

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

---

**African Union DDR Operational Guideline**  
**on detention and DDR**

## Contents

<b>AU Guidelines on detention and DDR .....</b>	<b>1</b>
<b>1. Introduction, and legal framework for detention by AU peace support missions .....</b>	<b>3</b>
1.1. Purpose of these Guidelines .....	3
1.2. Legal Framework for detention by AU peace support missions .....	4
1.2.1. Authority and grounds to detain .....	4
1.2.2. Who has legal obligations? .....	6
1.2.3. The relationship with the host State.....	8
<b>2. Operationalizing detention by peace support missions .....</b>	<b>9</b>
2.1. Receipt of detainees .....	9
2.1.1. Security / restraints.....	10
2.1.2. Searches .....	10
2.1.3. Detainee registration and notification.....	12
2.1.4. Addressing a detainee’s immediate needs .....	13
2.1.5. Information of rights.....	13
2.2. Next steps .....	14
2.2.1. Detainee register and filing.....	14
2.2.2. Interviewing and questioning of detainees .....	15
2.2.3. Family and consular notification.....	16
2.3. Release, transfer or continued detention.....	17
2.3.1. Release, including into a voluntary DDR programme .....	17
2.3.2. Transfers .....	18
2.3.3. Continued detention.....	19
2.4. Conditions for continued detention .....	20
2.5. Foreign detainees.....	24
2.6. Use of force and firearms .....	24
2.7. Detainee monitoring.....	25
2.8. Deaths in custody.....	25
2.9. Complaints .....	26
2.10. Implementation .....	26

# 1. Introduction, and framework for detention by AU peace support missions

## 1.1. Purpose of these Guidelines

Detention – which is any deprivation of liberty, however it is called and for however long or short it lasts - is an almost inevitable task for AU peace support missions, whether in the DDR context of disarmament and screening or the operational need to capture/arrest and detain persons to fulfil the mission’s mandate.

First, detention – even if only short-term - is an almost inevitable first step in any DDR process. This is because surrendering combatants normally need to be disarmed, screened and demobilised in conditions that ensure both their own security (e.g. because of the danger of reprisals against “defectors”) and the mission’s security (e.g. in case the individuals are feigning surrender in order to mount an attack within the mission’s compound). While there is often some degree of confusion regarding the overlap between DDR and detention, persons such as “defectors” or “surrendered” who are “held” in “reception centres” (including persons who are in “protective custody” because they would be likely to be attacked if they left the site) are, legally speaking, detainees as long as they are not free to leave without having to obtain authorisation to do so.

Second, AU Peace Support Missions are increasingly being mandated to use “all necessary measures” to complete their missions (missions which increasingly include the protection of civilians). While it is well established and understood that such mandates authorise the use of (armed) force, it is also implicit that missions may also use all necessary means short of the use of force, including, necessarily, arrest / capture and detention, to achieve their mandates. Indeed, it is inherent in the scheme of international law that a mission that is empowered to use (lethal) force against an individual not only may, but must, arrest/capture and detain that individual instead: international law provides that where the situation of violence is not an armed conflict, armed force is a last resort,<sup>1</sup> and even in armed conflicts, force may only be used to the extent that it is militarily necessary.<sup>2</sup>

Moreover, for various reasons, including political, operational, humanitarian and legal ones, any detention by AU peace support missions should, as a matter of principle, be kept to the shortest time possible, and detainees should be either released (including into voluntary DDR programs) or transferred to the competent authorities of the host State. When it comes to transfers, however, international law prohibits detainee transfers where there is a real risk that certain of the detainee’s fundamental rights will be violated afterwards.<sup>3</sup> In order to comply with this obligation,<sup>4</sup> AU peace support missions may be required to detain individuals for longer than envisaged or desired, either because a review of such risks is pending or because, after such a review, the risks are well-founded and cannot be sufficiently mitigated.

These Guidelines aim to provide standardised, concrete, operational guidance to Mission personnel, from the Head of Mission to individual unit commanders, on how to deal with detainees in compliance with international law and standards. Besides the legal obligation on the AU and AU missions to respect applicable international law relating to detention, doing so carries various rather more practical and operational benefits. First, it protects missions from legal claims. Second, it is also essential for the reputation of both the mission and the AU itself. Third, crucially, it may encourage enemy combatants to surrender.

Because the legal principles and the operational considerations are the same whether a person is detained after surrendering, after being arrested or captured, or after being transferred by another detaining authority, these guidelines apply to all three categories of detainee.

## 1.2. Legal Framework for detention by AU peace support missions

### 1.2.1. Authority and grounds to detain

There are various possible sources (“legal bases”) for a peace support mission’s authority to detain. These can include:

- a binding mandate from the UN Security Council under Chapter VII of the UN Charter<sup>5</sup> and/or the AU Peace and Security Council<sup>6</sup>, in conformity with international law,<sup>7</sup> authorising the use of “all necessary means” to achieve certain objectives;
- *where the mission is party to an armed conflict*, the inherent authority, under international humanitarian law, to intern persons for imperative reasons of security,<sup>8</sup>
- the Status of Forces / Status of Mission Agreement between the AU and the host State, which may permit the Mission to apprehend detain persons committing, or attempting to commit, a crime, and/ or persons suspected of having committed a crime; and / or
- an ad hoc request by the competent authorities of the host State.

#### Classification of situations of violence

Situations of violence can, as a matter of law, be classified into armed conflicts and “other” situations of violence.

Armed conflicts may be either international or non-international:

- International armed conflicts exist whenever there is resort to armed force between two or more States or multinational forces.
- Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and/or multinational forces, on one hand, and the forces of one or more armed groups on the other hand, or between such groups arising on the territory of a State. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation.<sup>9</sup>

Other situations of violence are situations in which violence is engaged in collectively, with significant humanitarian consequences, but which do not reach the threshold of an armed conflict.

The legal classification of a situation of violence is governed by the facts on the grounds, not statements of the parties or international organisations, or a mission’s mandate.

Regardless of the source of the authority to detain, the prohibition under international law of arbitrary detention and the “principle of legality” mean that the grounds and procedures

for detention must normally be established by law or regulation.<sup>10</sup> However, because the AU is not a State and does not issue laws or regulations, the grounds and procedures for detention must be established in a document approved at an equivalent level (e.g. approval by, at least, the AU Commissioner for Peace and Security).

The possible grounds for arrest / capture and detention may include, depending on the mission and the various possible legal bases for its authority to detain outlined above, the following:

- a) where the mission is party to an armed conflict, and there are imperative reasons of security to detain the individual (this constitutes internment, or administrative detention), and / or
- b) where a mission is mandated, and/or authorised through its Status of Mission / Status of Forces Agreement, to assist host State law enforcement authorities in the apprehension and detention of alleged criminal offenders and the individual is suspected of committing or having committed, and / or
- c) in order to respond to a request by the competent police and/or judicial authorities of the host State to arrest/ capture and/or detain an individual on its behalf.

It is the responsibility of the detaining authority, in the first instance, to determine whether sufficient grounds for detention exist.

#### **Internment / administrative detention v. criminal detention**

Internment, or administrative detention, is defined as the deprivation of liberty of a person that has been initiated / ordered by authorities other than judges without criminal charges being brought against the internee/administrative detainee. Internment is an exceptional measure of control that may be ordered for security reasons in armed conflict, or for the purpose of protecting State security or public order in non-conflict situations provided the requisite criteria have been met.<sup>11</sup>

Internment/administrative detention is a measure of control aimed at dealing with a person who poses a real threat to State security, currently or in the future, in situations of armed conflict, or to State security or public order in non-conflict situations. By contrast, a person who is suspected of having committed a criminal offence, whether in armed conflict or other situations of violence, has the right to benefit from the additional stringent judicial guarantees provided for in humanitarian and/or human rights law for criminal suspects, which include the right to be tried by a regularly constituted, independent and impartial court.<sup>12</sup>

Given that detainees must be able to challenge the legality of their detention,<sup>13</sup> the grounds and procedures for detention must be communicated without delay to all detainees. This should include the process and deadline for arraignment before a judge for indictment in case of detention for a criminal offence, or – in the case of internment of persons posing an imperative threat to security where the mission is party to an armed conflict – the procedure for periodically reviewing that the individual continues to pose such a threat.

Where the grounds for detention is that the individual is suspected of committing or having committed a criminal act or is based on a request from the competent host State authorities

(see grounds (b) and (c) above), the detention must respect not only applicable international law and standards but also the national criminal law and procedure of the host State.

### 1.2.2. Who has legal obligations?

The welfare of a detainee may be the legal responsibility of several authorities which may have concurrent – but sometimes different - legal obligations.<sup>14</sup> They may include

- (i) the AU Commission,
- (ii) the individuals responsible for arrest / capture and custody (e.g. the individual soldiers and/or police officers guarding the detainee) and their superiors,
- (iii) their sending State(s), and
- (iv) the host State (e.g. if it – rather than the mission - orders / requests the detention or if it is detaining a person for/on behalf of the mission).

These guidelines focus on the responsibilities of the AU Commission and the personnel of AU peace support missions.

#### **The detaining authority and the principle of command responsibility**

The detaining authority is the mission unit – represented by the commanding officer – that has the physical custody of a detainee.

The principle of command responsibility provides that commanders and other superiors are responsible for preventing violations of the law, and for taking necessary action, including disciplinary, where violations have occurred.

