

AFRICAN UNION

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African Commission on Human & Peoples' Rights



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Commission Africaine des Droits de l'Homme & des Peuples

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## PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA

The African Commission on Human and Peoples' Rights;

*Recalling* its mandate under Article 45(c) 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";

*Recalling* Articles 5, 6, 7 and 26 of the Charter, which contain provisions relevant to the right to a fair trial;

*Recognising* that it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to fair trial in the Charter and 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 and the resolution Urging States to Envisage a Moratorium on the Death Penalty adopted at its 26<sup>th</sup> ordinary session in November 1999;

*Recalling also* the resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26<sup>th</sup> session held in November 1999, in which it decided to prepare general principles and guidelines on the right to a fair trial and legal assistance under the African Charter;

*Solemnly* proclaims these Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and urges that every effort is made so that they become generally known to everyone in Africa; are promoted and protected by civil society organisations, judges, lawyers, prosecutors, academics and their professional associations; are incorporated into their domestic legislation by State parties to the Charter and respected by them:

### A. GENERAL PRINCIPLES APPLICABLE TO ALL LEGAL PROCEEDINGS:

#### 1. Fair and Public Hearing

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

#### 2. Fair Hearing

**Page**

The essential elements of a fair hearing include:

- (a) equality of arms between the parties to proceeding, whether they be administrative, civil, criminal, or military;
- (b) equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or other convictions, national or social origin, means, disability, birth, status or other circumstances;
- (c) equality of access by women and men to judicial bodies and equality before the law in any legal proceedings;
- (d) respect for the inherent dignity of the human person, especially of women who participate in legal proceedings as complainants, witnesses, victims or accused;
- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;
- (g) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body;
- (h) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body;
- (i) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and
- (j) an entitlement to an appeal to a higher judicial body.

1. Public hearing:

- (a) All the necessary information about the sittings of judicial bodies shall be made available to the public by the judicial body;
- (b) A permanent venue for proceedings by judicial bodies shall be established by the State and widely publicised. In the case of ad-hoc judicial bodies, the venue designated for the duration of their proceedings should be made public.
- (c) Adequate facilities shall be provided for attendance by interested members of the public;
- (d) No limitations shall be placed by the judicial body on the category of people allowed to attend its hearings where the merits of a case are being examined;
- (e) Representatives of the media shall be entitled to be present at and report on judicial proceedings except that a judge may restrict or limit the use of cameras during the hearings;
- (f) The public and the media may not be excluded from hearings before judicial bodies except if it is determined to be
  1. in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence
  2. for reasons of public order or national security in an open and democratic society that respects human rights and the rule of law.
- (a) Judicial bodies may take steps or order measures to be taken to protect the identity and dignity of victims of sexual violence, and the identity of witnesses and complainants who may be put at risk by reason of their participation in judicial proceedings.
- (b) Judicial bodies may take steps to protect the identity of accused persons, witnesses or complainants where it is in the best interest of a child.
- (c) Nothing in these Guidelines shall permit the use of anonymous witnesses, where the judge and the defence is unaware of the witness' identity at trial.  
Any judgement rendered in legal proceedings, whether civil or criminal, shall be pronounced in public.

1. Independent tribunal

- (a) The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities;
- (b) Judicial bodies shall be established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner;
- (c) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for decision is within the competence of a judicial body as defined by law;
- (d) A judicial body's jurisdiction may be determined, *inter alia*, by considering where the events involved in the dispute or offence took place, where the property in dispute is located, the place of residence or domicile of the parties and the consent of the parties;
- (e) Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies;
- (f) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law;
- (g) All judicial bodies shall be independent from the executive branch.
- (h) The process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary.
- (i) The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability.
- (j) Any person who meets the criteria shall be entitled to be considered for judicial office without discrimination on any grounds such as race, colour, ethnic origin, language, sex, gender, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. However, it shall not be discriminatory for states to:
  - 1. prescribe a minimum age or experience for candidates for judicial office;
  - 2. prescribe a maximum or retirement age or duration of service for judicial officers;
  - 3. prescribe that such maximum or retirement age or duration of service may vary with different level of judges, magistrates or other officers in the judiciary;
  - 4. require that only nationals of the state concerned shall be eligible for appointment to judicial office.
- (a) No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their functions.
- (b) Judges or members of judicial bodies shall have security of tenure until a mandatory retirement age or the expiry of their term of office.
- (c) The tenure, adequate remuneration, pension, housing, transport, conditions of physical and social security, age of retirement, disciplinary and recourse mechanisms and other conditions of service of judicial officers shall be prescribed and guaranteed by law.
- (d) Judicial officers shall not be:
  - 1. liable in civil or criminal proceedings for improper acts or omissions in the exercise of their judicial functions;
  - 2. removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body;
  - 3. appointed under a contract for a fixed term.

