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Regional Guide to Public Defence and the Comprehensive Protection of Persons Deprived of Freedom

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1. Whereas

With regard to the “100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad”, (100 Rules of Brasilia on Access to Justice for Persons in Vulnerable Conditions), approved by the XIV Ibero-American Judicial Summit, held in Brasilia from 4 to 6 March 2008.

Taking into account the goals of the "Strategic Plan for Implementing the 100 Rules of Brasilia" adopted by the Inter-American Association of Public Defenders (AIDEF in its Spanish acronym).

Recalling that persons deprived of freedom belong to the groups of people in situations of vulnerability, specifically as a consequence of their situation of being deprived of the fundamental right to personal freedom.

Expressing concern about the critical situation in the region of many persons deprived of their freedom, as a result of, among other causes, overcrowded prisons, episodes of violence in prisons and poor detention conditions.

Bearing in mind, as highlighted by the Resolutions of the General Assembly of the OEA, AG/RES. 2656 (XLI-O/11), “Guarantees for access to justice. The role of Official Public Defenders”, and AG/RES. 2714 (XLII-O/12), “Official Public Defence as a guarantee of access to justice for persons in vulnerable conditions”, that the work being carried out by the Official Public Defenders of the States of the Hemisphere constitutes an essential component for strengthening access to justice and consolidating democracy, and the importance of free legal aid service in promoting and protecting the right of access to justice for all persons, in particular those who may be in special situations of vulnerability.

Taking account of the principles and provisions contained in the international human rights instruments, especially those concerning the rights of persons deprived of freedom.

Recognising the existence in the region of best practices in the scope of Official Public Defenders in promoting and defending the rights of people deprived of freedom.
In order to strengthen, consolidate and extend existing best practices, and improve the services provided by Official Public Defenders in defending the rights of persons deprived of freedom.

Declaring that under this Guide, the term persons deprived of freedom refers to those persons who use the public defence service. Specifying that, for the purpose of this Guide, deprivation of freedom shall be understood as any form of detention or incarceration or custody of any person in any public or private institution from which such person is not free to walk out by order of a judicial or administrative authority or any other public authority.

This REGIONAL GUIDE TO PUBLIC DEFENCE AND THE COMPREHENSIVE PROTECTION OF PERSONS DEPRIVED OF FREEDOM and the Explanatory Memorandum accompanying it, intended for Official Public Defenders who form part of the Inter-American Association of Public Defenders (AIDEF) and the comprehensive defence of the same is hereby adopted.
2. Right of access to justice

(1) Access to justice is a fundamental human right and essential condition for the fulfilment of all other human rights. It is the medium that makes it possible to restore the exercise of those rights that have been ignored, violated or infringed.

The right of access to justice is one of the basic pillars on which the constitutional rule of law rests in a democratic society. Universality and equality are two characteristic elements of the specific recognition of the right of access to justice.

(2) It is recalled that international recognition of this right requires States to define comprehensive public policies that guarantee effective access to justice for persons without any form of discrimination.

(3) Pursuant to international conventions, States are required to guarantee this access through a simple, fast and effective remedy that is effective, appropriate and relevant to the exercise of rights.

(4) International conventions require States to adopt all possible measures to remove regulatory, economic or social obstacles and barriers impeding access to justice.

(5) Access to justice must respect the integral guarantees of the right to due process. States are not only required to guarantee access to justice, but also to ensure that such access complies with the integral guarantees of due process.

(6) The institutional strength of Official Public Defenders is one of the key factors for the safe and universal right of access to justice as a genuine human right that must be guaranteed for all persons.
3. Persons in situations of vulnerability and access to justice

(7) Persons considered as in a vulnerable condition include those persons who, for reasons of their race, ethnic origin, nationality, sex, language, religion, political opinion or other nature, national or social origin, economic position, birth, physical, mental or sensory disability, gender, sexual orientation, gender expression and identity or any other social condition, encounter particular difficulties to fully exercise before the justice system, the rights recognised by the legal system.

(8) In the case of persons and/or groups in vulnerable conditions, the right of access to justice should be safeguarded and guaranteed especially given the particular situation in which they are.

(9) Pursuant to international conventions, States should establish public policies that guarantee this right and prioritise those actions aimed at facilitating access to justice for persons in situations of great or special vulnerability.

(10) As part of these public policies, the institutional strengthening of Official Public Defenders tends to ensure, guarantee and facilitate access to justice for persons and groups in conditions of vulnerability.
4. Persons deprived of freedom and access to justice

(11) All persons deprived of freedom should be considered as in a vulnerable position, specifically due to the particular situation whereby their fundamental right to personal freedom is restricted, and they are exposed to a higher risk of violation of their human rights.

(12) This situation of vulnerability generates difficulties in acceding to justice to defend their rights. It has been observed, that on many occasions, in addition to the situation of deprivation of freedom, there are other related causes and/conditions that further aggravate the situation of high and/or special vulnerability. This situation of vulnerability generates difficulties in acceding to justice to defend their rights.

(13) We should make sure that said persons can depend on the appropriate legal resources to seek the effective judicial protection of their rights.

(14) Any person deprived of freedom should have the right, by themselves or through a third party, to present a simple, fast and effective appeal before the competent, independent and impartial authorities, against acts or omissions that violate or threaten to violate their human rights.

