

Southern African Development Community (SADC)

Standard Minimum Guidelines for the Treatment and Management of Detainees



******Final Draft for Stakeholder Comments******

Prepared by the SADC Lawyers' Association

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Application of the SADC Minimum Standard Guidelines for the Treatment and Management of Detainees

These Guidelines will apply to the management of detainees in pre-trial detention, awaiting sentence and to those serving sentences following a legally recognised trial through a national court system of a SADC country. Places of detention where such detainees are held include police cells and correctional facilities housing either remand detainees or those serving prison terms. These guidelines will not apply to the management of detainees held in terms of military disciplinary or court martial proceedings or any proceedings outside of the nationally recognised criminal justice delivery system.

Definitions

Child - Refers to any person below the age of eighteen years. Children under the age of 14 years should not be detained.

Correctional Facility - Is an institution where detainees or inmates are housed as they await trial or sentence or when serving court imposed detention terms. This excludes police cells.

Detainee - Is a person detained lawfully in line with criminal justice processes and shall include a person in pre-trial, pre-sentence and/or police detention or a person serving a court imposed sentence.

Inmate - Refers to a person who is detained in a place of detention.

Place of detention/ detention facility - Is a place designated in law for the detention of a person who is deprived of his or her liberty in accordance with the law or criminal procedure. This includes detention in a police cell, a remand facility or a correctional facility for inmates serving their sentences.

Remand detainee – is a person who has been arrested and is in custody, either in a police detention facility or a correctional facility. This includes detainees who are awaiting trial (pre-trial) and as well as those awaiting sentence.

Torture -

Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, defines Torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions.

UNDERLYING ASSUMPTIONS

1. *The Southern African Development Community (SADC) Standard Minimum Guidelines for the Treatment and Management of Detainees (hereinafter referred to as “Guidelines”) are intended to show the spirit in which places of detention should be administered within the framework of the rights and duties espoused by international and regional law and principles, as well as those set out in the African Charter on Human and Peoples’ Rights and the SADC Treaty which aim at safeguarding the rights and dignity of humankind.*
2. *There is growing international consensus that pre-trial detention has negative implications on the rights of the detainee and the socio-economic wellbeing of the detainee, his/her immediate family and the wider society. As such, the justice delivery systems of the region must seek to avoid pre-trial detention as much as possible and only resort to such measures where alternatives are either unavailable or will not serve the interests of justice.*
3. *There is also growing international consensus that one of the measures to protect society against crime is to ensure - so far as possible - that upon his or her return to society a detainee is not only willing but able to lead a law-abiding and self-supporting life. Therefore, these Guidelines have been developed with a view that the responsibility of correctional facility administration shall be discharged in keeping with a State’s social objectives together with its fundamental responsibilities for promoting the well-being and development of all members of society, including inmates.*
4. *There is a reasonable expectation that the community, social institutions and civil society shall contribute towards ensuring that favourable conditions are created for the reintegration of the ex-inmates into society.*
5. *In view of the current disparities in the legal, social, and economic conditions within the SADC region, it is possible that these Guidelines may not be holistically applicable at all times in each of the SADC Member States. However, they aim to establish a regional minimum standard for the management of places of detention and treatment of detainees in the SADC region which all SADC Member States should aspire to and progressively seek harmonization of the systems as regards to:*
 - a. *protecting and ensuring the treatment of all detainees in a humane manner with respect due to their inherent dignity as a human person;*
 - b. *improving management practices in individual correctional facilities and to increase transparency and efficiency within the correctional services according to international standards;*
 - c. *enhancing the professionalism of correctional services staff and improving their knowledge and skills, as well as working and living conditions;*
 - d. *creating an enabling environment for civil society to collaborate with the correctional services administration with regard to improving the conditions and treatment of inmates and the working environment of correctional facilities;*
 - e. *Safeguarding the rights of pre-trial detainees in an effort to ensure that their stay in places of detention before trial is kept to the minimum.*

6. *SADC Member States should endeavour to take measures within three years of adoption of these Guidelines to ensure the implementation of these Guidelines on a consistent and ongoing basis.*
7. *Except for those limitations that are demonstrably necessitated by the fact of detention, all inmates shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and the African Charter on Human and People's Rights, and where the State is a party, to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the International Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, as well as such other rights as are set out in the United Nations and regional instruments.*
8. *Produced as a tool for SADC Member States and citizens, it is anticipated that these Guidelines will influence the creation of the needed institutional frameworks, enabling environment and adequate legislative provisions to protect society as a whole, strengthen the administration of criminal justice, safeguard the rights of detainees, improve correctional facility conditions, promote the rehabilitation of detainees and facilitate the coordination between the police, prosecution, judicial and correctional facility administration systems.*

