



**PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL  
AND LEGAL ASSISTANCE IN AFRICA  
(excerpts)**

**A. GENERAL PRINCIPLES APPLICABLE TO ALL LEGAL PROCEEDINGS**

**3) Public hearing**

f) The public and the media may not be excluded from hearings before judicial bodies except if it is determined to be:

(i) in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence [...]

h) Judicial bodies may take steps to protect the identity of accused persons, witnesses or complainants where it is in the best interest of a child.

[...]

**M. PROVISIONS APPLICABLE TO ARREST AND DETENTION**

**1) Right to liberty and security**

f) Expectant mothers and mothers of infants shall not be kept in custody pending their trial, but their release may be subject to certain conditions or guarantees, including the payment of bail.

[...]

**N. PROVISIONS APPLICABLE TO PROCEEDINGS RELATING TO CRIMINAL CHARGES**

[...]

(v) If national law does not permit the accused to examine witnesses during pre-trial investigations, the defendant shall have the opportunity, personally or through defence counsel, to cross-examine the witness at trial. However, the right of a defendant to cross-examine witnesses personally may be limited in respect of victims of sexual violence and child witnesses, taking into consideration the defendant's right to a fair trial.

[...]

## **9) Sentencing and punishment**

c) Sentence of death shall not be imposed or carried out on expectant mothers and mothers of infants and young children.

[...]

e) States shall provide special treatment to expectant mothers and to mothers of infants and young children who have been found guilty of infringing the penal law and shall in particular:

(i) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;

(ii) establish and promote measures alternative to institutional confinement for the treatment of such mothers;

(iii) establish special alternative institutions for holding such mothers;

(iv) ensure that a mother shall not be imprisoned with her child;

(v) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation

[...]

## **O. CHILDREN AND THE RIGHT TO A FAIR TRIAL**

a) In accordance with the African Charter on the Rights and Welfare of the Child, a child is any person under the age of 18. States must ensure that domestic legislation recognises any person under the age of 18 as a child.

b) Children are entitled to all the fair trial guarantees applicable to adults and to some additional special protection.

c) States must ensure that law enforcement and judicial officials are adequately trained to deal sensitively and professionally with children who interact with the criminal justice system whether as suspects, accused, complainants or witnesses.

d) States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.

e) No child shall be subjected to arbitrary arrest or detention.

f) Law enforcement officials must ensure that all contacts with children are conducted in a manner that respects their legal status, avoids harm and promotes the well-being of the child.

g) When a child suspected of having infringed the penal law is arrested or apprehended, his or her parent, guardians or family relatives should be notified immediately.

h) The child's right to privacy shall be respected at all times in order to avoid harm being caused to him or her by undue publicity and no information that could identify a child suspected or accused of having committed a criminal offence shall be published.

i) States shall consider, wherever appropriate, with the consent of the child and his or parents or guardians, dealing with a child offender without resorting to a formal trial, provided the rights of the child and legal safeguards are fully respected. Alternatives to criminal prosecution, with proper safeguards for the protection of the well-being of the child, may include:

(i) The use of community, customary or traditional mediation;

(ii) Issuing of warnings, cautions and admonitions accompanied by measures to help the child at home with education and with problems and difficulties.

(iii) Arranging a conference between the child, the victim and members of the community;

(iv) Making use of community programmes such as temporary supervision and guidance, restitution and compensation to victims.

j) Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Any child who has been arrested for having committed a crime shall be released into the care of his or her parents, legal guardians or family relatives unless there are exceptional reasons for his or her detention. The competent authorities shall ensure that children are not held in detention for any period beyond 48 hours.

k) Children who are detained pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

l) Every child arrested or detained for having committed a criminal offence shall have the following guarantees:

(i) to be treated in a manner consistent with the promotion of the child's dignity and worth;

(ii) to have the assistance of his or her parents, a family relative or legal guardians from the moment of arrest;

(iii) to be provided by the State with legal assistance from the moment of arrest;

(iv) to be informed promptly and directly, in a language he or she understands, of the reasons for his or her arrest and of any charges against his or her, and if appropriate, through his or her parents, other family relative, legal guardians or legal representative;

