PENAL REFORM INTERNATIONAL

AFRICA'S RECOMMENDATIONS FOR PENAL REFORM

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Ahmed Othmani

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ABOUT PRI

Penal Reform International, founded in 1989, is an international non-governmental organisation promoting penal reform worldwide.

PRI has regional programmes in the Great Lakes, the Middle East and North Africa, Central and Eastern Europe, Central Asia, the South Caucasus and North America.

PRI has Consultative Status with the United Nations (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and Peoples' Rights.

PRI MANDATE

PRI seeks to achieve penal reform by promoting:

- The development and implementation of international human rights instruments in relation to law enforcement and prison conditions
- The reduction of the use of imprisonment throughout the world
- The elimination of unfair and unethical discrimination in all penal measures
- The abolition of the death penalty
- The use of constructive non-custodial sanctions which support the social reintegration of offenders whilst taking into account the interests of victims.

FOREWORD

The materials gathered by PRI in this volume reflect the concern that my colleagues in Africa – government officials, members of the legal community and civil society – have shown at the slow pace of penal reform in our region. The documents show that this concern is neither abstract nor academic. They focus on the difficulties faced by individuals in conflict with the law – men, women, children, the elderly, the mentally and physically sick – in accessing their fundamental human rights. They focus also on the plight of officials who administer the criminal justice system, often without sufficient support or training.

Although drafted in Africa, the fact that many of these documents are referenced in United Nations Economic and Social Council (ECOSOC) resolutions is a sign that Africa is not alone in experiencing problems in achieving dignity and justice for those who come into conflict with the law. Prison overcrowding has become a global scourge, and the low priority attached to alternative sentencing practices is international.

The existence of the declarations, guidelines and recommendations contained in this volume, however, is evidence that there is energy and imagination enough in Africa to turn the tide. I hope that the call in successive ECOSOC resolutions for technical and other essential assistance to be made available to those willing to change penal practices in their country and region will continue to meet with a positive response from the local, regional and international community.

I am confident that the African Commission (and specifically its Special Rapporteur on Prisons and Conditions of Detention in Africa) and ECOSOC will continue to refer to the material contained herein, in inviting states to conduct regular and serious self-examination as to their performance against national, regional and international obligations.

Angela Melo

Vice-President, African Commission on Human and Peoples' Rights
(and former Rapporteur on the Rights of Women in Africa)

INTRODUCTION

The original idea behind this book was to bring together the final documents resulting from four Pan-African conferences organised by Penal Reform International (PRI) between 1996 and 2004. The Declarations, plan of actions and recommendations aim at practical, cost-effective reforms which can reduce the unnecessary use of incarceration, implement international human rights standards and where needed, respond to the special needs of certain categories of prisoner. All have been endorsed by the African Commission on Human and Peoples' Rights (ACHPR) and noted in resolutions of the UN Economic and Social Council (ECOSOC).

Those documents are:

The Kampala Declaration on Prison Conditions in Africa, noted in ECOSOC resolution 1997/36 on International cooperation for the improvement of prison conditions.

The Kadoma Declaration on Community Service, noted in ECOSOC resolution 1998/23 on International cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing.

The Arusha Declaration on Good Prison Practice, noted in ECOSOC resolution 1999/27 on Penal reform.

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, noted in ECOSOC resolution 2007/24 on International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa.

It was never PRI's intention to produce an exhaustive collection of texts relating to penal reform in Africa, but as this compilation took shape, it became clear that several other documents would complement the existing content and produce an even more useful tool for advocates of penal reform. Therefore, in addition to the four aforementioned texts, it was agreed that several other Declarations and guidelines were particularly worthy of being included.

Those documents are:

The Kampala Declaration on Prison Health in Africa

The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa

The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)

The Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa

The latter two texts did not originate from PRI projects but their clear, practical recommendations and important contributions to penal reform have guided PRI in its work and go hand in hand with its own, similar efforts in this field.

These texts come from a variety of different sources (PRI, UN, APT, ACHPR, etc.) therefore there are differences in terms of the language, spelling and format used. We have not attempted to make them consistent in any way.

PRI hopes that the texts contained in this publication will inspire to practical action those working for penal reform in Africa and indeed, beyond.

PRI wishes to thank all those who contributed to the development of these texts and those who made comments and suggestions for this book.

KAMPALA DECLARATION ON PRISON CONDITIONS IN AFRICA

Kampala Conference

Held from 19-21 September 1996 in Kampala, Uganda

Organisers:

- Penal Reform International (PRI)
- African Commission on Human and Peoples' Rights (ACHPR)
- Uganda Prison Services
- International Committee of the Red Cross (ICRC)
- Foundation for Human Rights Initiative (FHRI)
- Observatoire International des Prisons (OIP)

Acknowledgements:

- Uganda Prison Services
- International Committee of the Red Cross (ICRC)
- Norwegian Agency for Development Cooperation (NORAD)
- Danish Ministry for Foreign Affairs (DANIDA)
- Swedish International Development Agency (SIDA)
- The Ford Foundation
- Swiss Federal Department of Foreign Affairs
- European Union (EU)
- Agence de la Francophonie

Between 19-21 September 1996, 133 delegates from 47 countries, including 40 African countries, met in Kampala, Uganda. The President of the African Commission on Human and Peoples' Rights, Ministers of State, Prison Commissioners, Judges and international, regional and national non-governmental organisations (NGOs) concerned with prison conditions all worked together to find common solutions to the problems facing African prisons. The three days of intensive deliberations produced **the Kampala Declaration on Prison Conditions in Africa** which was adopted by consensus at the closure of the conference.

The importance of **the Kampala Declaration** was recognised by the UN and noted by ECOSOC in Resolution 1997/36, adopted at the 36th plenary meeting on 21 July, 1997.

KAMPALA DECLARATION ON PRISON CONDITIONS IN AFRICA

Prison conditions

Considering that in many countries in Africa the level of overcrowding in prisons is inhuman, that there is a lack of hygiene, insufficient or poor food, difficult access to medical care, a lack of physical activities or education, as well as an inability to maintain family ties,

Bearing in mind that any person who is denied freedom has a right to human dignity,

Bearing in mind also that the universal norms on human rights place an absolute prohibition on torture of any description,

Bearing in mind further that some groups of prisoners, including juveniles, women, the old and the mentally and physically ill, are especially vulnerable and require particular attention,

Bearing in mind that juveniles must be separated from adult prisoners and that they must be treated in a manner appropriate to their age,

Remembering the importance of proper treatment for female detainees and the need to recognize their special needs,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1 That the human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role in this respect,

2 That prisoners should retain all rights which are not expressly taken away by the fact of their detention,

3 That prisoners should have living conditions which are compatible with human dignity,

4 That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty,

5 That the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility,

6 That prisoners should be given the opportunity to maintain and develop links with their families and the outside world,

7 That prisoners should be given access to education and skills training in order to make it easier for them to reintegrate into society after their release,

8 That special attention should be paid to vulnerable prisoners and that non-governmental organizations should be supported in their work with these prisoners,

9 That all the norms of the United Nations and the African Charter on Human and Peoples' Rights[1] on the treatment of prisoners should be incorporated into national legislation in order to protect the human rights of prisoners,

10 That the Organization of African Unity and its member States should take steps to ensure that prisoners are detained in the minimum conditions of security necessary for public safety.

Remand prisoners

Considering that in most prisons in Africa a great proportion of prisoners are awaiting trial, sometimes for several years,

Considering also that for this reason the procedures and policies adopted by the police, the prosecuting authorities and the judiciary can significantly influence prison overcrowding,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1 That the police, the prosecuting authorities and the judiciary should be aware of the problems caused by prison overcrowding and should join the prison administration in seeking solutions to reduce this,

2 That judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court,

3 That there should be a system for regular review of the time detainees spend on remand.

Prison staff

Considering that any improvement in conditions for prisoners will be dependent on staff having pride in their work and a proper level of competence,

Bearing in mind that this will only happen if staff are properly trained,

1 United Nations, *Treaty Series,* vol. 1520, No. 26363.

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1 That there should be a proper career structure for prison staff,

2 That all prison personnel should be linked to one government ministry and that there should be a clear line of command between central prison administration and the staff in prisons,

3 That the State should provide sufficient material and financial resources for staff to carry out their work properly,

4 That in each country there should be an appropriate training programme for prison staff to which the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) should be invited to contribute,

5 That there should be a national or sub-regional institution to deliver this training programme,

6 That the penitentiary administration should be directly involved in the recruitment of prison staff.

Alternative sentencing

Noting that in an attempt to reduce prison overcrowding, some countries have been trying to find a solution through amnesties, pardons or by building new prisons,

Considering that overcrowding causes a variety of problems including difficulties for overworked staff,

Taking into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

Considering the growing interest in African countries in measures which replace custodial sentences, especially in the light of human rights principles,

Considering that community service and other non-custodial measures are innovative alternatives to imprisonment and that there are promising developments in Africa in this regard,

Considering also that compensation for damage done is an important element of non-custodial sentences,

Considering further that legislation can be introduced to ensure that community service and other non-custodial measures will be imposed as an alternative to imprisonment,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1 That petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree,

2 That, whenever possible petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system,

3 That the principle of civil reparation or financial recompense should be applied, taking into account the financial capability of the offender or of his or her parents,

4 That the work done by the offender should if possible recompense the victim,

5 That the community service and other non-custodial measures should if possible be preferred to imprisonment,

6 That there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used,

7 That the public should be educated about the objectives of these alternatives and how they work.

African Commission on Human and Peoples' Rights

Considering that the African Commission on Human and Peoples' Rights has the mandate to ensure the promotion and the protection of human and peoples' rights in Africa,

Considering that the Commission has shown on many occasions its special concern on the subject of poor prison conditions in Africa and that it has adopted special resolutions and decisions on this question previously,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend that the African Commission on Human and Peoples' Rights:

1 Should continue to attach priority to the improvement of prison conditions throughout Africa,

2 Should nominate a Special Rapporteur on Prisons in Africa as soon as possible,

3 Should make the Member States aware of the recommendations contained in this **Declaration** and publicize United Nations and African norms and standards on imprisonment,

4 Should cooperate with non-governmental organizations and other qualified institutions in order to ensure that the recommendations of this Declaration are implemented in all the Member States.

