock-up Book, when used properly, will provide a complete record of all detainee movements within a detention facility on any given day, as well as the type of activity each detainee engages in, which serves as a critical source of information, especially in incidences involving allegations of human rights abuses occurring in detention facilities.

Station/Facility/Unit Lock-up Book

Time	Date	Name of detainee	Detainee number	Activity	Person/association meeting	Location	Comments	Shift supervisor's initials
08h00	1/2/2016	Xxxx Yyyy	123456	Meeting with lawyer	Sssss Tttttt, ABC Lawyers	Interrogation Room	Medication 2 x daily	AC
08h30	1/2/2016	Aaaaa Bbbbbb	789012	Interview with Chief Investigator	Llllllll Eeeeeee, Detective	Interrogation Room		AC

Property Register

Explanatory note

The On-site Detainee Property Register records when the property of detainees is kept in the possession of the agency in control of the place of detention. All items that are removed from the detainee's possession or person, but that are not kept in evidence, must be recorded here. The Individual Detainee Property Receipt Number should be recorded in any other registers, and should be used to mark the envelope or other packaging in which the detainee's property is stored.

Property Register

PLACE OF DETENTION NAME:

ADDRESS:

AGENCY:

Date	Time	Name of detainee	Individual Detainee Property Receipt number	Comments	Officer responsible

Model Letters of Rights

Letter of Rights for Arrested Persons

Explanatory note

The Letter of Rights for Arrested Persons emanates from the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') as well as the international and regional legal framework governing the rights of arrested and detained persons. In this regard, the purpose of a Letter of Rights is to inform the arrested person of the range of rights to which he or she is entitled as an arrested person. The example provided is a generic one, and will need to be adapted for the national context to consider national legislation, regulations and policies, and the national structure of law enforcement and criminal justice.

While the African Commission acknowledges the reality certain countries face with respect to budgetary and resource constraints, including limited numbers of skilled human resources personnel as well as the absence of electronic data management systems, the Commission strongly encourages State Parties to promote use of the Letter of Rights for Arrested Persons as a model of 'good practice' for advancing the rights of arrested persons, including the right to remain silent, the right to legal representation, the right to interpretation and translation, and the right to information.

Letter of Rights for Arrested Persons

To be completed by a law enforcement official

Detainee full name: _____

Custody ID/Number: _____

Date: _____ Time: _____ Officer: _____

Custodial site: _____

Independent witness: _____

To be completed, and read to the arrested person, by the law enforcement official

My name is _____

I am a law enforcement officer at [*insert name of place of detention*] _____

It is my responsibility to read you the following Letter of Rights to ensure you fully understand your rights as an arrested person.

I am going to explain all the rights you are entitled to as an arrested person with the assistance of an interpreter (if necessary).

Interpreter name: _____

Language: _____

1. You have the right to remain silent, which means you do not have to answer any questions that may be asked of you, and that you cannot be forced into answering any such questions. If you decide to waive (or ignore) your right to remain silent, anything you say can and will be used as evidence against you. For example, if you decide to answer questions from law enforcement officials, your statements will be recorded and the responses you provide will be used to convict you. Do you understand?
 - Response: _____
2. You are required to have your fingerprints taken so you can be properly identified and recorded within our information system. Do you understand?
 - Response: _____
3. You are in custody because you have been arrested. This means that you can only be held for [*insert maximum number of hours allowed for in legislation*] _____ hours before you must either be:
 - a. released without charge;
 - b. released on bail; or
 - c. taken before a court to apply for bail.
 - Do you understand?
 - Response: _____
4. You have been arrested because _____ [*insert reason for arrest here, e.g. 'law enforcement officials have reasonable suspicion*

you were involved in a robbery at ...' or 'law enforcement officials have reasonable suspicion you have breached your bail.]] _____

A law enforcement official will provide you with further details regarding the allegations that have been made against you. If you are charged with an offence, a law enforcement official will explain the charge to you. Do you understand?

• Response: _____

5. You have the right to legal representation, which means you are allowed to hire a lawyer or legal services organisation to represent you. (You may contact a family member or friend to assist you in finding a lawyer.) If you cannot afford a lawyer, you are entitled to legal aid, which means that a lawyer will be appointed to you by the State free of charge. Do you understand?

• Response: _____

6. Your lawyer is allowed to come to see you while in custody. Any conversation you have with your lawyer (including by telephone) must be in private and your lawyer is obligated to keep everything you say to him/her confidential. Do you understand?

• Response: _____

7. You have the right to have your lawyer present at all times when you are questioned by law enforcement officials. If a law enforcement official tries to question you without the presence of your lawyer, you have the right to refuse and request that your attorney be present. Do you understand?

• Response: _____

8. You have the right to contact a family member or a friend after the intake process is complete to let them know you have been placed in custody. You are allowed to have people come to visit you in custody as long as you follow the rules for visitation, and as long as their visits do not interfere with the investigation. Do you understand?

• Response: _____

9. If you have caretaking responsibilities (for children or for elderly persons), you have the right to contact a family member or friend and make arrangements to ensure those children and/or elderly persons are being cared for while you are in custody. You have a right to make phone calls to arrange for the care of those children once the intake process is completed. Do you understand?

• Response: _____

10. (For detainees who are not citizens.) If you are not a national of [*insert country where custody is taking place*], you have the right to contact the embassy or consulate of your home country and inform officials that you are in custody and in need of their assistance, which may include contacting your relatives at home or visiting you in custody to ensure your rights are being protected. If a consular official visits you in custody, you have a right to meet him/her in private. You have a right to make a phone call to a consular official, once the intake process is complete. Do you understand?

• Response: _____

11. If you are a refugee or a stateless person, you have a right to contact an international organisation for legal assistance. Do you understand?

• Response: _____

12. You have the right to be informed of any person who comes to this place of custody and requests to see you, (regardless of whether he/she claims to be your lawyer, family member, friend, etc.), and to meet with that person in accordance with visitation protocol. You also have the right to refuse to meet with any persons (other than law enforcement officials and lawyers) who request to visit you. Should anyone request information about you or your whereabouts, you have the right to inform law enforcement officials not to disclose your personal information. Do you understand?
 - Response: _____
13. You have a right to access medical treatment and care when necessary. If the need for medical treatment and/or care becomes urgent, or if you make a request for medical treatment in accordance with facility protocols, a law enforcement official must make the necessary arrangements for you within a reasonable time that considers the urgency of your medical needs. Do you understand?
 - Response: _____
14. You have the right to access food and clean drinking water. You have a right to access adequate toilet and bathing facilities, as well as any necessary toiletries. If you are held in custody overnight, you have the right to be provided with bedding materials and a place to sleep. Do you understand?
 - Response: _____
15. If you are under the age of 18, you have the right to be detained separately from adults. You should never be detained in a cell or room with any adult detainees. Do you understand?
 - Response: _____
16. You also have the right to have a parent or guardian come to be with you while you are in police custody, and while any officers are questioning you. You have a right to contact a parent, guardian, or other adult of your choosing when the intake process is complete.
17. You have the right to be detained with people of the same gender. Female detainees must be detained from male detainees and vice versa. At no time should you ever be detained with persons of a different gender. Do you understand?
 - Response: _____
18. You have the right to be searched by law enforcement officials of the same gender. At no time should any law enforcement official of the opposite gender be allowed to search of you, regardless of whether it is a pat-down or an invasive body search. Do you understand?
 - Response: _____
19. You have the right to privacy while in custody, specifically when using the toilet and/or accessing bathing facilities. At no time should any law enforcement official of the opposite gender look at you while you are using the toilet and/or bathing. Do you understand?
 - Response: _____

20. If you have a physical disability, you have the right to reasonable accommodation, which means that if you require physical support of any kind (be it a wheelchair, walking stick, etc.) to move around, you have the right of access to such support as long as these devices are used for their intended purpose. Do you understand?
- Response: _____
21. If you have a psycho-social disability, you have the right to access to treatment, which means that if you take medication and/or require medical treatment or psycho-social counseling, you have the right of access to such support as long as these devices are used for their intended purpose. Do you understand?
- Response: _____
22. While in custody, you have the right to be treated in a humane manner, which means that you have the right not be subject to physical harm and/or mistreatment (i.e. torture, coerced confessions, etc.) by law enforcement officials or other detainees. Do you understand?
- Response: _____
23. If you are subject to inhumane treatment, or believe that any of your other rights have been violated, you have the right to lodge a complaint with our internal complaints division and to be informed of the required filing procedures. Copies of complaints forms are located [insert location/office] and must be made in accordance with procedures. All complaints will be kept confidential, to the extent possible. Do you understand?
- Response: _____
24. You have a right to access all documents related to your case during the time you are in custody and thereafter, provided that you comply with formal information request procedures. Documents relating to your case will be kept in a safe and secure for facility for _____ years. Do you understand?
- Response: _____

Acknowledgement.

Law enforcement official

At _____ a.m./p.m. on _____ I informed the detainee of the information contained in this Letter of Rights by reading the content contained therein and making sure and by giving him/her a copy of this Letter.

Signature of law enforcement official: _____

Name: _____

Rank: _____

(If interpreter used)

Interpreter

I fully and accurately interpreted the words spoken by the law enforcement official to the detainee, and by the detainee to the law enforcement official, during the reading of this Letter of Rights.

Signature of interpreter: _____

Name: _____

Language: _____

Detainee

The information in this Letter of Rights has been read to me in a format and language that I understand. I was not coerced in any way during the reading of this Letter of Rights or forced to sign sections that I did not understand. I have also been given a copy of the Letter of Rights.

Signature of detainee: _____ *

(Note: You do not have to sign.)

Name of detainee: _____

The detained person has refused to sign the above acknowledgement for the following reason(s): _____

Signature of law enforcement official: _____

Name: _____

Rank: _____

Letter of Rights for People in Pre-Trial Detention

Explanatory note

The Letter of Rights for People in Pre-Trial Detention emanates from the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') as well as the international and regional legal framework governing the rights of arrested and detained persons. In this regard, the purpose of a Letter of Rights is to inform the pre-trial detainee of the range of rights to which he or she is entitled as a pre-trial detainee. The example provided is a generic one, and will need to be adapted for the national context to consider national legislation, regulations and policies, and the national structure of law enforcement and criminal justice.

While the African Commission acknowledges the reality certain countries face with respect to budgetary and resource constraints, including limited numbers of skilled human resources personnel as well as the absence of electronic data management systems, the Commission strongly encourages State Parties to promote use of the Letter of Rights for Pre-Trial Detainees as a model of 'good practice' for advancing the rights of pre-trial detainees, including the right to remain silent, the right to legal representation, the right to interpretation and translation, and the right to information.

Letter of Rights for People in Pre-Trial Detention

To be completed by a law enforcement official

Detainee full name: _____

Custody ID/Number: _____

Date: _____ Time: _____ Officer: _____

Custodial site: _____

Independent witness: _____

To be completed, and read to the pre-trial detainee, by the law enforcement official

My name is _____

I am a law enforcement officer at [*insert name of place of detention* _____]

It is my responsibility to read you the following Letter of Rights to ensure that you fully understand your rights as an arrested person.

I am going to explain all the rights you are entitled to as an arrested person with the assistance of an interpreter (if necessary).

Interpreter name: _____

Language: _____

1. You have the right to remain silent, which means you do not have to answer any questions that may be asked of you, and that you cannot be forced into answering any such questions. If you decide to waive (or ignore) your right to remain silent, anything you say can and will be used as evidence against you. For example, if you decide to answer questions from law enforcement officials, your statements will be recorded and the responses you provide will be used to convict you. Do you understand?
 - Response: _____
2. You are required to have your fingerprints taken so you can be properly identified and recorded within our information system. Do you understand?
 - Response: _____
3. You have been placed in pre-trial detention because: (*circle the option that applies*)
 - a. Your case is being investigated further.
 - b. You await your trial.
 - c. You await the outcome of your bail application.
 - d. You have been denied bail.
 - Do you understand?
 - Response: _____

4. You have the right to be detained with other pre-trial detainees. Persons in pre-trial must be kept separate from sentenced detainees and vice versa. At no time should you ever be detained with sentenced detainees. Do you understand?
 - Response: _____
5. You have the right to legal representation, which means you are allowed to hire a lawyer or legal services organisation to represent you. (You may contact a family member or friend to assist you in finding a lawyer.) If you cannot afford a lawyer, you are entitled to legal aid, which means that a lawyer will be appointed to you by the State free of charge. Do you understand?
 - Response: _____
6. Your lawyer is allowed to come to see you in detention. Any conversation you have with your lawyer (including by telephone) must be in private and your lawyer is obligated to keep everything you say to him/her confidential. Do you understand?
 - Response: _____
7. You have the right to have your lawyer present at all times when you are questioned by law enforcement officials. If a law enforcement official tries to question you without the presence of your lawyer, you have the right to refuse and request that your attorney be present. Do you understand?
 - Response: _____
8. You have the right to contact a family member or a friend after the intake process is complete to let them know you have been placed in custody. Do you understand?
 - Response: _____
9. You are allowed to have people come to visit you in custody as long as you follow the rules for visitation, and as long as their visits do not interfere with the investigation. Do you understand?
 - Response: _____
10. If you have caretaking responsibilities (for children or for older persons), you have the right to contact a family member or friend and make arrangements to ensure those children and/or elderly persons are being cared for while you are in custody. You have a right to make phone calls to arrange for the care of those children once the intake process is completed. Do you understand?
 - Response: _____
11. (For detainees who are not citizens.) If you are not a national of [*insert country where custody is taking place*], you have the right to contact the embassy or consulate of your home country and inform officials that you are in custody and in need of their assistance, which may include contacting your relatives at home or visiting you in custody to ensure your rights are being protected. If a consular official visits you in custody, you have a right to meet him/her in private. You have a right to make a phone call to a consular official, once the intake process is complete. Do you understand?
 - Response: _____

12. If you are a refugee or a stateless person, you have a right to contact an international organisation for legal assistance. Do you understand?
 - Response: _____
13. You have the right to be informed of any person who comes to this place of custody and requests to see you, (regardless of whether he/she claims to be your lawyer, family member, friend, etc.), and to meet with that person in accordance with visitation protocol. You also have the right to refuse to meet with any persons (other than law enforcement officials and lawyers) who request to visit you. Should anyone request information about you or your whereabouts, you have the right to inform law enforcement officials not to disclose your personal information. Do you understand?
 - Response: _____
14. You have a right to access medical treatment and care when necessary. If the need for medical treatment and/or care becomes urgent, or if you make a request for medical treatment in accordance with facility protocols, a law enforcement official must make the necessary arrangements for you within a reasonable time that considers the urgency of your medical needs. Do you understand?
 - Response: _____
15. You have the right to access food and clean drinking water. You have a right to access adequate toilet and bathing facilities, as well as any necessary toiletries. If you are held in custody overnight, you have the right to be provided with bedding materials and a place to sleep. Do you understand?
 - Response: _____
16. If you are under the age of 18, you have the right to be detained separately from adults. You should never be detained in a cell or room with any adult detainees. Do you understand?
 - Response: _____
17. You also have the right to have a parent or guardian come to be with you while you are in police custody, and while any officers are questioning you. You have a right to contact a parent, guardian, or other adult of your choosing when the intake process is complete.
18. You have the right to be detained with people of the same gender. Female detainees must be detained from male detainees and vice versa. At no time should you ever be detained with persons of a different gender. Do you understand?
 - Response: _____
19. You have the right to be searched by law enforcement officials of the same gender. At no time should any law enforcement official of the opposite gender be allowed to search you, regardless of whether the search is a pat-down or an invasive body search. Do you understand?
 - Response: _____
20. You have the right to privacy while in custody, specifically when using the toilet and/or accessing bathing facilities. At no time should any law enforcement

official of the opposite gender look at you while you are using the toilet and/or bathing. Do you understand?