RULES OF GENERAL APPLICATION

1. These Guidelines shall apply to all persons without distinction of any kind, including race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, sexual orientation, gender, marital status, pregnancy, disability or economic or social or other status.
2. No one shall be subject to the arbitrary imposition of any form of detention. Any form of detention or arrest shall only be ordered by, or be subject to the effective control of a judicial or other legally recognized authority for that purpose.
3. No person shall be arrested or detained without charge.
4. These Guidelines promote every individual's right to have his or her cause timeously heard by an independent and competent court or tribunal. This comprises:
 - (a) the right to appeal to competent national organs against acts violating his or her fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - (b) the right to be presumed innocent until proven guilty by a competent court or tribunal;
 - (c) the right to be informed of charges against him or her;
 - (d) the right to legal defence, including the right to be defended by counsel of his or her choice; and
 - (e) the right to be tried within a reasonable time by an impartial court or tribunal.
5. All detainees shall be treated with respect, due to their inherent dignity and value as human beings.
6. No person shall be subject to torture, or to cruel inhuman or degrading treatment or punishment. No circumstance whatsoever, including an order from a superior official or public authority, may be invoked as a justification for torture or other cruel, inhuman and degrading treatment or punishment.
7. Punishment is personal and can be imposed only on the detainee.
8. No one may be accused or convicted for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed.
9. There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention recognized or existing in any SADC Member State pursuant to law, conventions, regulations or custom on the pretext that these Guidelines do not recognize such rights or that they recognize them to a lesser extent.

10. Correctional services personnel and police officials shall endeavour in good faith to adhere to these Guidelines. Correctional services personnel and police officials who have reason to believe that a gross departure from these Guidelines has occurred or is about to occur shall report the matter to their superior authority and, where necessary, to other appropriate authorities or organs vested with review or remedial powers.
11. Any other person who has grounds to believe that a gross departure from these Guidelines has occurred or is about to occur shall have the right to report the matter to the senior correctional services personnel or police official at the correctional or detention facility in question, the national correctional services or police authorities, as well as to other appropriate authorities, and/or organs vested with review or remedial powers whether they be internal or external or the detention authority.

GENERAL HEALTH AND WELFARE

Accommodation

12. Because overcrowded accommodation compromises the health, safety and well-being of detainees and infringes on their dignity and human rights, detention authorities shall take all steps to eliminate overcrowding.
13. All accommodation provided for the use of detainees, and in particular all sleeping accommodation, shall meet all requirements of health, due regard being paid to climatic conditions. At the minimum:
 - 13.1. Each room or cell shall have sufficient floor space, which shall provide for 5.4 square meters per individual regardless of whether they are staying in dormitory accommodation or single cells.
 - 13.2. Detainees shall be provided with a single bed off the ground, and sufficient seating. A secure lockable storage facility should be provided for the safe keeping of personal belongings.
14. Where sleeping accommodation is in individual cells or rooms, each detainee shall occupy by night a cell or room by him or herself. Where dormitories are used, these shall be occupied by detainees carefully selected as being suitable to associate with one another. There shall be regular night supervision by officials on duty, in keeping with the nature of the institution.
15. In all places where inmates are required to live or work:
 - 15.1. The windows shall be large enough to enable the inmates to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation, due regard being paid to climatic conditions. The windows and other openings shall be protected against mosquitoes and other disease-bearing insects; and
 - 15.2. Natural light shall be available at all times, and artificial light shall be provided sufficient for the inmates to read or work without injury to eyesight.

Sanitation and Hygiene

16. The sanitary installations shall be adequate to enable every detainee to comply with the needs of nature when necessary and in a clean and decent manner. As a minimum, there shall be a working toilet for at least every 25 inmates for dormitory accommodation and a toilet in each room for single accommodation. Each toilet or toilet block shall be installed with a tap for washing. All toilets shall be maintained in working order and be kept clean.
17. All parts of a detention facility regularly used by inmates shall be properly maintained and kept scrupulously clean at all times. Detainees shall be provided with the means and materials to keep it clean.
18. Adequate bathing or shower installations shall be provided so that every inmate may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently or as necessary for general hygiene according to season and geographical region.
19. In order for detainees to keep their persons clean, they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
20. In order that detainees may maintain a good appearance compatible with their self-respect, facilities shall provide for the proper care of the hair and beard, and men shall be enabled to shave regularly. Women shall be given access to an adequate supply of sanitary pads during their menstruation cycles and a regular supply of water.

Clothing and bedding

21. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
22. Every detainee who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
23. Every detainee shall, in accordance with local or national standards, be provided with separate and sufficient bedding which shall be clean when issued, kept in good order, washed and changed often enough to ensure its cleanliness, and detainees shall be provided with the means and materials to do so.

Food

24. Without exception, every detainee shall be provided with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. As a minimum, every detainee shall be entitled to two wholesome and nutritious meals a day.

25. Fresh drinking water of a sufficient quantity shall be available to every inmate at all times and shall be available in the cells, rooms or dormitories. Where water is stored, it shall be stored in clean and suitable containers.
26. Food shall be provided that meets the religious requirements of detainees, and special diets must be made available to those who require it, such as detainees who are ill, HIV positive, pregnant or nursing babies.

Exercise and sport

27. Every detainee shall have at least one hour daily exercise, and in open air if the weather permits.
28. Detainees should be allowed at least 10 hours out of every 24 hours out of the cell, excluding time needed for sanitation and hygiene, or the time set aside for recreation.
29. Children and others of suitable age and physical health in a correctional facility shall receive physical and recreational training. Correctional facility administrations shall provide the necessary installations and equipment to facilitate this.
30. All detainees in a correctional facility shall be provided with access to radio or television programmes during prescribed periods.

