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## Draft Guidelines on the Use and Conditions of Police Custody and Pre Trial Detention in Africa - Discussion Document

### 1. Introduction

#### 1.1 Problem Statement: Use and Conditions of Police Custody, Prison Remand and Pre-trial Detention in Africa

The Over-use of and poor conditions of pre-trial detention have been identified as prevalent but **the processes** of criminal justice reform **have overlooked this area**. Approximately 35 per cent of Africa's prison population is composed of pre-trial detainees, who often exist in the shadows of the criminal justice system **but** their detention and treatment is not subject to the same level of judicial or other oversight as general prison populations.

A study by The International Centre for Prison Studies has revealed that the prison population in Africa totals 857,994 inmates. Of these, 36.3% are in pre-trial detention. This figure does not include detainees **held** in secret or non-gazetted places of detention, nor does it include those in police detention **without charges**. The percentages also vary enormously across the continent reaching 80-90% in some countries.

The situation of pre-trial detainees in all custodial settings is urgent and warrants action for a number of reasons, including the following:

- Conditions of detention for pre-trial detainees in police lock-ups and prisons frequently fail to meet established international and regional minimum standards for the treatment of persons deprived of their liberty. Pre-trial detainees' access to health care, adequate nutrition and other support services is often less favourable than for their sentenced counterparts. Conditions of detention are frequently so poor that they are life threatening, and have been recognised by the United Nations (UN) and African Charter on Human and Peoples' Rights (ACHPR) treaty bodies as amounting to ill treatment. Special procedures for all detainees including those on trial are mandated under the relevant instruments which are set out in **the First Schedule**.
- Pre-trial detainees often remain in custody for lengthy periods (sometimes as long as ten years) without having been convicted of any offence thereby undermining the principle of the presumption of innocence and its application in favour of detainees.
- Pre-trial detainees are particularly vulnerable to torture and other ill treatment. They are also more vulnerable to exploitation in comparison to convicted detainees serving their known and fixed prison terms, as corrupt officials have the scope to claim having influence over criminal justice processes in favour of unconvicted detainees in return for money and other benefits.
- Large pre-trial detainee populations contribute towards prison overcrowding which in turn has negative consequences for the prison system as a result of the strain placed on limited resources, poor conditions of detention, infringement on the right to adequate health facilities, inability to separate inmates according

to age, gender and other recognised categories, and poor safety measures for the prison populations.

The problem of pre-trial detention disproportionately affects marginalised and disadvantaged communities, whose members are more likely to be arbitrarily arrested and, unable to afford legal assistance, are most vulnerable to spending prolonged periods in pre-trial detention. When individuals are detained for excessive periods and are unable to work, their families are vulnerable to poverty, hunger and homelessness. This is a significant challenge given that these individuals are presumed and may very well be innocent of the crimes of which they are charged.

## **1.2 The ACHPR mandate and rights framework**

### 1.2.1 Mandate of the ACHPR

The ACHPR has a mandate to develop a guideline on pre-trial detention pursuant to Articles 45(b) and 60 of the African Charter. Article 45(b) provides the ACHPR with power *'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation.'*

Article 60 provides that the ACHPR-

*'shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of*

*various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members’.*

### 1.2.2 ACHPR framework for the protection of persons deprived of their liberty

The African Charter on Human and Peoples’ Rights (the **African Charter**) establishes a rights protection framework for persons deprived of their liberty. This framework consists of the right to equality and freedom from discrimination (Article 2), and the rights to equality before the law and equal protection of the law (Article 3). Article 4 guarantees the right to life and protection against arbitrary deprivation thereof. Article 5 recognises the inherent dignity of all persons, and guarantees the right to be free from, amongst others, torture and other ill-treatment. Article 6 of the African Charter which enshrines the right to liberty and security of the person is pertinent to the issue of pre-trial detention. It states that:

*‘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’.*

The problem of pre-trial detention centres on two core rights issues, namely the recognition of the inherent dignity of all persons, and freedom from arbitrary detention. From these two rights flow other protections, relating, but not limited to due process rights (Article 7), the right to health care (Article 16), and the protection of vulnerable groups (Article 18.1).