The fact that a superior did not order, authorise or knowingly acquiesce in a violation of the law by a subordinate does not relieve him of responsibility if he knew, or owing to the circumstances at the time, should have known, that subordinates were committing or about to commit crimes, and he failed to take all necessary and reasonable measures within his power to prevent or suppress their commission, or to submit the matter to the competent authorities for investigation or prosecution.<sup>15</sup>

#### **Legal obligations of the AU Commission and AU peace support missions**

The AU Commission is legally responsible for the activities of AU peace support missions, because of its command / control over the mission.<sup>16</sup>

While the AU is not a State and is not party to international law treaties, it is bound to respect applicable international law, including customary international humanitarian, human rights and refugee law.<sup>17</sup>

The body of law which the mission – and mission personnel - must apply depends on the factual situation, namely

- a. whether or not the situation of violence is an armed conflict,
- b. where there is an armed conflict, whether or not the mission is party to it, and
- c. the grounds and basis on which the individual is detained.

- If an AU peace support mission is deployed in a situation of collective violence which is not an armed conflict (e.g. because hostilities have not reached the required level of intensity, or because the violence is not attributable to armed groups with a sufficient level of organisation), it must respect customary international human rights and refugee law.<sup>18</sup> Because international human rights treaties often lack detailed provisions on issues relating to detention, internationally accepted standards provide vital guidance.<sup>19</sup>
- If an AU mission is deployed in a country where there is an armed conflict and the mission is party to that armed conflict because it is engaged in hostilities that are related to it, then it must also respect customary international humanitarian law.<sup>20</sup> However, international human rights law and standards – including in particular provisions regarding conditions of detention - continue to apply where they are not modified by more specific rules of IHL.<sup>21</sup> Moreover, if the mission is party to an armed conflict, mission personnel still have to apply human rights law - not international humanitarian law - for actions/operations undertaken but having no nexus with the AC (e.g. protecting civilians against criminal activity not related to the conflict, or involvement in policing activities).

In addition to the obligation to respect applicable international law, Status of Forces / Status of Mission Agreements between the mission and the host State normally require that AU peace support missions respect the latter's national law. Where, however, there is a conflict between applicable international law and the domestic law of the host State, the former must prevail.

#### **Legal obligations of contributed personnel and their sending States**

In addition to the above, mission personnel are also bound by the domestic law of their sending States, and sending States are bound, under international law, to ensure that their personnel respect obligations under the treaties to which those States are party, as well as customary international law. It is important to note that both the AU and the sending State can have concurrent legal responsibility for the actions and omissions of the personnel, depending on the command and control structure of the peace operation.<sup>22</sup>

Further, TCC/PCC MoUs between the TCCs / PCCs and the AU require adherence by contributed personnel to the Status of Forces / Status of Mission Agreement; as mentioned above, these agreements in turn normally require that contributed personnel adhere to the national law of the host State.

#### **The obligation to respect - and to ensure (that others) respect - international law**

The AU is not only obliged to respect international law, but also to do everything feasible to ensure that others (including participating States, and the host State) respect it.<sup>23</sup> Further, the AU must not facilitate violations by others.<sup>24</sup>

### 1.2.3. The relationship with the host State

An AU mission's legal relationship with the host State is governed by international law, in particular any agreements of a binding nature between the two, such as the Status of Mission / Forces Agreement and any Memoranda of Understanding and/or ad hoc agreements made from time to time.

The power to arrest and detain is in principle the sovereign prerogative of the Host State (with the exception of the right of a party to an armed conflict to detain persons for imperative reasons of security). Status of Mission / Forces Agreements can provide Missions with the legal authority to arrest/capture and detain, but this is rare, and the legal basis and modalities for a mission's power to detain are subject to a variety of political, operational and legal considerations:

- As for political considerations, the mission and the host State may have different views on who should be detained and who should be released.
- As for operational considerations, missions are rarely given the necessary resources required for them to undertake long-term detention, so missions will normally want to detain for as short a time as possible before transferring their detainees to the appropriate - normally host State - authorities. (At the same time, however, the host State may not have the capacity to hold detainees in adequate conditions.)
- Finally, as for legal considerations, a mission's mandate (e.g. to protect civilians) may not be backed up by the necessary powers to fulfil it. For example, while a mission may have the power to use lethal force against persons attacking civilians, it may not be expressly given the power to apprehend and detain those persons. This is particularly the case where the mission is not party to an armed conflict and thus has no inherent power under international humanitarian law to detain persons for imperative reasons of security.

It is therefore natural that whenever a mission apprehends and detains an individual, it should notify without delay the authorities of the host State. Detainee notification and transfer modalities can and should be included in mission-specific detention SOPs. In addition, a bilateral detainee transfer agreement between the AU and the host State should be negotiated with, and annexed to, the Status of Mission / Forces Agreement. Such a transfer agreement should set out the conditions on which detainees may and may not be transferred, in order to ensure, in particular, compliance by the mission of its obligations under the principle of "non-refoulement".

#### **The principle of "non-refoulement"**

The principle of non-refoulement is a rule of international humanitarian, human rights and refugee law that prohibits transfers of detainees where they would subject the detainee to a real risk of either:

- torture and cruel, inhumane or degrading treatment or punishment,<sup>25</sup>
- arbitrary deprivation of life, including execution after a trial that does not respect internationally-recognised judicial guarantees,<sup>26</sup>

- enforced disappearance,<sup>27</sup>
- having his / her life, liberty or physical integrity threatened on account of the detainee's race, religion, country of origin, membership of a particular social group or political opinion, or by events seriously disturbing public order,<sup>28</sup> or
- under-age recruitment to armed forces and armed groups or of participation in hostilities.<sup>29</sup>

The detainee transfer agreement should contain measures to mitigate the risks to detainees after transfer, such as commitments to (i) treat transferred detainees humanely and, where there are risks of an unfair trial, not to carry out capital punishment, (ii) detain them at specified sites where treatment and conditions are considered to respect international law and standards, and (iii) to allow the mission and other appropriate organisations<sup>30</sup> to visit them to ensure that those commitments are respected and, (iv) if they are not, to ensure that all necessary corrective measures are implemented. Such measures may result in the mission being able to transfer detainees when it would otherwise be legally prohibited from doing so.

A model detainee transfer memorandum of understanding is annexed to these Guidelines.

## 2. Operationalizing detention by peace support missions

### 2.1. Receipt of detainees

There are, broadly, three circumstances in which a peace support mission may detain an individual:

- a. the individual surrenders to mission personnel, or
- b. the individual is captured or arrested by mission personnel, or
- c. the individual is transferred to the custody of the mission, e.g. by the authorities of the host State.

Regardless of *how* the mission comes to receive a detainee (in particular whether he/she surrenders or is arrested/captured), its legal obligations are the same. Most of those obligations (such as humane treatment, humane conditions of detention, prevention of enforced disappearance etc.) apply throughout the chain of custody, from initial reception through to transfer or release and are dealt with in the following sections.

However, from a practical perspective, certain considerations - such as the use of restraints to ensure security, searches, registration of the detainee, the obligation to address his/her immediate needs, and to inform him/her of his/her basic rights - are most critical at the moment of receipt of the detainee.

#### **Mission detention focal point**

Missions should appoint a detention focal point, who should report directly to the Head / Deputy Head of Mission, to be responsible for overseeing compliance with these guidelines and other relevant instruments such as the Status of Mission / Status of Forces Agreement, mission Rules of Engagement, Police Directives on the Use of Force, etc.

The focal point should be responsible for the oversight of all detainee-related matters in the mission, such as registration, notification of detention, review of grounds for detention, transfers, releases, handling of complaints etc.

The mission detention focal point should also arrange, with the Head of Mission, a system of regular reporting to the AU Commission, the mission's strategic headquarters, on detainee issues (e.g. numbers of detainees held, places where they are held, and details of releases/transfers).

### 2.1.1. Security / restraints

Mission personnel involved in the receipt of a detainee – whether after arrest / capture, transfer or surrender – may need to use handcuffs until their own security can be assured and the possibility of escape can be excluded. However, the use of restraints can only be used when operationally necessary, and must not constitute cruel, inhumane or degrading treatment.<sup>31</sup>

Restraining a detainee with rope or other materials not designed for this purpose can cause pain and injury, through restricted blood circulation, and in some circumstances may be tantamount to cruel or inhumane treatment. Only purpose-designed handcuffs or flexi-cuffs, which are inexpensive and are specifically designed to minimise discomfort, should be used. The use of other forms of restraint by mission personnel should be prohibited.

Tying a detainee's hands behind his/her back for more than a short period of time cause pain and injury to muscles and joints, and may be tantamount to cruel or inhumane treatment. Hands should therefore only be restrained in front of the detainee. Restraints should be checked on initial application and regularly thereafter to ensure proper circulation and minimise discomfort.

Restraints must not be applied for any longer time than is strictly necessary.<sup>32</sup> In order to ensure the dignity of the detainee, restraints must be removed if necessary for the detainee to undertake ablutions or for matters of personal hygiene.

Because of the inherent risks to the detainee (e.g. in case of accident or attack), detainees should not be attached by instruments of restraint to any vehicle or object.

Restraints must never be applied as a punishment.

### 2.1.2. Searches

At the time and place of receipt of the detainee, the mission personnel involved may want to search him/her for weapons, ammunition and other items that may cause harm or damage property, as well as for intelligence-related material and evidence of a criminal offence. It is essential that searches are conducted in such a manner that does not constitute degrading treatment.<sup>33</sup>

In all circumstances, searches must be carried out with respect for the dignity of the detainee, and must take into account gender, age, religion, disability etc.

### Searching female detainees

Female detainees are particularly open to abuse during searches, so peace support missions should put in place safeguards to ensure that searches of female detainees are conducted in an appropriate manner.