• Response: _____

21. If you have a physical disability, you have the right to reasonable accommodation, which means that if you require physical support of any kind (be it a wheelchair, walking stick, etc.) to move around, you have the right of access to such support as long as these devices are used for their intended purpose. Do you understand?

• Response: _____

22. If you have a psycho-social disability, you have the right to access to treatment, which means that if you take medication and/or require medical treatment or psycho-social counselling, you have the right of access to such support as long as these devices are used for their intended purpose. Do you understand?

• Response: _____

23. While in custody, you have the right to be treated in a humane manner, which means that you have the right not be subject to physical harm and/or mistreatment (i.e. torture, coerced confessions, etc.) by law enforcement officials or other detainees. Do you understand?

• Response: _____

24. If you are subject to inhumane treatment, or believe that any of your other rights have been violated, you have the right to lodge a complaint with our internal complaints division and to be informed of the required filing procedures. Copies of complaints forms are located [insert location/office] and must be made in accordance with procedures. All complaints will be kept confidential, to the extent possible. Do you understand?

• Response: _____

25. You have a right to access all documents related to your case during the time you are in custody and thereafter, provided that you comply with formal information request procedures. Documents relating to your case will be kept in a safe and secure for facility for _____ years. Do you understand?

• Response: _____

Acknowledgement.

Law Enforcement Official

At _____ a.m./p.m. on _____ I informed the detainee of the information contained in this Letter of Rights by reading the content contained therein and making sure and by giving him/her a copy of this Letter.

Signature of law enforcement official: _____

Name: _____

Rank: _____

(If interpreter used)

Interpreter

I fully and accurately interpreted the words spoken by the law enforcement official to the detainee, and by the detainee to the law enforcement official, during the reading of this Letter of Rights.

Signature of Interpreter: _____

Name: _____

Language: _____

Detainee

The information in this Letter of Rights has been read to me in a format and language that I understand. I was not coerced in any way during the reading of this Letter of Rights or forced to sign sections that I did not understand. I have also been given a copy of the Letter of Rights.

Signature of detainee: _____ *

(Note: You do not have to sign.)

Name of detainee: _____

The detained person has refused to sign the above acknowledgement for the following reason(s): _____

Signature of law enforcement official: _____

Name: _____

Rank: _____

GUIDANCE NOTE REPORTING ON THE LUANDA GUIDELINES AS PART OF INITIAL AND PERIODIC REPORTS BY STATE PARTIES UNDER ARTICLE 62 OF THE AFRICAN CHARTER

PART I

PURPOSE AND SCOPE OF THE GUIDANCE NOTE (EXPLANATORY PROVISIONS)

PURPOSE OF THE GUIDANCE NOTE

Pursuant to Article 62 of the African Charter on Human and Peoples' Rights ('AChHPR') and other relevant legal instruments that supplement the reporting procedure, including Article 26 of the Protocol to the African Charter on the Rights of Women in Africa, State Parties must submit a report to the African Commission on Human and Peoples' Rights ('ACHPR') every two years on measures taken and progress made in giving effect to the AChHPR.

As an authoritative interpretation of the AChHPR as it pertains to the legislative, policy and administrative framework for arrest, police custody and pre-trial detention, the ACHPR encourages State Parties to use the Guidelines on Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') as a framework for reporting on relevant criminal justice issues in Initial and Periodic Reports under Article 62 of the AChHPR (see Section 47, Luanda Guidelines).

To promote this aim, the ACHPR has produced this Guidance Note for State Parties to the AChHPR on how to address the provisions of the Luanda Guidelines in their Initial and Periodic Reports to the ACHPR. The Guidance Note is intended to complement the Guidelines for National Periodic Reports under the African Charter (1998). Noting that State Parties are not required to submit a separate report to the ACHPR on performance under the Luanda Guidelines specifically, this Guidance Note is designed to ensure that in the compilation of Initial and Periodic Reports to the ACHPR, State Parties provide recent, specific and evidence-based information relevant to arrest, police custody, pre-trial detention and related matters, for each relevant Article of the AChHPR.

OVERVIEW OF THE LUANDA GUIDELINES

The Luanda Guidelines were adopted by the ACHPR during its 55th Ordinary Session in Luanda, Angola from 28 April to 12 May 2014.

The Luanda Guidelines cover a broad range of issues that are relevant to State Parties' reporting obligations, particularly in the context of civil and political rights relevant to promoting a rights-based approach to criminal justice. Specifically, the Luanda Guidelines provide an authoritative interpretation and supplementary detail on the

nature and scope of State Parties' obligations in relation to the following Articles of the AChHPR:

Article 1: Legislative and policy measures

Article 2: Non-discrimination

Article 3: Equality before the law

Article 4: Right to life

Article 5: Freedom from torture and other cruel, inhuman or degrading treatment or punishment

Article 6: Right to liberty and security of the person (including freedom from arbitrary arrest and detention)

Article 7: Access to justice

Article 9: Right to receive and disseminate information

Article 16: Right to the highest attainable standard of health

Article 25: Human rights promotion

Article 26: Judicial independence and external oversight

HOW TO USE THE REPORTING TEMPLATE

The ACHPR encourages States Parties to address each of the issues relevant to the Luanda Guidelines in their reporting against Articles 1, 2, 3, 4, 5, 6, 7, 9, 16, 25 and 26 in Initial and Periodic Reports to the ACHPR. Information provided by State Parties in response to these issues should be recent, specific and evidence-based, and provide an assessment of the achievements and challenges in the promotion of African Charter rights.

SYSTEMS TO SUPPORT IMPROVED REPORTING

Reporting on the *de jure* (or, formal legal) situation is not sufficient to allow the ACHPR to make an assessment and formulate recommendations in relation to a State Party's fulfilment of the AChHPR. Therefore, in addition to providing information on legislative and policy developments, the ACHPR encourages States Parties also to provide information on the human rights situation in practice.

In this regard, the ACHPR encourages State Parties to establish systems that promote the conduct of regular internal monitoring of human rights situations. In presenting subjective information, States Parties should also provide a combination of statistical data and narrative information to allow the ACHPR to measure progress made over time within the country, by region, and across the continent.

For example, in relation to the prohibition against torture in Article 5 of the AChHPR, State Parties should include information on the legislative and/or policy developments (such as the criminalisation of torture in national legislation); statistics on incidents of torture in places of detention; data relating accountability and redress for torture survivors and the family of victims; and narrative reports that analyse the information presented and provide reasons for the achievements and challenges faced by the state in achieving Article 5 guarantees.

PART 2

GUIDANCE NOTE (SUBSTANTIVE PROVISIONS)

The purpose of this Guidance Note is to support State Parties in compiling reports to the African Commission by showing the rights implicated in pre-trial detention, by identifying which Articles of the African Charter speak directly to provisions of the Luanda Guidelines, and by proposing a series of questions for State Parties to consider in their reports against relevant Articles of the African Charter.

Additionally, this Guidance Note aims to assist State Parties in recognising the types of information that should be included in their reports in relation to arrest, police custody and pre-trial detention. In this regard, information presented in State Parties' reports should be recent, specific and evidence-based, to the extent possible.

Accordingly, the types of information provided by State Parties should include:

- Disaggregated data
- Legislation, policy and other standing orders, guidelines or directives
- Qualitative information on the implementation and impact of measures.

LUANDA GUIDELINES PROVISIONS RELEVANT TO THE AFRICAN CHARTER

AChHPR	Luanda Guidelines
<p>Article 1: Legislative and policy measures</p> <p><i>The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.</i></p>	<p>Section 44(a): Implementation measures</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> • <i>Measures taken to harmonise national law and policy on arrest, police custody and pre-trial detention with the Luanda Guidelines.</i> • <i>Existing or planned mechanisms for co-ordination and case-flow management in relation to arrest, police custody and pre-trial detention.</i>
<p>Article 2: Non-discrimination</p> <p><i>Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, birth or any status.</i></p>	<p>Sections 29, 30, 31, 32, 33, 34: Vulnerable Groups</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> • <i>Administration of juvenile justice, including information on the definition of a child in law, the number of children in pre-trial detention, the average length of pre-trial detention for children, information on diversion and alternatives to pre-trial detention, and any mechanisms in place to address the rights of children in conflict with the law.</i> • <i>Number of women in conflict with the law who are held in institutions specifically designated for women, measures and other procedures to ensure that women are only searched by female law enforcement officials, and information on the extent to which facilities meet specific hygiene needs and gender-specific health screening and care of women.</i> • <i>Legislative, judicial or administrative measures aimed at promoting the rights of children accompanying parents in police custody or pre-trial detention.</i>

AChHPR	Luanda Guidelines
	<ul style="list-style-type: none"> ● <i>Legislative, judicial or administrative measures to ensure that persons with physical and/or sensory disabilities receive information in accessible formats, can access the physical environment, information and communications (and other services provided by the detaining authority) on an equal basis with other detainees, have access to reasonable accommodation which meets their needs, and enjoy equal access to procedural and substantive due process.</i> ● <i>Legislative, judicial or administrative measures to ensure that persons with psycho-social disabilities receive information in accessible formats, can access the physical environment, information and communications (and other services provided by the detaining authority) on an equal basis with others, have access to reasonable accommodation which meets their needs, and enjoy equal access to procedural and substantive due process.</i>
<p>Article 3: Equality before the law</p> <ol style="list-style-type: none"> 1. <i>Every individual shall be equal before the law.</i> 2. <i>Every individual shall be entitled to equal protection of the law.</i> 	<p>Sections 4(j), 4(d), 11 and 12: Rights of arrested persons, safeguards and reviews of pre-trial detention orders</p> <p><u>Issues to consider/information to include:</u></p> <p><i>Disaggregated data (by age, sex, ethnicity or national origin) on access by persons in conflict with the law to:</i></p> <ul style="list-style-type: none"> ● <i>Lawfulness of arrest</i> ● <i>Legal representation in criminal matters</i> ● <i>Safeguards on pre-trial detention orders</i> ● <i>Reviews of pre-trial detention orders.</i>
<p>Article 4: Right to life</p> <p><i>Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.</i></p>	<p>Sections 3(c) and 21: Lawful use of force and firearms during arrest, and deaths in police custody and pre-trial detention</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative, policy and administrative framework for use of force and firearms by police agencies, and data on the use of force.</i> ● <i>Legislative, policy and administrative framework, and both qualitative and quantitative data, on existence and application of frameworks for the prompt, independent investigation of deaths resulting from actions taken during arrest, police custody and pre-trial detention.</i>
<p>Article 5: Freedom from torture and other cruel, inhuman or degrading treatment or punishment</p> <p><i>Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</i></p>	<p>Sections 3(d), 4(a), 9, 22, 24, 25: Human rights violations and conditions of custody and pre-trial detention</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative criminalisation of torture, and quantitative data on the number of reports of torture and other ill-treatment, and information on the existence and application of prompt and independent investigations into torture and other ill-treatment in the context of arrest, police custody and pre-trial detention.</i> ● <i>Legislative, policy and administrative framework for questioning and confessions by law enforcement officers.</i>

AChHPR	Luanda Guidelines
	<ul style="list-style-type: none"> ● <i>Conditions of detention in police custody and pre-trial detention facilities, including the existence and operation of monitoring and inspection mechanisms.</i> ● <i>Legislative and policy framework for safeguards provided to persons under arrest, in police custody and pre-trial detention, including information on the existence of complaints and redress mechanisms, and quantitative data on the use of those mechanisms by persons in conflict with the law and held in police custody and pre-trial detention.</i>
<p>Article 6: Right to liberty and security of the person, including freedom from arbitrary arrest and detention</p> <p><i>Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</i></p>	<p>Sections 1(a), 1(b), 1(c), 2(a), 2(b), 3(a), 3(b), 4(b), 4(f), 4(i), 4(j), 5, 6(a), 7(a), 7(b), 11, 12, 13, 14: General provisions on arrest, police custody and pre-trial detention</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on the number of arrests per 100 000 population, including the percentage of total arrests for serious and non-serious crimes.</i> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on the number of persons held in police custody per 100 000 population.</i> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on the number of pre-trial detainees per 100 000 population, as a percentage of the total prison population, and the average length of pre-trial detention.</i> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on the number of criminal cases finalised (with verdict) per year, and information relevant to addressing backlog issues within the court system.</i> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on the existence and application of criminal justice diversion mechanisms and alternatives to pre-trial detention.</i> ● <i>Legislative, policy and administrative framework for the provision of bail or bond by law enforcement agencies and the courts, including provisions for renewal and review of custodial and non-custodial measures.</i> ● <i>Analysis and data, including disaggregated by sex, gender and national or ethnic origin, on bail or bond decisions made by law enforcement officials and courts.</i> ● <i>Analysis and data on the number of criminal cases delayed or postponed, and reasons for postponements.</i>
<p>Article 7: Access to justice</p> <p>1. <i>Every individual shall have the right to have his cause heard. This comprises:</i></p> <p>a) <i>The right to an appeal to competent national organs</i></p>	<p>Sections 4(c), 4(d), 8: Rights of arrested persons and access to legal services</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative, policy and administrative framework for access to legal services, including information on state legal aid systems.</i>

AChHPR	Luanda Guidelines
<p><i>against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;</i></p> <p>b) <i>The right to be presumed innocent until proved guilty by a competent court or tribunal;</i></p> <p>c) <i>The right to defense, including the right to be defended by counsel of his choice;</i></p> <p>d) <i>The right to be tried within a reasonable time by an impartial court or tribunal.</i></p> <p>2. <i>No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offense for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.</i></p>	<ul style="list-style-type: none"> ● <i>Analysis and data, disaggregated by age, sex and national or ethnic origin, on access to legal assistance in criminal cases.</i> <p>*** Although the Luanda Guidelines do not speak to the right to a fair trial specifically, State Parties should refer to the <i>Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa</i> for assistance in compiling reports to the African Commission. ***</p>
<p>Article 9: Right to receive information</p> <p>1. <i>Every individual shall have the right to receive information.</i></p> <p>2. <i>Every individual shall have the right to express and disseminate his opinions within the law.</i></p>	<p>Sections 15, 16, 17, 18, 19, 27, 39 and 40: Registers, communication, data collection and access to information</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative, policy and administrative framework for the collection, analysis, dissemination and disaggregation of data on the use of arrest, police custody and pre-trial detention, and information on criminal justice sector case-flow management systems.</i>
<p>Article 16: Right to the highest attainable standard of health</p> <p>1. <i>Every individual shall have the right to enjoy the best attainable state of physical and mental health</i></p> <p>2. <i>State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</i></p>	<p>Sections 4(e), 4(g) and 24: Rights of an arrested person, physical conditions of police custody and pre-trial detention</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative, policy and administrative framework, and data, disaggregated by age, gender and national or ethnic origin, on the provision of health care in the context of police custody and pre-trial detention.</i> ● <i>Analysis and data on conditions of detention in police custody and pre-trial detention.</i>
<p>Article 25: Human rights promotion</p> <p><i>State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the</i></p>	<p>Sections 44(b), 45: Implementation and application of the Guidelines</p> <p><u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Dissemination of the Luanda Guidelines to state criminal justice institutions, and the community.</i>

AChHPR	Luanda Guidelines
<p><i>rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.</i></p>	<ul style="list-style-type: none"> ● <i>Training for law enforcement personnel, prison and judicial officers on the Luanda Guidelines.</i>
<p>Article 26: Judicial independence and external oversight <i>State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.</i></p>	<p>Sections 4(k), 6(b), 7(c), 20, 35, 36, 37, 38, 41, 42, 43: Rights of arrested persons, general provisions and safeguards for police custody, accountability mechanisms and remedies <u>Issues to consider/information to include:</u></p> <ul style="list-style-type: none"> ● <i>Legislative, policy and administrative framework for accountability and oversight for arrest, police custody and pre-trial detention, including information on the existence, and data on the operations, of:</i> ● <i>Complaints and oversight mechanisms</i> ● <i>Custody monitoring mechanisms</i> ● <i>Redress mechanisms.</i>

Communication and Advocacy Tools

THE LUANDA GUIDELINES: A RIGHTS-BASED APPROACH TO ARREST AND PRE-TRIAL DETENTION IN AFRICA

In May 2014 the African Commission on Human and Peoples' Rights (ACHPR) adopted the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa. They provide a guide to policy-makers and criminal justice practitioners and aim to strengthen day-to-day practice across the region. The guidelines contribute to the growing movement to advance pre-trial justice, recognising that improvements at the entry point to the criminal justice system positively impact throughout the trial and post-trial stages.