## Page

- (a) Promotion of judicial officials shall be based on objective factors, in particular ability, integrity and experience.
- (b) Judicial officials may only be removed or suspended from office for gross misconduct incompatible with judicial office, or for physical or mental incapacity that prevents them from undertaking their judicial duties.
- (c) Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.
- (d) The procedures for complaints against and discipline of judicial officials shall be prescribed by law. Complaints against judicial officers shall be processed promptly, expeditiously and fairly.
- (e) Judicial officers are entitled to freedom of expression, belief, association and assembly. In exercising these rights, they shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
- (f) Judicial officers shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.
- (g) States may establish independent or administrative mechanisms for monitoring the performance of judicial officers and public reaction to the justice delivery processes of judicial bodies. Such mechanisms, which shall be constituted in equal part of members the judiciary and representatives of the Ministry responsible for judicial affairs, may include processes for judicial bodies receiving and processing complaints against its officers.
- (h) States shall endow judicial bodies with adequate resources for the performance of its their functions. The judiciary shall be consulted regarding the preparation of budget and its implementation.

5. Impartial Tribunal

- (a) A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.
- (b) Any party to proceedings before a judicial body shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt.
- (c) The impartiality of a judicial body could be determined on the basis of three relevant facts:
  - 1. that the position of the judicial officer allows him or her to play a crucial role in the proceedings;
  - 2. the judicial officer may have expressed an opinion which would influence the decision-making ;
  - 3. the judicial official would have to rule on an action taken in a prior capacity.
- (a) The impartiality of a judicial body would be undermined when:
  - 1. a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party;
  - 2. a judicial official secretly participated in the investigation of a case;
  - 3. a judicial official has some connection with the case or a party to the case;
  - 4. a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body.

In any of these circumstances, a judicial official would be under an obligation to step down.
- (a) A judicial official may not consult a higher official authority before rendering a decision in order to ensure that his or her decision will be upheld.

**JUDICIAL TRAINING:**

- (a) States shall ensure that judicial officials have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of accused persons, victims and other litigants and of human rights and fundamental freedoms recognized by national and international law.
- (b) States shall establish where they do not exist, specialised institutions for the education and training of judicial officials and encourage collaboration amongst such institutions in countries in the region and throughout Africa.
- (c) States shall ensure that judicial officials receive continuous training and education throughout their career including, where appropriate, in racial, cultural and gender sensitisation.

**C. RIGHT TO AN EFFECTIVE REMEDY:**

- (a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.
- (b) The right to an effective remedy includes:
  - 1. access to justice;
  - 2. reparation for the harm suffered;
  - 3. access to the factual information concerning the violations.
- (a) Every State has an obligation to ensure that:
  - 1. any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;
  - 2. any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;
  - 3. any remedy granted shall be enforced by competent authorities;
  - 4. any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.
- (a) The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

**D. COURT RECORDS AND PUBLIC ACCESS:**

- (a) All information regarding judicial proceedings shall be accessible to the public, except information or documents that have been specifically determined by judicial officials not to be made public.
- (b) States must ensure that proper systems exist for recording all proceedings before judicial bodies, storing such information and making it accessible to the public.
- (c) All decisions of judicial bodies must be published and available to everyone throughout the country.
- (d) The cost to the public of obtaining records of judicial proceedings or decisions should be kept to a minimum and should not be so high as to amount to a denial of access.

**E. LOCUS STANDI:**

States must ensure, through adoption of national legislation, that in regard to human rights violations, which are matters of public concern, any individual, group of individuals or non-governmental organization is entitled to bring an issue before judicial bodies for determination.

Page

**F. ROLE OF PROSECUTORS:**

- (a) States shall ensure that:
  - 1. Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law, including the Charter.
  - 2. Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
- (a) Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, housing, transport, conditions of physical and social security, pension and age of retirement and other conditions of service shall be set out by law or published rules or regulations.
- (b) Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.
- (c) Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
- (d) Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.
- (e) The office of prosecutors shall be strictly separated from judicial functions.
- (f) Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of decisions of judicial bodies and the exercise of other functions as representatives of the public interest.
- (g) Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
- (h) In the performance of their duties, prosecutors shall:
  - 1. carry out their functions impartially and avoid all political, social, racial, ethnic, religious, cultural, sexual, gender or any other kind of discrimination;
  - 2. protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
  - 3. keep matters in their possession confidential, unless the performance of duty or needs of justice require otherwise;
  - 4. consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the provisions below relating to victims.
- (a) Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
- (b) Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.
- (c) When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which

constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the judicial body accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

- (d) In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, judicial bodies, the legal profession, paralegals, non-governmental organisations and other government agencies or institutions.
- (e) Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors, which allege that they acted in a manner that is inconsistent with professional standards, shall be processed expeditiously and fairly under appropriate procedures prescribed by law. Prosecutors shall have the right to a fair hearing including the right to be represented by a legal representative of their choice. The decision shall be subject to independent review.
- (f) Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics.

#### **G. ACCESS TO LAWYERS AND LEGAL SERVICES:**

- (a) States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.
- (b) States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar.
- (c) States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.