Missions should ensure that female personnel are available to search female detainees received. Male mission personnel should be permitted to search female detainees only in exceptional circumstances, on the order of the commanding officer of the detaining unit, where the following cumulative conditions are met:

- i) on initial receipt by the mission (arrest / capture or surrender), *and*
- ii) no female personnel can reasonably be made available to conduct the search, *and*
- iii) there are imperative security reasons to conduct such a search without delay, such as a reasonable belief that the detainee is carrying a weapon.

In any case when a female detainee is searched by male personnel, the search should be conducted by two individuals (one searching and one monitoring), and should not be conducted or witnessed by persons below the rank of non-commissioned officer or a police officer or equivalent rank. Moreover, an explanation of the circumstances that required the search should be duly recorded in the detainee's file.

### Strip-searches

Strip-searches present clear potential for the humiliation of detainees, and so should only be permitted in exceptional circumstances, for reasons of operational exigency and by order of the commanding officer.

Safeguards to ensure that strip-searches are not used abusively should include the obligation to record in the detainee's file the reason to conduct a strip-search, and to require that strip-searches are conducted by two individuals (one searching and one monitoring). At least one of these individuals should have the rank of non-commissioned officer or above, or be a police officer of equivalent rank and experience.

Strip-searches involving complete nudity should never be permitted. Male personnel must never be permitted to strip-search – or witness the strip-search of - a female detainee.

### Cavity searches

Cavity searches, which are inherently degrading, should not be permitted, since they are not normally necessary for concealed weapons or other evidence to be identified and removed.

### Removal of property

Certain items may need to be removed from the detainee; they may need to be preserved or documented for evidence, destroyed for reasons of security, or held for safekeeping. Detainees should, however, be allowed to retain other property, in particular items of a personal or religious nature.

In order to prevent theft - and allegations of theft - whenever any item is removed from the detainee during a search, it should be distinctly marked for identification purposes, and the fact that the item has been removed should be recorded in the detainee's file, with the detainee's signature, so that it can be returned to him/her on his/her release (unless its destruction is required for security purposes).<sup>34</sup>

### 2.1.3. Detainee registration and notification

The personal details of all detainees must be recorded.<sup>35</sup> Detainee registration is an important tool for management of the mission (e.g. knowing the numbers of persons detained will inform decisions on accommodation, purchasing of essential supplies, enabling detainee notification to family, ensuring the respect of time limits and other procedural requirements, etc.). It is also essential to protect detainees against enforced disappearance – and to protect the mission against allegations of enforced disappearance.<sup>36</sup>

#### **Enforced disappearance**

*'Enforced disappearance' is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."*

International Convention for the Protection of All Persons from Enforced Disappearance,  
Article 2

In order to be effective, mission personnel receiving a detainee should immediately register basic details such as

- the detainee's name, age, gender, place of origin and family contact(s);
- the date, time, place and circumstances of the person's detention, including details of the initial arrest, and, for detainees received on transfer, details of the transferring authority;
- the reason(s) and basis for detention; and
- the location where the detained person is being held.<sup>37</sup>

The detaining authority should immediately communicate this up the chain of command, to the mission's sector Headquarters which should in turn, without delay, notify the Force Headquarters, Mission Headquarters, and the competent host State authorities.

Detainees should be photographed only for the purposes of identification or recording of injuries.

Whenever a detainee is transferred, the detaining authority should update the register with – and notify the detaining authority's chain of command of - the date and the authority to which the detainee is transferred. Details of any other material change in circumstances of the detainee, in particular in case of release, escape, or death should also be recorded / notified.

The mission's Sector Headquarters should notify the same information, without delay, to the International Committee of the Red Cross and/or other relevant neutral and impartial international or national humanitarian organisation with access to the detainee.

#### **The role of the International Committee of the Red Cross (ICRC)**

The ICRC is mandated by the Geneva Conventions to visit both prisoners of war and civilians interned during international armed conflicts. It may also offer its services to visit persons deprived of liberty because of non-international armed conflicts or other situations of violence. ICRC detention visits aim to ensure that detainees, whatever the reason for their arrest and detention, are treated with dignity and humanity, in accordance with international norms and standards.<sup>38</sup>

#### **2.1.4. Addressing a detainee's immediate needs**

Detainees must be provided with shelter,<sup>39</sup> adequate food<sup>40</sup> and clean drinking water,<sup>41</sup> and access to basic means of hygiene such as toilets and water for bathing.<sup>42</sup>

Detainees must be given the medical care and attention that is required by their condition.<sup>43</sup> Because those needs may not be immediately evident to the mission personnel receiving the detainee, the mission should ensure that all detainees are seen by a medical officer as soon as possible and in any event within 24 hours of receipt of a detainee – whether upon arrest/capture, surrender or transfer, unless the detainee refuses. During this medical check, the medical officer should give the detainee the opportunity to raise medical issues or issues related to their treatment with him/her, and should maintain a confidential record of findings and observations, in accordance with medical ethics.

In order to protect women and children from abuse (and to protect the mission from allegations of abuse), female detainees should be immediately separated from male detainees and placed under the immediate supervision of female guards; similarly, minors should be immediately separated from adults, except where detainees are of the same family.<sup>44</sup> Due precautions must also be taken in relation to any other form of vulnerability that would put a detainee at risk.

#### **2.1.5. Information of rights**

Immediately on, or as soon as possible after, arrest, capture or receipt of a detainee upon surrender or transfer, the detaining authority shall inform the detainee, in a language he/she understands, in particular

- i) of the reason(s) for detention;<sup>45</sup>
- ii) of his/her rights to have a family member and/or other representative notified of his/her detention, and his/her right to communicate with them;<sup>46</sup>
- iii) in the case of a foreign national, refugee, stateless person or otherwise under the protection of an international organization, of his/her rights to have his/her embassy, consular official or diplomatic representatives,<sup>47</sup> and/or relevant international organisation such as UNHCR notified of his/her detention;

- iv) of his/her rights to have the International Committee of the Red Cross (ICRC) notified of his/her detention;
- v) of his/her rights to communicate in a confidential manner with, and receive visits from, his / her lawyer;<sup>48</sup>
- vi) the possible next steps, e.g. duration of continued detention, presentation to judge, proposed hand-over to the Host State authorities and in this case, of his/her rights to express legitimate his/her fears.

Such notification could use the form attached hereto as Annex [A].

## 2.2. Next steps

### 2.2.1. Detainee register and filing

It is essential for proper detainee management that missions which hold detainees keep accurate and complete records of matters relating to detainees under their custody. These include not only a central detention register (see section 2.1.3 above) but also an individual file for each detainee as well as a confidential medical file (access to which should be governed by the normal rules of medical ethics).

Since names are subject to multiple (and erroneous) spellings, each detainee should be given a unique number to facilitate tracking.

The central detention register should record the basic details of all detainees arriving and departing, incidents of general relevance to the whole detainee population, and the names, ranks and numbers of mission personnel responsible for guarding detainees.

Detainees' individual files should record

- i) basic individual information about the detainee (identity, number, country of origin, family contacts),
- ii) the date, time, place and circumstances of the person's detention, including details of the initial arrest/capture or surrender, and, for transferred detainees, details of the transferring authority;
- iii) the factual reason(s) and legal basis for detention, details of interviewing/questioning, details of any proceedings established to review the grounds for detention and/or risks of transfer, and details of any contacts with national police / judicial authorities;
- iv) all other matters of individual relevance to the detainee, such as details of restraints used, searches made, items removed, notifications of detention made, visits received, complaints made, force used by or against the detainee, disciplinary measures etc., and
- v) the location where the detained person is being held.<sup>49</sup>

Any mission holding detainees should also establish individual medical files for them, access to which respects the normal rules of medical confidentiality.

Both the detainee register and the individual file should be updated whenever there is a material change of circumstances (including, in particular, details of transfer, release, escape or death). When a detainee is transferred, a copy of the detainee's individual file, and - subject to appropriate safeguards to maintain confidentiality - of the medical file, should be transferred with the detainee.

Original registers and detention files should be archived with the mission headquarters on termination of the mission.

### **2.2.2. Interviewing and questioning of detainees**

Mission personnel may wish to interview detainees for various reasons, such as

- to identify the individual's identity, age, nationality and family contacts,
- for DDR "screening",
- for detainee categorisation / segregation,
- for tactical military intelligence, and
- for information relating to criminal activity, for potential subsequent use as evidence.

All necessary caution must be taken to ensure that all interviews of detainees are conducted in a manner that respects international law, in particular the absolute prohibition of ill-treatment such as torture and cruel, inhumane or degrading treatment,<sup>50</sup> and the right not to be forced to incriminate oneself.<sup>51</sup>

Missions must implement safeguards, e.g. through SOPs, to ensure that this does not happen. These safeguards should include the obligation to record, in the detainee's file, the details of interviews, such as, as a minimum:

- the date, start-time and end-time of the questioning;
- the questions asked, the responses given, and any refusal to respond to particular questions;
- the identity (name, post and index number) of any person present during the questioning.

In order to further reduce the risk of abuse – and allegations of abuse - by individual mission personnel, missions should consider requiring that all interviews of detainees are conducted by teams (e.g. 3-5 persons) of members of the mission's police component or, if they are not available, by members of the military component of a certain minimum rank, such as Non-Commissioned Officer.

Since mission Status of Forces / Status of Mission Agreement normally require them to respect domestic law, where the purpose of questioning detainees is to gather information for the purposes of criminal prosecution, questioning must normally be done by national police and/or judicial authorities. At the very least, where the Status of Forces / Mission Agreement foresees that a mission's police component has executive powers, such questioning should be done by mission police personnel only, and in accordance with the host State's criminal law and procedure.

