

INTER-SESSION ACTIVITY REPORT
(MAY 2017 to NOVEMBER 2017)
AND
THEMATIC REPORT ON DENIAL OF ABORTION AND
POST-ABORTION CARE AS TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING PUNISHMENT OR
TREATMENT

Presented to the 61st Ordinary Session of the African Commission on Human and
Peoples' Rights

Banjul, The Gambia, 01 to 15 November 2017

Commissioner Lawrence M. Mute
Chairperson, Committee for the Prevention of Torture in Africa
Member, Working Group on Older Persons and Persons with Disabilities
Member, Working Group on Specific Issues
Related to the work of the African Commission

Email: lamumu07@gmail.com

Contents

I: Introduction	3
II: Inter-sessional Activities	4
III: Denial of Abortion and Post-Abortion Care as Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment.....	7
IV: Conclusion and Recommendations.....	13

I: Introduction

1. This Report is prepared pursuant to Rules 23 (3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the African Commission), which requires each of the African Commission's subsidiary mechanisms to present a report on its work at each Ordinary Session, and each Commissioner to submit a report similarly on promotion activities undertaken during the inter-session. I submit this Report in my capacity as a Member of the African Commission, the Chairperson of the Committee for the Prevention of Torture in Africa ('CPTA' or 'the Committee'), Member of the Working Group on Older Persons and Persons with Disabilities, and Member of the Working Group on Specific Issues Related to the work of the African Commission.
2. This Report covers the inter-session between the 60th and the 61st Ordinary Sessions of the African Commission, during the period May to November 2017. It also provides an analysis on the theme '*Denial of Abortion and Post-Abortion Care as Torture and Cruel, Inhuman or Degrading Punishment or Treatment.*'
3. The Report is divided into this introduction; my inter-sessional activities; a thematic report on 'Reproductive Violence as Torture'; and recommendations.
4. Annexed to this Report is a compilation and assessment of all the work done by the CPTA during my tenure as its Chairperson, from 2014 to 2017.

II: Inter-sessional Activities

5. I undertook the following activities as a member of the African Commission:

- a. From 27 June to 04 July 2017, I attended the 29th Ordinary Session of the Summit of the African Union, held in Addis Ababa, Ethiopia. In the course of the Session, I attended and participated in the following meetings: the 34th Ordinary Session of the Permanent Representatives Committee; the 31st Ordinary Session of the Executive Council; and the 29th Ordinary Session of the Assembly of Heads of State and Government.
- b. Additionally, on the margins of the Summit, I participated in a courtesy call made by the African Commission's delegation on the AU Commissioner for Political Affairs, **H.E. Cessouma Minata Samate**, where discussions on the mutual human rights mandates of the Department of Political Affairs and the African Commission were discussed.
- c. Finally, on the side-lines of the Summit, on date, I also participated in the Ninth Meeting of the Bureaus of the Commission and the African Court on Human and Peoples' Rights (the African Court), held on **02 July 2017**. meeting of the Bureaus of the African Commission and the African Court on Human and Peoples' Rights which discussed the outcome of Project 2016; the draft practice directives on the agreed conclusions between the Bureaus of the Court and Commission; progress of the Yearbook on Human Rights; the Legal Aid Fund; cooperation on PANAF; and a proposed tri-partite agreement between the Commission, the Court and the Committee of Experts on the Rights and Welfare of the Child.
- d. From 29 July to 07 August 2017, I attended the 22nd Extra-Ordinary Session of the African Commission, held in Dakar, Senegal.

- e. On 07 August 2017, I issued a Press Statement on the Human Rights Situation in the Federal Democratic Republic of Ethiopia, welcoming the lifting of the state of emergency imposed by the Government of Ethiopia on 04 August 2017.
- f. On 30 August 2017, in my capacity as Commissioner-Rapporteur for Ethiopia, I sent a Letter of Appreciation to His Excellency Dr. Mulatu Teshome, President of the Federal Democratic Republic of Ethiopia, welcoming the lifting of the state of emergency which had been imposed by the Government on 09 October 2016. While congratulating the Government, I urged His Excellency the President to:
- ensure that due process of law was observed for persons arrested and detained further to the state of emergency and release all persons not charged following their arrest or detention;
 - initiate impartial investigations into the alleged human rights violations that occurred following imposition of the state of emergency, and ensure that the perpetrators are prosecuted and subjected to sanctions reflecting the gravity of their offences;
 - ensure that the victims of the violations and their families obtain full and adequate redress; and
 - take the necessary measures to guarantee the security and safety of its population, in accordance with the African Charter and other regional and international human rights instruments to which Ethiopia is a party.
- g. On 06 September 2017, I participated in a panel discussion on the importance of human rights in development in Africa, during a Policy Forum on strengthening human rights based approach to development in Africa: the nexus between strong human rights institutions and development at a national level. This forum was organized in Addis Ababa by Network of African Human Rights