#### **H. LEGAL AID AND LEGAL ASSISTANCE:**

- (a) The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it.
- (b) The interests of justice should be determined by considering:
  - 1. in criminal matters:
    - i) the seriousness of the offence;
    - ii) the severity of the sentence.
  - 2. in civil cases:
    - i) the complexity of the case and the ability of the party to adequately represent himself or herself;
    - ii) the rights that are affected;
    - iii) the likely impact of the outcome of the case on the wider community.
- (a) The interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon.
- (b) An accused person or a party to a civil case has the right to an effective defence or representation and has a right to choose his or her own legal representative at all stages of the case. They may contest the choice of his or her court-appointed lawyer.
- (c) When legal assistance is provided by a judicial body, the lawyer appointed shall:
  - 1. be qualified to represent and defend the accused or a party to a civil case;

## Page

2. have the necessary training and experience corresponding to the nature and seriousness of the matter;
  3. be free to exercise his or her professional judgement in a professional manner free of influence of the State or the judicial body;
  4. advocate in favour of the accused or party to a civil case;
  5. be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.
- (a) Professional associations of lawyers shall co-operate in the organisation and provision of services, facilities and other resources, and shall ensure that:
1. when legal assistance is provided by the judicial body, lawyers with the experience and competence commensurate with the nature of the case make themselves available to represent an accused person or party to a civil case;
  2. where legal assistance is not provided by the judicial body in important or serious human rights cases, they provide legal representation to the accused or party in a civil case, without any payment by him or her.
- (a) Given the fact that in many States the number of qualified lawyers is low, States should recognize the role that para-legals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.
- (b) States should, in conjunction with the legal profession and non-governmental organizations, establish training, the qualification procedures and rules governing the activities and conduct of para-legals. States shall adopt legislation to grant appropriate recognition to para-legals.
- (c) Para-legals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession.
- (d) Non-governmental organizations should be encouraged to establish legal assistance programmes and to train para-legals.
- (e) States that recognize the role of para-legals should ensure that they are granted similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence.

**I. INDEPENDENCE OF LAWYERS:**

- (a) States, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
- (b) States shall ensure that lawyers:
1. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
  2. are able to travel and to consult with their clients freely both within their own country and abroad;
  3. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
- (a) States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.
- (b) It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
- (c) Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a judicial body or other legal or administrative authority.



- (d) Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
- (e) Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
- (f) Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
- (g) Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
- (h) Lawyers shall always loyally respect the interests of their clients.
- (i) Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and the protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.
- (j) Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.
- (k) Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.
- (l) Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
- (m) Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or even before a judicial body, and shall be subject to an independent judicial review.
- (n) All disciplinary proceedings shall be determined in accordance with the code of professional conduct, other recognized standards and ethics of the legal profession and international standards.

**J. CROSS BORDER COLLABORATION AMONGST LEGAL PROFESSIONALS:**

- (a) States shall ensure that national legislation does not prevent collaboration amongst legal professionals in countries in their region and throughout Africa.
- (b) States shall encourage the establishment of agreements amongst states and professional legal associations in their region that permit cross-border collaboration amongst lawyers including legal representation, training and education, and exchange of information and expertise.

**K. ACCESS TO JUDICIAL SERVICES:**

- (a) States shall ensure that judicial bodies are accessible to everyone within their territory and jurisdiction, without distinction of any kind, such as discrimination based on race, colour, disability, ethnic origin, sex, gender, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
- (b) States must take special measures to ensure that rural communities and women have access to judicial services. States must ensure that law enforcement and judicial officials are adequately

**Page**

trained to deal sensitively and professionally with the special needs and requirements of women.

- (c) In countries where there exist groups, communities or regions whose needs for judicial services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, States shall take special measures to ensure that adequate judicial services are accessible to them.
- (d) States shall ensure that access to judicial services is not impeded including by the distance to the location of judicial institutions, the lack of information about the judicial system, the imposition of unaffordable or excessive court fees and the lack of assistance to understand the procedures and to complete formalities.

**L. RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS:**

- a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.
- b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines.
- c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

**M. PROVISIONS APPLICABLE TO ARREST AND DETENTION:****1. Right to liberty and security**

- (a) States shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected.
- (b) States must ensure that no one shall be subject to arbitrary arrest or detention, and that 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, pursuant to a warrant, on reasonable suspicion or for probable cause.
- (c) Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
- (d) Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.
- (e) Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.
- (f) Expectant mothers and mothers of infants shall not be kept in custody pending their trial, but their release may be subject to certain conditions or guarantees, including the payment of bail.
- (g) States shall ensure, including by the enactment of legal provisions, that officials or other persons who arbitrarily arrest or detain any person are brought to justice.
- (h) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of unlawful arrest or detention is enabled to claim compensation.