Health Care

31. Every detainee shall have access to adequate health care and services available in the country in order to enable the detainee to lead a healthy life, without discrimination of any kind. This care and treatment shall be provided free of charge.
32. Every detainee is entitled to medical treatment, which must be provided by a medical officer, medical practitioner or specialist in a health care institution.
33. Due to the high prevalence of HIV and AIDS in the SADC region, every place of detention shall ensure the provision of adequate facilities for the care and treatment of detainees infected by HIV and suffering from HIV related illnesses. Such care and treatment, including the provision of anti-retroviral medication shall be provided to all detainees without discrimination on any ground. In particular the HIV and AIDS care, treatment and anti-retroviral medication shall not be withheld on the basis of a detainee's nationality or his or her sexual orientation.
34. Every detainee shall be allowed to be visited and treated by his or her own medical practitioner at his or her own cost.

35. At every institution there shall be available the services of at least one qualified medical doctor. The services of a qualified dental officer shall be available to every detainee, and one should visit a correctional facility at least twice a month.
36. Every detainee should be assessed and examined by a medical practitioner within hours of admission to the institution with a view to determining the detainee's mental and physical health, any need for immediate treatment, the segregation of vulnerable inmates, and for the identification and treatment of contagious diseases. The assessment should take place before detainees are integrated into the general population of the facility.
37. Detainees must be assessed to determine their dependence on drugs or alcohol and the necessary treatment, care and support must be provided to manage their withdrawal from the substance.
38. No detainee shall, even with his or her consent, be subjected to any medical or scientific experimentation which may be detrimental to his or her health.
39. Any detainee who is suffering from a mental or psychiatric illness shall be regularly assessed by a psychiatrist or medical practitioner qualified in psychiatry and shall receive the appropriate treatment. Such a person shall be referred to a designated specialist mental health institution where appropriate.
40. The use of anti-psychotics may only be administered with appropriate medical supervision.
41. Gender-specific health care services, equivalent at least to those available in the community shall be provided to female detainees. In all institutions accommodating females, there shall be special accommodation made for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in a correctional facility, this fact shall not be mentioned in the birth certificate.

ADMISSION TO DETENTION FACILITY

Register

42. In every place where a person is detained there shall be kept a register of all persons detained therein in a bound and sequentially numbered registration book. Where possible, the institution should also maintain an electronic record. The following information must be recorded:
 - a. Information concerning the identity of every detainee;
 - b. The reason(s) for his or her commitment and the authority therefor;
 - c. The day and hour of his or her admission and release;
 - d. The time and date of the arrest;

- e. The identity of the law enforcement officials who arrested the detainee and particulars of any vehicle used in conveying the detained person;
 - f. The date and time of any appearance before a judicial or other authority;
 - g. The date and time of any review about his or her detention, information about when the review took place and the outcome of the review;
 - h. Precise information concerning the place where a detainee is held in custody at any time, and information relating to transfer to another detention institution.
 - i. Requests for medical treatment, and where a detainee is receiving any treatment or medication, the details of such treatment or medication and its administration.
43. No person shall be received in any place of detention without a valid commitment order of which the details shall be entered in the register.
44. The details entered in such a register shall be communicated to the detained person, or to his or her counsel, if any, relative or any person nominated by the detained person in the form prescribed by law.
45. There shall be designated officials at any place of detention to keep and maintain such a register

Retention of detainee's property

46. All money, valuables, clothing and other effects belonging to a detained person, which under the regulations of the institution he or she is not allowed to retain, shall on his or her admission to a place of detention be placed in safe custody. The detained person shall sign a receipt certifying the intake by the institution of the articles and money that he or she was not allowed to retain.
47. An inventory of all property belonging to a detained person shall be signed for by both the detained person and a correctional facility or detaining officer as appropriate. Reasonable and necessary steps shall be taken by the administration at the detention facility to keep them in good condition, or, to hand them over to a person designated by the detained person.
48. On the release of the detained person all such articles and money placed in custody shall be returned to him or her except in so far as he or she has been authorized to spend money or send any such property out of the correctional facility or place of detention. The detained person shall sign a receipt for the articles and money returned to him or her.
49. If a person is detained in possession of prescription drugs or medicine, this shall be handed over to the detention facility's medical officer or officer-in-charge for safekeeping and to administer the medication to the detainee as required.