In particular, they are entitled to file complaints and/or allegations of acts of torture, prison violence, corporal punishment, cruel, inhumane or degrading treatment or sentences, as well as for the conditions of detention, lack of medical or psychological care and adequate food.

(15) It is noted that Official Public Defenders should steer their actions towards promoting the right of access to justice for all persons deprived of freedom and to promoting, defending and protecting their rights.
5. Right to defence and legal aid

(16) The right of defence is an internationally recognized human right and a basic guarantee of the very notion of due process.

(17) The right of defence, as a fundamental right is an inherent guarantee in all constitutional rule of law and basic condition for the legitimacy and validity of the criminal proceedings at all stages, including criminal enforcement.

(18) The right to legal aid, as a guarantee integrated within the broader right of defence, must be guaranteed for all persons without any kind of discrimination. Legal aid should be free for those who lack sufficient financial resources.

(19) It is noted that legal aid services are of fundamental importance for promoting the right of access to justice for all people, especially those who are in particularly vulnerable situations.

(20) We consider that guaranteeing the right of defence requires, inter alia, that States should ensure a system of Official Criminal Public Defence to provide quality legal assistance to those who require it.

(21) The actions of Official Public Defenders should be based on the principle of effective defence of the interests of the defendant.
6. Right to defence and persons deprived of freedom

(22) All persons deprived of freedom must be guaranteed the right of defence and access to legal aid.

(23) Any person deprived of liberty is entitled to appoint a special counsel or request the appointment of an Official Public Defender.

(24) It is emphasised that legal aid ensures that persons deprived of freedom receive technical assistance to defend themselves against arbitrary deprivations and/or to enforce their rights against arbitrary limitations or violations committed during their detention or incarceration.

(25) Any person deprived of freedom is entitled to communicate with their counsel / and maintain contacts and receive their visits without restriction.

(26) It is hereby reaffirmed that any person deprived of freedom is entitled to the treatment of such communications and visits with their counsel as privileged and that those visits and communications are neither hindered nor censored by the authorities of the detention centres.

(27) Any person deprived of freedom is entitled to authorise their defender, in their capacity as a representative, to access the official record containing his/her personal data.

(28) Any person deprived of freedom has the right to submit through his/her counsel, petitions, protests, complaints and appeals to the competent authorities in case of violation of their rights and, in particular, in cases of torture or other cruel, inhumane or degrading punishment.
7. The role of Public Defence Officers in protecting the rights of persons deprived of freedom

(29) It is recalled that compliance with and protection of the rights of persons deprived of freedom is a shared responsibility of all public institutions and organisations within the scope of exercise of their respective functions and powers.

(30) Official Public Defenders are key institutional actors in the defence, protection and promotion of the rights of persons deprived of freedom. Their actions should help to facilitate and improve access to justice for persons deprived of freedom.

(31) It is emphasised that the work of Official Public Defenders in this field must be an example of institutional commitment to the protection and promotion of the rights of persons deprived of freedom, ensuring the technical quality in their defence.

(32) Official Public Defenders shall include the promotion and defence of the rights of persons deprived of freedom within their institutional strategic mission. This strategic mission shall be implemented by providing the services of information, representation and legal counsel to the persons deprived of freedom, including administrative and judicial services, to ensure that only those rights strictly linked to the situation of incarceration or detention are affected.

(33) Official Public Defenders shall have the basic functions of providing assistance, legal counsel and representation to persons deprived of freedom.

(34) Official Public Defenders shall adapt their actions to ensure respect for human rights in detention centres and compliance with applicable international standards.

(35) In fulfilling this mission, Official Public Defenders accredited by AIDEF have to:

a) Establish regular and periodic service within the detention centres to ensure that direct contact of persons deprived of freedom with their counsel is guaranteed to procure their effective treatment.
b) Systematically organise the processes and procedures used in managing the specialised defence oversight on the conditions of deprivation of freedom.

c) Have theoretical inputs and systematic practical experience to interpret the scope and content of the rights of the persons deprived of freedom from a fully guaranteed perspective.

d) Improve the instruments required to make qualitative, comprehensive and critical assessment of the detention or incarceration situation and accordingly propose prevention policies to avoid the violation of human rights of the persons deprived of freedom.

(36) Those national laws that do not provide for the intervention and/or participation of Official Public Defenders during the criminal execution phase should encourage the incorporation and development of this provision in the law, in order to provide adequate regulatory coverage for exercising the duties of defending the rights of persons deprived of freedom.
8. The duties of Official Public Defenders in protecting the rights of persons deprived of freedom

(37) With respect to the different realities and existing national experiences in the region, and in accordance with legally recognised powers, the Official Public Defenders, members of AIDEF will exercise, develop and promote at least the following basic functions for the defence of the rights of persons deprived of freedom according to internationally established standards.

- Legal information and counselling
- Representation and defence before the administrative authorities
- Representation and defence before judicial authorities
- Dissemination and publicity of rights

(38) The assumption and exercise of such functions requires adjusting the operating capacity of Official Public Defenders, to match the possibilities of each one, in order to be in an optimum position to provide information and legal assistance to all persons deprived of freedom who contact them for assistance.

(39) In the exercise of these duties, Official Public Defenders will create and launch interaction and collaboration networks with governmental and non-governmental organisations defending human rights, in particular with the various national mechanisms for the prevention of torture, as well as with civil society.