1. Rights upon arrest:

- a) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her.
- b) Anyone who is arrested or detained shall be informed upon arrest, in a language he or she understands, of the right to legal representation and to be examined by a doctor of his or her choice and the facilities available to exercise this right.
- c) Anyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.
- d) If the arrested or detained person is a foreign national, he or she must be promptly informed of the right to communicate with his or her embassy or consular post. In addition, if the person is a refugee or stateless person or under the protection of an inter-governmental organization, he or she must be notified without delay of the right to communicate with the appropriate international organization.
- e) States must ensure that any person arrested or detained is provided with the necessary facilities to communicate, as appropriate, with his or her lawyer, doctor, family and friends, and in the case of a foreign national, his or her embassy or consular post or an international organization.
- f) Any person arrested or detained shall have prompt access to a lawyer and, unless the person has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.
- g) Anyone who is arrested or detained shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution.
- h) Any form of detention and all measures affecting the human rights of a person arrested or detained shall be subject to the effective control of a judicial or other authority. In order to prevent arbitrary arrest and detention or disappearances, states should establish procedures that require police or other officials with the authority to arrest and detain to inform the appropriate judicial official or other authority of the arrest and detention. The judicial official or other authority shall exercise control over the official detaining the person.

1. Right to be brought promptly before a judicial officer:

- a) Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.
- b) The purpose of the review before a judicial or other authority includes to:
  1. assess whether sufficient legal reason exists for the arrest;
  2. assess whether detention before trial is necessary;
  3. determine whether the detainee should be released from custody, and the conditions, if any, for such release;
  4. safeguard the well-being of the detainee;
  5. prevent violations of the detainee's fundamental rights;
  6. give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.

## Page

1. Right of arrested or detained person to take proceedings before a judicial body:

Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.

2. Right to habeas corpus:

- a) States shall enact legislation, where it does not exist, to ensure the right to habeas corpus, amparo or similar procedures.
- b) Anyone concerned or interested in the well-being, safety or security of a person deprived of his or her liberty has the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of such a person and/or identifying the authority ordering or carrying out the deprivation of liberty.
- c) In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.
- d) Any other competent authority entitled under law of the State or by any international legal instrument to which the State is a party may also have access to such places.
- e) Judicial bodies shall at all times hear and act upon petitions for habeas corpus, amparo or similar procedures. No circumstances whatever must be invoked as a justification for denying the right to habeas corpus, amparo or similar procedures.

1. Right to be detained in a place recognised by law:

- a) Any person deprived of liberty shall be held in an officially recognised place of detention.
- b) Accurate information shall be recorded regarding any person deprived of liberty including:
  1. his or her identity;
  2. the reasons for arrest;
  3. the time of arrest and the taking of the arrested person to a place of custody;
  4. the time of his first appearance before a judicial or other authority;
  5. the identity of the law enforcement officials concerned;
  6. precise information concerning the place of custody;
  7. details of the judicial official or other authority informed of the arrest and detention.
- a) Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be promptly available to their family members, their legal representative or to any other persons having a legitimate interest in the information.
- b) An official up-to-date register of all persons deprived of liberty shall be maintained in every place of detention and shall be made available to any judicial or other competent and independent national authority seeking to trace the whereabouts of the a detained person.

7. Right to humane treatment:

- (a) States shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human person.
- (b) In particular States must ensure that no person, lawfully deprived of his or her liberty is subjected to torture or to cruel, inhuman or degrading treatment or punishment. States shall ensure that special measures are taken to protect women detainees from ill-treatment, including making certain that their interrogation is conducted by women police or judicial officials.

- (c) Women shall at all times be detained separately from men and while in custody they shall receive care, protection and all necessary individual assistance – psychological, medical and physical – that they may require in view of their sex and gender.
- (d) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him or her to confess, to incriminate himself or herself or to testify against any other person.
- (e) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgement.
- (f) No detained person shall, even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health.
- (g) A detained person or his or her legal representative or family shall have the right to lodge a complaint to the relevant authorities regarding his or her treatment, in particular in case of torture or other cruel, inhuman or degrading treatment.
- (h) States shall ensure that effective mechanisms exist for the receipt and investigation of such complaints. The right to lodge complaints and the existence of such mechanisms should be promptly made known to all arrested or detained persons.
- (i) States shall ensure, including by the enactment of legal provisions, that officials or other persons who subject arrested or detained persons to torture or to cruel, inhuman or degrading treatment are brought to justice.
- (j) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of torture or cruel, inhuman or degrading treatment or punishment is enabled to claim compensation.

#### 8. Supervision of places of detention:

- (a) In order to supervise strict observance of relevant laws and regulations and international standards applicable to detainees, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.
- (b) A detained person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with the above principle, subject to reasonable conditions to ensure security and good order in such places.

### **N. PROVISIONS APPLICABLE TO PROCEEDINGS RELATING TO CRIMINAL CHARGES:**

#### 1. Notification of charge:

- (a) Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her.
- (b) The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused.
- (c) The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.

#### 1. Right to counsel:

- (a) The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms.

