

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

Luanda Guidelines

Trainer Manual



AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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Foreword



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

The Luanda Guidelines promote the implementation of these obligations by State Parties to the African Charter in the specific context of arrest, police custody and pre-trial detention.

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

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

The Training Manual, which has been made available in both a 'trainer' and 'trainee' format, is designed to be used to assess current law enforcement training curriculum on the use of arrest and custody, and to be incorporated or adapted where necessary by State Parties to the African Charter. The approach taken to this Training Manual has its foundation in behavioural change, and emphasises the skills and knowledge required by law enforcement officials to make decisions and take action that respects human rights, the rule of law and the safety and security of all people.

The Manual was subject to a consultation process, where the views and experiences of States and their stakeholders were incorporated into the documents to ensure the relevance of this Manual to the challenges facing our respective law enforcement agencies in this visible area of practice.

I extend my sincere gratitude to the African Policing Civilian Oversight Forum and the Open Society Foundations for their support to the development of this Manual. I also extend my gratitude to the law enforcement agencies of the United Republic of

Tanzania and to the Policing and Human Rights Platform of Burkina Faso, Mali and Niger, for agreeing to test and improve this Training Manual in workshops during 2016.

The African Commission is committed to providing the technical assistance required by States to achieve a more rational and proportionate use of pre-trial detention. The publication of this Training Manual is an important step in that process and I encourage all States to ensure the comprehensive and ongoing training of law enforcement officials in a rights-based approach to arrest and detention.

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a smaller 'K' and a final flourish.

Honourable Med SK Kaggwa

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

Two-day workshop timetable

Day 1

09.00 – 10.00	Module 1: Introduction and Contextualisation
10.00 – 10.30	Tea break
10.30 – 11.30	Module 2: What are human rights? How do they apply to policing?
11.30 – 12.00	Module 3: The Detention Continuum
12.00 – 13.00	Module 4: Principles that underpin the Luanda Guidelines
13.00 – 14.00	Lunch
14.00 – 15.00	Module 4, Principle 1: The Rule of Law
15.00 – 15.30	Tea break
15.30 – 17.00	Module 4, Principle 2: Non-discrimination

Day 2

09.00 – 09.30	Recap and reflections
09.30 – 10.30	Module 4, Principle 3: Proportionality and Necessity
10.30 – 11.00	Tea break
11.00 – 13.00	Module 4, Principle 4: Procedural guarantees and the rights of detainees
13.00 – 14.00	Lunch
14.00 – 15.30	Module 5: Accountability and Transparency
15.30 – 16.30	Final Module: Evaluation Questions

Module 1: Introduction and contextualisation of Luanda Guidelines

Background to the development of the Guidelines (Sections 25 and 46)

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

Why are the guidelines important and how were they developed?

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

How do the guidelines promote more effective and fair pretrial detention?

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

WHAT DO THE GUIDELINES COVER?

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

1. **ARREST** covers grounds for arrest, procedural guarantees and the rights of suspects and arrested persons including the requirement that they be notified of their rights.

2. **POLICE CUSTODY** provides a framework for decision making on police bail or bond, and details safeguards for persons subject to police custody, including access to legal services, limitations on the use of force and restraints, safeguards during questioning and recording of confessions.
3. **DECISIONS AROUND PRETRIAL DETENTION** includes safeguards for suspects who are subject to a pretrial detention order, review procedures and mechanisms to minimise prolonged pretrial detention.
4. **REGISTERS** are designed to ensure transparency, and provide details regarding the type of information that should be recorded in all forms of record keeping, including arrest registers and those used in police custody and pretrial detention centres where the information should be made available.
5. **DEATHS AND SERIOUS HUMAN RIGHTS VIOLATIONS IN CUSTODY** details the procedures that should be followed in the event of a death or rights violation in police custody or pretrial detention.
6. **CONDITIONS OF DETENTION** includes conditions in police custody and pretrial detention and specific safeguards that apply to these places of detention such as the separation of different categories of detainees.
7. **VULNERABLE GROUPS** covers groups identified by the African Charter as being at risk or having special needs within the criminal justice system including women, children, persons with disabilities and non-nationals.
8. **ACCOUNTABILITY AND REMEDIES** includes a range of measures such as judicial oversight, habeas corpus, independent complaints, investigation and monitoring mechanisms, data collection and dissemination and the provisions for redress.

IMPLEMENTATION OF THE GUIDELINES

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

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

- **The ACHPR** through promotional, monitoring, reporting and case handling functions.
- **National governments** through transposition into national laws, policies and practice.
- **National parliaments** through legislation and parliamentary oversight.
- **Oversight bodies and civil society organisations** through monitoring, reporting, awareness raising and technical assistance.

The ACHPR, civil society and states are working together to promote implementation of the guidelines.

The guidelines are available in the four African Union languages.

The African Commission on Human and Peoples' Rights

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

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

The African Commission is officially charged with three major functions:

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

To assist the Commission with these three major functions, the Commission has the power to collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organise seminars, hear and decide on individual complaints about violations of the African Charter, and encourage, make views or recommendations to African states to implement the African Charter (Charter, Article 45).

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

The adoption was in accordance with the Commission's mandate in the African Charter on Human and Peoples' Rights to 'formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation'. Although the Luanda Guidelines are not binding on African Union states, they are an authoritative interpretation of the binding Charter rights as they apply to policing and pre-trial detention.

The Luanda Guidelines recognise the importance of training in ensuring that States, police organisations, correctional services institutions and other criminal justice actors are aware of the Guidelines, and how they can be used to improve national pre-trial systems. This training is part of the African Commission's efforts to promote effective training at the national level.

46. Training

- a. States shall ensure that *all officials who are involved in the arrest, custody, interrogation and treatment of individuals subject to arrest, police custody and pre-trial detention are properly trained* in relation to the provisions of these Guidelines. The provisions of these Guidelines and other relevant guidelines developed by the African Commission pursuant to the African Charter shall be *fully incorporated into the curricula of all basic and in-service training*.

States shall ensure that where *places of detention are under the management of, or staffed by, private security organisations, all personnel are properly trained ...*

Luanda Guidelines, section 46

Ensure that there is adequate and efficient staffing in places of detention, and that staff are trained in terms of these Guidelines, including special training on the provisions for vulnerable persons and subject to effective oversight and accountability mechanisms

Luanda Guidelines, section 25.j.

Icebreaker, introduction and expectations

Acknowledge that the people in the room bring a wealth of professional and personal experience. Tell participants that the course will draw on their own knowledge and experience, and they should feel comfortable to make comments and ask questions.

People learn best when they feel comfortable. Keep the atmosphere light, allowing for jokes. Allowing for questions makes people feel comfortable.

Trainer introduction


Use this moment to tell the participants something about yourself, your experience in policing and training.

Participants introduce themselves

The following activity is a good way to break the ice and get to know the participants.

Give each participant four A5 pieces of paper. Tell them that on each piece of paper they must:

- 1. Draw a sketch of the work they do (for example, police official, investigator, commander). Just a sketch! No artwork required.*
- 2. Say one thing about what they expect to learn from this course.*

<p>Name and What I do</p> 	<p>My expectations</p> <p>I want to see what the Guidelines say about police custody</p>
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At the end of the course, come back to the expectations and see if they have been met.

Trainer's expectations

Tell them that your expectation is not for them to know the Luanda Guidelines off by heart, but to have a good idea of what they are about and what the values are that inform them.

Tell participants that at the end of this course, you would like each person to give **THREE WAYS OF DOING THINGS DIFFERENTLY FROM NOW, IN ACCORDANCE WITH THE LUANDA GUIDELINES.**

Participants are free to choose any three things they feel they can realistically implement. Examples might include:

- *Informing a suspect of grounds for arrest*
- *Keeping good registers*
- *Only searching people of the same sex.*

As the course develops, participants should examine and reflect on their own usual way of doing things and their departments' way, and see how, in future, they could do things in a way that reflects the kind of human rights to which the Guidelines seek to give effect.

*Make a point of saying you **understand that it may not be physically possible** for the individual police officer, prison official etc. to live up to the Luanda Guidelines; there may, for instance, not be any specific cells for women, making it difficult to separate women from men. Tell them to raise these challenges as we go along, and that we will try to think of solutions.*

House rules

Tell learners what you expect from them in terms of the house rules. For example:

- *Cell phones on silent*
- *No interrupting people while they are talking*
- *No dominating the class*
- *Participating*
- *Questioning*
- *Punctuality*
- *No going in and out of the class during the course*
- *Homework.*

Also, go through the agenda and the breaks: tea breaks and lunch breaks.

Baseline test

Participants work alone.

The purpose of this activity is to establish what participants know about aspects of arrest, police custody and pre-trial detention. Give them 10 minutes to answer these questions:

1. Policing is primarily about enforcing the law.	Agree	Disagree	Don't know
2. Police should treat a 17-year-old who is caught pointing a gun at someone as an adult.	Agree	Disagree	Don't know
3. Detention starts the moment a person is held in a police cell.	Agree	Disagree	Don't know
4. Keeping records of people in police custody is a good way of protecting my own human rights.	Agree	Disagree	Don't know
5. You only need to provide an interpreter for a foreigner if the foreigner asks for one.	Agree	Disagree	Don't know
6. A female suspect should only be searched by a female police officer.	Agree	Disagree	Don't know
7. A police officer can use lethal force to protect property.	Agree	Disagree	Don't know
8. If a suspect is unable to afford a lawyer, he or she should be provided with a lawyer at no cost.	Agree	Disagree	Don't know
9. Human rights do not apply to terrorists.	Agree	Disagree	Don't know

Module 2: What are human rights? How do they apply to policing?

This module addresses the question of human rights and how they apply to policing. You may find yourself with a very receptive group; or you may encounter hostility. You will need to assess your group and decide which aspects of this module are appropriate.

Brainstorm: Ideas and concepts that relate to human rights and policing

Ask participants to brainstorm any ideas or concepts that come up when they think about human rights. Prompt them if necessary. They may come up with ideas and concepts like:

- Freedom
- Fairness
- Justice
- Laws
- Access to justice
- Rule of law
- International law
- The constitution
- Dignity, liberty, freedom of expression, movement, safety, protection of property.

Acknowledge all these ideas and concepts. Tell them that as they can see from the number of ideas and concepts they came up with, the concept of human rights is very broad and interconnected.

Human rights in brief

The aim of this section is to make it clear that human rights exist because we are human, and are not related to whether we belong to one religion or another, or are criminals or police officers. You can decide whether to include this discussion on human rights or not, depending on your group.

The general concept of human rights refers to **rights and values** that are universal, inalienable (meaning they cannot be taken away), and inherent, **solely because we are human**. Human rights are not connected to religious beliefs, although many religions espouse many human rights. The difference between religious beliefs and human rights is that human rights exist in all people as a fundamental starting point. They are the basis of our humanity, regardless of our religion or whether we are religious.

Our human rights are not taken away from us if we are not religious.

To sum up

- Human rights are the rights a person has simply because that person is a human being.

- Human rights *apply to all people*, whatever their nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status.
- Human rights are basic standards without which people cannot live in *dignity*.
- Human rights are usually *guaranteed by law*.

A brief history of the development of the concept of human rights

The aim of the section that follows is to give participants a brief historical overview. Ideally, you should know the history below well enough to recount it to the participants without having to read it. If you do not, you can read through it with the group.

Alternatively, you can do this as an interactive group session, asking questions like: Does anyone know how the United Nations started? How many countries were involved? What was the impetus behind it? And so on.

In Africa, the core human rights document is the African Charter on Human and Peoples' Rights, which came into effect on 21 October 1986, on what is now known as African Human Rights Day. The African Charter is binding on all states that have ratified it, and compliance with the African Charter by states is the key role of the African Commission on Human and Peoples' Rights, which was established in 1987.

The African Charter builds on the rights guaranteed at an international level by the United Nations' Universal Declaration of Human Rights but, importantly, creates specific and unique group rights (or peoples' rights).

The African Charter has four categories of rights protections:

Civil and political rights: freedom from discrimination (Article 2), equality (Article 3), life and personal integrity (Article 4), dignity, freedom from slavery and freedom from torture and other cruel, inhuman or degrading treatment or punishment (Article 5), liberty, security and freedom from arbitrary arrest and detention (Article 6), right to a fair trial (Articles 7 and 25), freedom of religion (Article 9), freedom of association (Article 10), freedom of assembly (Article 11) and freedom of political participation (Article 13).

Economic, social and cultural rights: freedom of movement (Article 12), the right to property (Article 14), the right to work (Article 15), the right to health (Article 16) and the right to education (Article 17).

Peoples' rights (or group rights): protection of the family (Article 18), the right to equality (Article 19), the right to self-determination (Article 20), the right to freely dispose of wealth and natural resources (Article 21), the right to development (Article 22), the right to peace and security (Article 23), and the right to a satisfactory environment (Article 24).