Kampala, 19-21 September, 1996

ECOSOC RESOLUTION 1997/36

International cooperation for the improvement of prison conditions

The Economic and Social Council,

Gravely alarmed by the serious problem confronting many Member States as a result of prison overcrowding,

Convinced that conditions in overcrowded prisons may affect the human rights of prisoners,

Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,[2] adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977,

Recalling General Assembly resolution 45/111 of 14 December 1990, adopted on the recommendation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[3] in which the Assembly affirmed the Basic Principles for the Treatment of Prisoners, annexed to that resolution,

Recognizing that prison overcrowding requires the implementation of effective policies directed towards the rehabilitation of prisoners and their social reintegration, as well as the application of the Standard Minimum Rules for the Treatment of Offenders and the Basic Principles on the Treatment of Prisoners,

Mindful of the fact that the physical and social conditions associated with prison overcrowding may result in outbreaks of violence in prisons, a development that could pose a grave threat to law and order,

Recalling the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),[4]

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2 First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. E.56.IV.4).

3 Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. F.91.IV.2) chapter I, section A.

4 General Assembly resolution 45/119.

Recalling the resolutions on the conditions of prisoners adopted by United Nations congresses on the prevention of crime and the treatment of offenders, in particular resolution 16 on reduction of the prison population, alternatives to imprisonment and social integration of offenders and resolution 17 on the human rights of prisoners, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[5]

Noting the resolution adopted at the seminar entitled "Criminal justice: the challenge of prison overcrowding", organized by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, with the support of the European Commission, and held at San Jose', Costa Rica, from 3 to 7 February 1997, in which it was recommended, inter alia, that the number of prisoners should not exceed the number that could be held in decent conditions,

Noting **the Kampala Declaration on Prison Conditions in Africa**

Also noting the nomination of a special rapporteur on prisons in Africa by the African Commission on Human and Peoples' Rights, in accordance with recommendations contained in **the Kampala Declaration,**

Mindful that many Member States lack the necessary resources to resolve the problem of prison overcrowding,

1 Requests the Secretary-General to assist countries, at their request, and within existing resources or, where possible, funded by extrabudgetary resources if available, countries in the improvement of their prison conditions in the form of advisory services, needs assessment, capacity-building and training;

2 Invites other entities of the United Nations system, including the United Nations Development Programme and the United Nations Crime Prevention and Criminal Justice Programme network, as well as intergovernmental organizations, to assist the Secretary-General in implementing the request contained in paragraph 1 above;

3 Urges Member States, if they have not yet done so, to introduce appropriate alternatives to imprisonment in their criminal justice systems;[6]

5 Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

6 See the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110) and Human Rights Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention (United Nations publication, Sales No. E.94.XIV.6).

4 Recommends that Member States, if they have not yet done so, adopt appropriate effective measures to reduce pre-trial detention;

5 Invites international and regional financial institutions such as the World Bank and the International Monetary Fund to incorporate in their technical assistance programmes measures to reduce prison overcrowding, including the construction of adequate infrastructure and the development of alternatives to imprisonment in their criminal justice systems;

6 Requests the Commission on Crime Prevention and Criminal Justice to discuss the issue of prison overcrowding in the context of technical cooperation at its eighth session, with a view to achieving greater international cooperation in that area;

7 Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its eighth session on the implementation of the present resolution.

36th plenary meeting
21 July 1997

KADOMA DECLARATION ON COMMUNITY SERVICE

Kadoma Conference

Held from 24-28 November 1997 in Kadoma, Zimbabwe

Organisers:
- Penal Reform International (PRI)
- Zimbabwe National Committee on Community Service

Acknowledgements:
- European Union (EU)
- The British Council
- Department for International Development, UK (DfID)
- Norwegian Agency for Development Cooperation (NORAD)
- Ministry of Justice, Legal and Parliamentary Affairs, Zimbabwe
- UN International Centre on Crime Prevention (UNICCP)
- African Commission on Human and Peoples' Rights (ACHPR)

The conference involved participants from 23 countries of which 15 were in Africa, including countries where community service was already established and countries which were actively preparing to introduce community service. Participants also attended from Trinidad and Tobago, Brazil, India, France, Canada, the UK and Norway. Representatives from the African Commission on Human and Peoples' Rights, Amnesty International, the International Committee of the Red Cross, Prison Fellowship and International Prison Watch also participated.

The aim of the conference was to draw together the experience and expertise which has been developed in introducing community service in a range of countries in Africa, particularly in Zimbabwe, and to develop further a model for community service which may be used to reduce the use of imprisonment in other African countries and across the world. The delegates at the conference agreed **the Kadoma Declaration on Communuity Service** and **Plan of Action.**

The importance of **the Kadoma Declaration** was recognised by the UN and noted in ECOSOC Resolution 1998/23, adopted at the 44th plenary meeting on 28 July, 1998.

KADOMA DECLARATION ON COMMUNITY SERVICE

Recalling **the Kampala Declaration on Prison Conditions in Africa,** adopted at the International Seminar on prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

Noting the growing interest in many countries in measures that replace custodial sentences and the promising developments across the world in this regard,

Noting with appreciation that the importance of the Kampala Declaration was recognized by the Economic and Social Council in its resolution 1997/36 of 21 July 1997 on international cooperation for the improvement of prison conditions, to which **the Kampala Declaration** was annexed,

Bearing in mind the 1990 United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[7] and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),[8]

Considering that, in many countries in Africa, the level of overcrowding is inhuman,

Recalling that the African Charter on Human and Peoples' Rights[9] reaffirms the dignity inherent in a human being and the prohibition of degrading punishment and treatment,

Welcoming the success of the Zimbabwe Community Service scheme and its adoption by the Government of Zimbabwe following a three-year trial period,

Noting with appreciation that other African countries, including French-speaking and Portuguese-speaking countries, are interested in introducing community service as a penal sanction in their criminal justice systems,

7 General Assembly resolution 45/110.
8 General Assembly resolution 40/33.
9 United Nations, Treaty Series, vol.1520, No. 26363.

The participants at the International Conference on Community Service Orders in Africa, held in Kadoma, Zimbabwe, from 24 to 28 November 1997, make the following Declaration:

1 The use of prison should be strictly limited as a measure of last resort. Prisons represent a waste of scarce resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.

2 The overcrowding in our prisons requires positive action through, inter alia, the introduction of community service.

3 Community service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred whenever possible to a sentence of imprisonment.

4 Community service should be effectively implemented and supervised and involve a programme of work where the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his or her own time.

5 Governments, donors and civil society organizations are invited to support research, pilot schemes and other initiatives in this important area.

6 Countries that already have community service should take into account lessons learned from elsewhere and review their own schemes accordingly.

7 There should be promotion of community support through sensitization campaigns targeting public opinion; and the development of statistical databases to measure the effectiveness of community service.

8 We encourage those countries that have not yet done so to develop non-custodial sentencing alternatives and to this end we commit ourselves to cooperating with, and coordinating our action through, other national committees on community service, and/or interested groups, in order to better promote the scheme.

9 We adopt the Plan of Action.

Kadoma, 24-28 November 1997

PLAN OF ACTION FOR THE KADOMA DECLARATION ON COMMUNITY SERVICE

Further to **the Kadoma Declaration on Community Service,** adopted by the participants at the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997,

The participants adopted the following Plan of Action:

1 Network

Establish a network of National Committees on Community Service and other interested groups to provide mutual support and encouragement through:

- The provision of resource persons to assist at seminars in the subregion and elsewhere;
- The sharing of documentation (legislation, guidelines, administrative forms) and ideas;
- Coordination and support of new projects;
- Cooperation and assistance in administering the scheme;
- Assistance in staff training;
- Exchange visits.

2 Community service directory

Compile a community service directory. To this end, a home page will be established on the Internet informing interested persons of developments in this area; and a book will be produced that includes:

- The contact points and addresses of all National Committees on Community Service and those contacts engaged in community service schemes;
- List of experts and resource persons;
- Contacts in interested countries; interested groups and organizations around the world;
- Donor contacts and government contacts.

The book will be distributed in different languages, including in French and English.

3 Newsletter

Issue a newsletter:

- To be produced by each National Committee on Community Service at regular intervals and circulated to the network;
- To include: initiatives undertaken, problems encountered, solutions found, reports on workshops, calendar of events, requests for support (for example, resource persons), statistics and other information;
- To be disseminated through the Internet or the mail (or both).

4 Research and data-gathering

Set up mechanisms for research and data-gathering:

- Research findings and data gathered to be shared through the Newsletter or via the Internet;
- Research projects identified (for example, on cost-benefit analyses) and funding application supported by the network;
- Joint research projects on the benefits, problems and effectiveness of community service where the scheme is applied – undertaken regionally and internationally.

