

THE LUANDA GUIDELINES: A RIGHTS-BASED APPROACH TO ARREST AND PRETRIAL DETENTION IN AFRICA

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

A BLUEPRINT FOR PRETRIAL JUSTICE IN AFRICA

Why are the guidelines important and how were they developed?

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

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

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

“The guidelines reflect the collective aspirations of our states, national human rights institutions and civil society organisations in promoting a rights-based approach to this critical area of criminal justice.”

—Commissioner Med Kaggwa,
ACHPR Special Rapporteur
on Prisons and Conditions of
Detention in Africa

WHAT DO THE GUIDELINES COVER?

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

and accountability and ways to improve coordination between criminal justice institutions.

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

2. POLICE CUSTODY provides a framework for decision making on police bail or bond, and details safeguards for persons subject to police custody, including access to legal services, limitations on the use of force and restraints, safeguards during questioning and recording of confessions.

3. DECISIONS AROUND PRETRIAL DETENTION includes safeguards for suspects who are subject to a pretrial detention order, review procedures and mechanisms to minimise prolonged pretrial detention.

4. REGISTERS are designed to ensure transparency, and provide details regarding the type of information that should be recorded in all forms of record keeping, including arrest registers and those used in police custody and pretrial detention centres

where the information should be made available.

5. DEATHS AND SERIOUS HUMAN RIGHTS VIOLATIONS IN CUSTODY details the procedures that should be followed in the event of a death or rights violation in police custody or pretrial detention.

6. CONDITIONS OF DETENTION includes conditions in police custody and pretrial detention and specific safeguards that apply to these places of detention such as the separation of different categories of detainees.

7. VULNERABLE GROUPS covers groups identified by the African Charter as being at risk or having special needs within the criminal justice system including women, children, persons with disabilities and non-nationals.

8. ACCOUNTABILITY AND REMEDIES includes a range of measures such as judicial oversight, habeas corpus, independent complaints, investigation and monitoring mechanisms, data collection and dissemination and the provisions for redress.

IMPLEMENTATION OF THE GUIDELINES

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

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

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

What are some of the key actions needed to ensure implementation?

MONITORING AND REPORTING states are required to utilise the guidelines in their reports to the ACHPR. In turn, the Commission plays a key role as monitor of the implementation of the guidelines through state reporting and country visits allowing them to identify challenges, makes recommendations and ensure follow up.

ACCESSIBILITY, AWARENESS AND TRAINING are important to ensure that the guidelines are translated and disseminated in ways that are accessible to target communities. They can usefully be supported by a variety of practical tools and training materials.

NATIONAL IMPLEMENTATION PLANS are critical to promote implementation and should involve all relevant actors from the executive, security and justice institutions, national human rights institutions and civil society.

INFORMATION & NEXT STEPS

The ACHPR, civil society and national human rights institutions are working together to promote implementation of the guidelines including:

- ▶ The guidelines are available in the four African Union languages.
- ▶ Steps are underway to develop a number of practical checklists, templates and training guides to support the implementation of the guidelines.
- ▶ In a number of pilot countries national action plans are being developed.