**Page**

- (b) The accused has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.
- (c) This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings.
- (d) The accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. A judicial body may not assign counsel for the accused if a qualified lawyer of the accused's own choosing is available.

1. Right to adequate time and facilities for the preparation of a defence:

- (a) The accused has the right to communicate with counsel and have adequate time and facilities for the preparation of his or her defence.
- (b) The accused may not be tried without his or her counsel being notified of the trial date and of the charges in time to allow adequate preparation of a defence.
- (c) The accused has a right to adequate time for the preparation of a defence appropriate to the nature of the proceedings and the factual circumstances of the case. Factors which may affect the adequacy of time for preparation of a defence include the complexity of the case, the defendant's access to evidence, the length of time provided by rules of procedure prior to particular proceedings, and prejudice to the defence.
- (d) The accused has a right to facilities which assist or may assist the accused in the preparation of his or her defence, including the right to communicate with defence counsel and the right to materials necessary to the preparation of a defence.
- (e) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality.
  - 1. The right to confer privately with one's lawyer and exchange confidential information or instructions is a fundamental part of the preparation of a defence. Adequate facilities shall be provided that preserve the confidentiality of communications with counsel.
  - 2. States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.
  - 3. The accused or the accused's defence counsel has a right to all relevant information held by the prosecution that could help the accused exonerate him or herself.
  - 4. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
  - 5. The accused has a right to consult legal materials reasonably necessary for the preparation of his or her defence.
  - 6. Before judgement or sentence is rendered, the accused and his or her defence counsel shall have the right to know and challenge all the evidence which may be used to support the decision. All evidence submitted must be considered by the judicial body.
  - 7. Following a trial and before any appellate proceeding, the accused or the defence counsel has a right of access to (or to consult) the evidence which the judicial body considered in making a decision and the judicial body's reasoning in arriving at the judgement.

1. The right to an interpreter:

- (a) The accused has the right to the free assistance of an interpreter if he or she cannot understand or speak the language used before the judicial body.

- (b) The right to an interpreter does not extend to the right to express oneself in the language of one's choice if the accused or the defence witness is sufficiently proficient in the language of the judicial body.
- (c) The right to an interpreter applies at all stages of the proceedings, including pre-trial proceedings.
- (d) The right to an interpreter applies to written as well as oral proceedings. The right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence.
- (e) The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses.
- (f) The right to interpretation or translation cannot be qualified by a requirement that the accused pay for the costs of an interpreter or translator. Even if the accused is convicted, he or she cannot be required to pay for the costs of interpretation or translation.

1. Right to trial without undue delay:

- (a) Every person charged with a criminal offence has the right to a trial without undue delay.
- (b) The right to a trial without undue delay means the right to a trial which produces a final judgement and, if appropriate a sentence without undue delay.
- (c) Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.

1. Rights during a trial:

## Page

- (a) In criminal proceedings, the principle of equality of arms imposes procedural equality between the accused and the public prosecutor.
  - 1. The prosecution and defence shall be allowed equal time to present evidence.
  - 2. Prosecution and defence witnesses shall be given equal treatment in all procedural matters.
- (a) The accused is entitled to a hearing in which his or her individual culpability is determined. Group trials in which many persons are involved may violate the person's right to a fair hearing.
- (b) In criminal proceedings, the accused has the right to be tried in his or her presence.
  - 1. The accused has the right to appear in person before the judicial body.
  - 2. The accused may not be tried in absentia. If an accused is tried in absentia, the accused shall have the right to petition for a reopening of the proceedings upon a showing that inadequate notice was given, that the notice was not personally served on the accused, or that his or her failure to appear was for exigent reasons beyond his or her control. If the petition is granted, the accused is entitled to a fresh determination of the merits of the charge.
  - 3. The accused may voluntarily waive the right to appear at a hearing, but such a waiver shall be established in an unequivocal manner and preferably in writing.
- (a) The accused has the right not to be compelled to testify against him or herself or to confess guilt.
  - 1. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion.
  - 2. Silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent.
- (a) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
  - 1. The presumption of innocence places the burden of proof during trial in any criminal case on the prosecution.
  - 2. Public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect.
  - 3. Legal presumptions of fact or law are permissible in a criminal case only if they are rebuttable, allowing a defendant to prove his or her innocence.
- (a) The accused has a right to examine, or have examined, witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.
  - 1. The prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence.
  - 2. The accused's right to examine witnesses may be limited to those witnesses whose testimony is relevant and likely to assist in ascertaining the truth.
  - 3. The accused has the right to be present during the testimony of a witness. This right may be limited only in exceptional circumstances such as when a witness reasonably fears reprisal by the defendant, when the accused engages in a course of conduct seriously disruptive of the proceedings, or when the accused repeatedly fails to appear for trivial reasons and after having been duly notified.