A BLUEPRINT FOR PRE-TRIAL JUSTICE IN AFRICA

Why are the guidelines important and how were they developed?

The unnecessary and arbitrary use of arrest and pre-trial detention is a major contributing factor to prison overcrowding in the region. It also feeds corruption, increases the risk of torture and has significant socioeconomic impacts on suspects, their families and communities. Cognizant of these issues, and of the need to strengthen criminal justice systems, the ACHPR mandated its Special Rapporteur on Prisons and Conditions of Detention in Africa in 2012 to develop a set of practical guidelines on arrest and detention. A number of background studies, regional consultations and expert group meetings led to the final adoption of the Luanda Guidelines at the 56th Ordinary Session of the ACHPR in 2014.

'The guidelines reflect the collective aspirations of our states, national human rights institutions and civil society organisations in promoting a rights-based approach to this critical area of criminal justice.'

Commissioner Med Kaggwa, ACHPR Special Rapporteur on Prisons and Conditions of Detention in Africa

How do the guidelines promote more effective and fair pre-trial detention?

The guidelines provide an authoritative interpretation of the African Charter and offer specific detail on the measures that State Parties need to take to uphold, protect and promote the rights of people subject to arrest, police custody and pre-trial detention. In doing so, they reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and a more rational and proportionate use of pre-trial detention. This enables a more effective use of human and financial resources targeted, for example, towards legal aid and crime prevention.

WHAT DO THE GUIDELINES COVER?

The guidelines trace the steps from the moment of arrest until trial, focusing on the decisions and actions of the police, correctional services and other criminal justice professionals. They contain eight key sections covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability and ways to improve co-ordination between criminal justice institutions.

1. **Arrest** covers grounds for arrest, procedural guarantees and the rights of suspects and arrested persons including the requirement that they be notified of their rights.
2. **Police custody** provides a framework for decision-making on police bail or bond, and details safeguards for persons subject to police custody, including access to legal services, limitations on the use of force and restraints, safeguards during questioning and recording of confessions.
3. **Decisions about pre-trial detention** includes safeguards for suspects who are subject to a pre-trial detention order, review procedures and mechanisms to minimise prolonged pre-trial detention.
4. **Registers** are designed to ensure transparency, and provide details regarding the type of information that should be recorded in all forms of record keeping, including arrest registers and those used in police custody and pre-trial detention centres where the information should be made available.
5. **Deaths and serious human rights violations in custody** details the procedures that should be followed in the event of a death or rights violation in police custody or pre-trial detention.
6. **Conditions of detention** includes conditions in police custody and pre-trial detention and specific safeguards that apply to these places of detention such as the separation of different categories of detainees.
7. **Vulnerable groups** covers groups identified by the African Charter as being at risk or having special needs within the criminal justice system including women, children, persons with disabilities and non-nationals.
8. **Accountability and remedies** includes a range of measures such as judicial oversight, habeas corpus, independent complaints, investigation and monitoring mechanisms, data collection and dissemination and the provisions for redress.

IMPLEMENTATION OF THE GUIDELINES

The final section of the guidelines highlights steps for implementation which is key to the practical realisation of all legal standards.

Who needs to take action to ensure that the guidelines are implemented?

- **The ACHPR** through promotional, monitoring, reporting and case-handling functions.
- **National governments** through transposition into national laws, policies and practice.

- **National parliaments** through legislation and parliamentary oversight.
- **Oversight bodies and civil society organisations** through monitoring, reporting, awareness-raising and technical assistance.

What are some of the key actions needed to ensure implementation?

Monitoring and reporting. States are required to utilise the guidelines in their reports to the ACHPR. In turn, the Commission plays a key role as monitor of the implementation of the guidelines through state reporting and country visits, allowing it to identify challenges, makes recommendations and ensure follow-up.

Accessibility, awareness and training. These are important to ensure that the guidelines are translated and disseminated in ways that are accessible to target communities. They can usefully be supported by a variety of practical tools and training materials.

National implementation plans. These are critical to promote implementation and should involve all relevant actors from the executive, security and justice institutions, National Human Rights Institutions and civil society.

INFORMATION AND NEXT STEPS

The ACHPR, civil society and National Human Rights Institutions are working together to promote implementation of the guidelines:

- The guidelines are available in the four African Union languages.
- Steps are underway to develop a number of practical checklists, templates and training guides to support the implementation of the guidelines.
- In a number of pilot countries, national action plans are being developed.

Sample press release

Inaugural Africa Pre-Trial Detention Day

25 April 2016

25 April marks the inaugural African Pre-Trial Detention Day, which raises awareness of the plight of thousands of people who are held for prolonged periods without trial in police cells and prisons across Africa. The date was chosen to coincide with the adoption by the African Commission on Human and Peoples' Rights of new Guidelines on Arrest, Police Custody and Pre-trial Detention ('the Luanda Guidelines'), which provide a blueprint for states to strengthen national systems and practices in terms of arrest, police custody and pre-trial detention. The Luanda Guidelines reinforce the importance of a criminal justice system built on core human rights principles.

'The guidelines reflect the collective aspirations of our states, national human rights institutions and civil society organisations in promoting a rights-based approach to this critical area of criminal justice' – Commissioner Med SK Kaggwa, African Commission Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa.

Across Africa, approximately 43 per cent of the total prison population comprises of pre-trial detainees. In [pick a regional context]

Central Africa alone, there are approximately 21 000 people held in detention who are still waiting for their right to a fair trial.

Northern Africa alone, there are approximately 57 000 people who are still waiting for their right to a fair trial.

In East Africa alone, there are almost 70 000 people who are still waiting for their right to a fair trial.

In West Africa alone, there are approximately 65 000 people who are still waiting for their right to a fair trial.

In Southern Africa alone, there are almost 97 000 people who are still waiting for their right to a fair trial.

For many of these pre-trial detainees, the right to a fair trial is elusive. The lack of affordable legal representation, unaffordable bail, arrest and custody for minor or petty offences, and the detention of people who do not pose a risk to society, means that detainees can wait years until their matters are adjudicated by a court. For every day that people spend in pre-trial detention, they lose the opportunity to work, study and care for their families, and are exposed to conditions of detention that pose a serious risk to their life and health. Addressing pre-trial justice will also support the development goals as, across Africa, arbitrary and prolonged pre-trial detention impacts the most on the poor and marginalised.

The unnecessary and arbitrary use of pre-trial detention, and of arrest and police custody, are major contributing factors to prison overcrowding. Prolonged and arbitrary detention also feeds corruption, exposes detainees to the risk of serious human rights

violations such as torture and ill-treatment, and has significant socio-economic impacts on detainees, their families and communities.¹

Africa Pre-Trial Detention Day provides an opportunity for all stakeholders to reflect on the challenges of pre-trial detention, and to commit to taking immediate steps to implement the Luanda Guidelines in a national context.

National governments can use the Luanda Guidelines as a template against which to review existing national laws, practices and policies. Oversight authorities and civil society also play an important role in monitoring, reporting, raising awareness and providing technical assistance to governments to promote arrest, police custody and pre-trial detention systems that are fair, based on core principles of human rights, and which do not place an overwhelming burden on court and detention systems. [Include any specific national strategies or advocacy points here].

On 25 April, [details of events planned].

For more information, please contact: [Name and contact details].

About the African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights is an African Union mechanism that comprises of 11 members elected by the African Union Assembly. The members, known as Commissioners, are human rights experts nominated by African Union State Parties, and their mandates are for six years, renewable.

The African Commission was established by the African Charter on Human and Peoples' Rights, and inaugurated on 2 November 1987. The Commission's Secretariat is located in Banjul, The Gambia, and meets for two Ordinary Sessions and two Extraordinary Sessions every calendar year.

The African Commission is officially charged with three major functions:

- The protection of human and peoples' rights.
- The promotion of human and peoples' rights.
- The interpretation of the African Charter on Human and Peoples' Rights.

To assist the Commission with these three major functions, the Commission has the power to collect documents; undertake studies and research on African problems in the field of human and peoples rights; organise seminars; hear and decide on individual complaints about violations of the African Charter; and encourage and make views

1 Preamble, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted by the African Commission on Human and Peoples' Rights during its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014. See also Louise Edwards, *Pre-Trial Justice in Africa: An Overview of the Use of Arrest and Detention, and Conditions of Detention*, APCOF Policy Paper No. 7, February 2013, available at http://www.apcof.org/files/8412_Pretrial_TrialJustice_Overview_in_Africa.pdf [Accessed 1 October 2015]; Martin Schönteich, *Presumption of Guilt: The Global Overuse of Pretrial Detention*, Open Society Justice Initiative, 2014, available at <https://www.opensocietyfoundations.org/sites/default/files/presumption-guilt-09032014.pdf> [Accessed 1 October 2015]; L. Muntingh & K. Petersen, *Punished for Being Poor: Evidence and Arguments for the Decriminalisation of Petty Offences*, Civil Society Prison Reform Initiative, 2015; and L. Muntingh & J. Redpath, *The Socio-Economic Impact of Pre-Trial Detention* (forthcoming), Johannesburg, Open Society Institute.

or recommendations to African States to implement the African Charter (Charter, Article 45).

The Commission also has Special Mechanisms, known as Special Rapporteurs, working groups or committees that investigate and report on human rights issues in specific areas or geographic regions. For example, relevant to the Luanda Guidelines is the mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, currently held by Commissioner Med SK Kaggwa, and the Committee on the Prevention of Torture in Africa, currently chaired by Commissioner Lawrence Mute. These two special mechanisms will include the Luanda Guidelines as one of the standards, in addition to the African Charter, that they will use to assess situations and to make recommendations and views to African Union States

About the Luanda Guidelines

In May 2014, the African Commission on Human and Peoples' Rights ('African Commission') adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa ('the Luanda Guidelines') at its 55th Ordinary Session in Luanda, Angola.

The unnecessary and arbitrary use of arrest and pre-trial detention is a major contributing factor to prison overcrowding in Africa. It also feeds corruption, increases the risk of torture and has significant socio-economic impacts on detainees, their families and communities. Cognizant of these issues, and of the need to strengthen criminal justice systems, the African Commission mandated the Special Rapporteur on Prisons and Conditions of Detention to develop a set of practical guidelines on arrest and detention. A number of background studies, regional consultants and expert group meetings led to the final adoption of the Luanda Guidelines during the African Commission's 56th Ordinary Session in Luanda, Angola, in May 2014.

The Guidelines provide an authoritative interpretation of the African Charter on Human and Peoples' Rights and offer specific detail on the measures that State Parties to the African Charter need to take to uphold, protect and promote the rights of people subject to arrest, police custody and pre-trial detention. In doing so, they reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and a more rational and proportionate use of pre-trial detention. This enables a more effective use of human and financial resources, targeted, for example, towards legal aid and crime prevention. The Luanda Guidelines promote a holistic approach to the management of pre-trial justice systems, with co-ordination between the main sector institutions responsible for the care and management of accused persons: the police, correctional services, judiciary, prosecution, legal aid, health services, and others.

The Guidelines trace the process from the moment of arrest until trial, focusing on the decisions and actions of the police, correctional services, the judiciary and other criminal justice sector actors. They contain nine key sections, covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability, and ways to improve co-ordination between criminal justice institutions.

Sample short article: The Luanda Guidelines and the African Year of Human Rights, with a particular focus on women's rights

The rights of women and girls as accused persons

For publication in the ACHPR Policing and Human Rights Newsletter

Louise Edwards
Programme Manager
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Concerned about the impact of overcrowding in prisons on human rights, and the consequences of arbitrary arrest and prolonged pre-trial detention on detainees and their families, the African Commission on Human and Peoples' Rights ('the Commission') adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa ('the Luanda Guidelines') at its 56th Ordinary Session in Luanda, Angola. The Luanda Guidelines provide an authoritative interpretation of the relevant provisions of the African Charter on Human and Peoples' Rights and give guidance to law and policy-makers on measures to promote core human rights principles in national criminal justice systems, with a particular focus on the pre-trial and police custody phases.

The Luanda Guidelines apply to *all* persons who are subject to arrest, police custody and pre-trial detention. For certain categories of persons, including women and girls, the Guidelines offer specific protections that states must guarantee beyond the general protections provided to all accused persons. For women and girls, these additional protections include safeguarding the right to privacy, guarantees of searches being conducted by persons of the same biological gender, same-gender detention facilities, and provision for biology-specific hygiene and healthcare, including during pregnancy, birth and breastfeeding. Further protections are provided for in respect of the physical, emotional, social and psychological needs and development of babies and children accompanying women to police cells or pre-trial detention/remand facilities.

These provisions do not create new law *per se*, but they do highlight and reinforce the obligation on State Parties to the African Charter to develop legislation, procedures, policies and practices that are designed to protect the rights, special status and distinct needs of women and girls, including those who are the subject to arrest, police custody or pre-trial detention.

As States are beginning to implement the Luanda Guidelines, the emerging work is confirming that despite substantial efforts to address the needs of women as victims of crime and violence in Africa, the challenges faced by women and girls as *accused persons* are often overlooked in state policies and practices. For example, concern is often raised about the rape of women and girls by law enforcement officials and other detainees, yet protection and preventive measures such as separate holding facilities in police stations for men and women are not in place or enforced in many countries. Further, arbitrary and invasive searches, and the manner in which searches are conducted, can violate women and girls' privacy and dignity as law enforcement personnel are not always

trained or sensitised on rights-based practices, such as conducting searches in private, same-gender search protocols, and the requirement for obtaining prior approval before conducting intimate or internal searches.

