

Perspectives on Pre-Trial Detention in Africa

March 2015



The African Policing and Civilian Oversight Forum

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ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

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Foreword

The excessive and arbitrary use of arrest, police custody and pre-trial detention, pose a serious threat to the human rights of persons across the globe. According to researchers, approximately 42.8% of people detained in African prisons are awaiting trial.¹ This proportion of awaiting trial prisoners varies from country to country – ranging from 7.1% of the total prison population in Rwanda to 91.7% in Comoros.² Due to the fact that the incarceration of pre-trial detainees is not subject to the same level of oversight as sentenced prisoners, detainees awaiting trial are more susceptible to higher levels of physical and mental abuse, corruption and torture. Additional factors, such as limited financial and administrative capacity of judicial systems in Africa, contribute to this trend, with violations of the rights of pre-trial detainees being more likely to go undetected.

Since 2011, the African Policing Civilian Oversight Forum (APCOF) has worked to promote a rights-based approach to arrest, police custody and pre-trial detention practices in accordance with the principles of the African Charter on Human and Peoples' Rights ('African Charter'). As part of this initiative, APCOF has conducted a series of evidence-based studies of pre-trial justice conditions across a range of countries in Africa (Niger, South Sudan and Uganda).³ The findings presented in these studies have also contributed to APCOF's work in supporting the African Commission in the development of *The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (the Luanda Guidelines). The Luanda Guidelines were adopted by the African Commission during its 55th Ordinary Session from 28 April to 12 May 2014 in Luanda, Angola.

The first study conducted by APCOF involved a regional overview of issues relating to arrest, police custody, and conditions of detention in countries across Africa. This included an extensive review of the international and regional human rights framework and assessment of numerous reports by the United Nations Human Rights Council. The study identified a range of challenges to achieving a rights-based approach to pre-trial justice, which included: expansive police powers; insufficient training and resources; discriminatory attitudes and behaviours; high levels of corruption; and weak systems of oversight and accountability. This study determined the need for further research and, in particular, country-specific data. APCOF then contracted local experts to conduct studies in Niger, South Sudan and Uganda. These countries were selected on the basis of their development and reform agendas, as well as their potential to contribute and support domestic efforts for reform.

1 International Centre for Prison Studies, 'World Prison Brief: Africa'. Available at <http://www.prisonstudies.org>. <Accessed on 18 March 2015>

2 International Centre for Prison Studies. (2015). The regional average was calculated on the basis of available statistics, and excluded information from Equatorial Guinea, Eritrea, Gabon, Guinea Bissau, Mayotte, Reunion and Somalia

3 APCOF is the process of completing further country studies in Tanzania, Malawi, South Africa, and Tunisia, which will be collated into Volume 2 of this Edition

Dr Bashir Tarif Idrissa, a professor of law and economics, conducted the baseline study in Niger and found significant gaps between national legislation and international standards relating to arrest, custody and pre-trial detention. For example, domestic law makes no distinction between arrest and 'questioning'; detention is not articulated or practised as a measure of last resort, and legislation provides no oversight or accountability mechanisms for pre-trial justice. In addition, there are no accommodations afforded in law to vulnerable groups, such as children and persons with disabilities. Although Niger has ratified several international treaties endorsing the rights of pre-trial detainees, these provisions have not yet been legislated into domestic law.

The South Sudan study was conducted by Amanda Lucey, a human rights practitioner, who found that arbitrary arrests and illegal detentions were common practice in South Sudan, often motivated for political reasons. Additional findings included insufficient training of the police, and long periods of civil unrest resulted in discriminatory attitudes and practices going unpunished, resulting in a pre-trial detention environment that is ripe for corruption and abuse. Furthermore, the lack of oversight structures and accountability mechanisms pose additional challenges to the establishment of a rights-based approach to pre-trial justice in South Sudan.

The Uganda study was conducted by Roselyn Karugonjo-Segawa, a human rights advocate. The study found that even though national legislation is generally compliant with international norms and standards, implementation remains a serious problem. In addition, the study noted the prevalence of arbitrary arrest, and raised concerns regarding political motivations and discriminatory behaviours and attitudes of the police. The study also concluded that high levels of corruption and the absence of oversight mechanisms threaten the achievement of pre-trial justice in Uganda.

Each of these studies presents an in-depth analysis of the country-specific conditions threatening the achievement of a rights-based approach to pre-trial justice. Whilst certain challenges are common to countries, understanding the socio-political climate of a specific country is critical for the successful implementation of human rights norms and standards. Attention should be directed towards ensuring that national legislation is in compliance with regional norms and standards relating to arrest, custody and pre-trial detention. In addition, capacity building needs to be prioritised, specifically as it relates to the training practices of law enforcement personnel, and provision of adequate resources. Furthermore, the establishment of oversight structures and accountability mechanisms needs to form part of the legislative architecture for pre-trial justice, not only to ensure that human rights are protected, but also to provide mechanisms for dealing with acts of corruption to end widespread impunity.

Pre-Trial Justice in Africa

An overview of the use of arrest and detention, and conditions of detention

Louise Edwards

1 Introduction

Arbitrary arrest and detention, and poor conditions of pre-trial detention are prevalent but under-examined areas of criminal justice practice and reform.¹ Approximately 43.3% of detainees across Africa are pre-trial detainees, with statistics ranging from 7.9% of the total prison population in Namibia, to 88.7% in Libya.² These statistics are unlikely to include detainees in police detention facilities, and may therefore be significantly higher.

Pre-trial detainees often exist in the shadows of the criminal justice system, as their detention and treatment are not generally subject to the same levels of judicial and other oversight as sentenced prisoners. Overall, pre-trial detainees experience poorer outcomes than sentenced prisoners in relation to conditions of detention, the risk of torture and other ill-treatment, susceptibility to corruption, and experience conditions of detention that do not accord with the rights to life, humane treatment and the inherent dignity of the person.³ Pre-trial detention has a disproportionate impact on the most vulnerable and marginalised, with pre-trial detainees more likely to be poor and without means to afford legal assistance or to post bail or bond.⁴ The over-use of pre-trial detention, and conditions of detention that do not accord with basic minimum standards, undermines the rule of law, wastes public resources and endangers public health.⁵

This study provides an overview of the challenges to achieving a rights-based approach to the use of arrest and detention by the police across Africa. It sets out the general principles of international law in relation to the procedural safeguards for arrest and detention and minimum standards for conditions of detention, and examines whether, and why, reports of arbitrary arrest and detention, and poor conditions of detention in police facilities persist across the African continent. The paper is structured as follows:

- 1: Introduction and methodology
- 2: The use of arrest
- 3: The use of pre-trial detention in police custody
- 4: Conditions of detention in police facilities
- 5: Conclusion and recommendations.

1 Schoenteich M (2008) *The Scale and Consequences of Pre-Trial Detention around the World*. New York: Open Society Justice Initiative. http://www.soros.org/initiatives/justice/focus/criminal_justice/articles/publications/pre-trial20080513?res_id=104079, accessed 14 June 2011

2 International Centre for Prison Studies. *World Prison Brief*. <http://www.prisonstudies.org>, accessed 17 January 2012. The overall figure is an average calculated on available statistics, excluding Equatorial Guinea, Eritrea, Guinea Bissau, Mayotte, Reunion, and Somalia for which statistics are unavailable

3 Schoenteich M (2008) *The Scale and Consequences of Pre-Trial Detention around the World*. New York: Open Society Justice Initiative. http://www.soros.org/initiatives/justice/focus/criminal_justice/articles/publications/pre-trial20080513?res_id=104079, accessed 14 June 2011

4 Shaw M (2008) *Reducing the Excessive Use of Pre-trial Detention*. New York: Open Society Justice Initiative. http://www.soros.org/initiatives/justice/focus/criminal_justice/articles/publications/pre-trial20080513?res_id=104079, accessed 14 June 2011

5 *Ibid*

The report concludes with a number of recommendations aimed at promoting a rights-based approach to arrest and detention. Specifically, it proposes that the African Commission on Human and Peoples' Rights (ACHPR) use its mandate to 'formulate and lay down principles and rules' in relation to human rights⁶ to adopt a dedicated set of guidelines on pre-trial detention that promotes the implementation of a rights-based approach to arrest and detention across the continent.

1.1 Methodology

This study focuses primarily on arrest and detention until an individuals' unconditional or bonded release, or their transfer to detention facilities outside the control of the police. However, where appropriate it also recognises the role played by other criminal justice stakeholders, including government, the judiciary and the prison system on the ability of police to achieve a rights-based approach to arrest and detention.

The standards for a rights-based approach to arrest and detention articulated in this paper are a composite of international and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (UNCAT) and the African Charter on Human and Peoples' Rights (ACHPR). Reference is also made to other non-binding instruments, such as the United Nations (UN) Standard Minimum Rules of the Treatment of Prisoners, the United Nations Code of Conduct on the Use of Force and Firearms, determinations made by the United Nations Human Rights Council and international jurisprudence.

Information about the implementation of the international framework for arrest and detention in Africa is taken from the reports of UN special mechanisms and treaty bodies from the last decade. The report is not an in-depth examination of implementation of the international framework in Africa, but rather aims to provide a high-level overview of key common and recurring issues relating to implementation. The decision to rely on UN treaty body and special mechanisms' reports, and content submitted by governments, national human rights institutions (NHRIs) and civil society as part of those reporting processes, was taken in consideration of the high-level nature of this report, and limitations related to languages other than English.

The countries reviewed, which are representative of the four African regions, and the diversity of judicial systems across the continent, are:

Algeria	Angola
Benin	Burundi
Cameroon	Cape Verde
Central African Republic	Chad
Côte d'Ivoire	Democratic Republic of Congo (DRC)
Djibouti	Egypt
Equatorial Guinea	Ethiopia
Ghana	Kenya
Madagascar	Malawi
Mauritania	Mauritius
Morocco	Nigeria
Senegal	South Africa
Sudan	Togo
Uganda	Zambia

⁶ African Charter on Human and Peoples' Rights, articles 45(b) and 60

2 THE USE OF ARREST

2.1 Introduction

International human rights law provides a comprehensive framework for a rights-based approach to the arrest of individuals in conflict with the law. State signatories to key international human rights treaties, such as the ICCPR and UNCAT, have an obligation to implement the framework into domestic law and practice. This international framework recognises the link between unlawful and arbitrary arrest and further human rights abuses, such as arbitrary detention, torture, extrajudicial executions, discrimination and other ill-treatment,⁷ and is supplemented by guidelines and determinations of the UN Human Rights Council to assist state compliance.⁸

2.2 Procedural Rights for Arrest

Arbitrary arrest is prohibited by article 9(1) of the ICCPR,⁹ and article 6 of the AChHPR.¹⁰ Police powers to arrest are limited to grounds that are established by law and in conditions that are appropriate, just, predictable and accord with due process.¹¹ Article 9 of the ICCPR, which protects the rights to liberty and security of the person, has been broadly interpreted by the UN Human Rights Council as giving the police recourse to arrest and detain only insofar as it is necessary to meet a pressing societal need, and is done in a manner appropriate to that need.¹²

The international legal framework provides a set of procedural safeguards to protect the rights of persons subject to arrest, and requires the police to:¹³

- Clearly identify themselves and the unit to which they belong;
- Use vehicles that are clearly identifiable and carry number plates;
- Record information about the arrest, including the reason for the arrest, the time and place of arrest and the identity of the officers involved;
- Inform arrested persons, at the time of arrest, of the reasons for their arrest and their rights;¹⁴
- Limit the use of force to circumstances in which it is strictly necessary, proportionate and in accordance with the UN Code of Conduct on the Use of Force and Firearms;
- At the time of arrest, detention, imprisonment or transfer, notify relatives or a third party of the arrested persons' choice; and
- For non-citizens, notify consular authorities without delay.¹⁵

2.3 Challenges to implementation of the international legal framework

An analysis of reports from UN treaty bodies and special mechanisms revealed a range of factors that contribute to the use of arbitrary arrest across the continent. These are discussed below.

7 *AW Mukong v Cameroon*, Communication No. 458/1991, 21 July 1994, GAOR A/49/40 (vol.III), [9.8]

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

9 'Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law'

10 'Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained'

11 *AW Mukong v Cameroon*, Communication No. 458/1991, 21 July 1994, GAOR A/49/40 (vol.III), [9.8]

12 United Nations United Nations Commission on Human Rights, Report of the Working Group on Arbitrary Detention, E/CN.4/2006/7, 12 December 2005, [60] – [64]

13 United Nations United Nations Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [30]

14 International Covenant on Civil and Political Rights, Article 9(2); Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, principles 13–14

15 International Convention on the Protection of Migrant Workers and their Families, Article 16(7); Vienna Convention on Consular Relations, Article 36(1)(b) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16(2)

2.3.1 Expansive police powers

In a number of countries, including Equatorial Guinea and Nigeria, police legislation and criminal codes provide the police with expansive powers to arrest and do not guarantee the procedural safeguards set out in international law.¹⁶

The implementation of law that fails to meet international standards for non-discrimination can lead to the disproportionate use of arrest, including arbitrary arrest, against particular groups. In Senegal, for example, police have arrested persons committing 'unnatural sex acts' as part of the broader campaign of discrimination against lesbian, gay, bisexual, transsexual and intersex communities.¹⁷

In Mauritania, the broad interpretation of constitutional provisions regarding 'public offences against Islamic morals and decency' provides the police with wide discretion to arrest individuals on grounds that contravene international law, particularly protections against discrimination on the basis of sex and sexual identity.¹⁸

Legislative restrictions on the activities of the press, political opposition and human rights defenders have also contributed to the arrest and subsequent ill-treatment of members of these groups in a number of countries, including Mauritania, Cameroon and Madagascar.¹⁹

There are also links between broad powers of arrest and excessive use of force. In Cameroon, for example, there are reports that police are largely unaccountable for excessive use of force during arrest, even in circumstances where the arrested person was not a threat to the arresting officers or others.²⁰

2.3.2 Inadequate police resources and training

Inadequate resources for police organisations contribute to arbitrary arrest and unlawful police conduct during arrests. For example, police may not have access to resources to aid investigations, such as adequate staffing levels, vehicles or forensic facilities. This can lead to the problem of confession-based convictions, which is a recognised factor in relation to arbitrary arrest. So too, the lack of investment in police resources, such as defensive and non-lethal incapacitating weapons, can lead to a heavy-handed approach to maintaining law and order, including the ill-treatment of detainees during and immediately following arrest.²¹

The lack of investment in police training can also create problems in relation to arrest and detention. The inadequacy of police training across the continent is routinely criticised as producing police officers who lack understanding of their rights and responsibilities, including in relation to arrest and detention, which leads to endemic corruption and human rights abuses, such as arbitrary arrest and detention.²²

Under-resourcing and poor training for criminal investigations, coupled with inadequate judicial oversight of police investigations and evidence collection, has contributed to the use of confessions as the basis for convictions, rather than investigation and evidence gathering, in a number of

16 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [31]; Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]

17 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [72]

18 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Mauritania, Addendum, A/HRC/10/21/Add.2, 21 November 2008, [77]

19 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [65]; United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Mauritania, Addendum, A/HRC/10/21/Add.2, 21 November 2008, [78]; United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture: Madagascar, CAT/C/MDG/CO/1, 21 December 2011, [8]

20 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/2009/9/Add.2, 11 November 1999, [53]

21 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [13]

22 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]; United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [63]

countries including Equatorial Guinea, Kenya, Nigeria and Togo.²³ Without adequate resources or training for investigations, there is considerable pressure on police to extract confessions, which contributes to the use of arbitrary arrest, and to torture and ill-treatment during interrogation.²⁴

International law prohibits the admission into evidence of statements made as a result of torture, except in proceedings against a person accused of committing torture as evidence that the statement was made.²⁵ The prohibition safeguards the freedom against torture, and recognises that confessions and statements obtained under torture are inherently unreliable.²⁶ A number of countries, including Nigeria, do not have robust criminal procedure legislation that prohibits the admissibility of confessions into evidence,²⁷ while in others, such as Togo and Djibouti, there are reports that confession-based convictions, including those extracted by torture, are common despite legislation that prohibits the admissibility of evidence or confessions obtained through torture.²⁸

2.3.3 Racial and other forms of discrimination

The UN Working Group on Arbitrary Detention has observed that discrimination against certain groups, who are either vulnerable on account of current or past discrimination (such as ethnic minorities), or are otherwise marginalised (including people with HIV/AIDS or mental illness), experience higher rates of arrest than the general population. This has led to a gross over-representation of these groups in the criminal justice system.²⁹

Prevailing ethnic tensions in South Africa, for example, have resulted in some foreigners experiencing arbitrary arrest.³⁰ South Africa's immigration laws and policies, which curtail the right of persons in detention to seek asylum, coupled with the failure by internal and external accountability agencies to bring the police to account for harassment and arbitrary arrest of non-citizens, has contributed to a concerning rate of arbitrary arrest and detention of foreigners.³¹

In some countries, such as Equatorial Guinea, where there are no laws operating to govern illegal migration, police routinely carry out checks and raids to identify and arrest undocumented foreigners. Undocumented foreigners are reportedly vulnerable to police corruption, and there are reports of individuals being held in police custody indefinitely, pending expulsion, without an opportunity to challenge the lawfulness of their arrest or detention.³² Even where laws provide procedural safeguards for undocumented foreigners, in some parts of West Africa, such as Nigeria and Mauritania, political agreements with governments of Western Europe have resulted in the

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- 23 United Nations General Assembly, Human Rights Council, 13th session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [55]; United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [6]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, pg 2 and [84]; Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [59]
- 24 United Nations General Assembly, Human Rights Council, 13th session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [55]; United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [6]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [2] and [84]; Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [59]
- 25 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 15
- 26 Human Rights Council, 16th Session, Report submitted by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Mendez, A/HRC/16/52, 3 February 2011, [58]
- 27 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [28]
- 28 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [28]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [29]. United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1, [20]
- 29 United Nations Commission on Human Rights, 62nd Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2006/7, 12 December 2005, [65]
- 30 United Nations Economic and Social Council, Report of the Working Group on Arbitrary Detention – Visit to South Africa, Addendum (4–19 September 2005), E/CN.3/2006/7/Add.3, 29 December 2005, [80]
- 31 United Nations Economic and Social Council, Report of the Working Group on Arbitrary Detention – Visit to South Africa, Addendum (4–19 September 2005), E/CN.3/2006/7/Add.3, 29 December 2005, [80]
- 32 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add., 18 February 2008, [46] and [82]

arbitrary arrest of non-citizens, who are then detained or repatriated without an opportunity to challenge the legality of their arrest, detention or expulsion.³³

In Djibouti, there are reports of Ethiopian and Yemeni nationals being held in police custody and tortured prior to their extradition. These detainees were held incommunicado and denied access to consular assistance, or access to the courts to challenge the legality of their arrest, detention and extradition.³⁴

There are also reports of systemic discrimination by police against the socially and economically marginalised and disadvantaged, which has been often cited as a factor contributing to arbitrary arrest.³⁵ In Mauritania, for example, particular identifiable groups are over-represented in the criminal justice system while others, protected by their families or ethnic groups, are largely absent from the prison system.³⁶ In Kenya, police routinely round up the poor, women, homeless children, migrants and refugees in mass arrests (often night raids in informal settlements) without search or arrest warrants. These groups are then reportedly subjected to beatings, sexual abuse and rape, and extortion by the police.³⁷

2.3.4 'Tough on crime' approach to policing

A number of countries studied have adopted a 'tough on crime' approach to policing in response to public concerns and perceptions about high rates of violent crime and insecurity. This contributes to high rates of arrest, including arbitrary arrest. In Kenya, Nigeria and South Africa, the police, under pressure from the government, media and public to arrest and 'punish' perpetrators of crime, enjoy expanded powers to search and arrest without effective oversight. It is reported that sweeping arrests and the ill-treatment of arrested persons are now culturally accepted norms in these countries.³⁸ In South Africa, the adoption of tough policing approaches has resulted in increased rates of arrest and pre-trial detention.³⁹ The impact of tough policing can also have a disproportionate impact on particular groups. In Cape Verde, for example, criminal activity by 'youth gangs' has resulted in police brutality against juveniles, a practice that has reportedly received popular support.⁴⁰

High rates of arrest are also fuelled by mandatory and harsh sentences for particular categories of crime. In South Africa, for example, arrest and detention is applied in a systematic manner in relation to particular categories of crime – even for minors – with or without the completion of a thorough criminal investigation.⁴¹

In the context of violent criminality, the police will invariably be required to use force, including lethal force, in order to protect life. However, there are reports in a number of countries, including Kenya, Nigeria and South Africa, that the excessive use of force during arrest, or the use of lethal force in circumstances when an arrest could have been made, persist due in part to pressure on police

33 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Mauritania, Addendum, A/HRC/10/21/Add.2, 21 November 2008, [65] and [68]; United Nations Commission on Human Rights, Report of the Special Rapporteur, Mr. Philip Alston, Addendum, Mission to Nigeria, E/CN.4/2006/53/Add.4, 7 January 2006, p.2; United Nations Commission on Human Rights, 61st Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, 1 December 2004, [59]

34 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1

35 United Nations Committee against Torture, 41st Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Kenya, CAT/C/KEN/CO/1, 19 January 2009, [11]

36 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Mauritania, Addendum, A/HRC/10/21/Add.2, 21 November 2008, [79] and [81]

37 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [17]

38 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [13]. Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]

39 United Nations Economic and Social Council, Report of the Working Group on Arbitrary Detention – Visit to South Africa, Addendum (4–19 September 2005), E/CN.3/2006/7/Add.3, 29 December 2005, [62]

40 Human Rights Committee, Concluding observations of the Human Rights Committee: Cape Verde, CCPR/C/CPV/CO/1, 23 April 2012, [11]

41 *Ibid.*, [64]

to make arrests, coupled with inadequate oversight, and ambiguous use of force regulations.⁴² In Nigeria, high rates of violent crime have resulted in the label of 'armed robber' often being used to justify the arrest and/or extrajudicial execution of individuals who have come to the attention of the police for a range of reasons, including the refusal to pay a bribe.⁴³

The excessive use of arrest, and the use of force and other ill-treatment during arrest, has also been described as an 'overreaction' by under-resourced police stressed by levels of violence and criminality.⁴⁴ In Kenya, for example, the issue is compounded by the lack of access to appropriate non-lethal incapacitating weapons and self-defence equipment.⁴⁵

2.3.5 Legacy of conflict

The legacy of conflict in a number of countries, including Angola, Nigeria, Cameroon, Burundi, Kenya and Togo, has resulted in policing cultures that undermine constitutional democracy and efforts to reform the administration of justice.⁴⁶ In Nigeria, Togo and Cameroon, the legacy of conflict has resulted in militarised police forces that emphasise military skill rather than the capacity for criminal investigations and the maintenance of law and order, leading to heavy-handed policing.⁴⁷ In these circumstances, the use of arrest can become a tool of sanction and oppression, rather than in aid of investigations or the maintenance of law and order.⁴⁸ In addition, the discriminatory application of arrest powers can lead to the use of arrest in the context of civil law, or arrest on the orders of administrative authorities, as observed in Togo and Cameroon.⁴⁹

2.3.6 The absence/failure of oversight and accountability mechanisms

Across Africa, serious concerns have been raised about the extent to which oversight and accountability mechanisms are effective at holding police to account for misconduct and human rights abuses.⁵⁰ Weaknesses in accountability mechanisms stem from a number of factors, including the lack of effective internal and external accountability mechanisms; mistrust or unavailability of complaints mechanisms; and a general culture of impunity that pervades the criminal justice system.⁵¹ Without effective oversight, the police are not incentivised to act lawfully, and victims of arbitrary arrest or police abuse are not provided with recourse.

2.3.7 Corruption

Police corruption is a key driver of arbitrary arrest and detention, and a challenge to the effective administration of justice.⁵² Across the continent, there are numerous and credible reports that police corruption during and immediately after arrest is endemic.⁵³ Corrupt practices include release from custody in exchange for gifts or payment; torture with the aim of extracting bribes; payment in exchange for visitation by relatives; and demands for bribes to ensure the prompt handling of

42 Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Addendum, Mission to Kenya, A/HRC/11/2/Add.6, 26 May 2009, [9]

43 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]

44 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [13]

45 *Ibid*

46 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, [88]

47 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/2009/9/Add.2, 11 November 1999, [46]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [77]

48 *Ibid*

49 *Ibid*

50 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, <http://www.apcof.org.za>, accessed 16 January 2013

51 *Ibid*

52 Human Rights Council, 10th Session, Report of the Working Group on Arbitrary Detention, A/HRC/10/21, 16 February 2009, [60]

53 Human Rights Committee, List of issues prepared in the absence of the initial report of Cote d'Ivoire due in 1993, CCPR/C/CIV/Q/1, 7 December 2010, [21]

investigations. These practices are demonstrated to impact disproportionately on the economically disadvantaged.⁵⁴

There are also reports that police in some countries become involved in commercial disputes by using their powers to arrest in favour of one of the parties to the dispute. In Senegal, for example, the police arbitrarily arrested and detained taxi drivers for up to eight days without charge during a dispute between taxi drivers' associations.⁵⁵

2.3.8 Political interference

Political interference in policing, whether enshrined by law through weak separation of powers, or entrenched in practice, contributes to arbitrary arrest. As observed in Equatorial Guinea and Senegal, political interference can take the form of arrests on the order of administrative authorities, such as governors, government representatives, or the military, rather than solely on the basis of independent investigations into alleged criminal offences.⁵⁶ In Equatorial Guinea, Cameroon, Ethiopia, Burundi and Morocco, police have reportedly carried out arrests against persons exercising their political rights, including the rights of peaceful assembly, expression and association.⁵⁷

3 THE USE OF PRE-TRIAL DETENTION IN POLICE CUSTODY

3.1 Introduction

As with arrest, international human rights law provides a comprehensive framework for the lawful and rights-based approach to the use of pre-trial detention in police custody for persons in conflict with the law. States have an obligation to implement this legal framework into their domestic law and practice, which is supplemented by guidelines and determinations of the UN Human Rights Council to assist state compliance.⁵⁸

3.2 International framework for procedural rights in pre-trial detention

Article 9(1) of the ICCPR and article 6 of the AChHPR prohibit arbitrary arrest. Deprivation of liberty is only permitted on grounds that are clearly established in law and which accord with international

54 United Nations General Assembly, Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [63]; United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p. 3; United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [11]; Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]; United Nations Commission on Human Rights, Report of the Special Rapporteur, Mr Philip Alston, Addendum, Mission to Nigeria, E/CN.4/2006/53/Add.4, 7 January 2006, p. 2; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [79]; United Nations Committee against Torture, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Chad, CAT/C/TCD/CO/1, 4 June 2009, [17]

55 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [78]

56 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [28]. United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [78]

57 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add., 18 February 2008, p.2; United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [11]; United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Ethiopia, CAT/C/ETH/CO/1, 20 January 2011, [14]; United Nations Committee against Torture, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Chad, CAT/C/TCD/CO/1, 4 June 2009, [17]; United Nations Committee against Torture, 35th session, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Burundi, CAT/C/BDI/CO/1, 15 February 2007, [10]; United Nations Committee against Torture, 31st session, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Morocco, CAT/C/CR/31/2, 5 February 2004, [5]

58 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 27 August to 7 September 1990; United Nations Standard Minimum Rules of the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988

standards for detention, and must not be motivated by discrimination of any kind. Detention should be an exception rather than a rule, and for as short a time period as possible.⁵⁹

International law establishes a number of procedural safeguards to protect individuals from arbitrary detention, which include:⁶⁰

- The right to be informed of a criminal charge;
- The right to prompt access to judicial authorities;
- The right to challenge the lawfulness of arrest and detention; and
- The right to compensation for unlawful arrest or detention.

Each is discussed below.

3.2.1 *The right to be informed of a criminal charge*

At the time of their arrest, individuals have the right to be informed of the reason for their arrest and any charges brought against them.⁶¹ Police must make detainees reasonable aware of the precise reasons for arrest, and enable detainees to take immediate steps to secure their release, including accessing a lawyer or judicial authority.⁶²

3.2.2 *The right of prompt access to judicial authorities*

Detainees have the right to be 'promptly' brought before a court or other judicial officer to have their detention reviewed, which is consistent with the principle that pre-trial detention be the exception rather than the rule.⁶³ The UN Human Rights Council has interpreted 'promptly' as not exceeding a few days⁶⁴ and, in its review of Angola, urged the Angolan government to ensure that police detention not exceed 48 hours.⁶⁵ Longer periods of detention in police custody may be permitted if a detainee is charged with a serious offence, providing that other procedural safeguards for detention are observed.⁶⁶

This key procedural safeguard operates so that a detainee is not held in a facility under the control of their interrogators or investigators for longer than required by law to obtain a judicial warrant which, if granted, should require the transfer of the detainee to a dedicated pre-trial facility with no further unsupervised contact with interrogators or investigators.⁶⁷ The extension of custody by judicial warrant should be a measure of last resort, underpinned by proportionate and legitimate aims.⁶⁸

Prompt access to a judge ensures that the lawfulness of a detained person's arrest and detention is reviewed, and can provide oversight in relation to the rights of detainees, including adherence by the police to procedural safeguards, freedom from torture and other ill-treatment, and conditions of detention.⁶⁹ Prolonged detention in police cells raises concerns regarding conditions of detention, as police cells are not designed for extended periods of custody. They often lack the space and facilities required to meet minimum conditions for detention, which are set out in the section below.

59 Jordan J Praust (2003), Judicial Power to Determine the Status and Rights of Persons Detained Without Trial, *Harvard International Law Journal* 44: 503, 505-6

60 International Covenant on Civil and Political Rights, articles 9(2)-(5). See also, Joseph, Schultz and Castan, *The International Covenant on Civil and Political Rights – Cases, Materials and Commentary* (2nd edn, 2004) p.304

61 International Covenant on Civil and Political Rights, article 9(2). See also, *Kelly v Jamaica*, Communication No 253/87 [5.8]

62 *Drescher v Caldas v Uruguay*, Communication No 43/79 (11 January 1979) [13.2]

63 International Covenant on Civil and Political Rights, article 9(3)

64 United Nations Human Rights Committee, General Comment No 8: Right to Liberty and Security of the Persons (art 9) (30 June 1980) [2]. *Kone v Senegal*, Communication No 386/89, [8.6]

65 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p.3

66 Joseph, Schultz and Capstan (2004) *The International Covenant on Civil and Political Rights – Cases, Materials and Commentary*, 330

67 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [34]

68 United Nations Commission on Human Rights, 62nd Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2006/7, 12 December 2005, [60] – [64].

69 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 11, 32 and 37

Excessive periods in police custody contribute to overcrowding that, in turn, can negatively impact detainees' access to hygiene, health, bedding and privacy.⁷⁰

3.2.3 *The right to habeas corpus*

Detainees have the right to *habeas corpus* – that is, the right to appeal their detention to a judicial authority on the grounds that their detention is arbitrary or unjust.⁷¹ The right to challenge the legality of detention is a fundamental safeguard against arbitrary detention, and states are not permitted to limit or remove this right under any circumstances, including states of emergency.⁷² A writ of *habeas corpus* is also an avenue for detainees to defend and protect their substantive, procedural and institutional guarantees under law. Without this right, detainees are at risk of abuse of authority, ill-treatment and other rights violations.⁷³

Detainees who seek to file a writ of *habeas corpus* may require access to legal assistance, a right that is guaranteed by international law.⁷⁴

3.2.4 *Compensation*

Compensation and other reparations that are adequate and just are part of a broader accountability framework, and ensure redress for victims of arbitrary arrest and detention.⁷⁵ As part of a broader accountability framework, it is an important element to deter the police from the arbitrary use of power, including the power to detain, which may limit the rights of liberty and security.⁷⁶

3.3 **Challenges to implementation of the international legal framework for the use of detention**

There are a number of challenges to the implementation of procedural safeguards against arbitrary detention across Africa. The challenges are discussed below in relation to each of the four procedural safeguards identified in the previous section of this paper.