Institutions (NANHRI) and involved the Permanent Representatives Council of the African Union. I made a presentation entitled 'Dovetailing human rights into development in African states and African Union organs: A perspective from the African Commission on Human and Peoples' Rights' in which I stressed the fact that since African states have ceded specific human rights protection and promotion mandates to the Commission, then they are obligated to respect and support the Commission's work.

- h. On 06 October 2017, in my capacity as Commissioner-Rapporteur for Ghana, I paid a courtesy call on Ambassador Albert Yankey, Chief Director in the Ministry of Foreign Affairs & Regional Integration of Ghana in Accra. During the meeting, we discussed strategies for effective collaboration between Ghana and the Commission.

III: Denial of Abortion and Post-Abortion Care as Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment

A. INTRODUCTION

6. The CPTA is mandated to facilitate the implementation of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines). The Robben Island Guidelines expound on Article 5 of the African Charter on Human and Peoples' Rights (the Banjul Charter) which prohibits all forms of exploitation and degradation of persons, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.
7. This thematic report of the CPTA explores how denial of safe and legal abortion and post-abortion care services can amount to torture and other cruel and inhuman or degrading treatment (torture and other ill-treatment). It also makes recommendations on measures that State Parties and the African Commission on Human and Peoples' Rights (the African Commission) can take to remedy such human rights violations.
8. The guarantee of sexual and reproductive rights are fundamental to women's and girls' right to be free from torture and other ill-treatment. It is widely recognised that sexual violence can rise to the level of torture and other ill-treatment.¹ In addition, recent international legal precedents establish that the mental and physical trauma

¹ Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 available tbinternet.ohchr.org/Treaties/CEDAW/.../1_Global/CEDAW_C_GC_35_8267_E.pdf

caused by depriving women of their reproductive rights may also constitute a violation of the right to be free from torture and other ill-treatment.²

9. The torture and other ill-treatment framework should be applied “in a gender-inclusive manner with a view to strengthening the protection of women from torture.”³ Yet women across the region continue to be denied access to safe and legal abortion and post-abortion care services due to restrictive abortion laws, stigma and violations of medical confidentiality in health-care settings. These denials can cause tremendous pain and suffering and have long lasting consequences for women’s health and lives and may amount to torture and other ill-treatment.

B. NORMATIVE FRAMEWORK

10. Article 5 of the Banjul Charter prohibits all forms of exploitation and degradation of man, particularly torture, cruel, inhuman or degrading punishment and treatment. Article 4 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) prohibits exploitation and cruel, inhuman or degrading punishment and treatment of women, including all medical or scientific experiments without their informed consent. Article 16(1) of the African Charter on the Rights and Welfare of the Child calls for legislative, administrative, social, and educational measures to protect the child from all forms of torture and inhuman or degrading treatment.

11. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes the minimum global standard on

² In the landmark decision of *K.L. v. Peru*, the Human Rights Committee deemed the denial of a therapeutic abortion that put the petitioner’s (K.L.) physical and mental health at risk, a violation of her fundamental right to be free from torture and other cruel, inhuman or degrading treatment, as recognized under Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

³ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil Political, Economic, Social & Cultural Rights including Right to Development (7th session) UN Doc. A/HRC/7/3 (2008), para 26.

what torture means. An act or omission may amount to torture where severe physical or psychological pain or suffering is inflicted on a person intentionally by an official or agent of the state. The infliction of that pain or suffering must have the aim of obtaining a confession, meting out punishment, causing intimidation, or engendering discrimination.

12. The African Commission recognizes that reproductive rights violations which involve tremendous physical and psychological pain may amount to torture and other ill-treatment. In General Comment No. 4 on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, the African Commission affirms that acts of gender based violence or failure on the state's part to prevent and respond to such acts may amount to torture and other ill-treatment contrary to Article 5 of the Banjul Charter⁴. Specifically, General Comment No. 4 recognizes that denial of reproductive rights including forced or coerced pregnancy can constitute torture and other ill-treatment.