Duties: to preserve the harmonious development of the family, to service to the community, not to compromise the security of the State, to preserve and strengthen solidarity at a social and national level, to strengthen national independence and

territorial integrity, to pay taxes, to preserve positive African cultural values, and to promote the achievement of African unity (Article 29).

The overarching framework for human rights promotion and protection in Africa provided by the African Charter has been further expanded and strengthened through the adoption of other binding and non-binding instruments.

Legal instruments, which bind States Parties, include the African Charter on Democracy, Elections and Governance, the Protocol on the Rights of Women in Africa, the Protocol on the Establishment of the African Court of Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the AU Convention Governing Specific Aspects of Refugee Problems in Africa.

Soft-law, or non-binding, instruments have also been developed by the African Commission to provide authoritative interpretation of the binding African Charter principles for specific areas of human rights. The Luanda Guidelines are the authoritative interpretation of the African Charter as it pertains to arrest, police custody and pre-trial detention, and specifically expands on a range of civil and political rights, such as freedom from torture (Article 5), freedom from arbitrary arrest and detention (Article 6) and freedom from discrimination (Article 2). Other soft-law instruments include General Comment No. 3 on the Right to Life (Article 4) (2015), the Model Law for African States on Access to Information (2011), and the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) (2008).

The African framework for human rights protection reflects many of the protections and priorities of the international human rights framework, as expressed in the Universal Declaration of Human Rights, and the two key binding international instruments, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, which were both adopted by the United Nations in 1966. As with the African system, the United Nations has adopted additional binding treaties that focus on expanding the promotion and protection of particular rights, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

The legal instruments of the African Union and the United Nations are binding on those States that have ratified these treaties (i.e. signed and adopted them in some way into national law). Compliance with these human rights standards is then monitored at the African level by the African Commission on Human and Peoples' Rights, at the international level by the United Nations' Human Rights Committee, and by other United Nations treaty body committees that have been established to monitor compliance with specific treaties (e.g. the Committee on the Rights of the Child monitors state compliance with the Convention on the Rights of the Child). Compliance is monitored in a number of ways in both systems, and mainly through periodic state reports to the African Commission or the UN system by the state, and through individual complaints and communications of violations of human rights law by individuals or organisations.

Policing through a human rights framework

Now that you have dealt with human rights and human rights law in general, this section of the module deals with police and human rights specifically.

Discussion: Police and human rights

The aim of this discussion is to bring out some of the issues that police officials in your group may encounter about human rights as they apply to themselves, to the community they are policing, and the tensions between these.

Put up this statement on PP:

- The effective implementation of international human rights norms is premised on adherence to the *rule of law*, i.e. that no person is above the law, and that the law ... applies to every person equally, without discrimination, whether a person is a private citizen or a public official.
- Accordingly, police organisations and individual officials have an *obligation to act within the bounds of the law*, and the state has an obligation to ensure clear laws and adequate training and to promote compliance with the law.

Ask the participants:

- *Do you agree with the statement that no one is above the law, which means that all people, including police officials, have the same obligations and rights?*
- *Is it right that there should be **restrictions on some human rights for police officials**? For example, the restriction on the use of force? If yes, why is that?*
- *When police break the law, they violate human rights. Do you agree?*
- *Is there **a tension** between policing and human rights? For example, should police officials be allowed to torture someone (i.e. violate a human right) for the greater good of the community? In other words, should police officials be exempt from certain prohibitions on human rights?*
- *Are some **human rights more difficult** for the police to uphold than others?*

What you want to draw from this discussion is that human rights law regulates the conduct of the state in relation to the people in that state's territory or subject to that state's jurisdiction. The rights provided by international human rights law impose obligations on the state to act, or to refrain from acting, in a certain way, to the benefit of communities and individuals. Police officials are part of the state, and therefore carry the obligations of the state.

That is why there are limitations on the actions of the state and the police as an institution of the state (such as prohibiting the use of torture or other ill-treatment).

The other side of human rights is to set minimum standards of treatment for people deprived of their liberty (such as requiring a detainee to have access to a lawyer or other legal service provider).

Module 3: Detention

This module begins to look at the themes, values and specific provisions in the Luanda Guidelines. The starting point for the Luanda Guidelines is detention.

When you think of detention, you probably think only of the period in which a person is in a prison cell. But in a human rights framework, the concept of detention begins much earlier.

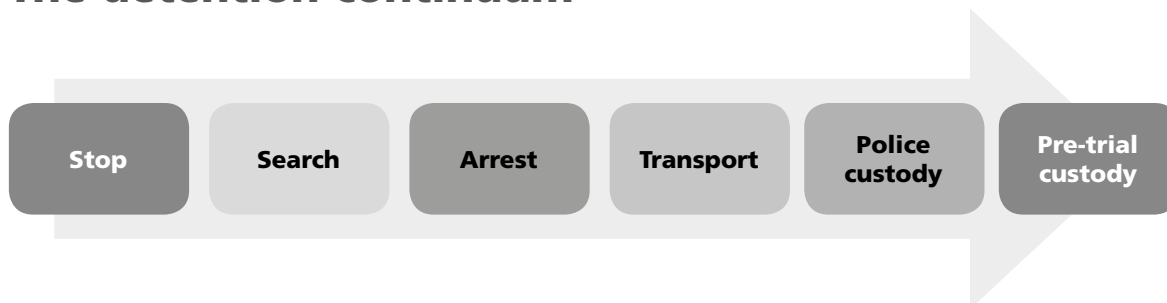
Detention begins the moment a state authority stops (or detains) someone.

It does not depend on how long the person is stopped for. It can be a few moments (for example, when you stop someone to ask them questions) or longer (such as when people are taken into custody).

The human right that a person is deprived of when detained by a state authority is the right to liberty. There are situations when the infringement of the right to liberty is lawful, and situations when it is unlawful.

The Luanda Guidelines are concerned with ensuring that when someone is detained, they are detained lawfully and with respect for their human rights throughout their detention. The diagram below illustrates what we might call a detention continuum. The person is detained throughout these procedures.

The detention continuum



It starts the moment you stop (detain) someone and continues through the action of arresting someone, transportation of the person to a place of custody, the condition of being in a prison cell to the condition of being held in custody while awaiting trial.

Structure and concerns of the Luanda Guidelines (Contents page)

Point participants to the Table of Contents of the Luanda guidelines in their manuals, or put up this PowerPoint slide. The aim is to show them how the guidelines are organised:

Parts I, II and III deal with arrest (which includes sections on stop and search and transport); then police custody, then pre-trial detention.

Part IV deals with registers, which we will deal with later in this course.

Parts V and VI deal with serious offences while in police custody (torture, etc.) and conditions of detention in police custody and pre-trial detention.

Part VII is a thread that runs throughout these guidelines: human rights best practice when dealing with vulnerable people.

Part VIII recounts the internal and external accountability structures to which the police are answerable, and their obligations in relation to investigations or inquiries by those accountability mechanisms.

GUIDELINES ON THE CONDITIONS OF ARREST, POLICE CUSTODY AND PRE-TRIAL DETENTION IN AFRICA

PREAMBLE

PART I – ARREST ✔

Grounds for arrest	Procedural guarantees for arrest	
Rights of an arrested person	Notification of rights	

PART II - POLICE CUSTODY

Safeguards for police custody	Access to legal services	
Questioning and confessions		✔

PART III - PRE-TRIAL DETENTION ✔

Safeguards on pre-trial detention orders	Safeguards for persons subject to pre-trial detention orders	
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PART IV - REGISTERS ✔

Information to be recorded in arrest, custody and pre-trial detention registers	✔
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PART V PROCEDURES FOR SERIOUS VIOLATIONS OF HUMAN RIGHTS IN POLICE CUSTODY AND PRE-TRIAL DETENTION

State responsibility to account	Deaths in police custody and pre-trial detention
Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention	

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

Physical conditions	Procedural and other safeguards	
Separation of categories of detainees	Communication	✔
Recreational, vocational and rehabilitation services		

PART VII - VULNERABLE GROUPS ✔

Special measures are not discriminatory			
Children	Women	Persons with disabilities	Non-nationals

PART VIII - ACCOUNTABILITY AND REMEDIES

Standards of individual conduct for official	Access to information
Oversight mechanisms	Monitoring mechanisms

PART IX - IMPLEMENTATION ✔

Application	Training	Reporting
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Brainstorm: Challenges about forms of detention in Africa

Groups of five to six

The aim of this exercise is for participants to reflect on the challenges in their country about detention. Working in groups, give them 10 minutes or so to brainstorm some of the issues. Get one person per group to report back, without repeating what other groups have said. Some problems they may come up with that are, indeed, the challenges that the Guidelines seek to address include:

- Arbitrary police custody
- Excessive police custody
- Poor health conditions
- Poor cell conditions
- Marginalised people more subject to detention
- Use of torture
- Use of disproportionate force
- People jailed for petty crimes
- Long times spent in custody
- No access to legal representation
- Incorrect places used for detention
- Infrastructure for detainees in police cells and prison inadequate
- No effective oversight agencies
- Corruption
- Inhuman and degrading treatment and punishment
- No systems to keep records of arrest, custody, pre-trial detention.

Participants may raise the issue of resource constraints as challenging their ability to meet human rights standards. While this may be true in some respects (for example, the lack of training and resources to carry out an evidence-based investigation may have an impact on custody time limits), this argument can largely be counteracted.

First, international law acknowledges that resource constraints exist. In relation to non-derogable rights (such as the right to life and freedom from torture) there is no excuse for violations. For other rights, such as conditions of detention, international law recognises progressive development and realisation of these rights in a staged and sustainable way, providing the state is using all available resources at its disposal to achieve these rights to the fullest extent possible.

Second, there are many human rights that do not require resources to address. For example, there are no budgetary arguments against management structures that have zero tolerance for torture, inappropriate use of disciplinary measures and restraints, the arrest and detention of people for petty offences, etc.

Module 4: Principles that underpin the Luanda Guidelines

The structure of law enforcement agencies, and the content of national criminal laws, will differ from country to country. The Luanda Guidelines addresses the issue of diversity amongst African States' by providing the principles that should underpin a national framework for pre-trial justice in order that it comply with the African Charter.

These are some of the principles that underpin the Luanda Guidelines. We will look at each one individually.

Principle 1: RULE OF LAW

- Grounds and procedures established by law, NOT arbitrary
- Authorised and competent authority
- Sufficient legal reasons
- Formally recognised and gazetted

Principle 2: NONDISCRIMINATION

- No discrimination, no one is above the law and the law applies equally
- Fair discrimination with end aim of equality – vulnerable people: children, the disabled, women, foreign nationals

Principle 3: PROPORTIONALITY AND NECESSITY

- Police action proportional to the offence – alternatives/last resort?
- Use of force
- Use of restraints

Principle 4: PROCEDURAL GUARANTEES AND RIGHTS OF DETAINEES

- Prohibition against torture and cruel, inhuman and degrading punishment – confessions, disciplinary action (solitary confinement); interrogation
- Right to privacy – searches, consultations with legal representatives
- Right to dignity – cell conditions, exercise
- Right of access – to legal representation, families
- Right to information

Principle 5: ACCOUNTABILITY AND TRANSPARENCY

- Records and registers – custody, arrest, searches, evidence, bodily harm
- Oversight mechanisms
- Remedies and sanctions

Principle 1: Rule of law

Ask the participants if they are familiar with the concept of the rule of law. Invite them to suggest the elements of the rule of law, providing them with a brief explanation of each element as they are raised.

For police action to be carried out without infringing people's human rights, these elements need to be present. If they are not, then the person's human right is violated.

Go through the following aspects of the rule of law with participants, discussing each one.

The action must be authorised by law. In other words, the person must have the authority conferred on them by some law.

Places must also be authorised by law. Places of detention must be formally recognised and gazetted.

Police powers are **subject to the law**. Because you are depriving someone of their freedom, or invading their right to privacy, or dignity, there are limitations on when and how you can detain someone. You can only do it in a particular way, in a particular set of circumstances.

There must be **legal grounds**. If it is an **arbitrary** action, it would constitute an unlawful infringement of a person's right to freedom – it must be based on reasonable grounds.

Relevant sections regarding rule of law: Sections 1, 2, 3, 7, 10, 25

The following provisions of the Luanda Guidelines deal specifically with the rule of law. They emphasise the importance of the legal grounds for police actions, the use of official places of detention, and adherence to the procedural safeguards for suspects at the time of arrest and during detention.

For the purpose of these Guidelines, 'arrest' refers to the act of apprehending a person for the alleged commission of an offence, or to the action of a competent authority to arrest and detain a person as otherwise authorised by law.

Pre-trial detainees shall only be held in a formally recognised and gazetted place of detention. Information on the gazetted places of police custody and pre-trial detention should be readily accessible.