3.3.1 *Failure to lay charges or inform detained persons of charges against them*

In most countries studied, including Togo and Madagascar, domestic law requires the police to inform persons in custody of any charges against them.⁷⁷ However, there are numerous and credible reports that police systematically fail to bring charges against persons in their custody and, when charges are filed, to inform the person of the charges against them.⁷⁸

70 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [81]

71 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [39]. See also, United Nations Commission on Human Rights, 61st Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, 1 December 2004, [59]

72 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988, principles 11, 32 and 37

73 Human Rights Council, 10th session, Report of the Working Group on Arbitrary Detention, A/HRC/10/21, 16 February 2009, [49]

74 International Covenant on Civil and Political Rights, article 14

75 International Covenant on Civil and Political Rights, article 9(5). Human Rights Council, 16th Session, Report submitted by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Mendez, A/HRC/16/52, 3 February 2011, [48]. Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [182]

76 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [182]

77 Human Rights Council, Report of the Working Group on Arbitrary Detention (Addendum): Mission to Mauritania, A/HRC/10/21/Add.2, 21 November 2008, [27]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [21]

78 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [81]. United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture: Madagascar, CAT/C/MDG/CO/1, 21 December 2011

3.3.2 Failure to observe the 48-hour rule

Police organisations across the continent fail to observe the 48-hour rule, either in disregard of domestic law that sets appropriate time limits, or because the criminal procedure law fails to implement this international standard.

In a number of states, including Djibouti, Ghana, Mauritania, Cameroon, Burkina Faso, Equatorial Guinea, Togo and Nigeria, domestic law provides for initial police custody of between 24 to 72 hours, depending on the offence, renewable for a limited number of times by a judicial officer. However, there are numerous and credible reports that police fail to adhere to these time limits.⁷⁹

In Mauritania, the law requires the extension of police custody to be made in writing by judicial officers. However, most police stations visited by the UN Working Group on Arbitrary Detention were unable to produce extension authorisations for detainees in custody beyond the permitted 48 hours, including some who were held for up to 23 days. Prosecutors were often involved in covering up these breaches by issuing authorisations for extended custody after the fact.⁸⁰

In Kenya, police reportedly flout the requirement that an arrested person be brought before a judicial authority within 24 hours, or as soon as practical thereafter, by transferring detainees from one police detention facility to another, which has the effect of resetting the clock.⁸¹ Kenyan police have the authority to issue bonds if they are unable to bring a person before a court within 24 hours, but this is reported to be a rare occurrence.⁸²

In Equatorial Guinea, detainees are reportedly held in police custody for up to a month before they are presented to a judicial authority, and detainees have complained about being interviewed by a court secretary rather than a judge.⁸³

In Togo, the police maintain physical control and access over suspects beyond the prescribed time limit for the purpose of 'solving' criminal cases by, amongst other things, extracting confessions from suspects, or acting as a mediator between victims and offenders.⁸⁴

In Nigeria, the dysfunction of the criminal justice system has resulted in an informal system of 'holding charges', whereby the police present detainees to a magistrate who remands them to indefinite police custody, without formal charge, while the police conduct their investigation. It is reported that this practice has led to the prolonged and indefinite detention of innocent people.⁸⁵

In states such as Algeria, Chad and Morocco, domestic law permits periods of police custody, which are incompatible with international law. In Algeria, the law provides for a maximum period of

79 Human Rights Council, Report of the Working Group on Arbitrary Detention (Addendum): Mission to Mauritania, A/HRC/10/21/Add.2, 21 November 2008, [28]; United Nations Commission on Human Rights, 56th Session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/1999/9/Add.2, 11 November 1999, [48] – [49]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [65]; Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [25]; UN Human Rights Committee, Rapport Initial du Burkina Faso relatif à la Convention Contre la Torture et autres Peines ou Traitements Cruels, Inhumains ou Degradants, en application de l'article 19, Mars 2012, CAT/C/BFA/1, United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1, United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [9]

80 Human Rights Council, Report of the Working Group on Arbitrary Detention (Addendum): Mission to Mauritania, A/HRC/10/21/Add.2, 21 November 2008, [89]; United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p.3

81 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [59] – [60]

82 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [61]

83 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add., 18 February 2008, [62]

84 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [70]

85 United Nations Commission on Human Rights, Report of the Special Rapporteur, Mr. Philip Alston, Addendum, Mission to Nigeria, E/CN.4/2006/53/Add.4, 7 January 2006, [93]

12 days, with provision for repeated and indefinite extensions.⁸⁶ Criminal procedure law in Chad and Morocco provides the vague requirement of 'reasonable time'.⁸⁷

3.3.3 Restrictions on habeas corpus

A number of countries reviewed, including Equatorial Guinea, Togo, Cameroon, Kenya and Angola, recognise the right to a writ of *habeas corpus*. In Equatorial Guinea, for example, the law prescribes the circumstances in which detention is unlawful, including when procedural safeguards have been breached, detention in an unauthorised facility, or when the maximum period of detention has been exceeded without judicial authorisation.⁸⁸

In reality, systemic barriers to accessing courts and lawyers in most countries reviewed makes *habeas corpus* an ineffective and impractical option for detainees who seek to challenge the lawfulness of detention. In Togo, the lack of access to courts and lawyers, corrupt judicial authorities, and the lack of awareness about *habeas corpus* by detainees means that few take advantage of this facility.⁸⁹ In Cameroon, procedural barriers exist, including the requirement that a writ be accompanied by an order of release from prosecutors. This process delays applications and is reportedly subject to interference by the police who do not operate independently from prosecution and judicial authorities.⁹⁰ In Kenya, the cost of filing a writ presents a significant barrier to most detainees, while in Angola, the main barrier for detainees is complicated procedural requirements.⁹¹

These barriers are compounded by the lack of access to lawyers. As detailed in this report, there are significant barriers to accessing legal assistance services across the continent, including the unavailability and expense of defence counsel, and restrictions on the rights of detainees to meet with counsel while in police detention.

3.3.4 Failure to provide compensation

Limitations on the right of detainees to compensation for arbitrary detention are numerous and widespread across Africa.

In a number of countries, such as Djibouti, Senegal, Equatorial Guinea, Burundi, Nigeria and Morocco, the law provides for the right to compensation and other redress for arbitrary and prolonged detention, or for police misconduct, including torture, either as part of broader civil compensation processes, or provisions specific to police misconduct.⁹² However, few cases of reparation or compensation are ever brought to court. Factors include the barriers to accessing

86 United Nations Committee against Torture, 40th session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Algeria, CAT/C/DZA/CO/3, 26 May 2008, [5]

87 United Nations Committee against Torture, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Chad, CAT/C/TCD/CO/1, 4 June 2009, [25]. See also, United Nations Committee against Torture, 31st session, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Morocco, CAT/C/CR/31/2, 5 February 2004, [5]

88 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add.18, 18 February 2008, [32] – [33]

89 United Nations Commission on Human Rights, 61st Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, 1 December 2004, [63]. See also, Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [100]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [21]

90 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [13]

91 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p.2.

92 United Nations General Assembly, Human Rights Council, 13th session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [51]. Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [34]; United Nations Committee against Torture, 35th session, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Burundi, CAT/C/BDI/CO/1, 15 February 2007, [23]; United Nations Committee against Torture, 31st session, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Morocco, CAT/C/CR/31/2, 5 February 2004, [4]; United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [77]; United Nations General Assembly, Human Rights Council, 13th session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [51]. United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1

the courts and lawyers already discussed in relation to *habeas corpus*, complex procedural requirements and, in a few concerning examples, specific limitations on the right to compensation. For example, in Nigeria, compensation for unlawful arrest and detention is not available to individuals who are arrested and charged in relation to a capital offence.⁹³ In Algeria, the law imposes terms of imprisonment and fines on anyone who ‘insults the honour’ or undermines an institution of the state or its agents – a provision which may discourage persons who have been subject to arbitrary arrest from making a complaint or filing an application for compensation.⁹⁴

Where courts make awards for compensation or reparation, there are often problems and delays in providing the remedy to victims. In Zambia, awards to victims have been criticised as falling short of the requirements of international law that compensation be adequate and just.⁹⁵ In Kenya, delays in making awards are caused by a number of factors, including lack of government resources, corruption and the lack of political will to make resources available.⁹⁶

4 CONDITIONS OF DETENTION IN POLICE CUSTODY

4.1 Introduction

International human rights law provides a comprehensive framework to safeguard minimum standards for the detention of persons in conflict with the law that accord with the rights to life, humane treatment and the inherent dignity of the person. As with the procedural safeguards for arrest and detention, the framework for conditions of detention is supplemented by guidelines and determinations of the UN Human Rights Council to assist state compliance.⁹⁷

This section sets out the framework for conditions of detention as it pertains to police custody.

4.2 International legal framework for conditions of detention

International law protects the rights of persons deprived of their liberty to life, to be treated with humanity and respect for the inherent dignity of the person.⁹⁸ The framework includes implementation of the following safeguards, which are discussed in turn below:

- The maintenance of a custody register;
- Interrogation rules and techniques that discourage the use of torture and other ill-treatment;
- Access to lawyers, medical care and family;
- Limitations on the use of force and discipline;
- The absolute prohibition against torture and other ill-treatment;
- Minimum requirements for the physical conditions of detention;
- Special measures to safeguard vulnerable groups; and
- Regular and independent inspections and oversight.

93 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [34]

94 United Nations Committee against Torture, 40th session, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding observations of the United Nations Committee against Torture, Algeria, CAT/C/DZA/CO/3, 26 May 2008, [17]

95 Human Rights Council, 16th Session, Report submitted by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Mendez, A/HRC/16/52, 3 February 2011, [48]; United Nations Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Zambia, CAT/C/ZMB/CO/2, 26 May 2008, [9]

96 United Nations Committee against Torture, 41st Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Kenya, CAT/C/KEN/CO/1, 19 January 2009, [25]

97 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 27 August to 7 September 1990; United Nations Standard Minimum Rules of the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988

98 International Covenant on Civil and Political Rights, articles 10 and 14

4.2.1 Maintenance of a register

The maintenance of a register at police stations is one of the most basic safeguards against arbitrary detention and ill-treatment.⁹⁹ Registers are also important for preventing enforced disappearances and other serious human rights violations, such as torture.¹⁰⁰ At a minimum, the register should be regularly updated and include the date a detainee enters and leaves the police station, the name of the arresting officer, the names of the judicial authorities before which the detainee appears and the corresponding dates.

4.2.2 Interrogations

Interrogation rules, instructions, methods and practices must be kept under systematic review with a view to preventing torture and ill-treatment. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also offer procedural safeguards for interrogations, such as intervals between each interrogation and a register to record the identity of the officials conducting the interrogation. Interrogations should be recorded, preferably video-recorded, and evidence from non-recorded interrogations should be excluded from court.¹⁰¹

4.2.3 Access to lawyers

In the determination of criminal charges, all persons have the right to legal counsel, including free legal assistance if they cannot afford a lawyer.¹⁰² Access to lawyers for detainees should be prompt and regular, with initial contact within 24 hours of detention.¹⁰³ The Committee on the Prevention of Torture has further suggested that the right to a lawyer is applicable from the moment a person is obliged to remain with police.¹⁰⁴ In exceptional circumstances, under which prompt contact with a detainee's lawyer might raise genuine security concerns, or where restrictions on contact are judicially endorsed, it should be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association.¹⁰⁵

4.2.4 Access to medical care

International law guarantees the rights of all people, including detainees, to the highest attainable standard of health within a state's available resources.¹⁰⁶ For persons deprived of their liberty, this includes the right to prompt and independent medical examinations upon the commencement of detention, and as required and/or requested by the detainee during detention.¹⁰⁷

4.2.5 Access to family members

Persons deprived of their liberty have the right to contact and receive regular visits from their relatives and, when security arrangements permit, third parties such as non-governmental

99 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010

100 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add., 18 February 2008, [97]. See also, United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [11]

101 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [34]

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

103 United Nations Human Rights Committee, CCPR General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art.7), 10 March 1992

104 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010

105 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [32]

106 International Covenant on Economic, Social and Cultural Rights, article 12

107 United Nations Standard Minimum Rules of the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 24; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988, principle 24

organisations and other persons of their choice.¹⁰⁸ Access can be restricted only in accordance with the law, and on reasonable conditions.¹⁰⁹

4.2.6 Prompt access to judicial authorities

As discussed above in relation to procedural guarantees during detention, detainees have the right to be 'promptly' brought before a court or other judicial officer to have their detention reviewed, which is consistent with the principle that pre-trial detention be the exception rather than the rule.¹¹⁰

4.2.7 The use of force and discipline

The police have a lawful authority to apply force in the course of making an arrest, or during detention, when circumstances require it. The adoption, implementation and enforcement of the legal framework on the use of force that is consistent with the rights to life, liberty, security, freedom from ill-treatment and the presumption of innocence is crucial in reassuring the community that the police are adhering to the rule of law.

Under international law, the right to life is one of the most fundamental of all human rights, and states are not permitted to derogate from this right in any circumstances.¹¹¹ The right to life includes an obligation on the state to take legislative measures to strictly control and limit the circumstances in which a police officer may use force and deprive an individual of their right life. The UN Basic Principles on the Use of Force and Firearms provide states with guidance on the safeguards necessary to meet their international obligations, including that the use of force (including firearms), should only be used as a last resort when all other non-violent means of carrying out duties have failed. It limits the intentional use of lethal force to circumstances in which it is 'strictly unavoidable in order to protect life'.

Disciplinary measures must also meet the standards for the use of proportionate and necessary force. Restraint techniques that are imposed in a degrading or painful manner, or imposed for longer than strictly necessary, constitute ill-treatment.¹¹²

4.2.8 Freedom from torture and other ill-treatment

International law imposes an absolute prohibition against torture. Signatories to the UNCAT are required to ensure that acts of torture are criminal offences, and to provide a definition of torture that accords with the Convention.¹¹³ The Committee against Torture has emphasised that states must criminalise all acts of torture, which includes acts of attempt, complicity and participation, and that penalties must commensurate to the gravity of the crime.¹¹⁴

Confessions extracted by torture are not permitted into evidence in any proceeding, except against a person accused of torture as evidence that the statement was made.¹¹⁵ Interrogators should receive training to ensure that they have the necessary skills to conduct interrogations and interview witnesses and victims.¹¹⁶

108 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988, principle 19

109 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [43]

110 International Covenant on Civil and Political Rights, article 9(3)

111 International Covenant on Civil and Political Rights, article 1

112 United Nations Standard Minimum Rules of the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 34

113 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 1 and 4

114 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 4(2)

115 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 15

116 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [35]

Allegations of torture and ill-treatment must be thoroughly and impartially investigated, and all law enforcement officials must receive training on international human rights standards, including the absolute prohibition on torture.¹¹⁷

4.2.9 Minimum requirements for physical conditions of detention

All persons deprived of their liberty must be treated with humanity and respect for their inherent dignity, which includes minimum requirements for the physical condition of detention. This includes providing all detainees with adequate food, clothing and hygiene in accordance with the Standard Minimum Rules for the Treatment of Prisoners.

4.2.10 Special measures to safeguard the rights of vulnerable groups

International law provides special protections to juveniles and women who are deprived of their liberty, in addition to the general safeguards that apply to all persons who are deprived of their liberty.

The principle of detention as a measure of last resort is particularly relevant to minors.¹¹⁸ Children deprived of their liberty must be kept separate from adults, and be provided with age appropriate treatment that maintains the best interest of the child at its core.¹¹⁹

Female detainees must be held separately from men, and police lock-up must provide facilities for pregnant and breastfeeding women.¹²⁰

4.2.11 Inspections and oversight

Independent complaints and oversight mechanisms should be provided for in law and their operation must be effective, with a sufficient mandate and resourcing to address complaints.¹²¹ Detained persons have the right to communicate freely and confidentially with persons who visit places of detention.¹²² If a mechanism receives a complaint from or on behalf of a detainee, an inquiry should always take place and, unless the allegation is 'manifestly ill-founded', the officials involved should be suspended from their duties pending legal or disciplinary proceedings and their outcome.¹²³

In relation to complaints of torture, the UN Special Rapporteur on Torture recommends that complaints be dealt with immediately by an independent authority with no connection to the police organisation or prosecutors.¹²⁴

Regular inspections of detention facilities ensure that safeguards are implemented, can be a deterrent, and provide an opportunity for detainees to complain. The Optional Protocol to the CAT (OPCAT) was adopted by the UN General Assembly and aims to prevent ill-treatment and promote humane conditions of detention by requiring that all places of detention are subject to independent monitoring and inspection.¹²⁵ It encourages state parties to establish national preventative mechanisms (NPMs), an independent body with a mandate to conduct both announced and unannounced visits to places of detention, to make recommendations to prevent ill-treatment and improve conditions, and to report publicly on its findings and views.¹²⁶

117 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

118 International Covenant on Civil and Political Rights, article 14(4), United Nations Convention on the Rights of the Child, article 49(3)(b)

119 United Nations Convention on the Rights of the Child, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, article 49

120 United Nations Standard Minimum Rules of the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; rule 8

121 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

122 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988, principle 29(2)

123 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [40]

124 United Nations Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56, 23 December 2003, [40]

125 General Assembly, 65th session, Note by the Secretary General, A/65/273, 10 August 2010, [77]

126 General Assembly, 65th session, Note by the Secretary General, A/65/273, 10 August 2010, [80]

4.3 Challenges to the implementing a framework for conditions of detention

4.3.1 Registers

In most countries reviewed, including Equatorial Guinea and Cameroon, there is no systematic registration of information on detainees in police custody.¹²⁷ In some countries, such as Togo and Nigeria, there is a legal requirement for police to maintain a register, but there are reports that police either deliberately or negligently fail to maintain the register, or make erroneous entries.¹²⁸

In Togo, for example, the Special Rapporteur on Torture uncovered disparities between the two main registries held by police, and evidence that police made entries into the registry after the fact.¹²⁹

4.3.2 Interrogations

Generally, detainees are not treated in a manner consistent with their right to the presumption of innocence. In most examples reviewed, detainees in police custody are vulnerable to conditions that create an incentive for self-incrimination, in violation of the presumption of innocence.¹³⁰

In Angola, police investigators are permitted to conduct the first interrogation of a suspect alone if the suspect was arrested during the commission of a crime. In all other circumstances, interrogations are only lawful if done in the presence of a prosecutor.¹³¹

As previously discussed, evidence obtained under torture is commonly used as the basis for convictions, with under-investment in police infrastructure and training resulting in considerable pressure on police to extract confessions *in lieu* of thorough criminal investigations. Even in countries where domestic legislation prohibits the admission into evidence of confessions extracted by torture, there are reports that courts rarely investigate complaints by detainees, or disallow such evidence at trial.¹³²

In Kenya, there are reports that suspects are routinely convicted on the basis of confessions extracted through torture despite Kenyan law prohibiting the use of such confessions. Non-governmental organisations have complained that medical evidence is not requested at judicial proceedings, and that most suspects are not represented by a lawyer and therefore do not complain about their treatment.¹³³

4.3.3 Access to lawyers

Access to counsel is guaranteed by the constitution and law of a number of countries, including Malawi, Ghana, Kenya and Côte d'Ivoire. However, despite such safeguards, access to lawyers is limited by the lack of available and affordable defence lawyers, and limited numbers of legal aid lawyers.¹³⁴

In some countries, the legal framework provides restrictions on the right of detainees to access a lawyer. In Senegal, defendants do not have the right to contact a lawyer during the first 24 hours

127 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add.1, 18 February 2008, [97]. See also, United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [11]

128 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [19]; United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [21]

129 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [70]

130 United Nations Commission on Human Rights, 61st Session, Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, 1 December 2004, [68]–[70]

131 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, [42]

132 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [9]

133 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [62] – [63]

134 United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [9]. Human Rights Committee, List of issues prepared in the absence of the initial report of Cote d'Ivoire due in 1993, CCPR/C/CIV/Q/1, 7 December 2010, [23]. Human Rights Committee, Concluding Observations of the Human Rights Committee: Malawi, CCPR/C/MWI/CO/1, 18 June 2012

in police custody.¹³⁵ In Mauritania, access to lawyers may be authorised by the prosecutor as from the first extension of police custody – however, detainees charged with state security or terrorism offences are not entitled to communicate with counsel during their time in police custody, which can last between five and 23 days.¹³⁶ In Equatorial Guinea, lawyers do not have access to police stations, nor can they otherwise contact detainees held by the police.¹³⁷ In Burkina Faso, the criminal procedure legislation is silent on the right of persons in custody to communicate with their lawyer during the preliminary investigation phase.¹³⁸

4.3.4 Access to medical care

Access to medical care for detainees in police custody is a challenge across the continent. Detainees often have no or limited access to medical facilities and treatment, and for those suffering from illness, this has resulted in further health complications or death. This has occurred despite legal frameworks in some countries, such as Cameroon, Kenya and Mauritius, which guarantee the right of detainees to medical care.¹³⁹ In Cameroon, access to medical care is restricted by the requirement that doctors obtain a court order to access persons in detention facilities. In Kenya, the lack of access to medical care also hinders detainees from making complaints of torture and ill-treatment, as independent verification of injuries is required to file an application with the court.¹⁴⁰

In Ghana, there are concerns about police and executive interference in medical examinations, and safeguards for the privacy and confidentiality of medical information of detainees. Currently, the police legislation requires medical examinations of detainees to be conducted under the supervision and control of government medical officers, who can be present during independent medical examinations.¹⁴¹

4.3.5 Access to family members

In all countries reviewed, detainees in police custody were not guaranteed direct access to their families, either because the law failed to provide this right or, as in Cameroon, the police either failed to inform families of the detention, or denied their access to detainees.¹⁴²

4.3.6 Access to judicial authorities

Access to judicial authorities is discussed in relation to *habeas corpus*, above. Despite some countries, including Kenya, having legal frameworks that limit incommunicado detention, it is reported that detainees are often held incommunicado for longer than the legally permitted time. In Kenya, it is also reported that in order to maintain incommunicado detention beyond the prescribed time limit, detainees are transferred between police stations, which has the effect of ‘resetting’ the time limit. Detainees are particularly vulnerable to torture and ill-treatment as a result of this practice.¹⁴³

4.3.7 The use of force and discipline

In a number of countries, including Cameroon, the police have a mandate to use whatever force is necessary to overcome resistance during arrest and detention, despite the international legal

135 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Senegal, A/HRC/13/30/Add.3, 23 March 2010, [57]

136 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Mauritania, Addendum, A/HRC/10/21/Add.2, 21 November 2008, [30]

137 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [74]

138 United Nations Human Rights Committee, Rapport Initial du Burkina Faso relatif à la Convention Contre la Torture et autres Peines ou Traitements Cruels, Inhumains ou Degradants, en application de l'article 19, Mars 2012, CAT/C/BFA/1, [17]

139 United Nations Committee against Torture, Concluding observations of the United Nations Committee against Torture: Mauritius, CAT/C/MUS/CO/3, 15 June 2011, [10]

140 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [9]

141 United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [9]

142 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [56]

143 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [7]

framework limiting the use of force.¹⁴⁴ In Nigeria, legislative frameworks prohibit the unnecessary use of restraints on persons in police custody, and limit the use of force to circumstances in which it is both reasonable and necessary. However, ill-treatment in the form of excessive use of force and restraint was reported to be widespread and systematic, owing to the culture of impunity for police abuses.¹⁴⁵

4.3.8 Freedom from torture and other ill-treatment

With few exceptions, there is a significant gap between the international legal framework for the eradication of torture and domestic law and practice across Africa.

In Burkina Faso and Djibouti, for example, torture is not defined or prohibited in domestic criminal law, and is therefore prosecuted as a form of assault in contravention on the UNCAT.¹⁴⁶ Failure to prohibit the specific offence of torture results in criminal penalties that are not commensurate to the seriousness of the crime.¹⁴⁷ In Equatorial Guinea, for example, terms of imprisonment for acts of torture are limited to five years, while in Togo, the provisions of the Criminal Code pertaining to wilful violence are rarely applied and subject to statutes of limitations.¹⁴⁸

In other jurisdictions, such as Kenya and Ghana, torture may be prohibited by the constitution or police legislation, but complementary provisions in the criminal codes are absent, which both weakens the nature of the prevention and the availability of remedies for victims.¹⁴⁹ In Madagascar, legislation prohibits torture in accordance with the UNCAT, but the imposition of penalties is at the discretion of the judge rather than prescribed by law.¹⁵⁰ In Mauritius, torture is permitted in 'exceptional circumstances', and penalties are not commensurate to the gravity of the offence.¹⁵¹

4.3.9 Minimum requirements for physical conditions of detention

As a rule, police cells are not designed for extended periods of custody and lack the necessary space and other facilities to ensure that the minimum safeguards for conditions of detention are provided. Often, detainees in police cells are not provided with food or water. Overcrowding contributes to issues of hygiene, health, bedding and privacy.¹⁵² In many situations, detainees in police cells slept on the floor with no bedding, and no toilet facilities, food or water were provided. Cells are generally dirty, overcrowded and lack sufficient light and fresh air.¹⁵³

Police officials reportedly claim that it is not their responsibility to provide detainees with the minimum necessary facilities for survival and dignity. In Equatorial Guinea and Cameroon, for example, families provide detainees with water and food, and the containers are later used by detainees *in lieu* of toilet facilities. If detainees have no family or friends to provide food and water, they depend on their fellow detainees for survival.¹⁵⁴

144 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [20]

145 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [26]

146 UN Human Rights Committee, *Rapport Initial du Burkina Faso relatif a la Convention Contre la Torture et autres Peines ou Traitements Cruels, Inhumains ou Degradants, en application de l'article 19, Mars 2012*, CAT/C/BFA/1, [11]. United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1

147 United Nations Committee against Torture, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Chad, CAT/C/TCD/CO/1, 4 June 2009, [23]

148 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010

149 United Nations Commission on Human Rights, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, E/CN.4/2009/9/Add.4, 9 March 2000, [57]. United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [9]

150 United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture: Madagascar, CAT/C/MDG/CO/1, 21 December 2011, [6]

151 United Nations Committee against Torture, Concluding observations of the United Nations Committee against Torture: Mauritius, CAT/C/MUS/CO/3, 15 June 2011, [9]

152 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010

153 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [232]

154 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [54]. Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, [233]

4.3.10 Special measures to safeguard the rights of vulnerable groups

Domestic law in a number of countries, including Cape Verde, Nigeria, Djibouti and Equatorial Guinea, requires that juveniles and women be detained in facilities that are separate from those of adult males. However, juveniles and women are frequently detained in the same facilities as adult males, largely on the basis that police stations lack the resources to provide separate detention facilities.¹⁵⁵

4.3.11 Inspections and oversight

Impunity for police misconduct and ill-treatment of detainees is endemic across the continent. In Togo, Mauritania, Ethiopia and Equatorial Guinea, for example, UN special procedures were not provided with information about a single case of a police officer or other state agent responsible for persons in detention receiving a criminal sanction for acts of torture or ill-treatment, nor was information received about the proper functioning of internal or external complaints mechanisms.¹⁵⁶ In Djibouti, despite numerous and credible reports of torture by police officers, there have been no serious investigations into these cases.¹⁵⁷

The UN Special Rapporteur on Extrajudicial Executions identified a number of drivers of impunity, which are reflected either in whole or in part in the challenges to effective oversight and inspections in all the countries studied. These include:¹⁵⁸

- The absence, or ineffectiveness, of external oversight mechanisms for police custody;
- The unwillingness or inability of police to carry out independent investigations of torture, ill-treatment and deaths in custody;
- The failure by the police to refer cases of torture, ill-treatment and deaths in custody to prosecutorial services;
- Prosecutorial services that lack training and resources, or are corrupt;
- The lack of judicial independence;
- Inadequate and non-existent witness protection programmes; and
- Systemic delays in the justice system.

Issues pertaining to external accountability mechanisms, internal investigations, inadequacy of forensic capacity, and the role of prosecutors and the judiciary are discussed below.

a External accountability mechanisms

Where complaints mechanisms are provided for by law, effectiveness is often undermined by inaccessibility and the lack of prompt, independent and thorough investigations into allegations. It is reported that detainees are often not aware of their right to complain, or, as observed in Cameroon, fear reprisals if they do make a complaint.¹⁵⁹

155 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [39]. United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add.18, 18 February 2008, [83]. United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1. Human Rights Committee, Concluding observations of the Human Rights Committee: Cape Verde, CCPR/C/CPV/CO/1, 23 April 2012, [14]

156 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [61]; United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Ethiopia, CAT/C/ETH/CO/1, 20 January 2011, [14]. Human Rights Council, Report of the Working Group on Arbitrary Detention (Addendum): Mission to Mauritania, A/HRC/10/21/Add.2, 21 November 2008, [53]. General Assembly, Note by the Secretary General, A/65/273, 10 August 2010, [75]; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, p.2 and 31

157 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1, [9]

158 Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/14/24, 20 May 2010, [53] – [54]. See also, United Nations General Assembly, Human Rights Council, 13th session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to the Republic of Equatorial Guinea, A/HRC/13/39/Add.4, 7 January 2010, [55]

159 Human Rights Council, 13th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention, A/HRC/13/39/Add.5, 5 February 2010, United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/2009/9/Add.2, 11 November 1999, [53]

In Nigeria, the Human Rights Desk has a mandate to receive complaints about police misconduct. However, the mechanism has been described as 'utterly ineffective', as its mandate is restricted to making recommendations to government, and it lacks the financial and human resources to make thorough investigations and to enforce redress.¹⁶⁰ Indeed, the UN Special Rapporteur on Torture observed that in one afternoon at Nigeria's NHRI, he received more complaints than the Human Rights Desk had claimed to receive in one year.¹⁶¹

In Equatorial Guinea, victims of police misconduct have a legal entitlement to complain to a judge, who is required to then promptly and impartially investigate the complaint. However, it is reported that detainees are reluctant to make complaints due to fear of reprisals, particularly from the police.¹⁶² Similarly, in Cameroon and Zambia, fear of reprisals coupled with low levels of awareness about complaints procedures results in few complaints being lodged with complaints mechanisms.¹⁶³ In Chad, there are no follow-up mechanisms for complaints of torture received by public prosecutors or investigating judges.¹⁶⁴

In terms of NPMs and systematic inspections of police detention facilities across Africa, states have either failed to ratify OPCAT or have not established NPMs in accordance with the protocol. Accordingly, there are few states with regular or systematic mechanisms or activities to ensure the independent monitoring of detention facilities.¹⁶⁵ In Mauritius, for example, the mandate of the NPM is based on a governmental decree rather than legislation,¹⁶⁶ which raises concerns about the independence of the mechanism.