4. If the defendant is excluded or if the presence of the defendant cannot be ensured, the defendant's counsel shall always have the right to be present to preserve the defendant's right to examine the witness.
  5. If national law does not permit the accused to examine witnesses during pre-trial investigations, the defendant shall have the opportunity, personally or through defence counsel, to cross-examine the witness at trial. However, the right of a defendant to cross-examine witnesses personally may be limited in respect of victims of sexual violence and child witnesses, taking into consideration the defendant's right to a fair trial.
  6. The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in the interests of justice.
- (a) Evidence obtained by illegal means constituting a serious violation of internationally protected human rights shall not be used as evidence against the accused or against any other person in any proceeding, except in the prosecution of the perpetrators of the violations.

#### 1. Right to benefit from a lighter sentence or administrative sanction

- (a) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit therefrom.
- (b) A lighter penalty created any time before an accused's sentence has been fully served should be applied to any offender serving a sentence under the previous penalty.
- (c) Administrative tribunals conducting disciplinary proceedings shall not impose a heavier penalty than the one that was applicable at the time when the offending conduct occurred. If, subsequent to the conduct, provision is made by law for the imposition of a lighter penalty, the person disciplined shall benefit thereby.

#### 1. Second trial for same offence prohibited

No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### 2. Sentencing and punishment

- (a) Punishments constituting a deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.
- (b) In countries that have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.
- (c) Sentence of death shall not be imposed or carried out on expectant mothers and mothers of infants and young children.
- (d) States that maintain the death penalty are urged to establish a moratorium on executions, and to reflect on the possibility of abolishing capital punishment.
- (e) States shall provide special treatment to expectant mothers and to mothers of infants and young children who have been found guilty of infringing the penal law and shall in particular:
1. ensure that a non-custodial sentence will always be first considered when sentencing such mothers;

## Page

2. establish and promote measures alternative to institutional confinement for the treatment of such mothers;
3. establish special alternative institutions for holding such mothers;
4. ensure that a mother shall not be imprisoned with her child;
5. the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

10. Appeal

- (a) Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal.
  1. The right to appeal shall provide a genuine and timely review of the case, including the facts and the law. If exculpatory evidence is discovered after a person is tried and convicted, the right to appeal or some other post-conviction procedure shall permit the possibility of correcting the verdict if the new evidence would have been likely to change the verdict, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused.
  2. A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal.
- (a) Anyone sentenced to death shall have the right to appeal to a judicial body of higher jurisdiction, and States should take steps to ensure that such appeals become mandatory.
- (b) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law.
- (c) Every person convicted of a crime has a right to seek pardon or commutation of sentence. Clemency, commutation of sentence, amnesty or pardon may be granted in all cases of capital punishment.

**O. CHILDREN AND THE RIGHT TO A FAIR TRIAL:**

- (a) In accordance with the African Charter on the Rights and Welfare of the Child, a child is any person under the age of 18. States must ensure that domestic legislation recognises any person under the age of 18 as a child.
- (b) Children are entitled to all the fair trial guarantees applicable to adults and to some additional special protection.
- (c) States must ensure that law enforcement and judicial officials are adequately trained to deal sensitively and professionally with children who interact with the criminal justice system whether as suspects, accused, complainants or witnesses.
- (d) States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.
- (e) No child shall be subjected to arbitrary arrest or detention.
- (f) Law enforcement officials must ensure that all contacts with children are conducted in a manner that respects their legal status, avoids harm and promotes the well-being of the child.
- (g) When a child suspected of having infringed the penal law is arrested or apprehended, his or her parent, guardians or family relatives should be notified immediately.

- (h) The child's right to privacy shall be respected at all times in order to avoid harm being caused to him or her by undue publicity and no information that could identify a child suspected or accused of having committed a criminal offence shall be published.
- (i) States shall consider, wherever appropriate, with the consent of the child and his or parents or guardians, dealing with a child offender without resorting to a formal trial, provided the rights of the child and legal safeguards are fully respected. Alternatives to criminal prosecution, with proper safeguards for the protection of the well-being of the child, may include:
  - 1. The use of community, customary or traditional mediation;
  - 2. Issuing of warnings, cautions and admonitions accompanied by measures to help the child at home with education and with problems and difficulties.
  - 3. Arranging a conference between the child, the victim and members of the community;
  - 4. Making use of community programmes such as temporary supervision and guidance, restitution and compensation to victims.
- (a) Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Any child who has been arrested for having committed a crime shall be released into the care of his or her parents, legal guardians or family relatives unless there are exceptional reasons for his or her detention. The competent authorities shall ensure that children are not held in detention for any period beyond 48 hours.
- (b) Children who are detained pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- (c) Every child arrested or detained for having committed a criminal offence shall have the following guarantees:
  - 1. to be treated in a manner consistent with the promotion of the child's dignity and worth;
  - 2. to have the assistance of his or her parents, a family relative or legal guardians from the moment of arrest;
  - 3. to be provided by the State with legal assistance from the moment of arrest;
  - 4. to be informed promptly and directly, in a language he or she understands, of the reasons for his or her arrest and of any charges against his or her, and if appropriate, through his or her parents, other family relative, legal guardians or legal representative;
  - 5. to be informed of his or her rights in a language he or she understands;
  - 6. not to be questioned without the presence of his or her parents, a family relative or legal guardians, and a legal representative;
  - 7. not to be subjected to torture or any other cruel, inhuman or degrading treatment or punishment or any duress or undue pressure;
  - 8. not to be detained in a cell or with adults detainees.
- (a) States shall establish separate or specialized procedures and institutions for dealing with cases in which children are accused of or found responsible for having committed criminal offences. The establishment of such procedures and institutions shall be based on respect for the rights of the child, shall take into account the vulnerability of children and shall promote the child's rehabilitation.
- (b) Every child accused of having committed a criminal offence shall have the following additional guarantees:
  - 1. to be presumed innocent until proven guilty according to the law;
  - 2. to be informed promptly and directly, and in a language that he or she understands, of the charges, and if appropriate, through his or her parents or legal guardians;
  - 3. to be provided by the State with legal or other appropriate assistance in the preparation and presentation of his or her defence;