Pre-Trial Detention 10 f

Pre-trial detainees shall only be held in an officially recognised place of detention.

Ensure that any transfer of detainees is authorised by law, that detainees are only moved to and from official gazetted places of detention.

Concerned by arbitrary, excessive, and at times abusive recourse to police custody

and pre-trial detention prevalent in several States Parties to the African Charter on Human and Peoples' Rights [...]

Preamble

Everyone has the right to liberty and security of the person [...] No one shall be subjected to arbitrary or unlawful arrest or detention.

Arrest, section 2 b

Grounds for arrest

Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.

It must be **procedurally correct** to be lawful, i.e. follow all the procedures set down.

3. Procedural guarantees for arrest

- a. Arrests shall only be carried out by police or by other competent officials or authorities authorised by the state for this purpose, and shall only be carried out pursuant to a warrant or on reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.*

7. Safeguards for police custody

- a. All persons detained in police custody shall have a presumptive right to police bail or bond. States shall ensure that competent authorities and officials within the state's criminal justice system authorised to grant police bail or bond make decisions based on the criteria set out in Part III of these Guidelines.*

14. Safeguards for persons subject to pre-trial detention orders

- a. Pre-trial detention orders shall be carried out in strict accordance with the law shall not be motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.*

Applying the rule of law

Three requirements for a lawful stop and search

This section applies the rule of law to stop and search. Procedural safeguards apply to all persons from the moment they come into contact with the police, even before an arrest is made. Although the Luanda Guidelines do not focus on the stop and search powers of the police, it can be a precursor to arrest, and it is a visible form of policing that has the potential to violate African Charter rights if not done in accordance with the law.

Police have the power to stop and search persons. If not done in accordance with the rule of law, stop and search can unlawfully violate certain human rights, such as the liberty, privacy, equality before the law and dignity. Therefore, to stop and search someone without infringing their human rights, there are three requirements:

1. Rule of law (legality), which includes equal protection/prohibition against discrimination

2. The manner in which the stop and search is conducted – privacy and dignity must be respected in the decision to conduct a stop and search, and in the conduct of the stop and search
3. Procedural requirements – rules to be followed when a person is stopped and searched

Plenary Discussion on stop and search

1. *You see some men talking in a language you don't understand. You realise they are non-nationals. They don't look like holidaymakers. You suspect they are in the country 'illegally'. Can you stop and search them?*
2. *You are called to the scene of a housebreaking in a village. Someone stole a bicycle from inside the dwelling. The owner says she did not see the person, but her neighbour said it is John. Can you go to John, stop him and search him, on the strength of this?*
3. *A woman at a taxi rank screams that she has been pickpocketed. You arrive just at that moment. You tell everyone to stand still. You see a young man. He is acting strangely. Can you stop him? Can you question him? Can you search him? Can you question him at the same time as you do the search?*

Understanding reasonable suspicion

In order for a stop to be legal it must be based on reasonable grounds or a reasonable suspicion. What is reasonable suspicion? Is it hard evidence, e.g. a wallet in the person's hand? A pointing out? Information received from another source? What if the person is just acting strangely? Is that enough?

Reasonable suspicion must be supported by intelligence or information about, or some specific behaviour by, the person concerned and not personal factors. There is no power to stop or detain a person in order to find grounds for a search. Reasonable suspicion must be held at the time at which the person is stopped or searched. It cannot be provided retrospectively when questioning. To satisfy the requirements of the rule of law, the basis on which the police can exercise their power to stop and search must be provided by law.

Procedural safeguards during a stop and search

The Luanda Guidelines provide safeguards to persons who are stopped and searched.

Section 3(d): Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:

- i. For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the suspect.*
- ii. Inform suspects of the reason for the search prior to the conduct of the search.*
- iii. Make a written record of the search, which is accessible by the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.*

- iv. *Provide a receipt for any items confiscated during the search.*
- v. *Ensure that strip searches and internal body searches are only conducted in private.*
- vi. *Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order.*

Principle 2: Nondiscrimination

Ask the participants what they understand about the concept of non-discrimination. In this discussion, you are trying to draw out three key concepts: (1) that the actions of the police should not discriminate against any person on the basis of a protected status; (2) any special measures taken to protect or enhance the rights of protected groups are not prohibited discrimination; and (3) the African Charter affords special protection to certain categories of persons, and that in the Luanda Guidelines, specific protections are outlined in relation to women, children, persons with disabilities and non-nationals.

No discrimination in arrest or pre-trial custody (Section 2)

The Luanda Guidelines prescribe that there should be no discrimination throughout the arrest, custody and pre-trial detention process. This is based on the principle that no one is above the law and that the law applies equally to everyone. No one is exempt from the law; but at the same time, no one is targeted for reasons of discrimination on grounds of sex, race, disability, nationality, etc.

Arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.

Section 2 a.

Special measures are not discriminatory (Section 30)

However, it also makes provision for special measures for certain categories of people, whom it considers to be the most vulnerable, as shown below:

Measures designed to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender identity, refugees and asylum seekers, non-citizens, stateless persons, racial or religious minorities, or other categories of persons with special needs shall not be considered discriminatory or applied in a manner that is discriminatory.

Special measures shall be applied in accordance with the law, and shall be subject to periodic review by a competent, independent and impartial authority.

Four vulnerable groups requiring special measures: children, women, the disabled, non-nationals

The Luanda Guidelines deal with four groups requiring special measures. The reason for this is to 'bring them up' to the level of groups who are not as vulnerable. Creating special provisions for them ensures that they have the same rights as other groups.

These groups are children, women, the disabled and non-nationals. They have all the rights provided to suspects in the Luanda Guidelines plus some additional special protection set out in Part 7 of the Guidelines.

Assign one of the vulnerable groups to a group of five to seven participants. Tell them to read the scenario that applies to their group, and to find and apply the provisions of the Guidelines to each scenario. Ask them to choose one person to report back. Go through the slides for each group to see if they have covered everything. Also ask how much of what the Guidelines say is currently being applied in their country.

Group 1: Scenario: Special measures for CHILDREN (Section 31)

A 16-year-old male has been arrested for throwing stones at police officers. This is not the first time he has been arrested for something similar. He is part of a group of social activists who are very angry with the system and the injustices they see, especially corruption, nepotism and unemployment. Many of these other activists are older than he is.

What do the Luanda Guidelines say about how to deal with this male? Given his history of similar offences, should he still be treated as a child? Does the fact that he is part of a group of older activists mean anything?

Should he be arrested at all? Or should an alternative be found? If so, what?

Should his stay in police custody be the same as a non-vulnerable person?

Which cell should he be assigned, if at all?

Should he have access to his parents? To anyone else? Do you agree with the Luanda Guidelines' views? If this boy were your son, would your views change in any way?

31. Children

General Principles

The principle of the best interests of the child shall be paramount in any decision making and action taken in relation to child suspects and detainees.

- a. For the purposes of these Guidelines, a 'child' means every person below the age of 18 years.*
- b. If there is uncertainty regarding the age of an arrested or detained person, but reason to believe that the person may be under the age of 18, the State must ensure that the person is to be treated as a child if and until such time as his or her age is determined to be 18 years or older. States shall have in place a process of age assessment for children.*

- i. *A child may only be detained in police custody or pre-trial detention as a measure of last resort and for the shortest possible period of time.*
 - ii. *Every child deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons of his or her age.*
- c. *Diversion and alternatives to pre-trial detention*
- i. *States shall enact laws and establish policies that prioritise non-custodial alternatives and diversion programmes for children in conflict with the law. Where possible, pre-trial detention shall be replaced by alternative measures.*
 - ii. *States shall have in place a process of preliminary inquiry to establish whether the case can be diverted from the criminal justice system and, if it can, what diversion option (for example, care, guidance and supervision orders, counseling, foster care, education and vocational training, or other alternatives to institutional care) is suitable for the child, taking into account the best interests of the child.*
 - iii. *The preliminary **inquiry** process shall consider factors such as the estimated age of the child, any previous convictions or diversions, whether the child is in need of care and protection and whether the child was used by an adult to commit the offences. The preliminary inquiry process shall take place within the first 48 hours of the child's arrest, and shall take account of the right of children and their parent(s) or guardian(s) to full participation in proceedings.*
- d. *Safeguards for arrest*
- If the arrest of a child is absolutely necessary, then upon arrest:*
- i. *The child's parent(s) or guardian(s) and the authority charged with the welfare of the child shall be immediately notified where such notification is in the best interests of the child.*
 - ii. *The child and, unless it is not in his or her best interests, the child's parent(s) or legal guardian(s), must be informed promptly and directly of the charges against him or her, his or her rights as a criminal accused and his or her rights to an interpreter (including language and sign interpreters where necessary), a lawyer or other legal service provider.*
 - iii. *The child must be given access to a lawyer or other legal services provider and the opportunity to consult freely and confidentially with him or her.*
- e. *Safeguards for police custody and pre-trial detention*
- If police custody or pre-trial detention of a child is absolutely necessary:*
- i. *Detention shall be for the shortest possible period of time.*
 - ii. *Children shall be detained separately from adults, unless it is in their best interest to be kept with family members also detained. Female children shall be held separately from male children unless it is in their best interest to be kept with family members also detained.*
 - iii. *Children shall be guaranteed the right to the presence of a parent or guardian at all stages of the proceedings, unless it is considered not to be in the best interests of the child.*
 - iv. *While in custody, children shall receive care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance they may require.*
- f. *Right to be heard*
- In all judicial proceedings affecting a child, the child shall have an opportunity to be heard either directly or through a representative of his or her choice. The child's views shall be taken into account by the relevant authority.*

g. Alternatives to pre-trial detention

Where possible, pre-trial detention shall be replaced by alternative measures such as close supervision, intensive care or placement with a family, in an education setting or home, or other place of safety.

h. Legal assistance

Children shall be guaranteed the right to the presence of a lawyer, or other legal service provider, of their choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process. Legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child.

i. Conduct of officials

Contact between law enforcement agencies and child suspects shall be managed in such a way as to respect the legal status of the child and promote his or her wellbeing, ensure the child's privacy, and avoid harm to him or her.

j. Specialised units

The State shall ensure that, where possible, specialised units be established in law enforcement agencies that frequently or exclusively deal with children who are in conflict with the law.

k. Access to third parties

The State shall ensure that children have reasonable access to parents, guardians or statutory authorities responsible for the care and protection of children.

Summary for PowerPoint

31. Children

Best interests of the child, respect child's legal status, promote wellbeing, ensure the child's privacy, and avoid harm.

Definition: below 18 years. Uncertainty ... treat as child

Absolutely necessary, last resort, non-custodial alternatives and diversion programmes preferred, hold separately from adults, unless best with family members

Hold for shortest possible period

Preliminary inquiry process within 48 hours

Procedural safeguards:

- notify parents or guardians
- notify authority
- inform child and parents/guardians of charge, general rights, interpreter, a lawyer or other legal service provider
- provide access to legal services provider
- give opportunity to consult freely and confidentially
- right to be heard and have views taken into account

Group 2: Scenario: Special measures for WOMEN (Section 32)

A 25-year-old unemployed woman has been arrested for shoplifting groceries. She is a single mom, and is carrying a baby whom she is breastfeeding. Her husband has left her, and she has one three-year-old to support. Should she be treated according to special measures? Which ones? Why? Think about the following:

What do the Luanda Guidelines say about how to deal with women? Does the nature of the offence mean anything? Does the fact that the woman is breastfeeding and has a small child change anything? Should she be given special measures when searched?

Should she be arrested at all? Or should an alternative be found? If so, what?

Should her stay in police custody be the same as a non-vulnerable person?

Which cell should she be assigned, if at all? To whom should she have access? Do you agree with the Luanda Guidelines' views? If this woman were your sister, would your views change in any way?

32. Women

a. General principles

States shall develop legislation, procedures, policies and practices that are designed to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.

b. Safeguards for arrest and detention

If arrest, custody and pre-trial detention is absolutely necessary, women and girls shall:

- i. Only be searched by female law enforcement officials, and in a manner that accords with women or girls' dignity.*
- ii. Be held separately from male detainees.
If they have caretaking responsibilities for children, be permitted prior to or on admission to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interest of the children.*
- iii. Be provided with the facilities necessary to contact their families, including children, their children's guardians and legal representatives.*
- iv. Be provided with the facilities and materials required to meet their specific hygiene needs, and offered gender-specific health screening and care which accords with the rights to dignity and privacy, and the right to be seen by a female medical practitioner.*
- v. Not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants.*
- vi. Have access to obstetric and pediatric care before, during and after birth, which should take place at hospitals or other appropriate facilities, and never be subject to physical restraints before, during and after childbirth.*

c. Accompanying children

States shall establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in

the place of detention, in a manner consistent with the rights of the child, and the best interests of the child, and in accordance with the recommendations of the African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 1 on Children Imprisoned with their Mothers.