The Charter imposes clear obligations on States Parties to uphold and protect the rights of persons deprived of their liberty, and to limit the enjoyment of rights only to the extent permitted by law.

The Ouagadougou Declaration was adopted by the ACHPR in 2002 to promote a number of actions to reduce the prison populations in Africa. These actions include strategies for preventing people from coming into the prison system and of reducing numbers of unsentenced prisoners by highlighting the following:

- Detention of persons awaiting trial only as a last resort and for the shortest time possible, including: increased use of cautioning; improved access to bail through widening police powers of bail and involving community representatives in the bail process; restricting the time in police custody to 48 hours; setting time limits for people on remand in prison.
- Good management of case files and regular review of the status of remand prisoners.
- Greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at a first aid level.

However, since the adoption of the Ouagadougou Declaration there has been little progress made in reducing the use of pre-trial detention and, in some states, it is indeed the case that “the process has become the punishment”. Lengthy periods of pre-trial detention, often lasting many years under deplorable conditions do not accord with the obligations imposed on State Parties by the African Charter, and other relevant guidelines and declarations.

The Commission has also adopted the following resolutions relevant to pre-trial detention:

- Resolution on the Right to Recourse and Fair Trial adopted at its 11<sup>th</sup> ordinary session in March 1992;
- Resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at its 19<sup>th</sup> ordinary session in March 1996;
- Resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26<sup>th</sup> session held in November 1999;
- General Principles and Guidelines on the Right to a Fair Trial and Legal Assistance under the African Charter and;
- Resolution on Independent Civilian Oversight of Police adopted at its 42<sup>nd</sup> session in November 2006.
- 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) Date and session of adoption 2002.

### 1.2.3 The Right to Fair Trial

The Right to Fair Trial<sup>1</sup> has the status of a peremptory norm. In particular everyone has the right to liberty and security of the person and no one shall be subjected to arbitrary arrest, detention or exile.<sup>2</sup> All States shall respect and ensure the full enjoyment of this right by all persons within their jurisdiction. The right to liberty is protected by a number of procedural safeguards that domestic law must

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<sup>1</sup> ICCPR, Art. 9(2)-(5) (2)

<sup>2</sup> International Covenant on Civil and Political Rights (1966) (hereafter ICCPR), Art. 9(1); Universal Declaration of Human Rights (UDHR), Arts. 3 & 9; European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereafter ECHR), Art. 5(1); American Convention on Human Rights (1969) (hereafter ACHR), Art. 7(1) & 7(3); African Charter for Human and Peoples' Rights (1981) (hereafter ACHPR), Art. 6. See also, Human Rights Committee (HRC), General Comment No. 8, Right to liberty and security of persons (Art. 9), 30/06/1982. See also Principle 2 of the Body of Principles: "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."

provide for. Any State agent entrusted with the implementation of these rights must respect and apply them in favour of the person being deprived of his or her liberty. While the specific characteristics of the procedure for implementation should be established in domestic law, international human rights law provides the minimum guarantees that such procedures must fulfil.<sup>3</sup>

The basic safeguards are clearly defined in Article 9 (2) to (5) of the International Covenant on Civil and Political Rights (ICCPR) and include the right of the arrested person to be promptly informed of the reasons for the arrest and the charges brought against him or her; the right to be brought promptly before a judge; the right to challenge the lawfulness of the arrest and detention; and the right to compensation in case of unlawful detention.<sup>4</sup>

When a person is arrested on suspicion of involvement in a crime, a number of rights apply from the moment of arrest. The person may not be arrested unless there is reasonable suspicion of commission of an offence and must be promptly informed of the reasons for the arrest.<sup>5</sup> The person must be informed by the arresting authority of

