

**PERIODIC PROGRESS REPORT**

**OF**

**THE COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA**

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**PRESENTED TO THE 53<sup>rd</sup> ORDINARY SESSION OF THE AFRICAN COMMISSION  
ON HUMAN AND PEOPLES' RIGHTS**

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**Introduction**

This report is presented pursuant to Article 3 of Resolution ***ACHPR/Res. 61(XXXII) 02*** on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), adopted by the African Commission on Human and Peoples' Rights (the Commission) at its 32<sup>nd</sup> Ordinary Session in October 2002. This resolution also set up a Follow-up Committee which was subsequently renamed the Committee for the Prevention of Torture in Africa (CPTA). It would be recalled that the principal mandate of the CPTA is to disseminate the RIG as well as to promote and facilitate their effective implementation by State Parties to the African Charter on Human and Peoples' Rights

(African Charter). The Committee is comprised of member(s) of the Commission and independent experts appointed by the Commission for a two years renewable term.

The present report outlines the progress made the by the Committee for the Prevention of Torture in Africa (CPTA) in the accomplishment of its mandate, since my tenure as its Chairperson from October 2007. , The report also sets out the challenges faced by the mechanism, its perspectives and recommendations to various stakeholders.

### **Overview of the situation of torture on the continent**

While torture and other forms of ill-treatment still remain widespread in many parts of the continent, significant gains have been registered in the fight against these ills. The last few years have witnessed increasing momentum in the fight against torture, with increasing awareness being raised among major stakeholders, especially State Party on the absolute necessity to prohibit and prevent torture. Thus, States are gradually moving away from outright denial of the occurrence of acts of torture in their territories and the involvement of their officials, to recognition of its existence and acknowledgement of the need to take measures to prevent its occurrence. The increasing adoption of laws and the initiation of Bills on the criminalization of torture on the continent as well as the increasing ratification by African States of the relevant international instruments is eloquent testimony to the political will.

The prohibition and prevention of torture has also taken center-stage internationally with greater collaboration between relevant international and regional mechanisms. Many more NGOs with a torture prevention mandate have also been established and authorized to operate in many countries across the continent.

These notwithstanding, many challenges still persist that leave millions of Africans vulnerable to being subjected to torture and ill-treatment. For instance, legal frameworks for the prohibition of torture are still lacking in most instances and where these exist, their effective implementation still lags behind; detention conditions remain deplorable and have a disproportionate impact on the most vulnerable and marginalized;

independent oversight of places of detention remains inadequate and the criminal justice systems, inefficient.

## **1) Progress in the implementation of the RIG**

The adoption of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines or RIG), by the Commission in October 2002, was meant to respond to the many challenges outlined above that African States face in the fight against torture. The Follow-up Committee for the Implementation of the RIG, today known as the CPTA, established by the Commission to among other things, oversee the effective implementation of the RIG within State Parties, has made significant progress within the last six years in the accomplishment of its mandate. Progress has been made in the following areas.

### **a) Ratification of regional and international instruments**

As a first step towards making the prohibition of torture effective within State Parties, the RIG admonishes State Parties to ratify and fully implement various international instruments, especially the Convention against Torture and its Optional Protocol (the OPCAT). The CPTA has been consistently advocating for the ratification and effective implementation of these instruments by African States. Apart from Angola, the Central African Republic, Guinea Bissau, Eritrea, Gambia, Soa Tome and Principe, Tanzania, Sahrawi Arab, Democratic Republic, South Sudan, Sudan and Zimbabwe, all the other African countries have ratified the CAT. It should also be noted that many of the State Parties to the CAT have been remiss in fulfilling their reporting obligations under this instrument. The CPTA therefore encourages State Parties that have not yet done so, to take the necessary measures to fulfill their reporting obligations.

Regarding the OPCAT, an instrument that empowers national and international oversight mechanisms, to undertake regular unannounced visits to places where people

are deprived of their liberty with a view to preventing the abuse of detainees, eleven African States have so far ratified. These are Benin, Burkina Faso, DRC, Gabon, Liberia, Mali, Mauritania, Nigeria, Senegal, Togo and Tunisia. Eight others including Cameroon, Republic of Congo, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Zambia have also signed the protocol.

Of the eleven (11) African countries that have ratified the OPCAT only few have established/designated National Preventive Mechanisms as required under the OPCAT to among other things, monitor conditions of detention in order to prevent torture and ill-treatment, engage in a constructive dialogue with State Party authorities and make recommendations for change. In this regard, the CPTA commends Mali, Mauritius, Nigeria, Senegal and Togo and encourages the other State Parties that have not yet done so to speed up the process of NPM establishment/designation.

#### **b) Criminalization of torture**

In promoting the implementation of the Robben Island Guidelines, the CPTA has adopted the criminalization of torture in national legislations as a matter of priority. The CPTA believes that the most basic and practical step for States to take in enhancing their efforts to prevent and eliminate torture is to adopt comprehensive anti-torture legislation in accordance with international norms that clearly defines torture and provides a framework for investigations and ensures reparation for victims. Criminalizing torture and ensuring the implementation of the relevant laws will go long way in preventing its occurrence and provide a foundation on which a tradition of accountability for perpetrators and redress for victims can be built.