Summary for PowerPoint

32. Women

legislation, procedures, policies and practices

- Only if absolutely necessary

Procedural safeguards

- Searches – female law enforcement officials
- Separate from male detainees
- Special arrangements for children in care (e.g. suspension of detention)
- Provide access to contact families, children, their children's guardians and legal representatives
- Provide facilities and materials for specific hygiene needs
- Provide gender-specific health screening and care – dignity and privacy
- Right to be seen by a female medical practitioner
- No close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants
- Have access to obstetric and paediatric care before, during and after birth
- No physical restraints before, during and after childbirth
- If accompanying children, state to provide for them in their best interests

Group 3: Scenario: The MENTALLY AND PHYSICALLY DISABLED (Section 33)

A 20-year-old man was deprived of oxygen at birth. As a result, he has less than average intelligence. He also has a small vocabulary and speaks with a speech impediment. He is unable to clean himself after going to the toilet. A girl has accused him of raping her. Should he be treated according to special measures? Which ones? Why? Think about the following:

What do the Luanda Guidelines say about how to deal with the mentally and physically disabled? Does the nature of the offence mean anything? What about the language and understanding issues?

Should he be arrested at all? Or should an alternative be found? If so, what?

Should his stay in police custody be the same as a non-vulnerable person?

Which cell should he be assigned, if at all? To whom should he have access? Do you agree with the Luanda Guidelines' views? If this man were your son, would your views change in any way?

33. Persons with disabilities

a. General principles

- i. For the purpose of these Guidelines, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
- ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.
- iii. Every person with a physical, mental, intellectual or sensory disability deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.
- iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programs and other services available to others, including voluntary engagement in activities and community release programs. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.
- v. States shall ensure that disciplinary actions take account of a person's disability.

b. Legal capacity

Persons with disabilities shall enjoy full legal capacity, access to justice on an equal basis with others, equal treatment before the law, and recognition as a person before the law.

c. Access to justice

States shall ensure that persons with disabilities are informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authority and who are appropriately qualified.

d. Accessibility and reasonable accommodation

States shall take measures to ensure that:

- i. Persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority. Accessibility should also take into account the gender and age of persons with disability, and equal access should be provided regardless of the type of impairment, legal status, social condition, gender and age of the detainee.

Group 4: Scenario: Non-nationals (Section 34)

A group of nationals attack some refugees' homes, torching and burning their property. The refugees retaliate. Your unit arrives and identifies five nationals (one woman and four men) and one refugee who you observe being violent. You search and arrest them.

You have only one vehicle available to transport the six suspects. The situation is very volatile and you cannot wait for another vehicle to separate the nationals and refugee suspects who are still displaying aggression towards each other. Only two police officers can accompany the suspects in a lock-up vehicle.

What factors have you considered in deciding on how to deal with this situation. Are there any measures in the Luanda Guidelines that would be difficult to implement in your domestic policing situation?

34. Non-nationals**a. Refugees**

- i. Refugees shall be informed of their right to contact consular officials and relevant international organisations, such as the United Nations High Commissioner for Refugees, and be provided with the means of contacting those authorities without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact or provide access to the consular authority or relevant international organisations about the arrest and detention of a person who is a refugee if the person so requests.*
- ii. All decisions and actions in relation to refugees below the age of 18, whether accompanied or unaccompanied, shall be consistent with the principle of the best interests of the child, and shall accord with the special protections afforded to children in section 31 of these Guidelines.*

b. Non-citizens

Non-citizens shall be informed of their right to contact consular officials and relevant international organisations, and be provided with the means to contact the relevant authority without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons.

c. Stateless persons

Stateless persons shall be informed of their right to contact a lawyer or other legal service provider who can address their needs, and relevant international organisations, and be provided with the means to contact them without delay. Detaining authorities must provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact relevant international organisations about the arrest and detention of a person who is stateless if the person so requests.

Principle 3: Proportionality and necessity

All actions by the police must be proportionate and necessary. To understand these concepts, we will consider their application to common policing scenarios: the use of force during arrest and detention, and the use of arrest and police custody.

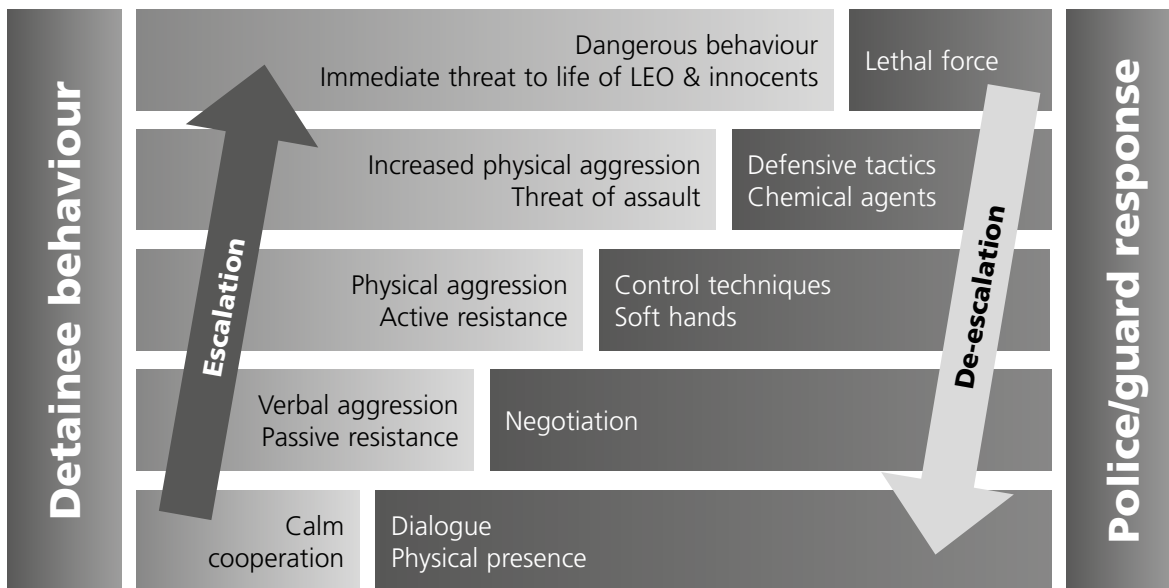
Use of lawful force and degree of force (Sections 3 and 25)

Using force in itself is not prohibited in the Guidelines. But there are detailed measures relating to when and why, and which degree of force can be used in order to make it lawful. This applies to all types of force, not just firearms.

The diagram below depicts what we call the use of force continuum. The idea is that force happens along an escalating continuum, beginning with the suspect's behaviour. The way in which a police official reacts must always be **in reaction** to the suspects' behaviour. In other words, a police official may not initiate any use of force before a suspect commits some kind of action. Whatever action the official takes must be in proportion to the action of the suspect.

Go through the use of force continuum with participants.

Use of force continuum



Video discussion: Use of force (man on roof)

YouTube clip of man being Tasered, wrestled down from roof, dies.

Show participants this clip and ask them to identify each stage of the person's behaviour and what the police response was. Could the police have done it differently?

Video discussion: Use of force (drunk man being arrested)

Show participants this clip and ask them to identify each stage of the person's behaviour and what the police response was. Could the police have done it differently?

Relevant passages in the Luanda Guidelines regarding use of force (Sections 3 and 25)

Procedures for arrest

3. c. *The lawful use of force and firearms shall be a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest. If the use of force is absolutely necessary in the circumstances:*
- i. *The level of force must be proportionate and always at the most minimal level necessary;*
 - ii. *Additional restrictions on the use of firearms shall be prescribed by law and require that their use be strictly limited to the arrest of a person presenting an imminent threat of death or serious injury; or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest; and*
 - iii. *The use of force shall be strictly regulated under national law and in conformity with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.*

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

25. b. *Limit the use of force against persons in police custody or pre-trial detention to circumstances in which force is strictly necessary for, and proportionate to, the need for maintenance of security and order within the detention facility, or when personal safety is threatened.*
- c. *Limit the use of firearms for reasons of self-defence or the defence of others against the imminent threat of death or serious injury.*
- d. *Limit the permissible use of restraints, and the type of restraints, to ensure consistency with the presumption of innocence, treatment of detained persons that accords with respect for the inherent dignity of the person.*
- e. *Set out the use of disciplinary measures against persons in police custody or pre-trial detention in law, policy and standard operating procedures, consistent with the inherent dignity of the person, humane treatment, limitations on the use of force.*

Proportionate use of police custody and pre-trial detention

The Guidelines encourage police to use their powers to arrest and to detain as an **exceptional measure** and a **measure of last resort**, only to be used if **absolutely necessary**, and if it is in proportion to the **offence and reasonable**.

The Guidelines encourage cases of minor crime to be diverted away from the criminal justice system, and the use of recognised and effective alternatives that respect

applicable international law and standards. In particular, the Guidelines stipulate that if an offence **does not carry a custodial penalty**, the offender should not be held in pre-trial detention.

Another reason for diversion of minor matters away from custody and pre-trial detention situations is the **lack of appropriate infrastructure for proper facilities** to ensure safe custody of all suspects, the **lack of budget** and the inability to provide for the **essential needs** of detainees during custody.

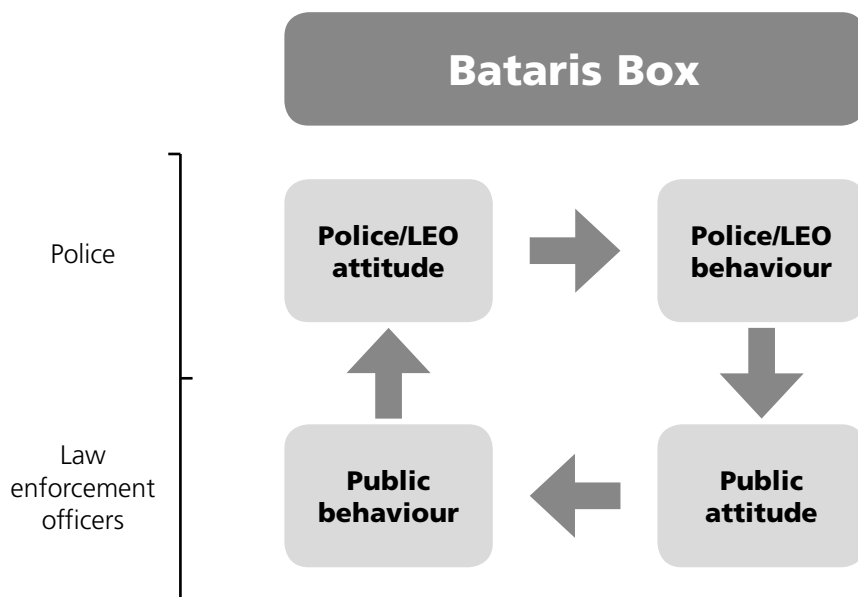
Excessive or in proportion/necessary

The Guidelines require all police action to be proportionate and necessary. Here are some possible scenarios to consider. Think about the suspect’s behaviour, the alleged offence (serious or minor), whether the offence has a custodial penalty, whether the suspect belongs to a vulnerable group, and whether an alternative is available.

1. A woman is arrested for stealing food for her baby
2. A non-national is arrested for not having papers
3. A short drunk man starts abusing the police. Police wrestle him to the ground, and handcuff him, and take him to the cells.
4. Same situation as above, but the man is very tall and big.

The benefits of proportionate and necessary policing responses

The way in which the police approach the use of force can have an impact on community perceptions of the police and the level of trust that the community will have in the police. The way in which the community then engage the police will have, in turn, an effect on the way that police themselves perceive and respond to the community. This Bataris Box shows how the behaviour and attitude of the police towards the community and vis versa is linked.



Principle 4: Procedural guarantees and rights of detainees

This section deals with the procedural guarantees and rights of detainees. We start with the Search and Arrest process.

Start by asking the participants about the type of procedural guarantees that exist in their national law for persons in arrest, and in police custody. List these on the board, then taken them through the Luanda Guidelines sections 3 and 4 to acknowledge where these reflect the Luanda Guidelines and where their national law may be missing certain safeguards, with the assistance of the slide.

Put up this slide.