In this African Year of Human Rights, with a particular focus on women's rights, states must be encouraged to develop effective evidence-based policies, programmes and interventions that make specific provision for the distinct needs and rights of women and girls as accused persons. These policies should also take into account the multiple or intersectional forms of discrimination that women and girls can experience based on one or any combination of gender, race, ethnicity, nationality, age, social status and whether they are persons with a disability.

As a new continental standard, which reflects states' existing obligations under the African Charter and the Protocol to the African Charter on the Rights of Women in Africa,

the Luanda Guidelines provide states with the template needed to ensure that the rights of women and girls as accused persons are taken into account in criminal justice law and policy reform. The full and equal participation of women in the reform agenda must also be encouraged to ensure that women's voices and experiences are reflected, and that states adopt and implement criminal justice policies and procedures that protect women and girls' rights to dignity, security, non-discrimination and equal protection before the law.

Luanda Guidelines: National Contexts

This briefing note has been prepared to provide a basis for the development of national-level awareness-raising and advocacy activities. It can also be used as the basis for short articles, website updates and other communications, and can be tailored by the author to account for national developments or challenges.

Introduction to the Luanda Guidelines

In May 2014, the African Commission on Human and Peoples' Rights ('African Commission') adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') at its 55th Ordinary Session in Luanda, Angola.

The unnecessary and arbitrary use of arrest and pre-trial detention is a major contributing factor to prison overcrowding in Africa. It also feeds corruption, increases the risk of torture and has significant socio-economic impacts on detainees, their families and communities. Cognizant of these issues, and of the need to strengthen criminal justice systems, the African Commission mandated the Special Rapporteur on Prisons and Conditions of Detention to develop a set of practical guidelines on arrest and detention. A number of background studies, regional consultants and expert group meetings led to the final adoption of the Luanda Guidelines during the African Commission's 56th Ordinary Session in Luanda, Angola, in May 2014.

The Guidelines provide an authoritative interpretation of the African Charter on Human and Peoples' Rights and offer specific detail on the measures State Parties to the African Charter need to take to uphold, protect and promote the rights of people subject to arrest, police custody and pre-trial detention. In doing so, they reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and a more rational and proportionate use of pre-trial detention. This enables a more effective use of human and financial resources, for example targeted towards legal aid and crime prevention. The Luanda Guidelines promote a holistic approach to the management of pre-trial justice systems, with co-ordination between the main sector institutions responsible for the care and management of accused persons: the police, correctional services, judiciary, prosecution, legal aid, health services, and others.

The Guidelines trace the process from the moment of arrest until trial, focusing on the decisions and actions of the police, correctional services, judiciary and other criminal justice sector actors. They contain nine key sections, covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability, and ways to improve co-ordination between criminal justice institutions. What follows is a summary of the key provisions, with more information on each Part of the Guidelines provided at **Annexure 1**.

- Part I: Arrest – covers grounds for arrest, procedural guarantees and the rights of suspects and arrested persons, including the requirement that they be notified of their rights.

- Part II: Police Custody – provides a framework for decision-making on police bail or bond, and details safeguards for persons subject to police custody, including access to legal services, limitations on the use of force and restraints, safeguards during questioning and recording of confessions.
- Part III: Decisions on Pre-Trial Detention – includes safeguards for suspects who are subject to a pre-trial detention order, review procedures and mechanisms to minimise prolonged pre-trial detention.
- Part IV: Registers – these are designed to improve efficiency in management of detainees to facilitate compliance with human rights standards. This section provides guidelines on the type of information that should be recorded in all forms of record-keeping, including arrest registers and those used in police custody and pre-trial detention facilities.
- Part V: Deaths and Serious Human Rights Violations in Custody – sets guidelines for the procedures that should be followed in the event of a death or rights violation in police custody or pre-trial detention.
- Part VI: Conditions of Detention – includes conditions of detention in police custody and pre-trial detention, and specific safeguards that apply to these places of detention such as the separation of categories of detainees.
- Part VII: Vulnerable Groups – covers groups identified by the African Charter as being at risk or having special needs within the criminal justice system, including women, children, persons with disabilities and non-nationals.
- Part VIII: Accountability and Remedies – includes a range of measures such as judicial oversight, right to challenge lawfulness of detention, independent complaints, investigations and monitoring mechanisms, data collection and dissemination, and provision for redress.
- Part IX: Implementation – highlights steps for implementation through monitoring, transposition, training and oversight.

The adoption of the Luanda Guidelines by the African Commission was an important first step in the Commission's work to promote a rights-based approach to arrest, police custody and pre-trial detention. The success of the Luanda Guidelines in reforming criminal justice process and practice across the continent will be measured by the extent to which they are implemented by stakeholders, including in the ordinary work of the Commission, by States, National Human Rights Institutions (NHRIs) and civil society.

Relevance of the Luanda Guidelines to national pre-trial detention systems

The adoption of the Luanda Guidelines by the African Commission is relevant in a national context for two reasons. First, it will impact the way in which a State Party to the African Charter reports to the African Commission through the State Reporting Procedure under Article 62 of the Charter. Second, its status as a soft-law instrument means that it is legally persuasive in the context of reviews and reform of existing pre-trial detention systems at the national level. Each is discussed in turn.

State reporting procedure under Article 62 of the African Charter

Article 62 of the African Charter requires States to submit reports to the African Commission every two years on legislative and other measures taken to give effect to the Charter.

As an authoritative interpretation of Charter rights, the African Commission will refer to the Luanda Guidelines in its review of State reports. This is particularly so in relation to the legislative and other measures taken by a State Party to give effect to Article 6 of the African Charter, which provides guarantees of freedom from arbitrary arrest and detention. During interactive dialogue as part of the State reporting procedure at recent 56th Ordinary Session of the African Commission, questions were posed by Commissioners to States under review on Luanda Guidelines compliance, and reference to the Luanda Guidelines was included in the Commission's concluding observations.

Domestic application of the Luanda Guidelines

The Luanda Guidelines are a soft-law instrument, designed to aid the implementation of the African Charter by States. Although the Luanda Guidelines do not create legally binding obligations on State Parties, they are nonetheless demonstrate recognition and endorsement of a normative framework for arrest, police custody and pre-trial detention in Africa, and are relevant to the interpretation of the African Charter and assessments on the extent to which a State Party fulfils its Charter obligations in relation to criminal justice.

There are various uses for the Luanda Guidelines at the national level, which include (but are not limited to):

- A reference document to assist State Parties and their stakeholders to identify the key tenets of a rights-based approach to arrest, police custody and pre-trial detention against which review of existing legal and policy frameworks can be made and new law can be based
- The development of jurisprudence by invoking the Luanda Guidelines through court processes, quasi-judicial processes (such as decisions by NHRIs) and through submissions and expert testimony to inquiries, commissions and other review processes.

Implementation

The adoption of the Guidelines by the African Commission was an important first step in its work to promote a rights-based approach to criminal justice in Africa. The success of the Luanda Guidelines in achieving this aim will be measured by the extent to which State Parties to the African Charter implement the Guidelines.

To promote implementation, the African Commission is working at the continental and national levels. Activities are varied, and include dissemination and awareness raising, and the development of a number of practical tools (including checklists, reporting templates and training manuals) to support implementation by States. Those tools will be available for during 2016, and can be used to review existing forms and processes, or to provide a template to initiate forms and processes. In addition, in a number of

pilot countries, baseline studies that compare national legal and policy frameworks for arrest, police custody and pre-trial detention against the Luanda Guidelines, and national action plans to address the gaps identified in the baseline studies, are being developed. National implementation projects are already underway in South Africa, Malawi, Tanzania, Côte d'Ivoire, Ghana and Tunisia, with plans for processes in Uganda and Sierra Leone during 2016.

Annexure 1

Summary of the international normative framework for rights-based remand systems, based on the Luanda Guidelines

The Luanda Guidelines were developed by the ACHPR as an authoritative interpretation of African Charter rights such as life, security, non-discrimination and freedom from torture, and contributes to the development of normative standards for criminal justice at the continental and international levels. Other relevant treaties and norms that are specifically contemplated by the Luanda Guidelines include, but are not limited to, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child, the UN Minimum Rules for the Treatment of Prisoners (the ‘Mandela Rules’),² and the UN Standard Minimum Rules for Non-Custodial Measures.³ In doing so, the Luanda Guidelines reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and more rational and proportionate use of pre-trial detention. This enables a more effective use of human and financial resources, targeted, for example, towards legal aid and crime prevention.

The Guidelines trace the steps from the moment of arrest until trial, focusing on the decisions and actions of the police, correctional services and other criminal justice stakeholders such as the judiciary and prosecution. They contain eight key sections covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability and ways to improve co-ordination between criminal justice institutions. Each part is discussed below.

0.1. Part I: Arrest

Arrest covers the grounds for arrest, procedural guarantees and the rights of suspected and arrested persons, including the requirement that they be notified of their rights. The aim of Part I of the Guidelines is to reduce the number of unnecessary and arbitrary arrests, and to protect persons who are under arrest from human rights abuses.

The rights to life and liberty are central to the construction of this part, and the grounds for arrest limit the use of arrest to exceptional circumstances and as a measure of last resort. The Guidelines promote alternatives to arrest where appropriate for minor crimes, and encourage State Parties to the African Charter to establish diversion systems.

The Guidelines set out in detail a range of procedural guarantees for arrest, including the requirement for officials to identify themselves, limitations on the use of force and firearms, a framework for the conduct of searches, and provision for the maintenance

2 The revised UN Standard Minimum Rules for the Treatment of Prisoners were adopted unanimously in December 2015 by the UN General Assembly and set out the minimum standards for good prison management, including ensuring that the rights of prisoners are respected.

3 Preamble, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted by the African Commission on Human and Peoples’ Rights during its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014.

of arrest registers. The rights of an arrested person are set out at length in Guideline 4 and include the rights to:

- Freedom from torture and other ill-treatment
- Information on the reason for arrest and charge in a language and format understood by the arrested person, and the necessary facilities to exercise rights
- Silence and freedom from self-incrimination
- Access to legal assistance, family or other person of choice, and medical assistance
- Humane conditions of police custody Information in an accessible format
- Release on bail or bond as the presumptive right
- Challenge the lawfulness of arrest
- Freely access complaints and oversight mechanisms
- Reasonable accommodation for persons with disabilities.

0.2. Part II: Police custody

Part II of the Luanda Guidelines sets out in detail the procedural and other safeguards for persons who are deprived of their liberty in police custody. The provisions are designed to promote freedom from arbitrary detention and emphasise the use of police custody as an exceptional measure of last resort. To promote the rights of persons who are held in police custody, the Guidelines highlight the need for independent monitoring of police cells, and provide safeguards for detainees who are subject to questioning and interrogation. Guideline 7 provides guidance for police agencies who have the statutory authority to grant bail, which are the same as the guidelines set out in Part III for judicial decision-makers (see below).

Guideline 8 sets out the requirement for the provision of legal assistance services to accused persons. The use of the term ‘legal assistance’ rather than ‘lawyer’ is deliberate, as it acknowledges that there is a range of legal service providers, such as paralegals, who can provide legal information and assistance to accused persons. However, this expanded definition does not diminish the importance of access to qualified lawyers, which must remain at the centre of any national legal aid scheme.

0.3. Part III: Pre-trial detention

Part III of the Guidelines establishes a detailed framework to promote a rights-based approach to decision-making in relation to remand orders, and safeguards for persons who are subject to such orders. As with police custody, the Guidelines emphasise that remand detention should only be ordered as an exceptional measure of last resort, and encourages State Parties to the African Charter to establish and maintain alternatives to remand detention. Part III shifts the focus of the Guidelines from the police to the judiciary, providing guidance on the framework for decision-making in terms of judicial orders for remand, and review of remand orders. It also sets out procedures in the case of delays in investigation or judicial proceedings that may result in prolonged remand detention. Lastly, it establishes safeguards for persons who are subject to remand orders, including that remand detainees be held in officially recognised places of detention and have access to a lawyer.

0.4. Part IV: Registers and access to information

Part IV of the Luanda Guidelines sets out the requirement for registers at all stages of the arrest, custody and remand process, and provides for access to registers by detainees, lawyers, family members, oversight authorities and any other organisation with a mandate to visit places of detention. This Part sets out the minimum information to record in a register, such as key identifying information (such as name and address), details for the next of kin and any observations in terms of the physical and mental health of the person subject to arrest, police custody or remand detention.

Guidelines 39 and 40 (which are in Part VIII of the Guidelines) deal specifically with data collection and access to information. These provisions require that State Parties establish processes for the systematic collection of disaggregated data on the use of arrest, police custody and remand detention, and ensure that there are systems and processes in place to guarantee the right of access to information for accused persons, their lawyers, family members and others.

0.5. Part V: Procedures for serious violations of human rights in police custody and pre-trial detention

State responsibility to account for death, injury and violations of human rights in a custodial setting underpin Part V of the Luanda Guidelines, which set out a range of procedures for State Parties to institute to ensure effective, impartial and independent investigations into death and human rights violations. Part V is premised on the requirement by States to establish independent oversight and accountability mechanisms, which are discussed in detail in Part VIII of the Guidelines.

0.6. Part VI: Conditions of detention in police custody and pre-trial detention

Acknowledging the comprehensive framework for physical conditions of detention provided in the recently updated UN Standard Minimum Rules for the Treatment of Prisoners, ('the Mandela Rules') the Luanda Guidelines focus on the procedural safeguards to ensure the safe custody of persons held in police cells and remand environments. The Guidelines emphasise that all fundamental rights and freedoms apply to accused persons, except those limitations that are demonstrably necessary by the fact of detention itself. Amongst the safeguards promoted by the Guidelines are:

- Alternatives to detention to reduce overcrowding
- Limitations on the use of force and firearms, permissible restraints, disciplinary measures and solitary confinement
- Legislative, budgetary and other measures to ensure adequate standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental health care, contact with the community, religious observance, reading and other educational facilities, support services, and reasonable accommodation
- Health assessment screenings and harm-reduction strategies
- Procedures for the safe transfer of accused persons
- Provision for adequate and efficient staffing
- Separation of categories of detainees

- Appropriate communication facilities, and access by accused persons to those facilities.

0.7. Part VII: Vulnerable groups

Part VII focuses specifically on the rights of persons identified as vulnerable to rights abuses in arrest, police custody and remand detention settings. It contains general provisions that encourage State Parties to enshrine the right to freedom from discrimination in national law, and outlines specific protections in relation to all categories of persons afforded protection in the African Charter, as well as the following specific groups:

- Children: definition of a child as anyone aged below 18; primacy of the best interest of the child; laws and policies to promote diversion and alternatives to detention; safeguards for arrest, police custody and remand detention; right to be heard and provision of legal assistance services; a framework for the conduct of officials and establishment of specialised units; access to third parties
- Women: safeguards for arrest and detention, including separation from male detainee populations; provisions for accompanying children
- Persons with disabilities: definition of disability, which includes physical, mental, intellectual or sensory disability; legal capacity and access to justice; accessibility and reasonable accommodation
- Non-nationals: specific protections for refugees, non-citizens; stateless persons in terms of access to third parties and translation services.

0.8. Part VIII: Accountability and remedies

Part VIII of the Guidelines sets out an accountability architecture that is comprised of internal and external oversight, judicial oversight, complaints and monitoring mechanisms, and provision for remedies. It also sets out the minimum standard of conduct for officials, and provides for a system of inquiries.