DETENTION FACILITY POPULATIONS

General

50. All detainees shall be made aware, by the correctional services administration, of the laws of the country applicable to the rights, rules and treatment of detained persons and to these Guidelines. Copies of these laws and guidelines shall be kept at the detention facility and made available to detainees on request.
51. A convicted person shall, where possible, be kept in a correctional facility near his or her usual place of residence unless he/she requests otherwise. Similar considerations shall apply in the case of pre-trial and un-sentenced detainees unless the place of trial creates administrative challenges relating to the transfer of the detainee or transportation of witnesses for purposes of trial.
52. No detained person shall be subjected to any forms of violence or to torture or cruel, inhuman or degrading treatment or punishment while being interrogated or questioned by the authorities. Safeguards must be put in place to protect the rights of detainees, which shall include keeping of records in a manner as may be prescribed by law regarding: the recording of interrogation sessions; the duration of the interrogation and intervals between sessions; the parties present; and details of officials conducting the interrogation.
53. Detainees shall be entitled to have their chosen legal representative present during all interrogations and must be informed of this right. A detained person, or his or her counsel, shall have access to all of the information pertaining to the detention and interrogations.
54. Each detention facility shall take steps to ensure the safe custody of every detainee and maintain security and good order in the detention facility.

Separation of Categories of Detainees

55. Pre-trial and un-sentenced detainees shall be kept separate from convicted and sentenced detainees.
56. Detainees who are children shall be kept separate from adults and in accommodation that is appropriate for their age.
57. A female detainee who has a child may keep the child with her until the child is weaned or is two years old, but subject to the best interests of the child.
58. Male detainees shall be detained separately from female detainees, and so far as is possible shall be detained in separate facilities. A facility which receives both men and women must keep the whole of the premises allocated to women entirely separate.

Correctional Facility Populations

59. As soon as possible after admission detainees in a correctional facility should be assessed in order to determine their needs, security classification and safety requirements, and detainees may be accommodated separately according to their classification. This may include consideration of:
- 59.1. Their vulnerability to becoming victims of violence, sexual violence or abuse by other detainees;
 - 59.2. Their education, rehabilitation and labour needs and requirements;
 - 59.3. The seriousness of the offence for which they have been convicted, and the risk they pose to other detainees;
 - 59.4. Their mental or physical health and health care requirements.
60. So far as possible separate correctional facilities or separate sections of a facility shall be used for the accommodation of detainees with special needs and requirements, to ensure order, safety and the implementation of rehabilitation and development programmes for the different categories of inmates.
61. So far as possible, correctional services administrations shall provide pre- and post-natal facilities for female detainees who are pregnant or for women with young children. A child may stay with its mother in a detention facility until the child is weaned or is two years old, but subject to the best interests of the child. Where children and nursing infants are allowed to remain in the correctional facility with their mothers, provision shall be made for a nursery staffed by qualified persons where the children and infants shall be placed when they are not in the care of their mothers.
- 61.1. Such children and their mothers shall be under regular supervision of social workers. Social workers or other competent authority responsible for the welfare of children shall assist the mother to determine the most suitable care option for the children when the child reaches the age where it should be removed from the correctional facility.

Specific Considerations for Categories of Inmates

Inmates under sentence

62. The correctional facility must provide or give access to as full a range of programmes and services to sentenced detainees so as to meet their developmental, educational and training needs and requirements in order to facilitate their rehabilitation and reintegration into the community on their release.
63. As soon as possible after admission, where it is feasible, and at regular intervals thereafter, suitably qualified correctional personnel shall assess each detainee with a view to determining their

development, education and training needs and to developing and implementing programmes or initiatives to respond to that need.

64. The correctional facility shall compile records of the activities and programmes undertaken by the detainee, which shall be kept and maintained in the detainee's file. Such file shall include any reports regarding his or her medical assessment and health requirements, which file should be kept up to date.
65. The correctional facility administration may institutionalise a system of privileges which are awarded to different classes of detainees which entitle detainees to benefits in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of the inmates in their treatment. The lowest level of privilege shall not be lower than the standards provided in these Guidelines.

Inmates with disabilities, or mental illness

66. The detention facility must ensure that detainees with disabilities are treated with dignity and are not subject to discrimination on the basis of their disability.
 - 66.1. A disabled detainee must be assessed by a medical practitioner with a view to determining his or her health and other needs, and any necessary treatment and care must be accorded to him or her.
 - 66.2. The facility must take all reasonable steps to facilitate the detainee's personal mobility and/or ability to communicate in a language and mode that the person understands, in order to promote the detainee's ability to live independently in the detention environment and to benefit from social interaction, education, training and development opportunities on an equal basis as other detainees.
67. Detainees whose medical assessment has determined that they have a mental illness or mental disability should not be detained in correctional facilities or police cells and arrangements shall be made to remove them as soon as practicable to appropriate medical institutions for the appropriate treatment and care. Until such time that a detainee is transferred the detainee must:
 - 67.1. Be placed under the supervision of a medical officer with specialised training in psychiatry, and receive the necessary treatment and care at state expense;
 - 67.2. Be accommodated in a room, dormitory or cell that is appropriate to his or her needs.
68. Mentally ill or disabled detainees who do not represent a danger to themselves or to others should be assessed to determine their suitability for release into the community under supervision.
69. Steps should be taken, by arrangement with the appropriate agencies, to ensure the continuation of necessary psychiatric treatment after release and the provision of social-psychiatric after-care.