## Page

4. to have the case determined expeditiously by a competent, independent and impartial authority or judicial body established by law in a fair hearing;
  5. to have the assistance of a legal representative and, if appropriate and in the best interests of the child, his or her parents, a family relative or legal guardians, during the proceedings;
  6. not to be compelled to give testimony or confess guilt; to examine or have examine adverse witnesses and to obtain the participation of witnesses on his or her behalf under conditions of equality;
  7. if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
  8. to have the free assistance of an interpreter if he or she cannot understand or speak the language used;
  9. to have his or her privacy fully respected at all stages of the proceedings.
- (a) In disposing of a case involving a child who has been found to be in conflict with the law, the competent authority shall be guided by the following principles:
1. The action taken against the child shall always be in proportion not only to the circumstances and gravity of the offence but also the best interest of the child and the interests of society;
  2. Non-custodial options which emphasise the value of restorative justice should be given primary consideration and restrictions on the personal liberty of a child shall only be imposed after careful consideration and shall be limited to the possible minimum. Non-custodial measures could include:
    - a) Care, guidance and supervision orders;
    - ii) Probation;
    - iii) Financial penalties, compensation and restitution;
    - iv) Intermediate treatment and other treatment orders
    - v) Orders to participate in group counselling and similar activities;
    - vi) Orders concerning foster care, living communities or other educational settings
  1. A child shall not be sentenced to imprisonment unless the child is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
  2. Capital punishment shall not be imposed for any crime committed by children and children shall not be subjected to corporal punishment.
- (a) States shall ensure that child witnesses are able to give their best evidence with the minimum distress. Investigation and practices of judicial bodies should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. States are required, as appropriate, to adopt the following measures in regard to child witnesses:
1. Child witnesses shall not be questioned by the police or any investigating official without the presence of his or her parents, a family relative or legal guardians, or where the latter are not traceable in the presence of a social worker;
  2. Police and investigating officials shall conduct their questioning of child witnesses in a manner that avoids any harm and promotes the well-being of the child;
  3. Police and investigating officials shall ensure that child witnesses, especially those who are victims of sexual abuse, do not come into contact with or made to confront the alleged perpetrator of the crime;
  4. The child's right to privacy shall be respected at all times and no information that could identify a child witness shall be published;

5. Where necessary, a child witness shall be questioned by law enforcement officials through an intermediary;
6. A child witness should be permitted to testify before a judicial body through an intermediary, if necessary;
7. Where resources and facilities permit, video-recorded pre-trial interviews with child witnesses should be presented;
8. Screens should be set up around the witness box to shield the child witness from viewing the defendant;
9. The public gallery should be cleared, especially in sexual offence cases and cases involving intimidation, to enable evidence to be given in private;
10. Judicial officers, prosecutors and lawyers should wear ordinary dress during the testimony of a child witness;
11. Defendants should be prevented from personally cross-examination child witnesses;
12. The circumstances in which information about the previous sexual history of alleged child victims may be sought or presented as evidence in trials for sexual offences must be restricted.

**P. VICTIMS OF CRIME AND ABUSE OF POWER:**

- a) Victims should be treated with compassion and respect for their dignity. They are entitled to have access to the mechanisms of justice and to prompt redress, as provided for by national legislation and international law, for the harm that they have suffered.
- b) States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials.
- c) States shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment.
- d) Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- e) States are required to investigate and punish all complaints of violence against women, including domestic violence, whether those acts are perpetrated by the state, its officials or agents or by private persons. Fair and effective procedures and mechanisms must be established and be accessible to women who have been subjected to violence to enable them to file criminal complaints and to obtain other redress for the proper investigation of the violence suffered, to obtain restitution or reparation and to prevent further violence.
- f) Judicial officers, prosecutors and lawyers, as appropriate, should facilitate the needs of victims by:
  1. Informing them of their role and the scope, timing and progress of the proceedings and the final outcome of their cases;
  2. Allowing their views and concerns to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
  3. Providing them with proper assistance throughout the legal process;
  4. Taking measures to minimize inconvenience to them, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  5. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