NHRIs often have a mandate to provide oversight in places of detention. However, there are numerous reports of NHRIs that lack the mandate and resources to independently receive and investigate complaints, and to conduct regular inspections of detention facilities.¹⁶⁷ In Djibouti, the National Human Rights Commission has visited police stations and gendarmerie units, however the monitoring is not systematic and regular. There are also concerns about the independence of this NHRI, with the Chair and Vice-Chair appointed by the President.¹⁶⁸ In Equatorial Guinea, the Commission on Human Rights has a mandate to receive complaints and make investigations. However, in 2008, it was reported that the Commission had not taken any complaints or made any investigations despite evidence of systemic ill-treatment of detainees in police custody.¹⁶⁹

In Togo, the NHRI lacks the resources and equipment to regularly and effectively carry out its mandate to visit places of detention,¹⁷⁰ and in Ghana, there are concerns that the NHRI is not adequately funded to undertake its mandated activities.¹⁷¹ In Cameroon, the National Committee on Human Rights and Freedoms has a broad mandate to inspect and make investigations, but is compromised by inadequate staffing levels and having its recommendations for improvement dismissed or ignored by the relevant authorities.¹⁷²

160 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [32]

161 *Ibid*

162 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [56]

163 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [56]. United Nations Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Zambia, CAT/C/ZMB/CO/2, 26 May 2008, [13]

164 United Nations Committee against Torture, Consideration of reports by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Chad, CAT/C/TCD/CO/1, 4 June 2009, [21]

165 Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria (4 to 10 March 2007), A/HRC/7/3/Add.4, 22 November 2007, [35]; United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding observations of the United Nations Committee against Torture, Ethiopia, CAT/C/ETH/CO/1, 20 January 2011, [14]; United Nations Committee against Torture, Consideration of reports by States Parties under Article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Benin, CAT/C/BEN/CO/2, 19 February 2008, [2]

166 General Assembly, 65th session, Note by the Secretary General, A/65/273, 10 August 2010, [82]

167 United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [9] Human Rights Committee, Concluding Observations of the Human Rights Committee: Malawi, CCPR/C/MWI/CO/1, 18 June 2012, [5]

168 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Djibouti, 22 December 2011, CAT/C/DJI/CO/1, [12]

169 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add, 18 February 2008, [57]

170 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [73]

171 United Nations Committee against Torture, Concluding Observations of the United Nations Committee against Torture – Ghana, CAT/C/GHA/CO/1, 15 June 2011, [14]

172 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [64]

A number of jurisdictions have other mechanisms, such as an Ombudsman, to conduct inspections of places of detention. However, there are numerous reports that there is a dearth of public information available about these mechanisms, and that they lack a broad enough mandate. In Angola, for example, the Ombudsman does not have a mandate to make unannounced visits, and is unable to make decisions and recommendations that are binding on the police or government.¹⁷³

In some countries, such as Angola, non-governmental organisations may visit police detention facilities, although this authority is not usually provided for by law and is revocable on the whim of the government or police.¹⁷⁴

b Internal accountability mechanisms

The overall lack of effective internal police complaints mechanisms across Africa is cause for concern, given that the authorities entrusted with the investigation of torture are often the same authorities accused of committing the offence, as is the case in Equatorial Guinea.¹⁷⁵ In Togo, this represents a significant barrier to victims obtaining justice, and to deterring police misconduct and ill-treatment of detainees.¹⁷⁶ In Cameroon, police conduct internal investigations, which are criticised as lacking independence and seldom result in thorough investigations or prosecutions for misconduct.¹⁷⁷

c Prosecutorial services

Prosecutors often have a legal mandate to ensure the rights of detainees, including time limits for police custody, ensuring that registers are maintained, and regularly carrying out inspections of places of detention. However, there are numerous and credible reports that prosecutorial services in a number of states, including Mauritania and Togo, fail to provide this level of oversight on a regular and systematic basis.¹⁷⁸

In Angola, there are reports that prosecutors are complicit in covering up police misconduct in relation to arbitrary arrest and unlawful interrogations by legalising police actions that contravene national and/or international law, for example by authorising extensions of police custody after the fact.¹⁷⁹ In Cameroon, prosecutors fail to fulfil their duty to make regular inspections of police detention facilities on the basis that they lack the necessary resources. There are also concerns about the independence of prosecutors in this context. Given the close working relationship between police and prosecutors in the criminal justice process, questions have been raised as to whether prosecutors are willing to take a confrontational role towards the police in an oversight context.¹⁸⁰

d Judicial independence

A major contributing factor to impunity is the lack of investigation and prosecution of police misconduct by the judiciary. Although prompt and impartial investigations should be carried out on suspicion of mistreatment, this is often not the case. Detainees are reported to appear in court with visible signs of ill-treatment, yet judicial authorities fail to instigate investigations, and it is reported that victims don't make complaints for fear of reprisals. The problem is particularly acute in countries where *ex officio* judicial investigations are not enshrined in law.¹⁸¹

173 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, [31]

174 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, [70]

175 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add., 18 February 2008, [59]

176 General Assembly, 65th session, Note by the Secretary General, A/65/273, 10 August 2010, [75]; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, p. 2 and 31

177 United Nations Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention: Concluding Observations of the United Nations Committee against Torture, Cameroon, CAT/C/CMR/CO/4, 19 May 2010, [60]

178 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [66]

179 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p. 3.

180 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/2009/9/Add.2, 11 November 1999, [77]

181 General Assembly, 65th session, Note by the Secretary General, A/65/273, 10 August 2010, [75]

In Equatorial Guinea, for example, the judiciary routinely fails to act on complaints made by detainees about arbitrary arrest, detention and ill-treatment in custody.¹⁸² In Togo, there are no reported cases of the judiciary initiating investigations into allegations of torture, or rejecting evidence of confessions obtained under torture, even where there is compelling medical evidence that torture has taken place.¹⁸³

In Angola, judges are not involved in verifying the lawfulness of detention, as authorisations are generally made by a public prosecutor after the fact.¹⁸⁴ Due to the lack of judges, it is reported that police officers frequently sit on the bench as assessors, which represents a significant concern in relation to the right of the accused to a fair trial.¹⁸⁵

In Cameroon, there is a general perception that judges are part of the Ministry of Justice, and therefore subject to the authority of executive power, in contravention of the separation of powers between the executive and judiciary. Accordingly, judicial oversight of police misconduct is ineffective.¹⁸⁶

In Kenya, the judiciary has been described as corrupt and susceptible to political influence. Magistrates are required to hold a 'trial within a trial' if a defendant claims that s/he was subject to torture in police custody. However, it is reported that this procedure is rarely followed, and only on the insistence of defence lawyers.¹⁸⁷

5 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This paper broadly highlights the challenges faced by Africa's police in achieving a rights-based approach to the use and conditions of pre-trial detention in police cells. It focuses on the factors that may cause police to rely on arrest and detention, and the issues associated with the management of police detention facilities to ensure the rights of detainees are upheld.

Despite international law providing a comprehensive framework to safeguard the rights of individuals in conflict with the law and deprived of their liberty by the police, there is a significant disparity between these standards and the laws and practice of police organisations across the continent.

Regarding arrest, the law may not provide the full suite of safeguards to detainees, or where the safeguards are guaranteed, the police systematically flout the law with impunity. The factors identified as contributing to the disparity between the international framework and the safeguards actually provided to detainees are numerous and varied. They include external pressures, such as the adoption of 'get tough on crime' approaches to policing, legislative frameworks that provide police with broad and largely unchecked powers, and political interference. Other factors are a symptom of broader police effectiveness and accountability issues, such as discrimination, corruption, reliance on confessions as a basis for criminal convictions, and inadequate resources for police investigations and training. Fundamentally, the lack of effective internal and external accountability mechanisms means that the rights of detainees are consistently breached with impunity.

182 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add.18, 18 February 2008, [22]

183 United Nations Human Rights Council, 7th Session, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Togo, A/HRC/7/3/Add.5, 6 January 2008, [66]

184 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, p. 2

185 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Angola, Addendum, A/HRC/7/4/Add.3, 29 February 2008, [84]

186 United Nations Commission on Human Rights, 56th session, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to United Nations Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, E/CN.4/2009/9/Add.2, 11 November 1999, [53]

187 United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea, Addendum, A/HRC/7/4/Add.18, 18 February 2008, [31]

In terms of safeguarding the right to be free from arbitrary detention, police custody is often no longer a precautionary measure aimed at facilitating effective criminal investigations, but serves as a type of punishment for suspects. Police, prosecutors and judges often lack understanding of the purpose of custody and pre-trial detention, and extended police custody has increasingly become a rule rather than an exception in criminal justice processes. Detainees in police custody are frequently denied, or unable to access, legal assistance services, are held beyond the legal time limits without judicial authorisation, and experience significant barriers to challenging the lawfulness of their detention in courts and to receiving compensation when their rights have been abused.

Similarly, despite a comprehensive framework to safeguard minimum conditions of detention that accord with the right to life, and of treatment that accords with humanity and respect for the inherent dignity of the person, this report confirms that conditions of detention in police cells across Africa regularly fail to meet basic standards. Detainees do not have access to regular and independent medical assessments, are subject to excessive and unchecked force and discipline, and are not provided with minimum standards of food, water and sanitation. The situation is particularly acute for vulnerable groups, such as juveniles and women, who are afforded special measures under international law. Internal police accountability measures are criticised for failing to address impunity, and prosecutors and judges often fail in their role to provide an additional layer of oversight, particularly in relation to the length of detention and the right to freedom from torture and ill-treatment. Where they exist, external oversight mechanisms are under-resourced and lack the mandate to hold individual officers accountable or address systemic rights abuses.

5.2 Recommendations

In terms of the challenges faced by Africa's police forces in achieving a rights-based approach to the use and conditions of pre-trial detention in police custody, it is recommended that the ACHPR adopt a dedicated set of guidelines on pre-trial detention that promotes the implementation of a rights-based approach to arrest and detention across the continent.

The value in the development of a resolution which consolidates the international and regional standards for the use and conditions of arrest and detention as they pertain specifically to the role of the police is as a comprehensive and agreed template to support a consistent and rights-based approach to the oversight and reform of the continent's police services, and as a template for state parties to report to the ACPHR.

Accordingly, the adoption by the ACHPR of Resolution 223 on the need to develop guidelines on conditions of police custody and pre-trial detention in Africa is noted as valuable progress towards this goal.¹⁸⁸ This signals a commitment by the ACHPR to establish measures to address the challenges to rights-based arrest and detention across the continent. Based on the gaps between the international legal framework for arrest and detention and law and practice across Africa, APCOF recommends that the ACHPR resolution include, at a minimum, address the following elements:

- Arrests should be carried out on grounds that are clearly established in law and accord with international standards. Arrests must not be motivated by discrimination of any kind.
- The subsequent decision to detain an individual should be based on grounds that are clearly established in law and in accordance with international standards for detention, and must not be motivated by discrimination of any kind. Detention should be an exception rather than a rule, and for as short a time period as possible. Police, and the justice system more broadly, must observe the procedural safeguards for detention as set out in international law.

¹⁸⁸ Adopted at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights in Yamoussoukro, Côte d'Ivoire, 9 to 22 October 2012

- Conditions of detention in police cells should accord with the right to life and respect the inherent dignity of the person. Conditions should accord with international standards, and detainees must have the right to protection from torture and ill-treatment.

It is further recommended that the ACHPR Special Rapporteur on Prisons and Conditions of Detention in Africa be provided with the necessary resources to develop and implement the resolution envisaged by Resolution 223, and specifically also include civil society organisations and NHRIs in the development, implementation and monitoring of guidelines on police custody and pre-trial detention.

Pre-trial Detention in Uganda

Roselyn Karugonjo-Segawa

Executive Summary

Despite a legal framework that is, on the whole, compliant with international human rights standards, implementation of the procedural safeguards for arrest and detention is weak in Uganda. Most pre-trial detainees are victims of arbitrary arrests and do not enjoy the rights that accrue to them during their arrest and detention. Sometimes this is based on inadequate police training and capacity for criminal investigations, discrimination, political interference and corruption, among others. Detainees who are poor and cannot afford legal services often remain in custody for a longer time.

Prolonged pre-trial detention has adverse effects on the rights of detainees to a fair and speedy trial. Detainees are often held in overcrowded facilities, which may have an impact on their health and which increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. Most detention facilities in Uganda are not suitable for housing detainees, and there are frequent challenges in providing food, water and other basic necessities such as hygiene, sanitation and bedding. Moreover, many of these facilities are dilapidated, overcrowded and have inadequate space, lighting and ventilation. Most inmates do not have access to adequate food and water especially in police cells. Inmates often lack clothing and bedding, access to health services, facilities for personal hygiene and access to opportunities for exercise.

There are oversight and accountability mechanisms at the national and international level. National mechanisms include both the internal and external mechanisms, but these are weak and need to be strengthened if they are to contribute to improved accountability. The mechanisms at the regional and international level also provide such opportunities, but cannot work in isolation, and need to be understood as complementing national measures. Therefore, for the regional and international mechanisms to work, it is important for them to work in cooperation with the state, and other national mechanisms.

1 Introduction

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police stations and prisons before the completion of their trial. Although detention pending trial should be the exception rather than the rule, its use is prevalent in Uganda. Indeed, pre-trial detainees constitute a large proportion of the inmates causing overcrowding at police stations and prisons. Currently, more than half of the inmates in prisons are on remand awaiting trial.¹ Recent

¹ Justice Law and Order Sector Secretariat. 2011. *Annual Performance Report 2010/2011*. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

data indicate that the total number of detainees in Ugandan prisons (both pre-trial and sentenced detainees) is 34 000, with an estimated 32% of these being pre-trial detainees.² The high number of detainees on remand is the result of a number of factors, including slow investigations by police, corruption, a backlog of cases in courts due to limited resources including judicial personnel, among other factors.³ Delays on remand have adverse effects on the rights of detainees to a fair and speedy trial. At police stations in some cases suspects are detained beyond the prescribed 48 hours without being granted police bond. It is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention.⁴ Detainees are often held in overcrowded facilities (it is estimated that prison occupancy is 213.8%),⁵ which impacts on health and safety, and increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment.

This study describes the extent and nature of pre-trial detention in Uganda and assesses the extent to which Uganda's law and practice comply with the international standards for the use and conditions of pre-trial detention. The study in particular highlights the challenges faced by pre-trial detainees in Uganda and makes appropriate recommendations.

2 Methodology

The research methodology for this study included an extensive literature review of relevant material and documents available on pre-trial detention in Uganda. These included laws such as the Ugandan Constitution and other relevant domestic legislation, and ratified international instruments. Other documents that were reviewed comprised documents from the United Nations (UN) including the UN Universal Periodic Review and relevant UN treaty bodies and Special Procedures Reports; documents from the African Commission on Human and Peoples' Rights; reports of the Uganda Human Rights Commission; reports produced by national and international civil society organisations; and media reports.

3 Legislative Framework in Uganda

Uganda is subject to various laws at the international, regional and national level in relation to pre-trial detention. At the international level, the applicable law includes the universal human rights treaties, which Uganda has ratified. This is in addition to the regional instruments including the African Charter on Human and Peoples' rights. Uganda is also subject to the human rights standards contained in instruments such as the International Covenant on Civil and Political Rights (ICCPR),⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁷ the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),⁸ the United Nations Convention on the Rights of the Child (CRC),⁹ the Convention on the Rights of Persons with Disabilities¹⁰ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹¹ among others.

Uganda is also subject to a range of African regional instruments including the African Charter on Human and Peoples' Rights,¹² the Protocol to the African Charter on the Rights of Women in Africa,¹³

2 International Centre for Prison Studies, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=51, accessed 30 October 2012

3 Justice Law and Order Sector Secretariat. 2011. *Annual Performance Report 2010/2011*. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

4 Human Rights Watch. 2011. *Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit*. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>

5 International Centre for Prison Studies, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=51, accessed 30 October 2012

6 Uganda ratified the ICCPR on 21 June 1995

7 Uganda ratified the ICESCR on 21 January 1987

8 Uganda ratified the UNCAT on 3 November 1986

9 Uganda ratified the CRC on 7 August 1990

10 Uganda ratified the CRPD on 25 September 2008

11 Uganda ratified the CEDAW on 22 July 1985

12 Uganda ratified the African Charter on 10 May 1986

13 Uganda ratified the Protocol to the African Charter on the Rights of Women on 22 July 2010

the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights¹⁴ and the African Charter on the Rights and Welfare of the Child (ACRWC),¹⁵ among others.

At the national level, the applicable law includes the Constitution of the Republic of Uganda,¹⁶ Penal Code Act,¹⁷ and Trial on Indictments Act,¹⁸ Criminal Procedure Code,¹⁹ Police Act,²⁰ Prisons Act,²¹ Uganda Peoples' Defence Forces Act²² and the Children's Act,²³ among others. These prescribe the rules for the treatment of detainees.

4 Legal Safeguards for Pre-trial Detainees and Review of Practices

There are procedural safeguards provided in both international, regional and international law relating to the arrest, conditions of detention, right to a fair trial and protection from torture and other cruel, inhuman and degrading treatment or punishment, among others. The discussion below reviews these safeguards, and then reflects on evidence relating to actual practice in Uganda.

4.1 Arrest

Arrests can be made by the Uganda Police Force, Uganda Peoples' Defence Forces and ordinary citizens, who would have to hand over the arrested person to the appropriate authorities depending on the crime. The Uganda Peoples' Defence Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there have been special agencies which combine the Police and the Military such as the Joint Anti-Terrorism Taskforce (JATT) and the recently disbanded Rapid Response Unit (which is notorious for human rights violations²⁴).

Ugandan law provides for the right to personal liberty.²⁵ The Constitution provides that 'no person shall be deprived of personal liberty' except for certain cases such as the execution of a sentence or a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others.²⁶ A person arrested under Ugandan law has the following rights:

- Right to be kept in a place authorised by law²⁷
- Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice²⁸
- Right to be brought to court as soon as possible but not later than 48 hours²⁹
- Right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention³⁰
- Right to access the next-of-kin, lawyer and personal doctor³¹
- Right to access medical treatment including, at the request and at the cost of that person, access to private medical treatment³²

14 Uganda ratified the Protocol to the African Charter establishing the Court on 16 February 2001

15 Uganda ratified the ACRWC on 17 August 1994

16 Constitution of the Republic of Uganda, 1995, as amended 2000 and 2005

17 Penal Code Act, 1950

18 Trial on Indictments Act, 1970

19 Criminal Procedure Code Act, 1950

20 Police Act, 2012

21 Prisons Act, 2006

22 Uganda Peoples' Defence Forces Act, 2005

23 Children's Act, 1996

24 Human Rights Watch. 2011. *Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit*. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>. See also Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.org

25 Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

26 Constitution of the Republic of Uganda, article 23

27 Constitution of the Republic of Uganda, article 23(2)

28 Constitution of the Republic of Uganda, article 23(3), International Covenant on Civil and Political Rights, article 9(2)

29 Constitution of the Republic of Uganda, article 23(4), International Covenant on Civil and Political Rights, article 9(3)

30 Constitution of the Republic of Uganda, article 23(5)(a)

31 Constitution of the Republic of Uganda, article 23(5)(b)

32 Constitution of the Republic of Uganda, article 23(5)(c)

- Right to bail³³
- Right to compensation for unlawful arrest, restriction or detention³⁴
- Right to deduct from their sentence days spent in custody before the completion of the trial³⁵
- Right of *habeas corpus*³⁶
- Right to protection from torture and other cruel, inhuman or degrading treatment or punishment³⁷
- Right to a fair trial³⁸
- Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment³⁹

On the whole, Ugandan law, especially the Constitution, complies with international human rights standards relating to arrest. The Constitution provides for protection against arbitrary arrest and detention; however, challenges are often found in the implementation of the law, which inevitably affects the enjoyment of those rights.⁴⁰

4.1.1 Right to be kept in a place authorised by law

Ugandan law explicitly prohibits keeping individuals in unauthorised places of detention, i.e. those that have not been officially gazetted by the Minister of Internal Affairs. In spite of the law, there are reports of the use of 'safe houses' or unauthorised places of detention.⁴¹ Those placed in safe houses have included terrorism and treason suspects, civil debtors and persons selected for such detention due to personal disputes.⁴² Detention of suspects in unauthorised places of detention exposes them to torture and other cruel, inhuman and degrading treatment and punishment.⁴³ Moreover, most detainees in such unauthorised places are often not brought to court within the requisite 48 hours. The Uganda Human Rights Commission (UHRC), the national human rights institution, has received a few complaints of people detained in unauthorised places referred to as 'safe houses'. In 2010, the UHRC received at least nine such complaints.⁴⁴ Concerns of detention in unofficial places of detention were also raised during Uganda's Periodic Review in October 2011, although Ugandan government representatives denied these allegations.⁴⁵ Detention in unauthorised places of detention is especially used by the JATT.⁴⁶

4.1.2 Right to be informed in a language they understand regarding the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice

Although there is a legal right to information in a language that one understands regarding the reasons for the arrest, restriction or denial of the right to a lawyer of their choice,⁴⁷ this is not enjoyed in practice.⁴⁸ Most suspects are not informed about the reasons for arrest, restriction or detention and of their right to a lawyer of their choice. Information regarding the arrest and the reasons for the restriction and detention are often provided after they have been taken to the police stations or police posts when they have to make their statements. There have also been incidents where suspects detained in police cells alleged that they did not know why they were arrested, restricted

33 Constitution of the Republic of Uganda, article 23(6), Magistrates Courts Act, section 76

34 Constitution of the Republic of Uganda, article 23(7)

35 Constitution of the Republic of Uganda, article 23(8)

36 Constitution of the Republic of Uganda, article 23(9) and International Covenant on Civil and Political Rights, article 9(4)

37 Constitution of the Republic of Uganda, article 24

38 Constitution of the Republic of Uganda, article 28

39 Constitution of the Republic of Uganda, article 28(3)(e)

40 Afuna Adula. Undated. *A History of the Violation of the Right to Personal Liberty in Uganda: Are there any improvements?* <http://ebookbrowse.com/a-history-of-the-violation-of-the-right-to-personal-liberty-in-uganda-doc-d107679647>, accessed 30 October 2012

41 Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, §92 and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 – Uganda, A/HRC/WG.6/UGA/3, §30

42 Amnesty International. 2007. *Uganda*. <http://www.amnesty.org/en/region/uganda/report-2007>, accessed 30 October 2012

43 Human Rights Watch. 2009. *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*. New York: Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>. Also see The Redress Trust. 2007. *Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda*. London: The Redress Trust

44 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission, p. 12

45 Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, p. 12, §92, p.13, §105

46 Human Rights Watch. 2009. *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*. New York: Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>

47 Constitution of the Republic of Uganda, article 28(3)(f)

48 United States Department of State, *Uganda*, www.state.gov/documents/organization/160149.pdf, accessed 29 October 2012

or detained. Most suspects and detainees are poor and do not know about their rights including the right to a lawyer and even if they did, most cannot afford their services.⁴⁹

4.1.3 Right to be brought to court as soon as possible but not later than 48 hours

The Constitution provides that suspects, if not released earlier, must be brought to court within 48 hours. However, this is often ignored or deliberately circumvented. The bulk of the complaints received by the UHRC are allegations of torture and other cruel, inhuman and degrading treatment or punishment, and detention beyond 48 hours before being brought to court. In 2010, 42% of the complaints that were reported to the UHRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period.⁵⁰ In several cases, the UHRC has found the Attorney General liable for the violation of the right to liberty where suspects have stayed longer than 48 hours in custody, and has ordered compensation for these victims.⁵¹ The courts have affirmed this. For example, in the case of *Kidega Alfonso v. Attorney General*, the court found that Mr Alfonso's detention for nine days before appearing in court on a murder charge was unlawful.⁵²

Failure to bring suspects to court within 48 hours is often the result of a lack of training in professional investigative procedures, inadequate facilitation with equipment for efficient and quick investigations, the overreliance on confessions and corruption in the judiciary, among others.⁵³ Suspects of terrorism and other capital offences are commonly victims of detention for periods longer than the requisite 48 hours. Such detention often creates an environment where torture and other ill treatment are likely to occur. The police detention facilities are not suitable for long stays and the suspects often face challenges with the provision of food, water and other basic necessities such as hygiene, sanitation and bedding.

4.1.4 Right to access the next of kin, lawyer and personal doctor

Those arrested and detained must have access to next of kin, doctors and lawyers.⁵⁴ However, the UHRC has received complaints that suspects are arrested with no effort being made to inform or to enable them to access their next of kin, doctors and lawyers.⁵⁵ Allegations of prolonged incommunicado detention by security agents (such as the JATT) have also been reported.⁵⁶ Uganda, like many countries in the region, has adopted anti-terrorism legislation.⁵⁷ Although Uganda's Terrorism Act of 2002 protects a number of due process rights, the practice has been different. There have also been some cases of this law being abused by charging people who have engaged in political activities under the Act.⁵⁸

4.1.5 Right to bail

Accused persons are entitled to apply to the court to be released on bail and the court may grant bail on such conditions, as it considers reasonable.⁵⁹ The Constitution further provides that persons shall be released on bail for cases which are tried by the High Court, as well as other subordinate courts, if they have been remanded in custody for 60 days,⁶⁰ and for cases which are tried only by

49 Chief Justice Benjamin Odoki, Keynote Address at the Opening of the National Legal Aid Conference, October 2011, <http://www.jlos.go.ug>, accessed 29 October 2012

50 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. <http://www.uhrc.ug>, accessed 29 October 2012, p.17

51 Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.ug>, accessed 29 October 2012

52 High Court Civil Suit No. 4 of 2000 [2008] UGHC 86, 27 June 2008

53 Justice Law and Order Sector Secretariat. 2011. *Annual Performance Report 2010/2011*. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>, pp.84-85

54 Constitution of the Republic of Uganda, article 23

55 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.83

56 Human Rights Watch. 2009. *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*. New York: Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>, pp.49-50

57 Nerida Nthamburi. Undated. *Fighting Terror in East Africa: Less Liberty for More Security? Analysis following Anti-Terrorism Legislation and Its Impact on Human Rights*, LLM dissertation, University of Cape Town

58 For example, in the recent case of *Uganda v. Roberty Sekabira & Others*, High Court Session Case No. 0085 of 2010, where rioters were charged with offences under the Act and kept in detention for close to three years without trial. The suspects were discharged after the Court found that the law had been abused

59 Constitution of the Republic of Uganda, article 23(6)

60 Constitution of the Republic of Uganda, article 23(6)(b)

the High Court if they have been remanded in custody for 180 days.⁶¹ In practice, however, there are many cases of persons remaining in detention for long periods before trial.⁶² If bail were applied in terms of the law, the number of pre-trial detainees in Uganda would be significantly reduced.

The President of Uganda, Mr Yoweri Museveni, recently made statements to the effect that bail should not be provided for certain categories of crime.⁶³ The President stated that bail should be scrapped for demonstrators and economic saboteurs. He also said that bail for capital offences such as treason, defilement, murder and rape should be denied until after 180 days on remand. Furthermore, he stated that rioting should be added to a list of offences which should not be granted bail. These calls have been opposed on the grounds that such an application of bail would be unconstitutional and discriminatory.⁶⁴ The President seems to have been particularly concerned about curbing the actions of opposition politicians who, it was feared, wanted to take over power in a manner similar to the Arab Spring through demonstrations and assemblies. Although most of the demonstrations and assemblies started peacefully, they ended up becoming riotous and leading to injuries, the loss of life and property as well as the disruption of economic activities.

There are a number of other concerns relating to bail in Uganda. These include: its lack of acceptability by the public, who often prefer the incarceration of suspects and accused persons until the trial is over; political interference; individuals failing to appear for the trial after their release; the difficult bail requirements for some individuals (e.g. sureties – persons who will ensure that the suspect does not abscond from court proceedings) and the money which has to be paid for security.⁶⁵

The Constitutional Court has refused to acknowledge bail as an automatic right. In *Foundation for Human Rights Initiative v. Attorney General*,⁶⁶ the Constitutional Court held that the objective and effect of bail are well settled. They are to ensure that an accused person appears to stand trial without the necessity of being detained in custody. The Court further noted that an accused person charged with a criminal offence is presumed innocent until proved guilty, or pleads guilty, and that if an accused person is remanded in custody but subsequently acquitted s/he could suffer gross injustice. According to the Court, however, this does not make bail automatic. Its effect is merely to release the accused from physical custody while s/he remains under the jurisdiction of the law and is bound to appear at the appointed place and time to answer the charge or charges against him/her.

4.1.6 Right to compensation for unlawful arrest, restriction or detention

Where a citizen has been subjected to an unlawful arrest, restriction or detention, they are entitled to compensation. However, many victims of such violations are not promptly compensated. The UHRC has handled several cases where victims of unlawful arrests, restriction and detention have expressed concern about the slow payment of awards of compensation by the Attorney General.⁶⁷ Although there are indications that the Ministry of Justice and Constitutional Affairs is prioritising these payments to victims of human rights violations, only a few victims have been compensated.

4.1.7 Right to deduct from sentence days spent in custody before the completion of the trial

Where suspects are detained in custody for several days, as is the practice, before the completion of the trial, the court is required to deduct from their sentence days spent in custody before the

61 Constitution of the Republic of Uganda, article 23(6)(c)

62 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.11

63 Uganda Radio Network. NRM Chief Whip Nasasira Insists Bail Should Be Debated, 16 July 2011. <http://ugandaradionetwork.com/a/story.php?s=35372&PHPSESSID=5a7c6ea40350d48944f6d3e9f04a04e6>

64 Uganda Law Society Press Statement on the Right to Bail, <http://www.uls.or.ug/details.php?load=uls&id=78&Uganda%20Law%20Society>

65 Foundation for Human Rights Initiative. 2011. *A Citizen's Handbook on The Law Governing Bail in Uganda*, <http://ppja.org/countries/uganda/Bail%20Handbook.pdf>

66 Constitutional Petition No. 20 of 2006 [2008] UGCC 1, 26 March 2008

67 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission

completion of the trial.⁶⁸ On the whole, there have been no complaints that this has not been observed. Nevertheless, there have been complaints of long periods of detention after which cases have been withdrawn or where suspects are acquitted.

4.1.8 Right of habeas corpus

Habeas corpus is a constitutional and internationally recognised right that ensures that one is lawfully detained or otherwise released.⁶⁹ The writ of *habeas corpus* is used to question the legality of the restraint or detention and thereby facilitate the release of persons in unlawful custody. Whereas the application for *habeas corpus* may be made from the moment of arrest, if there have been valid proceedings subsequent to the arrest which are offered in justification of detention, a detainee may not get redress. Although the right to an order of *habeas corpus* is inviolable and cannot be suspended or derogated,⁷⁰ only a few people in detention apply for it. This could be because of ignorance about the right and the lack of a comprehensive and integrated system for legal aid service provision, which would enhance suspects' accessibility to lawyers and courts.

4.1.9 Right to protection from torture and other cruel, inhuman or degrading treatment or punishment

Freedom from torture and ill treatment is provided for in the Constitution as a non-derogable right.⁷¹ The Constitution further provides that it is not a right that can be derogated from, even in emergencies.⁷² Nevertheless, torture and ill treatment is rampant in Uganda. It is one of the most common complaints received at the UHRC. Table 1 illustrates the report of violations received by the UHRC for 2009, 2010 and 2011, and the percentage of these complaints against the total number of complaints received. In addition, the 2011 report of the UHRC also reflected the steady increase of these complaints between 2006 and 2011, with only 2010 showing a slight decrease.