Detainees should be allowed – and told that they are allowed - to apply for free legal aid where it is available, and to receive visits from their legal advisers with a view to their defence.<sup>52</sup>

### Interviewing minors

Particular sensitivity must be exercised in interviewing of detained minors, since they are often themselves victims of violence, and questioning them can lead to further psychological trauma. Any interviewing of minors (e.g. to ascertain the child's age, identity, trace relatives etc.) must therefore at all times respect the best interests of the child.<sup>53</sup>

Since collecting military information on armed groups is rarely ever in a child's best interest, minors should not be questioned for this purpose.<sup>54</sup>

When mission personnel interview any minor for any other purpose, they should apply internationally recognised principles on interviewing of minors, such as:

1. interviewing personnel must be clear about the purpose of the interview and concentrate on information required for those purposes only;<sup>55</sup>
2. everything reasonably possible must be done to ensure that such interviews are conducted by personnel specially trained in interviewing children;<sup>56</sup>
3. everything reasonably possible must be done to ensure that children are interviewed by persons of the same sex;<sup>57</sup>
4. multiple interviews should be avoided;<sup>58</sup>
5. sensitive issues should be raised only when essential and in the child's best interests;<sup>59</sup>
6. psychological support should be available to the child before, during and after interviews;<sup>60</sup>
7. interviews must be conducted in private, where they cannot be overheard, and confidentiality regarding the information collected must be respected at all times;<sup>61</sup>
8. interviews must be conducted in a sensitive manner, without any threat or intimidation;
9. interviews must be limited in time to the minimum necessary;
10. the minor must be able to request the presence of his/her parent(s) or a representative of his/her choice during the interview: the detaining authority should inform the minor of this right and do everything reasonably possible to respect such any request.<sup>62</sup>

### **2.2.3. Family and consular notification of detention**

Detainees are entitled to notify their relatives or other appropriate persons of their detention, or request the detaining authority to do so on their behalf.<sup>63</sup> The detaining authority or Sector Headquarters should do everything feasible, without delay, to comply with such requests. If a detainee is a minor or is incapable of understanding his/her entitlement, the Sector Headquarters should on its own initiative undertake such notification.<sup>64</sup>

Foreign detainees have a legal right to have their detention notified to their consulate.<sup>65</sup> Detainees who are foreign nationals, refugees, stateless persons and/or under the protection of an international organization must be asked if they wish to notify their embassy, consular official or diplomatic representatives, or relevant international organisation such as UNHCR of their detention.<sup>66</sup> If the detainee requests, the detaining

authority must notify the embassy, consular official or diplomatic representatives, or relevant international organisation on his/her behalf.

Notification – to the detainee's family and/or consulate - should include, at least, the same basic information as is recorded in the detention register (where particular elements are not immediately available, they should be provided by the Sector Headquarters without delay as soon as they are available), namely:

- vi) the detainee's name, age, gender, nationality / place of origin and family contact(s);
- vii) the date, time, place and circumstances of receipt of the detainee (including, for transferred detainees, details of the transferring authority);
- viii) the factual reason(s) and legal basis for detention; and
- ix) the location where the detained person is being held.<sup>67</sup>

Details of all notifications of detention should be registered in the detainee's file.

### **2.3. Release, transfer or continued detention**

As soon as possible after receipt of a detainee, the mission must decide whether to:

- transfer him/her to the competent host State police or judicial authorities, or
- release him/her (including into a voluntary DDR programme), or
- continue to detain him/her, if authorised to do so by the host State, or because the mission is party to an armed conflict and detaining the individual because of imperative reasons of security, or because a transfer is otherwise prohibited by international law

#### **2.3.1. Release, including into a voluntary DDR programme**

Detainees must be released as soon as the reasons for their detention no longer exist.<sup>68</sup> In particular, minors,<sup>69</sup> pregnant women and nursing mothers should only be detained as a measure of last resort and for the shortest appropriate period of time.

Detainees may be released into a voluntary DDR programme (if the individual is not free to leave at any time without the need for authorization, this will constitute a transfer of detention rather than a release), or released back into the community.

In the case of release into the community, detainees should be released in the major town nearest to their last place of residence, unless the detainee prefers to be released at the place of detention. The mission should take all necessary measures to ensure the detainee's safety upon release.

Any release – whether to a voluntary DDR programme or to the community - should take place promptly after the decision to do so is made.

A release form (such as the model attached at Annex B) should be completed and filed with the detainee's file with the mission's records. Any items removed from the detainee should be returned to the detainee unless destroyed for security reasons or retained for evidence.<sup>70</sup>

### 2.3.2. Transfers

Where release is not possible or appropriate, the mission may want to transfer detainees to the authorities of the host State (normally the police and/or judicial authorities), e.g. for criminal prosecution.<sup>71</sup>

However, international law prohibits transfers of detainees to the authorities of any State in violation of the principle of “non-refoulement”, i.e. where there are substantial reasons to believe that a detainee would be would face a real risk of

- torture or cruel, inhumane or degrading treatment or punishment,<sup>72</sup>
- arbitrary deprivation of life, including execution after a trial that does not respect internationally-recognised judicial guarantees<sup>73</sup>
- enforced disappearance,<sup>74</sup>
- persecution on account of the detainee’s race, religion, country of origin, membership of a particular social group or political opinion, or having his or her life, physical integrity or liberty threatened by events seriously disturbing public order,<sup>75</sup> or
- for detainees below 18 years old, recruitment to armed forces and armed groups, or participation in hostilities.<sup>76</sup>

This prohibition applies regardless of the length of time that the person has been detained, and overrides any obligation resulting from the Status of Mission / Status of Forces Agreement to transfer an individual.

Before transferring any detainee, the mission must first, therefore, assess whether such risks exist, and suspend transfers pending the outcome of such an assessment. The detaining authority must inform the detainee about the proposed transfer and give him/her the opportunity to express any concerns he/she may have, and to challenge the transfer decision before an independent and impartial transfer review board. He/she should have the opportunity to make representations, in person, before that body in order to explain why he or she would be in danger in the receiving State and, where possible, should have the opportunity to be assisted for this purpose by a representative of his / her own choosing (such as a lawyer, retained at his or her own expense).

Transfer review boards must be impartial and outside of the chain of command authority that took the initial decision to transfer the individual.<sup>77</sup> At least one member of the board should be the mission's detention focal point, and another should be a legal or human rights officer; military component members of the board should be commissioned officers, while police component members shall be police officers of suitable experience and expertise. The decisions of the board should be binding, and proceedings should be recorded in writing in the detainee’s file and communicated up the mission chain of command to the Mission Headquarters.

#### **Detainee transfer agreements**

Depending on the situation and, notably, the type, nature and seriousness of the risks concerned as well as the political commitment of both the Mission and the receiving State to remedy to them, risks to the detainee after transfer can be mitigated by a legally binding detainee transfer agreement between the mission and the receiving State (normally the host

State), which, whenever feasible, should be negotiated along with – and annexed to – the Status of Mission / Status of Forces Agreement at the very start of a mission's establishment.

To be effective however, such an agreement must contain at the very least – but not be limited to – the following commitments:

- to treat transferred detainees in accordance with international law and internationally recognised standards,
- where there are doubts as to the likely lack of a fair trial, not to execute them,
- to detain them at specified sites where treatment and conditions have been ascertained to respect international law and internationally recognised standards, and
- to establish a strong monitoring mechanism by the mission, that include notably allowing members of the mission to visit the detainees on a regular basis to ensure that those commitments are respected, and a corresponding commitment by the receiving State to address any concerns that might arise; and
- to allow other appropriate organisations, such as the International Committee of the Red Cross (ICRC),<sup>78</sup> to visit transferred detainees.

A model detainee transfer agreement is annexed to these Guidelines.

Where a transfer can go ahead without violation of the principle of *non-refoulement*, details of the transfer should be registered and notified up the mission chain of command through to the mission headquarters. The International Committee of the Red Cross and other relevant neutral and impartial international or national humanitarian organisations should be notified of the same.

Where a transfer takes place, any items removed from the detainee should be handed over to the new detaining authority,<sup>79</sup> and a transfer form (such as that annexed to these Guidelines), should be completed with details of the receiving authority and filed with the detainee's file with the mission's records.

### 2.3.3. Continued detention

Rather than release or transfer a detainee, the mission may need (e.g. for imperative security reasons or because of the principle of non-refoulement) to continue to detain an individual. However, in order to prevent it from being arbitrary detention, the grounds for continued detention must be reviewed, and the detainee must be able to challenge his/her detention.<sup>80</sup>

Where the mission is not party to an armed conflict, or the individual is detained for criminal prosecution, the detainee must promptly be brought before a judge.<sup>81</sup>

Where the mission is party to an armed conflict and the individual is detained for imperative reasons of security, the detention must be reviewed by an independent body, both initially and periodically until release or transfer. The existence of grounds for continued detention beyond the initial period (e.g. 48 hours) must be therefore reviewed within the least possible delay (mission detention SOPs should determine a deadline, such as 30 days from the date of the decision to detain). The persistence of grounds for detention should also be periodically reviewed, at least once every three months,<sup>82</sup> and whenever relevant new information is received or there is a material change in circumstances.

The board reviewing the grounds for detention must be impartial and outside of the chain of command authority that took the initial decision to detain the individual,<sup>83</sup> at least one member should be the mission's detention focal point, and another should be a legal advisor or human rights officer. The board must make an impartial assessment of the initial decision to detain the individual and of the necessity for continued detention. The detainee should be allowed to make representations, call and hear witnesses, and bring and call for evidence to be brought.