Kadoma, 24-28 November 1997

ECOSOC RESOLUTION1998/23

International cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing

The Economic and Social Council,

Deeply concerned by the serious problem confronting many Member States as a result of prison overcrowding,

Convinced that conditions in overcrowded prisons may affect the human rights of prisoners,

Mindful of the fact that the physical and social conditions associated with prison overcrowding may result in outbreaks of violence in prisons, a development that could pose a grave threat to law and order,

Recalling the United Nations Standard Minimum Rules for Non- custodial Measures (the Tokyo Rules)[10] and convinced of the necessity of their further implementation,

Recalling also the resolutions on the conditions of prisoners adopted by United Nations congresses on the prevention of crime and the treatment of offenders, in particular resolution 16, on the reduction of the prison population, alternatives to imprisonment, and social integration of offenders, and resolution 17, on the human rights of prisoners, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[11]

Noting that the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, adopted **the Kadoma Declaration on Community Service,**

Taking note of the recommendations of the seminar entitled Criminal justice: the challenge of prison overcrowding, held jointly by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders and the European Commission at San Jose, Costa Rica, from 3 to 7 February 1997,

10 General Assembly resolution 45/110.

11 The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales, No. E.86.IV.I), chapt. I, sect. E.

Mindful that many Member States lack the necessary resources to resolve the problem of prison overcrowding and conscious that the inadequate facilities and cell accommodations in prisons are a product of the difficult socio-economic conditions prevailing in developing countries and in countries with economies in transition,

Noting that, in an attempt to reduce prison overcrowding, some Member States have been trying to find a solution by granting amnesties or pardons or by building new prisons,

Recognizing the need for Member States to establish economic and technical cooperation for the purpose of improving prison conditions and allocating resources to that end,

Considering that prison overcrowding causes a variety of problems, including difficulties for overworked staff,

Taking into account the limited effectiveness of imprisonment, especially for prisoners serving short sentences, and the cost of imprisonment to society as a whole,

Considering the growing interest in many Member States in measures to replace custodial sentences, especially taking into account the principles of human rights,

Considering also that community service and other non- custodial measures are innovative alternatives to imprisonment and that there have been promising developments in this area,

Considering further that compensation for damage done is an important element of non-custodial sentences,

Considering that legislation can be introduced to ensure that community service and other non-custodial measures will be imposed as alternatives to imprisonment,

1 Urges Member States, if they have not yet done so, to consider introducing appropriate alternatives to imprisonment in their criminal justice systems;[12]

2 Recommends to Member States that have not yet done so to consider the adoption of effective measures to reduce pre-trial detention;

12 See the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) as contained in General Assembly resolution 45/110, annex; and Human Rights and Pre-trial Detention: Handbook of International Standards Relating to Pre-Trial Detention, Professional Training Series, No. 3 (United Nations publication, Sales No. E.94.XIV.6).

3 Recommends to Member States, subject to national law, the consideration of the following:

   a) Dealing with petty offences according to customary practice where such practice exists, provided that doing so meets human rights requirements and that those involved so agree;

   b) If possible, using amicable means of settlement to deal with petty offences and resolving those offences among the parties, for example by using mediation, acceptance of civil reparation, or agreement to compensation through part of the income of the offender or through the work done by the offender to recompense the victim;

   c) If possible, preferring community service and other non-custodial measures to imprisonment;

   d) Conducting a study on the feasibility of adapting successful models of non-custodial measures and applying them in States where they are not yet being applied;

   e) Educating the public about the objectives of the above-mentioned alternatives to imprisonment and about how those alternatives work;

4 Invites international and regional financial institutions such as the World Bank and the International Monetary Fund to incorporate in their technical assistance programmes measures to reduce prison overcrowding, including the establishment of adequate infrastructure and the development of alternatives to imprisonment in their criminal justice systems;

5 Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice not later than at its tenth session on the implementation of the present resolution.

44th plenary meeting
28 July 1998

ARUSHA DECLARATION ON GOOD PRISON PRACTICE

Arusha Conference (Workshop)

23-27 February 1999 in Arusha, Tanzania

Organisers:
- Penal Reform International (PRI)
- Conference of Eastern, Southern and Central African Heads of Correctional Services (CESCA)

Acknowledgements:
- Department for International Development, UK (DfID)
- Conference of Eastern, Southern and Central African Heads of Correctional Services (CESCA)
- Ministry of Home Affairs, Tanzania

On the occasion of the 4th meeting of the CESCA held in Arusha, Tanzania on 24-29 February, and in agreement with the CESCA organisers, PRI held a workshop on good prison practice for heads of the Correctional Services from that region (on 23 February.) Both PRI and CESCA meetings were hosted by the Tanzanian Ministry of Home Affairs. The workshop followed up the recommendations of the 1996 Conference on Prison Conditions in Africa, held in Kampala. It included presentations and discussions on improving prison conditions, upgrading prison management practice and training prison officials, involvement of NGOs in prisons, and dynamic security in prisons.

The workshop agreed a draft resolution for presentation to the 8th Session of the UN Commission on Crime Prevention and Criminal Justice, to be held in Vienna, 26 April – 6 May 1999, and **the Arusha Declaration on Good Prison Practice.**

The importance of **the Arusha Declaration** was recognised by the UN and noted in ECOSOC resolution 1999/27, adopted at the 43rd plenary meeting on 28 July 1999.

ARUSHA DECLARATION ON GOOD PRISON PRACTICE

Aware of the fact that the management of prisons is a social service and that it is important to keep the public informed about the work of prison services,

Aware also of the need to promote transparency and accountability in the management of prisons and of prisoners in Africa,

Recalling **the Kampala Declaration on Prison Conditions in Africa,**[13] which sets out an agenda for penal reform in Africa,

Taking note of **the Kadoma Declaration on Community Service,**[14] which recommends greater use of non-custodial measures for offences committed at the lower end of the criminal scale,

Taking note also of the provisions of the African Charter on Human and Peoples' Rights of 1981,[15] the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,[16] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[17] that safeguard the right to life, the right to a prompt trial and human dignity,

Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,[18] the Basic Principles for the Treatment of Prisoners,[19] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),[20] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[21] and the Code of Conduct for Law Enforcement Officials,[22]

13 Economic and Social Council resolution 1997/36.
14 Economic and Social Council resolution 1998/23.
15 Organization of African Unity document CAB/LEG/67/3/Rev.5.
16 General Assembly resolution 2200 A (XXI).
17 General Assembly resolution 39/46.
18 See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).
19 General Assembly resolution 45/111.
20 General Assembly resolution 40/33.
21 General Assembly resolution 43/173.
22 General Assembly resolution 34/169.

Bearing in mind also that prison officers who comply with national and international standards for the protection of prisoners deserve the respect and the cooperation of the prison administration where they serve and the community as a whole,

Noting that conditions in most African prisons fall short of these minimum national and international standards,

The participants in the Fourth Conference of the Central, Eastern and Southern African Heads of Correctional Services, meeting in Arusha from 23 to 27 February 1999, agree with the following principles:

a) To promote and implement good prison practice, in conformity with the international standards mentioned above, and to adjust domestic laws to those standards, if this has not yet been done;

b) To improve management practices in individual prisons and in the penitentiary system as a whole in order to increase transparency and efficiency within the prison service;

c) To enhance the professionalism of prison staff and to improve their working and living conditions;

d) To respect and protect the rights and dignity of prisoners as well as to ensure compliance with national and international standards;

e) To provide training programmes to prison staff that incorporate human rights standards in a way that is meaningful and relevant and to improve the skills base of prison officers and, for this purpose, to establish a training board of the Conference of the Central, Eastern and Southern African Heads of Correctional Services;

f) To establish a criminal justice mechanism comprising all the components of the criminal justice system that would coordinate activities and cooperate in the solution of common problems;

g) To invite civil society groups into the prisons to work in partnership with the prison services in order to improve the conditions of imprisonment and the working environment of prisons;

h) To call upon Governments and national and international organizations to give full support to this declaration.

Arusha, 23-27 February 1999

ECOSOC RESOLUTION 1999/27

Penal reform

The Economic and Social Council,

Recalling its resolution 1997/36 of 21 July 1997 on international cooperation for the improvement of prison conditions and **the Kampala Declaration on Prison Conditions in Africa,** annexed to that resolution,

Recalling also its resolution 1998/23 of 28 July 1998 on international cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing and **the Kadoma Declaration on Community Service,** contained in annex I to that resolution,

Bearing in mind the recommendations of the African Regional Preparatory Meeting for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Kampala from 7 to 9 December 1998, on topics III and IV,[23]

Bearing in mind also the relevant United Nations standards and norms in crime prevention and criminal justice, in particular the Standard Minimum Rules for the Treatment of Prisoners,[24] the Basic Principles on the Treatment of Prisoners[25] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)[26] and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),[27]

Taking note of **the Arusha Declaration on Good Prison Practice,**

1 Urges Member States that have not yet done so, to the extent needed:

a) To take specific action and to establish time-bound targets to address the serious problems confronting many Member States as a result of prison overcrowding, recognizing that the conditions in overcrowded prisons may affect the human rights of prisoners and that many States lack the necessary resources to alleviate prison overcrowding;

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23 See A/CONF.187/RPM.3/1, chap. II, paras. 22-35.

24 See First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4).

25 General Assembly resolution 45/111.

26 General Assembly resolution 40/33.

27 General Assembly resolution 45/110.

b) In accordance with **the Kampala Declaration on Prison Conditions**[28] **and the Kadoma Declaration on Community Service,**[29] to devise, where necessary, and further to promote measures to reduce the number of prisoners on remand and awaiting trial;

c) In this context, to make increased use of alternatives to imprisonment, such as pre-trial release, release on own recognizance, conditional release, restitution, community service or labour, the use of fines and payment by installments and the introduction of conditional and suspended sentences;

2 Recommends to Member States that they consider the following, subject to the provisions of their national law:

a) Conducting research on new approaches to penal and justice reform, including promoting alternatives to imprisonment, alternative forms of dispute resolution, new approaches to prison and traditional forms of justice, alternatives to custody, alternative ways of dealing with juveniles, restorative justice, mediation and the role of civil society in penal reform;

b) The possible use of new modes of accessible justice for minor offences, with a view to the following:

i) Reviewing existing trends in and issues concerning people's access to criminal justice systems;

ii) Examining models of pre-trial dispute resolution;

iii) Assessing the use of mechanisms for expediting justice;

3 Invites international and regional financial institutions such as the World Bank and the International Monetary Fund to incorporate in their technical assistance programmes measures to promote examination of these issues;

4 Invites the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Vienna from 10 to 17 April 2000, to consider these issues;

5 Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its tenth session on the implementation of the present resolution.

43rd plenary meeting
28 July 1999

28 Economic and Social Council resolution 1997/36.
29 Economic and Social Council resolution 1998/23.

KAMPALA DECLARATION ON PRISON HEALTH IN AFRICA

Kampala Conference (workshop)

Held from 12-13 December 1999 in Kampala, Uganda

Organisers:
- Penal Reform International (PRI)
- Uganda Prisons Service

Acknowledgements:
- Norwegian Agency for Development Cooperation (NORAD)

In December 1999 the Kampala workshop on Health in African Prisons gathered together about 80 participants from all over Africa and the world to share their experiences. Practitioners, Heads of Prison Services, researchers and NGOs analysed prison health practices and discussed new directions in this field. As a result, delegates elaborated and adopted **the Kampala Declaration on Prison Health in Africa,** as well as a series of recommendations for governments, NGOs and donors.