0.9. Part IV: Implementation

The final Part of the Guidelines promotes implementation by State Parties to the African Charter through a range of measures, including review of existing national frameworks, national training, and reporting against the Luanda Guidelines to the African Commission as part of the State Party reporting procedures in the African Charter.

Legal Referencing

PART I: ARREST

Guideline 1: General provisions

Article 6, African Charter on Human and Peoples' Rights

Article 9(1), International Covenant on Civil and Political Rights

Articles M(7)(c)–(h), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *Law enforcement officials and/or judicial officers should always favour the release of a suspect against his or her physical arrest or detention.*¹
- *The deprivation of liberty is permissible only when occurring on such grounds and in accordance with such procedures as are established by law.*² Accordingly, the principle of legality is violated if an individual is arrested or detained on grounds that are not clearly established in domestic legislation.³
- *'Arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.*⁴ Thus, for an arrest to be in compliance with Article 9 of the International Covenant on Civil and Political Rights, it must not only be lawful, but reasonable and necessary in all the circumstances.⁵
- *The prohibition against arbitrariness requires that deprivation of liberty shall be under the authority and supervision of persons procedurally and substantively competent to certify it.*⁶
- *No retrospective law may deprive a person of their liberty.*⁷
- *Article 6 of the African Charter on Human and Peoples' Rights must be interpreted in such a way as to permit arrests only in the exercise of powers normally granted to the security forces in a democratic society. Provisions that allow for individuals to be arrested for vague reasons, and upon suspicion, not proven acts, are not in conformity with the spirit of the Africa Charter on Human and Peoples' Rights.*⁸

1 *Civil Liberties Organisation (in respect of the Nigerian Bar Association) / Nigeria* ACmPR Communication 101/93; *Gabriel Shumba / Zimbabwe* ACmHPR Communication 288/04.

2 *Leonid Komarovski / Turkmenistan* HRC Communication 1450/2006; *Andrei Khoroshenko / Russian Federation* HRC Communication 1304/2004.

3 *Clifford McLawrence / Jamaica* HRC Communication No 702/1996.

4 *Hugo van Alphen / The Netherlands* HRC Communication No 305/1988.

5 *Hugo van Alphen / The Netherlands* HRC Communication No 305/1988; *Aage Spakmo / Norway* HRC Communication No 631/1995.

6 *Purohit and Moore / The Gambia* ACmHPR Communication 241/01; *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan* ACmHPR Communication 279/03-296/05.

7 *Civil Liberties Organisation (in respect of the Nigerian Bar Association) / Nigeria* ACmHPR Communication 101/93.

8 *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* ACmHPR Communication 48/90-50/91-52/91-89/93.

- *An arrest without subsequent charge of an offence amounts to an arbitrary arrest.*⁹
- *An arrest without a warrant or information about the offence for which a person is being arrested amounts to an arbitrary arrest.*¹⁰ However, it is not sufficient to simply inform an arrestee that they are being arrested for a 'breach of State security' without any indication as to the substance of the complaint against them.¹¹
- *In circumstances where security forces carry out arrests during a state of emergency, Article 6 of the African Charter on Human and Peoples' Rights demands that arrests be made according to the exercise of powers normally granted to the security forces in a democratic society. Thus, decrees authorising the arrest of individuals for vague reasons, and upon suspicion, not proven acts, are a violation of Article 6.*¹²

Guideline 2: Grounds for arrest

Article 6, African Charter on Human and Peoples' Rights

Articles 9 and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *'Established by law' in Article 6 of the African Charter on Human and Peoples' Rights does not include any legislation laid down by a domestic authority that permits arbitrary arrest and is thus inconsistent with the obligations under the Charter.*¹³ A State Party cannot justify violations of the African Charter by relying on the limitation under Article 6 of the Charter.¹⁴ A State is therefore required to convince the African Commission that the measures or conditions it has put in place in relation to arrests are in compliance with Article 6.¹⁵

9 *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 / Mauritania* ACmHPR Communication 54/91-61/91-96/93-98/93-164/97 196/97-210/98.

10 *Media Rights Agenda / Nigeria* ACmHPR Communication 224/98; *Institute for Human Rights and Development in Africa / Angola* ACmHPR Communication 292/04; *Courson v Equatorial Guinea* ACmHPR Communication 144/95; *Rights International v Nigeria* ACmHPR Communication 215/98; *Huri-Laws v Nigeria* ACmHPR Communication 225/98; *Article 19 v Eritrea* ACmHPR Communication 275/2003; *Adam Hassan Aboussedra / Libyan Arab Jamahiriya* HRC 1751/2008; *Edriss El Hassy, on behalf of his brother, Abu Bakar El Hassy, / Libyan Arab Jamahiriya* HRC Communication 1422/2005; *Zulfia Ideiva / Tajikistan* HRC Communication 276/2004; *Dorothy Titahonjo / Cameroon* HRC Communication 1186/2003; *Pagdayawon Rolando / The Philippines* HRC Communication No 1110/2002; *Antonio Vargas Mas / Peru* HRC Communication No 1058/2008; *Marcel Mulezi / Democratic Republic of the Congo* HRC Communication 962/2001; *Hegatheeswara Sarma / Sri Lanka* HRC Communication No 950/2000; *Ilombe and Another / Democratic Republic of the Congo* HRC Communication 177/2003; *Marques de Morais / Angola* HRC Communication 1128/2002; *Patricio Ndong Bee / Equatorial Guinea* HRC Communication No. 1152/2003 and 1190/2003; *Njaru / Cameroon* HRC Communication 1353/2005; *Titahonjo / Cameroon* 2007 HRC Communication 1186/2003; *Leonid Komarovski / Turkmenistan* 2008 HRC Communication 1450/2006; *Andrei Platonov / Russian Federation* 2007 HRC Communication 1218/2003.

11 *Drescher Caldas / Uruguay* HRC Communication No 43/1979; *Ilombe and Another / Democratic Republic of the Congo* HRC Communication 177/2003.

12 *Amnesty International and Others / Sudan* 2000 ACmHPR Communications 48/90, 50/91, 52/91, 89/93.

13 *Sir Dawda K Jawara / The Gambia* ACmHPR Communication 147/95-149/96.

14 *Legal Resources Foundation / Zambia* ACmHPR Communication 211/98; *Kevin Mgwanga Gunme et al. / Cameroon* ACmHPR Communication 266/03.

15 *Kevin Mgwanga Gunme et al. / Cameroon* ACmHPR Communication 266/03.

- *To arrest and detain a person on account of their political beliefs, especially where no charges are brought against them, renders the arrest and deprivation of liberty arbitrary.*¹⁶
- *The arrest and detention of people based on grounds of ethnic origin alone, particularly in light of Article 2 of the African Charter on Human and Peoples' Rights, constitute arbitrary deprivation of the liberty of an individual.*¹⁷

Guideline 3: Procedural guarantees for arrest

3(a)–(b) – basis for arrest and officials conducting arrest

Articles 7 and 9, African Charter on Human and Peoples' Rights

Articles 14(4) and 19(2), International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Principles 2, 9, 10, 12, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

3(c) – use of force

Articles 4, 5 and 6, African Charter on Human and Peoples' Rights

Articles 6(1), 7, 9(1) and 10(1), International Covenant on Civil and Political Rights

- *Article 9(1) of the International Covenant on Civil and Political Rights protects the rights to security of the person also outside the context of formal deprivation of liberty. Thus, Article 9 does not allow the State Party to ignore threats to the personal security of non-detained persons subject to its jurisdiction.*¹⁸
- *Article 6(1) of the International Covenant on Civil and Political Rights entails an obligation of a State Party to protect the right to life of all persons within its territory and subject to its jurisdiction.*¹⁹
- *Where the use of force is authorised without lawful reasons the state has not acted in accordance with its obligations to protect the author's right to life.*²⁰

3(d) – searches

16 *Amnesty International / Zambia* (2000) ACmHPR Communication 212/98; *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda / Nigeria* ACmHPR Communication 140/94-141/94-145/95; *Liesbeth Zegveld and Mussie Ephrem / Eritrea* ACmHPR Communication 250/02; *Monja Joana / Madagascar* HRC Communication No 132/1982.

17 *Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme / Rwanda* ACmHPR Communication 27/89-46/91-49/91-99/93; *Institute for Human Rights and Development in Africa (on behalf of EsmailaConnateh & 13 others) / Angola* ACmHPR Communication 292/04; *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah / Zaire*, ACmHPR Communication 25/89, 47/90, 56/91, 100/93; *Patricio Ndong Bee / Equatorial Guinea* HRC Communication No. 1152/2003 and 1190/2003.

18 *Chongwe / Zambia* 2001 HRC Communication 821/1998.

19 *Chongwe / Zambia* 2001 HRC Communication 821/1998.

20 *Chongwe / Zambia* 2001 HRC Communication 821/1998.

Rules 50–52, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Guideline 4: Rights of an arrested person

Guideline 5: Notification of rights

See generally:

Articles 5, 6 and 7, African Charter on Human and Peoples' Rights

Articles 7, 9, 10 and 14, International Covenant on Civil and Political Rights

Principles 1 and 6, UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Article M(2)(a), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comments 13 and 32 on Article 14 of the International Covenant on Civil and Political Rights

Principle 13, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

- *The provisions of Article 7 of the African Charter on Human and Peoples' Rights should be considered non-derogable providing as they do the minimum protection to citizens and military officers alike, especially under an unaccountable, undemocratic military regime.*²¹
- *Article 14 of the International Covenant on Civil and Political Rights applies to all courts and tribunals whether specialised or ordinary.*²²

4(a) – freedom from torture

See Commentary for Chapter VI

4(b) – right to be informed of reasons for arrest and charges

Articles 7(1)(a)–(c), African Charter on Human and Peoples' Rights

Articles 9(2) and 14(3), International Covenant on Civil and Political Rights

Article M(2)(a), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *A State Party of the African Charter on Human and Peoples' Rights that neither informs a suspect of the nature of the offence for which he or she has been arrested nor the reasons for*

21 *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project / Nigeria 2001 HRC Communication 218/1998.*

22 *General Comment 14; Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project / Nigeria 2001 HRC Communication 218/1998.*

*the arrest is in violation of Article 7(1)(c) of the African Charter on Human and Peoples' Rights.*²³

- *The effective exercise of the rights under Article 14 of the International Covenant on Civil and Political Rights presupposes that the necessary steps should be taken to inform the accused of the charges against him and notify him or her of proceedings.²⁴ If such steps are not taken, the accused is not given adequate time and facilities for the preparation of his or her defence, cannot defend himself or herself through legal assistance of his or her own choosing, nor does he or she have the opportunity to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf.²⁵ Thus, the refusal on the part of the arresting State Party to disclose all the relevant charges against an accused amounts to a violation of Article 14(3) of the International Covenant on Civil and Political Rights.²⁶*
- *Article 14(3) of the International Covenant on Civil and Political Rights does not require that a suspect be informed of the details of the nature and cause of the charges against him or her immediately upon arrest – compliance with Article 9(3) will suffice, i.e. the charging of an a suspect at a preliminary hearing, the preliminary investigation or at the setting of some other hearing which gives rise to a clear official suspicion against the accused is not a violation of Article 14(3).²⁷*

4(c) – right to silence and freedom from self-incrimination

Article 7(b), African Charter on Human and Peoples' Rights

Articles 6(2) and 14(3)(g), International Covenant on Civil and Political Rights

Article M(2)(f), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

23 *Rights International / Nigeria* 1999 ACmHPR Communication 215/1998; *Media Rights Agenda / Nigeria* 2000 ACmHPR Communication 224/1998; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) / Angola* 2008 ACmHPR Communication 292/04; *Adam Hassan Aboussedra / Libyan Arab Jamahiriya* 2010 HRC Communication 1751/2008; ACmHPR Communication 292/04; *Courson / Equatorial Guinea* ACmHPR Communication 144/95; *Rights International / Nigeria* ACmHPR Communication 215/98; *Huri-Laws / Nigeria* ACmHPR Communication 225/98; *Article 19 v Eritrea* ACmHPR Communication 275/2003; *Adam Hassan Aboussedra / Libyan Arab Jamahiriya* HRC 1751/2008; *Edriss El Hassy, on behalf of his brother, Abu Bakar El Hassy, / Libyan Arab Jamahiriya* HRC Communication 1422/2005; *Zulfia Ideiva / Tajikistan* HRC Communication 276/2004; *Dorothy Titahonjo / Cameroon* HRC Communication 1186/2003; *Pagdayawon Rolando / The Philippines* HRC Communication No 1110/2002; *Antonio Vargas Mas / Peru* HRC Communication No 1058/2008; *Marcel Mulezi / Democratic Republic of the Congo* HRC Communication No 962/2001; *Hegatheeswara Sarma / Sri Lanka* HRC Communication No 950/2000; *Ilombe and Another v Democratic Republic of the Congo* HRC Communication 177/2003; *Marques de Morais / Angola* HRC Communication 1128/2002; *Patricio Ndong Bee / Equatorial Guinea* HRC Communication No. 1152/2003 and 1190/2003; *Njaru / Cameroon* HRC Communication 1353/2005; *Titahonjo / Cameroon* 2007 HRC Communication 1186/2003; *Leonid Komarovski / Turkmenistan* 2008 HRC Communication 1450/2006; *Andrei Platonov / Russian Federation* 2007 HRC Communication 1218/2003.

24 General Comment 32; *Mukhammed Salikh / Uzbekistan* 2009 HRC Communication 1382/2005.

25 *Daniel Monguya Mbenge / Zaire* 1983 HRC Communication 016/1977.

26 *Andrei Khoroshenko / Russian Federation* 2011 HRC Communication 1304/2004.

27 *Clifford McLawrence / Jamaica* 1997 HRC Communication 702/1996; *Desmond Williams / Jamaica* 1997 HRC Communication 561/1993.

Principles 15 and 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rule 111(2), UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *The presumption of innocence is universally recognised, and with it, the right to silence. Therefore no accused should be required to testify against himself or to incriminate himself or be required to make a confession under duress.*²⁸

4(d) – access to legal assistance

Article 7(c), African Charter on Human and Peoples' Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Article M(2)(f), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Article 20(c), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

Rule 120, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *The right to legal assistance is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.*²⁹ *Legal assistance necessarily includes the right of an accused person to have adequate time and facilities for the preparation of his defence.*³⁰
- *The right to a legal defence should also be interpreted as including the right to understand the charges being brought against oneself.*³¹
- *The right to freely choose one's counsel is essential to the assurance of a fair trial.*³² *Thus, where a defendant is denied the opportunity to select his or her own counsel without interference, or if any type of adjudicatory body reserves the right to bar certain advocates from appearing before it or to veto a defendant's choice of counsel, the right to a legal defence has been infringed.*³³

28 *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project / Nigeria* 2001 ACmHPR Communication 218/1998.

29 Human Rights Committee General Comment No. 32; *Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008; *Aston Little / Jamaica* 1987 HRC Communication 283/1988.

30 *Alrick Thomas / Jamaica* 1992 HRC Communication 272/1988.

31 *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 / Mauritania* 2000 ACmHPR Communication 54/91-61/91-96/93-98/93-164/97 196/97-210/98.