8.1. Legal information and counselling

(40) Official Public Defenders shall ensure the provision of consultancy services, information and legal advice to persons deprived of freedom.

(41) The defenders will present those legal avenues available to persons deprived of freedom to demand their rights and denounce any violations to such rights, especially in cases of torture or other cruel, inhumane or degrading punishment, in addition to any ensuing consequences.
(42) They will provide information on the processing of appeals, petitions, requests and complaints either to the administrative authorities or to the judicial authorities and on the procedural situation and / or prison in which the person is being held.

(43) If the grounds for the petition for information exceed the scope of the incarceration, the derivation of such petitions will be forwarded to the competent agencies and / or institutions.

(44) The provision of consultation, information and counselling services shall also extended to the families and friends of persons deprived of freedom, subject always to the duty of confidentiality when requested by the person deprived of freedom.

8.2. Representation and defence before the administrative authorities

(45) Official Public Defenders shall provide services of representation and defence of persons deprived of freedom before administrative and / or prison authorities where necessary under national law.

(46) The exercise of this function will require public defenders to have access to official records, administrative records and information necessary for the purpose of designing their defence strategy

8.3. Representation and defence before the judicial authorities

(47) Official Public Defenders provide services of representation and defence of persons deprived of freedom before the judicial authorities.

(48) To this end, the defenders shall initiate and promote all the procedural steps necessary to defend the interests of the defendants and intervene on behalf of the person deprived of freedom at all stages of the process.

(49) They shall file before the competent judicial authority appeals that are legally justified against the decisions of the authorities responsible for the detention centres and give them timely follow-up until the final resolution in the various procedural stages.

(50) They shall submit to the competent courts those actions, individual or collective, required to defend the fundamental rights of persons deprived of freedom, where they consider that those rights have been violated, and they shall follow up on the appeal until its final resolution.
They shall bring the appropriate actions, measures and petitions before the international courts and other international human rights protection organisations.

(51) The exercise of this function will require public defenders to have access to official records, administrative records and the information necessary for the purpose of preparing their defence strategy.

8.4. Dissemination and publicity of rights

(52) Official Public Defenders will design, plan, implement and execute dissemination and publicising programmes about the rights of persons deprived of freedom, the minimum standards of treatment, complaint and reporting mechanisms, the available services, sources of support and representation.

(53) Official Public Defenders will teach persons deprived of freedom about their rights and what to do when those rights are violated.

(54) The dissemination and publicity programmes shall extend to the families and friends of the persons deprived of freedom, as well as their social support networks. As far as possible, they shall try to involve the staff of the detention centre, as well as those in charge of providing care, transfer, discipline, custody and surveillance to the persons deprived of freedom.

(55) When designing and implementing such programmes, they shall encourage collaboration with other agencies and / or public institutions involved, as well as with civil society, especially with non-governmental organisations created for the purpose of protecting the rights of persons deprived of freedom.
9. Specialisation of public defenders as an institutional strategy

(56) Existing national experiments in the region and the best practices observed support the specialisation of Official Public Defenders as an organisational principle in the exercise of the functions of information, advice, representation and defence of persons deprived of freedom.

(57) It is noted that the specialisation of defenders is a guarantee of efficiency and effectiveness in the exercise of the legally assigned functions.

(58) The specialisation must be accompanied by the implementation of measures to ensure equal access to services without discrimination and adequate territorial deployment.

(59) Within the framework of their respective possibilities, Official Public Defenders will equip the support and defence services for persons deprived of freedom with sufficient human and material resources to ensure their effectiveness and operability.
10. Training strategies for defenders

(60) Official Public Defenders will design training strategies for defenders, including but not limited to the following basic themes:

- Rights of persons deprived of freedom, in accordance with international standards, and prevention and investigation of torture and other cruel, inhuman or degrading punishment.
- Monitoring visits at detention centres in cases where it is provided for in national legislation and/or is carried out.
- Interview techniques with persons deprived of freedom, with special attention to cases where there are indications of torture or ill-treatment in the case of persons belonging to particularly vulnerable groups

(61) Under the leadership of AIDEF, and in so far as allowed by available financial resources, there should be propose the design, promotion and strategic implementation of the following training activities:

- Conferences, seminars and workshops on the themes described above.
- Organisation of meetings between defenders in different countries of the region, in order to exchange respective experiences and strengthen national best practices at regional level.
- Development of training manuals for defenders taking into account the materials published and edited by different agencies, both nationally and internationally.
11. Strategies for verifying the conditions of incarceration or detention

(62) To ensure respect for the rights of persons deprived of freedom, Official Public Defenders must implement strategies to verify the conditions of detention centres.

(63) For these purposes, they shall use all existing legal avenues to perform the functions of promoting and defending the rights of persons deprived of freedom, by conducting monitoring visits, directly coordinating with the respective national mechanisms for preventing torture or other authorities with jurisdiction in the matter, or those bodies urging the effective implementation of these monitoring activities when circumstances so warrant.

In any case, they will find time to follow up on the outcome of the visits made by the agencies and competent authorities.

(64) All these verification strategies should be designed as an institutional action to ensure the protection of the rights of persons deprived of freedom.

(65) To carry out the task of ensuring respect for the rights of persons deprived of liberty, it is emphasised that visits help limit the risk of violation of the fundamental rights of these people. They are a valuable tool for preventing torture and other cruel, inhuman and degrading punishment and institutional abuse to which detainees may be subjected.