KAMPALA DECLARATION ON PRISON HEALTH IN AFRICA

Considering the poor records in the field of prison health in Africa,

Considering good health care management and practices that should be promoted and implemented,

The participants to the Kampala Workshop on Prison Health, 12-13 December 1999, recommended measures to be taken by Non-Governmental Organisations, Donors, Governments and Inter-Governmental Organisations to reform and improve prison health in Africa.

Inventory of prison health in Africa

- Conditions in African prisons are life threatening and a potential health hazard to the prison population and society at large;
- morbidity and mortality rates are high;
- health status is worse in prison than in the general community.

Structural problems

- Few resources are dedicated by the Governments to prisons for health and adequately trained personnel is lacking.
- Recruitment policy is inadequate and there are no incentives to attract doctors to work in prisons.
- Access to health care is difficult, drugs and equipment are lacking. Access to facilities in the communities is not easy where prison facilities are not adequate.
- Record keeping is inadequate.
- Confidentiality and privacy are lacking.
- The system lacks transparency.
- Poor attention is paid to prisoners' complaints.
- The community is not interested in the fate of prisoners.

General conditions of detention – Impact on health

- Excessive recourse to pre-trial detention entails overcrowding which facilitates the spread of disease inside and outside prisons. In many

countries, awaiting trial prisoners amounts to 70% or more of prison population.

- Living conditions are precarious: dilapidated infrastructure, lack of ventilation, of bedding, clothing and exercise.
- Proliferation of vectors such as mosquitoes goes uncontrolled.
- There are high incidences of drug abuse as well as violence in some places.
- The well being of prisoners is undermined by the lack of work and recreational activities as well as the lack of moral and spiritual support.
- Extra/special care is needed for vulnerable groups (children born in prison, drug addicts, juveniles, foreigners, elderly people, women, alcoholics). However, the penitentiary system is not adapted to their needs.

Specific health issues

- Sanitation and water facilities are poor.
- Food is insufficient in quality and quantity.
- There is high incidence/prevalence of infectious and contagious diseases such as TB and HIV/AIDS; facilities for the terminally ill are lacking and screening process is unsatisfactory.
- Prison population is poorly informed about health care, infectious and sexually transmitted diseases.
- There is hardly any prevention and treatment. Information on the right to health is lacking as well as health education for prisoners.
- Psychological and social support is inadequate and there is no specific approach to mental health.

RECOMMENDATIONS

All efforts possible should be made by NGOs, Governments and Donors to have the following recommendations implemented:

Governments should make sure that general good management practices are enforced

Norms and standards should be respected.
Governments should make sure that they fulfill obligations to international and regional standards pertaining to human rights, health and prison conditions. They should in particular implement World Health Organisation's directives and develop standards of health care – legislative and policy directives as well as a prisoner's manual on procedures and complaints.

Governments should commit themselves to less punitive criminal justice.
Imprisonment should remain the exception. Criminal justice systems should be improved to expedite awaiting trial prisoners. Legislative reform in line with international standards, notably in the field of non-custodial sentence, should be carried out and alternatives to imprisonment such as community service, diversion and mediation should be implemented. As many releases as possible should be ordered. Health should be considered when deciding upon an early release measure.

Equality of access to health care should be ensured.
The Ministry of Health should take over the responsibility of health in prison and prisons should be included in public health programmes. Adequate finance should be made available and budgeting for prison health care should be a separate line item. There should be transparency and accountability regarding health care. This should be achieved by having a state department responsible for health care and training of officials (including human rights training).

Prisons should be more open to the outside.
Prisons should be open to relevant external actors providing specific assistance as well as independent inspectors who should report to a high authority. Access to prisons by the public should be facilitated to enhance transparency. Open door visits could be organised on a regular basis to sensitise and educate the community about prison.

Production activities should be developed.
Governments should see to it that production activities are developed to increase prison administrations' and prisons self-sufficiency. Any labouring activities should benefit prisoners.

Sharing experiences and on-site training should be supported.
Regular exchanges should be facilitated between health professionals. Prison officials should be properly trained and progressive attitudes encouraged. Governments should participate fully in the Conference on Health to be convened by the Uganda Prisons Service.

Governments should make sure that some basic good practices are enforced at the level of each prison

- Primary health care should be a priority. Prisoners should be allowed to take responsibility for their health.
- Each prisoner must have a confidential clinical health record giving all essential details of the individuals health profile. It should record all incidences of illness and treatment. It should contain a fitness certificate on discharge.

- Health examinations and treatment should be conducted in privacy.
- Discipline regarding maintenance of hygiene and sanitation in institutional environment must be enforced.
- Professionally trained personnel, diagnostic facilities and drugs should be available in adequate quantities at all times.
- Health education and counselling should form an integral part of the treatment for all health care management.
- There should be a public health programme for staff and prisoners alike to prevent disease rather than cure it later. It should be a continuing process.
- Preventive health care programmes should focus on decongestion.
- A holistic approach should be adopted to include paramedics and social welfare.

NGOs/civil society groups should

- Assist in health awareness and education including AIDS and STDs.
- Develop networks within the NGOs working in this field to co-ordinate their work, exchange and build synergies.
- Engage constructively by including prisons in the planning of their activities whenever possible, by getting more involved in educating donors, by demonstrating ethical accountability and transparency.

Donors should

- Make sure that their assistance benefits the recipient/targeted persons.
- Encourage developmental programmes in the field of prison health in recipient countries.
- Support NGOs doing work in the area of prison health.
- Support prison administrations and justice systems for the improvement of health.

Kampala, 12-13 December 1999

THE OUAGADOUGOU DECLARATION ON ACCELERATING PRISON AND PENAL REFORM IN AFRICA

The Ouagadougou conference

Held from 18 – 20 September 2002 in Ouagadougou, Burkina Faso

Organisers
- Penal Reform International (PRI)
- Ministry of Justice, Burkina Faso
- Ministry of Promotion of Human Rights, Burkina Faso
- African Penitentiary Association (APA)

Acknowledgements
- African Commission of Human and Peoples' Rights (ACHPR)
- Swiss Agency for Development and Cooperation (SDC)
- Canadian International Development Agency (CIDA)
- Royal Embassies of Denmark in Burkina Faso and in South Africa
- Intergovernmental Agency of Francophone Countries (Agence intergouvernementale de la francophonie – AIF)
- Department for International Development, UK (DfID)
- The French government
- European Union (EU)

Between the 18th – 20th September 2002, 123 delegates from 38 countries, 33 of which were African, gathered together in Ouagadougou, Burkina Faso, for the Second Pan-African Conference on Penal and Prison Reform in Africa.

Under the high patronage of the President of Burkina Faso, the Chairman of the African Commission of Human and Peoples' Rights (ACHPR) and the Special Rapporteur on Prisons and Conditions of Detention in Africa, ministers of state, directors of prison administrations, judges and magistrates, representatives of national, regional and international non-governmental organisations worked on finding means to accelerate penal reform in Africa.

The Conference was a follow-up to the first *Pan-African Conference on Conditions of Detention in Africa,* held in Kampala, Uganda, in 1996. It was part of a continuous process of thinking and action on criminal justice in Africa

The immediate objective of the Conference was to assess the situation in prisons and penal systems in Africa six years after the Kampala Conference in order to draw up a new and consistent plan of action for lasting prison and penal reform on the continent.

The Conference produced **the Ouagadougou Declaration on Accelerating Penal and Prison Reform in Africa.** The Declaration, prepared by a working group on the basis of the Conference recommendations was adopted by acclamation by the Conference participants.

The Conference also produced **the Ouagadougou Plan of Action.** The aim of the Plan of Action is to provide practical guidance based on good practices in the region to facilitate the effective implementation of the Declaration's recommendations.

THE OUAGADOUGOU DECLARATION ON ACCELERATING PRISONS AND PENAL REFORM IN AFRICA

Recognising that there has been progress in raising general prison standards in Africa as recommended by **the Kampala Declaration on Prison Conditions (1996)**

Recognising also the specific standards on alternatives to imprisonment contained in **the Kadoma Declaration on Community Service Orders in Africa (1997);** and on good prison administration set out in **the Arusha Declaration on Good Prison Practice (1999)**

Noting the recognition given to these African standards by the United Nations as complementary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules')

Mindful of the key role played by Africans in formulating an agenda for penal reform through the 1999 Egham Conference on 'A New Approach for Penal Reform in a New Century'

Noting with satisfaction the important practical steps that have been taken to implement these standards at an African level through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention

Commending the practical measures that have been taken by prison authorities in African countries to apply these standards in their national jurisdictions

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources

Welcoming the growing partnerships between Governments, non governmental organizations and civil society in the process of implementing these standards

Emphasising the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment

The participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18-20 September 2002, recommend:

1 Reducing the prison population
Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy. It should be based on accurate and widely publicized information on the numbers and kinds of people in prison and on the social and financial impact of imprisonment. Reduction strategies should be ongoing and target both sentenced and unsentenced prisoners

2 Making African prisons more self-sufficient
Further recognition should be given to the reality that resources for imprisonment are severely limited and that therefore African prisons have to be as self sufficient as possible. Governments should recognize, however, that they are ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.

3 Promoting the reintegration of offenders into society
Greater effort should be made to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime-free life in the future. This should include rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.

4 Applying the rule of law to prison administration
There should be a comprehensive law governing prisons and the implementation of punishment. Such law should be clear and unambiguous about the rights and duties of prisoners and prison officials. Officials should be trained to follow proper administrative procedures and to apply this law fairly. Administrative decisions that impact on the rights of prisoners should be subject to review by an independent and impartial judicial body.

5 Encouraging best practice
Further exchange of examples of best penal practice is to be encouraged at national, regional and international levels. This can be enhanced by the establishment of an all-African association of those involved in penal matters. The rich experience available across the continent can best be utilized if proven and effective programmes are progressively implemented in more countries. The Plan of Action to be developed from the proceedings of the Ouagadougou Conference will serve to further such exchange.