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<sup>3</sup> ICCPR, Art. 9(2)-(5) (“2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest; and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”). See also, HRC, General Comment No. 08, Right to liberty and security of persons (Art. 9) (30/06/82). See also guarantees linked to the right to due process: UDHR, Arts. 10 & 11, ICCPR, Art. 14. Regional conventions also reflect these safeguards, in ECHR, Art. 5(1); ACHR, Art. 7(1) & 7(3); ACHPR, Art. 6. Furthermore, Art. 147 of the Fourth Geneva Convention define ‘unlawful confinement of a protected person’ as a grave breach of the Convention. Grave breaches of the Geneva Conventions constitute war crimes under Art. 8 of the ICC Statute, including unlawful confinement under (2)(a)(vii), just as Art. 2(g) of the ICTY Statute. The ICTY held that ‘clear guidance can be found in the provisions of Geneva Convention IV’ (*Delalić* Judgement, (IT-96–21-A), Appeals Chamber, 20 February 2001, para. 320), most notably in Art. 42 and 43, and, in para. 378, that unlawful confinement could be committed in one of two ways, namely where: “[An Accused] has no reasonable grounds to believe that the detainees pose a real risk to the security of the state; or he knows that they have not been afforded the requisite procedural guarantees (or is reckless as to whether those guarantees have been afforded or not).” These safeguards are confirmed in the principles stated by the UN Working Group on Arbitrary Detention, as listed in the introduction: A/HRC/10/21 para 54.

<sup>4</sup> More detailed guidance is given in the Body of Principles.

<sup>5</sup> See e.g. Principle 10 of the Body of Principles and the Council of Europe (CoE) Guidelines on human rights and the fight against terrorism, adopted by the CoE Council of Ministers on 11 July 2002 (hereafter CoE Guidelines), Art. VII (1).



his or her rights and how to access such rights.<sup>6</sup> Upon admission to the place of detention, the detained person must be provided with information on the rules that govern the place of detention, including the complaints procedures.<sup>7</sup>

In order to ensure that a detained person is in a position to fully understand his or her rights and the charges brought against him or her, he or she must have prompt access to legal counsel. Access to legal counsel is also an additional safeguard against the risk of torture and other ill treatment and exploitation during detention.<sup>8</sup>

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>9</sup> (hereinafter called 'Body of Principles'), in Principles 17 and 18, state that detained persons have the right to choose their own legal counsel and the right to consult and communicate with legal counsel without delay or censorship, and in full confidentiality.<sup>10</sup> Principle 18 (3) allows for the suspension or restriction of the right of a detained person to be visited by and to consult with his legal counsel in exceptional circumstances.

### 1.3 Participation and support for the Guidelines

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<sup>6</sup> Principle 13 of the Body of Principles.

<sup>7</sup> Rule 35 (1) SMR, "Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution."

<sup>8</sup> See also the report of the Eminent Jurists Panel (EJP) on Terrorism, Counter-terrorism and Human Rights, (2009) "*Assessing Damage, Urging Action*", Geneva, (hereafter ICJ EJP Report) p. 155, 3.2.6, *Assistance by counsel*. The EJP stresses that in order for legal counsel to be effective, "States have a duty to uphold the rule of law by actively and publicly supporting the independent role of the judiciary, and lawyers generally, in their professional endeavours." The EJP was established by the International Commission of Jurists and the report is based on a process of sixteen hearings around the world covering more than forty countries in different parts of the world.

<sup>9</sup> Adopted by General Assembly resolution 43/173 of 9 December 1988.

<sup>10</sup> Rule 93 SMR, also reflects this right: "For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official."



At the 51<sup>st</sup> and 52<sup>nd</sup> ordinary sessions of the ACHPR, APCOF collaborated with a number of non-governmental organisations to hold workshops on the use and conditions of pre-trial detention in Africa. A list of these organisations is attached as **the Second Schedule**. This has helped in creating a consensus on the need to develop implementable guidelines on pre-trial detention in Africa. These guidelines are therefore a culmination of the two workshops and subsequent consultations that were made with various other stakeholders on the African continent.