(66) Official Public Defenders shall draw up and publish an annual report on the results of the implementation of their respective strategies for verifying the conditions of detention.

11.1. Personal visits by defenders to their defendants

(67) The Official Public Defence shall organise visits, through its defenders, to those persons deprived of freedom and for whom they are in charge of their technical defence.
During visits the defender will personally meet with the person deprived of freedom.

Official Public Defenders shall promote the installation and use of existing technological means to facilitate contact and meetings between the defenders and persons deprived of freedom by ensuring that their confidentiality is respected. Under no circumstance shall the use of such technological means replace actual on-site visits.

(68) Personal visits carried out by defenders to their defendants will be used also to obtain information about the conditions of detention to allow, where appropriate, the introduction of measures and necessary actions to defend the rights of persons deprived of freedom.

(69) Within the framework of its powers and functions, they will define a protocol for personal interviews, which will define the general and specific objectives and rules of conduct and the action of the defenders.

(70) Defenders will ensure that interviews can be conducted in appropriate spaces that ensure confidentiality. In the case where the authorities responsible for detention centres hinder or impede the realisation of visits or fail to guarantee their confidentiality, they shall initiate actions and appropriate measures to put a stop to such practices.

11.2. Monitoring visits on the conditions of incarceration or detention

(71) There must be a formal protocol for monitoring visits to check the conditions of detention. The protocol must set the broad and specific targets, and identify the minimum rules of conduct for the visiting teams.

They will initiate and encourage the possibility of carrying out unannounced visits without prior notice to the detention centre authorities.

11.2.1. Defining a protocol for the monitoring visits

(72) A formal protocol will require prior preparation of a periodic programme of regular monitoring visits to the detention centres, setting the priorities and general and specific objectives that they intend to follow.

(73) The program for monitoring visits shall contain, at least, the following points:

• list of detention and incarceration establishments;
• whether the visits should be announced or not;
• the order in which the places will be visited;
• the planned duration of the visit;
• the planned frequency of visits and the number of recommended monitoring visits estimated for each centre.

(74) General monitoring visits will be conducted independently of other national and / or international organisations with competence in the matter, without prejudice to establishing channels of coordination and collaboration.

(75) The planning of regularly scheduled visits will not be incompatible with occasional and / or emergency visits when required by the circumstances.

(76) Visit protocols and / or manuals taking into account existing best practices and the guidelines and instructions issued by International Organisations and the contents of this Regional Guide shall be developed as a modernisation criterion.

11.2.2. General goals for monitoring visits

(77) Regardless of the specific objectives and priorities established in the corresponding national programme of monitoring visits, the following goals shall be set as the minimum:

• Check that at the time of admission, the persons deprived of freedom are informed of their rights and obligations.
• Evaluate the treatment given to the persons deprived of freedom in the detention centres.
• Verify the occurrence of factors that promote, facilitate or allow torture or other cruel, inhumane or degrading punishment.
• Observe the general state of the detention centres and the living conditions
• Verify especially sensitive locations in the detention centre, such as solitary confinement and punishment cells.
• Check the disciplinary system.
• Verify access to medical care and medical facilities.
• Verify the schedule of activities and contacts with the outside world and access conditions and places for visits with the family and relatives of persons held in detention centre.
• Verify the safety conditions of detention centres.
• Check the existence of particularly vulnerable situations

11.2.3. Minimum rules of conduct for the monitoring visit teams

(78) The monitoring visit teams of Official Public Defenders competent in the matter will ensure that their actions comply with the principles and rules indicated by international organisations.
In conducting the visits defenders shall neither jeopardise the safety of persons deprived of liberty nor that of the detention facility, they shall adapt their actions to the principle of objectivity and impartiality, respect the custodial authorities and the persons deprived of freedom, preserving the privacy of the latter and the confidentiality of the information provided in private interviews.

(79) The rules and principles of action will be incorporated by Official Public Defenders in their visit protocols and/or manuals
12. Rights of persons deprived of freedom

(80) In exercising their duties, defenders should be aware that persons deprived of freedom enjoy the same rights recognised for all persons under national and international human rights conventions, except that the exercise of such rights is limited or restricted because of their incarceration.

(81) It is recalled that the conditions of detention should not lead to an additional punishment for persons deprived of their freedom or involve a limitation or violation of their human rights

12.1. International recognition and standards

(82) It is recalled that international instruments set minimum standards for the treatment of persons deprived of freedom and the recognition, promotion and defence of their fundamental rights, with a clear purpose of protecting them.

(83) In accordance with international laws, States, in their role as guarantors of those rights that are not restricted by the act of deprivation of freedom, should refrain from carrying out actions that violate the rights of persons deprived of freedom.

(84) According to international laws, all States have an obligation to respect and protect the rights of persons deprived of freedom. In cases of violations of such rights, they have an obligation to put a stop to such violation and implement efficient and appropriate investigations for clarification.

(85) According to international laws, all States have an obligation to promote the rights of persons deprived of freedom, this obligation is internationally recognised by taking measures to incorporate them into national legislation.