6 Promoting an African Charter on Prisoners' Rights

Action should be taken to promote the draft African Charter on Prisoners' Rights as an instrument that is appropriate to the needs of developing countries of the continent and to refer it to the African Commission on Human and Peoples' Rights and the African Union.

7 Looking towards the United Nations Charter on the Basic Rights of Prisoners

The international criminal justice community should look towards developing a United Nations Charter of Basic Rights for Prisoners with a view to strengthening the rule of law in the treatment of offenders. African experience and concerns should be reflected in this Charter, which should be presented to the 11th United Nations Congress on the Prevention of Crime and Criminal Justice in Bangkok, Thailand, 2005.

Ouagadougou, 18-20 September 2002

PLAN OF ACTION FOR THE OUAGADOUGOU DECLARATION ON ACCELERATING PRISON AND PENAL REFORM IN AFRICA

The participants recommend the following measures as forming part of a plan of action to implement the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa.

The document is addressed to governments and criminal justice institutions as well as to non-governmental organisations and associations working in this field. It is meant to be a source of inspiration for concrete actions.

1 Reducing the prison population

Strategies for preventing people from coming into the prison system include:

- Use of alternatives to penal prosecution such as diversion in cases of minor offences with particular attention to young offenders and people with mental health or addiction problems.
- Recognition of restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system – including wider use of family group conferencing, victim offender mediation and sentencing circles.
- Use of traditional justice as a way of dealing with crime in line with constitutional guarantees and human rights standards.
- Improving referral mechanisms between the formal (State) justice system and the informal (non State) justice system.
- Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents.

Strategies for reducing the numbers of unsentenced prisoners include:

- Co-operation between the police, the prison services and the courts to ensure trials are speedily processed and reduce the delays of remand detention through: regular meetings of caseload management committees including all criminal justice agents at the district, regional and national levels; making of costs orders against lawyers for unnecessary adjournments; targeting cases of vulnerable groups.
- 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.

Strategies for reducing the numbers of sentenced prisoners include:
- Setting a target for reducing the prison population.
- Increased use of proven effective alternatives, such as community service and exploring other sanctions such as partially or fully suspended sentence, probation and correctional supervision.
- Imposition of sentences of imprisonment only for the most serious offences and when no other sentence is appropriate, i.e. as a last resort and for the shortest time possible.
- Consideration of prison capacity when determining decisions to imprison and the length and terms of imprisonment.
- Review and monitoring of sentencing practice to ensure consistency.
- Powers to courts to review decisions to imprison, with a view to substituting community disposals in place of prison.
- Early and conditional release schemes, furloughs and home leave – criteria for early release should include compassionate grounds based on health and age.

2 Making African prisons more self-sufficient
- Foster prison agriculture, workshops and other enterprises for the good of prisoners and staff.
- Develop appropriate technology to reduce costs (e.g.: use of biogas for cooking, more effective wood burning stoves).
- Promote transparent management of prisons.
- Encourage training courses and study visits for staff on best practices in prison management.
- Involvement of staff and prisoners in agricultural production and prison industries through the establishment of management committees.

3 Promoting the reintegration into society of alleged and convicted offenders
- Promote rehabilitation and development programmes during the period of imprisonment or non-custodial sentence schemes.

- Ensure that unsentenced prisoners have access to these programmes.
- Emphasise literacy and skills training linked to employment opportunities.
- Promote vocational training programmes certificated to national standards.
- Emphasise development of existing skills.
- Provide civic and social education.
- Provide social and psychological support with adequate professionals.
- Promote contact with the family and community by: encouraging civil society groups to visit the prison and work with offenders; improve the environment for visitors so that physical contact is permissible; provide facilities for conjugal visits; setting up a privilege system including day, week-end and holiday leave subject to satisfying appropriate criteria.
- Sensitize families and community in preparation for the reintegration of the person back into society and involve them in rehabilitation and development programmes.
- Develop half way houses and other pre-release schemes in partnership with civil society groups.
- Extend the use of open prisons in appropriate circumstances.

4 Applying the rule of law to prison administration

- Ensure that prisons are governed by prison rules that are publicised and made known to prisoners and staff.
- Review prison legislation in line with national constitutional guarantees and international human rights law.
- Encourage independent inspection mechanisms, including the national media and civil society groups.
- Ensure staff are trained in the application of the relevant laws and international principles and rules governing the management of prisons and the prisoners' rights.

5 Encouraging best practice

- Publicise **the Kampala Declaration on Prison Conditions in Africa 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002;** the reports of the Special Rapporteur on Prisons and Conditions of Detention in Africa; the reports and statements of the heads of Correctional Services Conference of Central, Eastern and Southern Africa (CESCA).

- Develop and promote models for replication throughout the continent, such as the Community Service scheme developed in Zimbabwe, the diversion scheme in Namibia and South Africa, the sector-wide approach in Uganda, the prison farm and paralegal models developed in Malawi or the use of biogas technique developed in Rwanda.
- Emphasise primary health care, hygiene education, nutrition and sanitation promotion in the prisons and link health care of prisoners with the Ministry of Health.
- Develop approaches to HIV/AIDS based on international standards, including sensitization and prevention campaigns for staff, prisoners and families, as well as provision of condoms inside the prisons. Include the issue of AIDS/HIV in prison in campaigns of sensitization for the community.
- Apply UN safeguards guaranteeing protection of the rights of those facing the death penalty where not yet abolished.
- Promote specific juvenile justice laws and systematic use of alternatives to imprisonment to deal with young offenders.
- Encourage the establishment of a pan-African penal reform network.

6 Promoting regional and international Charters on Prisoners' Rights

- Publicise the draft African Charter on Prisoners' Rights to be finalised and further adopted by the African Commission on Human and Peoples' Rights (ACHPR).
- Contribute to finalising and promoting the United Nations Charter on the Rights of Prisoners.

Ouagadougou, 18-20 September 2002

LILONGWE DECLARATION ON ACCESSING LEGAL AID IN THE CRIMINAL JUSTICE SYSTEM IN AFRICA

Lilongwe Conference

Conference on legal aid in criminal justice: the role of lawyers, non-lawyers, and other service providers in Africa

Held from 22-24 November 2004 in Lilongwe, Malawi

Organisers and partners:
- Penal Reform International (PRI)
- Malawi Ministry of Justice and Constitutional Affairs
- Projet d'Assistance Judiciaire aux Detenus (PAJUDE), Benin
- APA, Burkina Faso
- Legal Resources Centre, Ghana
- Legal Resources Foundation and Kenya Human Rights Commission, Kenya
- Legal Assistance Centre, Namibia
- Prisoners Rehabilitation and Welfare Association (PRAWA), Nigeria
- University of KwaZulu-Natal, South Africa
- PLACE, Sudan
- Envirocare and Legal and Human Rights Centre, Tanzania
- Foundation for Human Rights Initiative, Uganda (FHRI)
- Uganda Association of Women Lawyers (FIDA)
- Legal Aid Project, Uganda
- Legal Resources Foundation, Zambia
- Southern Africa Legal Aid Network (SALAN)
- International Corrections and Prisons Association (ICPA)

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- Canadian International Development Agency (CIDA)
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- European Commission (Malawi)
- Danish Institute for Human Rights
- Danish International Development Agency (DANIDA)
- Department for International Development, UK (DfID) through the Malawi Safety, Security and Access to Justice Programme (MaSSAJ)
- International Commission for Jurists (Sweden)

- Netherlands Institute for Southern Africa (NIZA)
- UNICEF

128 delegates from 26 countries (including 21 African countries) met from 22-24 November 2004, in Lilongwe, Malawi, to discuss legal aid services in the criminal justice systems in Africa. Ministers of state, judges, lawyers, prison commissioners, and academics, along with international, regional, and national non-governmental organisations attended the conference. Three days of deliberations produced **the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa** that was adopted by consensus at the closure of the conference, with the request that it be forwarded to national governments, the African Commission on Human and Peoples' Rights, the African Union Commission, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, and publicised to national and regional legal aid networks.

The importance of **the Lilongwe Declaration** was recognised by the UN and noted in ECOSOC resolution 2007/24, adopted at the 45th plenary meeting on 26 July 2007.

LILONGWE DECLARATION ON ACCESSING LEGAL AID IN THE CRIMINAL JUSTICE SYSTEM IN AFRICA

Preamble

Bearing in mind that access to justice depends on the enforcement of rights to due process, to a fair hearing, and to legal representation;

Recognising that the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights;

Further recognising that the vast majority of ordinary people in Africa, especially in post-conflict societies where there is no functioning criminal justice system, do not have access to legal aid or to the courts and that the principle of equal legal representation and access to the resources and protections of the criminal justice system simply does not exist as it applies to the vast majority of persons affected by the criminal justice system;

Noting that legal advice and assistance in police stations and prisons are absent;

Noting also that many thousands of suspects and prisoners are detained for lengthy periods of time in overcrowded police cells and in inhumane conditions in over-crowded prisons;

Further noting that prolonged incarceration of suspects and prisoners without providing access to legal aid or to the courts violates basic principles of international law and human rights, and that legal aid to suspects and prisoners has the potential to reduce the length of time suspects are held in police stations, congestion in the courts, and prison populations, thereby improving conditions of confinement and reducing the costs of criminal justice administration and incarceration;

Recalling the Resolution of the African Charter of Fundamental Rights of Prisoners adopted by the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held at Addis Ababa, Ethiopia in March, 2004 and its recommendations for its adoption by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005;

Mindful that the challenge of providing legal aid and assistance to ordinary people will require the participation of a variety of legal services providers and partnerships with a range of stakeholders and require the creation of innovative legal aid mechanisms;

Noting **the Kampala Declaration on Prison Conditions 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Abuja Declaration on Alternatives to Imprisonment 2002** and **the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002;** and mindful that similar measures are needed with respect to the provision of legal aid to prisoners;

Noting with satisfaction the resolutions passed by the African Commission on Human and Peoples' Rights (notably: the Resolution on the Right of Recourse and Fair Trial 1992, the Resolution on the Right to a Fair Trial and Legal Assistance in Africa 1999) and, in particular, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2001;

Commending the practical steps that have been taken to implement these standards through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention;

Commending also the Recommendation of the African Regional Preparatory Meeting held at Addis Ababa in March 2004 that the African Region should prepare and present an African Common Position to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005, and that the African Union Commission has agreed to prepare and present that Common Position to the Congress;

Welcoming the practical measures that have been taken by the governments and legal aid establishments in African countries to apply these standards in their national jurisdictions; while emphasizing that notwithstanding these measures, there are still considerable shortcomings in the provision of legal aid to ordinary people, which are aggravated by shortages of personnel and resources;

Noting with satisfaction the growing openness of governments to forging partnerships with nongovernmental organizations, civil society, and the international community in developing legal aid programs for ordinary people that will enable increasing numbers of people in Africa, especially in rural areas, to have access to justice;

Commending also the recommendations of the African Regional Preparatory Meeting for the Eleventh United Nations Conference for the introduction and strengthening of restorative justice in the criminal justice system;

The participants of the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, held in Lilongwe, Malawi, between 22 and 24 November 2004, hereby declare the importance of:

1 Recognising and supporting the right to legal aid in criminal justice

All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice. Legal aid should be defined as broadly as possible to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.