## **2. Working Text on a Guideline on the Use and Conditions of Police Custody and Pre trial Detention in Africa**

### **PREAMBLE**

*Noting* that the over-use of and poor conditions of police custody and pre-trial detention have been identified as a prevalent but overlooked area of the criminal justice system,

*Acknowledging* that that pre-trial detainees are often vulnerable to violation of their rights, poor health outcomes, conditions which are typically worse than for sentenced inmates and, increased risk of being subject to torture, ill-treatment and corruption,

*Further noting that* pre-trial detention disproportionately impacts on the most vulnerable and marginalised, and thus least able to afford or access legal assistance or to post bail,

*Recognising* that arbitrary arrest, prolonged pre-trial detention and poor conditions of detention have their root causes in a range of problems characterising many criminal justice systems on the continent, such as archaic evidence, civil procedure and criminal procedure legislation, lack of accountability and transparency of the

police, compromised independence of the judiciary, and poor case flow management in the criminal justice system,

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

*Further recalling* its mandate under Article 60 of the African Charter that "The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members",

*Further recalling* Articles 3, 4, 5, 6, 7 and 26 of the Charter, which contain provisions relevant to pre-trial detention,

*Further recalling* the obligations of State Parties to uphold and implement the articles of the Charter and the Resolutions passed by the African Commission on Human and Peoples Rights,

*Recognising* that it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to the conditions and use of pre-trial detention by police agencies to reflect international standards;

*Recalling* the Resolution on the Right to Recourse and Fair Trial adopted at its 11<sup>th</sup> ordinary session in March 1992, the Resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at its 19<sup>th</sup> ordinary session in March 1996, the Resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26<sup>th</sup> session held in November 1999 and the general principles and guidelines on the right to a fair trial and legal assistance under the African Charter and the Resolution on Independent Civilian Oversight of Police adopted at its 42<sup>nd</sup> session in November 2006;

*Recalling* the resolution passed at the 52<sup>nd</sup> session of the African Commission on Human and Peoples Rights on the need to develop

guidelines on conditions of police custody and pre-trial detention in Africa:

*NOW THEREFORE THE COMMISSION solemnly* proclaims these Guidelines on the Use of and Conditions of Police and Pre Trial Detention and urges that every effort be made to ensure that the Guidelines become universally known and applied to everyone in Africa; that the guidelines be protected, respected and implemented by States, National Human Rights Institutions, police, judges, lawyers and prosecutors and are promoted by academics and their professional associations and civil society organisations and other actors; and they be incorporated into domestic legislation and operating procedures by State Parties to the Charter.

# **GUIDELINES ON THE USE AND CONDITIONS OF POLICE CUSTODY AND PRE TRIAL DETENTION IN AFRICA**

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# GUIDELINES ON THE USE AND CONDITIONS OF POLICE CUSTODY AND PRE TRIAL DETENTION IN AFRICA

## PART I

### PRELIMINARY PROVISIONS

*Citation*

1. This instrument may be cited as the Guidelines on the Use and Conditions of Police Custody and Pre Trial Detention in Africa and shall become operative upon depositing the instruments of ratification and adoption by [*the majority of State Parties*]

*Definitions*

2. Unless the context otherwise requires-  
“Guidelines” means the Guidelines stipulated in this instrument by the majority of State Parties;  
“State Parties” means African States that have subscribed to the Guidelines;

## PART II

### ARREST

*Grounds for  
arrest*

3. Arrest must be carried out on any grounds that are clearly established in law and must not be motivated by discrimination or distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

## PROCEDURAL SAFEGUARDS

*Safeguards* 4. Any authority effecting arrest must observe certain procedural safeguards, which include-

(a) clear self identification by the arresting officers and the unit to which they belong by showing an official identity card which displays their respective name, rank and identity number;

(b) use of motor vehicles that carry visible number plates;

(c) recording particulars about the arrest, in an official register with sequentially numbered pages reflecting *inter alia* -

(i) the identity of the arrested person;

(ii) the date, time and place where the person was arrested;

(iii) precise information about the place of custody and the date and time the arrested person was taken into custody;

(iv) the reason for the arrest;

(v) confirmation that the arrested person was provided with information about their rights, including the right to legal assistance in terms of paragraph (c) of this Article;

(vi) the time and date the arrested persons was granted or refused police bail, including reason for refusal;

(vii) the time and date of the arrested person's first appearance before a judicial officer or other authority;

(viii) observations on the general state of health of the arrested persons;

(ix) the identity of the officers involved, including the arresting officers;

(x) the date and time of release or transfer to another place of custody and the authority responsible for the transfer;

(xi) in the case of a child being arrested, the arresting officer must inform the parents or guardian of the child of the arrest as well as the appropriate authorities charged with the welfare of children in terms of Article 11 .