(86) Defenders shall ensure, in the performance of their duties, that the rights of detainees are respected and verify the effective implementation of international standards by the State and the authorities in charge of the detention or incarceration centres.
12.2. Respect for the dignity of the person

(87) Every human being is entitled to respect for their personal dignity. This respect for every person must be guaranteed regardless of race, ethnicity, nationality, colour, sex, age, language, religion, political or other nature, national or social origin, economic status, birth, physical, mental or sensory disability, gender, sexual orientation, gender identity and expression, or any other social condition.

(88) Any person deprived of freedom shall be treated with humanity and with respect due to the inherent dignity of a human being.

(89) Defenders shall verify that the conditions of detention of persons deprived of freedom are compatible with human dignity and guarantee their right to life and personal, physical and mental integrity. The detention conditions shall not aggravate the pain and suffering of being deprived of their freedom.

(90) It has been observed that inhumane conditions of detention represent one of the causes that contribute to the phenomenon of prison violence.

(91) Defenders shall ensure, in the performance of their duties, that persons deprived of freedom are treated with the respect due to their dignity.

12.3. Respect for the right to life and personal, physical and psychic integrity. Prohibition of torture, and other cruel, inhuman or degrading treatments.

(92) Rights to life and personal, physical and psychic integrity are inalienable and basic assumptions for exercising the rights recognised for persons deprived of freedom. From the recognition and protection derives the absolute prohibition of torture, and other cruel, inhumane or degrading treatments.

(93) The defenders shall ensure that the authorities in charge of detention facilities, as well as the personnel in charge of their treatment, custody, supervision, discipline and transfer do not engage in behaviour that undermines the integrity of persons deprived of freedom, and shall encourage the competent authorities to adopt the essential and necessary measure to prevent such behaviour.

They should also ensure that persons deprived of freedom are not subjected to coercion, threats, extortion and other acts of violence by other inmates, and if necessary, will urge the competent authorities to take appropriate steps to end these practices.
(94) Defenders shall ensure that allegations of torture and other cruel, inhumane or degrading punishments are promptly, effectively and completely investigated by an impartial body.

(95) In the performance of their functions, defenders will insist on compliance with, inter alia, the following international standards:

a) The prohibition of any penalties or disciplinary sanction that includes corporal punishment, or is cruel, inhumane or degrading.

b) The abolition or restriction of the use of solitary confinement as a disciplinary sanction. When solitary confinement is combined with inhumane living conditions, then the incarceration or detention becomes a cruel, inhumane or degrading treatment.

c) That body searches are made with respect and regard for human dignity.

d) That detainees are transferred or transported under conditions that are not demeaning and that they are not subject to unnecessary physical or mental suffering, or exposure to public display.

(96) Overcrowding and prison overpopulation constitute a cruel, inhumane or degrading treatment, which violates the human rights of persons deprived of freedom.

Defenders shall verify the capacity of the detention centres they visit and recommend and initiate through the competent authorities the adoption of the necessary measures to correct any overcrowding they find.

(97) In cases of people with physical, mental or sensory disabilities, defenders shall promote the adoption of alternative solutions to incarceration in detention centres. For cases where it might not be possible to verify that detention facilities are adapted to their needs, in order to prevent a situation where the deprivation of freedom is aggravated and turns into degrading or humiliating treatment.

(98) Carry out the necessary and appropriate actions when they become aware that the force used by the staff responsible for the custody, treatment, surveillance, discipline and transfer of persons deprived of liberty does not conform to the principles of necessity and proportionality.

12.4. Right to non-discriminatory treatment

(99) Any person deprived of freedom is equal before the law and has the right to equal protection under the law and the courts of justice.

(100) Defenders shall note that under no circumstance shall there be discrimination against persons deprived of freedom for reasons of race, ethnicity, nationality, colour,
sex, age, language, religion, political or other nature, national or social origin, economic status, birth, physical, mental or sensory disability, gender, sexual orientation, gender identity and expression, or any other social condition.

Likewise, they shall strive for the adoption of measures to prevent and eliminate discriminatory patterns against persons deprived of freedom and living with HIV/AIDS.

12.5. Right to ideological and religious freedom and respect for cultural identity

(101) Any person deprived of freedom has the right to ideological and religious freedom and is entitled to respect for their cultural identity.

(102) Defenders shall ensure that persons deprived of freedom are guaranteed:

• The right to profess, manifest, practice and change their religion according to their beliefs.
• The right to participate in religious and spiritual activities, and to exercise their cultural traditions.
• The right to communicate and receive visits from their religious or spiritual representatives, with a guarantee of confidentiality in their case.

(103) They will recognise that persons deprived of freedom, who have no religious beliefs and no desire to practice a religion, are not obliged to do so or are not discriminated against on such grounds.

12.6. Right of access to health

(104) The right to health entitles the person deprived of freedom to claim and enjoy all the means that allow them to access the highest level of physical, mental and social well-being. The deprivation of liberty must never represent the loss of the right to health.

It is unacceptable that the condition of detention should add illness and physical and/or mental ailments to those suffering from the deprivation of freedom.

Defenders shall demand respect for the medical records of persons deprived of freedom, and the right of non-disclosure of this information.

(105) The right of access to health must be guaranteed without discrimination and, under the same conditions as for those not deprived of their freedom.
(106) The person deprived of freedom must have access to a basic supply of services and goods needed to care for their health, as well as the possibility to do so on an equal footing with other people and in the best possible facilities.

The provision of health services should be done in close coordination and collaboration with the public health system.