2 Sensitising all criminal justice stakeholders

Government officials, including police and prison administrators, judges, lawyers, and prosecutors, should be made aware of the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system. Since those in control of government criminal justice agencies control access to detainees and to prisoners, they should ensure that the right to legal aid is fully implemented.

Government officials are encouraged to allow legal aid to be provided at police stations, in pre-trial detention facilities, in courts, and in prisons. Governments should also sensitize criminal justice system administrators to the societal benefits of providing effective legal aid and the use of alternatives to imprisonment. These benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.

3 Providing legal aid at all stages of the criminal justice process

A legal aid program should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail

hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected.

Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited paralegal, or legal assistant. Governments should ensure that legal aid programs provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups, such as children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, refugees, internally displaced persons, and foreign nationals.

4 Recognising the right to redress for violations of human rights

Human rights are enforced when government officials know that they will be held accountable for violations of the law and of basic human rights. Persons who are abused or injured by law enforcement officials, or who are not afforded proper recognition of their human rights, should have access to the courts and legal representation to redress their injuries and grievances. Governments should provide legal aid to persons who seek compensation for injuries suffered as the result of misconduct by officials and employees of criminal justice systems. This does not exclude other stakeholders from providing legal aid in such cases.

5 Recognising the role of non-formal means of conflict resolution

Traditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. All stakeholders should recognise the significance of such diversionary measures to the administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms.

6 Diversifying legal aid delivery systems

Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a

variety of service delivery options that can be considered. These include government funded public defender offices, judicare programmes, justice centres, law clinics – as well as partnerships with civil society and faith-based organizations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need. Appropriate coordinating mechanisms should be established.

7 Diversifying legal aid service providers

It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognised that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, paralegals, and legal assistants. These paralegals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants.

8 Encouraging pro-bono provision of legal aid by lawyers

It is universally recognised that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably. By involving a broad spectrum of the private bar in the provision of legal aid, such services will be recognised as an important duty of the legal profession. The organized bar should provide substantial moral, professional and logistical support to those providing legal aid. Where a bar association, licensing agency, or government has the option of making pro-bono provision of legal aid mandatory, this step should be taken. In countries in which a mandatory pro-bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro-bono legal aid services.

9 Guaranteeing sustainability of legal aid

Legal aid services in many African countries are donor funded and may be terminated at any time. For this reason, there is need for sustainability.

Sustainability includes: funding, the provision of professional services, establishment of infrastructure, and the ability to satisfy the needs of the relevant community in the long term. Appropriate government, private sector and other funding, and community ownership arrangements should be established in order to ensure sustainability of legal aid in every country.

10 Encouraging legal literacy

Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system.

Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, women, and the urban and rural poor.

Lilongwe, 22-24 November, 2007

LILONGWE PLAN OF ACTION FOR ACCESSING LEGAL AID IN THE CRIMINAL JUSTICE SYSTEM IN AFRICA

The participants recommend the following measures as forming part of a Plan of Action to implement the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa.

The document is addressed to governments, criminal justice practitioners, criminologists, academics, development partners, as well as non-governmental organizations, community-based organizations, and faith-based groups active in this area. It is meant to be a source of inspiration for concrete actions.

Legal aid framework

Institution building

Governments should introduce measures to:

- Establish a legal aid institution that is independent of government justice departments eg: legal aid board/commission that is accountable to parliament.
- Diversify legal aid service providers, adopting an inclusive approach, and enter into agreements with the Law Society as well as with university law clinics, nongovernmental organizations (NGOs), community-based organizations (CBOs) and faith-based groups to provide legal aid services.
- Encourage lawyers to provide pro bono legal aid services as an ethical duty.
- Establish a legal aid fund to administer public defender schemes, to support university law clinics; and to sponsor clusters of NGOs/CBOs and others to provide legal aid services throughout the country, especially in the rural areas.
- Agree minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by:
  - developing standardized training programmes
  - monitoring and evaluating the work of paralegals and other service providers
  - requiring all paralegals operating in the criminal justice system to submit to a code of conduct to establishing effective referral mechanisms to lawyers for all these service providers.

Public awareness

Governments should introduce measures to:

- Incorporate human rights and 'Rule of Law' topics in national educational curricula in accordance with the requirements of the United Nations Decade of Human Rights Education.
- Develop a national media campaign focusing on legal literacy in consultation with civil society organizations and media groups.
- Sensitise the public and justice agencies on the broadened definition of legal aid and the role all service providers have to play (through TV, radio, the printed media, seminars and workshops).
- Institute one day a year as 'Legal Aid Day'

Legislation

Governments should:

- Enact legislation to promote the right of everyone to basic legal advice, assistance and education, especially for victims of crime and vulnerable groups.
- Enact legislation to establish an independent national legal aid institution accountable to Parliament and protected from executive interference.
- Enact legislation to ensure the provision of legal aid at all stages of the criminal justice process.
- Enact legislation to recognize the role of non-lawyers and paralegals and to clarify their duties.
- Enact legislation to recognize customary law and the role non State justice for a can play in appropriate cases (ie where cases are diverted from the formal criminal justice process)

Sustainability

Governments should introduce measures to:

- Diversify the funding-base of legal aid institutions that should be primarily funded by governments, to include endowment funds by donors, companies and communities.
- Identify fiscal mechanisms for channeling funds to the legal aid fund, such as:

  - recovering costs in civil legal aid cases where the legal aid litigant has been awarded costs in a matter and channeling such recovered costs into the legal aid fund
  - taxing any award made in civil legal aid cases and channeling the moneys paid into the legal aid fund
  - fixing a percentage of the State's criminal justice budget to be allocated to legal aid services.
- Identify incentives for lawyers to work in rural areas (eg tax exemptions/ reductions).
- Require all law students to participate in a legal aid clinic or other legal aid community service scheme as part of their professional or national service requirement.
- Request the Law Society to organize regular circuits of lawyers around the country to provide free legal advice and assistance.
- Promote partnerships with NGOs, CBOs, faith-based groups and, where appropriate, local councils.

Legal aid in action

In the police station

Governments should introduce measures to:

- Provide legal and/or paralegal services in police stations in consultation with the Police Service, the Law Society, university law clinics and NGOs. These services might include:
  - providing general advice and assistance at the police station to victims of crime as well as accused persons
  - visiting police cells or lock-ups (cachots)
  - monitoring custody time limits in the police station after which a person must be produced before the court
  - attending at police interview
  - screening juveniles for possible diversion programmes
  - contacting / tracing parents / guardians / sureties
  - assisting with bail from the police station.
- Require the police to co-operate with service providers and advertise these services and how to access them in each police station.

At court

Governments should introduce measures to:

- Draw up rosters for lawyers to attend court on fixed days in consultation with the Law Society and provide services free of charge.
- Encourage the judiciary to take a more pro-active role in ensuring the defendant is provided with legal aid and able to put his/her case where the person is unrepresented because of indigency.
- Promote the wider use of alternative dispute resolution and diversion of criminal cases and encourage the judiciary to consider such options as a first step in all matters.
- Encourage non-lawyers, paralegals and victim support agencies to provide basic advice and assistance and to conduct regular observations of trial proceedings.
- Conduct regular case reviews to clear case backlogs, petty cases and refer/divert appropriate cases for mediation; and convene regular meetings of all criminal justice agencies to find local solutions to local problems.

In prison

Governments should introduce measures to ensure that:

- Magistrates/judges screen the remand caseload on a regular basis to make sure that people are remanded lawfully, their cases are being expedited, and that they are held appropriately.
- Prison officers, judicial officers, lawyers, paralegals and non-lawyers conduct periodic census to determine who is in prison and whether they are there as a first rather than a last resort.
- Custody time limits are enacted.
- Paralegal services are established in prisons. Services should include:
  - legal education of prisoners so as to allow them to understand the law, process and apply this learning in their own case
  - assistance with bail and the identification of potential sureties
  - assistance with appeals
  - special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.
- Access to prisons for responsible NGOs, CBOs and faith-based groups is not subject to unnecessary bureaucratic obstacles.

In the village

Governments should introduce measures to:

- Encourage NGOs, CBOs and faith-based groups to train local leaders on the law and constitution and in particular the rights of women and children; and in mediation and other alternative dispute resolution (ADR) procedures.
- Establish referral mechanisms between the court and village hearings. Such mechanisms might include:
  - diversion from the court to the village for the offender to make an apology or engage in a victim-offender mediation;
  - referral from the court to the village to make restitution and/or offer compensation
  - appeals from the village to the court.
- Establish a Chief's Council, or similar body of traditional leaders, in order to provide greater consistency in traditional approaches to justice.
- Record traditional proceedings and provide village hearings ('courts') with the tools for documenting proceedings.
- Provide a voice for women in traditional proceedings.
- Include customary law in the training of lawyers.