*Information  
to arrested  
persons*

**5.** Informing arrested persons, at the time of arrest, of the reasons for their arrest and their rights including:

- (a) the right to be informed of the charge,
- (b) the right to remain silent,
- (c) the right of access to legal assistance and to see a lawyer, a friend or family member as the case may be,
- (d) information about free legal assistance and the procedures for obtaining same, and
- (e) the right to contact a relative or third person of choice,

- (f) the right to be free from torture and other ill treatment,
- (g) the right to interpretation and translation,
- (h) the right to challenge their detention and apply for bail.

*Language*

**6.** Information shall be provided in a language and format that is understood by the arrested person particularly if the arrested person is a child or a foreign national or person who speaks a language other than the language used during arrest;

*Notification of arrest to relatives concerning arrest*

**7.** The arrested person shall be given the opportunity, without undue delay access to the means to notify relatives (or a third person of the arrested person's choice) of the arrest and the place where he or she is kept in custody:

**Provided** always that the opportunity shall be made available at the time of arrest, detention, imprisonment and transfer;

*Access to legal services*

**8.** The arrested person shall be afforded with the means to contact and meet with a legal representative prior to interrogation and at all subsequent stages of the criminal justice process: Provided that the meeting shall be held in private.

*Non citizens*

**9.**For non-citizens, the arresting officer or the officer in charge of the institution responsible shall notify the relevant consular authorities of the state of origin of a detained foreigner, without delay.

*Stateless persons*

**10.**For stateless persons , the arresting officer or officer in charge of the institution responsible shall notify the relevant institutions including the relevant United Nations body without delay.

*Children*

**11.(1)**The police shall actively seek not to arrest children but where arrest is unavoidable shall implement special measures to ensure that the rights of the child are preserved and protected in terms of Article 1 of the Convention on the Rights of the Child (CRC) which defines a person under the age of 18 years as a child.

(2)(a)Upon arrest of a child his or her parents or guardian and the appropriate authorities charged with the welfare of children shall be immediately notified.

(b)The child should be able to consult freely and in full confidentiality with their parent or guardian and officials of the relevant authority charged with the welfare of children.

(3) If a child is detained this should be as a measure of last resort and shall be for the shortest possible period of time:

Provided that the continued detention of a child should be reviewed on a regular basis.

(4) Children shall be guaranteed the right to the presence of a parent or guardian at all stages of the proceedings, unless it is considered not to be in the best interests of the child.

(5) Children must be provided with access to free legal assistance from the moment of arrest, and at all subsequent stages of the criminal justice process.

(6) Contact between law enforcement agencies and child suspects shall be managed in such a way as to respect the legal status of the juvenile to promote his or her well-being, ensure privacy and avoid harm to him or her with due regard to the circumstances of the case.

(7) Interviews shall be conducive to the best interests of the child and shall be conducted in an atmosphere of understanding which shall allow the child to participate therein and to express herself or himself freely.

(8) Consideration should be given to whatever appropriate measures are available to limit the child's exposure to the criminal justice process.

(9) In order to best fulfil their functions police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained, and where possible specialised units should be established for this purpose.



## PART III

### ARBITRARY DETENTION

#### **Procedural safeguards against arbitrary detention**

*Grounds for  
judicial  
detention  
orders*

**12.** Detention by judicial authorities shall only be ordered on grounds that are clearly established in law in accordance with international standards for detention, and must not be motivated by discrimination or distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. Detention should be an exception rather than the rule and should be exercised for the shortest time period possible.