Guarantees during arrest

- Procedural guarantees for arrest
- Officials clearly identify themselves

Searches – dignity; privacy

- Inform reason for search prior to search

Rights of an arrested person

- Not to be tortured or subjected to cruel, inhuman and degrading treatment and punishment
- To be informed of the reasons and charges, at the time of arrest, in appropriate language
- To silence and freedom from self-incrimination
- To access, without delay, to a lawyer, or legal service provider (state or non-state)
- To humane and hygienic conditions
- To contact and access a family member or another person
- To urgent medical assistance
- To information in accessible formats, interpreter
- To apply for release on bail or bond
- To challenge promptly the lawfulness of their arrest before a competent judicial authority
- To freely access complaints and oversight mechanism
- To reasonable accommodation

Relevant passages in the Luanda Guidelines: Guarantees and rights during arrest (Sections 3 and 4)

3. Procedural guarantees for arrest

- b. Officials conducting an arrest must clearly identify themselves and the unit to which they belong by showing an official identity card which visibly displays their name, rank and identity number. Any vehicles used shall have clearly visible number plates and any other required or legally prescribed identity markers or numbers.*
- d. Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:

 - ii. Inform suspects of the reason for the search prior to the conduct of the search.**

4. Rights of an arrested person

The following rights shall be afforded to all persons under arrest:

- a. The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.*
- b. The right to be informed of the reasons for their arrest and any charges against them.*
- c. The right to silence and freedom from self-incrimination.*
- d. The right of access, without delay, to a lawyer of his or her choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions.*
- e. The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody.*
- f. The right to contact and access a family member or another person of their choice, and if relevant consular authorities or embassy.*
- g. The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.*
- h. The right to information in accessible formats, and the right to an interpreter.*
- i. The right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court.*
- j. The right to challenge promptly the lawfulness of their arrest before a competent judicial authority.*
- k. The right to freely access complaints and oversight mechanism.*
- l. The right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities.*

5. Notification of rights

At the time of their arrest, all persons shall be informed of the rights set out in section 4, orally and in writing, and in a language and format that is accessible and is understood by the arrested person. Authorities shall provide the arrested person with the necessary facilities to exercise the rights set out in section 4, above.

Sequence and actions to follow from arrest to cell custody

Match the sequences with the actions

From the moment a police officer arrives at the place of detention with a detainee, he or she should follow a set sequence. The sequence is shown in the arrows numbered 1–8 in the graphic that follows. Match each step below (a – x) under one of the headings for each sequence. For example, x. Record removal of items in register falls under the sequence heading 1. Search detainee and secure items.

1. Search detainee and secure items	x
2. Give detainee access to family and legal representation	
3. Confirm or reject detention	
4. Allocate cell	
5. Assess detainee	
6. Interview detainee	
7. Call in appropriate service	
8. Actions while detainee is in cell	

- a. Allow detainee to retain types of medication, such as asthma inhalers or angina sprays.
- b. Assess if detainee is dangerous to himself or others.
- c. Call in appropriate medical attendant or guardian or interpreter etc. for vulnerable person.
- d. Check cells and holding rooms for damage and objects that could harm detainee.
- e. Allow detainee to consult with legal representative in private.
- f. Search detainee.
- g. Secure any items you have removed from detainee.
- h. Check that detainees under the influence of alcohol are visited at intervals dictated by their condition and risks. (They should be roused at least every 30 minutes or if possible more frequently when suspected of being intoxicated or having swallowed drugs or their level of consciousness is a concern). Detainees at risk of self-harm to be checked more frequently. Assess whether they can be woken and can answer questions or respond to commands (i.e. where they live or to move limbs).
- i. Remove personal effects and dangerous objects, such as ties, belts, shoelaces and cords that can be used to commit suicide.
- j. Check medication provided by detainee or friend or relative or police for concealment of other items.

- k. Assess if detainee is in a vulnerable group.
- l. Assess if detainee is injured or drunk or on drugs.
- m. Check that only approved restraint techniques and equipment have been used.
- n. Check records for any information about detainee.
- o. Communicate information about detainee's welfare risk to relevant staff and appropriate agencies.
- p. Decide on appropriate cell for detainee, depending on age, gender, degree of danger to himself or others, etc.
- q. Inform detainee of right to legal representation.
- r. Interview detainee regarding physical and mental health and state of intoxication or drugs.
- s. Make sure detainee signs register of items removed.
- t. Provide detainee with information on how to use his or her rights i.e. legal assistance, routines of facility i.e. meals, exercise and non-professional visits.
- u. Record grounds of detention.
- v. Check if detainee needs any medication or medical attention.
- w. Record refusal to detain.
- x. Record removal of items in register.

Safeguards and rights during police custody (Section 7)

Go through these points with participants.

Safeguards for police custody

If police custody is absolutely necessary, the suspect has a:

- right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond
- right to no more than 48 hours in police custody (extendable)
- right to access to confidential and independent complaints mechanisms

Legal access

States should establish a legal aid service framework to guarantee access.

Different types of legal services made available, but not supersede right to a qualified lawyer. States to provide.

Legal rights

Access without delay prior to and during any questioning by an authority, and thereafter throughout criminal justice process

Confidentiality of communication – within sight, but out of the hearing of officials

If confidentiality broken, information inadmissible as evidence

Means to contact a lawyer or similar

Access to case files
 Adequate time and facilities to prepare a defence
 No unlawful or unreasonable restrictions on access
 Qualified legal service providers

Relevant section in Luanda Guidelines regarding safeguards and rights during police custody⁷. Safeguards for police custody

- b. *If detention in police custody is determined by the competent authority to be absolutely necessary:*
 - i. *All persons arrested and detained have the right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond.*
 - ii. *The maximum duration of police custody, prior to the obligation to bring the arrested person before a judge, shall be set out in national law that prescribes time limits of no more than 48 hours extendable in certain circumstances by a competent judicial authority, consistent with international law and standards.*
- c. *Persons in police custody shall have access to confidential and independent complaints mechanisms while in custody.*

8. Access to legal services

- a. *States should establish a legal aid service framework through which legal services for persons in police custody and pre-trial detention are guaranteed*
- b. *Legal services may be provided by a number of service providers including lawyers, paralegals and legal clinics, depending on the nature of the work and the requisite skills and qualifications. States should take steps to ensure sufficient access to quality legal services and, in particular, that sufficient lawyers are trained and available.*
- c. *Reference in these Guidelines to services provided by persons other than lawyers shall not in any way be a substitute for the right to access to and assistance by a qualified lawyer. Where the services of a lawyer are not available, States shall make every effort to ensure that services available from suitably qualified legal service providers can be accessed by detainees under conditions that guarantee the full respect of the rights of the detainees as set out in international law and standards.*
- d. *All persons detained in police custody enjoy the following rights in relation to legal assistance:*
 - i. *Access without delay to lawyers and other legal service providers, at the latest prior to and during any questioning by an authority, and thereafter throughout the criminal justice process.*
 - ii. *Confidentiality of communication, including meetings, correspondence, telephone calls and other forms of communications with lawyers and other legal service providers shall be respected. Such communications may take place within the sight of officials, providing that they are conducted out of the hearing of officials. If this confidentiality is broken any information obtained shall be inadmissible as evidence.*

- iii. *Detainees shall be provided with the means to contact a lawyer or other legal service provider of their choice or one appointed by the state. State legal assistance should be provided if the detainee does not have sufficient means or if the interests of justice require, for example given the gravity, urgency or complexity of the case, the severity of the potential penalty, and/or the status of the detainee as vulnerable or otherwise protected under Part VII of these Guidelines.*
- iv. *The right to access case files and have adequate time and facilities to prepare a defence.*
- v. *Access to lawyers or other legal service providers should not be unlawfully or unreasonably restricted. If access to legal services is delayed or denied, or detained persons are not adequately informed of their right to access providers of legal services in a timely manner, then States shall ensure that a range of remedies are available, in accordance with the principles set out in Part VIII of these Guidelines.*
- vi. *Legal service providers should possess the requisite skills and training as required under national law for the provision of legal assistance and services. Depending on the system in place this includes lawyers, and where appropriate also other legal advisors, legal assistants, paralegals and those running legal clinics.*

Questioning and confessions (Section 9)

Ask participants if any of them are involved in questioning and confessions. How are these dealt with in their country?

Ask if they know of the correct procedures and the rights of detainees.

Then go through these points.

Rights of anyone being questioned by police:

- informed of the right to the presence and assistance of a lawyer or other legal service provider before each questioning session
- medical examination and results
- interpreter
- other accessible language formats
- right to remain silent – no undue advantage to compel or induce
- no torture or other ill-treatment

Relevant section in Luanda Guidelines regarding questioning and confessions

9. Questioning and confessions

- a. *Prior to the commencement of each questioning session, all persons detained in police custody, and other persons subject to police questioning, shall be afforded the following rights:*
 - i. *The right to be informed of the right to the presence and assistance of a lawyer or other legal service provider (such as a suitably qualified paralegal) during questioning where a lawyer or other legal service provider is not present.*

- ii. *The presence and assistance of a lawyer or, where relevant, other legal service providers, during questioning.*
 - iii. *The right to a medical examination, with the results of each examination recorded in a separate medical file, access to which is governed by the normal rules on medical confidentiality.*
 - iv. *The presence and the services of an interpreter, and access to accessible formats, if the arrested person does not understand and speak the language in which the questioning will take place or has a disability.*
- b. *The right of persons undergoing questioning to remain silent shall be respected at all times. It shall be prohibited to take undue advantage of the situation of a detained person for the purpose of compelling or inducing him or her to confess, to incriminate himself or herself, or to testify against another person.*
 - c. *No detained person while being questioned shall be subject to torture or other ill-treatment, such as violence, threats, intimidation or methods of questioning which impair his or her capacity of decision or his or her judgment.*
 - d. *Confessions should only be taken in the presence of a judicial officer or other officer of the court who is independent of the investigating authority. The burden of proof lies with the prosecution to prove that confessions were obtained without duress, intimidation or inducements. Confessions by children are to be recorded in the presence of a judicial officer, and their parent, guardian or independent advocate, lawyer or other legal services provider.*

Rights and safeguards during pre-trial detention (Sections 10, 14, 22)

Rights of anyone in pre-trial detention

- Carried out according to law
- Not motivated by discrimination
- Fair trial, within a reasonable time
- Information on court sessions and adjournments
- Held in detention facilities as close to their home or community and in officially recognised place of detention
- Regular and confidential access to lawyers or other legal service providers
- Torture, etc. prohibitedLodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations about torture
- Shall ensure prompt investigation by independent and impartial authorities if reasonable grounds to suspect torture.

Relevant sections in the Luanda Guidelines regarding rights and safeguards during pre-trial detention

III PRE-TRIAL DETENTION

10. *d. All persons shall have the right to a fair trial, within a reasonable time, in accordance with international law and standards, including the principles set out in the African Commission on Human and Peoples' Rights' Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.*

e. Pre-trial detainees shall be provided with information on court sessions and any adjournments of court sessions.

g. Pre-trial detainees should be held in detention facilities as close to their home or community as possible, taking account any caretaking or other responsibilities.

14. Safeguards for persons subject to pre-trial detention orders

c. Pre-trial detainees shall have regular and confidential access to lawyers or other legal service providers. Detainees must be provided with information about the availability of lawyers and, where appropriate, other legal service providers, the means to access them, and the facilities to prepare their defence.

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

a. All persons deprived of their liberty shall have the right to lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations in a manner consistent with the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

b. If there are reasonable grounds to believe that an act of torture and other cruel, inhuman or degrading treatment or punishment, or another serious human rights violation has taken place, States shall ensure prompt investigation by independent and impartial authorities.

Discussion: Scenario

In plenary

Put this case study onto a PowerPoint presentation and discuss with participants whether the actions accord with the Luanda Guidelines in terms of:

- *The use of force on arrest and transportation*
- *His treatment during police custody*
- *His treatment and rights during pre-trial custody*

Ask:

- *When would this type of force in an arrest context be appropriate?*
- *Are there any dignity issues?*
- *Are any other rights infringed?*
- *Is denying him access to a doctor for eight days a form of torture, as he was in pain?*

Six police officers arrested Mr H. They threw a stun grenade, entered Mr H's flat and forced him to the ground. They handcuffed and hooded him and then took him to police headquarters for questioning. It was not until the second day that he was able to change his soiled clothes. On the second day of his police custody, he asked to see a doctor. He was not examined until eight days after his arrest, while in pre-trial detention, when X-rays revealed he had sustained a fractured rib during his arrest.

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

23. General provisions

Persons deprived of their liberty shall enjoy all fundamental rights and freedoms, except those limitations which are demonstrably necessary by the fact of detention itself.

24. Physical conditions

Conditions of detention in police custody and pre-trial detention shall conform with all applicable international law and standards. They shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.