Table 1: Complaints of torture, cruel, inhuman and degrading treatment and punishment to the Uganda Human Rights Commission

	2011	2010	2009
Complaints of torture, cruel, inhuman and degrading treatment and punishment	428	276	314
Total complaints	1 231	975	1 013
Percentage of total complaints	34.77	28.3	31.0

Source: Uganda Human Rights Commission, Annual Reports 2010, 2011 and 2012

Human Rights Watch and Amnesty International have also documented allegations of torture and other ill treatment.⁷³ This has been affirmed by local civil society organisations such as the African Centre for Treatment and Rehabilitation of Torture Victims.⁷⁴ Recently, it was reported that a police officer squeezed the breast of Mrs Ingrid Turinawe, of opposition party Forum for Democratic Change, during her arrest.⁷⁵ Suspects are more vulnerable to torture and ill treatment shortly after arrest and during long detentions. They are also vulnerable to torture and ill treatment while in detention at the hands of their fellow inmates and when they are taken out to farms to work.⁷⁶

68 Constitution of the Republic of Uganda, article 23(8)

69 International Covenant on Civil and Political Rights, article 9(4)

70 Constitution of the Republic of Uganda, articles 23(9) and 44(d)

71 Constitution of the Republic of Uganda, article 24

72 Constitution of the Republic of Uganda, article 44

73 Human Rights Watch, UPR submission on Uganda, March 2011, <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/HRW-HumanRightsWatch-eng.pdf>

74 African Centre for Treatment and Rehabilitation of Torture Victims. 2011. *Annual Report 2010*. http://www.actvuganda.org/uploads/1309243277_ACTV%202010%20Annual%20Report.pdf%20mail.pdf

75 *The Daily Monitor*. 23 April 2012. Police under fire over Ingrid arrest. <http://www.monitor.co.ug/News/National/-/688334/1391926/-/avjydsz/-/index.htm>. Also see *BBC News Africa*. 23 April 2012. Uganda Ingrid Turinawe 'sexual abuse' protesters strip. <http://www.bbc.co.uk/news/world-africa-17814860>, accessed 29 October 2012

76 Ugandan Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission; Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.23

The persistence of torture has been exacerbated by the lack of an adequate law that prohibits, prevents and punishes individuals who subject others to torture and ill treatment. Fortunately, the Parliament has heeded the calls to enact such a law by the UHRC and the Coalition of Civil Society Organisations against Torture, and recently passed the Prohibition and Prevention of Torture Act, and assented to by the President in July 2012. The Act domesticates Uganda's international obligations under the UN Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (UNCAT). Notably, Uganda has not yet ratified the Optional Protocol to the UNCAT.

4.1.10 *The right to a fair trial*

Key elements of the right to a fair trial include an independent adjudication body; the presumption of innocence; adequate time and facilities to prepare one's defence including access to interpreters and lawyers; among others. These rights – as well as the right of access to legal aid⁷⁷ and representation and the right to a prompt trial – are provided under both national⁷⁸ and international law.⁷⁹

There are challenges in the enforcement of the right to a fair trial in Uganda. Although the Constitution provides for a number of safeguards, practice runs contrary to these provisions. The Ugandan judiciary is marred by corruption⁸⁰ and the accused do not usually have the facilities to prepare their defence or to have sufficient legal representation. Currently legal aid in Uganda is limited and inadequate.⁸¹ The majority of the suspects in pre-trial detention are usually illiterate and poor, which affects their ability to defend themselves even when they have language interpretation services. They often cannot afford to hire legal representatives, and are not guaranteed state legal representation except for cases that carry the death penalty or life imprisonment.⁸² Despite the provisions of the Poor Persons Defence Act, the legal aid services provided by the state do not match the needs of the citizenry and exclude the majority, especially the poor and the vulnerable.⁸³ Moreover, even in cases of a capital nature and with the potential for life imprisonment, where legal representation is required, the service remains wanting.⁸⁴

It is important to note that, in general, trials in Uganda are often delayed. The average length of pre-trial detention for capital offenders is about 15 months.⁸⁵ However, there are people who are on remand in prison who have been waiting for their trials for more than two years. Examples include the suspects in the Buganda riots, who have been in detention since September 2009 with their trials only beginning recently.⁸⁶ Conditions can be a lot worse, as reflected in the statement below from Mr Paul Gadenya Wolimbwa, the Senior Technical Advisor of the Uganda Justice, Law and Order Sector, speaking about the case backlog of the judiciary in the recent past:

many people continued to languish in the prisons, case files remained unattended to and in one of the worst case scenarios, three suspects facing capital offences were forgotten in prison after a judge adjourned their cases to the next convenient session! The next convenient session came after a decade of waiting!⁸⁷

There have also been challenges to the guarantee to a fair hearing, especially in the case of courts martial. In the case of *Uganda Law Society & Another v. Attorney General*,⁸⁸ the Constitutional

77 Poor Persons Defence Act, section 2

78 Constitution of the Republic of Uganda, articles 22, 26 and 28

79 International Covenant on Civil and Political Rights, articles 6 and 14

80 Transparency International, *East African Bribery Index 2011*, http://www.tkenya.org/index.php?option=com_content&view=article&id=73&Itemid=67, accessed 29 October 2012

81 Justice, Law and Order Sector. *National Legal Aid Conference Report: Emerging Issues and Recommendations*, 26-28 October 2011, <http://www.jlos.go.ug/publications.php>

82 Constitution of the Republic of Uganda, article 28(3)(e)

83 Justice, Law and Order Sector. *National Legal Aid Conference Report: Emerging Issues and Recommendations*, 26-28, October 2011 <http://www.jlos.go.ug/publications.php>

84 Justice, Law and Order Sector. *National Legal Aid Conference Report: Emerging Issues and Recommendations*, 26-28 October 2011, <http://www.jlos.go.ug/publications.php>

85 Justice Law and Order Sector Secretariat. 2011. *Annual Performance Report 2010/2011*. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

86 *New Vision*. 11 April 2012. Buganda riot suspects' trial starts today. <http://www.newvision.co.ug/news/630249-Buganda-riot-suspects--trial-starts-today.html>

87 Paul Gadenya Wolimbwa. 2011. *The Role of the JLOS Case Backlog Reduction Programme: Achievements and Lessons Learned*, <http://www.jlos.go.ug/uploads/Case%20backlog%20paper.pdf>

88 Constitutional Petitions Nos 2 & 8 of 2002 [2009] UGCC 1, 5 February 2009

Court had to determine whether the quick trial by a field court martial and the immediate execution of soldiers was consistent with the right to a fair trial. Accused of murder, two soldiers had been arrested on 22 March 2002, detained and then appeared before a court martial on 25 March 2002. They were tried the same day, convicted and executed by firing squad. The Constitutional Court found this trial to have violated a number of elements of the right to a fair trial, including the right to an interpreter, the right to be given adequate facilities and time to prepare a defence, and the right to legal representation, among others.

4.1.11 Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment

Any person who is accused of an offence that carries the death penalty is entitled to legal representation at the cost of the state.⁸⁹ Although there is a practice in Uganda of handing state briefs to advocates to represent those likely to face the death penalty and life imprisonment for a minimal fee, it is insufficient. This is because the advocates are unlikely to work as diligently as they would for clients who pay them satisfactorily. It is necessary to have a comprehensive system for the provision of legal aid services. While this has budgetary implications for the state, such a system is essential in order to implement effectively not only the right to legal representation for offenders who are likely to face the death penalty, but also the right to a fair trial.

4.2 Conditions of Pre-trial Detention

Detainees are entitled to certain rights. They must be detained in adequate facilities, treated in a humane and respectful manner, and given access to outside contacts. Both international and Ugandan law provide for these rights, but practice frequently deviates from the law. Pre-trial detainees in Uganda are held in both police and prison facilities.

4.2.1 Detention in adequate facilities

In terms of adequate facilities, pre-trial detainees must be housed in officially recognised places of detention, in humane and healthy conditions. They must be given adequate shelter, which should have adequate space, lighting and ventilation, among other things.⁹⁰ They must also be provided with adequate food and water.⁹¹ In addition, they must have adequate clothing, bedding, medical services,⁹² exercise facilities and opportunities,⁹³ and adequate items and facilities for personal hygiene such as soap, water and bathrooms.⁹⁴

As noted earlier, there are reports that suspects are detained in unauthorised places of detention. Most places of detention in Uganda are inadequate. Detention facilities in police stations and prisons are mostly dilapidated, overcrowded and have inadequate space, lighting and ventilation.⁹⁵ The majority of inmates do not have access to adequate food and water.⁹⁶ They also lack clothing and bedding.⁹⁷ Moreover access to health services, facilities for personal hygiene and exercise is a challenge.⁹⁸

89 Constitution of the Republic of Uganda, article 28(3)(e)

90 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 10

91 Prisons Act, section 61

92 Constitution of the Republic of Uganda, article 23(5)

93 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 21

94 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 15 and 16

95 Uganda Human Rights Commission, Annual Reports, available at www.uhrcr.org. Also see Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch

96 Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.16

97 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.37; Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.15

98 Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.19

4.2.2 Treatment in a humane and respectful manner

Being treated in a humane and respectful manner involves the presumption of innocence;⁹⁹ respect of the inherent dignity of the person;¹⁰⁰ the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment,¹⁰¹ which includes the prohibition of violence or threats and protection from torture and violence by other detainees; respect for religious and moral beliefs;¹⁰² the prohibition of taking advantage of a detainee's situation to force confession or self-incrimination;¹⁰³ and having measures for discipline and order which are derived from the law and regulations and which should only be limited to those necessary for custody.¹⁰⁴ Accused persons on trial should be segregated from convicted persons and given separate treatment appropriate to their status.¹⁰⁵

The law also provides for special measures to cater for the most vulnerable among the suspects such as women, children and the disabled. Arrested or detained females should not suffer discrimination¹⁰⁶ and should be protected from violence, including sexual harassment.¹⁰⁷ In order to enhance protection, female officers should supervise and search female detainees. Female officers also need to be present during all contact with female detainees. Furthermore, female detainees must be housed separately from male detainees. Children should only be detained as a matter of last resort and for the shortest appropriate period of time.¹⁰⁸ Where children are detained, they must be separated from adults.¹⁰⁹ The disabled detainees also should not suffer discrimination and should be protected from violence.¹¹⁰ They should be assisted to enjoy the same rights as the other suspects or inmates.¹¹¹

The practice is that inmates are treated in a manner that negates the presumption of innocence and respect of the inherent dignity of the person. In Ugandan prisons, most suspects are detained together with convicted prisoners.¹¹² Both sets of inmates are subject to the same deplorable conditions of overcrowding and lack of adequate space. Moreover, the pre-trial detainees, like convicted prisoners, are also overworked in the prison farms.¹¹³ Although torture and ill treatment are prohibited, they are rampant in the Ugandan places of detention as mentioned earlier. Some suspects have been killed as a result of being subjected to torture, cruel, inhuman and degrading treatment.¹¹⁴ Moreover, the detainees are not protected from violence or threats of violence and torture from other detainees. Detainees are often subjected to torture and ill treatment by their fellow inmates, especially the 'katikiros' or prefects.¹¹⁵

There are no special measures to cater for the most vulnerable among the detainees. There are cases of pregnant women¹¹⁶ and women who are incarcerated with children who do not get the required care.¹¹⁷ Although the law requires that children should only be detained as a matter of last resort, children are often incarcerated instead of being diverted away from the criminal justice system.¹¹⁸ Moreover, children are sometimes detained with adults.¹¹⁹ A review of the Remand Homes and the National Rehabilitation Centre found that the number of girls in conflict with the law was very small

99 Constitution of the Republic of Uganda, article 28(3)(a)

100 Prisons Act, section 57(a)

101 Constitution of the Republic of Uganda, articles 24 and 44(a); Universal Declaration of Human Rights, article 5, International Covenant on Civil and Political Rights, article 7; United Nations Convention against Torture, article 1 and Constitution of the Republic of Uganda, article 24

102 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 6(b)

103 International Covenant on Civil and Political Rights, article 14(g) and United Nations Principles And Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, section 7(d)

104 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 27

105 International Covenant on Civil and Political Rights, article 10 and the United Nations Standard Minimum Rules for Treatment of Prisoners, Rules 8(b)

106 Universal Declaration on Human Rights, article 2; International Covenant on Civil and Political Rights, article 3; Convention for the Elimination of all forms of Discrimination against Women, articles 1 and 2; the United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 6; Human Rights Committee, General Comment 21 concerning humane treatment of persons deprived of liberty, para. 4. HRI/GEN/1/Rev.7 at 153 (2004)

107 Declaration on the Elimination of Violence against Women, article 1 and 4(c)

108 United Nations Convention on the Rights of the Child, article 37(b)

109 United Nations Convention on the Rights of the Child, article 37(c)

110 Universal Declaration on Human Rights, articles 1 and 5; International Covenant on Civil and Political Rights, articles 7 and 10; Convention on the Rights of Persons with Disabilities, articles 5, 14, 15 and 16; and Human Rights Committee, General Comment No. 9

111 Convention on the Rights of Persons with Disabilities, article 5 and International Covenant on Civil and Political Rights, article 26

112 Human Rights Watch. 2011. *Even Dead Bodies Must Work: Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.14

113 Human Rights Watch. 2011. *Even Dead Bodies Must Work: Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.21

114 Human Rights Watch. 2009. *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*. New York; Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>

115 Uganda Human Rights Commission. 2010. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.40

116 Human Rights Watch. 2011. *Even Dead Bodies Must Work: Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.18

117 Forum for Women in Democracy. 2010. *Equal by Right, The Uganda Women's Agenda 2010-2016*, p.28

118 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. pp.40-41

119 Uganda Human Rights Commission. 2010. *Annual Report 2009*. Kampala: Uganda Human Rights Commission. p.52

compared to boys at a ratio of 1 or 2 girls to 20 or 30 boys.¹²⁰ It was noted that the girls were not only likely to miss other female company, but were also potentially vulnerable to sexual exploitation given that defilement is such a prevalent offence.¹²¹ Furthermore, there are no sufficient measures to ensure that inmates with disabilities are able to enjoy the same rights as the other detainees, for example, inmates with physical disabilities often have difficulties in using bathroom facilities.¹²²

The treatment of persons with mental disabilities is also problematic. The law requires that, when they appear in the course of the trial after an inquiry that a person is incapable of making their defence, the court should order for the detention of such person and the file should be sent to the Minister of Justice for certification.¹²³ The law also allows for the detention of a person even when such person has been acquitted of an offence, yet the period of detention is not defined. Unfortunately, such persons have been detained for long periods in prisons awaiting such certification.¹²⁴ Given the deplorable conditions in prisons, their detention only worsens their situation and constitutes inhumane treatment.

4.2.3 Access to the outside world

Access to the outside world entails having access to legal representatives, judges, family members, medical personnel and visitors. Visitors could include national and international visitors to places of detention such as the national human rights institutions, Inspectorates of Prisons, civil society organisations, religious authorities, the International Committee of the Red Cross, among others.

Generally, in practice, pre-trial detainees are given access to the outside world, especially access to visitors. However, there are problems in terms of access to court. This is especially brought on by resource constraints such as the vehicles or fuel needed to transport detainees to court.¹²⁵ Moreover, detainees also face challenges accessing health services.¹²⁶ Some detainees are denied access to their families, especially in military detention facilities.¹²⁷

5 Oversight and Accountability Systems

National and international law establishes monitoring mechanisms for places of detention. There are both internal and external oversight and accountability mechanisms. The external oversight and accountability mechanisms are available at both national and international levels.

5.1 Internal Oversight and Accountability Mechanisms

The following internal oversight and accountability mechanisms are provided in the Uganda Police Force and the Uganda Prison Service.

5.1.1 Uganda Police Force

The Uganda Police Force has disciplinary courts which hear complaints against officers. The disciplinary court is instituted by the Inspector General of Police and has the power to decide whether perpetrators are to be discharged, dismissed, cautioned, fined or demoted in rank.

120 Marianne Moore. 2010. *Juvenile Detention in Uganda. Review of Ugandan Remand Homes and the National Rehabilitation Centre*. Kampala: African Prisons Project. p.13. <http://www.africanprisons.org/documents/Juvenile-Detention-in-Uganda-October-2010.pdf>

121 Marianne Moore. 2010. *Juvenile Detention in Uganda. Review of Ugandan Remand Homes and the National Rehabilitation Centre*. Kampala: African Prisons Project. p.13. <http://www.africanprisons.org/documents/Juvenile-Detention-in-Uganda-October-2010.pdf>

122 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p.32

123 Magistrates Courts Act, section 113 and Trial on Indictments Act, section 45

124 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p.26

125 Asan Kasingye. Undated. *The Role of the Police in Diversion: An assessment of success and failures*, <http://www.createolutions.org/unicef/Documents/resources/country/africa/ugandapoliceroleindiversion.pdf>

126 Human Rights Watch. 2011. *Even Dead Bodies Must Work: Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch

127 Uganda Human Rights Commission. 2010. *Annual Report 2009*. Kampala: Uganda Human Rights Commission. pp.47-48

The Disciplinary Committee confirms sentences before they are executed. Furthermore, there is provision for a public complaints system, where individuals can make a written complaint relating to police misconduct to the District Police Commander or the Inspector General of Police.¹²⁸

The police also have a Professional Standards Unit (PSU), which replaced the Human Rights and Complaints Desk. The PSU is responsible for investigating complaints against the police. Complaints relate to unprofessional conduct as well as violations of human rights. Since 2007, the PSU has received over 8 000 complaints, with 232 received in 2011. Most of these relate to torture, arbitrary detention and the violation of the right to life.¹²⁹ The PSU is based in Kampala and also has regional offices in Mbale, Masaka, Hoima, Gulu, Arua, Jinja and Mbarara. The intention is to establish two further offices in Kabale and Fort Portal in the near future. The Unit is composed of about 94 staff, and appointments are made on the basis of criteria such as a good professional record. The PSU headquarters is in Bukoto, Kampala, in a residential environment, which may facilitate access by the public. However, in the regions, offices are based at police stations and posts. Although the PSU has powers of access to pre-trial detainees, it is not immune to the resource problems faced by police.

The internal oversight and accountability mechanisms of the police remain weak, as the police continue to remain at the top on the list of complaints made by the public to the UHRC about human rights violations.¹³⁰

5.1.2 Uganda Prison Service

The Uganda Prison Service has established Human Rights Committees to ensure compliance with human rights obligations. Although the Committees are a recent development, they have been acclaimed as playing an important role in the protection of the rights of inmates as they address human rights complaints in prisons. The Human Rights Committees undertake human rights education, peer reviews and compliance monitoring of human rights standards in prisons.¹³¹ Nonetheless, the UHRC noted in its Annual Report for 2011 that in spite of the presence of the Committees, the conditions in places of detention are still deplorable.¹³²

5.2 External Oversight and Accountability Mechanisms

Both national and international mechanisms serve external oversight and accountability functions.

5.2.1 National mechanisms

At the national level, mechanisms include the Inspectorate of Government, the UHRC, the judiciary, Parliament and civil society organisations.

a Inspectorate of Government

The Inspectorate of Government (IG), which is the Ombudsman of Uganda, engages in investigations of corruption and abuse of office and can provide some form of oversight for those in detention.¹³³ The IG is guaranteed independence under the Constitution and investigates various cases of corruption and abuse of office. However, it does not appear to have dealt with many, if any, cases involving accountability in places of detention or cases of torture or other ill treatment. Nevertheless, the Inspectorate has noted that corruption is rampant among the police.¹³⁴

128 Police Act, article 70(1)

129 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p. 18

130 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission; Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission

131 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p. 22

132 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. pp. 15-34

133 Constitution of the Republic of Uganda, article 225

134 Inspectorate of Government. 2011. *Second Annual Report on Corruption Trends in Uganda 2011*. <http://www.igg.go.ug/static/files/publications/ig-report-corruption.pdf>. Also see *The Observer*. 21 November 2011. IGG Report Pins Police, Judiciary on Corruption. http://www.observer.ug/index.php?option=com_content&task=view&id=15971&Itemid=59, accessed 29 October 2012

b Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is the main external body with a mandate to investigate complaints of human rights violations including those relating to pre-trial detention. The UHRC was established under the Constitution as an independent body with a mandate to promote and protect human rights, including investigating complaints of torture and other ill treatment.¹³⁵ The Commission is currently composed of five members, including the Chairperson, who are appointed by the President with the approval of Parliament. Staff are appointed by the members of the Commission in consultation with the Ministry of Public Service. Currently the Commission has about 208 staff members in nine regional offices and at the Kampala headquarters.¹³⁶ The UHRC has a broad investigative mandate and does not require a complaint to be submitted, and may institute investigations itself.¹³⁷ The UHRC also has broad powers with a quasi-judicial function.¹³⁸ If satisfied that there has been an infringement of a right, the UHRC may order the release of a detained or restricted person, the payment of compensation, or any other legal remedy or redress. A person or authority dissatisfied with an order made by the Commission has the right to appeal to the High Court.

The process of the investigation of complaints can take between one to four years to complete, depending on the particular circumstances of the case.¹³⁹ There have been cases that have been delayed for even longer than four years because there are currently only four members who are hearing cases.¹⁴⁰ The Uganda Human Rights Commission is fairly accessible as the services offered are free and there are regional offices in Kampala, Masaka, Fort Portal, Mbarara, Jinja, Soroti, Moroto, Gulu and Arua. Since its inception, the UHRC has handled thousands of complaints and some victims have been awarded compensation.

The UHRC is not allowed to investigate any matter which is pending before a court or judicial tribunal; a matter involving the relations or dealings between the government and the government of any foreign state or international organisation; or a matter relating to the exercise of the prerogative of mercy.¹⁴¹ The UHRC faces a number of challenges including the lack of compliance with its orders, such as the payment of the UHRC tribunal awards, especially by the Attorney General; limited capacity and resources; and the lack of a victim and witness protection law, which deters some victims from continuing with cases.¹⁴²

Despite these challenges, the UHRC has been accredited with 'A' status by the International Coordinating Committee of National Human Rights Institutions, which monitors national institutions' compliance with the Paris Principles.¹⁴³ This means that, on the whole, it is perceived as effective. The African Commission on Human and Peoples' Rights also recognised the UHRC as the best National Human Rights Institution in 2012.

c The judiciary

The judiciary has the power to play an important role as an oversight and accountability mechanism for pre-trial detainees. Courts have an oversight role while hearing both criminal and civil cases. Pre-trial detainees have an opportunity to complain about long detention periods, torture and ill treatment or any other human rights violation to courts. Indeed a few detainees have used the courts as a channel of redress for these sorts of violations. An example of this is the case of *CPL Opio Mark v. Attorney General*,¹⁴⁴ where the plaintiff sought redress for detention in a police cell for 11 days without appearing in court. The plaintiff was awarded damages of up to UGX 6 000 000 (approx. USD 2 400). In another case, *Martin Edeku v. Attorney General*, the plaintiff was awarded damages for a violent arrest, detention beyond 48 hours and torture while in detention.¹⁴⁵

135 Constitution of the Republic of Uganda, article 51(1)

136 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p.50

137 Constitution of the Republic of Uganda, article 52(1)(a)

138 Constitution of the Republic of Uganda, article 53

139 Uganda Human Rights Commission, *Complaints Handling Manual*

140 Uganda Human Rights Commission. 2012. *Annual Report 2011*. Kampala: Uganda Human Rights Commission. p.13 and p.149

141 Constitution of the Republic of Uganda, article 53(4)

142 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.27

143 Principles relating to the Status of National Institutions (The Paris Principles), <http://www2.ohchr.org/english/law/parisprinciples.htm>, accessed 29 October 2012

144 Civil Suit No. 611 of 2006, High Court of Uganda

145 HCCS 93A/89, High Court of Uganda

The courts, however, face problems such as case backlogs, corruption and inadequate resources, among others.¹⁴⁶ As a result, only a few cases make it to court and are heard to completion within a reasonable period of time.

d Parliament

Parliament also has an oversight role to play with respect to places of detention. Members of Parliament have many routine opportunities for oversight during question time and annual reviews of performance, especially at budget allocation time. Parliamentarians have raised concerns relating to conditions of detention especially torture and other ill treatment, and a few Members of Parliament have also condemned the excessive use of force by security agencies.¹⁴⁷

e Visiting justices

The Prison Act makes provision for what is described as 'visiting justices'. These are persons who are allowed to visit and inspect prisons on a regular basis and are appointed by the Minister. Nonetheless, the Act recognises some people as *ex-officio* visiting justices. These include the Chairperson and members of the UHRC; a judge of the High Court, Court of Appeal and Supreme Court; the minister responsible for internal affairs; the minister responsible for justice; all cabinet ministers; a Chief Magistrate and resident magistrates in any area in which the prison is situated; the Chief Administrative Officer of the District in which a prison is situated; the Permanent Secretary in the ministry responsible for internal affairs; and the Inspector General of Government.¹⁴⁸ The functions of the visiting justices are detailed in the Act and include: inspect every part of the prison and visit every prisoner in the prison where practicable, especially those in confinement; inspect and test the quality and quantity of food ordinarily served to prisoners; inquire into any complaints or requests made by a prisoner; ascertain as far as possible whether the rules, administrative instructions, standing orders issued to the prisoner and the prisoner's rights are brought to their attention and are observed; inspect any book, document or record relating to the management, discipline and treatment of prisoners; and perform such other functions as may be prescribed.¹⁴⁹ Other persons allowed to inspect prisons include cabinet ministers and judges.¹⁵⁰ This is in addition to the African Commission's Special Rapporteur on Prison Conditions.¹⁵¹

f Civil society organisations

Some civil society organisations (CSOs) visit places of detention, but at times their access may be limited, or they may be expected to give advance notice of their intention to visit. The Prisons Act provides that they require the permission of the Commissioner General of Prisons to inspect places of detention.¹⁵² Information regarding the frequency and methodology of the CSOs' visits to places of detention is limited. Some of the CSOs that undertake visits include the African Centre for Treatment and Rehabilitation of Torture Victims,¹⁵³ the Uganda Prisoners' Aid Foundation, the Foundation for Human Rights Initiative,¹⁵⁴ Avocat Sans Frontières and the Human Rights Network Uganda.

5.2.2 Regional mechanisms

At the regional level, oversight and accountability mechanisms in relation to pre-trial detention (amongst other issues) include the African Commission on Human and Peoples' Rights, the Special Rapporteur on Prisons and Conditions of Detention in Africa, the African Court on Human and

146 Justice Law and Order Sector Secretariat. 2011. *Annual Performance Report 2010/2011*. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

147 *Weinformers*. 9 May 2011. Workers MP warns security agents against violence on people working. <http://www.weinformers.net/2011/05/19/workers-mp-warns-security-agents-against-violence-on-people-working/>

148 Prisons Act, section 109

149 Prisons Act, section 110

150 Prisons Act, section 111

151 Prisons Act, section 112(1)

152 Prisons Act, section 112(2)

153 African Centre for Treatment and Rehabilitation of Torture Victims. 2010. *Annual Report 2010*, http://www.actvuganda.org/uploads/1309243277_ACTV%202010%20Annual%20Report.pdf%20mail.pdf

154 Foundation for Human Rights Initiative. *The Human Rights Status Reports*, <http://www.beta.afonet.biz/~fhri/Uganda%202007%20Human%20Rights%20Status%20Report%20.pdf>

Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, and the East African Court of Justice, among others.

a African Commission on Human and Peoples' Rights

Under the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has the mandate to promote and protect human rights.¹⁵⁵ Uganda is party to the African Charter and is therefore subject to the African Commission. The ACHPR, which has been greatly supported by NGOs, fulfils its mandate through a complaints mechanism, consideration of State Reports, Special Rapporteurs, site visits and resolutions which contribute to oversight and accountability.

The ACHPR has received two communications relating to illegal arrest, arbitrary detention and torture relating to Uganda. The case of *Nziwa Buyingo v. Uganda*¹⁵⁶ involved a complaint of alleged illegal arrest, arbitrary detention, torture and extraction of money from the complainant by Ugandan soldiers in Kisoro contrary to articles 5, 6, 12 and 14 of the African Charter. The ACHPR dismissed the complaint as inadmissible as the complainant failed to demonstrate that local remedies had been exhausted. The other case was an inter-state communication, namely the *Democratic Republic of the Congo (DRC) v. Burundi, Rwanda and Uganda*.¹⁵⁷ In this communication, the DRC alleged numerous violations of the African Charter and other international obligations by the respondent states. In its decision, the ACHPR found that the respondent states had violated articles of the African Charter, including article 5.

During the consideration of the State Reports from Uganda, the ACHPR has made specific recommendations in respect of pre-trial detention. It expressed concern that ordinary Ugandans cannot afford legal services to litigate against the government and obtain compensation for human rights abuses.¹⁵⁸ It has also expressed concern about the fact that only 19% of prisoners have access to clean water and only 62% are provided with meals on a daily basis.¹⁵⁹

The ACHPR has also expressed concern about, among other things, the lack of legislative measures to criminalise torture and violence against children,¹⁶⁰ the trial of civilians by military courts,¹⁶¹ the lack of adequate legal aid,¹⁶² and the retention of the death penalty.¹⁶³

b Special Rapporteur on Prisons and Conditions of Detention in Africa

The African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. The Special Rapporteur has powers to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. The Special Rapporteur's work entails: examining the state of prisons and conditions of detention and making recommendations to improve them; advocating for adherence to the African Charter and international human rights norms; and, if requested by the African Commission, making recommendations regarding communications by individuals who have been deprived of their liberty. The visits of the Special Rapporteur are only carried out after the agreement of the state concerned. Reports are published after the integration of comments from the state's participating authorities. Although, the Special Rapporteur has the potential to contribute to the oversight and accountability mechanisms, this opportunity has not yet been used in Uganda.