Persons under arrest or awaiting trial

70. Unconvicted detainees are presumed to be innocent and shall, in every regard be treated as such.
71. Every detainee shall have the right to proceed to court so that the court may decide the lawfulness of his or her detention, and order his or her release if it is not lawful.
72. Recognizing the potential for abuse of authority with regard to arrested and pre-trial detainees, which may adversely impact on the human rights and dignity of pre-trial detainees, the following must be observed:
- a. Remand detainees shall be brought before a court or relevant judicial authority within forty eight (48) hours of arrest. The 48 hour rule shall run in respect of all the days of the week, including Saturdays, Sundays and public holidays.
 - b. At the first hearing of the court and at regular intervals after that, the court must consider the detainee's release from detention on bail or other non-custodial measure in order to prevent overcrowding of remand institutions and police cells and to prevent unnecessary detention of accused persons.
 - c. The national legislative frameworks in the SADC region shall be reviewed with a view to encouraging the practice of empowering and building the capacity of the police to handle the release of remand detainees (e.g. police bail) for certain offences, particularly in situations where there is a potential for a remand detainee to be detained for more than forty-eight (48) hours without the possibility of being presented before a court of law.
 - d. A remand detainee shall only be held in custody at the last resort.
 - e. SADC countries shall ensure that all courts have functioning systems that allow for the holding of initial court appearances by accused persons and hearings during weekends and public holidays.
 - f. To prevent overcrowding of remand institutions and to encourage smooth case-flow management, the trials for pre-trial detainees shall commence within thirty (30) days of their being charged with an offence and shall conclude within but not later than one hundred and twenty (120) days from the commencement of the trial. Where a trial of a detained person cannot be concluded within the prescribed time, the judicial officer shall immediately review the detention and where appropriate grant bail to the detainee.
 - g. In recognition of the advancement in education and training by judicial officers at the lower level of the justice delivery system in SADC, and in particular at Magistrate's Court level, and with a view to reducing pre-trial detention, SADC countries shall increase the jurisdiction of the Magistrate's Courts to allow them to determine bail applications and conduct trials and impose sentences in serious offences that are currently the preserve of the High Courts.
73. Within the limits compatible with the good order of the institution, remand detainees may have their food procured at their own expense from the outside, either through the correctional facility or police administration or through their family or friends. Otherwise, the administration shall provide their food.
74. A remand detainee shall be allowed to wear his or her own clothing if it is clean and suitable, and be supplied with soap and other cleaning articles to keep him or herself and his or her clothing clean and hygienic. If a remand detainee wears correctional facility dress, it shall be different from that supplied to convicted inmates.

75. A remand detainee shall be offered the opportunity to work, but shall not be compelled to work other than work necessary to keep the detention facility clean. If he or she chooses to work, he or she shall be paid for that work.
76. A remand detainee shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution and shall be entitled to keep them in the facility with him or her.
77. A remand detainee, irrespective of nationality, shall as soon as possible after his or her arrest, be allowed to contact and inform his or her family of his or her detention and place of detention. He or she shall be given all reasonable facilities for communicating with his or her family, and for receiving visits from them, subject only to restrictions and supervision as is necessary in the interests of the administration of justice and of the security and good order of the institution.
78. If a remand detainee is a non-national, the officer in charge of the detention facility must without delay notify the relevant consular authorities of his or her country or where there is no such representative, with a diplomatic representative of the state or international organisation which protects the interests of such a detainee. The detainee must be provided with the means to communicate.
79. A remand detainee shall have the right to consult and meet with a legal practitioner of his or her choice prior to interrogation and at any other point in the legal process. If the detainee cannot afford the services of legal counsel, he or she shall have the right to access free legal aid provided by the State. The detainee shall be supplied with writing material on request in order to help prepare his or her legal defence. Interviews between the pre-trial detainee and his or her legal adviser may be within sight but not within the hearing of a police or correctional facility official.
80. In every detention facility there should be sufficient information pertaining to the laws of the country and the rights of a detainee which detainees may consult.
81. SADC Countries shall put in place a system and procedure for the release on bail of persons resident in the SADC region arrested outside the country where a person is ordinarily resident to allow such persons to return to their country of residence whilst awaiting trial so as to reduce the numbers of remand foreign nationals in SADC detention facilities, provided the state in which the person is arrested is reasonably satisfied that the detained person will return to face trial.

Civil Detention

82. No person shall be detained for failing to settle a debt or for any civil liability.
83. SADC member states shall remove legal provisions where they exist allowing for the detention and imprisonment for persons as a result of civil liability.

Detainees Awaiting Implementation of the Death Penalty

84. Member states shall abolish the death penalty.
85. Until such time as the death penalty is fully abolished, any detainee awaiting the implementation of the death penalty shall be treated in full accordance with the Guidelines and international and regional standards
86. Detention facility officials shall monitor all death row inmates to ensure that no detainee is kept on death row for a prolonged period of time as this amounts to cruel, inhuman and degrading treatment and where it is proved that a detainee has been kept on death row for a prolonged period of time, the death penalty shall be commuted to life imprisonment.