The detainee should:

- a) be informed about the review and provided with information about the reasons for detention with sufficient specificity to allow him/her to effectively challenge the decision to detain him/her. Such information should be provided within a fixed time (e.g. 7 days) of the detainee's arrival at a detention facility;
- b) be allowed, subject to security concerns, to personally attend and participate in all review hearings,<sup>84</sup> be able to propose witnesses and evidence, and be able to address the board;
- c) be provided with an interpreter where necessary,
- d) be allowed, including at the hearings, to assistance from a personal representative or legal advisor;
- e) be promptly informed, in a language he/she understands, of the outcome of the review;<sup>85</sup> and
- f) be informed in advance, in a language he/she understands, his/her rights in the context of a detention review; this information should also be given in writing in a language that he/she understands.

Where the board decides that there are no longer sufficient grounds for the detention to continue, the detainee must be released without delay.

Detention review board proceedings should be recorded in writing in the detainee's file and communicated to the mission headquarters.

## 2.4. Conditions for continued detention

### Security

All detainees should be relocated, without delay, to a facility authorised by the Head of Mission to hold detainees. Places of detention should not be located close to combat zones, and detainees must be evacuated if the places where they are held become particularly exposed to danger, providing that their evacuation can be carried out under adequate conditions of safety.<sup>86</sup>

As mentioned above, the use of physical restraints must remain the exception (see above, Section 2.2.1). Instead, detainees – particularly those who have surrendered and are therefore normally present a low security risk - should be detained unrestrained within a secure compound

### Accommodation

Accommodation provided for the use of detainees, and in particular sleeping accommodation, should meet all requirements of hygiene and health, due regard being paid to climatic conditions, cubic content of air, minimum floor space, lighting, heating, ventilation and protection from damp; sufficient bedding and blankets should be provided.<sup>87</sup>

### Food and drinking water

Detainees should be provided, three times per day, with meals of sufficient nutritional value to prevent weight loss and/or malnutrition.<sup>88</sup> As far as possible, meals and meal-times should be consistent with the detainee's religious and dietary traditions. Clean drinking water should be available to detainees at all times.<sup>89</sup>

### Personal hygiene and laundry

Detainees must be given adequate means of hygiene, such as access to toilets by both day and by night, and daily access to water and soap for bathing, ablutions and laundry.<sup>90</sup> Where necessary, they must be provided with appropriate clothing.<sup>91</sup>

### Exercise and access to the open air

Detainees should be allowed recreational and physical exercise. They should, as soon as possible and in any event within 48 hours of receipt, be allowed access to the open air for at least one hour per day.<sup>92</sup>

### Freedom of religion

The personal convictions and religious practices of persons deprived of their liberty must be respected.<sup>93</sup> Consideration should be given to giving detainees a copy of their principal religious text in the appropriate language. Where possible, meal-times should allow for detainees' religious customs.

### Detainees with special needs

Provision shall be made for the special needs of pregnant women, nursing mothers, children, disabled persons or other specific vulnerable persons.

Except where women and men of the same family are accommodated together, female detainees must be separated from male detainees and under the immediate supervision of female guards.<sup>94</sup>

Minors must be held in quarters separate from those of adults, except where families are accommodated as family units, and in conditions appropriate to their age, including education and physical exercise.<sup>95</sup>

### Medical attention

Detainees must be given the medical care and attention that is required by their condition, subject to their consent,<sup>96</sup> by qualified medical staff. In addition, a medical officer should conduct a medical examination, unless the detainee refuses:

- whenever a detainee complains of illness,
- after any force has been used on a detainee (whether they have been injured or not),
- whenever a detainee has been injured,
- as a routine matter, at least once per month, and
- before a detainee is transferred or released.

During these medical examinations, the medical officer should give the detainee the opportunity to raise medical issues or issues related to their treatment with him/her (where necessary through an interpreter). Medical staff should maintain a confidential record of observations, including weight and overall condition, and treatment provided.

### Contact with, and visits from, relatives and consular officials

Detainees must be allowed to communicate with their families and consular officials, as soon as reasonably practicable,<sup>97</sup> and be able to be visited by them, subject to reasonable conditions relating to security.<sup>98</sup>

### Contact with legal advisors

Detainees must be allowed to freely and confidentially communicate with their legal advisers for the purpose of their defence and be allowed adequate time and facilities to do so.<sup>99</sup> They must be allowed to receive visits from them and to prepare and hand to them confidential instructions; interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.<sup>100</sup>

### Contact with International Committee of the Red Cross

Missions should also allow detainees to be visited, in private and in accordance with its standard visiting procedures, by representatives of the International Committee of the Red Cross, as well as other neutral and impartial humanitarian organisations with a legitimate interest in detainees' welfare.

### Discipline and sanctions

Mission detention facilities should establish – and communicate to detainees - clear rules on detainee discipline and procedures for disciplinary hearings and sanctions. Sanctions such as corporal punishment, the use of restraints or stress positions, sensory deprivation, restrictions of diet and deprivation of contact with relatives and legal advisors should be prohibited. The use of solitary confinement should be limited to a maximum of 15 days and should not exclude meaningful human interaction

### Access to detainees

Detainees must be protected from public curiosity.<sup>101</sup> To protect detainees from abuse, except where visits are provided for by these guidelines (visits by family, consular officials, International Committee of the Red Cross, etc.), access to detainees should be strictly controlled and kept to the absolute minimum necessary for the safe, secure and humane treatment of the detainees. The names, ranks and service numbers of all persons having access to detainees should be recorded.

### Detention briefing

On admission to a detention facility, detainees should be briefed on the applicable rules and routine, in a language they understand. Such briefings should include the standards of behaviour expected of them, meal, access to the open air and exercise timings, discipline (including sanctions, proceedings and recourse available to them) how to raise complaints, religious matters, what to do in case of fire, and all such matters that are necessary to enable him/her to understand both their rights and obligations and to adapt to the life in the facility-.

## 2.5. Foreign detainees

Foreign detainees must be treated without adverse discrimination. Special consideration must be given to their particular rights and needs.

Missions must first identify who are foreign detainees, by asking the detainee and, where necessary, consulting as appropriate with relevant consular officials.

International law provides that foreign nationals, refugees, stateless persons and other person under the protection of an international organization must be permitted, if they so wish, to communicate with, and receive visits from, their embassy, consular official or diplomatic representatives,<sup>102</sup> or relevant international organisation.<sup>103</sup>

Should a mission wish to release a foreign detainee, consideration should be given to his/her repatriation. Such repatriation must however respect the principle of non-refoulement (see Section 2.3.2).

## 2.6. Use of force and firearms

When handling detainees, the use of force must be strictly in accordance with international standards on the use of force<sup>104</sup> and with the mission's Rules of Engagement and/or Police Directives for the Use of Force (which must be, themselves, conform with such standards).

Mission staff shall, as far as possible, apply non-violent means before resorting to the use of force against detainees. Use of force can only be used if other means remain ineffective or without any promise of achieving the intended result.

As a general rule, force shall only be used against detainees when and where strictly necessary for the maintenance of security and order, or when personal safety is threatened.<sup>105</sup> Any force used must be proportionate to the situation, minimize damage and injury and respect and preserve human life.<sup>106</sup>

Mission personnel should not use firearms in handling detainees except

- in self-defence, or
- in the defence of others against the immediate threat of death or serious injury, or
- where strictly necessary to prevent the escape of a detainee who presents the danger of perpetrating a particularly serious crime involving a grave threat to life,

provided, in all cases, that less extreme means are insufficient to achieve these objectives.<sup>107</sup>

In all cases, the intentional lethal use of firearms may only be made when strictly unavoidable to protect human life.<sup>108</sup>

Use of firearms should be preceded by a clear warning of the intent to do so, in a language commonly understood, and with sufficient time for the warning to be observed, unless to do so would unduly place mission personnel at risk or would create an imminent risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.<sup>109</sup>

In all cases when force is used against a detainee, whether the detainee is injured or not, the detainee should be seen by a qualified medical practitioner and must, if necessary, given the medical care and assistance that is required by his/her condition.

Where any use of force or firearms has been used against a detainee, the incident should be recorded in the detention register and detainee file, and immediately reported in writing up the chain of command.<sup>110</sup> This report should explain why the use and level of force used was necessary, and give details of any medical treatment given immediately after the incident.

## **2.7. Detainee monitoring**

Missions should consider establishing a detainee monitoring mechanism, according to which the mission's detention focal point and other specified members of the mission (ideally human rights observers, or, at a minimum, individual police officers) visit places where detainees are held and interview detainees in order to monitor compliance with these guidelines and other applicable rules and standards.

Where detainees are transferred to the authorities of the host State, the same observers should be made responsible for conducting post-transfer monitoring visits and reporting back to the mission.

## **2.8. Deaths in custody**

Deaths in custody are extremely serious matters which can be detrimental to a mission's reputation and lead to time-consuming and costly legal claims. They must be dealt with professionally and with sensitivity to both the deceased and his/her relatives. In all cases and at all times, the body of the deceased must be treated with respect and handled in accordance with the deceased's wishes and/or his/her cultural and religious customs, where known.

Mission SOPs should inform mission personnel how to deal with such incidents. They should cover the immediate steps to be taken, such as informing the mission chain of command, competent host State authorities and International Committee of the Red Cross, preserving the body and other evidence, identifying the deceased, and ascertaining cause of death.

These SOPs should also cover the next steps, such as notifying the deceased's family and / or country of origin, and constituting a Board of Inquiry to investigate the death in more detail. The latter should determine the responsibilities of any persons implicated in the death, as well as any pattern or practice that may have contributed to the death. It should, where appropriate, make recommendations for action to be taken against persons implicated in the death and identify lessons learned to adjust training, practices or procedures in order to prevent reoccurrence.