(107) The person deprived of freedom is entitled to access the health programmes, goods and services provided by qualified medical staff and equipment and be treated with scientifically approved drugs and under good conditions.

(108) Defendants shall check that the detainees are not subjected, even with their consent, to medical and/or scientific experiments harmful to their health.

(109) Defenders shall strive to ensure that persons deprived of their freedom are guaranteed at least the following health benefits and services:

a) Admission medical and psychological examination.
b) Periodic medical consultations, including psychological and dental care, and continuity of recommended medical treatment.
c) Psychiatric care for diagnosis and treatment of cases of mental disease.
d) Permanent and timely emergency care.
e) 24-hour medical and nursing care.
f) Facilities equipped to handle consultations and application of the appropriate treatment.
g) Provision of timely and adequate quantities and quality of free medication.
h) Provision of medically-ordered diets.
i) Implementation of educational and health promoting programmes including, sexual and reproductive health that guarantee access to scientific and quality information, unprejudiced and respectful of sexual diversity, as well as immunisation, prevention and treatment of infectious and endemic diseases, and access to means of prophylaxis. Access to prevention, treatment and monitoring of sexually-transmitted diseases and HIV/AIDS programmes, and access to addiction treatment programmes.
j) Transfer without unnecessary delay, to a civil hospital or specialist prison hospital when ailments cannot be treated in detention centres.
k) The right to request a second medical opinion.
l) Healthcare specifically targeted at women and girls at least equivalent to the care available in the community.
m) Adequate paediatric care in all incarceration or detention facilities housing women with under-age children.
n) Access to the reports of medical studies carried out.
12.7. Right to personal hygiene

(110) Defenders shall strive to ensure that persons deprived of freedom are guaranteed:

a) Access to clean and sufficient sanitary facilities that ensure their privacy and dignity.
b) Free access to basic products to meet the needs for ensuring gender-appropriate hygiene.
c) Access to water for personal hygiene, according to the climatic conditions.

(111) Unhygienic conditions in detention centres should be considered as humiliating and degrading.

12.8. Right to sufficient, good quality food

(112) All persons deprived of freedom have the right to sufficient good quality food with the adequate nutritional value to maintain their health.

(113) Defenders shall strive to ensure that persons deprived of freedom are guaranteed:

a) The right to receive and claim nourishment that corresponds in quantity, quality and conditions of hygiene to adequate and sufficient nutrition, for the purpose of guaranteeing a fully satisfactory and dignified life. They shall verify that the food is provided at regular times.
b) That they take into account their cultural and religious traditions.
c) That they take into account their special needs or diets determined in accordance with medical criteria.

(114) They shall ensure that this right is neither suspended nor limited as a form of disciplinary sanction.

12.9. Right of access to clean drinking water

(115) Defenders shall demand that persons deprived of freedom are assured the right of access to adequate and sufficient drinking water for consumption and personal hygiene.

(116) They shall demand that this right is neither suspended nor limited as a form of disciplinary measure.
12.10. Right to productive paid work

(117) All persons deprived of freedom are entitled to productive, paid work under fair and dignified conditions and that is not afflictive in nature. Pursuant to international laws, any form of exploitative and forced labour is prohibited.

Work that is carried out as a means of reducing and/or serving a sentence shall also be recognised as paid work.

(118) Defenders shall demand that both men and women have the same possibilities of access to work, without any restrictions or limitations based on gender.

(119) They shall strive for detention centre authorities to propose professional and technical training to persons deprived of freedom, with special attention to women, youth and communities in especially vulnerable position.

12.11. Right to education and participation in cultural and sports activities

(120) Persons deprived of freedom are entitled to education and participation in cultural and sports activities. Access to such activities must be guaranteed for all persons without any discrimination and regardless of gender. In any case, cultural diversity and special needs must be taken into account.

Participation in education and cultural activities may, in accordance with national legislation, be taken as reduction and/or serving of sentence.

Defenders must strive to ensure that language barriers do not hinder or block access to education, and that such access is guaranteed as best as possible, with particular attention to language.

(121) Defenders shall demand that persons deprived of freedom are assured and guaranteed at least, the following benefits and services:

a) Free primary or basic education.

b) Secondary, technical, vocational and higher education, equally accessible to all, in view of their abilities and skills, and the availability of the existing resources.

c) That the educational services provided in places of deprivation of freedom operate in close coordination and integration with the public education system.

d) Availability of adequate installations and libraries, with sufficient books, magazines and education reviews, with the appropriate equipment and technology, according to the available resources.
The defenders shall ensure that the persons deprived of freedom are assured of their right to participate in cultural, sports, and social activities and that they have opportunities for healthy and constructive recreation.

12.12. Right to a decent wardrobe

(123) Defenders shall strive to ensure that persons deprived of freedom are guaranteed:

a) That the clothing used will be sufficient and appropriate for the climatic conditions, and in case a uniform is required, that it will be provided free of charge by the authorities in charge of the detention centre.

b) That the detainee’s cultural and religious identity is respected in the locker room as well as their self-perceived gender identity.

c) That the cloths are neither degrading nor humiliating.

d) That they have individual and sufficient bed linen.

12.13. Right to communicate with the outside world and maintain relations with family and friends

(124) The authorities responsible for detention facilities should ensure that the detainees can contact and communicate with the outside world. Such contact and communication must especially be guaranteed with their families and friends.