SOCIAL RELATIONS AND AFTER-CARE

87. A detainee shall be entitled to maintain and develop relations with his or her family, and shall be encouraged by the detention authority to do so, especially where a detainee is a child.
88. Detainees shall be encouraged and assisted to maintain and establish relations with persons outside the correctional facility as may promote the best interests of his or her family and his or her own social rehabilitation and reintegration.
89. The detention authority should encourage community organisations, agencies and faith based organisations or individuals to interact with sentenced detainees in order to facilitate their rehabilitation and reintegration into the community.
90. The detention authority shall ensure that sentenced detainees are prepared for their release into society after completion of their sentence, and should facilitate their entry by helping them to establish contact with organisations and service providers who can assist with placement in suitable accommodation, employment opportunities, and seeing to their social welfare requirements.
91. All detainees shall have the right to vote in national elections and national referenda.

ACCESS TO SERVICES, INFORMATION, COMMUNICATION AND CONTACT WITH FAMILY AND OTHER RELEVANT PERSONS AND INSTITUTIONS

92. Every inmate in a correctional facility shall have the right to receive and send information and to express and disseminate his or her opinions within the provisions of the law.

93. Every detainee shall be entitled to communicate with people outside the place of detention, in particular with his or her family and legal counsel or any other person of their choice. The detainee shall be provided with the means to do so.
94. Promptly after arrest and after each transfer from one place of detention to another, a detained person shall notify members of his or her family or other appropriate persons of his arrest or relocation, or request the office in charge of the detention facility to do so on his or her behalf.
95. A detained person who is a foreign national shall be promptly informed of his or her right to communicate with the diplomatic or consular representative of his or her country or where there is no such representative, with a diplomatic representative of the state or international organisation which protects the interests of such a detainee. The detainee must be provided with the means to communicate.
96. If a detained person is a child, is mentally ill or disabled or is incapable of understanding his or her entitlement, the competent authority shall on its own initiative undertake the notification referred to above.
97. A detained person shall have the right to be visited by members of his or her family, or religious counsellor subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Access to legal assistance

98. Every detained person shall have the right to assistance of a legal counsel. He or she shall be informed of his or her right by the competent authority upon arrest and shall be provided with reasonable facilities for exercising this right.
99. A detained person may consult a legal practitioner of his or her choice and at his or her own expense. If a detainee is unable to pay, he or she shall be entitled to legal counsel and assistance at state expense where the interests of justice so require.
100. The detainee shall be supplied with writing material on request in order to help prepare his or her legal defence. Interviews between the detainee and his or her legal adviser may be within sight but not within the hearing of a police or correctional facility official.
101. The state and the detention facility must facilitate regular visits by legal representatives in order to ensure the detainee's right of access to the law.

Practice of Religion

102. Every detainee shall have the right to freedom of conscience, religion and belief, and is entitled to communicate with and be visited by a religious worker of his or her choice.

103. Every detainee shall be entitled to attend religious services and meetings, and have religious literature in his or her possession. Where the detainee's religion or beliefs requires a particular diet or clothing, the detainee must be provided with the relevant diet and be allowed to wear the prescribed religious clothing.

104. Where the correctional institution contains a sufficient number of inmates of the same religion, a representative of that religion shall be appointed.

Education

105. Every detained person shall have the right to education. Correctional facilities shall provide educational opportunities for detainees. Children, and those who are illiterate, may be compelled to attend educational classes.

106. A detained person shall have the right to obtain, within the limits of available resources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or correctional facility.

107. Every correctional institution shall have a library for the use of detainees, adequately stocked with recreational, educational and instructional books, and detainees shall be encouraged to make full use of such library.

108. So far as practicable, the education of inmates shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Cultural Activities

93. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental, spiritual and physical health of all detainees.

Work

94. Every detainee has the right to work and sentenced detainees may be compelled to work or be subject to forced labour. Sufficient work must be provided to keep detainees busy during a normal working day, but for no longer hours per day than the law permits. Detainees shall be permitted at least one rest day per week, and time to attend other cultural, religious, education, recreation and vocational opportunities.

95. As far as possible, detainees should be remunerated for their work at a rate commensurate with the national minimum wage for the type of work undertaken. Part of their earnings may be used to purchase articles for their own use while in custody, while they should be encouraged to save or invest part of their earnings which would become available to the detainee on release from custody.

96. A detainee may not be compelled to work as a form of punishment.
97. Work shall not be of an afflictive nature, but should be aimed at providing the detainee with useful skills that can be used on his or her re-entry into society after release.
98. In a correctional facility detainees may be required to work in a capacity which would contribute to the sustainability of the correctional facility, such as in agriculture, mechanical workshops or building.
99. Children may only be required to work for the purposes of training or obtaining skills for their development, and the work must be appropriate to their age.
100. The precautions laid down to protect the safety and health of a free workforce shall be equally observed by detention administrations. Provision shall be made to indemnify detainees against industrial injury on terms no less favourable than those extended to people in the community.