155 The African Charter on Human and Peoples Rights, article 45(1) and(82)

156 *Nziwa Buyingo v. Uganda*, http://www.achpr.org/english/Decision_Communication/Uganda/Comm.8-88.pdf

157 *D.R. Congo v. Burundi, Rwanda and Uganda*, African Commission on Human and Peoples' Rights, Communication No. 227/99 (2003). <http://www1.umn.edu/humanrts/africa/comcases/227-99.html>

158 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 16

159 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 32

160 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 34

161 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 37

162 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 38

163 Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda, para. 38

c The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights complements the protective mandate of the ACHPR. The added value of the Court is that it has powers to take final and binding decisions on human rights violations. Uganda is among the 26 countries that have thus far ratified the Protocol establishing the Court, and is thus subject to its jurisdiction. The role of the African Court is however limited as Uganda has not made a declaration to allow it to receive direct complaints of human rights violations from civil society organisations and individuals.¹⁶⁴ Although, the African Court has yet to handle any matter relating to Uganda, it has the potential to contribute to the process of oversight and accountability.

d The African Committee of Experts on the Rights and Welfare of the Child

When Uganda presented its initial report, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) made several comments. The ACERWC commended Uganda for efforts made with regard to the establishment of family and juvenile courts, a National Rehabilitation Centre and the possibilities for amicably resolving cases relating to children in conflict with the law.¹⁶⁵ However, the Committee was concerned that several districts do not always have provisional detention centres for children and that the number of functional re-education centres is limited.¹⁶⁶ The Committee was also concerned that children are held with adults in police detention centres.¹⁶⁷ The Committee also observed that the report did not provide information pertaining to the treatment of mothers incarcerated with their children, pregnant women and young children.¹⁶⁸

5.2.3 International mechanisms

At the international level, oversight and accountability mechanisms in relation to pre-trial detention include the United National Human Rights Committee (HRC), which monitors the implementation of the International Covenant on Civil and Political Rights, the United Nations Committee Against Torture and the Committee on the Rights of the Child. Furthermore, there are special procedures such as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There are also various international organisations that are involved in visiting places of detention such as the International Committee of the Red Cross (ICRC).

a United Nations Human Rights Committee

The Human Rights Committee (HRC), which is the monitoring mechanism for the implementation of the International Covenant on Civil and Political Rights (ICCPR), is one of the mechanisms for oversight and accountability. During its consideration of Uganda's initial report, the HRC noted various important human rights concerns that demonstrate Uganda's lack of compliance with the ICCPR. The Committee noted the frequent lack of implementation by the government of UHRC recommendations and decisions concerning awards of compensation to victims of human rights violations and the prosecution of human rights offenders.¹⁶⁹ It further noted that state agents continue to arbitrarily deprive persons of their liberty, including in unacknowledged places of detention.¹⁷⁰ It also noted the deplorable prison conditions such as overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The Committee was concerned about the treatment of prisoners, especially the use of corporal punishment, solitary confinement and food deprivation as disciplinary measures, and the fact that juveniles and women

164 Protocol in the Statute of the African Court of Justice and Human Rights, article 5(3) and article 34(6)

165 Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. http://www.crin.org/docs/Uganda_COs.doc

166 Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. http://www.crin.org/docs/Uganda_COs.doc

167 Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. http://www.crin.org/docs/Uganda_COs.doc

168 Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. http://www.crin.org/docs/Uganda_COs.doc

169 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCRP/CO/80/UGA at para. 7

170 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCRP/CO/80/UGA at para. 17

are often not kept separate from adults and males.¹⁷¹ The Committee also noted the practice of imprisoning persons for financial debt, which is incompatible with article 11 of the Covenant.¹⁷² The Committee noted with concern shortcomings in the administration of justice, such as delays in proceedings and in relation to pre-trial detention, the lack of legal assistance provided to non-capital suspects and the conditions under which a confession may be secured.¹⁷³ Notably, all these challenges remain.

b Universal Periodic Review

Uganda was considered under the Universal Periodic Review (UPR) in October 2011, and states and other stakeholders raised a number of issues related to pre-trial detention.¹⁷⁴ In particular concerns were expressed regarding torture by security agents;¹⁷⁵ reports of the use of 'safe houses' or unofficial places of detention;¹⁷⁶ the regular use of torture as a method of interrogation by the police;¹⁷⁷ the arbitrary arrest and torture of journalists;¹⁷⁸ and a penitentiary system plagued by the poor treatment of detainees, overcrowding, inadequate feeding, poor medical care and sanitary conditions, forced labour, and inadequate rehabilitation programmes.¹⁷⁹

c Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other mechanisms

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Forced or Involuntary Disappearances and the Working Group on Arbitrary Detention were established by Resolutions of the United Nations Human Rights Commission. Their visits are occasional and based on prior agreement by the state concerned in order to assess the country situation. Their recommendations are issued on the basis of information communicated to the Rapporteur and verified, or following visits carried out in the country being assessed. The recommendations are not binding, but provide guidance on how the situation can be improved. Public reports are presented at the session of the UN Human Rights Commission.

Uganda has not had visits from these Special Rapporteurs and Working Groups. Nevertheless, they have the potential to contribute to the process of oversight and accountability.

d United Nations Committee Against Torture

Article 20 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) gives the mandate to the Committee Against Torture to visit places of detention. However, the Committee can only visit States Parties to the Convention, who must authorise the visit. Visits are made only in the cases of 'systematic torture' and the proceedings are confidential. No visits by the Committee Against Torture have been made to Uganda. Nevertheless, during the presentation of State Reports, the Committee has noted various human rights concerns which are still relevant.

The Committee was concerned about the lack of incorporation of the Convention into Uganda's legislation, such as the lack of a comprehensive definition of torture in domestic law, the lack of an absolute prohibition of torture, and the absence of universal jurisdiction for acts of torture in Ugandan law.¹⁸⁰ The Committee expressed concern over the widespread practice of torture and

171 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 18

172 Human Rights Committee. 2004 Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 19

173 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee., Uganda CCPR/CO/80/UGA at para. 21

174 Summary of Stakeholders Information prepared for the UPR UN Doc A/HRC/WG.6/12/UGA, 20 July 2011, <http://daccessddsny.un.org/doc/UNDOC/GEN/G11/152/32/PDF/G1115232.pdf?OpenElement>

175 Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/19/16, §46

176 Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/19/16, §92 and Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §30

177 Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §25

178 Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §29

179 Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §31

180 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 5

ill treatment of persons detained by the military as well as by other law enforcement officials.¹⁸¹ Furthermore, it was concerned about the length of pre-trial detention, including detention beyond 48 hours as stipulated by the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail.¹⁸²

The Committee also expressed concern about the reported limited accessibility and effectiveness of *habeas corpus*¹⁸³ and the continued allegations of widespread torture and ill treatment by the state's security forces and agencies.¹⁸⁴ The Committee was also concerned about the wide array of security forces and agencies in Uganda with the power to arrest, detain and investigate.¹⁸⁵ The Committee noted the disproportion between the high number of reports of torture and ill treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area.¹⁸⁶ It further noted the alleged reprisals, intimidation and threats against persons reporting acts of torture and ill treatment.¹⁸⁷ The Committee also expressed concern about the frequent lack of implementation of the UHRC's decisions concerning both awards of compensation to victims of torture and the prosecution of human rights offenders.¹⁸⁸

e International Committee of the Red Cross

Visits from the International Committee of the Red Cross (ICRC) are based on the 1949 Geneva Conventions¹⁸⁹ for situations of conflict, and take place on the basis of an agreement with the state in other situations. Monitoring of conditions of detention is targeted at persons arrested and detained in relation to a situation of conflict or internal strife. In certain situations, monitoring extends to other categories of persons deprived of their liberty. In the situation of an international conflict, the States Parties to the conflict are obliged to authorise visits to military internees and civilian nationals of the foreign power involved in the conflict. In other situations, visits are subject to prior agreement by the authorities. The ICRC visits are often permanent and regular during times of conflict or strife (or its direct consequences). The ICRC often provides relief or rehabilitation activities with the agreement of the authorities and helps to restore family links. Their procedures and reports are confidential. The ICRC has been working in Uganda for the last 33 years, monitoring the treatment of detainees in both civilian and military places of detention and working with the authorities to improve conditions of detention.

6 Conclusion

Despite a legal framework that is, on the whole, compliant with international human rights standards, implementation of the procedural safeguards for arrest and detention is weak in Uganda. Most pre-trial detainees are victims of arbitrary arrests and do not enjoy the rights that accrue to them during their arrest and detention. Sometimes this is based on inadequate police training and capacity for criminal investigations, discrimination, political interference and corruption, among others. Detainees who are poor and cannot afford legal services often remain in custody for a longer time.

Prolonged pre-trial detention has adverse effects on the rights of detainees to a fair and speedy trial. Detainees are often held in overcrowded facilities, which may have an impact on their health and which increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. Most detention facilities in Uganda are not suitable for housing detainees, and there are frequent challenges providing food, water and other basic necessities such as

181 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(c)

182 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(a)

183 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(b)

184 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(c)

185 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(d)

186 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(e)

187 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(g)

188 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 8

189 Uganda ratified the Geneva Conventions on 18 May 1964

hygiene, sanitation and bedding. Moreover, many of these facilities are dilapidated, overcrowded and have inadequate space, lighting and ventilation. Most inmates do not have access to adequate food and water especially in police cells. Inmates often lack clothing and bedding, access to health services, facilities for personal hygiene and access to opportunities for exercise.

There are oversight and accountability mechanisms at the national and international level. National mechanisms include both the internal and external mechanisms, but these are weak and need to be strengthened if they are to contribute to improved accountability. The mechanisms at the regional and international level also provide such opportunities, but cannot work in isolation, and need to be understood as complementing national measures. Therefore, for the regional and international mechanisms to work, it is important for them to work in cooperation with the State, and other national mechanisms.

7 Recommendations

7.1 Strengthening Internal and External National Oversight and Accountability Mechanisms

The internal and external national oversight and accountability mechanisms on pre-trial detention should be strengthened by building their capacity to enable them to efficiently perform their mandates. It is important to devote resources to promote the increased capacity of mechanisms, and to allow for an increased capacity to investigate complaints, as well as to apply to other functions such as prevention and public education. Furthermore, efforts should be made to follow up and implement their recommendations. This would lead to an improvement in the situation of pre-trial detainees.

Civil society remains a central stakeholder in the issue of pre-trial detention given the vast potential for the violation of the rights of citizens, and the range of negative consequences that may result from these violations. It is important to encourage the engagement of organised civil society in national and regional efforts to raise the profile of pre-trial detainees, and to campaign for improved law and practice. Civil society organisations are also in a strong position to petition with the national government to address the root causes of the inappropriate use of pre-trial detention, as well as the violation of rights during detention.

7.2 Review of the Law and Practice to Address the Causes of Pre-trial Detention

It is necessary to review the laws and practice relating to pre-trial detention to enhance compliance with all international, regional and national obligations. It is also important for efforts to be made to identify and address the causes of pre-trial detention, such as inadequate police training and capacity for criminal investigations, discrimination, corruption, political interference and the inadequate provision of legal aid services, among others.

7.3 Use of the Regional and International Mechanisms

Regional and international mechanisms should be used to address the issues of pre-trial detention for example by:

- Motivating for the African Commission on Human and Peoples' Rights (ACHPR) to pass a resolution on pre-trial detention
- Assisting victims to file complaints before the ACHPR, the Human Rights Committee and the East African Court of Justice

- Encouraging the government to allow visits of the Special Rapporteur on Prisons and Conditions of Detention in Africa and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment, and Uganda should be encouraged to ratify the Optional Protocol to the Convention Against Torture.

A Review of the Use of Arrest, the Use of Detention and Conditions in Detention in South Sudan

Legislation, practice and accountability

Amanda Lucey

Executive Summary

On 9 July 2011 South Sudan became an independent nation following a 2005 peace agreement that ended decades of civil war between the north and the south. While the future looks promising for the country, and legal frameworks have been put in place to promote this new democracy, the greatest challenges for the rule of law lie in the need to strengthen state structures, train and reform the police, protect human rights and address accountability. This study examines a range of laws and policies in South Sudan relating to arrest and detention within the context of international standards, and reviews these in terms of their ability to act as procedural safeguards. This paper analyses the factors that prevent the criminal justice system from functioning according to written laws and policies, and also looks at accountability and oversight mechanisms.

There are several key pieces of legislation in South Sudan that relate to arrest and detention, most notably the Transitional Constitution of South Sudan (2011) and the Code of Criminal Procedure Act (2008). The Transitional Constitution (2011) sets out a comprehensive Bill of Rights that promotes life and human dignity, personal liberty, equality before the law, the right to a fair trial and freedom from torture.¹ The Code of Criminal Procedure Act (2008) sets out the procedures for arrests and detentions and allocates powers to the relevant authorities.

While the laws of South Sudan are consonant with the requirements of the international framework in many regards, a number of factors prevent these laws from being followed in practice. This study examines a number of factors that play a role in arbitrary arrests, including political interference, inadequate training of police, discrimination and corruption. Furthermore, the complications of co-existing customary and statutory systems, and the application of the customary system to cases required by law to be dealt with by the statutory system, is a further factor that influences arbitrary arrests.

In terms of detention, a number of factors influence the inability of the criminal justice system to observe procedural safeguards and these include poor case tracking, an enormous backlog of cases and corruption. Conditions of detention are also far removed from international standards. Detention cells are overcrowded and dilapidated and there is little provision for vulnerable groups. Because of limited infrastructure, police cells are often used as prisons and there is limited access to medical services. Detainees are often left without food and water, either due to a lack of funds or

¹ Transitional Constitution of South Sudan (2011), article 9(2), <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

corruption, and rely on families to provide food. There is little oversight in terms of police detention. The right to a fair trial is also problematic as the Legal Aid Strategy is limited only to those accused of serious offences,² and the Strategy has yet to be implemented.

While oversight and accountability mechanisms can play an important role in addressing the problems noted in relation to arrest, detention and conditions in detention, both internal mechanisms in the police, as well as external mechanisms such as the South Sudan Human Rights Commission and the Anti-Corruption Commission, are currently inadequate.

1 Introduction

After decades of civil war, the Government of South Sudan and the Sudan People's Liberation Movement (SPLM) signed the Comprehensive Peace Agreement (CPA) in 2005, which was comprised of six protocols. These protocols provided for, among other things, a cessation of hostilities; a six-year interim period following which the people of southern Sudan could vote for or against secession in a self-determination referendum; the establishment of a semi-autonomous Southern Sudan; power and wealth sharing agreements; the establishment of a special administrative status for the border area of Abyei with a special referendum for these residents. South Sudan became independent on 9 July 2011, after a referendum held on 9 July 2011 that massively favoured secession.

South Sudan's population was last estimated at 8.3 million (52% men and 48% women). The demographic structure of the country has continued to change due to large numbers of returnees.³ Fifty-one percent of the population lives below the national consumption poverty line,⁴ and the country remains hugely underdeveloped following years of war and neglect, with most of the population relying on subsistence agriculture. Poor health and education also pose development challenges.⁵ The country also faces the problems of tribal conflict, proliferation of arms, perceptions of insecurity, cattle raiding and a lack of economic opportunities. Furthermore, some critical provisions of the CPA have not been implemented with regards to the Abyei region and the Blue Nile and Southern Kordofan States. Tension persists between the north and south over the distribution of oil.

South Sudan has instituted a decentralised system of governance with three levels of government: the national level, the state level and the local level. In order to promote a distinct South Sudanese national identity and as a means of maintaining values and traditions, South Sudanese customary law has been instituted in parallel with the statutory court system. Customary law is used throughout the country, and provides alternatives for the resolution of conflict in a country where the formal justice system is overloaded. However, the country faces challenges in aligning the two systems, as well as strengthening formal state structures, rule of law mechanisms and addressing accountability.

The issue of interest for this study is the pre-trial phase of citizens' engagement with the justice system, and its specific issues of interest are: (1) the use of arrest; (2) the use of pre-trial detention; and (3) conditions in detention. This study, firstly, reviews the legal framework in South Sudan in each of these three areas, particularly in terms of international standards. Secondly, this study explores actual realities on the ground in relation to these three areas, and examines the practical factors that affect the implementation of these laws. Finally, this study examines oversight and accountability mechanisms in South Sudan. Throughout the paper recommendations are made relating to how improvements may be made. These recommendations are summarised at the end of this report.

2 Government of South Sudan. 2011. *Legal Aid Strategy 2011–2013*. Ministry of Justice, unpublished

3 5th Sudan Population and Housing Census (2008), in Government of South Sudan, *South Sudan Development Plan 2011–2013*, p.13, <http://www.jdt-juba.org/wp-content/uploads/2012/02/South-Sudan-Development-Plan-2011-13.pdf>, accessed 15 January 2013

4 *Ibid*

5 *Ibid*

2 Methodology

The methodology is limited to desk-based research. The study utilises the latest legislation available in South Sudan, including the Transitional Constitution, Code of Criminal Procedure Act, Police Service Act and Prisons Service Provisional Order. The study then analyses the structural and practical limitations on achieving these legal norms, using secondary data as evidence to back up these claims. In many cases, legislation has been published but is not widely available, even within South Sudan. There are also a number of documents which are not available online, but have been personally obtained.

3 The Use of Arrest

3.1 The legal framework

From the outset, South Sudan has included similar articles in its supreme law of the land, the Constitution, to provisions contained in international law. International standards require that arrests are carried out according to lawful procedures and that arrests are not the outcome of any form of discrimination. The Universal Declaration of Human Rights (UDHR) prohibits arbitrary arrest, detention or exile,⁶ and the International Covenant on Civil and Political Rights (ICCPR), describes arbitrary arrest further:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.⁷

The Transitional Constitution of South Sudan (2011) contains a Bill of Rights that contains an almost word-for-word provision as in the ICCPR, stating:

Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with procedures prescribed by law.⁸

The Transitional Constitution also corresponds with international law on arrests based on discrimination. It affords citizens:

Equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status.⁹

While these provisions are promising and indicative of the will of the government to establish a human rights-based approach to governance, international law goes further to set out a number of procedural safeguards that the police must observe. Some of these are not included, or are not precisely formulated in South Sudanese law.

6 Universal Declaration of Human Rights (UDHR), article 9, <http://www.un.org/en/documents/udhr/index.shtml>, accessed 15 January 2013

7 International Covenant on Civil and Political Rights (ICCPR), article 9(1), <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 16 January 2013; see also African Charter on Human and Peoples' Rights, article 6, <http://www.achpr.org/instruments/achpr/>, accessed 15 January 2013

8 Transitional Constitution of South Sudan (2011), article 12, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

9 *Ibid*, article 14

International procedural safeguards require that police officers:

- Identify themselves;¹⁰
- Give the accused the reasons for their arrest;¹¹
- Inform them of their rights and record information about the arrest;¹²
- Inform relatives at the time of the arrest;¹³ and
- Inform consular authorities if the person is a non-citizen.¹⁴

The discussion below reviews to what extent South Sudanese law provides for these procedural safeguards for arrest.

The Bill of Rights in the Transitional Constitution speaks to the right to a fair trial.¹⁵ It states:

Any person who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her.¹⁶

In addition, the Code of Criminal Procedure enables an arrested person to contact his or her advocate,¹⁷ and provides that an arrested person may inform his or her family. If the arrested person is a juvenile, or suffering from a mental infirmity (so that they are unable to contact their family), the police, Public Prosecution Attorney, Magistrate or the Court shall, 'on its own initiative notify the family or the appropriate body'.¹⁸ While the Police Service Act (2009)¹⁹ requires that police carry on them identification at all times, the law does not spell out that these officials should provide identification at the time of an arrest. It also neglects to include any clauses that require police to inform the consulate of non-citizens.

The Code of Criminal Procedure Act (2008) details further procedures surrounding arrests but, problematically, provides for a range of institutions to be involved in the process. According to this law, cases are to be initiated and overseen by the Directorate of Public Prosecutions (DPSS).²⁰ Appeals against the initiation of cases are to be made to a Senior Public Prosecutor and then to a Court of Appeal.²¹ The police are to carry out investigations according to the directives of the Directorate of Public Prosecutions,²² and may only initiate an investigation in the absence of a Public Prosecutor,²³ (with absence meaning that no one has been appointed as a prosecutor or that s/he is absent and no substitute has been appointed).²⁴ These defined roles require good communication and cooperation between the South Sudan Police Service (SSPS) and the Directorate of Public Prosecutions for arrests to be carried out successfully and in accordance with human rights standards. This is a challenge given the lack of transport, absence of coordination mechanisms and a limited budget for communication. It is recommended that the government prioritise mechanisms of communication and cooperation between these agencies, particularly by the Directorate of Organised Forces.

10 ECOSOC Council, Commission on Human Rights, Civil and Political Rights, including the Questions of Torture and Detention: Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Theo van Boven, UN Doc E/CN.4/2004/56, 23 December 2003, [30]-[31]

11 *Ibid*

12 *Ibid*

13 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16, and Standard Minimum Rules for the Treatment of Prisoners, rule 92

14 International Convention on the Protection of Migrant Workers and their Families, article 16(7); Vienna Convention on Consular Relations, article 36(1)(b); and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16(2)

15 Transitional Constitution of South Sudan (2011), article 19, <http://www.gurtong.net/ECM/Editorial/tabid/124/ct/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

16 *Ibid*, article 19(2)

17 Code of Criminal Procedure Act (2008), article 93(2), <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

18 *Ibid*, article 93(4)

19 Police Service Act (2009), article 82, <http://www.southsudanpolice.net/wp-content/uploads/2012/10/SSPS-Police-Service-Act-2009.pdf>, accessed 16 January 2013

20 Code of Criminal Procedure Act (2008), article 23(1)(a), <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

21 *Ibid*, article 24

22 *Ibid*, article 27(2)

23 *Ibid*, article 31(1)

24 *Ibid*, article 31(2)

The powers of arrest have been given to any Public Prosecution Attorney, Magistrate or Court,²⁵ the police, traditional Chiefs,²⁶ and private persons (only if directed by a Public Prosecution Attorney, proclamation or if the person has escaped arrest).²⁷ This can lead to confusion between different institutions and disagreements over jurisdiction. In addition, there may not be consistency in terms of the understanding of human rights standards and procedural safeguards across these institutions. For example, traditional authorities have been known to act without regard to these standards.²⁸ Although the incorporation of Chiefs into the system may be useful in that they are often in a position to know who the criminals are in a community and because they have a strong social standing, Chiefs require training on how to carry out arrests within the framework of human rights standards. Furthermore, there are no accountability mechanisms for Chiefs who make erroneous or arbitrary arrests. In addition, customary courts often deal with criminal cases and cite provisions from the Penal Code, despite the lack of training on statutory criminal law and procedural rules.²⁹ It is recommended that the law reflect that a Chief immediately inform the police to be present during an arrest, that Chiefs be trained to effect arrests using the appropriate procedural safeguards during arrests and that the jurisdiction of customary courts be clarified.

Also of concern are some vague clauses that are not properly explicated in the Criminal Code of Procedure, such as:

Any policeman or Chief may arrest any person –

- (c) against whom a reasonable complaint has been made, a credible information has been received, or reasonable suspicion exists of his or her having been so concerned.
- (k) who is reasonably suspected of being a deserter from the Sudan People's Liberation Army, the Joint Integrated Units, Sudan Armed Forces or any other organised force.³⁰

This imprecision can lead to differential interpretation over the definitions of 'reasonable' and 'credible'. In addition, the latter clause creates the potential for political arrests and interference.

The disparity between international and domestic standards therefore seems to be predominantly as a result of imprecise laws, further confused by the involvement of numerous institutions, rather than factors such as excessive police powers, since the new legislation is human rights-based. While South Sudan must be credited with having made an effort to prohibit arbitrary arrests in its legislation and to put in place procedural safeguards, it is recommended that the South Sudan Law Reform Commission review imprecise clauses and ensure accordance with international standards.

3.2 The practice of arbitrary arrest

Just before independence, the Deputy Commissioner for Human Rights stated that she had heard 'alarming reports of numerous killings, arbitrary arrests and prolonged pre-trial detention in South Sudan'.³¹ A recent study by Human Rights Watch (2012) confirms that arbitrary arrests are widespread.³² As discussed above, imprecise laws can lead to arbitrary interpretations of the law, however South Sudan faces numerous other challenges that play a role in the failure to adhere to international safeguards.

²⁵ *Ibid*, article 75

²⁶ *Ibid*, article 76

²⁷ *Ibid*, article 77

²⁸ Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.46; see also United States Institute for Peace. 2010. *Local Justice in Southern Sudan*, p.58, <http://www.usip.org/publications/local-justice-in-southern-sudan>, accessed 17 January 2013

²⁹ *Ibid*, p.46

³⁰ Code of Criminal Procedure Act (2008), article 76, <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

³¹ Kyung-wha Kang, 'Press statement of the Deputy Commissioner for Human Rights', Sudan Mission, 27 June 2011

³² Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012

3.2.1 Political interference

One driving factor leading to the high number of arbitrary arrests in South Sudan is political interference. After decades of civil war and political fighting against the Muslim north as well as the very recent introduction of democratic self-governance, it is not surprising that the country has far to go in terms of the development of its systems of governance. The most important shift that needs to be made is away from a military-dominated regime towards multi-party democracy. This requires the opening up party politics and the transformation of attitudes of government officials towards greater openness.³³

There are numerous examples of arrests for to political reasons. The United States Department of State reported that by the end of 2011, nine opposition members who had been arrested for allegedly criticising the governor of Northern Bahr el-Ghazal were still being held without charge, and no trial had been scheduled.³⁴ There have been allegations that political cadres have been attacked and tortured in Western Bahr el Ghazal, according to the Sudanese Peoples Liberation Movement (SPLM) chairperson for Wau and former County Commissioner.³⁵ There is also evidence of arbitrary arrests of journalists who are critical of the government. The United Nations Mission in the Republic of South Sudan (UNMISS) noted 16 violations of political rights and freedoms and six cases of arbitrary arrest and detention of journalists between 2 November 2011 and 7 March 2012.³⁶ For example, Peter Ngor was allegedly arrested and detained for 18 days and then released without an explanation after his newspaper, *Destiny*, published a critical opinion piece on the marriage of President Salva Kiir's daughter to an Ethiopian national.³⁷ Dr James Okuk was also allegedly apprehended at the Ministry of Foreign Affairs by security agents of the Criminal Investigations Department (CID), who accused him of writing critical newspaper articles.³⁸ President Salva Kiir has spoken out about these arrests,³⁹ however until individuals and institutions are held accountable for their actions, political interference will continue to play a role in arbitrary arrests in South Sudan. Human Rights Watch and Amnesty International claimed that a new pattern was developing during the April 2010 elections of security personnel arbitrarily arresting people suspected of links to armed opposition groups. They also claimed that the government limited the participation of opposition political parties during the drafting of the new constitution.⁴⁰

3.2.2 Inadequate police training and capacity

Another major factor contributing to arbitrary arrests is inadequate police training and capacity for criminal investigations. Limitations on the skills and tools for criminal investigations mean that police may be over-reliant on confessions,⁴¹ which creates the risk for the use of torture and other methods to extract these confessions. Human Rights Watch notes, 'the South Sudan Police Service remains under-equipped, ill-trained, largely illiterate, and insufficiently deployed. The SPLA is often called in to fill the policing void, but instead of upholding the rule of law the soldiers commit further violations against civilians.'⁴² It is estimated that 90% of the police are illiterate in both Arabic and English, and many have not been trained on law enforcement, legislation and human rights.⁴³

33 International Crisis Group. 2011. *Politics and Transition in the New South Sudan*, <http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/sudan/172%20-%20Politics%20and%20Transition%20in%20the%20New%20South%20Sudan.pdf>, accessed 17 July 2012

34 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

35 United Nations Mission in South Sudan. 2011. *Allegations of Arbitrary Arrest and Detention Grow in South Sudan*, <http://www.mirayafm.org/index.php/special-reports/6748-south-sudanese-decry-abductions-arbitrary-arrests-detention-and-torture>, accessed 17 July 2012

36 United Nations Security Council. 2012. *Report on the Secretary-General on South Sudan S/2012/140*, <http://reliefweb.int/sites/reliefweb.int/files/resources/N1225265.pdf>, accessed 10 June 2012

37 Committee to Protect Journalists. 'South Sudanese journalist speaks out after illegal detention', 24 November 2011, <http://cpj.org/blog/2011/11/south-sudan-journalist-speaks-out-after-illegal-de.php>, accessed 17 July 2012

38 *The Sudan Tribune*, 'How, who and why of my arbitrary arrest in Juba', 6 November 2011, <http://www.sudantribune.com/How-who-and-why-of-my-arbitrary-arrest-in-juba>, accessed 17 July 2012

39 Committee to Protect Journalists. 'South Sudanese journalist speaks out after illegal detention', 24 November 2011, <http://cpj.org/blog/2011/11/south-sudan-journalist-speaks-out-after-illegal-de.php>, accessed 17 July 2012

40 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012, pp.2–3

41 International alert states that police pressure leads to many questionable 'confessions'. See International Alert. 2012. *Peace and Conflict Assessment of South Sudan 2012*, <http://www.international-alert.org/sites/default/files/publications/201207PeaceSouthSudan.pdf>, accessed 15 January 2013, p.46

42 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012, pp.2–3

43 The North-South Institute, *Police Reform in Southern Sudan*, <http://www.nsi-ins.ca/content/download/1893-NSI-v3.pdf>, p.6, as cited in Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.24

The SSPS includes many former Sudanese People's Liberation Army (SPLA) fighters as well as from former militias,⁴⁴ meaning that a military culture continues to predominate in the police. Indeed, in January 2011, a United Nations Mission in Sudan (UNMIS) investigation into the sole police training centre in South Sudan at Rajaf near Juba found serious human rights violations against trainees and showed a culture of guerrilla training practices.⁴⁵ While President Salva Kiir issued a presidential decree to convene an investigation committee in response to this report, the findings of the committee have yet to be made public, and no perpetrators of these violations have been prosecuted.⁴⁶ It is clear that the police training curriculum at Rajaf must be developed in line with international policing standards and that further training of police must be systematically carried out across all the states, particularly with regard to human rights.

Common examples of arbitrary arrests noted by the UN demonstrate the need for training. Proxy detentions continue to occur. These include arresting the suspect's family members, either because of their mere affiliation to the suspect, or to force them to compensate the victim's family. This is illegal since the arrested person is not the one suspected of having committed the offence.⁴⁷ This idea is related to customary law notions of collective responsibility. In some cases, family members are arrested in an effort to put pressure on the suspected person to turn him/herself in.⁴⁸ It is recommended that the government clarify the illegality of these actions and that training is conducted on this specific issue.

The SSPS and the SPLA both require training on criminal investigations and human rights. Moreover, it is vital that they receive English language training, and training on the Constitution, Penal Code and Code of Criminal Procedure. The above-mentioned examples also demonstrate the need for customary law and statutory law to be aligned, and for customary law to conform to international human rights principles.

Traditional Chiefs and police officers should be made aware of their specific jurisdictions and the related provisions in law. Citizens also need education in relation to the law. The police sometimes arrest suspects on the basis of very little or no evidence due to pressure from community members who may want to see immediate punishment or may resort to mob justice if they do not feel that justice has been done.⁴⁹ Communities are also distrustful of the police,⁵⁰ and in some cases, having only known customary law, prefer to use customary courts to deal with cases that are out of the court's jurisdiction, for example, in relation to crimes such as rape and murder. The subsequent sentences that are imposed rarely exceed six months,⁵¹ and rape is rarely seen as a serious crime, providing insufficient redress for these crimes. Community education and training is also therefore necessary on the rule of law and the jurisdictions of different courts.

3.2.3 Police corruption and impunity

Police corruption may also be a factor that leads to arbitrary arrest and detentions. There are already indications of endemic corruption in South Sudan, with President Kiir recently requesting 75 senior officials to return at least USD 4 billion of stolen money.⁵² However, no police officials have been found guilty of corruption, and accounts of police corruption are restricted to newspaper

44 The North-South Institute, *Police Reform in Southern Sudan*, <http://www.nsi-ins.ca/content/download/1893-NSI-v3.pdf>, accessed 16 January 2013, p.1

45 Human Rights Council, 18th session, agenda item 4, *Human rights situations that require the Council's attention, Report of the independent expert on the situation of human rights in the Sudan*, August 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-40-Add1_en.pdf, accessed 17 July 2012, p. 17

46 Government of South Sudan, GOSS/PD/J/14/2011, 25 March 2011, http://www.goss-online.org/magnoliaPublic/en/president/documents/2011/mainColumnParagraphs/0/content_files/file39/Decree14-110001.pdf, accessed 17 July 2012

47 Human Rights Watch, 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.51

48 Office of the High Commissioner for Human Rights, *Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan: Arbitrary arrest and detention committed by national security, military and police*, 28 November 2008, <http://www.ohchr.org/Documents/Countries/10thOHCHR28nov08.pdf>, accessed 17 July 2012, pp.26–29

49 *Ibid.*, pp.26–29

50 United States Institute for Peace, 2010. *Local Justice in Southern Sudan*, <http://www.usip.org/publications/local-justice-in-southern-sudan>, accessed 17 January 2013, p.58

51 Human Rights Watch, 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.46

52 BBC News, 'South Sudan MPs suspend officials in corruption probe', 13 June 2012, <http://www.bbc.co.uk/news/world-africa-18421763>, accessed 18 July 2012

articles.⁵³ It is apparent that a culture of impunity prevails amongst the organised forces in South Sudan, partly because the law in South Sudan overemphasises immunity and underemphasises accountability. The Police Service Act (2008) and the Armed Forces Act contain many clauses that preserve immunities,⁵⁴ while giving very little emphasis to the procedural safeguards for detainees.⁵⁵ A United Nations independent expert noted the following:

Systematic human rights abuses continue in an environment of impunity, with the most frequent and worst abuses perpetrated by the security forces of Southern Sudan ... Like the SPLA, the Southern Sudanese Police Service (SSPS) commits serious human rights violations in its law enforcement operations.⁵⁶

Inadequate oversight mechanisms for police therefore continue to allow arbitrary arrests to occur. This inadequacy will be detailed later.