Finally, the deceased's body and personal effects should be handed over to the national authorities of the host State or consular officials of the deceased's country of origin, with a view to them being returned to the deceased's family or, where the deceased or his/her family cannot be identified, to disposing of them in a and respectful manner in accordance with appropriate religious custom. This should be fully documented and the records filed – along with the detainee's file – with the Mission headquarters.

When the identity of the deceased is unknown, all necessary measures should be taken to allow further identification, documentation preserved and the place of burial duly marked and registered.

## 2.9. Complaints

Detainees must be permitted to submit, without fear of reprisal, oral or written complaints to the mission regarding their treatment and/or conditions of detention.<sup>111</sup> Detainees must be informed, in a language they understand, on the methods of making complaints and to which authority (direct commander of the place, others in the chain of command, ICRC, Mission's human right focal point, etc...). Such complaints must not be censored as to the substance. All complaints, unless evidently frivolous or groundless must be promptly investigated; decisions should be recorded in writing and retained in the detainee's file, and recommendations should be promptly implemented.

Detainees must be allowed to "appeal" against the outcome, i.e. make requests or complaints, without censorship as to substance, to the next higher authority (e.g. the Mission headquarters if the initial complaint is made to the Sector headquarters). Unless they are evidently frivolous or groundless, all "appeals" must be promptly dealt with and replied to, in writing, without undue delay.<sup>112</sup>

Regardless of whether a complaint is submitted or not, any serious injury of a detainee shall be, without delay, followed by an official enquiry by the detaining authority.

## 2.10. Implementation

Both during the mission start-up phase and beyond, consideration should be given by both strategic and mission headquarters to measures which may be necessary to ensure compliance with these guidelines and the international law and standards on which they are based.

Such measures may include:

- ensuring that a detention focal point(s) is/are recruited, and establishing his/her reporting lines;
- ensuring that adequate resources are allocated for the handling of detainees, e.g. ensuring that
  - units have female personnel available to search and care for female detainees,
  - both police and military personnel are equipped with purpose-designed flexi-cuffs,
  - detainees, including specific vulnerable categories, can be properly accommodated, fed and given appropriate medical care,
  - that families and lawyers can have access to detainees;
- ensuring that functioning registration, filing and notification systems are put in place;
- ensuring that competent review boards are established, that translators are available,
- diligently dealing with complaints;
- "translating" these guidelines into clear Standard Operating Procedures (SOPs), and ensuring that, among others, mission rules of engagement and police directives on the use of force are consistent with them;

- assigning clear roles and responsibilities to staff and providing appropriate training for all appropriate mission personnel – including military and police commanders at all levels - on detainee handling;
- establishing mechanisms to ensure that violations of detention SOPs are reported, investigated and appropriate remedial and preventive action is taken.

## Annex A: Statement of detainee rights

**To be translated into a language understood by the detainee. Three copies to be signed and/or fingerprinted by the detainee at the beginning of any detention: one to be handed to the detainee, one to be retained with the detention register, and one to be sent to the Mission Headquarters)**

Name of detainee:

Detainee number:

While detained by [*name of Mission*], you have the following rights:

1. To be treated with respect and humanity.
2. To be told the factual reasons and legal basis for your arrest / detention, and the next steps that will or may occur.
3. To have a family member or other person of your choice notified of your detention.
4. To have the International Committee of the Red Cross notified of your detention, and to be visited in private by its delegates.
5. If you are a foreigner, to have your consulate / embassy, and/or UNHCR, notified of your detention, and to communicate with them.
6. To communicate with, and be visited in private by, a [*name of Mission*] human rights officer.
7. To communicate with, and be visited in private by, your immediate family members and, if you have one, your legal advisor.
8. To be given by [*name of Mission*] adequate food, drinking water, shelter, means of hygiene and, if necessary, clothing, as well as means of communication.
9. To be given an inventory of items taken from you, and have them returned to you if not destroyed for security reasons or required for evidence.
10. To be given all necessary medical care and attention.
11. Not be forced to answer any questions; in particular, you have the right to refuse to answer questions that may incriminate you.
12. To challenge the grounds for your detention before a court or impartial detention review board.
13. In the case of a proposed transfer to an authority other than [*name of Mission*], to communicate to [*name of Mission*] any concerns you may have about such a transfer.
14. To make complaints to [*name of Mission*] concerning your treatment and/or conditions of detention.

15. To receive a form completed by [*name of Mission*] when you are initially detained, transferred and/or released.

## **Annex B: Detention, release, transfer and/or handover form**

**To be translated into the official language most commonly used in the area of detention. Three copies to be signed and/or fingerprinted by the detainee: one to be handed to the detainee, one to be retained with the detention register, and one to be sent to the Mission Headquarters)**

### **1. Detainee's personal details**

Name:

Number:

Age:

Gender:

Nationality:

Religion:

Address / place of origin:

Family contact:

Height / build, distinguishing marks:

### **2. Detention details**

Date, time, place and circumstances (arrest/capture, surrender, transfer) of receipt of detainee:

Reasons / factual basis for detention:

Condition of the detainee on receipt:

Name, rank and index number of personnel involved in receipt of the detainee on capture/arrest, surrender or transfer:

**3. Inventory of items taken from the detainee, and reasons for removal:**

#### **4. Handover / transfer of detainee**

Date, time and place of handover:

Reason for handover:

ID details and signature of personnel who handed over the detainee:

Authority, ID details and signature of persons who received the detainee:

Property handed over:

Property retained, and reasons for retention:

#### **5. Release of detainee**

Date, time and place of release:

Reason for release:

ID details and signature of personnel who released the detainee:

ID and signature of other witnesses to the release:

Property returned to the detainee:

Property retained, and reasons for retention:

#### **6. Physical condition of detainee**

Details of any injury received during arrest/capture, escape or detention:

Height:

Weight:

Assessment of overall physical and mental condition:

ID details of the medical officer:

<sup>1</sup> See the UN Basic Principles on the Use of Force and Firearms (Principle 4), 2009, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

<sup>2</sup> See N. Melzer, *Interpretative Guidance on the Notion of Direct Participation in Hostilities* (Chapter IX), ICRC 2009, available at <http://www.icrc.org/eng/resources/documents/publication/p0990.htm>

<sup>3</sup> This is the principle of « non-refoulement », which is contained in international humanitarian, human rights and refugee law. See C. Droege, *Transfers of detainees: legal framework, non-refoulement and contemporary challenges*, International Review of the Red Cross, number 871, September 2008, available at <http://www.icrc.org/eng/assets/files/other/irrc-871-droege2.pdf>

<sup>4</sup> While the AU is not a State and is not party to international law treaties, it is subject to customary international law, including customary international humanitarian, human rights and refugee law when and where applicable (by way of comparison with the UN, see the UN Secretary General's 1999 Bulletin Observance by United Nations forces of international humanitarian law, which sets out "*the fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control*"). In addition, Status of Forces / Status of Mission Agreements normally require that AU peace support missions adhere to the national law of the host State. Mission personnel are also bound by the domestic law of their sending States, and sending States are bound, under international law, to ensure that personnel respect their obligations under the treaties to which those States are party.

<sup>5</sup> UN Charter (Art. 25 and 49). A Chapter VII mandate can be given where the UN Security Council considers that a particular situation represents a threat to international peace and security, and normally gives a mission the authorization to use "all necessary means" (including, necessarily, the use of lethal force and deprivation of liberty where compliant with international law) to achieve its objectives.

<sup>6</sup> Protocol Establishing the Peace and Security Council of the African Union (Art. 7(2))

<sup>7</sup> Protocol Establishing the Peace and Security Council of the African Union (Art. 4(c)), UN Charter (Art. 1(1))

<sup>8</sup> See Fourth Geneva Convention (Art. 42, 78)

<sup>9</sup> See *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, ICRC Opinion Paper, March 2008, available at <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>, and S. Vité, *Typology of armed conflicts in international humanitarian law: legal concepts and actual situations*, International Review of the Red Cross, No. 873, 31.03.2009

<sup>10</sup> According to the African Charter of Human and Peoples' Rights, no one may be arbitrarily arrested or detained (Art. 6). Under the International Covenant on Civil and Political Rights, persons may not be deprived of their liberty "*except on such grounds and in accordance with such procedure as are established by law*" (Article 9 (1)). See, further, *Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence*, J. Pejic, International Review of the Red Cross, June 2005 (page 9)

<sup>11</sup> See J. Pejic, *Procedural principles for internment/administrative detention*, International Review of the Red Cross, No. 858, 30.06.05, at page 375

<sup>12</sup> *Idem*, at page 381

<sup>13</sup> See the International Covenant on Civil and Political Rights (Article 9(4)) and the Fourth Geneva Convention (Articles 43 and 78). See, further, *Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence*, J. Pejic, International Review of the Red Cross, June 2005, page 11

<sup>14</sup> The extent of the obligations incumbent upon multiple detaining authorities will depend on the command and control structure of the peace operation concerned.

<sup>15</sup> See ICRC Customary IHL database (Rule 153) for war crimes.

<sup>16</sup> AU Protocol Relating to the Establishment of the AU Peace and Security Council (Art. 10). See the ICRC database of customary IHL rules (available at <http://www.icrc.org/customary-ihl/eng/docs/home>) Rule 139: *“Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.”* mandates for AU peace support missions – like those for UN peacekeeping missions – give operational control to the AU while the troop / police contributing States retain operational command. Given that operational control allows the force commander / police commissioner to give direct orders to the troops / police in the mission, this is sufficient to vest legal responsibility over their actions in the AU Commission.