25. Procedural and other safeguards

States should have in place, and make known, laws, policies and standard operating procedures, which accord with Member States' obligations under the African Charter on Human and Peoples' Rights and other international law and standards, to:

- a. Reduce overcrowding in police custody and pre-trial detention facilities, including through the use of a variety of alternatives to detention, including the use of measures that do not require resort to judicial proceedings, providing that these measures are consistent with international law and standards.*
- f. Ensure that the use of solitary confinement is restricted, and that methods to anticipate crisis situations and de-escalate them without the need to resort to seclusion, restraint or forced treatment are developed and ingrained among law enforcement personnel.*
- g. Provide legislative, budgetary and other measures for the provision of adequate standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental health care, contact with the community, religious observance, reading and other educational facilities, support services, and reasonable accommodation, in accordance with international law and standards.*
- h. Have in place measures, including health assessment screenings, to reduce suicide and self-harm, such as alternatives to custody, diversion to mental health care, promotion of family support, drug treatment and detoxification, and training for officials to identify and address persons who are at risk of suicide and self-harm.*

25. i. *Ensure that any transfer of detainees is authorised by law, that detainees are only moved to and from official gazetted places of detention, that movements are recorded in a register in accordance with Part IV of these Guidelines, and that detainees' next of kin, legal representatives are informed about the transfer prior to the transfer taking effect.*

26. Separation of categories of detainees

The State shall ensure that detaining authorities hold pre-trial detainees separately from the convicted prison population. They shall also ensure that detaining authorities take the necessary measures to provide for the special needs of vulnerable groups/persons, in accordance with Part VII of these Guidelines.

27. Communication

Detainees in police custody and pre-trial detention shall be provided with appropriate facilities to communicate with, and receive visits from, their families at regular intervals, subject to reasonable restrictions and supervision as are necessary in the interests of security. Such contact shall not be denied for more than a few days.

28. Recreational, vocational and rehabilitation services

States shall ensure that persons in police custody and pre-trial detainees have access to adequate recreational, vocational, rehabilitation and treatment services.

VII VULNERABLE GROUPS

29. General provisions

- a. *Legislative, administrative and other measures that apply to persons under arrest, in police custody and in pre-trial detention shall be consistent with international law and standards.*
- b. *In addition to the principles set out in these Guidelines, and the rights afforded to persons with special needs under the African Charter on Human and Peoples' Rights and relevant international law, States shall take measures to ensure that the special protections set out in Part VII are provided in relation to persons with special needs.*
- c. *States should provide for access to intermediaries to assist with capacity and communication, and should be provided for on the grounds of age or incapacity. Intermediaries should be subject to a state registration process and be neutral and independent.*

To sum up: Case study (Sections 23, 24, 25, 26, 27, 28 and 29)

Maria was arrested on 15 December 2013 on suspicion of theft and shoplifting. She was admitted to a police station that day and brought before court the following morning. In January 2014, she was remanded in pre-trial detention until May.

She was denied bail on the grounds that she was a foreign national, and might be a flight risk. In May, she was remanded again until the end of September 2014. On this date, when she came before the court, the presiding officer noticed that she was pregnant and realised that she could not have been pregnant before she was admitted into custody. The presiding officer ordered an investigation.

YOU ARE THE INVESTIGATING TEAM.

You start your investigation by interviewing Maria in a room at the police station. One police official wants to sit in with Maria, but when you explain that your interview must be private, he agrees and stands outside the door, but says the door must be left open. Your interview with Maria is difficult, as she does not say much. You are not sure if there is a language issue or a mental disability issue, or just shyness. At first she says she does not know how she became pregnant. Then she tells you that one of the police officers is her boyfriend. She explains that she was the only woman in detention when she first came in, and a police official, Constable Bennet, came into her cell and locked it. He told her she would never get out of detention, but he would help her if she had sex with him. Maria protested, and eventually gave in. Over the next few months, Constable Bennet came often to have sex and bring her nice food and blankets. Maria says he was very nice and promised to take care of her when she got out, although she hasn't seen him for a while.

You interview other women in the police station at the time, who are currently being held in the same cell as Maria. They tell you that police officials often come and ask for sex in exchange for things, like making a phone call, or sending a message to their families. The cell is very crowded. The women tell you that sit in the cell all day, doing nothing. They have no reading material and are not allowed out to exercise.

You interview the station commander who tells you that his male officials are never allowed into the cells alone. They must always be accompanied by a female police officer. However, there are no female officers on duty sometimes. He tells you that Constable Bennet is no longer working there.

You check the cell registers for the time Maria has been there. You see that sometimes she is with a group of women, and sometimes alone. You visit the cell she is kept in when she is alone. It is small and has no natural light.

These case studies encompass many of the provisions of the Luanda Guidelines that we have already discussed. Participants must refer back to these and also self-study Sections 23–29, and refer to these in their answers.

Participants work in groups for these case studies. You may want to set it for homework, as it is quite involved. If you do it during the day, allow at least 45 minutes for participants to work through the case study and their answers, as well as 45 minutes for the report-back. When reporting back, ask participants to relate this scenario to situations in their country, where applicable.

Questions

Were there any human rights abuses in this case and, if so, what were they? Consider vulnerable groups, overcrowding, communication, cell allocation, female police officials, solitary confinement and other physical conditions, and use of force. Support your answers with the Luanda Guidelines.

Principle 5: Accountability and transparency

This section deals with issues of accountability and transparency, which includes:

- Effective **monitoring mechanisms** and **oversight agencies**
- **Written records** – for arrest, search, seizure of evidence, detention, interrogation.

Oversight and monitoring

Discussion: Benefits of accountability and transparency to police

Let's discuss the value of accountability and transparency in police officials as individuals, and the service as a whole.

- In the table below, discuss with a partner whether you agree or disagree with the following:
- Accountability and transparency in policing:

	Agree	Disagree	Don't know/not always/not sure/other
Promotes stability			
Promotes democracy			
Promotes greater reliance on legal action and less vigilantism			
Enhances people's democratic, economic and social development/ respect for the law enhances the authority of the law			
Makes people less hostile to police			
Allows police really to service the community			
Promotes trust in the community of police			
Community knows they will get equal treatment			
Promotes pride in the country's police services			
Increases safety of police if less hostility towards police			
Promotes greater cooperation with police			

Throughout the Guidelines, starting in the preamble, you will find references to the need for accountability at all levels of the judicial system.

For example, the Preamble says:

*Recognising further that arrest, detention and conditions of police custody in many African countries are characterized by **lack of accountability**, poorly paid and under-resourced police, malfunctioning of administration of justice, including the lack of independence of the judicial service system [...], the lack of **registration and monitoring systems for keeping track of police detention**, systemic corruption and the lack of resources, all of which contribute to the absence of the rule of law;*

Concerned by the lack of effective and/or appropriate monitoring mechanisms and independent policing oversight agencies;

Democratic police forces should be monitored by a range of external stakeholders, and should also have effective internal accountability and oversight controls. The mechanisms of oversight that hold the police to account are complex. The police are answerable to many audiences including:

- The Auditor-General, who reviews their use of finances
- The Parliament, who reviews their annual performance
- The communities and people they police
- The media
- Independent organisations, who may monitor investigations carried out by police, or who may undertake investigations themselves.

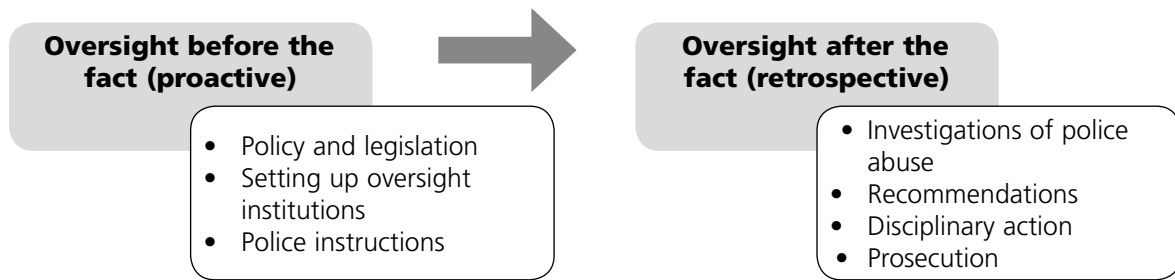
Before and after the fact oversight

There are several ways in which we try to arrange how we think about the multiple layers and spheres of oversight: one is oversight before the fact, and the other is oversight after the fact.

- **Oversight before the fact:** this oversight role is the instruction, policy or legal requirement that is set before policing takes place. It is provided through political oversight by the executive or Parliament in the form of policy, legislation and/or appropriate budgets.
- **Oversight after the fact:** this oversight role provides review of police conduct and actions after the event. These bodies may have the power to undertake investigations, refer matters to prosecution, and make recommendations for policy changes and disciplinary action depending on their role and mandate.

External, internal and civil society oversight

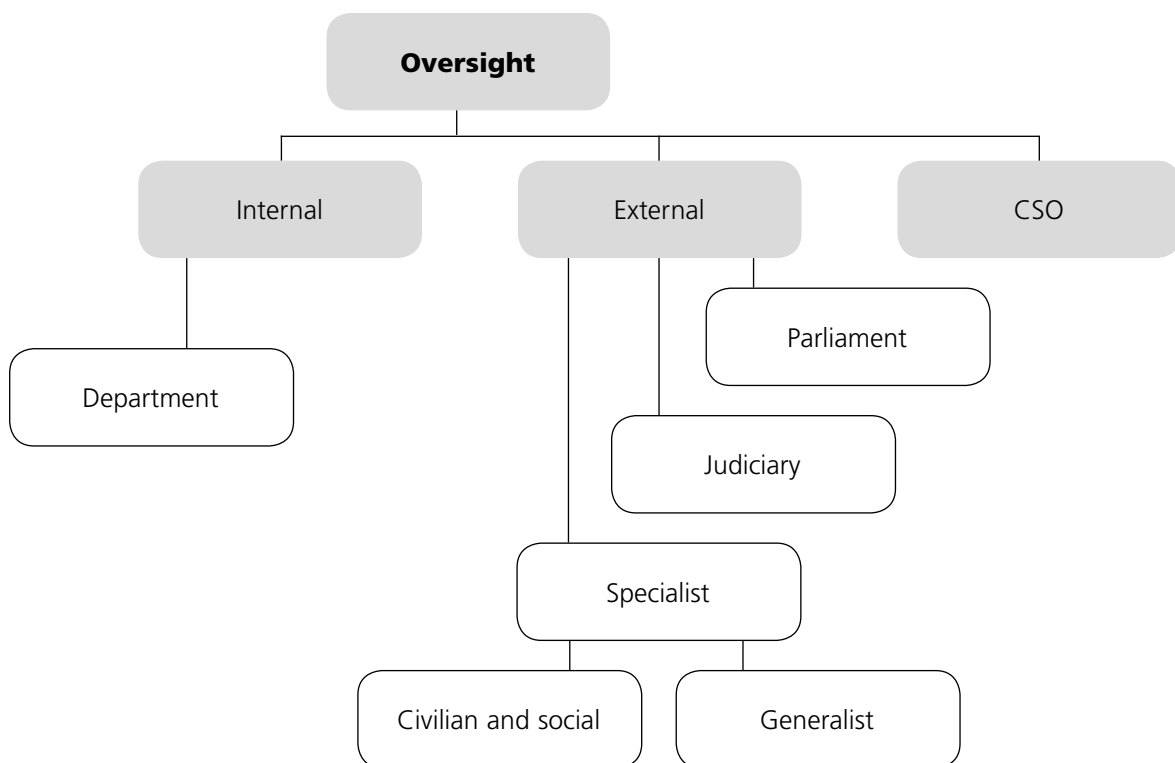
In addition to the two stages at which oversight needs to happen (before and after the fact), another way to view oversight is at three key levels. It can occur internal to the police, external and at the level of civil society. Although the diagram shows the spheres or levels of oversight as distinct, they need to be linked in a supportive and responsive chain for oversight to be effective.



Discussion

Discuss the oversight institutions in your country and group them according to whether they are before the fact or after the fact. Describe their most distinguishing features.

The Luanda Guidelines envisage a number of mechanisms providing an oversight role for the police, including internal controls and external actors, and ad hoc systems such as inquiries to respond to particular events. The Luanda Guidelines also set out systems that should be in place to facilitate effective monitoring, such as access to information.



35. Judicial oversight of detention and habeas corpus

All persons in police custody and pre-trial detention shall have the right, either personally or through their representative, to take proceedings before a judicial authority, without delay, in order to have the legality of their detention reviewed. If the judicial authority decides that the detention is unlawful, individuals have the right to release without delay.

- d. Standards of individual conduct for officials
 - i. States should have in place, and make known, laws, policies and standard operating procedures to set enforceable standards of conduct for police officers, prison officials and other law enforcement or judicial officers that are consistent with internationally recognised standards of conduct for law enforcement personnel and other law enforcement officials responsible for the care or supervision of persons who are in conflict with the law and deprived of their liberty.
 - ii. Non-compliance with the rules on arrest and custody should be a disciplinary offence, subject to disciplinary and, where appropriate, criminal procedures, that accord with international law and standards on procedural fairness.
- e. Complaints mechanisms
 - i. States shall establish, and make known, internal and independent complaints mechanisms for persons in police custody and pre-trial detention.
 - ii. Access to complaints mechanisms shall be guaranteed for all persons in police custody and pre-trial detention, without fear of reprisals or punishment.
 - iii. Detainees shall have the right, and be provided with the facilities, to consult freely and in full confidentiality with complaints mechanisms, subject to reasonable conditions to ensure security and good order in the place of detention.
- d. There shall be thorough, prompt and impartial investigations of all complaints and, where they are well-founded, appropriate remedial action shall be taken without delay.