13. General Comment No. 2 on Article 14 (2) of the Maputo Protocol obligates states to ensure that women are not treated in an inhuman, cruel or degrading manner when they seek safe abortion care. The African Commission also recognises that 'being forced to carry the pregnancy to term in cases where a foetus has a fatal anomaly would constitute cruel and inhuman treatment.'⁵

C. DENIAL OF ACCESS TO SAFE AND LEGAL ABORTION AND POST-ABORTION CARE IN AFRICA

- Restrictive abortion laws

⁴ General Comment No. 4 on the African Charter of Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)

⁵ General Comment No. 2 on Article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Para 40

14. Human rights violations in the context of abortion and post-abortion care are often directly related to the legal status of abortion in a country and the stigma surrounding the post-abortion care procedures. In 11 countries in Africa abortion is either prohibited altogether or there is no explicit legal exception to save the life of a woman.⁶ In a further 38 countries, abortion is legal under restrictive circumstances such as where the life, physical or mental health of the pregnant woman is at risk.⁷ This means that an estimated 90% of women of child-bearing age in Africa live in countries with restrictive laws which force women to seek unsafe abortions, often at great risk to their health and lives. Even where the law has no restrictions or allows abortion under limited circumstances, some abortion laws establish legal and administrative barriers, including third party authorisation, for one to access the services. In such instances women needing safe abortion services may be unable to navigate the processes required to obtain a safe, legal procedure. Unsafe abortion often results in serious health consequences that cause immense pain and suffering.⁸ This is one of the leading causes of maternal mortality in Africa as recognised by the African Commission in General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Maputo Protocol.

15. In 2014, at least 9% of maternal deaths (or 16,000 deaths) in Africa were due to unsafe abortions.⁹ About 1.6 million women in the region are treated annually for complications from unsafe abortions. The World Health Organisation (WHO) estimates that over six million unsafe abortions occur in Africa resulting in 29,000

⁶ Guttmacher Institute, 'Factsheet: Abortion in Africa' (September 2017), available at <https://www.guttmacher.org/fact-sheet/facts-abortion-africa>

⁷ Ibid

⁸ These range from medium to severe complications that include incomplete abortions, excessive blood loss, infection, septic shock, perforation of internal organs and even death. Abortion in Africa, Incidence and Trends, Guttmacher Institute

⁹ Guttmacher Institute, 'Factsheet: Abortion in Africa' (September 2017), available at <https://www.guttmacher.org/fact-sheet/facts-abortion-africa>

deaths and many more serious injuries and disabilities every year for poor, mostly rural based African women and girls under the age of 25.¹⁰

16. The suffering and deaths resulting from restrictive abortion laws are a clear manifestation of the discrimination which women face. They are not only preventable but they are disproportionately inflicted on vulnerable groups of women. WHO evidence¹¹ indicates that restrictive and unclear abortion laws have a disparate impact on low-income women and adolescents who have greater difficulty in preventing unwanted pregnancies and accessing safe abortion services.¹²
17. The African Commission recognises that restrictive abortion laws significantly contribute to unsafe abortions which result in death, severe injury and disability with poor and rural based women bearing a significant burden.¹³ The Commission has urged various State Parties to the ACHPR to review their laws to ensure access to safe abortion. The Commission has called on Mauritius¹⁴, the Federal Republic of Nigeria¹⁵, Uganda¹⁶, Malawi¹⁷, and Kenya¹⁸ to review their abortion legislation to align with international and regional standards and obligations.

¹⁰ World Health Organisation, 'Preventing Unsafe Abortion' (September 2017), available at <http://www.who.int/mediacentre/factsheets/fs388/en/>

¹¹ Ibid

¹² See for instance Center for Reproductive Rights "The Stakes are High: the tragic impact of unsafe abortion and inadequate access to contraception in Uganda" (2013); Center for Reproductive Rights, 'In Harm's Way: the impact of Kenya's restrictive abortion law (2010); CEHURD & Center for Reproductive Rights, 'Facing Uganda's law on Abortion: Experiences from women and service providers (2016).

¹³ <http://www.achpr.org/press/2016/01/d287/> Indeed, the UN Committee against Torture has found that complete bans on abortion, which exist in only five countries in the world (Nicaragua, El Salvador, Chile, Malta, and the Dominican Republic) may constitute prima facie torture or ill-treatment, because these laws place women at risk of preventable maternal mortality.