In post-conflict societies

Governments should introduce measures to:

- Recruit judges, prosecutors, defence lawyers, police and prison officers in peacekeeping operations and programmes of national reconstruction.
- Include the services of national NGOs, CBOs and faith-based groups in the reestablishment of the criminal justice system especially where the need for speed is paramount.
- Consult with traditional, religious and community leaders and identify common values on which peace-keeping should be based.

Lilongwe, 22-24 November 2007

ECOSOC RESOLUTION 2007/24

International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa

The Economic and Social Council,

Recalling the Universal Declaration of Human Rights,[30] which enshrines the key principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence,

Recalling also the International Covenant on Civil and Political Rights,[31] in particular article 14, which states that everyone charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and to minimum guarantees, including to be tried without undue delay,

Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,[32] approved in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, according to which an untried prisoner shall be allowed to receive visits from his legal adviser,

Bearing in mind also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[33] principle 11 of which states that a detained person shall have the right to be assisted by counsel as prescribed by law,

Bearing in mind further the Basic Principles for the Treatment of Prisoners[34] and the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules),[35]

30 General Assembly resolution 217 A (III).
31 General Assembly resolution 2200 A (XXI).
32 First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).
33 General Assembly resolution 43/173.
34 General Assembly resolution 45/111.
35 General Assembly resolution 45/110.

Bearing in mind the Basic Principles on the Role of Lawyers,[36] in particular principle 1, which states that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings,

Recalling its resolution 1997/36 of 21 July 1997, on international cooperation for the improvement of prison conditions, in which it took note of **the Kampala Declaration on Prison Conditions in Africa,**[37]

Recalling also its resolution 1998/23 of 28 July 1998, on international cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing, in which it noted that the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, had adopted **the Kadoma Declaration on Community Service,**[38]

Recalling further its resolution 1999/27 of 28 July 1999, on penal reform, in which it took note of **the Arusha Declaration on Good Prison Practice,**[39]

Recalling its resolution 2004/25 of 21 July 2004, on the rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction, and its resolution 2005/21 of 22 July 2005, on strengthening the technical cooperation capacity of the United Nations Crime Prevention and Criminal Justice Programme in the area of the rule of law and criminal justice reform,

Bearing in mind the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,[40] especially paragraph 18 of the Declaration, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

Bearing in mind also its resolution 2006/21 of 27 July 2006, on implementation of the Programme of Action, 2006-2010, on strengthening the rule of law and the criminal justice systems in Africa, and its resolution 2006/22 of 27 July 2006, in which it welcomed the Programme of Action,

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36 *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3.

37 Economic and Social Council resolution 1997/36.

38 Economic and Social Council resolution 1998/23.

39 Economic and Social Council resolution 1999/27.

40 General Assembly resolution 60/177.

2006-2010, adopted by the Round Table for Africa, held in Abuja on 5 and 6 September 2005, in particular the actions on penal reform and alternative and restorative justice,

Having regard to the regional efforts in the promotion of basic rights of prisoners, as considered by the Pan-African Conference on Penal and Prison Reform in Africa, held in Ouagadougou from 18 to 20 September 2002, and the Latin American Conference on Penal Reform and Alternatives to Imprisonment, held in San José from 6 to 8 November 2002, and pursued by the African Union and the Organization of American States, as well as the Asian Conference on Prison Reform and Alternatives to Imprisonment, held in Dhaka from 12 to 14 December 2002,

Noting the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and Other Service Providers in Africa, held in Lilongwe from 22 to 24 November 2004,

Noting also **the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa,** and the Lilongwe Plan of Action for the implementation of the Declaration,[41]

Concerned at the proportion of suspects and pretrial detainees detained for long periods of time in many African countries without being charged or sentenced and without access to legal advice or assistance,

Noting the prolonged incarceration of suspects and pretrial detainees without their being provided with access to legal aid or to the courts, and concerned that it violates the basic principles of human rights,

Recognizing that providing legal aid to suspects and prisoners may reduce the length of time suspects are held at police stations and detention centres, in addition to reducing the prison population, prison overcrowding and congestion in the courts,

Mindful that many Member States lack the necessary resources and capacity to provide legal assistance for defendants and suspects in criminal cases,

Recognizing the impact of action by civil society organizations in improving access to legal aid in criminal justice and in respecting the rights of suspects and prisoners,

1 Notes the progress made by Member States and the recent efforts by some to provide legal assistance for defendants and suspects in criminal cases;

41 Official Records of the Economic and Social Council, 2007, Supplement No. 10 (E/2007/30), chap. I, sect. B, draft resolution VI, annexes I and II.

2 Encourages Member States implementing criminal justice reform to promote the participation of civil society organizations in that endeavour and to cooperate with them;

3 Commends the initiation by the United Nations Office on Drugs and Crime of work focused on providing long-term sustainable technical assistance in the area of criminal justice reform to Member States in post-conflict situations, in particular in Africa, in cooperation with the Department of Peacekeeping Operations of the Secretariat, and the increased synergy between the two entities;

4 Requests the United Nations Office on Drugs and Crime, subject to the availability of extra-budgetary resources, in cooperation with relevant partners, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of penal reform, including restorative justice, alternatives to imprisonment, the development of an integrated plan for the provision of legal assistance, including paralegals and similar alternative schemes to provide legal aid for persons in communities, including victims, defendants and suspects at all critical stages in criminal cases, and legislative reforms that guarantee legal representation in accordance with international standards and norms;

5 Also requests the United Nations Office on Drugs and Crime, subject to the availability of extra-budgetary resources and in cooperation with the African Institute for the Prevention of Crime and the Treatment of Offenders, to assist African States, upon request, in their efforts to apply **the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa;**[42]

6 Further requests the United Nations Office on Drugs and Crime, subject to the availability of extra-budgetary resources, to convene an open-ended intergovernmental meeting of experts, with interpretation, to study ways and means of strengthening access to legal aid in the criminal justice system, as well as the possibility of developing an instrument such as a declaration of basic principles or a set of guidelines for improving access to legal aid in criminal justice systems, taking into account the Lilongwe Declaration and other relevant materials;

7 Requests the Commission on Crime Prevention and Criminal Justice to include the issue of penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems, as a potential thematic topic for discussion by the Commission at one of its future sessions;

42 Official Records of the Economic and Social Council, 2007, Supplement No. 10 (E/2007/30), chap. I, sect. B, draft resolution VI, annexes I and II.

8 Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its eighteenth session on the implementation of the present resolution.

45th plenary meeting
26 July 2007

GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA (THE ROBBEN ISLAND GUIDELINES)

The Robben Island Workshop

Held 12-14 February 2002, Robben Island, South Africa

Organisers and partners:
- Association for the Prevention of Torture (APT)
- African Commission on Human and Peoples' Rights (ACHPR)

The Robben Island Guidelines were drafted during a joint workshop convened by the APT and the African Commission which took place between 12 and 14 February 2002 in Cape Town and on Robben Island. Overall, 26 participants attended coming from a variety of backgrounds including representatives from; the African Commission on Human and Peoples' Rights, African based NGOs, international NGOs, African police services, African sub-regional institutions, African and International experts.

The aim of the workshop was to draft a document containing concrete measures for the prohibition and prevention of torture and other forms of ill-treatment which could be implemented by African States and promoted by a variety of actors throughout Africa.

The Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa were formally adopted by a resolution of the African Commission during its 32nd ordinary session in October 2002 and approved by the Conference of Heads of State and Government of the African Union held in Maputo, Mozambique, in July 2003.

The adoption of **the Robben Island Guidelines** marked a historic step forward in the prevention of torture on the African continent.

GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA (THE ROBBEN ISLAND GUIDELINES)

Preamble

Recalling the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Deeply concerned about the continued prevalence of such acts;

Convinced of the urgency of addressing the problem in all its dimensions;

Recognising the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Recognising the importance of preventive measures in the furtherance of these aims;

Recognising the special needs of victims of such acts;

Recalling the provisions of:

Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;

Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further the international obligations of States under:

Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;

Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;

Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

Desiring the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The 'Robben Island Workshop on the Prevention of Torture', held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.

PART I: PROHIBITION OF TORTURE

A Ratification of Regional and International Instruments

1 States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;

b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;

c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;

d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

B Promote and Support Co-operation with International Mechanisms

2 States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.

3 States should co-operate with the United Nations Human Rights Treaties Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C Criminalisation of Torture

4 States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.

5 States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

6 National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.

7 Torture should be made an extraditable offence.

8 The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.

9 Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

10 Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

11 Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.

12 Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.

13 No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.

14 States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

D Non-Refoulement

15 States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E Combating Impunity

16 In order to combat impunity States should:

a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.

b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.

c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.

d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.

e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

F Complaints and Investigation Procedures

17 Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18 Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19 Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)

PART II: PREVENTION OF TORTURE

A Basic Procedural Safeguards for those deprived of their liberty

20 All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

a) The right that a relative or other appropriate third person is notified of the detention;

b) The right to an independent medical examination;

c) The right of access to a lawyer;

d) Notification of the above rights in a language, which the person deprived of their liberty understands;

B Safeguards during the Pre-trial process

States should:

21 Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

22 Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.

23 Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24 Prohibit the use of incommunicado detention.

25 Ensure that all detained persons are informed immediately of the reasons for their detention.

26 Ensure that all persons arrested are promptly informed of any charges against them.

27 Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.

28 Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.

29 Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as

evidence in any proceedings except against persons accused of torture as evidence that the statement was made.

30 Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.

31 Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.

32 Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C Conditions of Detention

States should:

33 Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.

34 Take steps to improve conditions in places of detention, which do not conform to international standards.

35 Take steps to ensure that pre-trial detainees are held separately from convicted persons.

36 Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.

37 Take steps to reduce over-crowding in places of detention by inter alia, encouraging the use of non-custodial sentences for minor crimes.

D Mechanisms of Oversight

States should:

38 Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.

39 Encourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.

40 Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.

41 Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.

42 Encourage and facilitate visits by NGOs to places of detention.

43 Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.

44 Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

E Training and empowerment

45 Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.