Through the concerted efforts of the CPTA and other relevant actors, African countries are increasingly enacting legislation criminalizing torture. Algeria, Burundi, Cameroon, the DRC, Egypt, Mauritius, Madagascar Tunisia, and recently, Uganda and Rwanda, have adopted specific legislations criminalizing torture, while Benin, Burkina Faso, Kenya, Liberia Nigeria, Namibia, Togo still have bills pending before their respective legislatures.

### **c) Organization of seminars**

Despite its meager resources, the CPTA Since 2007 has organized various seminars for law enforcement officials and other concerned relevant stakeholders with a view to raising awareness on the prohibition and prevention of torture and disseminating the Robben Island Guidelines. The Committee has organized training seminars for various stakeholders in Nigeria (2008), Liberia (2009), Benin (2009) and Cameroun (2012). It has also organized a regional conference on the OPCAT in Dakar (2010), a Seminar on the effective functioning of Senegalese National Preventive Mechanism (2011), and a Commemorative Seminar on the 10<sup>th</sup> Anniversary of the Adoption of the Robben Island Guidelines in South Africa (August 2012);

The Commemorative seminar in particular, was a milestone event whose main objective was to enhance torture prevention efforts in Africa through the assessment of the impact of the RIG ten years after its adoption, the sharing of good practice and experiences in the implementation of the RIG, the identification of challenges that hinder the effective implementation of the Guidelines as well as brainstorming on possible solutions to these challenges. The seminar came up with the ‘Johannesburg Declaration and Plan of Action on the Prevention and Criminalization of Torture’ providing a significant impetus to the prevention of torture in Africa by equipping participants with the necessary knowledge and tools to make a difference in their respective countries.<sup>1</sup>

### **d) Engagement with authorities of State Parties**

The Committee has engaged in a constructive dialogue with authorities of State Parties and other relevant stakeholders during its promotion missions. Promotion missions have enabled the CPTA to engage directly with various government officials at the highest level, policy makers, members of the judiciary, legislative bodies, NHRIs and NGOs in the concerned states on a diverse range of issues including the enactment of anti-torture legislation, reporting on torture in their periodic reports, detention conditions etc. Missions have so far been undertaken to Uganda (2009), Benin (2009), Algeria

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<sup>1</sup> For details on the Johannesburg Declaration, please see <http://www.achpr.org/mechanisms/cpta/>.

(2010) DRC (2011) and Mauritania (2012). Indeed the long standing anti-torture bill was passed by DRC during a mission to that country in 2011 while Mauritania ratified the OPCAT following the CPTA mission.

The Committee has also been active in engaging States Parties on the issues of torture prevention during the presentation of their Periodic Reports to the Commission. In that regard, the thematic of torture has featured prominently in all recent Periodic Reports examined by the Commission, notably those of Cameroon, Namibia, Uganda, DRC, Togo, Burundi, Nigeria, Libya, Angola etc. through this process, the CPTA has made pertinent recommendations to the concerned States on ways of enhancing the efforts in the prohibition and prevention of torture.

**e) Partnerships and interaction with other actors**

**During the reporting period, the CPTA has successfully initiated and sustained cooperation relationships with various relevant international mechanisms, National Human Rights Institutions (NHRIs) and NGOs. In this regard, the CPTA has been collaborating with UN bodies such as the Office of the Office of the High Commissioner for Human Rights, the Special Rapporteur on Torture, the Subcommittee for the Prevention of Torture, in the organization of various events and the issuing of joint statements.**

**The CPTA has also closely collaborated with NHRI, especially in countries where it has carried out activities. The case of the Mauritanian NHRI during the 2012 CPTA promotion mission to that country in 2012 and the exemplary cooperation between the South African Commission and the CPTA in the Organization of the Commemorative seminar on the 10<sup>th</sup> Anniversary of the RIG, are worth mentioning. The CPTA has also initiated and sustained a close working relationship with partners such as the Association for the Prevention of Torture and the Article 5 Initiative who have greatly contributed to the work of the mechanism.**

**f) Publications**

A practical guide on the implementation of the RIG has also been published in 2008, jointly with the APT and the OHCHR. The CPTA also publishes a biannual newsletter, '*the Africa Torture Watch*', to sensitize the public about its work and clarify provisions of the RIG.

#### **g) Internal organization**

The Committee has developed a three years strategic plan to guide its work and improve its performance and visibility in the discharge of its mandate. It had also elaborated and adopted its internal rules.<sup>2</sup> It now holds regular meetings and has established a working relationship with other international bodies such as the UN Special Rapporteur on Torture, the Subcommittee for the Prevention of Torture as well as NGOs and National Human Rights Institutions;

#### **Urgent Appeals/Press Statements**

In responding to act of torture and ill-treatment brought to its attention, the CPTA has engaged State Parties through letters of urgent appeals requesting for the concerned State to take measures among other things protect the mental and physical integrity of the persons allegedly tortured or ill-treated, investigate the allegations, bring the perpetrators to justice and afford redress for the victims.