(125) Defenders shall strive to ensure that persons deprived of freedom are guaranteed:

a) The right to receive and send mail, subject to those limitations compatible with international law.

b) Right to maintain personal and direct contact, through periodic and regular visits with their families, relatives and legal representatives.

c) The right to maintain intimate relations with their partners, whether of the same sex or otherwise.

d) Right to be informed about events in the outside world through social communication media and through any other form of communication with the outside world, in accordance with the law.

(126) They shall require that the visits with family and relatives take place in a dignified manner, under acceptable conditions of privacy, hygiene and safety, and in adequate installations for them.
(127) They shall verify that the families of persons deprived of freedom are not subject, during their visits, to humiliating or degrading treatment by the authorities and agents in charge of the surveillance and safety of the detention facilities.

(128) They shall ensure that foreign nationals deprived of their freedom benefit from adequate facilities to communicate, upon request, with their diplomatic and consular representatives.

For the event that the persons deprived of freedom have access to telephone communication, they shall ensure that foreign nationals are provided with access to communication taking into account the different time zones with their countries of origin.

12.14. Right to lodge appeals, petitions and claims before the competent authorities

(129) Persons deprived of freedom are entitled to submit appeals, petitions and claims before the competent authorities, both administrative and judicial. International laws also recognise for such persons, the right to both individual and collective petition. This right can be exercised by third parties or organisations. Such third parties include lawyers and Official Public Defenders.

(130) The defenders shall guarantee that such petitions and claims are neither censored nor screened by the authorities in charge of the detention centres, and that there are no obstacles or difficulties to the exercise of this right.

(131) They shall demand that persons deprived of freedom are not subjected to acts of reprisal and/or disciplinary sanctions as a consequence of the exercise of this right.

(132) They shall ensure that the petitions, claims, motions and appeals obtain rapid respond from the judicial and/or administrative authorities, and in this case shall initiate and implement the appropriate measures to this effect.

(133) Defenders shall offer persons deprived of freedom adequate legal assistance and information about the exercise of this right.

(134) Defenders shall specifically ensure that the petitions, requests and appeals submitted to the administrative and / or judicial authorities are duly processed and that replies are received in a reasonable time. They should also ensure that judgements given on the occasion of appeals filed by persons deprived of freedom to protect their rights have been correctly and fully implemented and fulfilled. Otherwise, they will initiate and promote the adoption of the appropriate measures to ensure that it is done.
13. Particularly vulnerable groups

(135) Those persons deprived of freedom belonging, inter alia, to the groups listed below will be considered as particularly vulnerable persons: people with mental disabilities, women, children and institutionalized adolescents, persons belonging to the LGBTI (lesbian, gay, bisexual, transgender and intersex) community, persons belonging to indigenous peoples or indigenous communities, the elderly, migrants, refugees and asylum seekers.

(136) The recognition of the situation of special vulnerability calls for special protection measures. The adoption of such special measures can never be considered as discriminatory.

(137) Official Public Defenders should steer their actions to pay special attention to vulnerable groups in particular, in order for them to fully enjoy the rights they are entitled to under international instruments and national laws.

13.1. Persons with mental disabilities

(138) Persons considered as mentally disabled will include persons with limited cognitive and / or intellectual abilities.

(139) As a general principle, persons deprived of freedom with mental disabilities should be transferred to a mental health institution. The defenders shall defend compliance with said general principle. In case this is not possible, they will demand that, in the place of incarceration or detention, such persons receive specialised treatment appropriate to their ailment.

(140) The defenders shall ensure that the fundamental rights of such persons are respected, as set out in the UN Convention on the Rights of Persons with Disabilities and that they receive care and adequate health care for their ailment and suffering.
13.2. Women subject to incarceration or detention

(141) The deprivation of freedom aggravates the inherent situation of vulnerability of women and exposes them to a greater risk of being the victims of physical, psychological or sexual violence.

(142) Defenders shall ensure that women deprived of freedom receive non-discriminatory treatment that takes into account their special needs, in accordance with the International Standards set out in the so-called "Bangkok Rules".

For cases where the mothers deprived of freedom keep their children with them inside the place of incarceration or detention, defenders shall verify that they have access to the services required for their growing development and that at all times the best interests of the children is guaranteed.

(143) They shall monitor the incarceration or detention centres to ensure compliance with the criterion of separation between men and women.

(144) Defenders will inform and offer advice to incarcerated women who have been victims of episodes of violence about their right to go to the judicial authorities, about existing procedures, in addition to their right to obtain and receive legal assistance.

13.3. Institutionalised boys and girls and adolescents

(145) The terms boy, girl and adolescent refers to any person below eighteen years.

(146) During visits to young offenders detention centres, they must verify that the rights of children and adolescents enshrined in the UN Convention on the Rights of the Child are respected and shall insist on compliance with the recognized international standards, which include inter alia, the "United Nations Rules for the Protection of Juveniles Deprived of Freedom "and the "Beijing Rules "

(147) They shall ensure that no child below the age specified in national law is deprived of his/her freedom for breach of the criminal law.

They shall verify in particular that no boy, girl or adolescent is unlawfully or arbitrarily deprived of their freedom for conduct that is not considered criminal when performed by an adult.