32 *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93

33 *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93; *Law Office of Ghazi Suleiman / Sudan* 2003 ACmHPR Communication 222/98-229/99.

- *The refusal by a presiding officer or judge to entertain an accused's request to change defence counsel is a violation of Article 14(3)(d) of the International Covenant on Civil and Political Rights.*
- *Where the conditions of detention of an accused make it impossible for the accused to meet or consult with his or her lawyer or the accused is being detained incommunicado, Article 14(3)(d) of the International Covenant on Civil and Political Rights has been infringed.³⁴*
- *Denying a suspect access to the legal counsel for a period of time and interrogating him or her and conducting other investigative acts with him or her during such time constitutes a violation of Article 14(3)(b) of the International Covenant on Civil and Political Rights.³⁵*
- *Where defence counsel are harassed and intimidated to the extent of being forced to withdraw from proceedings, this amounts to a violation of the right to counsel in terms of Article 7(1)(c) of the African Charter on Human and Peoples' Rights.³⁶*
- *A State Party of the International Covenant on Civil and Political Rights that permits consultation between the defendant and defence counsel on the condition that law enforcement officials are present is in violation of Article 14(3)(b) of the International Covenant on Civil and Political Rights.³⁷*
- *Where an accused has restricted access to defence counsel and as a result the latter has insufficient time to prepare a defence, this constitutes a violation of Article 7(1)(c) of the African Charter on Human and Peoples' Rights.³⁸ The determination of what constitutes 'adequate time' requires an assessment of the circumstances of each case.³⁹*
- *The right to a legal defence implies that at each stage of the criminal proceedings, the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations.⁴⁰ Thus, being deprived of access to one's lawyer, even after trial and conviction, is a violation of Article 7(1)(c) of the African Charter on Human and Peoples' Rights.⁴¹*
- *Where a State Party to the International Covenant on Civil and Political Rights frustrates efforts at communication between the defendant and defence counsel (e.g. the denial of travel visas) this amounts to an infringement of Article 14(3)(b) of the International Covenant on Civil and Political Rights.⁴²*

34 *Mario Alberto Teti Izquierdo / Uruguay* 1982 HRC Communication 073/1980; *Rosario Pietrarroia Zapala / Uruguay* 1981 HRC Communication 044/1979.

35 *Tatiana Lyashkevich / Uzbekistan* 2010 HRC Communication 1552/2007; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006; *Mansur Kasimov / Uzbekistan* 2009 HRC Communication 1378/2005

36 *Constitutional Rights Project (in respect of Zamani Lakwot and six others) / Nigeria* 1995 ACmHPR Communication 87/93; *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

37 *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

38 *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93.

39 *Leaford Smith / Jamaica* 1993 HRC Communication 282/1988.

40 *Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) / Burundi* 2000 ACmHPR Communication 231/99; *Aliev / Ukraine* 1995 HRC Communication 781/1997.

41 *Civil Liberties Organisation / Nigeria* 1999 ACmHPR Communication 151/96.

42 *Pierre Désiré Engo / Cameroon* 2009 HRC Communication 1397/2005 *Aliev / Ukraine* 1995 HRC Communication 781/1997.

- *State parties to the African Charter on Human and Peoples' Rights should establish an objective system for licensing advocates, so that qualified advocates cannot be barred from appearing in particular cases. It is thus essential that the national bar is an independent body that regulates legal practitioners, and that the tribunals themselves not adopt this role, for this would amount to an infringement of one's right to legal assistance.*⁴³
- *Legal representation must be made available in capital cases.*⁴⁴
- *Where competent authorities provide counsel to a defendant free of charge, although the defendant is not entitled to choose such counsel,⁴⁵ such representation must be effective. Counsel's misbehaviour or incompetence may entail the responsibility of the State concerned of a violation of article 14(3)(d) of the International Covenant on Civil and Political Rights.⁴⁶ However, a State Party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.⁴⁷ In capital cases, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel.*⁴⁸

4(e) – conditions of detention

See Commentary for Chapter VI

4(f) – contact with family

Article 7(c), African Charter on Human and Peoples' Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Article M(2)(c)–(e), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Rule 58, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *All attempts must be made to notify an accused or his or her family of the date and place of his or her trial and to request his or her presence. If such attempts are not made, the accused is not given adequate time and facilities for the preparation of his or her and cannot defend himself or herself through legal assistance of his or her own choosing.*⁴⁹

43 *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93.

44 *Francisco Juan Larrañaga / The Philippines* 2006 HRC Communication 1421/2005; *Kurbanov / Tajikistan* 2000 HRC Communication 1096/2002; *Conroy Levy / Jamaica* HRC Communication 719/1996; *Clarence Marshall / Jamaica* HRC Communication 730/1996; *Tamara Chikunova / Uzbekistan* 2007 HRC Communication 1043/2002.

45 *Irving Phillip / Trinidad and Tobago* 1998 HRC Communication 594/1992.

46 Human Rights Committee General Comment No. 32; *Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008.

47 *Christopher Brown / Jamaica* 1999 HRC Communication 775/1997.

48 *Silbert Daley / Jamaica* 1998 HRC Communication 750/1997; *Vladislav Kovalev et al. / Belarus* 2012 HRC Communication 2120/2011.

49 *Mukhammed Salikh (Salai Madaminov) / Uzbekistan* 2009 HRC Communication 1382/2005; *Ivan Osiyuk / Belarus* 2009 HRC Communication 1311/2004.

- *Being deprived of the right to see one's family is a psychological trauma difficult to justify, and may constitute inhuman treatment in terms of Article 5 of the African Charter.*⁵⁰

4(g) – medical assistance

Article M(2)(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Article 20(b), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

- *Further procedural safeguards with regard to detention are the right to (be offered) a medical examination⁵¹ and the right to contact with family and the outside world.*⁵²

4(h) – interpreters

Article 7(1), African Charter on Human and Peoples' Rights

Article 14(3), International Covenant on Civil and Political Rights

Articles M(2)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *It is a pre-requisite of the right to a fair trial for a person to be tried in a language that he or she understands.*⁵³ Put differently, the right to a legal defence must be interpreted to include the right to of the accused to understand the charges being brought against him or her.⁵⁴
- *When tried in a language that the defendant cannot understand and denied the assistance of an interpreter, this amounts to a violation of Article 7(1) [African Charter].*⁵⁵
- *Persons who are arrested shall be informed at the time of arrest, in a language that they understand, of the reason for their arrest and shall be informed promptly of any charges against them. The failure and/or negligence of the security agents who arrested the convicted person to comply with these requirements is therefore a violation of the right to fair trial as guaranteed under Article 7 [African Charter].*⁵⁶

4(i) – bail

Articles 2 and 6, African Charter on Human and Peoples' Rights

50 *Civil Liberties Organisation / Nigeria* 1999 ACmHPR Communication 151/96.

51 Principle 24, Body of Principles, Rule 91 UNSMR.

52 Principles 15 and 19 Body of Principles, Rules 37, 38 and 92 UNSMR.

53 *Kevin Mgwanga Gunme et al. / Cameroon 2009* ACmHPR Communication 266/03; *Rozik Ashurov / Tajikistan 2007* HRC Communication 1348/2005.

54 *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 / Mauritania 2000* ACmHPR Communication 54/91-61/91-96/93-98/93-164/97 196/97-210/98; *Huri – Laws / Nigeria 2000* ACmHPR Communication 225/98.

55 *Kevin Mgwanga Gunme et al. / Cameroon 2009* ACmHPR Communication 266/03.

56 *Media Rights Agenda / Nigeria 2000* ACmHPR Communication 224/98; *Rights International / Nigeria 1999* ACmHPR Communication 215/98; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) / Angola 2008* ACmHPR Communication 292/04; *Lawyers of Human Rights / Swaziland 2005* ACmHPR Communication 251/02.

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(3)–(4), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comment 8 on Article 16

- *A government decree authorising the government to detain people arbitrarily without having to explain themselves and without any opportunity for the complainant to challenge the arrest and detention before a court of law is a violation of Article 6 [African Charter].*⁵⁷

4(j) – challenge lawfulness of arrest

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(3)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comment 8 on Article 16

- *The right to be brought 'promptly' before a judicial authority implies that any delay should be no more than a few days, and that incommunicado detention may in itself constitute a violation of Article 9(3) [ICCPR].*⁵⁸
- *In order to avoid a characterisation of arbitrariness, detention should not continue beyond the period for which the State Party can provide appropriate justification.*⁵⁹
- *Where release of an accused from custody has been denied, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee at a future date.*⁶⁰
- *What period constitutes release within a 'reasonable time' [Article 9(3) ICCPR] must be assessed on a case-by-case basis.*⁶¹
- *State Parties to the African Charter must observe certain minimum standards as regards the length of detention before trial. Thus, states cannot rely on the political situation, or even war, to justify excessive delay in bringing a detainee to trial. Furthermore, a backlog of cases awaiting trial cannot excuse unreasonable delays.*⁶²

4(k) – access to oversight mechanisms

Commentary for Chapter VI deals with complaints mechanisms and oversight in relation to torture and other cruel, inhuman and degrading treatment and punishment.

57 *Constitutional Rights Project / Nigeria* 1998 ACmHPR Communication 102/93.

58 *Rafael Marques de Morais / Angola* 2005 HRC Communication 992/2001; *Ali Medjnoune / Algeria* 2006 HRC Communication 1297/2004.

59 *C. / Australia* 2002 HRC Communication 900/1999; *Baban / Australia* 2003 HRC Communication 1014/2001.

60 *Salim Abbassi / Algeria* 2007 HRC Communication 1172/2003; *Liesbeth Zegveld and Mussie Ephrem / Eritrea* 2003 ACmHPR Communication 250/02.

61 *Girjadat Siewpersaud, Deolal Sukhram, and Jainarine Persaud / Trinidad and Tobago* 2004 HRC Communication 938/2000; see also Article 19 / Eritrea 2007 ACmHPR Communication 275/03.

62 *Article 19 / Eritrea* 2007 ACmHPR Communication 275/03.

4(l) – reasonable accommodation

Articles 4 and 5, Convention on the Rights of Persons with Disabilities

PART II – POLICE CUSTODY

Guideline 6 – General Provisions

Articles 2 and 6, African Charter on Human and Peoples’ Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Human Rights Committee General Comment 8 on Article 16

- *A government decree authorising the government to detain people arbitrarily without having to explain themselves and without any opportunity for the complainant to challenge the arrest and detention before a court of law is a violation of Article 6 [African Charter].*⁶³
- *Pre-trial detention should be an exception. Thus, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State Party, bail should be granted.*⁶⁴

Guideline 7 – Safeguards for police custody

7(a)–(b) – limitations on detention

Articles 2 and 6, African Charter on Human and Peoples’ Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Human Rights Committee General Comment 8 on Article 16

- *A government decree authorising the government to detain people arbitrarily without having to explain themselves and without any opportunity for the complainant to challenge the arrest and detention before a court of law is a violation of Article 6 [African Charter].*⁶⁵

7(c) – access to complaints mechanisms

Articles 12 and 13, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 2(3), International Covenant on Civil and Political Rights

Parts II(D) and (F), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (‘Robben Island Guidelines on Torture’)

63 *Constitutional Rights Project / Nigeria* 1998 ACmHPR Communication 102/93.

64 *Juan Peirano Basso / Uruguay* 2010 HRC Communication 1887/2009; 526/1993, *Hill / Spain* 1997 HRC Communication 526/1993.

65 *Constitutional Rights Project / Nigeria* 1998 ACmHPR Communication 102/93.

Rules 54–57, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Articles M(7)(g)–(h), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

- *It should be noted that the different instruments do not distinguish between sentenced and unsentenced prisoners, different categories of detainees, or the offence for which the person is detained and that the right to lodge a complaint exists regardless of the form of detention imposed.⁶⁶ Access to a complaints mechanism therefore applies without discrimination.*

Guideline 8 – Access to legal services

Article 7(c), African Charter on Human and Peoples’ Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Article M(2)(f), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Article 20(c), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (‘Robben Island Guidelines on Torture’)

Rule 120, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *The right to legal assistance is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.⁶⁷ Legal assistance necessarily includes the right of an accused person to have adequate time and facilities for the preparation of his defence.⁶⁸*
- *The right to a legal defence implies that at each stage of the criminal proceedings, the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations.⁶⁹ Thus, being deprived of access to one’s lawyer, even after trial and conviction, is a violation of Article 7(1)(c) [African Charter].⁷⁰*

66 The UNSMR refers to prisoners as persons detained in institutions: ‘... and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge’. The OPCAT takes a similar broad approach and defines, in Art. 4(2), the deprivation of liberty as ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority’. The Body of Principles defines prisoner and detained person and within the ambit of these two definitions, all persons deprived of their liberty are encapsulated (see Use of Terms in the Body of Principles).

67 Human Rights Committee General Comment No. 32; *Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008; *Aston Little / Jamaica* 1987 HRC Communication 283/1988.

68 *Alrick Thomas / Jamaica* 1992 HRC Communication 272/1988.

69 *Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) / Burundi* 2000 ACmHPR Communication 231/99; *Aliev / Ukraine* 1995 HRC Communication 781/1997.

70 *Civil Liberties Organisation / Nigeria* 1999 ACmHPR Communication 151/96.

- *A State Party [to the ICCPR] that permits consultation between the defendant and defence counsel on the condition that law enforcement officials are present is in violation of Article 14(3)(b) [ICCPR].*⁷¹
- *Where competent authorities provide counsel to a defendant free of charge, although the defendant is not entitled to choose such counsel,⁷² such representation must be effective. Counsel's misbehaviour or incompetence may entail the responsibility of the State concerned of a violation of article 14(3)(d) [ICCPR].⁷³ However, a State Party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.⁷⁴ In capital cases, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel.⁷⁵*
- *Where the conditions of detention of an accused make it impossible for the accused to meet or consult with his or her lawyer or the accused is being detained incommunicado, Article 14(3)(d) [ICCPR] has been infringed.⁷⁶*
- *The right to legal assistance is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.⁷⁷ Legal assistance necessarily includes the right of an accused person to have adequate time and facilities for the preparation of his defence.⁷⁸*
- *Denying a suspect access to the legal counsel for a period of time and interrogating him or her and conducting other investigative acts with him or her during such time constitutes a violation of Article 14(3)(b) [ICCPR].⁷⁹*
- *Where defence counsel are harassed and intimidated to the extent of being forced to withdraw from proceedings, this amounts to a violation of the right to counsel in terms of Article 7(1)(c) of the African Charter.⁸⁰*
- *Where an accused has restricted access to defence counsel and as a result the latter has insufficient time to prepare a defence, this constitutes a violation of Article 7(1)(c) of the*

71 *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

72 *Irving Phillip / Trinidad and Tobago* 1998 HRC Communication 594/1992.

73 Human Rights Committee General Comment No. 32; *Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008.

74 *Christopher Brown / Jamaica* 1999 HRC Communication 775/1997.

75 *Silbert Daley / Jamaica* 1998 HRC Communication 750/1997; *Vladislav Kovalev et al. / Belarus* 2012 HRC Communication 2120/2011.

76 *Mario Alberto Teti Izquierdo / Uruguay* 1982 HRC Communication 073/1980; *Rosario Pietraroia Zapala / Uruguay* 1981 HRC Communication 044/1979.