In the last 6 years several urgent appeals have been sent, amongst which is that related to the Marikana killings in South Africa. While State Parties generally fail to respond to these letters, The Republic of South Africa is commended for the prompt response received under the signature of the President H E Jacob Zuma.

Several Press statements have also been issued on acts of torture or ill-treatment brought to the attention of the CPTA. In the spirit of collaboration with the international bodies, the CPTA and the UNSRT issues a joint statement in March 2013 on the death

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<sup>2</sup> for texts of the CPTA Strategic Plan and Working Methods, see <http://www.achpr.org/news/2011/07/d29> .

of Macia Mido, a Mozambican taxi driver, resulting from cruel and inhuman acts of the South Africa Police.

## **2) Perspectives**

For the future, the CPTA envisages moving its focus from promotion to analysis of substantive issues and concepts in order to provide advice and technical support to national actors as well as authoritative guidance/views on the implementation of RIG provisions. In this regard, the Committee will in the course of 2013 begin the process of developing a model ant-torture law which can serve as a source of inspiration for States wishing to enact anti-torture legislation. All interested stakeholders are welcome to engage with the Committee to support this initiative.

The Committee will also strive to improve its operational efficiency and strengthen its interaction/cooperation with other mechanisms of the Commission,, the UN Subcommittee on the Prevention of Torture, the UN Special Rapporteur on Torture, National Human Rights Institutions as well as relevant NGOs

## **3) Challenges**

The CPTA has encountered several challenges that have impeded the accomplishment of its mandate. The very nature of the environment in which the mechanism operates, i.e., an environment characterized by acute deficiencies in governance, poverty and inequalities etc., are a major impediment to any effective torture prevention work. The CPTA has specifically faced the following challenges:

- a)** Lack of political will to prevent torture on the part of State Parties has significantly affected the work of the CPTA. Effective torture prevention requires a strong commitment from the State to adhere to its international obligations and collaborate with international mechanisms in that respect. However, many African countries have been remiss in fulfilling their obligations to prohibit and prevent torture.



- b) Lack of legal frameworks clearly defining torture as a crime with applicable penalties reflective of the seriousness of the offense is a major challenge in the fight against torture on the continent. Of the 43 African countries that have ratified the CAT and hence under an obligation to enact legislation criminalizing tort only 10 have done so and effective implementation still lags behind.
- c) While many African countries have ratified the CAT, only few have taken steps to ratify the OPCAT and establish fully functional National Preventive Mechanisms. The effective oversight of places of detention therefore remains problematic.
- d) Many State parties do not fully cooperate with the CPTA by for example, authorizing promotion missions, responding to urgent appeals and implementing recommendations arising from periodic reports and decisions of the Commission on communications.
- e) Lack of financial and human resources has also considerably affected the work of the CPTA. The CPTA is largely staffed and funded by the Commission which is itself under-staffed and under-resourced. There is no specific budget allocated to the mechanism and partner funding is very inadequate.

#### **4) Recommendations**

##### **A) To State Parties:**

###### **i) Criminalization of torture**

States should ensure that torture is criminalized in the national legal framework in conformity with the Convention against Torture and the Robben Island Guidelines. States Parties must go beyond the simple prohibition of torture in their constitutions and adopt specific comprehensive anti torture legislation that provides for adequate sanctions and a framework where victims of torture can be compensated and rehabilitated;

###### **ii) Speeding up the process of enacting draft bills into law**

For State Parties that have bills criminalizing torture pending before their legislatures, to speed up the process of adoption and enactment of these bills in to law;

**iii) Ratification of OPCAT**

For State Parties that have not yet done so, to ratify as soon as is practicable, the Optional Protocol to the UN Convention Against Torture and ensure its effective implementation, notably by setting up effective National Preventive Mechanisms (NPM) with all the requisite guarantees to undertake regular unannounced visits to places of deprivation of liberty.

**iv) Training and sensitization**

States should ensure that adequate training on human rights standards and specifically on the Robben Island Guidelines is provided to all services responsible for dealing with persons deprived of their liberty, notably, judges and magistrates, the police, correctional services personnel, immigration officials, defense forces etc.

**v) Redress for victims of torture**

States should take all necessary measures to ensure that allegations of torture are thoroughly investigated and that all perpetrators are subject to the legal process in order to curb impunity. Measures should also be put in place to ensure that victims of torture and other forms of ill-treatment are adequately compensated and rehabilitated. State Parties should also take steps to establish a National Fund for victims of Torture.

**B) To NHRIs and civil society organizations:**

1. To accompany the efforts of the CPTA in sensitizing the general public on the absolute and irrevocable nature of the prohibition against torture and help in disseminating the Robben Island Guidelines to various relevant actors in their respective areas of operation;

2. Promote the criminalization of torture in national legislation and advocate for the ratification and effective implementation of the OPCAT and accompany the implementation of the CPTA strategic plan.

**Finally, it is imperative that the Commission should devise ways and means of sourcing the resources necessary for the proper functioning of the mechanism.**