46 Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

F Civil Society Education and Empowerment

47 Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48 The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

PART III: RESPONDING TO THE NEEDS OF VICTIMS

49 Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50 The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:

a) Offered appropriate medical care;

b) Have access to appropriate social and medical rehabilitation;

c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

Robben Island, 12-14 February 2002

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

The ACHPR, in collaboration with the African Society of International and Comparative Law and Interights, held the Seminar on the Right to a Fair Trial in Africa, from 9-11 September 1999 in Dakar (Senegal). As a result of the seminar, the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa was adopted. The Declaration expressed the need for a coherent body of principles to further strengthen and supplement the provisions relating to fair trial in the African Charter on Human and Peoples' Rights and to reflect international standards.

For this purpose, the ACHPR established a Working Group on Fair Trial in 1999 which consisted of members of the ACHPR and representatives of non-governmental organisations. The Working Group produced the text of **the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa** which was adopted by the ACHPR at the 33rd ordinary session held from 15-29 May, 2003.

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

The African Commission on Human and Peoples' Rights (ACHPR);

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 11th ordinary session in March 1992, the resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at its 19th ordinary session in March 1996 and the resolution Urging States to Envisage a Moratorium on the Death Penalty adopted at its 26th ordinary session in November 1999;

Recalling also the resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26th 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

The essential elements of a fair hearing include:

a) equality of arms between the parties to a proceedings, 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 persons, 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.

3 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.

g) 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.

h) 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.

i) 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.

4 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.

k) No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their functions.

l) Judges or members of judicial bodies shall have security of tenure until a mandatory retirement age or the expiry of their term of office.

m) 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.

n) 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.

o) Promotion of judicial officials shall be based on objective factors, in particular ability, integrity and experience.

p) 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.

q) 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.

r) 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.

s) 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.

t) 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.

u) 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.

v) 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.

d) 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.

e) 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.

B 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.

c) 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.

d) 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.

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.

b) 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.

c) 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.

d) 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.

e) 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.

f) The office of prosecutors shall be strictly separated from judicial functions.

g) 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.

h) 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.

i) 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.

j) 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.

k) 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.

l) 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.

m) 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.

n) 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.

o) 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.

c) 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.

d) 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.

e) 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;
    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.

f) 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.

g) 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.

h) 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.

i) Para-legals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession.

j) Non-governmental organizations should be encouraged to establish legal assistance programmes and to train para-legals.

k) 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.

c) States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

d) 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.

e) 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.

f) Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

g) Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

h) Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

i) 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.

j) Lawyers shall always loyally respect the interests of their clients.

k) 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.

l) 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.

m) 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.

n) 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.

o) 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.

p) 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 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.

2 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.

3 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.

4 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.

5 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.

6 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.

c) 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.

d) 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.

2 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.

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.

3 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.

4 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.

5 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.

6 Rights during a trial:

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.

b) 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.

c) 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.

d) 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.

e) 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.

f) 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.

g) 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

h) 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 therefromby.

i) 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.

j) 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.

7 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.

8 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;

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.

9 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.

b) 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.

c) 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.

d) 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.

j) 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.

k) 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.

l) 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.

m) 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.

n) 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;

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.

o) 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:

i) 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.

p) 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.

g) 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.

h) 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.

i) 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.

j) 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.

k) 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.

l) States are encouraged to establish, strengthen and expand national funds for compensation to victims.

m) 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;

c) 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;

2 there shall not be any inappropriate or unwarranted interference with proceedings before traditional courts.

d) 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.

e) 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.

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.

Naimey, 15-29 May 2003

ADDITIONAL RESOURCES ON PENAL REFORM AND HUMAN RIGHTS IN AFRICA

PRI Publications:

Access to Justice in Sub-Saharan Africa, 2001
Making Standards Work, 2001
Index of Good Practices in Reducing Pre-trial Detention, 2005
Human Rights and Prisons Series, OHCHR/PRI, 2005
Access to Justice in Africa and Beyond, 2007
The PLC Manual, 2007
Juvenile Justice Manual, 2007
Handbook on Prisoner File Management, UNODC/PRI, 2008
Compendium of Comparative Prison Legislation, 2008

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Human Rights Protection in Africa. A Compilation of Texts, APT, 2006

Compendium of Key Human Rights Documents of the African Union, Third edition, PULP, 2007

Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment and Punishment in Africa. The Robben Island Guidelines, Second edition, ACHPR/OHCHR/APT, 2008

The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa. Practical Guide for Implementation, ACHPR/OHCHR/APT, 2008

PENAL REFORM INTERNATIONAL

Penal Reform International

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'Many countries have replaced the death penalty with the sentence of life imprisonment. In many countries that does not mean life in prison. It means time in prison, usually in regular prisons with other prisoners and moving to lower security prisons as the years go by. Release comes after a complex and I must say expensive process of risk assessment – psychiatric reports, probation reports, sometimes the views of the victim's family are taken into account – and when release comes the person is let out of prison but is still not free. The person comes out with an identity as a life-sentence prisoner. That lasts for the length of his or her life. It can mean reporting to the authorities, the possibility of being returned to prison, telling employers and the local police, always being known as someone who committed the worst crime.[1]

Baroness Vivien Stern, speech to the Second World Congress against the Death Penalty, Montreal, 6 October 2004.

Alternatives to the death penalty: the problems with life imprisonment

This briefing examines the use of life imprisonment worldwide, including the increasing trend of life imprisonment without the possibility of release, or life without parole (LWOP). Emerging trends indicate an increase in the number of offences carrying the sanction of life imprisonment, a greater prevalence of indeterminate sentencing, a reduction in the use of parole, and the lengthening of prison terms as a whole. The abolition of the death penalty has played a significant role in the increased use of life imprisonment sentences, and LWOP in particular. Conditions of detention and the treatment of prisoners serving life sentences are often far worse than those for the rest of the prison population and more likely to fall below international human rights standards.

Life imprisonment, particularly life without the possibility of release, is contributing to the overuse of imprisonment, a phenomenon underpinned by the belief that prisons represent the panacea to problems of crime and social control. Life-sentenced prisoners should be entitled to the same rights as other categories of prisoners and these should comply with the United Nations (UN) human rights standards including the Standard Minimum Rules for the Treatment of Prisoners. Their treatment and care in prison should be determined by individual needs rather than the type of sentence they are serving. All prisoners should have the right to parole, and release from prison should be determined by the risk they present to society rather than politically driven factors.

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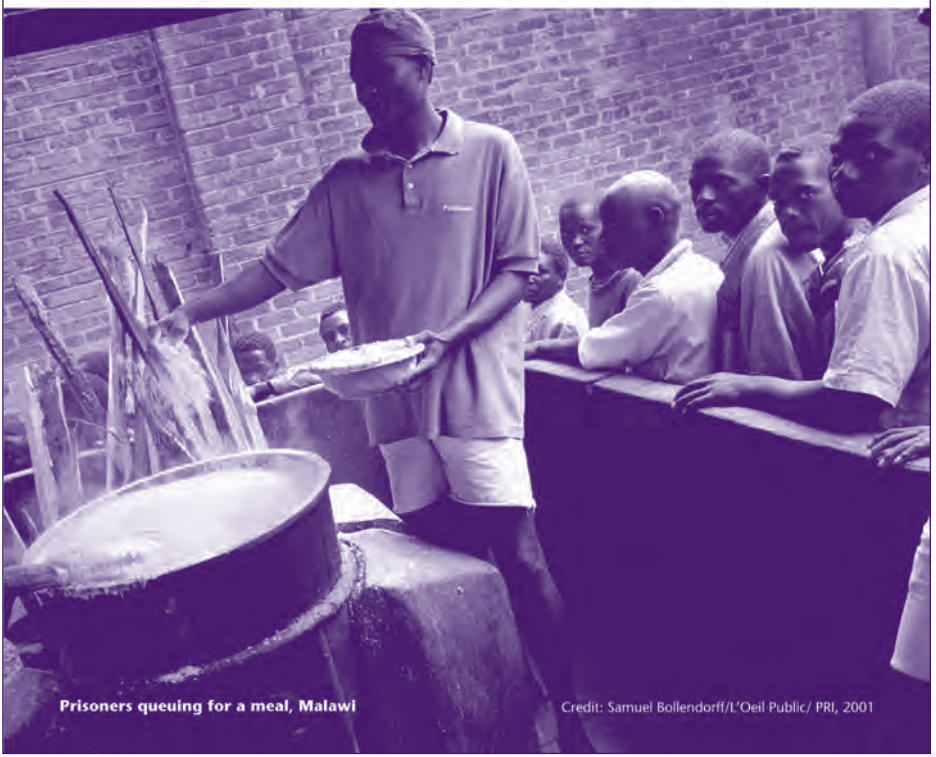
'Prisons can be breeding grounds for infection. Overcrowding, lengthy confinement within closed, poorly lit, badly heated and consequently poorly ventilated and often humid spaces are all conditions frequently associated with imprisonment and which contribute to the spread of disease and ill-health. Where these factors are combined with poor hygiene, inadequate nutrition and limited access to adequate health care, prisons can represent a major public health challenge.' (World Medical Association, 2000).

'Being in prison is a health hazard: the health status of prisoners is generally lower than the rest of the population.' (WHO Europe, 2003).

Health in prisons: realising the right to health



Prisoners queuing for a meal, Malawi

Credit: Samuel Bollendorff/L'Oeil Public/ PRI, 2001

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'It is not merely a question of women receiving equal treatment to men; in the prison system equality is everywhere conflated with uniformity; women are treated as if they are men.'

Her Majesty's Chief Inspector of Prisons, *Women in Prison: A Thematic Review*, UK, 1997, paragraph 3.46 (emphasis in original).

Women in prison: incarcerated in a man's world

Over half a million women and girls are held in penal institutions around the world, the largest populations being in the United States, the Russian Federation and Thailand.[1] Everywhere, women are a minority in national prison populations but their numbers are increasing in many countries. In the US, for example, the number of incarcerated women has increased by 404 per cent since 1985.[2] The imprisonment of low-level drug traffickers has been reported to be the largest factor contributing to this increase.[3]

The increase in women's imprisonment is fuelling the global trend towards the overuse of imprisonment and reflects the under-use of constructive alternative sanctions.

A woman in Katsina Central Prison, Nigeria, who is facing the death penalty for having an abortion. Under international human rights law, women have the right to decide on the number and spacing of their children