DISCIPLINE AND PUNISHMENT

101. Discipline and order shall be maintained with firmness and with no greater means necessary than for maintaining order and security in the facility, and in accordance with procedures provided for in law and international standards. Disciplinary measures may only be taken in correctional facilities.
102. The law must set out in detail the actions, which if committed by a detainee, constitute a disciplinary offence. The law must also indicate the disciplinary procedure to be followed in determining whether the detainee has committed the offence, and the types and duration of disciplinary sanctions that may be imposed. The types of disciplinary offences, procedure and possible sanctions must be made known to all detainees.
103. No disciplinary measure or punishment may infringe upon a detainee's basic rights and should always uphold the fundamental human dignity of the detainee.
104. Punishment which constitutes torture or cruel, inhuman or degrading treatment or punishment is prohibited. Disciplinary measures involving corporal punishment, solitary confinement, placement in a dark cell, reduction or denial of dietary requirements, and hard labour are prohibited.
105. A detained person shall be informed of the disciplinary charges against him or her, and has the right to be heard before disciplinary action is taken. He or she shall have the right to bring such action to higher authorities for review.
106. No detained person shall be employed, in the service of the institution, in any disciplinary capacity or given authority to punish other detainees.

107. The medical officer shall conduct daily visits to detainees where the implementation of disciplinary measures involves segregation of a detainee from the general population, and he or she shall advise the officer-in-charge if he or she considers the termination or alteration of the disciplinary measure necessary on grounds of physical or mental health.
108. Every detainee shall have the right to challenge any disciplinary measure before a higher authority before it is implemented.

INSTRUMENTS OF RESTRAINT

109. Instruments of restraint, such as handcuffs, chains, electroshock shields or instruments, irons and strait jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances, and only for the minimum period of time:
- a. As a precaution against escape during a transfer, provided that they shall be removed when the inmate appears before a judicial or administrative authority;
 - b. On medical grounds by direction of the medical officer;
 - c. The officer-in-charge must authorise any use of mechanical means of restraint and only if it is necessary for the safety of the detainee or other persons or to prevent damage to property. Where restraints have been applied, the officer-in-charge shall at once notify the medical officer and report to the higher administrative authority.
110. The type of restraints which may be used, their duration and manner of use must be determined in national law.

USE OF FORCE

111. Law enforcement officials and custodial officials shall in their relation with detainees not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.
112. Officials shall not use force except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody.
113. Only the minimum amount of force may be used.
114. Officials who use force, and officials witnessing the use of force, must report the incident immediately to the head of the detention institution.
115. Except in special circumstances, officials working in direct contact with detainees shall not be armed. Officials shall not be provided with firearms unless they have been trained in their use and are regularly tested on their proficiency of the use of firearms.

116. Any detainee injured as a result of the use of force must undergo an immediate medical examination and the necessary treatment. The head of the detention facility shall be informed of the injury.

117. Detention officials shall be trained in the use of non-forceful and non-violent methods of resolving disputes or conflicts and be encouraged to use them.

INFORMATION PROVIDED TO DETAINEES

118. Every detainee on admission shall be provided with written information about the regulations governing the treatment of detainees of his or her category, the disciplinary requirements of the detention facility, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him or her to understand both his or her rights and his or her obligations and to adapt him- or herself to the life of the facility.

119. If a detainee is illiterate or unable to read or understand the written communication, the information shall be conveyed to him or her orally and in a language that he or she understands.

COMPLAINTS AND REQUESTS

120. Every detainee shall have the opportunity daily of making requests or complaints to the officer-in-charge of the institution or to an authorised official. The official must record all complaints and requests and the steps taken in dealing with them. The official must deal with the complaints and requests promptly and must inform the detainee of the outcome.

121. Every detainee shall have the right to make complaints and requests and to have a private interview with members of any independent oversight mechanism and they shall not be sanctioned for doing so.

122. Every detainee, his or her legal representative or family member shall have the right to make a complaint and where appropriate to lay criminal charges to the relevant authorities regarding his or her treatment, including any allegations of torture or cruel, inhuman or degrading treatment or punishment, and that complaint shall be promptly and partially examined by the relevant authorities. Steps must be taken to ensure that the detainee and any witnesses are protected against any ill-treatment or intimidation as a result of making the complaint.

NOTIFICATION OF DEATH, ILLNESS, OR TRANSFERS

123. Upon the death, serious illness, or serious injury to a detainee, or his or her removal to an institution for the treatment of a mental or other illness, the person in charge of the institution shall at once inform the detainee's spouse, partner or family member.
124. A detainee shall promptly be informed of the death or serious illness of any close relative, spouse or partner. Inmates shall also be allowed to attend the funerals of close relatives as deemed appropriate.

TRANSPORT OF DETAINEES

125. Whenever a detainee is conveyed to or from a detention facility, he or she shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect him or her from insult, curiosity and publicity.
126. Detainees may only be transported in vehicles which have adequate ventilation or light, and steps shall be taken to ensure their safe custody.