77 Human Rights Committee General Comment No. 32; *Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008; *Aston Little / Jamaica* 1987 HRC Communication 283/1988.

78 *Alrick Thomas / Jamaica* 1992 HRC Communication 272/1988.

79 *Tatiana Lyashkevich / Uzbekistan* 2010 HRC Communication 1552/2007; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006; *Mansur Kasimov / Uzbekistan* 2009 HRC Communication 1378/2005.

80 *Constitutional Rights Project (in respect of Zamani Lakwot and six others) / Nigeria* 1995 ACmHPR Communication 87/93; *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

*African Charter.*⁸¹ *The determination of what constitutes ‘adequate time’ requires an assessment of the circumstances of each case.*⁸²

- *Where competent authorities provide counsel to a defendant free of charge, although the defendant is not entitled to choose such counsel,⁸³ such representation must be effective. Counsel’s misbehaviour or incompetence may entail the responsibility of the State concerned of a violation of article 14(3)(d) [ICCPR].⁸⁴ However, a State Party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer’s behaviour was incompatible with the interests of justice.⁸⁵ In capital cases, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel.⁸⁶*

Guideline 9 – Questioning and confessions

9(a)(ii) – presence of a lawyer

See generally

Article 7(c), African Charter on Human and Peoples’ Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Article M(2)(f), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

- *The right to a legal defence implies that at each stage of the criminal proceedings, the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations.⁸⁷ Thus, being deprived of access to one’s lawyer, even after trial and conviction, is a violation of Article 7(1)(c) [African Charter].⁸⁸*

9(a)(iii) – medical examination

Article 7(c), African Charter on Human and Peoples’ Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Articles M(2)(b) and (e), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

81 *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93.

82 *Leaford Smith / Jamaica* 1993 HRC Communication 282/1988.

83 *Irving Phillip / Trinidad and Tobago* 1998 HRC Communication 594/1992.

84 *Human Rights Committee General Comment No. 32; Nataliya Bondar / Uzbekistan* 2011 HRC Communication 1769/2008.

85 *Christopher Brown / Jamaica* 1999 HRC Communication 775/1997.

86 *Silbert Daley / Jamaica* 1998 HRC Communication 750/1997; *Vladislav Kovalev et al. / Belarus* 2012 HRC Communication 2120/2011.

87 *Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) / Burundi* 2000 ACmHPR Communication 231/99; *Aliev / Ukraine* 1995 HRC Communication 781/1997.

88 *Civil Liberties Organisation / Nigeria* 1999 ACmHPR Communication 151/96.

Principles 12, 23, 24 and 33, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Article 20(b), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

See Commentary for Chapter VI

9(a)(iv) – presence of an interpreter

Article 7(1), African Charter on Human and Peoples' Rights

Article 14(3)(a), International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *Persons who are arrested shall be informed at the time of arrest, in a language that they understand, of the reason for their arrest and shall be informed promptly of any charges against them. The failure and/or negligence of the security agents who arrested the convicted person to comply with these requirements is therefore a violation of the right to fair trial as guaranteed under Article 7 [African Charter].*⁸⁹

9(b) – right to silence

Article 7(b), African Charter on Human and Peoples' Rights

Articles 6(2), 14(2) and 14(3)(g), International Covenant on Civil and Political Rights

Article M(1)(f), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Principles 15 and 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rule 111(2), UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *The presumption of innocence is universally recognised, and with it, the right to silence. Therefore no accused should be required to testify against himself or to incriminate himself or be required to make a confession under duress.*⁹⁰

9(c) – prohibition against torture

See Commentary for Chapter VI

9(d) – presence of judicial officer

⁸⁹ *Media Rights Agenda / Nigeria* 2000 ACmHPR Communication 224/98; *Rights International / Nigeria* 1999 ACmHPR Communication 215/98; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) / Angola* 2008 ACmHPR Communication 292/04; *Lawyers of Human Rights / Swaziland* 2005 ACmHPR Communication 251/02

⁹⁰ *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project / Nigeria* 2001 ACmHPR Communication 218/1998.

Article M(6)(d), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

PART III – PRE-TRIAL DETENTION

Guideline 10 – General principles

10(b) – exceptional measure of last resort

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comment 8 on Article 16

- *Pre-trial detention should be an exception. Thus, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party, bail should be granted.*⁹¹

10(c) – offence must carry a custodial sentence

Article 6, African Charter on Human and Peoples' Rights

Articles 9(3) – (4), International Covenant on Civil and Political Rights

Principles 36 and 37, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rules 1.5 and 6, UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

10(d) – trial within a reasonable time

Article 7(1)(d), African Charter on Human and Peoples' Rights

Articles 14(1) and 14(3)(c), International Covenant on Civil and Political Rights

- *State Parties to the African Charter must observe certain minimum standards as regards the length of detention before trial. Thus, states cannot rely on the political situation, or even war, to justify excessive delay in bringing a detainee to trial. Furthermore, a backlog of cases awaiting trial cannot excuse unreasonable delays.*⁹²

10(f) – formally recognised places of detention

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(6)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

⁹¹ Juan Peirano Basso / Uruguay 2010 HRC Communication 1887/2009; 526/1993, Hill / Spain 1997 HRC Communication 526/1993.

⁹² Article 19 / Eritrea 2007 ACmHPR Communication 275/03.

Human Rights Committee General Comment 8 on Article 16

- *The right to be brought ‘promptly’ before a judicial authority implies that any delay should be no more than a few days, and that incommunicado detention may in itself constitute a violation of Article 9(3) [ICCPR].⁹³*

Guideline 11 – Safeguards on pre-trial detention orders

Articles 2 and 6, African Charter on Human and Peoples’ Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Human Rights Committee General Comment 8 on Article 16

- *A government decree authorising the government to detain people arbitrarily without having to explain themselves and without any opportunity for the complainant to challenge the arrest and detention before a court of law is a violation of Article 6 [African Charter].⁹⁴*
- *The right to a legal defence implies that at each stage of the criminal proceedings, the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations.⁹⁵ Thus, being deprived of access to one’s lawyer, even after trial and conviction, is a violation of Article 7(1)(c) [African Charter].⁹⁶*

Guideline 12 – Review of pre-trial detention orders

Articles 2 and 6, African Charter on Human and Peoples’ Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Human Rights Committee General Comment 8 on Article 16

- *Where release of an accused from custody has been denied, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee at a future date.⁹⁷*

Guideline 13 – Provision for delays in investigations and judicial proceedings

Article 7(1)(c), African Charter on Human and Peoples’ Rights

93 *Rafael Marques de Morais / Angola* 2005 HRC Communication 992/2001; *Ali Medjnoune / Algeria* 2006 HRC Communication 1297/2004.

94 *Constitutional Rights Project / Nigeria* 1998 ACmHPR Communication 102/93.

95 *Avocats Sans Frontières (on behalf of Gaëtan Bwampamyé) / Burundi* 2000 ACmHPR Communication 231/99; *Aliev / Ukraine* 1995 HRC Communication 781/1997.

96 *Civil Liberties Organisation / Nigeria* 1999 ACmHPR Communication 151/96.

97 *Salim Abbassi / Algeria* 2007 HRC Communication 1172/2003; *Liesbeth Zegveld and Mussie Ephrem / Eritrea* 2003 ACmHPR Communication 250/02.

Article 14(3)(c), International Covenant on Civil and Political Rights

Articles N(5)(1)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *In a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimise the negative effects on the life of the person who, after all, may be innocent.*⁹⁸
- *The rights set out in the ICCPR constitute minimum standards that all State Parties must observe. Accordingly, the lack of equipment and services necessary to expedite the disposal of cases is not sufficient justification for the unreasonable delay of criminal trials and the consequent infringement of Article 14(3)(c).*⁹⁹ *A backlog of cases cannot justify unreasonable delays either.*¹⁰⁰
- *Article 14(3)(c) [ICCPR] applies equally to the right of review of conviction and sentence guaranteed by article 14(5) [ICCPR].*¹⁰¹
- *The question of what is reasonable cannot be expressed in terms of a blanket time limit applicable in all cases, but rather must depend on the circumstances, including the complexity of the case and the conduct of the applicant and of the relevant authorities.*¹⁰²
- *The existence of war or general political unrest cannot be used to justify excessive delay in bringing detainees to trial.*¹⁰³

Guideline 14 – Safeguards for persons subject to pre-trial detention orders

14(a) – in accordance with the law; non-discrimination

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9 and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Rule 119, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *'[e]stablished by law' [Article 6 African Charter] does not include any legislation laid down by a domestic authority that permits arbitrary arrest and is thus inconsistent with its obligations under the Charter.*¹⁰⁴ *A State Party cannot justify violations of the African Charter by relying on the limitation under Article 6 of the Charter.*¹⁰⁵ *A state is therefore*

98 *Constitutional Rights Project / Nigeria (II)* 2000 ACmPR Communication 53/96.

99 *Lubuto / Zambia* 2001 HRC Communication 390/1990.

100 *Article 19 / Eritrea* 2007 ACmPR Communication 275/2003.

101 *Lubuto / Zambia* 2001 HRC Communication 390/1990.

102 *Article 19 / Eritrea* 2007 ACmPR Communication 275/2003.

103 *Article 19 / Eritrea* 2007 ACmPR Communication 275/2003.

104 *Sir Dawda K Jawara / The Gambia* ACmHPR Communication 147/95-149/96.

105 *Legal Resources Foundation / Zambia* ACmHPR Communication 211/98; *Kevin Mgwanga Gunme et al. / Cameroon* ACmHPR Communication 266/03.

*required to convince the [African] Commission that the measures or conditions it has put in place in relation to arrests are in compliance with Article 6.*¹⁰⁶

- *To arrest and detain persons on account of their political beliefs, especially where no charges are brought against them, renders the arrest and deprivation of liberty arbitrary.*¹⁰⁷
- *The arrest and detention of people based on grounds of ethnic origin alone, particularly in light of Article 2 of the African Charter, constitute arbitrary deprivation of the liberty of an individual.*¹⁰⁸

14(b) – officially recognised places of detention

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(1)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comment 8 on Article 16

- *The right to be brought 'promptly' before a judicial authority implies that any delay should be no more than a few days, and that incommunicado detention may in itself constitute a violation of Article 9(3) [ICCPR].*¹⁰⁹

14(c) – access to legal assistance

Article 7(c), African Charter on Human and Peoples' Rights

Articles 14(3)(b) and (d), International Covenant on Civil and Political Rights

Rule 61, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

- *The right to legal assistance is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.*¹¹⁰ *Legal assistance necessarily includes the right of an accused person to have adequate time and facilities for the preparation of his defence.*¹¹¹

106 Kevin Mgwanga Gunme et al. / Cameroon ACmHPR Communication 266/03.

107 Amnesty International / Zambia (2000) ACmHPR Communication 212/98; Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda / Nigeria ACmHPR Communication 140/94-141/94-145/95; Liesbeth Zegveld and Mussie Ephrem / Eritrea ACmHPR Communication 250/02; Monja Joana / Madagascar HRC Communication No 132/1982.

108 Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme / Rwanda ACmHPR Communication 27/89-46/91-49/91-99/93; Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) / Angola ACmHPR Communication 292/04; Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter-africaine des Droits de l'Homme, Les Témoins de Jehovah / Zaire, ACmHPR Communication 25/89, 47/90, 56/91, 100/93; Patricio Ndong Bee / Equatorial Guinea HRC Communication No. 1152/2003 and 1190/2003.

109 Rafael Marques de Morais / Angola 2005 HRC Communication 992/2001; Ali Medjnoune / Algeria 2006 HRC Communication 1297/2004.

110 Human Rights Committee General Comment No. 32; Nataliya Bondar / Uzbekistan 2011 HRC Communication 1769/2008; Aston Little / Jamaica 1987 HRC Communication 283/1988.

111 Alrick Thomas / Jamaica 1992 HRC Communication 272/1988.

- *Where the conditions of detention of an accused make it impossible for the accused to meet or consult with his or her lawyer or the accused is being detained incommunicado, Article 14(3)(d) [ICCPR] has been infringed.*¹¹²
- *Denying a suspect access to the legal counsel for a period of time and interrogating him or her and conducting other investigative acts with him or her during such time constitutes a violation of Article 14(3)(b) [ICCPR].*¹¹³
- *Where defence counsel are harassed and intimidated to the extent of being forced to withdraw from proceedings, this amounts to a violation of the right to counsel in terms of Article 7(1)(c) of the African Charter.*¹¹⁴
- *A State Party [to the ICCPR] that permits consultation between the defendant and defence counsel on the condition that law enforcement officials are present is in violation of Article 14(3)(b) [ICCPR].*¹¹⁵
- *Where an accused has restricted access to defence counsel and as a result the latter has insufficient time to prepare a defence, this constitutes a violation of Article 7(1)(c) of the African Charter.*¹¹⁶ *The determination of what constitutes ‘adequate time’ requires an assessment of the circumstances of each case.*¹¹⁷
- *Where a State Party [to the ICCPR] frustrates efforts at communication between the defendant and defence counsel (e.g. the denial of travel visas) this amounts to an infringement of Article 14(3)(b) [ICCPR].*¹¹⁸

PART IV – REGISTERS

Guideline 15 – General provisions

Guideline 16 – Information to be recorded in arrest, custody and pre-trial detention registers

Guideline 17 – Additional information to be recorded in arrest registers

Guideline 18 – Additional information to be recorded in police cell custody registers

Guideline 19 – Additional information to be recorded in pre-trial detention registers

112 *Mario Alberto Teti Izquierdo / Uruguay* 1982 HRC Communication 073/1980; *Rosario Pietrarroia Zapala / Uruguay* 1981 HRC Communication 044/1979.

113 *Tatiana Lyashkevich / Uzbekistan* 2010 HRC Communication 1552/2007; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006; *Mansur Kasimov / Uzbekistan* 2009 HRC Communication 1378/2005.

114 *Constitutional Rights Project (in respect of Zamani Lakwot and six others) / Nigeria* 1995 ACmHPR Communication 87/93; *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93; *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

115 *Temur Toshev / Tajikistan* 2011 HRC Communication 1499/2006.

116 *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93.

117 *Leaford Smith / Jamaica* 1993 HRC Communication 282/1988.

118 *Pierre Désiré Engo / Cameroon* 2009 HRC Communication 1397/2005; *Aliev / Ukraine* 1995 HRC Communication 781/1997.

See, generally, Articles M(6)(a)–(d), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Rule 6, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

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

Guideline 20 – State responsibility to account for death and serious injury in police custody and pre-trial detention

Guideline 21 – Deaths in police custody and pre-trial detention

Guideline 22 – Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in pre-trial detention

See, generally, Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article M(6)(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples’ Rights)

Principle 34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)

- *Any act leading to an enforced disappearance constitutes a violation of many of the rights enshrined in the ICCPR, including the right to liberty and security of person, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. It also violates or constitutes a grave threat to the right to life.*¹¹⁹
- *Investigations into torture and other human rights violations must be prompt, impartial, thorough, able to lead to the identification of those responsible, and carried out by a competent authority.*¹²⁰

PART VI – CONDITIONS OF DETENTION IN POLICE CUSTODY AND PRE-TRIAL DETENTION

Guideline 23 – General provisions

Article 5, African Charter on Human and Peoples’ Rights

Articles 2 and 16(1), UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment

¹¹⁹ *Madoui / Algeria* 2008 HRC Communication 1495/2006.