<sup>17</sup> As the International Court of Justice has noted in its advisory opinion on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, international organizations *“are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties”*. See, further, the International Law Commission’s 2011 draft Articles on the Responsibility of International Organisations. The UN Secretary General’s 1999 Bulletin Observance by United Nations forces of international humanitarian law, establishes that the UN must respect *“the fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control”*.

<sup>18</sup> This includes both UN treaties (including the 1966 International Convention on Civil and Political Rights, the 1985 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the 2006 Convention for the Protection of All Persons from Enforced Disappearance, and the 2006 Convention on the Rights of Persons with Disabilities, the 1951 Convention Relating to the Status of Refugees, the 1963 Convention on Consular Relations), and AU treaties (including the 1981 African Charter on Human and Peoples’ Rights, the 1990 African Charter on the Rights and Welfare of the Child, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa).

<sup>19</sup> See, in particular, the 1955 UN Standard Minimum Rules for the Treatment of Prisoners, the 1990 UN Body of Principles for the Treatment of Prisoners, and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>20</sup> In particular the four Geneva Conventions of 1949, the two Additional Protocols of 1977, and customary international humanitarian law (see the ICRC database of customary IHL rules, available at <http://www.icrc.org/customary-ihl/eng/docs/home>)

<sup>21</sup> See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 (par. 106: *“Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.”*)

<sup>22</sup> See the ICRC database of customary IHL rules (available at <http://www.icrc.org/customary-ihl/eng/docs/home>) Rule 139: *“Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.”*

<sup>23</sup> The four Geneva Conventions of 1949 provides that *“The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”* (common Article 1, emphasis added); similarly, the International Covenant on Civil and Political Rights of 1966 provides that *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant”* (Article 2(1), emphasis added).

<sup>24</sup> See draft Articles on the Responsibility of International Organisations, International Law Commission, 2001 (Article 14)

<sup>25</sup> Art. 3, UN Convention Against Torture provides that *“No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”*. The UN Human Rights Committee’s General Comment No. 20 provides that *“States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading*

*treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end*" (para. 9). The 2004 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that *"[t]he principle of non-refoulement is an inherent part of the overall absolute and imperative nature of the prohibition of torture and other forms of ill-treatment"* (para. 28).

<sup>26</sup> International Covenant on Civil and Political Rights (Articles 6 and 14). the UN Human Rights Committee's General Comment No. 31 provides that States have an *"not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as [the arbitrary deprivation of life], either in the country to which removal is to be effected or in any country to which the person may subsequently be removed"* (para. 12). The Human Rights Committee has consistently adopted the same position in its jurisprudence, e.g., *Chitat Ng v. Canada*, (Communication No. 469/1991, 7 January 1994, para. 14.1); *Joseph Kindler v. Canada* (Communication No. 470/1991, 18 November 1993, para. 6.2).

<sup>27</sup> The 2006 International Convention for the Protection of All Persons from Enforced Disappearance provides that: *"The No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance"* (Article 16(1)).

<sup>28</sup> 1969 OAU Refugee Convention (Art. 2(3)). See also, by analogy, the 1951 UN Refugee Convention provides that *"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"* (Art. 33(1)). It should be noted however that the same Convention also provides that *"the benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country"* (Art. 33(2)), and that *"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that (a) he has committed a crime against peace, a war crime, or a crime against humanity [...]"* (Art. 1(F)).

<sup>29</sup> The UN Committee on the Rights of the Child General Comment no 6(2005) provides that in view of the high risk of irreparable harm involving fundamental human rights, including the right to life, States shall not return children *"where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties"* (para 28).

<sup>30</sup> Such organizations may include the International Committee of the Red Cross (ICRC), which visits security detainees around the world. However, because of the ICRC's traditional working procedures – in particular the confidential nature of its reports to the detaining authorities – its visits cannot be a substitute for effective post-transfer monitoring by the mission or an agreed independent humanitarian organization that would report its findings back to the mission.

<sup>31</sup> See the four Geneva Conventions (common Article 3), customary international humanitarian law (Rule 90, ICRC Customary International Humanitarian Law Database), the 1985 Convention Against Torture, the International Covenant on Civil and Political Rights (Art. 7), the African Charter on Human and Peoples' Rights (Art. 5). The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses (see footnote to Principle 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).

<sup>32</sup> UN Standard Minimum Rules on the Treatment of Prisoners (Rule 34).

<sup>33</sup> See the four Geneva Conventions (common Article 3), customary international humanitarian law (Rule 90, ICRC Customary International Humanitarian Law Database), the 1985 Convention Against Torture, the International Covenant on Civil and Political Rights (Art. 7), the African Charter on Human and Peoples' Rights (Art. 5). The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to

extend the widest possible protection against abuses, whether physical or mental (see footnote to Principle 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).

<sup>34</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rule 43

<sup>35</sup> Customary IHL (see ICRC Customary IHL database, rule 123), International Convention for the Protection of All Persons from Enforced Disappearance (Art. 17(3)).

<sup>36</sup> Common Article 3 to the four Geneva Conventions prohibits violence to life and the carrying out of executions without previous judgment pronounced by a regularly constituted court; customary international humanitarian law prohibits murder and enforced disappearance (Rules 89 and 98, ICRC Customary International Humanitarian Law Database). The International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his life (Art. 6(1)). See also the 2006 Convention for the Protection of All Persons from Enforced Disappearance, and the African Charter on Human and Peoples' Rights (Art. 4).

<sup>37</sup> UN Convention for the Protection of All Persons from Enforced Disappearance (Art. 17(3)), and UN Body of Principles for the Treatment of Prisoners (Principle 12).

<sup>38</sup> See, further, *Visits to persons deprived of their freedom: the experience of the ICRC*, available at <http://www.icrc.org/eng/resources/documents/article/other/detention-visits-article-300906.htm>

<sup>39</sup> See, generally, ICRC Customary International Humanitarian Law Database, Rule 118 ("*Persons deprived of their liberty must be provided with adequate ... shelter ...*"). See UN Standard Minimum Rules on the Treatment of Prisoners, Rules 9-14.

<sup>40</sup> See Third Geneva Convention, Art. 26 ("*daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners*") and Fourth Geneva Convention, Art. 89. See also Additional Protocol II, Art 5(1)(b): "*persons deprived of their liberty for reasons related to the armed conflict ... shall, to the same extent as the local civilian population, be provided with food ...*". See also UN Standard Minimum Rules on the Treatment of Prisoners, Rule 20(1): "*Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.*"

<sup>41</sup> See UN Standard Minimum Rules, Rule 20(2): "*Drinking water shall be available to every prisoner whenever he needs it.*" See also Additional Protocol II, Art 5(1)(b): "*persons deprived of their liberty for reasons related to the armed conflict ... shall, to the same extent as the local civilian population, be provided with ... drinking water...*". See also the Third Geneva Convention (Art. 20 and 26) and the Fourth Geneva Convention (Art. 89).

<sup>42</sup> See Third Geneva Convention (Art. 29), Fourth Geneva Convention (Art. 85), UN Standard Minimum Rules on the Treatment of Prisoners, Principle 15.

<sup>43</sup> ICRC Customary International Humanitarian Law Database, Rule 110: "*The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.*" See also Additional Protocols I and II (Art. 10 and 7 respectively). See also 1966 International Covenant on Economic, Social and Cultural Rights (Art. 12).

<sup>44</sup> Customary international humanitarian law (Rules 119 and 120, ICRC Customary International Humanitarian Law Database), Additional Protocol II (Art. 5(2)(a)), UN Standard Minimum Rules on the Treatment of Prisoners (Rule 8(a)). UN Convention on the Rights of the Child (Art. 37(c)), International Covenant on Civil and Political Rights (Art. 10(2)(b)).

<sup>45</sup> Article 75(3) of Additional Protocol I to the Geneva Conventions, which is considered to reflect customary IHL in both international and non-international armed conflicts, provides that "*Any person arrested, deprived of liberty or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken*". Art. 9(2) of the International Convention on Civil and Political Rights provides that "*Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest*". See also Principle 10, UN Body of Principles for the Treatment of Prisoners.

<sup>46</sup> Rule 37, 44(3), UN Standard Minimum Rules on the Treatment of Prisoners, and Principles 15/16, UN Body of Principles for the Treatment of Prisoners.

<sup>47</sup> Art. 36(1)(b), 1963 Vienna Convention on Consular Relations.

<sup>48</sup> Rule 93, UN Standard Minimum Rules on the Treatment of Prisoners

<sup>49</sup> See UN Convention for the Protection of All Persons from Enforced Disappearance (Art. 17(3)), and UN Body of Principles for the Treatment of Prisoners (Principle 12).

<sup>50</sup> See the four Geneva Conventions (common Article 3), customary international humanitarian law (Rule 90, ICRC Customary International Humanitarian Law Database), the 1985 Convention Against Torture, the International Covenant on Civil and Political Rights (Art. 7), the African Charter on Human and Peoples' Rights (Art. 5). The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time (see footnote to Principle 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).

<sup>51</sup> International Convention on Civil and Political Rights (Art. 14(3)(g))

<sup>52</sup> See the International Covenant on Civil and Political Rights (Art. 14(3)(b)), UN Standard Minimum Rules for the Treatment of Prisoners (Rule 93), UN Body of Principles for the Treatment of Prisoners (Principle 17)

<sup>53</sup> Art. 4 of the African Charter on the Rights and Welfare of the Child provides that *"In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration"*. See also Article 3 (1) of the UN Convention on the Rights of the Child. See also the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice provide that *"Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case"* (Rule 10.3).