INDEPENDENT OVERSIGHT

127. SADC States shall take steps to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), to establish one more National Preventive Mechanisms, and to implement OPCAT.
128. In order to supervise the strict observance of relevant laws, regulations, and these Guidelines, and to regularly examine the treatment of persons held in detention with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment, all detention facilities must be regularly visited by representatives of one or more oversight mechanism which is functionally independent of the institution in which the person is detained.
129. Oversight bodies or individuals may include, but are not limited to, a National Preventive Mechanism; an ombudsman for correctional or detention facilities; magistrates; judges; the National Human Rights Institution; and commissioners and representatives of the African Commission on Human and People's Rights, or similar international and regional bodies.
130. The oversight mechanism must make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detained persons, and to prevent torture and other cruel, inhuman and degrading treatment or punishment in line with these Guidelines and international norms, and may submit proposals and observations concerning draft or existing legislation.
131. In order to fulfil their mandate, the oversight mechanism shall have:
- a. Access to all information concerning the number of persons detained in the institution;
 - b. Access to all information referring to the treatment of those persons as well as their conditions of detention;

- c. Access to all places where persons are detained as well as their installations and facilities;
- d. The opportunity to have private interviews with detainees, with a translator if necessary, and with any other person the mechanism deems may supply relevant information; and
- e. The liberty to choose the places they want to visit and the persons they want to interview.

132. States in the SADC region shall put in place mechanisms that allow faith based organisations, human rights workers, business and civil society actors and other actors to visit detention facilities and to provide recommendations on the improvement of conditions of detention and management of detainees.

DETENTION OFFICIALS

133. Officials recruited or appointed to work with detained persons, either in a police detention facility or a correctional institution, must be carefully selected on the basis of their integrity, humanity, professional capacity and personal suitability for the work of the detention institution.

134. In the recruitment process, the recruitment authority shall ensure that there is no discrimination on the basis of race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, sexual orientation, gender, marital status, pregnancy, disability or economic or social status.

135. A correctional facility should be a civilian institution and officials must be appointed as civil servants. Officials shall work on a full time basis.

136. Detention institutions must adopt a code of conduct which all officials must adhere to, based on the United Nations Code of Conduct for Law Enforcement Officials and the Southern African Regional Police Chiefs Cooperation Organisations Code of Conduct.

137. All officials must have an adequate standard of education, and shall undergo sufficient training on their recruitment on their general and specific duties. They must be declared competent before they may work with detainees. Officials must receive regular and appropriate in-service training to keep them informed of the correct standards and treatment of detainees and international and regional human rights norms and on their responsibilities in this respect.

138. Officials working in detention facilities shall at all times fulfil the duty imposed on them by law, by serving the community and by protecting all persons against illegal acts and consistent with the responsibility required of their profession.

139. All detention personnel shall at all times conduct themselves and perform their duties so as to influence the detainees for good by their example and to command their respect.

140. There shall be an officer-in-charge of each institution where detained persons are held in custody who shall be employed on a full time basis. The officer-in-charge of a detention facility shall be adequately qualified for his or her task by education, character, administrative ability, suitable training and experience.
141. So far as possible, the personnel in correctional facilities shall include a sufficient number of specialists including but not limited to medical doctors, psychiatrists, psychologists, social workers, teachers, lawyers and trade instructors. Whenever possible and with the necessary supervision, qualified detainees such as lawyers, medical doctors, teachers and others may be permitted to assist other detainees in need of these specialist services
142. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.
143. At least one medical doctor shall be appointed to work at the institution and shall make daily rounds and be enabled to attend, without delay, to medical emergencies on the premises. The doctor shall be assisted by other suitably qualified medical personnel who shall be appointed to work in correctional facilities on a full-time basis.

Recommended Measures for Respecting Diversity and Human Dignity

144. All detention facilities shall maintain a record of the personnel who are on duty and their area of general responsibility and specific responsibility while on duty. Only personnel on duty shall have access to the correctional facility, outside of scheduled inspections and visitations.
145. Every detention facility accommodating women shall be under the authority of a female official who shall maintain the keys to that institution.
146. No male personnel shall enter the part of the institution set aside for women unless accompanied by a female official and no female official shall be allowed to enter a part of the institution set aside for men unless accompanied by a male officer.
147. A female detainee may only be searched by a female official and a male detainee may only be searched by a male official, and not in the presence of members of a gender different to that of the detainee.
148. In an institution which handles children, at least two correctional facility officers shall at all times be on duty and shall accompany one another on scheduled rounds and when responding to emergencies while on duty.

Working conditions

149. Officials working in detention facilities shall be entitled to fair and humane working conditions which shall abide with fair labour practices as prescribed in national law to the extent that it is consistent with international law and good practice.

150. Where accommodation is provided for officials, this should be humane and comfortable and respectful of their dignity and which enables them to uphold humane treatment and conditions for detainees.

International Instruments Consulted in the Development of the Guidelines

- African Charter on Human and People's Rights, 1981
- American Bar Association Criminal Justice Standards on the Treatment of Prisoners: 2010, 2011
- 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, Havana, 27 August to 7 September 1990.
- International Committee of the Red Cross: Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance, 2012
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Kampala Declaration on Prison Conditions in Africa, 1996
- Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002
- Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, 2003
- Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct
- United Nations Code of Conduct for Law Enforcement Officials
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- United Nations Convention on the Rights of Persons with Disabilities
- United Nations Convention on the Rights of the Child, 1989
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Resolution 2010/16.
- United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955
- Universal Declaration of Human Rights, 1948