3.2.4 Discrimination

A final issue that threatens the procedural safeguards in South Sudan against arbitrary arrests is discrimination. South Sudan continues to be subject to significant ethnic fighting. For example, the attack by 6 000 Lou-Nuer fighters on the Murle community in Jonglei state in December 2011 displaced between 20 000 and 50 000 Murle community members.⁵⁷ Violence in the Abyei region before July 2009 between Sudan Armed Forces (SAF) and SPLA forces led to the displacement of around 110 000 people. In addition, there have been accusations that the government has promoted inter-tribal conflict.⁵⁸ Despite government reshuffles, there is still the general perception that the government is Dinka-led and the SSPS and SPLA promote these interests.⁵⁹ There is a possibility that arbitrary arrests could be linked to ethnic discrimination, particularly if left unchecked. Justin Ambago Ramba, the Secretary-General from the United South Sudan Party (USSP), has claimed that the non-representative composition of the SSPS requires immediate attention. He has stated:

The SSPS was anomalously designed to favour particular ethnicities and it is no secret that the SSPS Commissioners in the Ten States of RSS all without exception hail from one ethnic group.⁶⁰

He has also referred to widespread harassment of foreigners from neighbouring Kenya, Uganda, Eritrea, the DRC and Ethiopia.⁶¹ The composition of the SSPS therefore also needs to take into account the need for greater representation of the different ethnic groups as one approach to addressing discrimination.

Women are particularly at risk of arbitrary arrest due to discrimination, having come from a past where Sharia law and customary law dominated. There have been instances where they have been apprehended 'for their own safety', marital disobedience and dowry-related problems.⁶² There are

53 South Sudan News Agency, 'Prompt weeding needed in our police service', 10 September 2011, <http://www.southsudannewsagency.com/opinion/articles/prompt-weeding-needed-in-our-police-service>, accessed 30 November 2011

54 These include immunity for acts done whilst discharging functions and duties, that no police personnel can be arrested for murder committed whilst carrying out functions unless written authorisation is obtained from the President in the case of officers, and that no police personnel are liable for damages as a result of performing their duties; see Police Service Act (2009), article 51, <http://www.southsudanpolice.net/wp-content/uploads/2012/10/SSPS-Police-Service-Act-2009.pdf>

55 Human Rights Monitor. 2008. *Issue 3*. African Centre for Justice and Peace Studies, http://www.acjps.org/Publications/Human_Rights_Monitor-Issue3-FINAL.pdf, accessed 17 July 2012

56 Human Rights Council, 18th session, agenda item 4, *Human rights situations that require the Council's attention, Report of the independent expert on the situation of human rights in the Sudan*, August 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-40-Add1_en.pdf, accessed 17 July 2012, p. 17

57 *The Sudan Tribune*, 'South Sudan declares Jonglei state a disaster area', 4 January 2012, <http://www.sudantribune.com/South-Sudan-declares-Jonglei-state,41186>, accessed 6 January 2012

58 www.thesosaneews.com, 'EES Nimule: Dinka IDPs met with SPLA, guns to be flown to Nimule', 18 August 2011, <http://thesosaneews.com/2011/08/18/ees-nimule-outcome-dinka-idps-met-with-spla/>, accessed 21 January 2013

59 South Sudan.net, 'The root causes of conflicts in South Sudan', 14 May 2011, <http://www.southsudan.net/theroot.html>, accessed 17 July 2012

60 South Sudan News Agency, 'Prompt weeding needed in our police service', 10 September 2011, <http://www.southsudannewsagency.com/opinion/articles/prompt-weeding-needed-in-our-police-service>, accessed 30 November 2011

61 *Ibid*

62 Office of the High Commissioner for Human Rights, *Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan: Arbitrary arrest and detention committed by national security, military and police*, 28 November 2008, <http://www.ohchr.org/Documents/Countries/10thOHCHR28nov08.pdf>, accessed 17 July 2012, pp.30-35

also many instances where under-age children have been arrested. Further to this, people with psychosocial disabilities and refugees/asylum seekers are also very much at risk.⁶³ An independent expert for the United Nations stated the following:

Serious crimes against women are sometimes settled through the traditional justice system, which very often applies discriminatory customary norms focused more on reconciliation than on ensuring accountability. In Western Equatoria, a man suspected of raping his two under-aged stepdaughters was released on bail after he agreed to compensate the victims' family. Another man suspected of murdering his wife was also released by the police after the families agreed to a settlement out of court.⁶⁴

As may be seen from the discussion above, South Sudan has made important progress in putting in place domestic legislation that prevents arbitrary arrests, and has attempted to institute some of the procedural safeguards found in international law. Nevertheless, more safeguards could be explicated and imprecise laws can be better explained.

4 The Use of Detention

South Sudan uses police cells and prisons to detain suspects, however facilities are often in bad condition and suspects are not detained in accordance with international law. Suspects on remand pending investigation are usually held in a police cell, but due to long periods of investigation and limited services at the police station, they are often transferred to prison.⁶⁵

The Prison Service estimated that in November 2011 there were 5 767 prisoners in South Sudan. From this, 93% were male, 30% were on remand and 183 people were on death row. There were 168 children accused or convicted of crimes, while 55 were in prison accompanying their mothers.⁶⁶ It should be noted that accurate statistics on pre-trial detention are difficult to obtain due to inadequate record-keeping, and the lack of disaggregated data.

4.1 The legal framework

As with arrests, international law includes a number of procedural safeguards relating to detention under the International Convention for Civil and Political Rights, specifically: the right to be informed of a criminal charge;⁶⁷ the right of persons detained on criminal charges – the '48 hour rule';⁶⁸ the right of *habeas corpus*;⁶⁹ and the right to compensation for unlawful arrest or detention.⁷⁰

The Transitional Constitution of South Sudan affirms the right to be informed of a criminal charge.⁷¹ It also notes the following in relation to the rights of persons detained on criminal charges:

A person arrested by the police as part of an investigation, may be held in detention, for a period not exceeding 24 hours and if not released on bond to be produced in court. The court has authority to either remand the accused in prison or to release him or her on bail.⁷²

63 *Ibid*

64 Human Rights Council, 18th session, agenda item 4, *Human rights situations that require the Council's attention, Report of the independent expert on the situation of human rights in the Sudan*, August 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-40-Add1_en.pdf, accessed 17 July 2012, p.18

65 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.38

66 *Ibid*, p.30

67 International Covenant on Civil and Political Rights, article 9(2), <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 16 January 2013

68 *Ibid*, article 9(3)

69 *Ibid*, article 9(4)

70 *Ibid*, article 9(5)

71 Transitional Constitution of South Sudan (2011), article 19(2), <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 16 January 2013

72 *Ibid*, article 19(4)

The Transitional Constitution is the supreme law of South Sudan, but was written in 2011, three years after the Code of Criminal Procedure Act (2008), which was written in accordance with the Interim Constitution of 2005. The Code of Criminal Procedure Act contradicts the above clause of the Constitution as it gives the Public Prosecution Attorney, or in his/her absence the Magistrate, the power to renew the detention of an arrested person after 24 hours for a period not exceeding one week.⁷³ The Code of Criminal Procedure goes on to say that a Magistrate can, with the recommendation of a Public Prosecution Attorney order that a person be detained for investigation for no more than two weeks and that this should be recorded in the case diary.⁷⁴ If a person is charged, a Magistrate can renew the detention every week for no longer than three months except upon the approval of the competent President of the Court of Appeal.⁷⁵

The contradiction between the two laws has the potential of leading to disagreements between the Directorate of Public Prosecutions and the judiciary over jurisdiction. The nature of the relationship between the two institutions will determine how well the current system works, and this may vary from state to state. It is recommended that the two laws be harmonised as soon as possible and be adapted to comply with international human rights standards.

Further to these concerns, nowhere in South Sudanese law is there a provision relating to the procedures for *habeas corpus*. This is an important procedural safeguard allowing detained persons to challenge the legality of their detention before a court. An additional provision is required in South Sudanese legislation to complement current provisions.

The Ministry of Justice estimates that 95% of people do not receive counsel at any point in dealings with the criminal justice system. People are given the right to appeal but do not know how to do so without assistance.⁷⁶ An effective system for providing legal aid is vital for ensuring equal access to courts and fair treatment. Currently the Constitution gives the accused the right to a lawyer of the person's choice or to have legal aid given 'by the government where he or she cannot afford a lawyer in any serious offense'.⁷⁷ South Sudan has developed a Legal Aid Strategy,⁷⁸ and aims to provide a minimum of 300 people with legal aid. However, as of January 2013, this Strategy still required funding and had not commenced implementation.⁷⁹ In addition, defendants are still unaware of their right to legal aid and do not know how to apply for it.⁸⁰ Unfortunately the Strategy does not address vulnerable groups, such as women and children, but leaves this to Justice and Confidence Centres, which are in the process of being established by the United Nations Development Programme (UNDP). These centres are run by civil society organisations that provide legal advice and support to communities; however full legal aid is not guaranteed, and these centres do not exist in all states.⁸¹ Further to this, there is evidence that even prisoners that have been sentenced to death have not been given access to legal aid. In September 2010, four prisoners were executed in the state of Northern Bahr el Ghazal, and only one was reported to have benefited from legal aid.⁸²

In spite of the legislation having no clear clause relating to *habeas corpus*, the Code of Criminal Procedure includes a clause for compensation to persons wrongfully arrested, which is considered a procedural safeguard against wrongful arrests/detentions. Nevertheless, the fines are too low to act as a deterrent, and the sentencing is minimal. The provision states:

73 Code of Criminal Procedure Act (2008), article 64(1) and (2), <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

74 *Ibid*, article 64(3)

75 *Ibid*, article 64(4)

76 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.42

77 Transitional Constitution of South Sudan (2011), article 19(7), <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

78 Government of South Sudan. 2011. *Legal Aid Strategy 2011–2013*. Ministry of Justice, unpublished

79 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.92, and personal communication with UNDP Rule of Law Officer, 17 January 2013

80 *Ibid*, p.44

81 Government of South Sudan. 2011. *Legal Aid Strategy 2011–2013*. Ministry of Justice, unpublished

82 Human Rights Council, 18th session, agenda item 4, *Human rights situations that require the Council's attention, Report of the independent expert on the situation of human rights in the Sudan*, August 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-40-Add1_en.pdf, accessed 17 July 2012, p.17

When any person causes the arrest of another person and it appears to a Magistrate or Court by whom the case is investigated into or tried that there was no sufficient grounds for causing such arrest, the Magistrate or Court may in his or her discretion direct the person causing the arrest to pay to the arrested person or each of the arrested persons, if there are more than one, such compensation not exceeding SDG 100 which the Magistrate or Court deems appropriate, and may award a term of imprisonment not exceeding thirty days in the aggregate in default of payment.⁸³

The court must also record and consider any objection and state in writing the reasons for awarding the compensation. If the court discharges the accused and decides that the complaint was frivolous or vexatious, the complainant can be made to pay another fine not exceeding SDG 100.⁸⁴ Not only are these fines and sentencing inadequate compensation for victims of arbitrary arrest and detention, but because there is no clear procedure whereby the accused can challenge the legality of the detention, it is unlikely that a court will ever order compensation. It therefore seems that there is a problem with the enforcement of this law, with such cases having occurred with no recourse. It is recommended that prosecutors and police be made aware of the legal consequences of wrongful arrest and that the fines be augmented to discourage such actions.

As discussed, the legal framework does not permit police custody for more than 24 hours, but there is some legal confusion as to the procedures after 24 hours. Aside from contradictory laws, there are also other factors in South Sudan that lead police to fail to provide these safeguards against detention. In some areas there are no public prosecutors or magistrates.⁸⁵ As has been mentioned above, police sometimes make arbitrary arrests where they fail to lay charges or fail to inform the person of the charges brought against them.

4.2 The practice of detention

Illegal detentions are subject to a number of driving factors. One factor is that police do not observe the required time limitations on detention due to mismanagement and/or corruption. Deng Mading Kuc, a private advocate in Juba, has admitted that he often finds that the police are unwilling to accept complaints against soldiers or other security personnel due to the fear of retaliation.⁸⁶ The Anti-Corruption Commission (as discussed below) must therefore take a more proactive stance on investigating cases of corruption in the police.

Although efforts have been made to legislate in relation to record-keeping by the police,⁸⁷ as previously noted, there are problems of illiteracy and a lack of training in the police. In some of the rural counties, there are also problems in obtaining the most basic resources to create and maintain records, such as stationery and filing equipment.

There are instances where remands are not renewed in accordance with the Code of Criminal Procedure,⁸⁸ or where warrants for remands have expired.⁸⁹ The Prisons Service has attributed this to a lack of training, the absence of prosecutors, and the lack of communication systems and transport limitations, particularly if a crime occurs far away.⁹⁰ In 2011, 93% of the police budget was spent on salaries; this indicates that little funding was left for other necessities such as equipment.⁹¹ While police require training in record-keeping, it is recommended that the judiciary should adopt a more proactive stance in reviewing the legality and necessity of detentions.

83 Code of Criminal Procedure Act (2008), article 302, <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

84 *Ibid*, article 302

85 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

86 *The Sudan Tribune*, 'South Sudan Police pledge support to judicial system', 15 August 2011, <http://www.sudantribune.com/South-Sudan-police-pledge-support,39832>, accessed 17 July 2012

87 Code of Criminal Procedure Act (2008), article 302, <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

88 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.38

89 *Ibid*, p.40

90 *Ibid*, p.38

91 *Ibid*, p.24

It is also recommended that the Directorate of Public Prosecutions take a larger role overseeing police detentions. Prosecutors do not access police detention cells daily as they sometimes lack the transport and/or are not informed of new detainees by the police. This lack of communication between the two institutions means that it is sometimes difficult for prosecutors to oversee cases of detention. In addition, there are some areas of South Sudan where the police and judiciary have not been adequately deployed, resulting in difficulties in investigating and prosecuting cases within the established time frames.

In November 2011 a UN group on arbitrary detention was formed, comprised of UNMISS and UN country team members, and in December 2012 a UN assessment began to map the population of detainees in police cells and prisons.⁹² While the UN can provide a temporary solution in preventing arbitrary detentions, a long-term solution requires the government to take the lead.

There is also an enormous backlog of cases due to weaknesses in the justice system.⁹³ The justice system lacks general infrastructure, communications equipment and administrative and legal staff. There are only 125 judges in the country instead of the minimum requirement of 250.⁹⁴ The state of Northern Bahr el Ghazal, for example, has only five judges covering an area inhabited by an estimated population of over 700 000 people.⁹⁵ When trials do take place, they can be subject to repeated adjournments. Sometimes parties do not appear in court; there may be transportation difficulties or they may not know they were expected to attend. Prisoners have even missed their trial dates due to a failure to be presented at court.⁹⁶ Judicial corruption has also been said to be a problem.⁹⁷ There is currently inadequate oversight and monitoring of customary courts by the judiciary.⁹⁸ Indeed, customary courts are regulated and established by the Local Government Act (2008) and many Chiefs also hold positions within local government, raising doubts over their independence.⁹⁹ The Judiciary Act (2008) needs to be amended so that it provides clauses for oversight of the customary courts and this needs to be enforced in practice.

In summary, it is apparent that prolonged and illegal detentions do occur in South Sudan. Detainees may be held for longer than the prescribed times for a variety of reasons. Limited resourcing in the prisons, police and judiciary is a major factor.

5 Conditions of Detention

The section below discusses matters relating to conditions in detention. Each issue is explored in terms of the legal framework, as well as conditions in practice.

5.1 Access to medical care; access to judicial authorities; access to food, water and sanitation; and the treatment of vulnerable groups

5.1.1 The legal framework

Internationally, accused persons must be accorded access to medical care;¹⁰⁰ to judicial authorities;¹⁰¹ to food, water and sanitation;¹⁰² and to special measures for vulnerable groups.¹⁰³ The

92 United Nations Security Council, *Report of the Secretary-General on South Sudan, S/2012/140*, 7 March 2012, <http://reliefweb.int/sites/reliefweb.int/files/resources/N1225265.pdf>, accessed 10 June 2012

93 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, pp.2–3, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012

94 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.27

95 *The Sudan Tribune*, 'South Sudan Police pledge support to judicial system', 15 August 2011, <http://www.sudantribune.com/South-Sudan-police-pledge-support,39832>, accessed 17 July 2012

96 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.41

97 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

98 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.45

99 *Ibid*, p.45

100 Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, article 22, <http://www2.ohchr.org/english/law/treatmentprisoners.htm>, accessed 16 January 2013

101 International Covenant on Civil and Political Rights, article 9(3), <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 16 January 2013

102 International Committee of the Red Cross. 1949. *Geneva Convention Relative to the Treatment of Prisoners of War* (Third Geneva Convention), <http://www.unhcr.org/refworld/docid/3ae6b36c8.html>, accessed 16 January 2013

103 See for example International Covenant on Civil and Political Rights, article 14(4), <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 16 January 2013

use of force must also be proportionate to the seriousness of the offence.¹⁰⁴ In other words, force must only be applied when strictly necessary to resolve disturbances in the prison. While the Prison Service Provisional Order (2011) does make provision for these during detention in prison, South Sudanese law is silent on these measures during police detention. The Prisons Service Provisional Order contains provisions for the separation of prisoners,¹⁰⁵ provisions for female prisoners and children,¹⁰⁶ juveniles,¹⁰⁷ food, water and nutrition,¹⁰⁸ and health and medical care.¹⁰⁹ It also states that the use of force must be proportional.¹¹⁰ The Code on Criminal Procedure, on the other hand, is silent on vulnerable groups in detention and on access to medical care, and further states that:

An arrested person also has the right to obtain a reasonable amount of food stuff, clothing and cultural materials, at his or her own cost, subject to the conditions relating to security and public order.¹¹¹

Thus the police are not obliged to provide any food, water or a reasonable standard of hygiene, or to provide access to medical personnel.

Because traditional authorities and communities lack awareness of the rights of women and children under the law, vulnerable groups continue to be discriminated against. Children are often tried as adults and detained with adults.¹¹² In addition, the prison system is mainly punitive rather than reformatory since the prisons lack the resources to build facilities as required by the Child Act (2008).¹¹³ The Directorate of Public Prosecutions must prioritise juvenile cases and the government must give support and resources to the implementation of juvenile facilities. Training is needed for police and prison officials as well as traditional authorities.

5.1.2 In practice

In practice, South Sudan lacks the infrastructure to provide police and prison detentions at a standard that accords with international law. In most of the state capitals, there are separate police detention cells and prisons but in the more rural areas prisons and police detention are used interchangeably. In 2011, 93% of the budget for the Prisons Service was used to pay salaries, leaving little funding for additional equipment or services.¹¹⁴ As a result, in many prisons, prisoners rely on food from their families, and medical care is limited. Police detainees are not provided with food.¹¹⁵ There have been reports of inmates dying due to lack of medical care.¹¹⁶ The Prisons Service claims that the central government does not allocate any portion of the budget to food, leaving state governments to provide for this.¹¹⁷ It is recommended that this be addressed in future budgets.

Some prisons also suffer from severe overcrowding. For example, Rumbek prison in Lakes state holds more than 550 prisoners instead of the 200 inmates that is its stated capacity. There are also temperature and ventilation problems and the infrastructure is so basic that in some cases it is damaged and crumbling.¹¹⁸ Although prisoners are allowed to submit complaints to judicial authorities and to ask for an investigation into prison conditions, action has rarely been taken pending such investigations.¹¹⁹

104 Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, article 54 (1), <http://www2.ohchr.org/english/law/treatmentprisoners.htm>, accessed 16 January 2013

105 Government of South Sudan, Prisons Service Provisional Order 2011, article 64, unpublished

106 *Ibid.*, article 65

107 *Ibid.*, article 66

108 *Ibid.*, article 67

109 *Ibid.*, article 68

110 *Ibid.*, article 97

111 Code of Criminal Procedure Act (2008), article 93(5), <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3d&tabid=342>, accessed 15 January 2013

112 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

113 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012, p.3

114 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.32

115 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012, p.24

116 *Ibid.*, p.13

117 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.79

118 *Ibid.*, p.76

119 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

It is recommended that the Code of Criminal Procedure Act be reviewed to include a clause on conditions of police detention that is in accordance with international law. Furthermore, the government should allocate a portion of the budget to building adequate police and prison detention facilities and to ensure prisoners are fed properly.

5.2 The right to a fair trial

5.2.1 The legal framework

The right to a fair trial is outlined in South Sudan's Bill of Rights.¹²⁰ It details the presumption of innocence,¹²¹ and the entitlement to a fair and public hearing in accordance with procedures prescribed by law.¹²² The accused person is also entitled:

to be tried in his or her presence in any criminal trial without undue delay; the law shall regulate trial in absentia.¹²³

As previously discussed, the Constitution provides the right to legal assistance; either the person can have his/her own lawyer, or must be accorded a lawyer by the government if unable to afford it in serious cases.¹²⁴

5.2.2 In practice

The domestic legal framework for the right to a free trial therefore corresponds to international standards but in practice comes across several problems. The problems with the Legal Aid Strategy have already been detailed. In addition, as previously mentioned, conditions of detention are so inhumane that pre-trial detention is a form of advanced punishment that defies the presumption of innocence. Given that there are over 60 ethnic groups in South Sudan, access to interpreters can also be problematic. Furthermore, despite the right to be tried with undue delay, inadequate case tracking and management,¹²⁵ corruption,¹²⁶ political interference and inadequate training and resources¹²⁷ can result in limitations on the application of the right to a fair trial.

These problems are accurately summed up by an independent expert for the UN who states:

Weaknesses in its law enforcement capacity and the acute shortage of qualified staff in the justice sector have fuelled impunity for crimes. Illegal, prolonged and arbitrary detentions continue to be a major concern. Large numbers of people are put in prolonged detention without mandated legal warrants, very often in overcrowded and dilapidated cells. In Lake and Western Bahr el Ghazal, UNMIS observed that more than half of pre-trial detainees had been held without the appropriate warrant extension.¹²⁸

5.3 Freedom from torture and ill-treatment

5.3.1 The legal framework

The Transitional Constitution of South Sudan affirms the protection of citizens from torture and states the following:

120 Transitional Constitution of South Sudan (2011), article 19, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

121 *Ibid*, article 19(1)

122 *Ibid*, article 19(3)

123 *Ibid*, article 19(6)

124 *Ibid*, article 19(7)

125 Human Rights Watch and Amnesty International. 2011. *South Sudan: A Human Rights Agenda*, <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda>, accessed 17 July 2012, p.41

126 International Alert. 2012. *Peace and Conflict Assessment of South Sudan 2012*, <http://www.international-alert.org/sites/default/files/publications/201207PeaceSouthSudan.pdf>, accessed 15 January 2013, p.47

127 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.38

128 Human Rights Council, 18th session, agenda item 4, *Human rights situations that require the Council's attention, Report of the independent expert on the situation of human rights in the Sudan*, August 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-40-Add1_en.pdf, accessed 17 July 2012, p.17

No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹²⁹

While the above provision exists, nothing further is stated regarding procedural safeguards, including the prohibition on incommunicado detention, the prohibition on the admissibility of evidence obtained under torture, and accountability for acts of torture.

South Sudan has not ratified the Convention against Torture since it became an independent country. The government has made commitments to ratify key human rights conventions, but has yet to do so.¹³⁰

Finally, no independent police complaints mechanisms are provided for in South Sudanese law. The South Sudan Human Rights Commission and Anti-Corruption Commission exist and make recommendations to the Ministry of Justice, but neither have had notable successes in terms of holding police accountable.

5.3.2 *In practice*

Torture by government forces, however, remains a problem and it has been reported that civilians were abused throughout the year as a means of extracting information, although these incidents were rarely reported.¹³¹ Opposition members were allegedly arrested and tortured at party headquarters in Juba on 7 July 2011 but were not charged.¹³² Furthermore, rape by government forces is a particular problem. For example, a female detainee claimed that police officers raped her with bottles and stones on 22 July 2011 while she was being held at Juba's Malakia police station in connection with a dispute between her husband and another man.¹³³ The prisons still use corporal punishment, routinely beating prisoners with sticks, chains and whips and occasionally using chains and leg irons for restraint.¹³⁴

It is recommended that the government follow through on the ratification of key international human rights instruments, including the Convention against Torture, as a matter of urgency so that South Sudan is able to hold perpetrators accountable.

It is further recommended that the legal framework be developed in terms of the Criminal Code of Procedure to include procedural safeguards in relation to detention such as the prohibition of incommunicado detention, the prohibition of the admissibility of evidence obtained under torture, and accountability for acts of torture. A detailed custody register would also help limit acts of torture.

6 Police Oversight and Accountability

6.1 Introduction

Oversight and accountability mechanisms are increasingly becoming viewed as vital to preventing arbitrary arrests and detention, and promoting improved conditions of detention. Accountability should be a matter of proactive planning rather than an afterthought. Police training on human rights is only effective when accompanied by measures to deal with violations. It is also necessary

129 Transitional Constitution of South Sudan (2011), article 18, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>, accessed 15 January 2013

130 Reliefweb, 'Government pledges to ratify key human rights conventions', 10 December 2011, <http://www.reliefweb.int/node/464506>, accessed 6 January 2012

131 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

132 United Nations High Commission for Refugees. 2013. *Freedom in the World 2012 – South Sudan*, <http://www.unhcr.org/refworld/country,,FREEHOU,,SSD,,501fcc098,0.html>, accessed 16 January 2013

133 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

134 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.87

to promote a culture of openness to hearing the complaints of the public, and to encourage the reporting of violations.

Oversight and accountability is a major concern in South Sudan. In January 2011, the Deputy Commissioner for Human Rights for the UN stated:

The lack of accountability to date on abuses, including rape and torture of trainees, committed inside the Rajaf Police Training Centre is of concern. I trust the Government of South Sudan will soon make public the findings of its investigations into this matter and will use this case as an example to promote accountability among state agents in all sectors.¹³⁵

6.1.1 *Internal police mechanisms for accountability*

In South Sudan the ambit of accountability for arbitrary arrests and detentions falls predominantly within the internal mechanisms of the police. The police service in South Sudan is centralised and controlled at the national level, which means that police are not answerable to local government structures. Administering oversight from a national level requires good coordination and strong linkages between the state and national level.

In terms of internal discipline, the Police Act (2009) makes provision for police courts, and sets out the jurisdiction, type, formation and administration of police courts as well as their competencies and powers.¹³⁶

The police courts make determinations on any criminal acts committed by the police or any other contraventions of legislation committed during the course of official duty.¹³⁷ According to this Act:

complaints against police personnel received through a civilian complaint system, established by regulations, shall be referred to judicial courts subject to the regulations.¹³⁸

However, no civilian complaints system specifically for police has been established either by regulations or in practice. Civilian complaints systems in South Sudan are restricted to the South Sudan Human Rights Commission and the Anti-Corruption Commission. The Police Summary Court consists of an officer of a higher rank than the accused and the police summary court consists of a Chairperson having a rank not lower than Major and not lower than the rank of the accused, and other two officers of the same or lower ranks by virtue of an order issued by the Inspector-General or a Police Commissioner. The police summary court decides on the violations and penalties and the police non-summary court decides on crimes and contraventions.¹³⁹ Provision is also made for the Court of Appeal and the Police Supreme Court.

Aside from criminal offences, offences dealt with by the Police Act include crimes committed by force,¹⁴⁰ crimes against detention centres and public properties,¹⁴¹ disobedience of lawful orders,¹⁴² disposal of weapons and ammunition,¹⁴³ desertion,¹⁴⁴ contraventions during operations,¹⁴⁵ false information and accusation,¹⁴⁶ unbecoming conduct,¹⁴⁷ dealing with inmates and partiality.¹⁴⁸

135 Kyung-wha Kang, 'Press Statement of the Deputy Commissioner for Human Rights', Sudan Mission, 27 June 2011

136 Police Service Act (2009), article 52, <http://www.southsudanpolice.net/wp-content/uploads/2012/10/SSPS-Police-Service-Act-2009.pdf>, accessed 16 January 2013

137 *Ibid.*, article 52(1)

138 *Ibid.*, article 52(2)

139 *Ibid.*, article 56

140 *Ibid.*, article 65

141 *Ibid.*, article 66

142 *Ibid.*, article 67

143 *Ibid.*, article 68

144 *Ibid.*, article 69

145 *Ibid.*, article 70

146 *Ibid.*, article 71

147 *Ibid.*, article 72

148 *Ibid.*, article 73

Interestingly, the Police Act focuses predominantly on police immunities rather than accountability. It states that:

Any act done by a police personnel in good faith while discharging his or her functions and duties, or in performance of his or her functions and duties under any law, regulation, order, rule or instruction of a competent authority or person authorised to issue the same by virtue of the Code of Criminal Procedure Act, 2008, or any other law in force, or any regulations issued thereunder, shall not constitute an offence.¹⁴⁹

Moreover it goes on to say that:

No police personnel shall be arrested for or charged with murder in connection with acts committed in the course of his or her duty, except with a written authorisation obtained from the President in the case of officers, or a written authorisation from the Minister or Inspector General in the case of non-commissioned officers and privates.¹⁵⁰

Another clause states that police shall not be responsible for damages resulting from the good faith execution of duty.¹⁵¹ The Act therefore emphasises immunities and neglects the issue of custodial safeguards. Nowhere in the Act is direct reference made to human rights standards. It is only in the Police Code of Conduct that there is extensive reference to persons in custody and police investigations.¹⁵² The Code of Conduct does not clearly set out the procedures if it is violated.