They shall check that any detention measure is subject to a periodic review that takes account of the growth and development of the child or adolescent.
(148) The defenders shall monitor that the criterion of effective separation of adults from children is respected and that children and adolescents are subjected to treatment appropriate for their age and legal condition. Otherwise, they will initiate and promote the adoption of the appropriate measures by the competent authorities.

They shall check to make sure that boys are kept in separate centres from girls.

(149) In particular, they shall make sure that they are guaranteed free compulsory education.

13.4. Lesbian, gay, bisexual, transgender and intersex persons (LGBTI)

(150) Sexual orientation and gender identity are fundamental aspects of the dignity of every person. Therefore, defenders shall ensure that the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons deprived of freedom are respected and are not subject to discriminatory treatment because of their sexual orientation or gender identity or expression and that their special needs are taken into account.

(151) Defenders shall verify that the authorities responsible for detention and incarceration facilities respect their choice of dress as an expression of their self-perceived gender identity.

They shall also check that the persons belonging to these communities take part in decisions relative to the place of detention and concerning their sexual orientation and gender identity.

(152) They shall arrange to facilitate the benefit of intimate visits for such persons with their same-sex or different-sex partner, without any distinction based on considerations of gender or sexual orientation.

They should inform and advise LGBTI people, especially transgender people and children and adolescent LGBTI, deprived of liberty, who have been victims of violence, of their right to appeal to the judicial authorities, and of the existing procedures and their right to obtain and receive legal assistance.
13.5. Persons belonging to indigenous communities

(153) The incarceration of persons belonging to indigenous ethnic groups or communities should be a measure of last resort, and preference should be given to the adoption of alternative and/or substitute criminal sanctions.

(154) The defenders shall urge the adoption of measures likely to help promote the harmonization of state and indigenous justice administration systems, under the principle of mutual respect and in accordance with international human rights standards. Especially any sanctions that may be imposed by indigenous justice systems should not be contrary to the dignity of the person and the prohibition of torture and other cruel, inhumane or degrading punishment.

Likewise, where appropriate, to strengthen the defence of their rights, they shall propose before the competent authorities, the practice of the appropriate cultural assessments.

(155) Defenders shall verify that the treatment given to said persons when deprived of their freedom is respectful of their dignity, language and/or linguistic expression, customs and cultural traditions.

They shall ensure that they maintain ties with their native community.

(156) They shall ensure the fulfilment of their economic, social and cultural rights in the incarceration or detention facility.

They shall monitor that the detention or incarceration facility housing persons from native or indigenous communities have translators or interpreters for their language in order to facilitate communication and allow them to fully enjoy their rights.

They shall verify that the educational and training programmes are provided in accordance with their norms and customs, and with their language and/or linguistic expression.

13.6. The elderly

(157) Elderly people deprived of freedom should be guaranteed equal opportunity and dignified treatment.

(158) The defenders shall check that their physical and mental health needs are properly taken care of.
They shall check that they are given the right to take decisions regarding their care and quality of life.

(159) The defenders shall inspect the installations of the detention centre to check that they are fit for their condition, without barriers or obstacles to hinder or impede their normal autonomous movements.

13.7. Migrants

(160) Defenders will check that the detention of migrants for breach of immigration laws is not carried out with a punitive purpose.

When they are detained for their irregular immigration status, they shall check that such persons are not held in detention facilities housing prosecuted and/or convicted felons.

(161) In cases of deprivation of freedom, the defenders shall insist on the adoption of measures to facilitate and promote the contact of the migrants with their families in their home country.

Upon request, they shall facilitate for the detained migrants, relations and contacts with the consular authorities of their countries of origin.

They will promote the processing of applications for enforcement of sentences in the home countries brought by the sentenced or convicted migrants in accordance with the respective framework.

(162) When the detained migrant does not speak the national language of the place of detention, the defenders shall arrange for timely measures to ensure that the migrant receives the free assistance of an interpreter for the purpose of facilitating communication with the defender and the competent authorities.

13.8. Refugees and asylum seekers

(163) Defenders will arrange for the appropriate measures to be taken for foreign persons deprived of freedom who apply for recognition as refugees to access the information needed to present said application to the competent national authority.

In cases where it may be possible, the defender must choose the means through which the person deprived of freedom can access legal advice on their application for recognition as a refugee or can have legal representation in the process.
(164) The defenders shall apply all means necessary measures to ensure that the local authorities, in compliance with the principle of confidentiality, refrain from notifying any authority of the consulate or embassy of the home country of the refugee or asylum seeker when such person is deprived of freedom.

(165) Under the principle of non-refoulement, when a person deprived of liberty has stated his/her intention to seek asylum and submits his/her corresponding application or has been effectively recognised as a refugee, the defenders will strive to take all necessary and appropriate means to bring all suitable remedies in order to suspend any deportation or extradition proceedings against the person.
14. Regional Observatory of Best Practices

(166) Under the leadership and coordination of AIDEF, a Regional Observatory of Best Practices will be set up as a technical body tasked with, among other functions, the duties below:

a) monitoring and supervising the implementation and execution of this Regional Guide for Public Defence and the comprehensive protection of persons deprived of freedom.

b) Disseminating and publicising existing best practices in the region about the functions of Official Public Defenders in the protection of persons deprived of freedom and sharing different national experiences.

c) Promoting, supporting and coordinating training strategies at the regional level.
With the participation of more than 80 Operating Partners and Collaborators from Europe and Latin America.

Co-ordinating Partners:

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