¹²⁰ *Blanco Abad / Spain* 1996 CAT Communication 59/1996; *Halimi-Nedzibi / Austria* 1991 CAT Communication 8/1991.

Articles 7 and 10, International Covenant on Civil and Political Rights

Principles 1 and 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Articles 33–37, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Article 75(2), First Protocol Additional to the Geneva Conventions of 1949

Human Rights Committee General Comments 7, 20 and 29

- *Persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty. Detained persons must be treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners.*¹²¹

Guideline 24 – Conditions that conform with international law; consistent with inherent dignity; prohibition against torture

Article 5, African Charter on Human and Peoples' Rights

Articles 2 and 16(1), UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment

Articles 7 and 10, International Covenant on Civil and Political Rights

Principles 1 and 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rules 11–23 and 112–120, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Article 75(2), First Protocol Additional to the Geneva Conventions of 1949

Human Rights Committee General Comments 7, 20 and 29

- *The terms 'cruel, inhuman or degrading punishment or treatment' should be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.*¹²²
- *Detaining an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family whether the individual is being held and of his whereabouts, is inhuman treatment of both the detainee and the family concerned.*¹²³
- *The following factors, whether committed in combination with each other or in isolation, are considered contraventions of Article 5 [African Charter] and Article 7 [ICCPR]: extreme prison overcrowding, solitary confinement, lack of natural light, being denied food and access to hygienic facilities and medical care, being compelled to make statements; being denied the*

¹²¹ *Fongum Gorji-Dinka / Cameroon* 2005 HRC Communication 1134/2002; *Xavier Evans / Trinidad and Tobago* 2003 HRC Communication 908/2000; *Abdelhamid Benhadj / Algeria* 2007 HRC Communication 1173/2003.

¹²² *Media Rights Agenda / Federal Republic of Nigeria* 2000 ACmHPR Communication 224/1998.

¹²³ *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan* 1999 ACmHPR Communication 48/90-50/91-52/91-89/93.

opportunity of sleeping and being chained.¹²⁴ In addition, regular beatings/burnings and/or the imposition of any form of physical or mental anguish, including being left to die a slow death from one's injuries, is a violation of Article 5 [African Charter].¹²⁵

- *Where the government of a State Party [African Charter] sends armed gangs to attack human rights activists and destroy their homes, it is in violation of Article 5.¹²⁶*
- *Article 75(2) of the First Protocol Additional to the Geneva Conventions of 1949, which constitutes part of the general principles of law recognised by African states, prohibits the following acts at any time and in all places whatsoever, whether committed by civilian or by military agents: violence to life, health, or physical or mental well-being of persons, in particular; murder; torture of all kinds, whether physical or mental; corporal punishment; mutilations; and outrages upon personal dignity, in particular, humiliating and degrading treatment; enforced prostitution and any form of indecent assault.¹²⁷*
- *Persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty. Detained persons must be treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners.¹²⁸*

Guideline 25 – Procedural and other safeguards

Articles 4, 5 and 6, African Charter on Human and Peoples' Rights

Articles 2 and 16(1), UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment

Articles 7 and 10, International Covenant on Civil and Political Rights

Principles 1 and 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rules 36–39, 45, 82, 111(2), UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Article 75(2), First Protocol Additional to the Geneva Conventions of 1949

Human Rights Committee General Comments 7, 20 and 29

¹²⁴ Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chirwa) / Malawi 1995 ACmHPR Communication 64/92-68/92-78/92 8AR.

¹²⁵ Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chirwa) / Malawi 1995 ACmHPR Communication 64/92-68/92-78/92 8AR; 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 / Mauritania 2000 ACmHPR Communication 54/91-61/91-96/93-98/93-164/97 196/97-210/98; Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) / Angola 2008 ACmHPR Communication 292/04; Bradley McCallum / South Africa 2010 HRC Communication 181/2008.

¹²⁶ Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda / Nigeria 1999 ACmHPR Communication 140/94-141/94-145/95.

¹²⁷ Democratic Republic of Congo / Burundi, Rwanda, Uganda 2003 ACmHPR Communication 227/99.

¹²⁸ Fongum Gorji-Dinka / Cameroon 2005 HRC Communication 1134/2002; Xavier Evans / Trinidad and Tobago 2003 HRC Communication 908/2000; Abdelhamid Benhadj / Algeria 2007 HRC Communication 1173/2003.

- *Article 9(1) [ICCPR] protects the right to security of the person also outside the context of formal deprivation of liberty. Thus, article 9 does not allow a state party to ignore threats to the personal security of non-detained persons subject to its jurisdiction.*¹²⁹
- *Article 6(1) [ICCPR] entails an obligation of a State Party to protect the right to life of all persons within its territory and subject to its jurisdiction.*¹³⁰
- *Where the use of force is authorised without lawful reasons the state has not acted in accordance with its obligation to protect the author's right to life.*¹³¹

Guideline 26 – Separation of categories of detainees

Rules 11 and 112, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Guideline 27 – Communication

Rules 58–60, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Guideline 28 – Recreational, vocational and rehabilitation services

Rules 4(2) and 64, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

PART VII – VULNERABLE GROUPS

Guideline 29 – General provisions

Guideline 30 – Special measures are not discriminatory

Articles 2, 3, 18(4) and 19, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

Guideline 31 – Children

31(a)(i) – best interests of the child

Article 4, African Charter on the Rights and Welfare of the Child

Article 3, UN Convention on the Rights of the Child

31(a)(iv) – detention as a measure of last resort

Article 37(b), UN Convention on the Rights of the Child

Article O(j), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

31(a)(v) – age-appropriate treatment

Article 40(1), UN Convention on the Rights of the Child

¹²⁹ *Chongwe/Zambia* 2001 HRC Communication 821/1998.

¹³⁰ *Chongwe/Zambia* 2001 HRC Communication 821/1998.

¹³¹ *Chongwe/Zambia* 2001 HRC Communication 821/1998.

Article 17(1), African Charter on the Rights and Welfare of the Child

Article 18, African Youth Charter

Article O(j)(i), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

31(b) – diversion and alternatives to pre-trial detention

Article 40(3)(b), UN Convention on the Rights of the Child

Article 18, African Youth Charter

Articles O(i)(1)–(4), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

30(c) – safeguards for arrest

Articles 37, 40(1) and 40(2), UN Convention on the Rights of the Child

Articles 17(1), 17(2)(c) and 19(4), African Charter on the Rights and Welfare of the Child

Article O(g), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

30(d) – safeguards for police custody and pre-trial detention

Articles 3(c), 24(1), 37(b) and 37(c), UN Convention on the Rights of the Child

Article 14(1), African Charter on the Rights and Welfare of the Child

Article O(g), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Rule 112(2), UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

30(e) – right to be heard

Articles 12(2) and 37(c), UN Convention on the Rights of the Child

Article 4(2), African Charter on the Rights and Welfare of the Child

30(f) – alternatives to pre-trial detention

Article 40(3)(b), UN Convention on the Rights of the Child

Articles O(i)(1)–(4), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

30(g) – legal assistance

Article 37(d), UN Convention on the Rights of the Child

Article 17(2)(c), African Charter on the Rights and Welfare of the Child

Articles O(l) and O(m), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

30(h) – conduct of officials

Articles 37(c) and 40(2)(vii), UN Convention on the Rights of the Child

Articles 17(1) and 17(2)(d), African Charter on the Rights of the Child

Article O(n), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

30(i) – specialised units

Article 3(3), UN Convention on the Rights of the Child

30(j) – access to third parties

Article O(l), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Guideline 32 – Women

32(a) – general principles

Article 2, Convention on the Elimination of All Forms of Discrimination Against Women

Articles 2, 3 and 4(1), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

32(b) – safeguards for arrest and detention

Article 30, African Charter on the Rights and Welfare of the Child

Articles 16 and 18(3), African Charter on Human and Peoples' Rights

Article 2, Convention on the Elimination of All Forms of Discrimination against Women

Article 8, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Articles M(7)(b)–(c), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Rule 81, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

32(c) – accompanying children

Articles 19(1)–(3) and 30, African Charter on the Rights and Welfare of the Child

Rule 29, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Guideline 33 – Persons with disabilities

33(a) – general principles

Articles 2, 3, 18(4) and 19, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

Articles 4 and 5, Convention on the Rights of Persons with Disabilities

UN Principles for the Protection of Persons with Mental Illness and Improvement of Mental Illnesses and the Improvement of Mental Health Care

Rules 109–110, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

- *Laws and legislation failing to provide for the legal representation of the mentally challenged subject to involuntary commitment amount to infringements of the rights to equal protection of the law and the right not to be treated in a discriminatory manner.*¹³²

33(b) – legal capacity

Articles 2, 3, 18(4) and 19, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

33(c) – access to justice

Articles 2, 3, 18(4) and 19, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

33(d) – accessibility and reasonable accommodation

Articles 2, 3, 18(4) and 19, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

Rule 5(2), Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

UN Principles for the Protection of Persons with Mental Illness and Improvement of Mental Illnesses and the Improvement of Mental Health Care

Guideline 34 – Non-nationals

34(a) – refugees

Article M(2)(d), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

34(b) – non-citizens

Principle 16, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Rule 62, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

¹³² Purohit and Moore / The Gambia 2003 ACmHPR Communication 241/2001.

34(c) – stateless persons

Articles 2 and 3, African Charter on Human and Peoples' Rights

Article 26, International Covenant on Civil and Political Rights

Article M(2)(d), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

PART VIII – ACCOUNTABILITY AND REMEDIES**Guideline 35 – Judicial oversight of detention and habeas corpus**

Articles 2 and 6, African Charter on Human and Peoples' Rights

Articles 9(1), 9(3), 9(4) and 26, International Covenant on Civil and Political Rights

Articles M(8)(a)–(b), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Human Rights Committee General Comment 8 on Article 16

- *The right to be brought 'promptly' before a judicial authority implies that any delay should be no more than a few days, and that incommunicado detention may in itself constitute a violation of Article 9(3) [ICCPR].*¹³³
- *In order to avoid a characterisation of arbitrariness, detention should not continue beyond the period for which the State Party can provide appropriate justification.*¹³⁴
- *Where release of an accused from custody has been denied, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee at a future date.*¹³⁵
- *Which period constitutes release within a 'reasonable time' [Article 9(3) ICCPR] must be assessed on a case-by-case basis.*¹³⁶
- *State Parties to the African Charter must observe certain minimum standards as regards the length of detention before trial. Thus, states cannot rely on the political situation, or even war, to justify excessive delay in bringing a detainee to trial. Furthermore, a backlog of cases awaiting trial cannot excuse unreasonable delays.*¹³⁷

Guideline 36 – Standards of individual conduct for officials

See generally, UN Code of Conduct for Law Enforcement Officials

Rules 74–80, Rule 1, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

¹³³ *Rafael Marques de Morais / Angola* 2005 HRC Communication 992/2001; *Ali Medjnoune / Algeria* 2006 HRC Communication 1297/2004.

¹³⁴ *C. / Australia* 2002 HRC Communication 900/1999; *Baban / Australia* 2003 HRC Communication 1014/2001.

¹³⁵ *Salim Abbassi / Algeria* 2007 HRC Communication 1172/2003; *Liesbeth Zegveld and Mussie Ephrem / Eritrea* 2003 ACmHPR Communication 250/02.

¹³⁶ *Girjadat Siewpersaud, Deolal Sukhram, and Jainarine Persaud / Trinidad and Tobago* 2004 HRC Communication 938/2000; see also Article 19 / *Eritrea* 2007 ACmHPR Communication 275/03.

¹³⁷ *Article 19 / Eritrea* 2007 ACmHPR Communication 275/03.

Guideline 37 – Complaints mechanisms

Articles 12 and 13, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 2(3), International Covenant on Civil and Political Rights

Part I(F), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

Rule 71, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Articles M(7)(g)–(h), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

- *It should be noted that the different instruments do not distinguish between sentenced and unsentenced prisoners, different categories of detainees, or the offence for which the person is detained and that the right to lodge a complaint exists regardless of the form of detention imposed.*¹³⁸ *Access to a complaints mechanism therefore applies without discrimination.*
- *The unreasonable delay of an investigation into allegations of torture does not meet the requirements of Articles 12 and 13.*¹³⁹
- *Articles 12 and 13 require that an investigation into allegations of torture on the part of the state must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein. Moreover, the state party [UNCAT] must undertake to keep the complainant informed of the progress of the investigation into his/her complaint of torture.*¹⁴⁰
- *Where the state fails to inform a complainant of the results of an investigation, if any, this in turn prevents him or her from initiating a private prosecution, thus amounting to violations of articles 12 and 13.*¹⁴¹
- *Article 13 [UNCAT] does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence. It is sufficient for the victim simply to bring the facts to the attention of an authority of the state for the latter to be obliged to*

138 The UNSMR refers to prisoners as persons detained in institutions: '... and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge'. The OPCAT takes a similar broad approach and defines, in Art. 4(2), the deprivation of liberty as 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'. The Body of Principles defines prisoner and detained person and, within the ambit of these two definitions, all persons deprived of their liberty are encapsulated (see Use of Terms in the Body of Principles).

139 *Halimi-Nedzibi / Austria* 1993 CAT Communication 8/1991; *Ali Ben Salem / Tunisia* 2007 CAT Communication 269/2005.

140 *Besim Osmani / Serbia* 2009 CAT Communication 261/2005.

141 *Dragan Dimitrijevic / Serbia* 2004 CAT Communication 207/2002.

*consider it a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated.*¹⁴²

- *Where a complainant's claim is not investigated by the state, this amounts to a violation of Article 2(3) [ICCPR].*¹⁴³
- *It is furthermore recommended practice that internal complaints and request registers are reviewed by external visiting mechanisms or other authorities to verify that complaints and requests have been appropriately dealt with. The Committee against Torture has also recommended that a centralised public register of complaints of torture and ill-treatment and of the results of the investigations be established.*¹⁴⁴
- *The most important method of preventing torture is to replace the paradigm of opacity by the paradigm of transparency by subjecting all places of detention to independent outside monitoring and scrutiny. A system of regular visits to places of detention by independent monitoring bodies constitutes the most innovative and effective means to prevent torture and to generate timely and adequate responses to allegations of abuse and ill-treatment by law enforcement officials.*¹⁴⁵

Guideline 38 – Remedies

Article 7(1)(a), African Charter on Human and Peoples' Rights

Articles M(7)(i)–(j), Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission on Human and Peoples' Rights)

Articles 13 and 14, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Guideline 39 – Data collection

See, generally,

Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)

Guideline 40 – Access to information

Article 4, Declaration of Principles on Freedom of Expression in Africa

Guideline 41 – Oversight mechanisms

See, generally, Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

¹⁴² *Henri Unai Parot / Spain* 1988 CAT Communication 6/1990; *Bouabdallah Ltaief / Tunisia* 2003 CAT Communication 189/2001.

¹⁴³ *Bradley McCallum / South Africa* 2010 HRC Communication 181/2008.

¹⁴⁴ A/56/44 para. 97(e).

¹⁴⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, February 2010, A/HRC/13/39/Add.5.

Part II(D), Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')

Rule 71, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Guideline 42 – Monitoring mechanisms

See, generally, Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Guideline 43 – Inquiries

Article 12, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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