Pure internal systems of accountability have been criticised by experts as police may have a tendency to overlook the crimes of their colleagues. The United Nations General Assembly has remarked that:

Where police are allowed to effectively police themselves, as in any system of purely internal accountability, there is a strong temptation to 'look after one's own'. Police internal review is vulnerable to bias in all countries, but especially where there is minimal respect for the rule of law, where senior officers fail to push the importance of accountability, and where corruption is rampant.¹⁵³

It is generally accepted by scholars that these internal systems of accountability need to be complemented by external systems, both in government and civil society.¹⁵⁴

6.1.2 External mechanisms for accountability

South Sudan has the benefit of having such external systems, i.e. the South Sudan Human Rights Commission and the Anti-Corruption Commission, yet both of these institutions have not had any real success in enforcing accountability within the police and would do well to increase their monitoring in this regard.¹⁵⁵

6.1.2.1 South Sudan Human Rights Commission

The South Sudan Human Rights Commission Act came into force in 2009 with the purpose of establishing a body for monitoring the application and enforcement of rights and freedoms enshrined in the Constitution and ratified international and regional human rights instruments. The Commission also has the mandate to investigate complaints of human rights violations, to advise the

149 *Ibid.* article 51(1)

150 *Ibid.* article 51(2)

151 *Ibid.* article 51(3)

152 Southern Sudan Police Service, Code of Conduct (draft), article 5, <http://www.southsudanpolice.net/wp-content/uploads/2012/10/SSPS-CODE-OF-CONDUCT-Draft.pdf>, accessed 17 January 2013

153 United Nations General Assembly, A/HRC/14/24/Add.8

154 Stone C and H Ward. 2004. 'Democratic Policing: A framework for action', *Policing and Society*, 10, pp.11–45

155 Human Rights Watch. 2012. *Prison is Not For Me*, http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf, accessed 3 July 2012, p.100

government on human rights issues, and to raise awareness on human rights.¹⁵⁶ The Commission has the power to visit jails, prisons and places of detention to assess the conditions of inmates.¹⁵⁷

If the Commission obtains information pertaining to human rights that requires further investigation, an investigation committee is formed.¹⁵⁸ The investigation is conducted in private unless the Commission deems it in the public interest to conduct a public inquiry.¹⁵⁹ The investigation committee has the power to issue summons or orders,¹⁶⁰ and upon completion of the investigation prepares a final report for the Commission. If the findings warrant a prosecution, the case is referred to the Ministry of Legal Affairs and Constitutional Development.¹⁶¹ The Commission can also delegate investigation powers to the government or state investigation committees.¹⁶² The Act also states that the Commission should collaborate and coordinate with the Ministry of Legal Affairs and Constitutional Development in the enforcement of the provisions of this Act.¹⁶³

The Special Rapporteur for the UN has noted:

If oversight is to be effective, it should be created and should operate according to certain general principles. The most successful external mechanisms will have adequate powers to carry out comprehensive investigations of police abuses, will be sufficiently independent from the police and the government, will be adequately resourced, will operate transparently and report regularly, will have the support of the public and the government, and will involve civil society in its work.¹⁶⁴

As analysed above, the South Sudan Human Rights Commission has been given extensive powers according to government legislation. Not only does it have the powers of investigation, but it can also order warrants and subpoena documents. Failure to comply with such an order renders offenders liable under chapters IX and X of the Penal Code 2008.¹⁶⁵ The legislation also spells out that there must be cooperation with the Ministry of Legal Affairs to enforce decisions. As such, the South Sudan Human Rights Commission has adequate powers to investigate human rights violations.

However, the South Sudan Human Rights Commission faces extreme challenges in other areas. Like most institutions in South Sudan, the Commission lacks both financial and human resources.¹⁶⁶ The geographical size of South Sudan makes accessing rural areas difficult, often requiring specialised transportation. Staff members of the Commission also require specialised training. While in 2011 the Commission had ten offices operating in the ten states of South Sudan, the new budget approved in Parliament in April 2012 cuts the operating costs of the Commission by 46% and could lead to the closure of six offices.¹⁶⁷ In addition, because the South Sudan Human Rights Commission is still in the process of being set up at state level, reports from the Commission are hard to gain access to. In addition, the Commission is meant to produce annual, financial, investigation and periodic reports for the President and the Assembly,¹⁶⁸ but these remain unpublished and unavailable. In a fact finding mission by the International Federation for Human Rights (FIDH) in April 2012, it was noted that the Annual Report for 2011 was about to be released, but that no other official documentation on the human rights situation was available, and there was no data on individual

156 Human Rights Commission Act (2009), section 3, <http://www.icnl.org/research/library/files/South%20Sudan/SSHHumanRights%20CommissionAct2009.pdf>, accessed 16 January 2013

157 *Ibid.*, section 7(1)(c)

158 *Ibid.*, section 29

159 *Ibid.*, section 30

160 *Ibid.*, section 32

161 *Ibid.*, section 38(2)

162 *Ibid.*, section 39(1)

163 *Ibid.*, section 51(1)

164 United Nations General Assembly, 28 May 2010, United Nations A/HRC/14/24/Add.8, article 30

165 Human Rights Commission Act (2009), sections 20, 38, 47 and 49 <http://www.icnl.org/research/library/files/South%20Sudan/SSHHumanRights%20CommissionAct2009.pdf>, accessed 16 January 2013

166 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

167 International Federation for Human Rights. 2011. *South Sudan First Anniversary of Independence: Time to Act for Peace and Human Rights Protection*, <http://www.fidh.org/IMG/pdf/sudsoudan591apdf.pdf>, accessed 16 January 2013, p.24

168 Human Rights Commission Act (2009), section 33, <http://www.icnl.org/research/library/files/South%20Sudan/SSHHumanRights%20CommissionAct2009.pdf>, accessed 16 January 2013

complaints received.¹⁶⁹ These reports are necessary to ensure that the Commission is regarded as transparent. It is questionable as to whether or not the Commission is independent enough to carry out full investigations since the Ministry of Legal Affairs may want to cover up arbitrary arrests and detentions in which prosecutors may have been involved, because police and prosecutors work together on investigations. Finally, the South Sudan Human Rights Commission has a broad mandate, meaning that human rights violations committed by the police are just one aspect of the Commission's work.

6.1.2.2 South Sudan Anti-Corruption Commission

The South Sudan Anti-Corruption Commission also suffers from several problems and has been greatly criticised for failing to secure any prosecutions, with donors, the media and the public taking an increasingly harder line on corruption.¹⁷⁰ Like the Human Rights Commission, the Anti-Corruption Commission Act (2009) gives this Commission the powers of investigation.¹⁷¹ The investigation committee has the power to issue summons or orders¹⁷² and can seek the aid of the Ministry of Legal Affairs and Constitutional Development to enforce the order if anyone fails to comply.¹⁷³ The Commission refers reports warranting a prosecution to the Ministry of Legal Affairs and Constitutional Development.¹⁷⁴ There is a clause for protection of informers and witnesses¹⁷⁵ and the Act specifically orders the collaboration and coordination of the Commission with the Ministry of Legal Affairs.¹⁷⁶

The Anti-Corruption Commission has still been unable to secure any arrests or prosecutions, partly because the 2009 Act, which gives prosecutorial powers to the Ministry of Justice, has not been repealed and because corruption has not been defined in the Constitution or Criminal Procedure Act. Six cases have been submitted to the Ministry of Justice for prosecution but none has been concluded.¹⁷⁷ President Salva Kiir has just replaced the head of the Commission, prompting allegations of inefficiency and political interference, particularly with regards to a list of 13 MPs in Kiir's new cabinet that have been accused of corruption.¹⁷⁸ In August 2012, MPs had refused to approve South Sudan's first cabinet, demanding that the names of 13 MPs involved in corruption be released, but later approved the cabinet. The outgoing head, Pauline Riak, stated that many cases were not attended to and that officials refused to fill out incomes, assets and liability forms. Furthermore, a strong anti-corruption law is not in place.¹⁷⁹ On 3 May, President Salva Kiir wrote a letter to government officials accusing them of stealing USD 4 billion from government funds. Adding that the credibility of the government was on the line, Kiir promised anonymity and amnesty if officials returned the money. This response further entrenches the culture of impunity.

6.1.3 Recommendations for improved accountability and oversight of the police

In order to promote and improve accountability and oversight mechanisms in South Sudan, the government has several choices. Firstly, it can improve the effectiveness of the Anti-Corruption Commission and Human Rights Commission in a variety of ways. One of these ways is to increase the resources available for these commissions. The international community can continue to assist by providing training and overseeing the work of the Commission in the short-term. These Commissions must work hard to ensure compliance by the police and Ministry of Legal Affairs of any

169 International Federation for Human Rights. 2011. *South Sudan First Anniversary of Independence: Time to Act for Peace and Human Rights Protection*, <http://www.fidh.org/IMG/pdf/sudsudan591apdf.pdf>, accessed 16 January 2013, p.24

170 *The Sudan Tribune*, 'South Sudan President replaces head of Anti-Corruption Commission', 26 May 2012, <http://www.sudantribune.com/spip.php?article42718>, accessed 16 January 2013

171 The Anti-Corruption Commission Act (2009), article 24

172 *Ibid*, article 28(1)

173 *Ibid*, article 29(2)

174 *Ibid*, article 32(2)

175 *Ibid*, article 44

176 *Ibid*, article 45(1)

177 United States Department of State. 2012. *Country Report on Human Rights Practices 2011 – South Sudan*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187675#wrapper, accessed 29 March 2012

178 *The Sudan Tribune*, 'South Sudan President replaces head of Anti-Corruption Commission', 11 November 2011, <http://www.sudantribune.com/South-Sudan-president-replaces,40699>, accessed 17 July 2012

179 Catholic Radio News, 'Lack of political will, outgoing anti-corruption chief biggest nightmare', 16 November 2011, http://sudancatholicradio.net/index.php?option=com_content&view=article&id=5327:lack-of-political-will-outgoing-anticorruption-chief-greatest-nightmare&catid=2:south-sudan&Itemid=84, accessed 9 January 2011

reports warranting arrests and must release reports to build public confidence in the transparency of these institutions. As civil society develops they must work hand in hand with these organisations to increase their legitimacy and outreach. An alternative proposal is that the commissions are given greater prosecutorial powers so that they can refer matters to the courts directly without going through the Ministry of Legal Affairs and Constitutional Development.

A final option for improving police accountability, and one that this paper recommends, is that a specialised independent body is set up that deals specifically with police complaints. This is a similar model to that of South Africa where the Human Rights Commission focuses on social and economic rights, leaving complaints regarding the police to the Independent Complaints Directorate, a body focusing specifically on police conduct. In this way the broad mandate of the Human Rights Commission is limited to issues where there are no other appropriate bodies. In a country like South Sudan where the police have come from a highly militarised background, there should be a specific organisation to deal with police behaviour. This independent body should have extensive prosecutorial powers and should be given adequate funding and support by the government. This independent body should fully enforce all international guarantees set out in the International Covenant on Civil and Political Rights.

7 Summary of Recommendations

Throughout this study, several recommendations have been made to improve conditions relating to the use of arrest, the use of detention and conditions of detention. These recommendations are summarised below:

- South Sudan must immediately ratify human rights instruments – particularly the UN Convention against Torture (CAT) and the Elimination of all forms of Discrimination against Women (CEDAW).
- The South Sudan Law Review Commission (SALRC) must review imprecise domestic laws and disparities between national laws; namely the Transitional Constitution and the Code of Criminal Procedure Act. The Judiciary Act needs to include oversight clauses for customary courts and align this with the Local Government Act. The SALRC must review disparities between international and domestic standards and consider additional clauses/ amendments in accordance with international standards – for example, a clause for *habeas corpus* and increased compensation for wrongful arrests.
- The judiciary should review all detentions on a regular basis and release those unlawfully detained. The Directorate of Public Prosecutions should aim to visit police detention cells daily and monitor arrests and detentions. All cases should be tracked. Coordination mechanisms between different criminal justice sector organisations need to be set up and the linkages between national and state-level police must be strengthened.
- The government should develop police training curricula in line with international standards and extensively train all police on human rights and current legislation (the Code of Criminal Procedure Act, the Penal Code and the Constitution).
- Traditional Chiefs must be trained in human rights. The government should prioritise the alignment of customary law and statutory law, and clarify the jurisdiction of customary courts and their supervision.
- Police, prosecutors and Chiefs should be trained on the legal consequences of wrongful arrest and the penalties for doing so should be augmented.
- National and state-level budgets should prioritise building police detention facilities in line with international standards. Juvenile reformatories need to be built away from adult facilities and women and children must be kept separately. Budgetary provision needs to be made for food and other basic needs of detainees.
- The South Sudan Human Rights Commission should investigate and publish reports on human rights violations, including within the police.

- Legislation should be passed allowing the Anti-Corruption Commission to carry out its tasks.
- An independent police oversight body should be set up to monitor police conduct. This body should be given prosecutorial powers and an adequate budget.
- The government should be encouraged to develop a multi-party system of democracy to prevent political interference during arbitrary arrest, and restructure the South Sudan Police Service to include various ethnicities to prevent ethnic discrimination amongst the police.

8 Conclusion

South Sudan has made great headway since its independence but a lot still needs to be done. Laws are in the process of being reviewed, some laws have yet to be implemented and organisations and ministries are still being properly structured and resourced. Developments thus far are commendable; however, any system that requires the rule of law must also have adequate accountability mechanisms in place for police to build public trust and confidence.

This study has noted some of the legislative achievements with regards to arbitrary arrests and detentions, finding that the Transitional Constitution and Code of Criminal Procedure accord with many international human rights standards. Some attention needs to be paid to reviewing contradictory legislation but most issues arise from the implementation of the law. Several factors influence arbitrary arrests; political interference, inadequate training, corruption and ethnic discrimination are all relevant in these considerations. The tension and alignment between statutory and customary law is a factor specific to South Sudan that requires consideration.

Arbitrary detentions are occurring in South Sudan. The legislative framework is confusing at present due to disparities between the Code of Criminal Procedure and the Transitional Constitution. Whilst the Prison Service Provisional Order speaks of conditions of detention for inmates, the law is silent on conditions of detention for police. South Sudan is also yet to ratify the Convention against Torture or to detail legal provisions pertaining to torture. There are also other factors that drive such detentions, including corruption, mismanagement, inadequate case tracking and a huge backlog of cases. Inadequate detention facilities also mean that vulnerable groups are not protected.

Accountability and oversight mechanisms can reduce the number of arbitrary arrests and detentions and can act as a deterrent for those who think that they are untouchable. At present police accountability is mainly dealt with internally. Such systems have been found to be insufficient to prevent a culture of immunity. The South Sudan Human Rights Commission exists but has a very broad mandate and is yet to reach rural areas. The Anti-Corruption Commission has been criticised as ineffective, failing to secure a prosecution since its inception. Given the militarised background of South Sudan and the decades of civil war, it is recommended that an independent body be set up to deal specifically with police conduct and discipline.

This would concur with the statement by the UN's Special Rapporteur that:

An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.¹⁸⁰

¹⁸⁰ United Nations General Assembly, A/HRC/14/24/Add.8

Arrest and Pre-trial Detention in Niger

A review of domestic legislation

Dr Bashir Tarif Idrissa

1 Introduction

Police detention is a measure that allows an officer of the criminal investigation department of the police 'to detain one or more persons', either 'for purposes of investigation' or because there 'is sufficient reliable and consistent evidence against the person to justify pressing charges'. The period of detention may not exceed 48 hours, unless expressly extended. The purpose of pre-trial detention therefore is to prevent a person suspected of having committed or attempting to commit an offence from fleeing and/or disposing of evidence, or from influencing witnesses.¹

Given that this constitutes a deprivation of liberty, pre-trial detention may create risks for the infringement of a range of fundamental human rights. Therefore, those held in custody require guarantees that their rights will be protected, and that their detention is indeed a temporary measure.

This review examines the legal framework relating to the use of arrest and pre-trial detention by the police in Niger. A detailed review of the current domestic legislative regime is provided, and this is supported by a review of how this relates to the international framework.

2 Methodology

This review involved a detailed analysis of the international and domestic legislative framework relating to the application of arrest and pre-trial detention. This was undertaken with a view to comparing international standards and domestic provisions in order to identify inconsistencies. This also included a review of secondary sources, including research reports, reports to international treaty bodies and other relevant literature.

3 Structure of this Report

This legislative review is presented in three parts. It begins with a profile of Niger to contextualise the discussion that follows. It then sets out the conditions, in terms of Niger's current domestic legislation, as to the application of arrest and detention. This is supported in Annexure 1 by a detailed tabulation of Niger's domestic legislation as this relates to the requirements of the

¹ Lennon, JL (2006) 'Raisons justifiant le placement en garde à vue du suspect' ['Reasons for placing the suspect in custody'], *Chron.* 887

international legal framework. The concluding section provides an analysis of the legal framework and a set of recommendations.

4 Profile of Niger

Niger is in West Africa and covers an area of approximately 1 267 000 square kilometres. Its population was estimated at 15 203 822 in 2010.²

It became a republic on 18 December 1958 and gained independence on 3 August 1960. Its capital is Niamey, its currency is the CFA franc and its official language is French. Niger has a wealth of important natural resources, including uranium, coal, iron, gold, phosphate, cement and petroleum. Agriculture and livestock are also important in the economy. Niger is ranked among the poorest countries in the world according to the Human Development Index (HDI). The GDP of Niger was estimated at 2.48 trillion CFA francs in 2009. The poverty rate over the entire territory was estimated at 62.1% in 2005 and 59.5% in 2008.³ This has led the country to develop an Accelerated Development and Poverty Reduction Strategy (2008–2012) with the aim of improving social indicators by 2012 and reducing the poverty rate to 42%. The literacy rate among adults (those over the age of 15) was estimated in 2004 to be 14.4%.⁴ The country is predominantly Muslim, with minority populations of Christians and animists. Niger's population is composed of nine ethnic groups: Hausa, Zarma-Songhai, Tuareg, Fulani, Arabic, Kanuri, Tubu and Gourmantché Boudouma. The vast majority of these communities are concentrated in the west and south of the country, where the soil is more fertile.

The Niger National Police Force (*Police nationale*) operate under the Ministry of the Interior, and are responsible for security and law enforcement in urban areas, and the protection of government buildings, institutions, and the security of government leaders through special agencies.⁵ Outside the urban centres, police investigations are conducted by the National Guard, which, unlike the police, has a presence throughout the territory.

5 Arrest and Pre-trial Detention in Niger

5.1 Review of Domestic Legislation

The discussion below reviews Niger's domestic legislation in terms of legal provisions relating to use of arrest and detention. This should be read together with Annexure 1, which sets out these provisions as they relate to the international legal framework.

5.1.1 Who may place an individual in police custody?

An *Officier de police judiciaire* (OPJ) may place a person in custody in terms of the Criminal Procedure Code (CPC).⁶ Under the new Criminal Procedure Code, those who are defined as OPJ include the following:⁷

- Public prosecutors and their deputies;
- Investigating judges;
- Trial judges;

2 Institut National de la Statistique-Niger, <http://www.stat-niger.org/statistique/index.php?lng=fr>, accessed 15 December 2012

3 Institut National de la Statistique-Niger, <http://www.stat-niger.org/statistique/index.php?lng=fr>, accessed 15 December 2012

4 Unesco Institute for Statistics, <http://www.uis.unesco.org/Pages/default.aspx>, accessed 13 January 2013

5 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum

6 Criminal Procedure Code, article 59

7 Criminal Procedure Code, Ord. No. 2011-13 of 27 January 2011, article 16

- Governors;
- Prefects;
- The Director-General of the National Police Force and his/her deputy;
- Officers and senior officers of the Gendarmerie;
- Police commissioners and senior police inspectors, peace officers and police officers;
- Officers of the National Guard of Niger;
- Non-commissioned officers of the National Guard of Niger with at least three years of service, and who have undergone preparatory training as a senior officer of the criminal investigation department of the police;
- Police inspectors appointed as police commissioners and heads of the mobile brigade of the National Police Force;
- Sergeants and commanders of Gendarmerie brigades, stations or platoons;
- Police inspectors with at least three years of service in the police and appointed by order of the Minister of Justice upon nomination by the Minister of the Interior;
- Sergeants and gendarmes with at least three years of service in the Gendarmerie, appointed by order of the Minister of Justice upon nomination by the Minister of National Defence; and
- Mayors and their deputies.

The above list indicates that a wide range of officials are awarded OPJ status. It is clear, however, that few of these officials exercise this power – in practice only those who work in investigation units place people in custody.

5.1.2 *When may an individual be placed in custody?*

According to the CPC, placing people in custody may be done during three types of events: (1) during the investigation of cases of *in flagrante delicto*; (2) during pre-trial investigations; or (3) in execution of letters rogatory.⁸

In cases of *in flagrante delicto*, the officer may have to detain one or more persons during the investigation. The CPC makes provision for the detention of suspects⁹ and witnesses.¹⁰ For pre-trial investigations, this takes place either *ex-officio* or on the instructions of the public prosecutor and under the supervision of the Attorney-General.

In relation to letters rogatory, this occurs when an investigating judge requires any other investigating judge or officer of the criminal investigation department under the jurisdiction of his/her court to carry out investigative measures s/he considers necessary in places subject to his/her respective jurisdictions.

5.1.3 *Who may be placed in police pre-trial detention?*

During investigations of cases of *in flagrante delicto* these are either suspects (in particular those individuals that the OPJ considers to be 'fleeing the scene of the crime' and 'any person whose identity it appears necessary to establish or verify during the course of the criminal investigation'¹¹) or witnesses (including people 'likely to provide information regarding the facts' that can be summoned and questioned by the OPJ).¹² Lastly, it is anyone against whom there is 'sufficient reliable and consistent evidence to justify pressing charges'.¹³

⁸ Criminal Procedure Code, article 56, para. 1 and 2

⁹ Criminal Procedure Code, article 56, para. 1 and 2

¹⁰ Criminal Procedure Code, article 57, para. 1

¹¹ Criminal Procedure Code, article 56, para. 1 and 2

¹² Criminal Procedure Code, article 57, para. 1

¹³ Criminal Procedure Code, article 59, para. 2

In terms of detention for the purpose of pre-trial investigation, the CPC provides that these are 'persons against whom there is evidence of guilt'. Detention may also be effected in executing letters rogatory.¹⁴

5.1.4 What rights are guaranteed during pre-trial police detention?

The discussion below reviews procedural safeguards afforded in legislation for those in detention. Some of these rights are differentiated according to the crime the individual is accused of committing, and the status of the individual involved.

[a] What is the duration of police pre-trial detention?

Limitations on the time that may be spent in police detention have been differentiated by the law as follows:

- Ordinary law: Following accusations of *in flagrante delicto*, the duration of police custody is 48 hours, which may not be extended, for persons referred to in articles 56 and 57.¹⁵
- For people against whom there is sufficient reliable and consistent evidence to justify pressing charges: The duration of police custody (usually 48 hours) may be extended upon written authorisation from the Public Prosecutor or the investigating judge.¹⁶
- Pre-trial investigation: The duration of police custody is 48 hours, extendable once upon authorisation from the Public Prosecutor.¹⁷
- For children/juveniles: Neither the CPC nor Ordinance No. 99 of 2011,¹⁸ on the establishment, composition, organisation and powers of juvenile courts includes any special measures concerning juveniles. Therefore matters relating to this group proceed according to the rules of ordinary law.
- For addicts: The duration of police custody is as provided for by ordinary law (48 hours) on the fight against drugs in Niger.¹⁹ This period may be extended twice. A first extension is for the same duration of 48 hours and a second extension is for a period of 24 hours. All extensions must take place upon written authorisation from the Public Prosecutor.
- For terrorism suspects: A recent amendment to the CPC introduced new provisions on procedures relating to terrorism suspects. Amending the previous reform of 2008, the new law increases the duration of police custody to 120 hours.²⁰ This period may be extended once for a further period of 120 hours upon written authorisation from the Public Prosecutor, acting for the special judicial division, or the investigating judge for purposes of execution of letters rogatory.
- The execution of letters rogatory: The duration of police custody is as provided for by ordinary law (48 hours).²¹ This may be extended for a further period of 48 hours upon written authorisation from the investigating judge.

[b] The right to legal representation

The person placed in detention has the right to counsel. The OPJ must inform him/her of this right. Here too, the law reflects limitations on the length of time before this notification must be given.

- In ordinary law: the suspect is required to be informed of the right to legal counsel from the 24th hour of police custody.²² Failure to inform the individual of this right results in the nullification of the proceedings. It should be noted that notification of the right to counsel as provided for in the CPC, as part of the pre-trial investigation, has not been the case for

14 Criminal Procedure Code, article 147

15 Criminal Procedure Code, article 59, para. 1

16 Criminal Procedure Code, article 59, para. 3

17 Criminal Code, article 71, para. 2

18 Ordinance No. 99-11 of 14 May 1999

19 *Journal Officiel* [Government Gazette], No. 23 of 1 December 1999

20 Ordinance No. 2011-13 of 27 January 2011 amending and supplementing Act No. 61-33 of 14 August 1961 introducing the Criminal Procedure Code, article 605.5

21 Criminal Code, article 147

22 Criminal Code, article 71, para. 3

investigations following detection of *in flagrante delicto*.

- For juveniles and addicts: Notification of the right to legal counsel is not specifically prescribed by the Ordinance of 1999. Therefore, ordinary law as above applies.
- For terrorism suspects: It is required that the suspect be notified of their right to legal counsel from the 48th hour of police custody.²³

[c] The right to physical integrity

The right to physical integrity is a fundamental right guaranteed by international instruments and must be respected. The Constitution of Niger states:

No one shall be subjected to torture, slavery or ill-treatment or cruel, inhuman or degrading treatment. Any individual or public servant who is guilty of torture, abuse or cruel, inhuman or degrading treatment in the course of or in connection with the performance of his/her duties, either on his/her own initiative or on instructions, shall be punished in accordance with the law.²⁴

The CPC itself does not, however, specify offences of abuse or cruel, inhuman or degrading treatment of persons except for the provisions on assault and battery, and acts of violence. Nevertheless, when such abuse is perpetrated by civil servants or government employees, the Criminal Code provides for specific penalties.²⁵

There are, however, rules with regard to police custody to ensure that the physical integrity of persons held in custody is respected. It is required that a medical certificate must be issued certifying that the suspect has not suffered any physical harm.

- Ordinary law: The CPC provides that the person brought before the Public Prosecutor must be accompanied by a medical certificate attesting that s/he has not been subjected to abuse.²⁶
- For children/juveniles: No special measures have been provided for, and it may be assumed that ordinary law applies.
- For addicts: The law states the following: “from the outset of police custody, the Public Prosecutor shall designate a physician who examines the person in custody every 24 hours and after each examination issues a certificate of proof that is placed in the case file. Other medical examinations, which will be legal, may be requested by him/her. Medical certificates shall indicate in particular whether the person is a drug addict and if his/her state of health is consistent with being held in custody”.²⁷
- For terrorism suspects: The measure is similar to that provided for by ordinary law, and states that the suspect referred to the Public Prosecutor must be accompanied by a certificate attesting that s/he has suffered no physical harm.²⁸

[d] The right to be brought before a judicial authority

International law and principles require that when a person has been arrested and placed in custody for purposes of ascertaining the truth during an investigation, s/he must be brought before a judicial authority for them to be proven guilty or innocent.²⁹ The police are therefore required to refer the individual to a competent court for adjudication of the charge.

Domestic law in Niger, however, includes no express provisions to this effect. Only articles 147 and 605.5 deal explicitly with referral at the end of the period of police custody.³⁰

23 Ordinance No. 2011-13 of 27 January 2011, article 605.5, para. 2

24 Constitution of Niger, article 14

25 Criminal Procedure Code, articles 108-113 and 265-268

26 Criminal Procedure Code, article 71, para. 5

27 Criminal Procedure Code, article 118

28 Ordinance No. 2011-13 of 27 January 2011, article 605.5

29 International Covenant on Civil and Political Rights, 1966, article 9(3) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly resolution 43/173, 9 December 1988, Principle 11

30 Criminal Procedure Code, article 147 and Ordinance No. 2011-13 of 27 January 2011, article 605.5

In the case of letters rogatory, domestic law provides that the persons detained 'must mandatorily be brought before the investigating judge in whose jurisdiction the letters rogatory are carried out within 48 hours'.³¹

On terrorism suspects, the law states, 'When the end of a period of police custody falls on a public holiday, the detainee is referred on the next business day'.³²

Finally, general law raises the issue, but only incidentally, in dealing with the medical certificate which must accompany 'the person referred'. However, in the first paragraph of that article, it is provided that the OPJ 'must bring before the public prosecutor' the person held in custody when the period of custody is exceeded, otherwise s/he must be released.³³

It should be deduced from these provisions that the detainee has no opportunity to be brought before a judicial authority 'immediately' or 'as soon as possible'. This could only occur at the end of police custody. This also obviously depends on the duration of police custody according to the nature of the case involved or the individuals involved. They are therefore, for the duration of police custody, at the disposal of the OPJ. The OPJ is only 'required to immediately inform the public prosecutor' of 'crimes, misdemeanours and violations within his knowledge' and 'shall transmit directly to [the public prosecutor] the original copies of the minutes that have been kept together with a certified copy and all pertinent records and documents'.³⁴

Nowhere is there any mention of 'bringing the arrested person before a judicial authority'.

6 Analysis and Recommendations

6.1 Analysis

From the review presented above, it may be seen that the national legislative framework is insufficient in terms of meeting the standards set by the international framework. The country has, however, made efforts to address some of the gaps. Most notably, these have been in terms of Niger's ratification of international conventions relating to human rights, and the acceptance of various recommendations made by treaty bodies on human rights. This is also reflected in the reforms to the Criminal Code and Criminal Procedure Code which were introduced in 2003, 2004 and 2007.

In all its official reports to the Human Rights Committee of the ICCPR, to the Human Rights Council of the UPR, and to the African Commission on Human Rights; Niger declares its respect for human rights, particularly in terms of pre-trial detention and torture and cruel, inhuman and degrading treatment. However, these arguments are based primarily on the fact that Niger has ratified and/or acceded to the international instruments relating to the protection of these rights, rather than from meeting the necessary requirements in terms of domestic law and practice.³⁵

While great emphasis has been placed on the country's ratification and/or accession to various international human rights instruments, it is important to clarify the relationship between these actions and domestic law. Contrary to the claim made in some of its reports to international bodies,³⁶ that the ratification of these treaties means that such treaties then apply in domestic legal practice,

31 Criminal Procedure Code, article 147

32 Ordinance No. 2011-13 of 27 January 2011, article 605.5

33 Criminal Procedure Code, article 71, para. 5

34 Criminal Procedure Code, article 19

35 Niger Ministry of Justice (2010) Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme [Study for the compliance of national law with international standards of human rights]. Ministry of Justice/PAJED/EU. p.71

36 African Commission on Human and People's Rights (21 May to 4 June 2004). Initial and Periodic Report of the Republic of Niger (combining reports due from 1988 to 2002). <http://www.achpr.org/sessions/35th>, p.21-25

this is not so, and such international provisions must be specifically legislated for in domestic law. The same applies to the provisions of the Constitution. This conclusion is confirmed by a study which reviewed the compliance of Niger's domestic law with international human rights standards.³⁷

From Niger's most recent report to the Human Rights Council, the country has reported progress terms of the ensuring the rights of arrested and detained people, and particularly noted the specific steps that have been taken, such as the reforms since 2003.³⁸ The country has also reported that it punishes arbitrary detentions and arrests; and cruel, inhuman and degrading treatment.³⁹ While also noting the progress made in terms of legislative reform, civil society organisations' reports to treaty bodies reveal many violations of the rights of arrested and detained persons, and thus point out the gaps between the progressing legislative framework and actual practices. While this review has not sought to examine actual practices, it is important to maintain an equal focus on the implementation of the legislative regime, and whether actual practice is staying abreast of legislative reform. For example, the annual report of Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] in 2008 noted significant violations of the rights of persons detained in police custody, including police brutality, and stated that 'conditions of detention do not meet minimum international standards'.⁴⁰ The report stressed, however, that the situation of detainees has improved compared to previous years.⁴¹ This has been ascribed to the transition to democracy and Niger's accession to the major international human rights instruments. The role of civil society organisations and the National Commission on Human Rights and Fundamental Freedoms (CNDHLF) in monitoring places of detention through visits was also noted as having contributed to positive change.⁴²

In terms of actual practice, it is also worth noting there are instances where practices are consistent with international standards, even if there is an absence of enabling national legislation. For example, the OPJs most often try to separate adults and children, and males and females even though this is not provided for by national legislation (this has been provided for only for detention in prisons).

Much more is required of domestic legislation in terms of guaranteeing the rights of persons during arrest and detention. This is discussed below.

6.1.1 Arrest

While provisions relating to arrest are scattered throughout the Criminal Procedure Code, the specific rules relating to arrest are weak. For example, no distinction is made between bringing somebody in for questioning and arrest. While arrest itself is regulated by the CPC, questioning is not similarly regulated. Equally, the rights of the arrested person are not regulated in a comprehensive fashion.