*Safeguards  
against  
arbitrary  
arrest*

**13.** The police and the justice system broadly, shall observe procedural safeguards, including:

(1) the right of persons detained on criminal charges to be promptly brought before a court of competent jurisdiction;

(2) the arrested person shall be informed by the arresting officer about whether he or she can apply for bail for the offense they are charged with and

the procedures to be followed in applying for such bail.

(3) Judges and magistrates shall ensure that arrested persons are only remanded in custody if there is no other alternative:

Provided that pre trial detention should only be used in exceptional circumstances and in particular if-

(a) there is a legitimate fear, based on objective information other than the seriousness of the contemplated charge, that the defendant poses (potentially or in fact) a violent threat to the community; or

(b) there is reason to believe that the defendant will intimidate witnesses or interfere with the lawful collection of evidence; or

(c) there is a reason to believe, based on objective information other than the seriousness of the contemplated charge that the defendant will or is likely to flee from justice.

*Alternatives to  
pre-trial  
detention*

14.(1) Judges and magistrates shall clearly demonstrate that they have thoroughly considered alternatives to pre-trial detention before committing an accused person to pre-trial detention.

(2) Any suspect charged with a crime that carries a non-custodial penalty shall not be remanded in custody.

(3) Where the suspect is a child, detention should be ordered only in very exceptional circumstances.

(4) Where detention of a child is unavoidable the child shall-

a) in all instances be separated from adults;

b) receive care, protection and all necessary individual, social, educational, vocational, psychological, medical and physical assistance that may be required in view of the age, sex, and personality of the child.

(5) Specific considerations shall be put in place for women including health and sanitation issues:

Provided that women shall at all times be separated from men and specific considerations shall be made for those who are pregnant, are breastfeeding or have child care responsibilities.

## PART IV

### SAFEGUARDS DURING PRE TRIAL DETENTION

*Where  
detention  
inevitable*

**15(1).**Where it is concluded that detention is unavoidable, it shall be carried out in strict accordance with the law, in an officially recognised and gazetted place of detention;

(2) Detention shall be reviewed on a regular basis by a competent court, and the reviewing authority shall explicitly interrogate the need for continued pre-trial detention: Provided that any person who is found to be illegally detained shall be immediately released.

(3) Detainees shall have regular and confidential access to legal assistance.

(4) All places of detention shall have a register with sequentially numbered pages of all persons detained therein and bearing the following information, namely:

- a) details of every detainee;
- b) the reasons for his or her commitment and the authority for his or her commitment to detention;
- c) the day and hour of his or her admission and release;
- d) the name of the next of kin;
- e) the date when regular reviews are due, information about whether the review took place, the outcome

of the review and the reasons, if applicable, why the review did not happen or was delayed;

- f) any requests for access to medical or legal assistance;
- g) any complaints made by the detainees.

*Record of  
person  
interrogated*

**16.** When a detained person is being interrogated, the following information shall be recorded:

- a) the duration of any interrogation;
- b) the intervals between interrogations;
- c) the identity of any officials who conducted the interrogations and other persons present;
- d) confirmation that the detainee was availed the opportunity and was able to seek legal assistance prior to interrogation;

(2) If a detainee is released to the police or other authority for the purposes of further investigation or any other reasons, this shall be recorded in the register, noting the authority and the name and rank of the representing official.

*Death of  
detainee,  
etc*

**17. (1)** When a detained person dies during his or her detention, a prompt impartial and independent inquiry into the cause of death must be undertaken by a judicial authority, and his or

her family members shall be informed promptly of the death and the circumstances, cause and whereabouts of the remains.

(2) When a detained person disappears during his or her detention, a prompt impartial and independent inquiry into the disappearance shall be undertaken by a judicial authority.

*Duration of  
pre-trial police  
detention*

18. Police detention shall not exceed forty eight hours and suspects shall be brought before a court within this time period or as soon as possible thereafter.