(v) to be informed of his or her rights in a language he or she understands;

(vi) not to be questioned without the presence of his or her parents, a family relative or legal guardians, and a legal representative;

(vii) not to be subjected to torture or any other cruel, inhuman or degrading treatment or punishment or any duress or undue pressure;

(viii) not to be detained in a cell with adult detainees.

m) States shall establish separate or specialized procedures and institutions for dealing with cases in which children are accused of or found responsible for having committed criminal offences. The establishment of such procedures and institutions

shall be based on respect for the rights of the child, shall take into account the vulnerability of children and shall promote the child's rehabilitation.

n) Every child accused of having committed a criminal offence shall have the following additional guarantees:

- (i) to be presumed innocent until proven guilty according to the law;
- (ii) to be informed promptly and directly, and in a language that he or she understands, of the charges, and if appropriate, through his or her parents or legal guardians;
- (iii) to be provided by the State with legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iv) to have the case determined expeditiously by a competent, independent and impartial authority or judicial body established by law in a fair hearing;
- (v) to have the assistance of a legal representative and, if appropriate and in the best interests of the child, his or her parents, a family relative or legal guardians, during the proceedings;
- (vi) not to be compelled to give testimony or confess guilt; to examine or have examine adverse witnesses and to obtain the participation of witnesses on his or her behalf under conditions of equality;
- (vii) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (viii) to have the free assistance of an interpreter if he or she cannot understand or speak the language used;
- (ix) to have his or her privacy fully respected at all stages of the proceedings.

o) In disposing of a case involving a child who has been found to be in conflict with the law, the competent authority shall be guided by the following principles:

- (i) The action taken against the child shall always be in proportion not only to the circumstances and gravity of the offence but also the best interest of the child and the interests of society;
- (ii) Non-custodial options which emphasise the value of restorative justice should be given primary consideration and restrictions on the personal liberty of a child shall only be imposed after careful consideration and shall be limited to the possible minimum. Noncustodial measures could include:
  - (1) Care, guidance and supervision orders;
  - (2) Probation;
  - (3) Financial penalties, compensation and restitution;
  - (4) Intermediate treatment and other treatment orders
  - (5) Orders to participate in group counselling and similar activities;
  - (6) Orders concerning foster care, living communities or other educational settings
- (iii) A child shall not be sentenced to imprisonment unless the child is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (iv) Capital punishment shall not be imposed for any crime committed by children and children shall not be subjected to corporal punishment.

p) States shall ensure that child witnesses are able to give their best evidence with the minimum

distress. Investigation and practices of judicial bodies should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. States are required, as appropriate, to adopt the following measures in regard to child witnesses:

- (i) Child witnesses shall not be questioned by the police or any investigating official without the presence of his or her parents, a family relative or legal guardians, or where the latter are not traceable in the presence of a social worker;
- (ii) Police and investigating officials shall conduct their questioning of child witnesses in a manner that avoids any harm and promotes the well-being of the child;
- (iii) Police and investigating officials shall ensure that child witnesses, especially those who are victims of sexual abuse, do not come into contact with or made to confront the alleged perpetrator of the crime;
- (iv) The child's right to privacy shall be respected at all times and no information that could identify a child witness shall be published;
- (v) Where necessary, a child witness shall be questioned by law enforcement officials through an intermediary;
- (vi) A child witness should be permitted to testify before a judicial body through an intermediary, if necessary;
- (vii) Where resources and facilities permit, video-recorded pre-trial interviews with child witnesses should be presented;
- (viii) Screens should be set up around the witness box to shield the child witness from viewing the defendant;
- (ix) The public gallery should be cleared, especially in sexual offence cases and cases involving intimidation, to enable evidence to be given in private;
- (x) Judicial officers, prosecutors and lawyers should wear ordinary dress during the testimony of a child witness;
- (xi) Defendants should be prevented from personally cross-examination child witnesses;
- (xii) The circumstances in which information about the previous sexual history of alleged child victims may be sought or presented as evidence in trials for sexual offences must be restricted.