## Page

- a) Informal mechanisms for the resolution of disputes, including mediation, arbitration and traditional or customary practices, should be utilized where appropriate to facilitate conciliation and redress for victims.
- b) Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses, the provision of services and the restoration of rights.
- c) States should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- d) Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws or international law, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.
- e) When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
  1. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
  2. The family, in particular dependants of persons who have died or become physically or mentally incapacitated.
- a) States are encouraged to establish, strengthen and expand national funds for compensation to victims.
- b) States must ensure that :
  1. Victims receive the necessary material, medical, psychological and social assistance through state, voluntary, non-governmental and community-based means.
  2. Victims are informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
  3. Police, justice, health, social service and other personnel concerned receive training to sensitize them to the needs of victims, and guidelines are adopted to ensure proper and prompt aid.

**Q. TRADITIONAL COURTS:**

- a) Traditional courts, where they exist, are required to respect international standards on the right to a fair trial.
- b) The following provisions shall apply, as a minimum, to all proceedings before traditional courts:
  1. equality of persons without any distinction whatsoever as regards race, colour, sex, gender, religion, creed, language, political or other opinion, national or social origin, means, disability, birth, status or other circumstances;
  2. respect for the inherent dignity of human persons, including the right not to be subject to torture, or other cruel, inhuman or degrading punishment or treatment;
  3. respect for the right to liberty and security of every person, in particular the right of every individual not to be subject to arbitrary arrest or detention;
  4. respect for the equality of women and men in all proceedings;
  5. respect for the inherent dignity of women, and their right not to be subjected to cruel, inhuman or degrading treatment or punishment;
  6. adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
  7. an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the traditional court;
  8. an entitlement to seek the assistance of and be represented by a representative of the party's choosing in all proceedings before the traditional court;
  9. an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the traditional court;

10. an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions;
  11. an entitlement to an appeal to a higher traditional court, administrative authority or a judicial tribunal;
  12. all hearings before traditional courts shall be held in public and its decisions shall be rendered in public, except where the interests of children require or where the proceedings concern matrimonial disputes or the guardianship of children;
- a) The independence of traditional courts shall be guaranteed by the laws of the country and respected by the government, its agencies and authorities:
    1. they shall be independent from the executive branch;
    - i 2. there shall not be any inappropriate or unwarranted interference with proceedings before traditional courts.
  - a) States shall ensure the impartiality of traditional courts. In particular, members of traditional courts shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter.
    1. The impartiality of a traditional court would be undermined when one of its members has:
      - 1.1 expressed an opinion which would influence the decision-making;
      - 1.2 some connection or involvement with the case or a party to the case;
      - 1.3 a pecuniary or other interest linked to the outcome of the case.
    2. Any party to proceedings before a traditional court shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness any of its members or the traditional court appears to be in doubt.
  - a) The procedures for complaints against and discipline of members of traditional courts shall be prescribed by law. Complaints against members of traditional courts shall be processed promptly and expeditiously, and with all the guarantees of a fair hearing, including the right to be represented by a legal representative of choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.

## **R. NON-DEGORABILITY CLAUSE:**

No circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial.

## **S. USE OF TERMS:**

For the purpose of these Principles and Guidelines:

- a) “*Arrest*” means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.
- b) “*Criminal charge*” is defined by the nature of the offence and the nature and degree of severity of the penalty incurred. An accusation may constitute a criminal charge although the offence is not classified as criminal under national law.
- c) “*Detained person*” or “*detainee*” means any individual deprived of personal liberty except as a result of conviction for an offence.
- d) “*Detention*” means the condition of a detained person.
- e) “*Imprisoned person*” or “*prisoner*” means any individual deprived of personal liberty as a result of conviction for an offence.
- f) “*Imprisonment*” means the condition of imprisoned persons.
- g) “*Suspect*” means a person who has been arrested but not arraigned or charged before a judicial body.

## Page

- h) “*Judicial body*” means a dispute resolution or adjudication mechanism established and regulated by law and includes courts and other tribunals.
- i) “*Judicial office*” means a position on a judicial body.
- j) “*Judicial officer*” means a person who sits in adjudication as part of a judicial body.
- k) “*Legal proceeding*” means any proceeding before a judicial body brought in regard to a criminal charge or for the determination of rights or obligations of any person, natural or legal.
- l) “*Traditional court*” means a body which, in a particular locality, is recognised as having the power to resolve disputes in accordance with local customs, cultural or ethnic values, religious norms or tradition.
- m) “*Habeas corpus*”, “*amparo*” is a legal procedure brought before a judicial body to compel the detaining authorities to provide accurate and detailed information regarding the whereabouts and conditions of detention of a person or to produce a detainee before the judicial body.
- n) “*Victim*” means persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws or that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress.



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# PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA

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