<sup>54</sup> Paris Principles, Principle 7.25

<sup>55</sup> See Paris Principles, Principle 7.28.0

<sup>56</sup> See Paris Principles, Principle 7.28.1

<sup>57</sup> See Paris Principles, Principle 7.28.2

<sup>58</sup> See Paris Principles, Principle 7.28.3

<sup>59</sup> See Paris Principles, Principle 7.28.3/4

<sup>60</sup> See Paris Principles, Principle 7.28.5

<sup>61</sup> See Paris Principles, Principle 7.28.6

<sup>62</sup> See UN Committee on the Rights of the Child, General Comment 10 (2007) (para. 58)

<sup>63</sup> UN Body of Principles for the Treatment of Prisoners (Principle 16(1))

<sup>64</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice (Rule 10(1)), UN Body of Principles for the Treatment of Prisoners (Principle 16(3))

<sup>65</sup> Art. 36(1)(b), 1963 Vienna Convention on Consular Relations.

<sup>66</sup> Principle 16(2), UN Body of Principles for the Treatment of Prisoners.

<sup>67</sup> UN Convention for the Protection of All Persons from Enforced Disappearance (Art. 17(3)), and UN Body of Principles for the Treatment of Prisoners (Principle 12).

<sup>68</sup> Customary IHL (see ICRC Customary IHL Database, Rule 128), International Covenant on Civil and Political Rights (Articles 9 and 14), African Charter on Human and Peoples' Rights (Art. 6)

<sup>70</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rule 43(2)

<sup>71</sup> International Covenant on Civil and Political Rights, Art. 9(3) ("*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power*")

<sup>72</sup> Art. 3, UN Convention Against Torture provides that "*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*". The UN Human Rights Committee's General Comment No. 20 provides that "*States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end*" (para. 9). The 2004 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that "*[t]he principle of non-refoulement is an inherent part of the overall absolute and imperative nature of the prohibition of torture and other forms of ill-treatment*" (para. 28).

<sup>73</sup> International Covenant on Civil and Political Rights (Articles 6 and 14). the UN Human Rights Committee's General Comment No. 31 provides that States have an "*not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as [the arbitrary deprivation of life], either in the country to which removal is to be effected or in any country to which the person may subsequently be removed*" (para. 12). The Human Rights Committee has consistently adopted the same position in its jurisprudence, e.g., *Chitat Ng v. Canada*, (Communication No. 469/1991, 7 January 1994, para. 14.1); *Joseph Kindler v. Canada* (Communication No. 470/1991, 18 November 1993, para. 6.2).

<sup>74</sup> The 2006 International Convention for the Protection of All Persons from Enforced Disappearance provides that: "*The No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance*" (Article 16(1)).

<sup>75</sup> The UN Committee on the Rights of the Child General Comment no 6(2005) provides that in view of the high risk of irreparable harm involving fundamental human rights, including the right to life, States shall not return children "*where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties*" (para 28).

<sup>77</sup> Article 2(3)(a) of the International Covenant on Civil and Political Rights provides that States party must "*ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity*".

<sup>78</sup> The International Committee of the Red Cross (ICRC) visits security detainees around the world. However, because of the ICRC's traditional working procedures – in particular the confidential nature of its reports to the detaining authorities – its visits cannot be a substitute for effective post-transfer monitoring by the mission or an agreed independent humanitarian organization that would report its findings back to the mission.

<sup>79</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rule 43(2)

<sup>80</sup> See Principle 11(1), UN Body of Principles for the Treatment of Prisoners: "*A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.*" By way of analogy with international armed conflicts, Art. 43 and 78 of the Fourth Geneva Convention provides

that protected persons who are interned have the right to have their internment reviewed by an appropriate court or administrative board.

<sup>81</sup> International Covenant on Civil and Political Rights (Art. 9(3))

<sup>82</sup> The UN Body of Principles for the Treatment of Prisoners provides that “A judicial or other authority shall be empowered to review as appropriate the continuance of detention” (Principle 11(3)). In international armed conflicts, Art. 43 of the Fourth Geneva Convention provides that the review of internment of protected persons must take place “at least twice yearly”.

<sup>83</sup> Article 2(3)(a) of the International Covenant on Civil and Political Rights provides that States party must “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”.

<sup>84</sup> See Principle 11(1), UN Body of Principles for the Treatment of Prisoners: “A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law”.

<sup>85</sup> See Principle 11(2), UN Body of Principles for the Treatment of Prisoners: “A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.”

<sup>86</sup> ICRC Customary International Humanitarian Law Database (Rule 121). Additional Protocol II to the Geneva Conventions (Art. 5(2)(c)).

<sup>87</sup> See, generally, ICRC Customary International Humanitarian Law Database, Rule 118 (“Persons deprived of their liberty must be provided with adequate ... shelter ...”). See UN Standard Minimum Rules on the Treatment of Prisoners, Rules 9-14, and the Third Geneva Convention, Art. 25 (“Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health. The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets. The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire”); see also the Fourth Geneva Convention, Art. 85. See also the Third Geneva Convention, Art. 22 (“Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate”) and Additional Protocol II (Art. 5(1)(b): detainees shall “be provided with ... protection against the rigours of the climate and the dangers of the armed conflict”).

<sup>88</sup> See Third Geneva Convention, Art. 26 (“daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners”) and Fourth Geneva Convention, Art. 89. See also Additional Protocol II, Art 5(1)(b): “persons deprived of their liberty for reasons related to the armed conflict ... shall, to the same extent as the local civilian population, be provided with food ...”. See also UN Standard Minimum Rules on the Treatment of Prisoners, Rule 20(1): “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”

<sup>89</sup> See UN Standard Minimum Rules, Rule 20(2): “Drinking water shall be available to every prisoner whenever he needs it.” See also Additional Protocol II, Art 5(1)(b): “persons deprived of their liberty for reasons related to the armed conflict ... shall, to the same extent as the local civilian population, be provided with ... drinking water...”. See also the Third Geneva Convention (Art. 20 and 26) and the Fourth Geneva Convention (Art. 89).

<sup>90</sup> See Third Geneva Convention, Art. 29: “Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them. Also, apart from the baths and showers with which the camps shall be furnished prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary

*installations, facilities and time shall be granted them for that purpose.*" See also Fourth Geneva Convention, Art. 85. See, further, UN Standard Minimum Rules on the Treatment of Prisoners, Principle 15 (*"Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness"*).

<sup>91</sup> See Third Geneva Convention, Art. 27 (*"Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained... The regular replacement and repair of the above articles shall be assured by the Detaining Power."*). See, generally, ICRC Customary International Humanitarian Law Database, Rule 118 (*"Persons deprived of their liberty must be provided with ... clothing..."*).

<sup>92</sup> See Rule 21(1), UN Standard Minimum Rules on the Treatment of Prisoners, Fourth Geneva Convention (Art. 125).

<sup>93</sup> See UN Standard Minimum Rules on the Treatment of Prisoners (Rule 6(2), 40-42), ICRC Customary IHL Database (Rule 127), Third and Fourth Geneva Conventions (Art. 34 and 93 respectively), Additional Protocol II (Art. 5(1)(d)), ICRC Customary IHL Database (Rule 127)

<sup>94</sup> Customary international humanitarian law (Rule 119, ICRC Customary International Humanitarian Law Database), Additional Protocol II (Art. 5(2)(a)), UN Standard Minimum Rules on the Treatment of Prisoners (Rule 8(a)).

<sup>95</sup> Customary international humanitarian law (Rule 120, ICRC Customary International Humanitarian Law Database), UN Convention on the Rights of the Child (Art. 37(c)), International Covenant on Civil and Political Rights (Art. 10(2)(b)).

<sup>96</sup> ICRC Customary International Humanitarian Law Database, Rule 110: *"The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones."* See also Additional Protocols I and II (Art. 10 and 7 respectively).

<sup>97</sup> Article 5(2)(b), Additional Protocol II to the Geneva Conventions; Rules 125 and 105, ICRC Customary International Humanitarian Law Database; Rule 37, UN Standard Minimum Rules for the Treatment of Prisoners; Principles 15, 16, 19, UN Body of Principles for the Treatment of Prisoners. Vienna Convention on Consular Relations (Art. 36(1)(b-c)).

<sup>98</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Rule 37); UN Body of Principles for the Treatment of Prisoners (Principle 19), Customary IHL (ICRC Customary IHL Database, Rule 126: *"Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable"*). Vienna Convention on Consular Relations (Art. 36(1)(c)).

<sup>99</sup> International Covenant on Civil and Political Rights, Art. 14(3) (*"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing..."*). UN Standard Minimum Rules, Rule 93 (*"For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions"*).

<sup>100</sup> UN Standard Minimum Rules on the Treatment of Prisoners (Rule 93)

<sup>101</sup> See Fourth Geneva Convention (Art. 13)

<sup>102</sup> 1963 Vienna Convention on Consular Relations (Art. 36(1)(a) and 36(1)(c)).

<sup>103</sup> See also UN Body of Principles for the Treatment of Prisoners (Principle 16(2)).

<sup>104</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 15).

<sup>105</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 15).

---

<sup>106</sup> See the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 16), and UN Standard Minimum Rules on the Treatment of Prisoners (Rule 54)

<sup>107</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 16). In international armed conflicts, the Third Geneva Convention provides that *“The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances”* (Art. 42).

<sup>108</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 9)

<sup>109</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 10).

<sup>110</sup> Principle 6, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (*“Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22”*).

<sup>111</sup> Rules 36(1), UN Standard Minimum Rules on the Treatment of Prisoners, Principle 33, UN Body of Principles for the Treatment of Prisoners; Third and Fourth Geneva Conventions (Art. 78 and 101 respectively).

<sup>112</sup> See Rules 36(3) and 36(4), UN Standard Minimum Rules on the Treatment of Prisoners.