38. Remedies

All persons who are victims of illegal or arbitrary arrest and detention, or torture and ill-treatment during police custody or pre-trial detention have the right to seek and obtain effective remedies for the violation of their rights. This right extends to immediate family or dependents of the direct victim. Remedies include, but are not limited to:

- a. Restitution to restore the victim to the situation that would have existed had the violation of their right not happened.
- b. Compensation, including any quantifiable damages resulting from the right violation and any physical or mental harm (such as physical or mental harm, pain, suffering and emotional distress, lost opportunities including education, material damage and loss of actual or potential earnings, harm to reputation or dignity, and costs required for legal services or expert assistance, medicines, medical services, and psychological and social services).
- c. Rehabilitation, including medical and psychological care as well as legal and social services.
- d. Satisfaction and guarantees of non-repetition.

39. Data collection

States shall establish processes for the systematic collection of disaggregated data on the use of arrest, police custody and pre-trial detention to identify and address the over-use or inadequate conditions of police custody and pre-trial detention.

40. Access to information

States shall establish, and make known, systems and processes to guarantee the right of access to information for persons in police custody and pre-trial detention, their families, lawyers and other legal service providers, in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.

41. Oversight mechanisms

States shall establish, and make known, oversight mechanisms for authorities responsible for arrest and detention. These mechanisms shall be provided with the necessary legal mandate, independence, resources and safeguards to ensure transparency and reporting, to ensure the thorough, prompt, impartial and fair exercise of their mandate.

42. Monitoring mechanisms

- a. States shall ensure access to detainees and places of detention for independent monitoring bodies or other neutral independent humanitarian organisations authorised to visit them.
- 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.
- c. Access to places of detention shall also be provided to lawyers and other legal service providers, and other authorities such as judicial authorities and National Human Rights Institutions, subject to reasonable conditions to ensure security and good order.

43. Inquiries

States shall establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody, torture and other cruel, inhuman or degrading treatment or punishment, and other serious violations of the human rights.

Record keeping

One of the ways that police can be accountable and transparent is by keeping accurate registers. The Luanda Guidelines devotes Part IV to keeping records.

Discussion: Reasons for keeping good records

In plenary.

Discuss with participants why it is necessary to keep accurate records of everything that goes on from the moment a suspect is searched, during the arrest, to admission into police custody to individual and general cell information.

The discussion might include:

- *It's important for shift changes and incoming officials know what is going on*
- *It's a way for the commander to have a bird's eye of view of everything going on*
- *It gives lawyers and family members access to this kind of information*
- *It's a way for other organisations, e.g. human rights organisations, to carry out oversight*
- *It's a way of measuring improvements in the system*
- *It's a way of finding out whether there has been any mistreatment, on whose shift it occurred, and importantly, it's a way of ensuring that police have done everything 'by the book': procedurally correctly in terms of human rights, which is a form of protection for police in case of any accusation or investigation. So, ultimately, it's a good way for police to protect themselves.*

Case study: Keeping a register of intake and injuries on arrival at a police station

*The sections on keeping registers in the Luanda Guidelines are very specific and detailed about what information needs to be kept. We have designed a 'model' **Intake Form** and **Injury Record** on pages 47 to 53 of this manual, which contains all the specifications.*

Rather than participants reading the Guidelines, they can role-play admitting two suspects to police custody. Choose two participants to act out Suspect 1 and 2 below. Give them some time to 'get into' their characters. We have given them a sketch below, but they should also be creative and make up some of their own detail!

Choose four other participants to be the admitting officials: two for each suspect. The admitting officials must ask the suspect the questions on the Intake Form and the Injury Form and fill the forms in. The rest of the group must also fill them in.

First do Suspect 1, then Suspect 2.

Suspect 1: *You are a male of 17. You have been arrested for assaulting a man, who you say was trying to beat you. A sharp weapon was found on you and confiscated. You speak English. You have wounds on your wrists, a black eye and bruises on your body. You have not been read your rights. You have not been allowed to contact your parents or your lawyer yet.*

Suspect 2: *You are a middle-aged woman. A shopkeeper called the police when he found you wandering about, talking to yourself in a language no one understands and shouting. You keep threatening to kill yourself. When asked if you are in pain, you point to your stomach. You have not been read your rights. You are put into a cell with two other women, who are angry with you as they say you are mad. You have no purse or toiletries.*

Individual Detainee Custody Register

Detainee name (first name, surname): _____

ID/Passport number: _____

Case number: _____

Date: _____ Time: _____ Officer: _____

Station ID: _____

PERSONAL DETAILS

D.O.B: _____

Gender: Male Female Other

Address (last known): _____

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

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

Language(s) spoken: _____

Interpreter/intermediary needed? Yes No

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

If 'no', why not? _____

PHYSICAL HEALTH STATUS

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

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

If 'yes', please describe: _____

Has the detainee been offered medical treatment? Yes No

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

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

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

Does the detainee have any existing medical conditions? Yes No

Details: _____

Does the detainee take regular medication? Yes No

Details: _____

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

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

MENTAL/EMOTIONAL HEALTH STATUS

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

If 'yes', please describe: _____

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

If 'yes', please describe: _____

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

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

If 'no', please describe: _____

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

Yes No

If 'yes', please describe: _____

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

If 'yes', please describe: _____

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

VULNERABLE GROUPS

Is the detainee a member of a vulnerable group?

Child under 18 Woman Disability Non-national Elderly

CHILDREN

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

If no, why not? _____

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

If no, why not? _____

Is the child being held separately from adults? Yes No

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

WOMEN

Is a woman officer conducting this intake? Yes No

Name of officer: _____

If 'no', why not? _____

Is the detainee pregnant? Yes No

Is the detainee breastfeeding? Yes No

Does the detainee have any children with her? Yes No

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

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

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

If 'yes', who? _____

If 'no', why not? _____

Has the detainee been searched? Yes No

Name of officer who conducted search: _____

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

If 'no', why not? _____

PERSONS WITH DISABILITIES

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

If 'yes', detail: _____

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

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

If 'no', why not? _____

NON-CITIZENS

Is the detainee a citizen of another country? Yes No

Which country? _____

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

If 'yes', detail: _____

If 'no', why not?

Is the detainee a refugee? Yes No

Is the detainee a stateless person? Yes No

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

CIRCUMSTANCES OF ARREST/DETENTION

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

Name of officer who arrested the detainee: _____

Badge number of officer who arrested the detainee: _____

Date of arrest: _____

Time of arrest: _____

Place of arrest: _____

Was the arrest made pursuant to a warrant? Yes No

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

* If 'no', why not? _____

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

Please explain: _____

Reason for arrest: Alleged offence/charge of _____

Breach of bail Breach of probation/sentence

Other: _____

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

If 'no', why not? _____

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

If 'no', why not? _____

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

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

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

If 'yes', please explain: _____

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

DETAINEE RIGHTS

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

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

Yes No

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

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

If 'yes', please explain: _____

If 'no', why not? _____

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

If 'yes', details: _____

If 'no', why not? _____

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

If 'yes', details: _____

If 'no', why not? _____

CONDITIONS OF DETENTION

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

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

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

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

If 'no', why not? _____

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

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

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

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

Does the detainee have access to bathing facilities? Yes No

Has the detainee been given toiletries? Yes No

Has the detainee been given clean bedding? Yes No

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

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

DATE _____

TIME _____

AUTHORISING OFFICER _____

Individual Detainee Injury Record

Detainee full name: _____

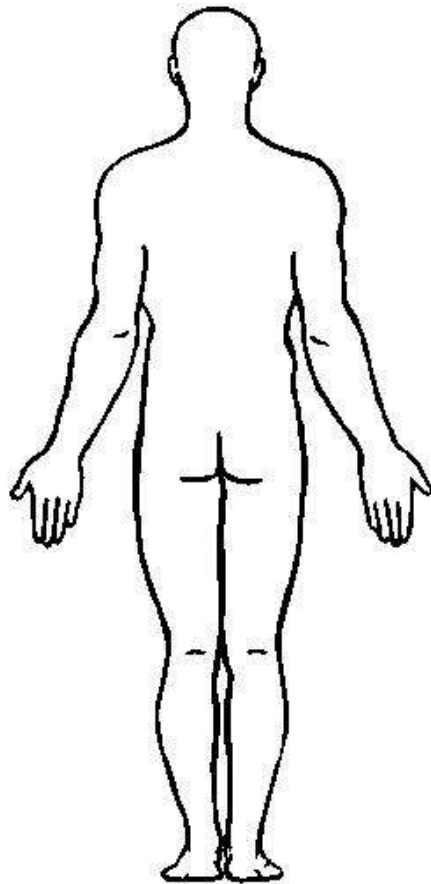
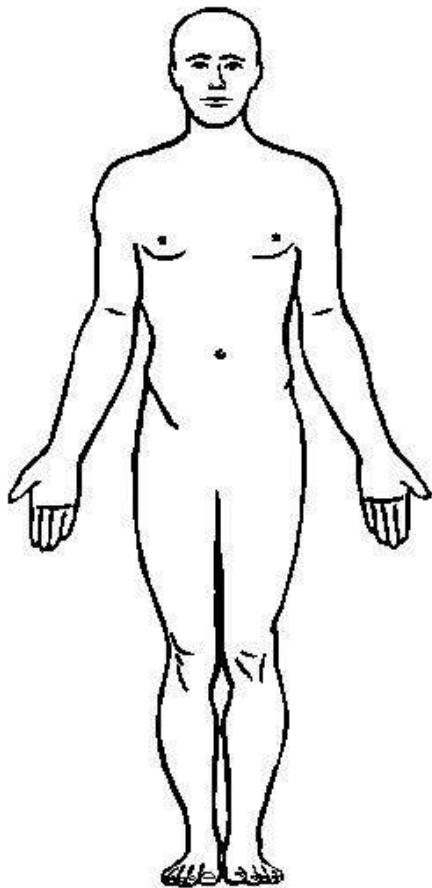
Custody ID/Number: _____

Date: _____ Time: _____

Custodial site: _____

Officer conducting intake: _____

Reasons for injuries (according to detainee): _____



Relevant sections in the Luanda Guidelines regarding registers (Sections 15, 16 and 17)

IV REGISTERS

15. General provisions

- a. *All arrests and detentions shall be recorded at the earliest possible time following arrest or detention in an official register with sequentially numbered pages.*
- b. *Access to the register shall be provided to the arrested or detained person, his or her lawyer or other legal service provider, family members, and any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of their liberty.*

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

All registers shall contain the following information, as a minimum:

- a. *The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable.*
- b. *The date, time and place that:*
 - i. *the person was arrested or detained;*
 - ii. *the person was notified of the reasons for arrest or detention;*
 - iii. *a record of the arrest or detention was made in the register; and*
 - iv. *notification of the arrest or detention to a third person of the arrested person's choice took place.*
- c. *The identity of the officers involved in the arrest or detention.*
- d. *Observations on the state of the mental and physical health of the arrested or detained person (including any visible physical injuries), and whether they requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality.*
- e. *An itemised account of any personal items belonging to the detained person taken by the arresting or detaining authority.*
- f. *The date, time and place of any transfers, and the identity of the official(s) responsible for, and involved, in that transfer.*
- g. *Any complaints raised by the arrested or detained person.*

17. Additional information to be recorded in arrest registers

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official arrest registers shall also set out:

- a. *The reason for the arrest.*
- b. *The date and time that the arrested person was notified of the reasons for his or her arrest, in terms of sections 4 and 5 of these Guidelines, and the identity of the official who performed the notification.*
- c. *The date and time that the arrested person or an official notified a third person of the arrested person's choice about the arrest.*

Module 5: Evaluation

Evaluation questions

Expectations

Go back to the participants' expectations and determine the extent to which they have been met.

Three things you could put into practice

Ask the participants to each tell you three things they can take away from this course and put into action.

Powerpoint Presentations

What are the Luanda Guidelines?

- Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa
- Adopted by the African Commission on Human and People's Rights
- 55th Ordinary Session from 24 April to 7 May 2014
- Luanda, Angola.