*Police  
training*

19. Police shall receive training on the management of detainees, the legislation regulating arrest, bail and pre-trial detention and the requirements when working with children, women and other vulnerable groups.

## PART V

### SAFEGUARDS FOR MINIMUM CONDITIONS OF DETENTION

*Minimum  
conditions*

**20.** (1) Conditions of detention in police and prison cells shall accord with the right to life and respect for the inherent dignity of the human person.

**(2)** Minimum conditions for detainees shall include:

- a) access to health care;
- b) prompt and effective access to judicial authorities;
- d) access to nutrition, potable water and sanitary conditions in the intervals recommended by a medical specialist; and
- e) observance of special measures to safeguard the rights of particular groups, including women, infants arrested with their mothers, children and persons with disabilities.



## CONDITIONS OF DETENTION THAT ARE CONSISTENT WITH SAFEGUARDS TO PREVENT TORTURE AND ILL-TREATMENT

*Immunity  
from ill  
treatment*

**21.** (1) Detainees have the right to protection from ill-treatment and torture.

(2) Custodial authorities shall ensure that procedural safeguards provided in international, regional and domestic law are available and complied with, including:

- a) prompt access to judicial authorities;
- b) prohibition of *incommunicado* detention;
- c) prohibition on the admissibility of evidence obtained through torture (and associated skills in forensics and investigations);
- d) access to legal and medical assistance;
- e) clearly established and independent mechanisms of oversight;  
and
- f) clearly established and independent complaints mechanisms.

## PART VI

### IMPLEMENTATION

Domes-  
tication of  
Guidelines

**22.** (1) State Parties and relevant institutions are urged to adopt all necessary measures at the national level aimed at achieving the full realization of the provisions contained in these Guidelines.

(2) These Guidelines shall be binding upon a State Party upon ratification by the internal body concerned and after depositing the instruments with the Secretariat of the African Charter.

Dated .....

## FIRST SCHEDULE

### BASIC DOCUMENTS BEARING ON RIGHTS OF ARRESTED/DETAINED PERSONS

1. 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 – 2002),

2. African Charter on Human and Peoples' Rights, Basic Principles and Guidelines on the Right to a Remedy and Reparation, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

3. Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

4. Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

5. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985.

7. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.

**8.**Declaration on the Protection of All Persons from Enforced Disappearance, Adopted by General Assembly resolution 47/133 of 18 December 1992.

**9.**Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997.

**10.**Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

**11.**International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

**12.**Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 37/194 of 18 December 1982.

**13.**Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000.

**14.**Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989. Safeguards guaranteeing protection of the rights of those facing the death penalty;

**15.**Code of Conduct for Law Enforcement Officials, Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

16.UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000.

17.United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

18.United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly resolution 45/113 of 14 December 1990.

19.United Nations Standard Minimum Rule for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

20.United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985.

21.United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) Adopted by General Assembly Resolution 65/229 on 21 December 2010.

## SECOND SCHEDULE

### ORGANISATIONS SUPPORTING THE DEVELOPMENT OF A GUIDELINE ON PRE TRIAL DETENTION

1. African Policing Civilian Oversight Forum (APCOF)
2. The African Centre for Democracy and Human Rights Studies (ACDHRS)
3. Association for the Prevention of Torture (APT)
4. African Centre for Justice and Peace Studies (ACJPS)
5. Amnesty International
6. Cleen Foundation
6. The Civil Society Prison Reform Initiative (CSPRI)
7. Human Rights Law Service (HURILAWS)
8. ITUC-Africa
9. Moroccan Organisation for Human Rights
10. Mouvement Burkinabé des Droits de l'Homme et des Peuples (MBDHP)
11. Muslims for Human Rights (MUHURI)
12. Open Society Justice Initiative
13. Penal Reform International
14. Prisoners Rehabilitation and Welfare Action (PRAWA)
15. The Rights Enforcement and Public Law Centre (REPLACE)
16. The SADC Lawyers' Association
17. Southern African Litigation Session (SALC)
18. West Africa Civil Society Institute (WACSI)
19. Zimbabwe Lawyers for Human Rights (ZLHR)