This allows for a situation in which the OPJ are free to act in ways that may abuse the rights of citizens, and where the victims of such abuses have no recourse. For example, a person may be held and questioned (possibly for hours), without being informed of his/her status in terms of whether s/he is arrested, or whether s/he is being questioned and may thus be entitled to leave. The OPJ also resorts to a procedure called 'to hold available', which abuses the rights of citizens. This

37 Niger Ministry of Justice (2010) Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme [Study for the compliance of national law with international standards of human rights]. Ministry of Justice/PAJED/EU. p.71

38 United Nations Human Rights Council (24 January to 4 February 2011) National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1. para. 17

39 United Nations Human Rights Council (24 January to 4 February 2011) National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1. para. 9 and 16

40 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.35

41 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.35

42 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.36

practice has been criticised in the Charrette Report.⁴³ The report highlights how rights are abused by referring such cases on the last day of the week with the knowledge that no legal counsel would be available, allowing for longer period of detention before being brought before the Public Prosecutor. The report also highlights longer periods in custody in the interior of the country, while there has been a clear reduction of such practices in the capital.

6.1.2 Pre-trial detention

As noted above, there are complicated provisions for the treatment of detained persons, depending on the nature of the offence that s/he is accused of committing. This results in inconsistencies in terms of the understanding of the law, and its application in practice. There is not always agreement on the rights of people in detention according to whether the suspect is involved in a preliminary investigation or an investigation in terms of *in flagrante delicto*. The same applies to the notification of the right to counsel that is provided for in terms of pre-trial investigation but not in investigations regarding cases of *in flagrante delicto*. It is the same for the medical certificate which must accompany the person in custody during referral, which is only provided for at the end of police custody, and only for the pre-trial investigation. On the other hand, when the suspect is an addict, it is provided for that a physician must examine the detainee every 24 hours and a 'justified' medical certificate is placed on file. Furthermore, medical check-ups must determine whether his/her state of health is consistent with being held in custody.

Notwithstanding the problems noted, it should be recognised that these provisions constitute improvements in the law, effected with the 2003 amendments to the Criminal Procedure Code.⁴⁴ Prior to this, legal assistance would only have been possible at the investigation or trial phase. These amendments also introduced the requirement of a medical certificate attesting that the suspect has not suffered abuse. The amendments also, significantly, provide for the nullification of the proceedings if there is a failure to notify the suspect of the right to counsel.

This is considerable progress, which may almost certainly be attributed to the comments made by Human Rights Committee regarding the improvement of conditions relating to detention. The Committee stated:

the implementation of Articles 9, 10 and 14 of the Covenant, particularly with regard to the duration of police custody, conditions of detention of persons deprived of their liberty and remedies available for violations of human rights is not satisfactory.⁴⁵

While this progress is important to note, it is also true that while many of the rights reflected in international law are reflected in the Constitution, they have not been translated into detailed procedural safeguards within legislation. Therefore, while the reforms of 2003, 2004 and 2007 have been important, much more is necessary.

The problems and inconsistencies that remain are detailed in the *Guide commenté sur les innovations apportées par les réformes de 2003, 2004 et 2007* (Annotated guide on the innovations introduced by the reforms of 2003, 2004 and 2007).⁴⁶

6.1.3 Oversight and accountability

⁴³ Ministry of Justice/EU Programme d'appui à la justice et à l'Etat de Droit [European Union Programme on Justice and the Rule of Law] (2008) *Réforme judiciaire et coopération intra-sectorielle* [Judicial reform and intra-sectorial cooperation], p.7

⁴⁴ Criminal Procedure Code, Act No. 2003-26 of 13 June 2003

⁴⁵ Concluding observations of the Human Rights Committee: Niger, 04/29/1993. CCPR/C/79/Add. 17, paras. 396, 416 and 423

⁴⁶ Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) *Guide commenté sur les innovations apportées par les réformes de 2003, 2004 et 2007 au Code pénal et au Code de procédure pénale à l'usage des magistrats* [Annotated guide on the innovations introduced by the reforms of 2003, 2004 and 2007] Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.66

The Criminal Procedure Code is not particularly clear on matters of oversight and accountability. Articles 12 and 13 are clear on the oversight role of the Public Prosecutor's office (PR and PG). Articles 216 to 222 contain provisions for disciplinary proceedings with regard to an OPJ. This is important internal measure for accountability. However, provisions relating to the oversight of senior criminal investigation officers are not sufficient, as the terms of oversight, and the details relating to the management of these activities, have not been detailed.

In terms of accountability, the provisions of the Criminal Code,⁴⁷ are not sufficient to cover all aspects of compensation for a victim of arbitrary arrest. While police officers or magistrates who are guilty of illegal actions in terms of arrest and detention must certainly be held responsible, the provisions of the Criminal Procedure Code on compensation for damages only relate to arbitrary detention.

There has been little in terms of judicial precedent to examine in terms of securing the rights of arrested and detained persons. The only judicial precedent known to date is judgment No. 93-44 in 1993 of the Judicial Chamber of the Supreme Court. In the case of PG c/ I.I. et al:

Following a complaint filed with the judicial police by M.A. for a commercial dispute against A.M., the latter was arrested and placed in custody in the police station where, on the instructions of OPJ I.I., he was subjected to physical violence on the part of APJ M. Ab., M.A., A.S. and A.D. who handcuffed his hands and feet and placed a stick between his hands and feet before hanging him from two (2) desks. According to the victim, his captors allegedly even subjected him to physical abuse with electricity, even though this OPJ was not on duty that day.⁴⁸

On the basis of articles 108 and 222 of the Criminal Code, the Supreme Court ordered an investigation into the OPJ for one count of attack on individual freedom and against the APJs for one count of assault and battery. It can be seen, therefore, that the Convention against Torture has not been applied, as this has not been incorporated into the Criminal Code. Similarly, there is no special criminalisation of the acts of torture and other cruel treatment carried out during arrest or detention in police custody. More generally, the lack of recourse to judicial proceedings for victims should be noted. Apart from this ruling, no other judgments may be found.

Finally, the gradual trend towards the improvement of the human rights of arrested and detained people may be ascribed to the significant efforts from the various stakeholders (government, civil society organisations and others) to increase awareness on human rights issues, and through the engagement with international treaty bodies, including the Universal Periodic Review (UPR) of the Human Rights Council.

This government's willingness to improve the situation is also reflected in a range of other developments. Recently, the Ministry of Justice established the Directorate of Human Rights which includes several sub-directorates with a focus on human rights.⁴⁹ This department also established a partnership protocol with the Danish Institute for Human Rights in February 2011 which will lead to the development and adoption of a national policy on human rights. Two committees have also been established to take this process forward: a drafting committee and a supervisory committee to oversee the process. The Ministry of Justice has also signed two annual work programmes with the United Nations Development Programme (UNDP) with regard to human rights, and a framework for dialogue on human rights under the joint chairmanship of the Minister of Justice and the chair of the technical and financial partners in human rights matters. This framework provides for periodic meetings for monitoring and further planning.

⁴⁷ Criminal Procedure Code, articles 108 and 265

⁴⁸ Judicial Chamber of the Supreme Court, judgment no. 93-44, 2 December 1993. www.jurini.org

⁴⁹ Decree No. 2011-223/PRN/MJ of 26 July 2011

There have also been important developments in training, which may also contribute to improvements in the human rights situation of arrested and detained people. Human rights training is increasingly included in basic training, as well as in ongoing training for the defence and security forces (the National Police Force, Gendarmerie and National Guard).

Specific developments include:

- Human rights training manuals have been developed for use in training of the police, the National Guard and magistrates; and
- Police training has been ongoing, with the assistance of international organisations and local civil society organisations, with the intention of strengthening adherence to human rights-based practices in terms of arrest and detention.

Other programmes also contribute to the improvement of the situation. For example, United Nations Volunteers have been undertaking monitoring activities in some places of detention,⁵⁰ which assists in identifying problems, and highlighting what actions need to be taken.

6.2 Recommendations

Apart from the range of items noted in this review, several studies have been conducted on these and related issues. These studies have provided a range of recommendations which have, thus far, not been adequately applied, and Niger's domestic legislation remains incompatible with its international obligations as well as its own Constitution.

It is therefore recommended that the government act to ensure consistency with the international framework and institute further reforms to the Criminal Code and the Criminal Procedure Code. The first step should be the review of recent studies which have already documented the required reforms. It is recommended that, among others, the following studies should be reviewed in detail.

- 'Rapport sur Fonctionnaires de Police et Droits Humains au Niger: Perception Sociologique du Phénomène à partir d'échantillons qualitatifs dans la C.U.N, Dosso, Tillabery, Gaya et Makalondi' (Report on Law Enforcement Officers and Human Rights in Niger: Perceptions of Sociological Phenomenon from qualitative samples in the Niamey Urban Community, Dosso, Tillabery, Gaya and Makalondi), Daouda Ali, 2003.
- 'La corruption dans la justice au Bénin, au Niger et au Sénégal' (Corruption in the justice systems in Benin, Niger and Senegal), Studies and Texts No. 39, LASDEL, 2005.
- Mission report: 'Réforme judiciaire et coopération intra-sectorielle' (Judicial Reform and intra-sectoral cooperation), Patrice de Charrette, 2008;
- Mission report: 'La détention provisoire' (Pre-trial detention), Patrice de Charrette, 2009;
- 'Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme' (Study for the compliance of national law with international standards of human rights), Democracy 2000, Ministry of Justice, PAJED/EU, 2010.

Legislative reform is incomplete without subsequent investment in the training of relevant personnel and educating the public on their rights. Continued investments in such activities are necessary.

It has also been demonstrated that the involvement and support of local and international organisations and bodies has played an important role in promoting progress on these issues in Niger. Such engagement should be continued.

⁵⁰ United Nations Human Rights Council (24 January to 4 February 2011). National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1

Annexure 1: Domestic Legal Provisions in terms of International Legal Framework

Table 1. Arrest and detention

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
1. Universal Declaration of Human Rights	See preamble to the Constitution	Article 5 No one shall be subjected to torture, slavery or ill-treatment or cruel, inhuman or degrading treatment.	Right to physical integrity	<ul style="list-style-type: none"> Constitution of the 7th Republic: Article 14. The Criminal Code contains provisions for punishing assault and battery but no special provisions on cruel, inhuman and degrading treatment. 	Provision partially integrated into the positive law of Niger.
2. International Covenant on Civil and Political Rights of 16 December 1966	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9 No one shall be subjected to arbitrary arrest nor detention or exile.	Right to personal liberty	<ul style="list-style-type: none"> Constitution of 7th Republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. 	Almost full integration of Article 9 of the UDHR by the Criminal Code establishes repression of arbitrary arrest and detention.
		Article 9.1 Everyone has the right to liberty and security of his or her person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with the procedure prescribed by law.	Right to personal liberty	<ul style="list-style-type: none"> Constitution of the 7th republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. 	Provision integrated into the positive law of Niger.
		Article 9.2 Any person arrested shall be informed of the reasons for his/her arrest at the time of the arrest and shall receive notification as soon as possible.	Notification of the charge	<ul style="list-style-type: none"> Criminal Procedure Code: Article 117 (Act No. 2003-26 of 13 June 2003). 	Provision partially integrated into the positive law of Niger. The CPC, in its articles 48 to 71, contains no clear provisions on notification in case of arrest by police.
		Article 10.1 Any person deprived of his/her liberty shall be treated with humanity and respect for the inherent dignity of the human person.	Conditions of detention. Prohibition of cruel, inhuman or degrading treatment.	<ul style="list-style-type: none"> Constitution of the 7th Republic: Article 14. The Criminal Code contains provisions for punishing assault and battery but no special provisions on cruel, inhuman and degrading treatment. 	Provision partially integrated into the positive law of Niger.

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
3. The African Charter on Human and Peoples' Rights of 1981	15 July 1986 (OJ No. 16 of 15 August 2003)	Article 6 Everyone has the right to liberty and security of his or her person. No one shall be deprived of his/her liberty except for reasons of and under the conditions previously determined by law; in particular, no one may be arbitrarily arrested or detained.	Right to personal liberty	<ul style="list-style-type: none"> Constitution of 7th Republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. 	Provision integrated into the positive law of Niger.
4. Standard Minimum Rules for the Treatment of Prisoners of 31 July, 1957 and 13 May 1977	Accession	<p>Article 7</p> <p>1. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:</p> <ol style="list-style-type: none"> his/her identity the reasons for his/her detention and the authority which decided it the day and time of the admission and release. <p>2. No person may be admitted to an institution without a valid detention order, details of which have been previously entered in the register.</p> <p>Article 8</p> <p>The separation of categories</p> <ol style="list-style-type: none"> whenever possible, men and women must be held in different establishments Pre-trial detainees shall be segregated from convicted prisoners Persons imprisoned for debt or convicted of another form of civil imprisonment shall be detained separately from persons detained for a criminal offence Juvenile detainees shall be segregated from adults. <p>Articles 9 to 14 (Detention premises)</p> <p>Article 15 (Personal hygiene)</p>	Right to individual freedom combined with a right to physical integrity	Criminal Procedure Code: Article 667.	Provision integrated into the positive law of Niger.
				Criminal Procedure Code: Article 659 to 661.	Provision integrated into the positive law of Niger.
					Provision not integrated into the positive law of Niger.
					Provision not integrated into the positive law of Niger.

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)	5 October 1998 (OJ No. special of 9 August 1986)	<p>Article 2, Article 4.1 and Article 4.2</p> <p>Each government party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture from being committed in any territory under its jurisdiction.</p> <p>No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any public emergency, may be invoked to justify torture.</p> <p>Each government party shall ensure that all acts of torture are offences under its criminal law. The same applies to an attempt to commit torture or any act committed by any person which constitutes complicity or participation in an act of torture.</p> <p>Each government party shall make these offences punishable by appropriate penalties which take into account their serious nature.</p>	The right to physical integrity	Constitution of the 7th Republic: Article 14.	Provision partially integrated into the positive law of Niger.
6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)	Accession	<p>Principle 4</p> <p>Any form of detention or imprisonment and all measures affecting the individual rights of a person subject to a form of detention or imprisonment shall be decided under effective control.</p> <p>Principle 17</p> <p>Any detained person shall be eligible for legal assistance. (...) If a detained person has not chosen a lawyer, he/she is entitled to have one appointed by a judicial or other authority in all cases where the interest of justice requires it, at no cost if he/she does not have the means to pay.</p>	<p>Principle of legality of offences and penalties</p> <p>Right to legal assistance</p>	<p>Constitution of the 7th Republic: Article 18.</p> <ul style="list-style-type: none"> • Law on public defenders. • Act No. 2011-42 of 14 December 2011 laying down the rules for legal and judicial assistance and creating a public administrative institution called the 'National Agency for Legal and Judicial Assistance'. 	<p>Provision integrated into the positive law of Niger.</p> <p>Provision integrated into the positive law of Niger.</p>

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
7. The African Charter on the Rights and Welfare of the Child (1990)	11 December 1996 (OJ No. 16 of 15 August 2003)	<p>Article 16 Governments participating in this Charter shall take legislative, administrative, social and educational measures to protect the child against all forms of torture, inhuman and degrading treatment and especially any form of harm or physical or mental abuse, neglect or maltreatment, including sexual abuse, while in the care of a parent, legal guardian, the school authority or other person having custody of the child.</p>	Right to physical integrity of the child	A draft Children's Code and a draft law on juvenile courts have already been developed. It remains to be introduced into the circuit of adoption.	Provision not yet integrated into the positive law of Niger, but it is an on-going process.
		<p>Article 17 § 2 a Participating governments shall in particular ensure that no child who is detained or imprisoned, or who is otherwise deprived of his/her liberty is subjected to torture, to inhuman or degrading treatment or punishment.</p>	Protection of the child	A draft Children's Code and a draft law on juvenile courts have already been developed. It remains to be introduced into the circuit of adoption.	Provision not yet integrated into the positive law of Niger, but it is an on-going process.

Table 2. Access to justice

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
Universal Declaration of Human Rights	See the preamble to the Constitution	Article 8 Everyone has the right to effective remedy before the competent national courts against acts violating the fundamental rights granted him/her by the Constitution.	Access to justice, equality before the law	Constitution of the 7th Republic: Article 117. 'Justice is done in the country on behalf of the people and in strict observance of the rule of law and citizens' rights. Court decisions are binding on all public authorities and citizens. They can only be opposed via avenues and in forms authorised by law.'	
International Covenant on Civil and Political Rights	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9.3 Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be tried within a reasonable time or released. The detention of people awaiting trial shall not be the rule, but release may be conditioned by guarantees to appear for the hearing, for all other acts and proceedings, and where appropriate, for the execution of the judgment.	Reasonable period of judgment Recourse without delay for the accused for investigation of his/her release	<ul style="list-style-type: none"> • Criminal Procedure Code: Article 379. • Criminal Procedure Code: Articles 131 et seq. and 186, para. 2. 	<ul style="list-style-type: none"> • Provision partially integrated into the positive law of Niger. • Provision of the positive law of Niger does not comply with the Covenant.
		Article 9.4 Anyone who is deprived of his/her liberty by arrest or detention shall be entitled to appeal the court order so that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is unlawful.	Equality before the law, access to justice	<ul style="list-style-type: none"> • Constitution of the 7th Republic: Article 117. • Criminal Procedure Code: Article 186. 	Provision partially integrated into the positive law of Niger.
The African Charter on Human and Peoples' Rights	15 July 1986 (OJ No. 16 of 15 August 2003)	Article 7 Everyone has the right to have his/her case heard. This comprises: a) the right to appeal to competent national organs against acts violating his/her fundamental rights as recognised and guaranteed by conventions, laws, regulations in force b) the right to be presumed innocent until proved guilty by a competent court c) the right to a defence, including the right to be defended by counsel of his choice d) the right to be tried within a reasonable time by an impartial national jurisdiction.	Equality before the law, access to justice, fair trial	<ul style="list-style-type: none"> • Constitution of the 7th Republic: Articles 20 and 117 • Criminal Procedure Code: Articles 64 (para. 2), 108 (para. 3) and 190 (para. 1), 218 (para. 3), 262, 263, 304 and 404. 	

Table 3. Oversight/accountability

International Law	Date of accession or ratification by Niger	Specific Provision	Guaranteed rights	Statute in Domestic Legislation	Observations
International Covenant on Civil and Political Rights	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9.5 Any individual who is the victim of unlawful arrest or detention shall be entitled to compensation.	Right to compensation following unlawful detention	Criminal Code: Articles 108 and 109. Criminal Procedure Code: Article 143.1 to 143.4 .	Provision incorporated into the positive law of Niger but cannot be effectively implemented for lack of adoption of the application decree.

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

PREAMBLE

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 55th Ordinary Session, held from 28 April to 12 May 2014 in Luanda, Angola:

Recalling its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52nd Ordinary Session in October 2012;

Recognising the mandate provided to the Special Rapporteur on Prisons and Conditions of Detention in Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52nd Ordinary Session in October 2012;

Recalling Resolution 100 on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System adopted at its 40th Ordinary Session in November 2006;

Noting Articles 2, 3, 4, 5, 6, 7 and 26 of the African Charter on Human and Peoples' Rights on the rights to life, dignity, security, fair trial and the independence of the judiciary;

Noting further its mandate under Article 45(1)(b) of 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*';

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, characterised by weak criminal justice systems;

Acknowledging the vast differences between states in terms of legal systems, political and historic influences on the use and conditions of detention, socio-economic and geographical conditions;

Acknowledging that individuals in police custody and pre-trial detainees in many African countries experience arbitrary limitations on their rights, poor health conditions, and are subject to torture, inhuman and degrading treatment or punishment;

Noting that pre-trial detention disproportionately impacts the vulnerable and marginalised who are unlikely to have the means to afford legal representation and assistance or comply with conditions of police bail or bond, and who in some cases may be detained through the justice system in psychiatric hospitals, departments or institutions both inside and outside of prisons and detention centres;

Recognising that police custody and remand facilities in many African countries lack appropriate infrastructure and budget and provisions for providing for the essential needs of detainees during custody;

Recognising further that arrest, detention and conditions of police custody in many African countries are characterised 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, excessive and disproportionate use of force by the police, lack of registration and monitoring systems for keeping track of police detention, systemic corruption and 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;

Recognising the need to formulate and lay down principles and guidelines to further strengthen the criminal justice system in States Parties with regards to police custody and pre-trial detention, and to ensure compliance with international norms and principles by the police and other law enforcement agencies;

Hereby adopt the following Guidelines on the use and conditions of police custody and pre-trial detention in Africa:

ARREST

1. General provisions

- a. 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.
- b. Everyone has the right to liberty and security of the person. Detention must always be an exceptional measure of last resort. No one shall be subjected to arbitrary or unlawful arrest or detention.
- c. Where appropriate, particularly for minor crimes, efforts should be made to divert cases away from the criminal justice system and utilise recognised and effective alternatives that respect applicable international law and standards. Alternatives to arrest and detention should be promoted under a framework that includes reasonable accommodation for persons with disabilities, and a framework that promotes the best interests of children in conflict with the law.

2. Grounds for arrest

- a. 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.

- b. 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.

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.
- 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.
- 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.
 - 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.
- 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.
- e. Arresting authorities shall maintain, and provide access to, an official custody register in strict accordance with Part 4 of these Guidelines.

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 mechanisms.
- 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.

POLICE CUSTODY

6. General provisions

- a. Detention in police custody shall be an exceptional measure. Legislation, policy, training and standard operating procedures shall promote the use of alternatives to police custody, including court summons or police bail or bond.

- b. States should establish measures to promote transparency with regard to police custody, including inspections by judicial authorities or an independent body and lay visiting schemes involving local community representatives and legal and health personnel.

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 3 of these Guidelines.
- 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 7 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 8 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.

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.
- e. The following information about every questioning session shall be recorded by the authority carrying out the questioning:

- i. The duration of any questioning session.
 - ii. The intervals between questioning sessions.
 - iii. The identity of any officials who conducted the questioning and of any other persons present.
 - iv. Confirmation that the detained person was availed the opportunity to seek legal services prior to the questioning, was provided with a medical examination, and had access to an interpreter during questioning (including sign language for the hearing impaired) and any accommodations necessary to ensure the detainee's understanding of and participation in the process were made.
 - v. Details of any statements provided by the detained person, with verification from the detained person that the record accurately recounts the statement he or she provided.
- f. Detaining authorities shall maintain, and provide access to, an official custody register, in strict accordance with Part 4 of these Guidelines.
- g. States shall make provision for the audio and audiovisual recording of questioning sessions and the provision of confessions.

PRE-TRIAL DETENTION

10. General provisions

- a. For the purpose of these Guidelines, 'pre-trial detention' refers to the period of detention ordered by a judicial authority pending trial.
- b. Pre-trial detention is a measure of last resort and should only be used where necessary and where no other alternatives are available.
- c. Persons charged with a criminal offence that does not carry a custodial penalty shall not be subject to a pre-trial detention order.
- 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.
- f. 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.
- g. Pre-trial detainees should be held in detention facilities as close to their home or community as possible, taking into account any caretaking or other responsibilities.

11. Safeguards on pre-trial detention orders

- a. Judicial authorities shall only order pre-trial detention:
 - i. On grounds that are clearly established by law and which are consistent with international standards, and not 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; and

- ii. If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, and there is a danger that he or she will abscond, commit further serious offences or if there is a danger that the release of the accused will not be in the interests of justice.
- b. If pre-trial detention is ordered, judicial authorities shall ensure that the least restrictive conditions are imposed that will reasonably ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community and any other person.
- c. Judicial authorities shall clearly demonstrate in the reasons for their decisions that they have considered alternatives before making a pre-trial detention order.
- d. Judicial authorities shall provide written reasons for decisions to order pre-trial detention. This should include clear demonstration that alternatives to pre-trial detention were considered.
- e. Persons subject to pre-trial detention orders shall have the right to challenge the lawfulness of their detention at any time and to seek immediate release in the case of unlawful or arbitrary detention, and compensation and/or other remedies as set out in Part 8 of these Guidelines.
- f. At all hearings to determine the legality of an initial detention order, or of an order extending or renewing pre-trial detention, detainees have the right to be present, the right to the assistance of a lawyer or other legal service provider, the right to access all relevant documents, the right to be heard, and the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.
- g. The burden of proof on the lawfulness of initial detention orders, and the lawfulness and necessity of extended or continued pre-trial detention, lies with the State.

12. Reviews of pre-trial detention orders

- a. Regular review of pre-trial detention orders shall be provided for in national law. Judicial authorities and detaining authorities shall ensure that all pre-trial detention orders are subject to regular review.
- b. In making a pre-trial detention order, or in extending or renewing pre-trial detention, judicial authorities shall ensure that they have thoroughly considered the need for continued pre-trial detention and shall give consideration to the following issues:
 - i. Assess whether sufficient legal reasons exist for the arrest or detention and order release if they do not exist.
 - ii. Assess whether the investigating authorities are exercising due diligence in bringing the case to trial.
 - iii. If the individual is suspected of a criminal offence, assess whether in the circumstances of the case of the individual, the detention pending trial is necessary and proportionate. In such assessment, among other things, responsibilities as primary caretakers should be taken into consideration.
 - iv. Enquire about and take means necessary to safeguard the well-being of the detainee.
- c. Judicial authorities shall provide written reasons for orders to extend or renew pre-trial detention.

13. Provision for delays in investigations and judicial proceedings

- a. Anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time.
- b. Judicial authorities shall investigate any delay in the completion of proceedings which could substantially prejudice the prosecution, the pre-trial detainee or his or her lawyer or other legal service provider, the State or a witness. In considering the question of whether any delay is reasonable, the judicial authority shall consider the following factors:
 - i. The duration of the delay.
 - ii. The reasons advanced for the delay.
 - iii. Whether any person or authority is responsible for the delay.
 - iv. The effect of the delay on the personal circumstances of the detained person and witnesses.
 - v. The actual or potential prejudice caused to the State or the defence by the delay.
 - vi. The effect of the delay on the administration of justice.
 - vii. The adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued.
 - viii. Any other factor which in the opinion of the judicial authority ought to be taken into account.
- c. If the judicial authority finds that the completion of the proceedings is being delayed unreasonably by the State or its agents, the judicial authority may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order to release the accused if the length of his or her detention is inconsistent with the right of detained persons to trial within a reasonable time. In such cases, however, release may be accompanied by any proportionate and necessary safeguards.

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 and 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.
- b. Pre-trial detainees shall only be held in an officially recognised place of detention.
- 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.
- d. Detaining authorities shall maintain, and provide access to, an official custody register in strict accordance with Part 4 of these Guidelines.

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.

18. Additional information to be recorded in police cell custody registers

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

- a. The time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal.
- b. The date and time that the detained person was notified of the charges brought against him or her, the right to seek release, the reason for the refusal to grant release, and the identity of the official who performed the notification.

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

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

- a. The name of the authority supervising the pre-trial detention.
- b. The time and date of the pre-trial detention order, and the name of the judicial authority who ordered the initial, extended and continuing pre-trial detention.
- c. The next date of review of the pre-trial detention orders by the relevant judicial authority.

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

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

Given the control that the State exercises over persons held in police custody or pre-trial detention, States shall provide a satisfactory explanation, and make available information on the circumstances surrounding custody or detention, in every case of death or serious injury of persons who are deprived of their liberty.

21. Deaths in police custody and pre-trial detention

- a. If a person under arrest, in police custody, pre-trial detention, or in the process of transfer, dies, a prompt, impartial and independent inquiry into the cause of death shall be undertaken by a judicial authority. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. The investigating authority shall have access to all necessary information and persons to conduct a thorough, impartial and independent inquiry.
- b. The detainee's next of kin shall be promptly informed of the death, be provided with regular updates by the authority investigating the death, and have access to information about the detainee and the investigative process in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.

- c. On completion of all examinations essential to the investigation, the body of the deceased shall be returned to the family, in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay. The investigating authorities should hand over to the next of kin a complete death certificate as soon as possible after the death. The personal belongings of the deceased should be returned to the next of kin as soon as possible.

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.

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.
- 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, and limitations on the use of force.
- 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 healthcare, 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 healthcare, 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.
- 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 4 of these Guidelines, and that detainees' next of kin and/all legal representatives are informed about the transfer prior to the transfer taking effect.
- j. 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.

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 7 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.

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 7 of these Guidelines 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.

30. Special measures are not discriminatory

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

31. Children

- a. **General principles**
 - i. 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.
 - ii. For the purposes of these Guidelines, a 'child' means every person below the age of 18 years.
 - iii. 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.
 - iv. 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.
 - v. 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.
- b. **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, counselling, 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.
- c. **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 services 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.
- d. **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.
- e. **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.
- f. **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.
- g. **Legal assistance**
Children shall be guaranteed the right to the presence of lawyer, or other legal services 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.

h. **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 well-being, ensure the child's privacy, and avoid harm to him or her.

i. **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.

j. **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.

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's or girls' dignity.
- ii. Be held separately from male detainees.
- iii. 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 interests of the children.
- iv. Be provided with the facilities necessary to contact their families, including their children, their children's guardians and legal representatives.
- v. 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.
- vi. Not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants.
- vii. 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.

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 programmes and other services available to others, including voluntary engagement in activities and community release programmes. 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.
- ii. The physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with physical, mental, intellectual or sensory disabilities, and that the detention of persons with disability does not amount to inhuman or degrading treatment.
- iii. Communication with and by persons with disabilities in custody or detention on an equal basis with others.

- iv. The provision of reasonable accommodation, procedural and substantive due process.
- v. The right of persons to informed consent to treatment is upheld.
- vi. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives shall be provided.

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.

ACCOUNTABILITY AND REMEDIES

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.

36. Standards of individual conduct for officials

- a. 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.

- b. 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.

37. Complaints mechanisms

- a. States shall establish, and make known, internal and independent complaints mechanisms for persons in police custody and pre-trial detention.
- b. Access to complaints mechanisms shall be guaranteed for all persons in police custody and pre-trial detention, without fear of reprisals or punishment.
- c. 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.

IMPLEMENTATION

44. Implementation measures

- a. In accordance with Article 1 of the African Charter on Human and Peoples' Rights, States shall adopt legislative, administrative, judicial and other measures to give effect to these Guidelines and ensure that the rights and obligations contained herein are always guaranteed in law and practice, including during conflict and states of emergency. This shall include a review of existing legislative, administrative and other provisions to assess compatibility with the Guidelines.
- b. States shall ensure that these Guidelines are widely disseminated, including to justice sector actors, the community, and to national human rights institutions, national preventative mechanisms, statutory oversight authorities and other institutions or organisations with a mandate to provide accountability, oversight or inspections to police stations, remand facilities and other relevant places of detention.

45. Application

States shall remain responsible for ensuring that the provisions of these Guidelines and other relevant guidelines developed by the African Commission on Human and Peoples' Rights pursuant to the African Charter on Human and Peoples' Rights, and other relevant international law and standards, are applied in places of detention, including those under the management of, or staffed by, private security organisations.

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.
- b. States shall ensure that where places of detention are under the management of, or staffed by, private security organisations, all personnel are properly trained in relation to the provisions and implementation of these Guidelines, the African Charter on Human and Peoples' Rights, and all other relevant guidelines developed by the African Commission and the United Nations.

47. Reporting

State parties to the African Charter, in their periodic reports to the African Commission on Human and Peoples' Rights, shall provide information on the extent to which national legislation, policy and administration pertaining to the use and conditions of arrest, police custody and pre-trial detention are consistent with these Guidelines.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.