**What's written on the door
he's about to enter?**



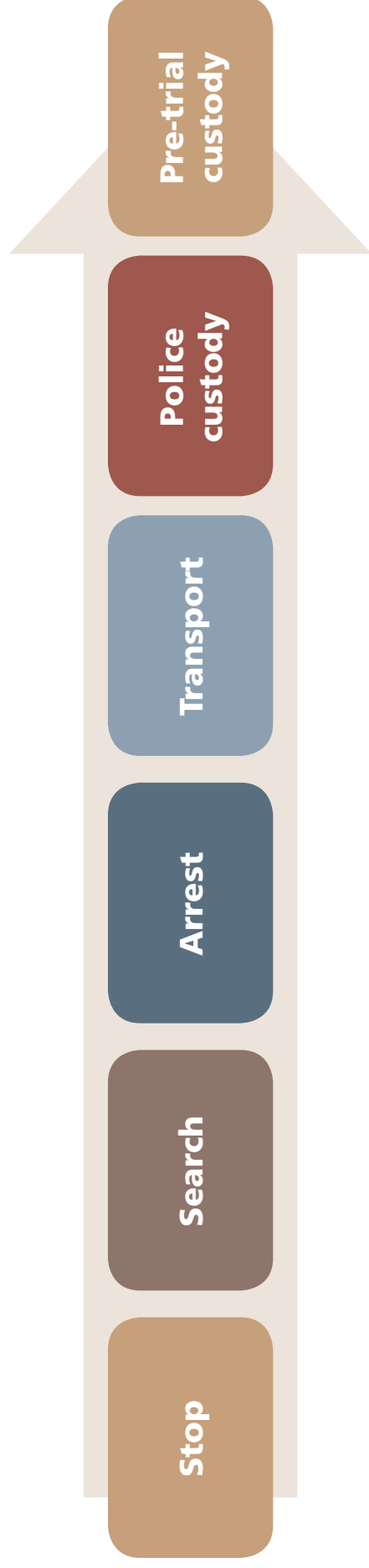
Ideas and concepts that relate to human rights and policing

- Human rights are the rights a person has simply because that person is a human being.
- Human rights apply to all people, whatever their nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status.
- Human rights are basic standards without which people cannot live in dignity.
- Human rights are usually guaranteed by law.

Police and human rights

- The effective implementation of international human rights norms is premised on adherence to the **rule of law**, i.e. that no person is above the law, and that the law applies to every person equally, without discrimination, whether a person is a private citizen or a public official.
- Accordingly, police organisations and individual officials have an **obligation to act within the bounds of the law**, and the state has an obligation to ensure clear laws and adequate training and to promote compliance

The detention continuum



GUIDELINES ON THE CONDITIONS OF ARREST, POLICE CUSTODY AND PRE-TRIAL DETENTION IN AFRICA

PREAMBLE

PART I – ARREST

Grounds for arrest
Rights of an arrested person

Procedural guarantees for arrest
Notification of rights



PART II - POLICE CUSTODY

Safeguards for police custody
Questioning and confessions

Access to legal services



PART III - PRE-TRIAL DETENTION

Safeguards on pre-trial detention orders
Safeguards for persons subject to pre-trial detention orders



PART IV - REGISTERS

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



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

State responsibility to account
Deaths in police custody and pre-trial detention
Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention

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

Physical conditions
Separation of categories of detainees
Recreational, vocational and rehabilitation services

Procedural and other safeguards

Communication
Rehabilitation services



PART VII - VULNERABLE GROUPS

Special measures are not discriminatory
Children
Women

Persons with disabilities

Non-nationals



PART VIII - ACCOUNTABILITY AND REMEDIES

Standards of individual conduct for official
Oversight mechanisms

Access to information
Monitoring mechanisms

PART IX - IMPLEMENTATION

Application
Training

Reporting



A POLICE OFFICIAL IS INFRINGING ON A SUSPECT'S HUMAN RIGHTS IF HE OR SHE ARRESTS THE PERSON ...

without sufficient grounds

for petty crime

without giving the person the reasons/charge

without informing of the right to silence

because of profiling (discrimination)

without the authority to arrest

TO AVOID INFRINGING A SUSPECT'S RIGHTS DURING ARREST:

There must be sufficient grounds

There must be an offence punishable by a custody sentence

The police official must tell the person the charge on arrest

The police official must inform the person of his or her right to silence

There must not be discriminatory practices

The person must be authorised by law to make an arrest

Principle 1: RULE OF LAW

- Grounds and procedures established by law, NOT arbitrary
- Authorised and competent authority
- Sufficient legal reasons
- Formally recognised and gazetted

Principle 2: NO DISCRIMINATION

- No discrimination, no one is above the law and the law applies equally
- Fair discrimination with end aim of equality – vulnerable people: children, the disabled, women, foreign nationals

Principle 3: PROPORTIONALITY AND REASONABLENESS

- Police action proportional to the offence – alternatives/last resort?
- Use of force
- Use of restraints

Principle 4: PROCEDURAL GUARANTEES AND RIGHTS OF DETAINEES

- Prohibition against torture and cruel, inhuman and degrading punishment – confessions, disciplinary action (solitary confinement); interrogation
- Right to privacy – searches, consultations with legal representatives
- Right to dignity – cell conditions, exercise
- Right of access – to legal representation, families
- Right to information

Principle 5: ACCOUNTABILITY AND TRANSPARENCY

- Records and registers – custody, arrest, searches, evidence, bodily harm
- Oversight mechanisms
- Remedies and sanctions

Section x: Children

- Best interests of the child, respect child's legal status, promote well-being, ensure the child's privacy, and avoid harm
- Definition: below 18 years. Uncertainty ... treat as child
- Absolutely necessary, last resort, non-custodial alternatives and diversion programmes preferred, hold separately from adults, unless best with family members
- Hold for shortest possible period
- Preliminary inquiry process within 48 hours
- Procedural safeguards
- Notify parents or guardians
- Notify authority
- Inform child and parents/guardians of charge, general rights, interpreter, a lawyer or other legal service provider
- Provide access to legal services provider
- Give opportunity to consult freely and confidentially
- Right to be heard and for views to be taken into account

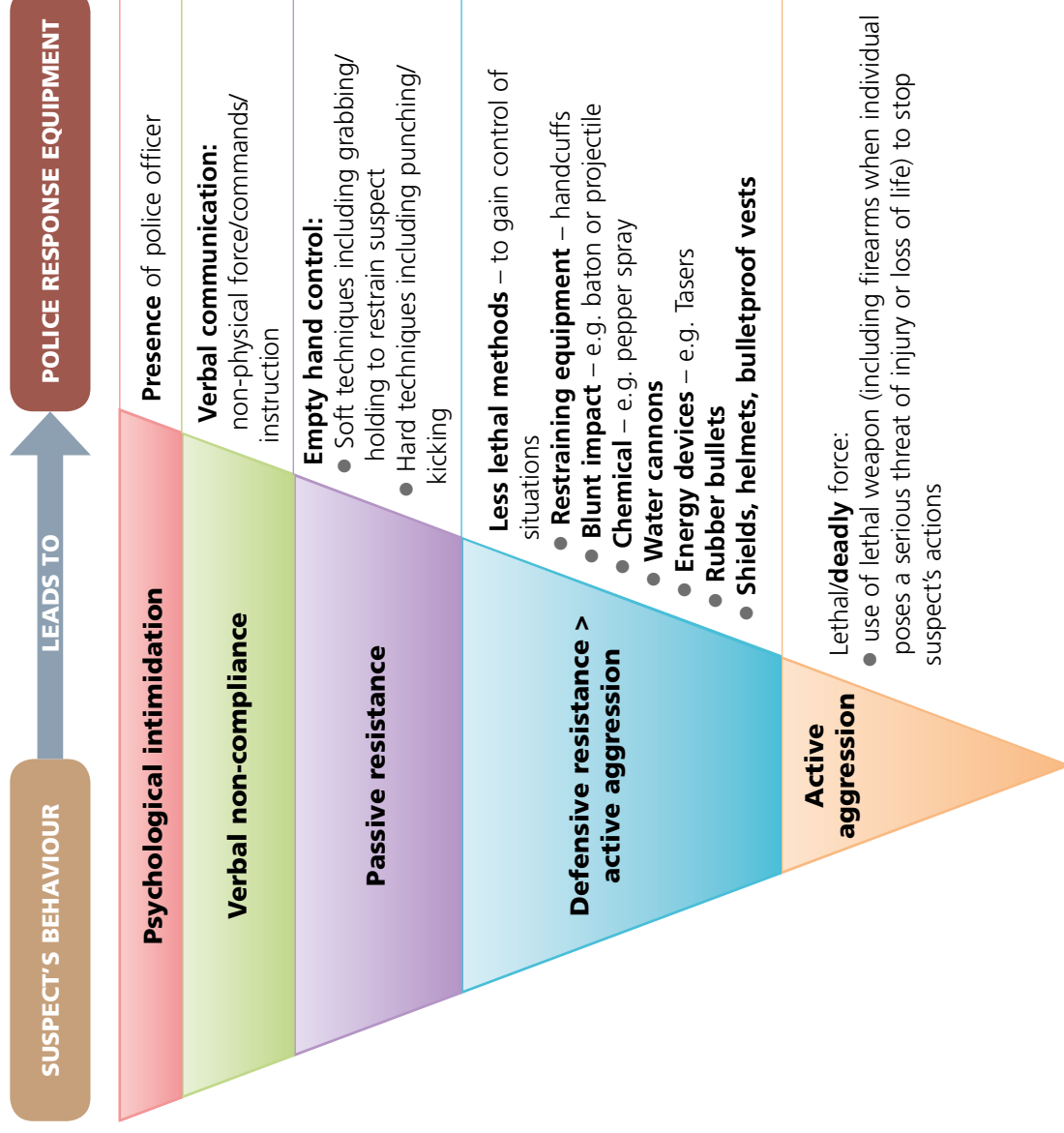
Section 32. Women

- 32. Women
- Legislation, procedures, policies and practices
- Only if absolutely necessary
- **Procedural safeguards**
- Searches – female law enforcement officials
- Separate from male detainees
- Special arrangements for children in care (e.g. suspension of detention)
- Provide access to contact families, children, their children’s guardians and legal representatives
- Provide facilities and materials for specific hygiene needs
- Provide gender-specific health screening and care – dignity and privacy
- Right to be seen by a female medical practitioner
- No close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants
- Have access to obstetric and pediatric care before, during and after birth
- No physical restraints before, during or after childbirth
- If accompanying children, state to provide for them in their best interests

Scenarios

- A woman is arrested for stealing food for her baby.
- A man starts shooting randomly in a marketplace. No one has been killed. Six policemen arrive. One shoots him.
- A short drunk man starts abusing the police. Police wrestle him to the ground, and handcuff him and take him to the cells.
- Same situation as 3, but the man is very tall and big.
- A non-national is arrested for not having papers.

Use of force continuum



Guarantees during arrest

- Officials clearly identify themselves
- **Searches** – dignity; privacy.
- Inform reason for search prior to search.
- **Rights of an arrested person**
- Not to be tortured or subjected to cruel, inhuman and degrading treatment and punishment
- To be informed of the reasons and charges, at the time of arrest, in appropriate language
- To silence and freedom from self-incrimination
- To access, without delay, to a lawyer, or legal service provider (state or non-state)
- To humane and hygienic conditions
- To contact and access a family member or another person
- To urgent medical assistance
- To information in accessible formats, interpreter
- To apply for release on bail or bond
- To challenge promptly the lawfulness of their arrest before a competent judicial authority
- To freely access complaints and oversight mechanism.
- To reasonable accommodation

Safeguards for police custody

If police custody is absolutely necessary, the suspect has a:

- right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond
- right to no more than 48 hours in police custody (extendable)
- right to access to confidential and independent complaints mechanisms

Legal access

- States should establish a legal aid service framework to guarantee access
- Different types of legal services made available, but not supersede right to a qualified lawyer. States to provide

Legal rights

- Access without delay prior to and during any questioning by an authority, and thereafter throughout criminal justice process
- Confidentiality of communication – within sight, but out of the hearing of officials
- If confidentiality broken, information inadmissible as evidence
- Means to contact a lawyer or similar
- Access to case files

Safeguards for police custody (cont.)

- Adequate time and facilities to prepare a defence
- No unlawful or unreasonable restrictions on access
- Qualified legal service providers
- Rights of anyone in pre-trial detention
- Carried out according to law
- Not motivated by discrimination
- Fair trial, within a reasonable time
- Information on court sessions and adjournments
- Held in detention facilities as close to their home or community and in officially recognised place of detention
- Regular and confidential access to lawyers or other legal service providers
- Torture, etc. prohibited.
- Lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations about torture
- Shall ensure prompt investigation by independent and impartial authorities if reasonable grounds to suspect torture

Case study

Six police officers arrested Mr H. They threw a stun grenade, entered Mr H's flat and forced him to the ground.

They handcuffed and hooded him and then took him to police headquarters for questioning. It was not until the second day that he was able to change his soiled clothes.

On the second day of his police custody, he asked to see a doctor.

He was not examined until eight days after his arrest, while in pre-trial detention, when X-rays revealed that he had sustained a fractured rib during his arrest.

And finally,

Were your expectations met?

Three things you could put into practice?

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