¹⁴ Concluding Observations and Recommendations on the 2nd, 3rd, 4th and 5th Periodic Reports of the Republic of Mauritius adopted at the Forty-Fifth Ordinary Session

¹⁵ Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014) adopted at the 57th Ordinary Session

¹⁶ http://www.achpr.org/files/sessions/57th/conc-obs/5-2010-2012/concluding_observations_5th_state_report_uganda.pdf

¹⁷ http://www.achpr.org/files/sessions/57th/conc-obs/1-1995-2013/concluding_observations__initial__combined_state_report_malawi.pdf

¹⁸ <http://www.statelaw.go.ke/wp-content/uploads/2016/08/Concluding-Observations-8th-to-11th-Report.pdf>

- Post-Abortion Care

18. Denial of post-abortion care to women after unsafe abortion may amount to torture and other ill-treatment, and seriously jeopardises their physical and mental health.¹⁹ Women throughout the continent face stigma from family members, communities, and health providers that may cause them to delay seeking emergency treatment and to face delays in receiving medical treatment at health facilities. Post-abortion care is free in some countries, but in other countries the prohibitive costs of care keep women away. In some countries, women seeking post-abortion care have been detained in hospitals due to non-payment of fees.²⁰

- Intersectional approach to torture and other ill-treatment

19. Women and girls may experience multiple forms and instances of discrimination and violations that compound their suffering and amount to more than one instance of torture or other ill-treatment. This is the case with survivors of sexual violence who also undergo unsafe abortions due to restrictive abortion laws and who are also denied adequate post-abortion care. In some countries, victims of sexual abuse who procure abortion are arrested, prosecuted and imprisoned. Restrictive abortion laws, while barring access to safe abortion services, also discriminate against women on the basis of sex, age and economic status, violating their right to be free from discrimination as elaborated in Articles 2, 3 and 18(3) of the Banjul Charter and Article 2(1) of the Maputo Protocol. In addition, they also pose a threat of violation to the rights to life, health, dignity, security of the person, and of access to

¹⁹ The CAT Committee has consistently found that denial of access to post-abortion care may constitute torture or ill-treatment. CAT Committee, *Concluding Observations: Paraguay*, Para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).

²⁰ Center for Reproductive Health Rights: *In Harm's Way. The Impact of Kenya's Restrictive Abortion Law*. New York: Center of Reproductive Rights; 2010. p84.

information as provided in Articles 4, 16, 5, 6 and 9 of the Banjul Charter respectively.

IV: Conclusion and Recommendations

20. Despite a clear causal link between maternal mortality, injury, intentional severe pain and suffering and the denial of safe and legal abortion services and post-abortion care, many states continue to uphold restrictive abortion laws and penalties for women and girls using illegal abortion services and providers. The denial of access to safe and legal abortion services and post-abortion care amounts to torture and other ill-treatment.

21. The CPTA therefore makes the following recommendations:

- a) All states should repeal restrictive abortion laws, including the removal of onerous conditions and barriers, restrictions on training of health-care workers on provision of safe abortion services or comprehensive abortion care, and third party authorisation for women and adolescents that hinder access to and timely provision of safe abortion care.
- b) States should amend their penal and criminal laws to remove criminal sanctions related to abortion, and immediately place a moratorium on the prosecution and detention of women who have illegal abortions.
- c) States should adopt WHO Guidelines on Safe Abortion at policy level and ensure their implementation, including through providing training for doctors and nurses and ensuring adequate stocks of abortion supplies and commodities.

d) States should raise awareness among providers and women that post-abortion care is part of emergency medical treatment and a legal service regardless of the legal status of abortion; and that health care providers are required to provide medical care – including post-abortion care.

e) States should take all necessary measures to ensure redress to victims of reproductive rights violations, including through accelerating their implementation of General Comment No. 4 on The Right to Redress for Victims of Torture, including in relation to the denial of reproductive rights.

22. The African Commission should consider commissioning a broader, in-depth study on reproductive rights violations as torture and other ill-treatment.

23. Finally, the CPTA calls upon states and all other stakeholders to support the regional campaign initiated by the Commission's Special Rapporteur on the Rights of Women entitled '**Decriminalization of Abortion in Africa: Women and Girls in Africa are Counting on Us to Save their Lives**' to encourage States' compliance with the Maputo Protocol by decriminalizing abortion laws.