

**INTER-SESSION ACTIVITY REPORT (APRIL 2016 to
OCTOBER 2016)
AND
ANNUAL SITUATION OF TORTURE AND ILL-
TREATMENT IN AFRICA REPORT**

Presented to the 59th Ordinary Session of the African Commission on Human and
Peoples' Rights

Banjul, Islamic Republic of The Gambia, 21 October to 4 November 2016

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 Violations in Africa

Email: lamumu07@gmail.com

Contents

| | |
|---|----|
| I: Introduction | 3 |
| II: Inter-sessional Activities | 3 |
| A: Activities as Chairperson of the CPTA..... | 3 |
| B: Other activities as Member of the African Commission | 5 |
| C: Letters of Appeal..... | 5 |
| III: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of Persons with Disabilities in Africa, with Special Focus on Women with Disabilities | 6 |
| A: Introduction | 6 |
| B: Normative Framework | 7 |
| C: Violations against Women and Girls with Disabilities | 9 |
| D: Recommendations..... | 11 |

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 which require each Subsidiary Mechanism of the African Commission on Human and Peoples' Rights (the African Commission) to present a report on its work at each Ordinary Session of the African Commission 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.
2. This Report covers the inter-session between the 58th and the 59th Ordinary Sessions of the African Commission during the period April - October 2016. It also provides an analysis of the general situation of torture and other ill-treatment on persons with disabilities, focussing specially on women with disabilities.
3. The Report is divided into this introduction; my inter-sessional activities; an analysis of the situation of persons with disabilities in respect of torture, giving special focus to women with disabilities in Africa; and recommendations.

II: Inter-sessional Activities

A: Activities as Chairperson of the CPTA

4. I undertook the following activities as Chairperson of CPTA:
 - a. From 5 - 6 April 2016, I delegated the Vice-chairperson of CPTA to represent the Committee in a "Regional Seminar on Promoting the implementation of the UN Convention against Torture and the Robben

Island Guidelines: the obligation to criminalise torture” where the Vice-chairperson made opening remarks, as well as presented on the key provisions of the African Charter and the Robben Island Guidelines regarding the prohibition and prevention of torture.

- b. On 3 June 2016, in Nairobi, Kenya, I attended a meeting organised by Kenyan Civil Society Organisations to make comments on the Zero Draft General Comment on the Right to Redress for Victims of Torture and other Ill-Treatment under Article 5 of the African Charter on Human and Peoples’ Rights (the Draft General Comment).
- c. From 15 to 17 August 2016, in Nairobi, Kenya, I chaired a retreat to consider feedback from stakeholders on the Draft General Comment.
- d. On 26 August 2016, in Nairobi, Kenya, I attended a meeting organised by the Independent Medico-Legal Unit to sensitise Members of Parliament on the Kenyan Prevention of Torture Bill, 2016.
- e. On 29 August 2016, in Nairobi, Kenya, I recorded a lecture on torture and other cruel, inhuman or degrading treatment or punishment on a series to train lawyers, organised by the Mental Disability Advocacy Centre.
- f. On 1 September 2016, I participated in a round table meeting to review the Kenyan Prevention of Torture Bill, 2016, in Nairobi, Kenya.
- g. On 5 September 2016, in Bristol, United Kingdom, I participated in a meeting organised by the Human Rights Implementation Centre of the University of Bristol to discuss possible avenues of collaboration between CPTA and the United Nations Sub-Committee for the Prevention of Torture (SPT).

B: Other activities as Member of the African Commission

5. I undertook the following other activities as a member of the African Commission:
 - a. From 9 to 18 June 2016, I attended the 20th Extra-Ordinary Session of the African Commission held in Banjul, Islamic Republic of The Gambia.
 - b. From 19 to 20 July 2016, in Nairobi, Kenya, I attended a meeting to discuss the Zero Draft Principles and Operational Standards for the Policing of Assemblies by Law Enforcement Officials in Africa.
 - c. In July 2016 I gave an interview to Human Rights Watch where I spoke about the human rights perspective on anal testing subjected to persons due to their perceived or imputed sexual orientation or gender identity.

C: Letters of Appeal

6. I forwarded the following three letters of appeal to the Federal Democratic Republic of Ethiopia in my capacity as Commissioner-Rapporteur for the Human Rights Situation in the Federal Democratic Republic of Ethiopia and as Chairperson of the Committee for the Prevention of Torture in Africa:
 - a. On 22 August 2016, I sent a letter, jointly with the Special Rapporteur on the Situation of Human Rights Defenders in Africa, to His Excellency Dr. Mulatu Teshome, President of the Federal Democratic Republic of Ethiopia, concerning the alleged killings, excessive use of force, beating and arbitrary arrest of protestors. The Government of the Federal Democratic Republic of Ethiopia has not responded to the letter of appeal.
 - b. On 28 September 2016, I sent a letter jointly with the Special Rapporteur on Prisons and Conditions of Detention and Policing in Africa, to His Excellency Dr. Mulatu Teshome, President of the Federal Democratic Republic of Ethiopia, concerning the fire outbreak in Qilinto Prison in

Addis Ababa. The Government of the Federal Democratic Republic of Ethiopia has not responded to the letter of appeal.

- c. On 12 October 2016, I sent a letter of appeal to His Excellency Dr. Mulatu Teshome, President of the Federal Democratic Republic of Ethiopia, regarding the deaths of over fifty-five (55) people in a stampede in Bishoftu, Oromia Region, on 2 October 2016. The letter also addressed the six month state of emergency declared on 9 October 2016, and requested the Government to take all necessary measures to ensure that peoples' fundamental human rights are upheld during the state of emergency period. The Government of the Federal Democratic Republic of Ethiopia has not responded to the letter of appeal.

III: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of Persons with Disabilities in Africa, with Special Focus on Women with Disabilities

A: Introduction

7. The Committee for the Prevention of Torture in Africa (CPTA) is mandated to facilitate the dissemination and 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 African Charter) which prohibits all forms of exploitation and degradation of human beings, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.
8. This thematic report explores how torture and other ill-treatment has been inflicted on women with disabilities within the African continent. It also makes recommendations on measures that States should take to remedy this situation.

9. Persons with disabilities often live on the side-lines of society where they are perpetually denied their civil, political, economic, social and cultural rights. As highlighted in the 2008 Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:¹

Persons with disabilities are often segregated from society in institutions, including prisons, social care centres, orphanages and mental health institutions. They are deprived of their liberty for long periods of time including what may amount to a lifelong experience, either against their will or without their free and informed consent. Inside these institutions, persons with disabilities are frequently subjected to unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence. The lack of reasonable accommodation in detention facilities may increase the risk of exposure to neglect, violence, abuse, torture and ill-treatment. In the private sphere, persons with disabilities are especially vulnerable to violence and abuse, including sexual abuse, inside the home, at the hands of family members, caregivers, health professionals and members of the community.

B: Normative Framework

10. Torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²
11. Human dignity is an inherent right which all human beings are entitled to without discrimination. The African Charter guarantees the right to the respect

¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, July 2008 para 65, available at www.un.org/disabilities/images/A.63.175.doc.

² Article 1 of the Convention against Torture (CAT).

of the inherent dignity of human beings and their freedom from torture and other ill-treatment.

12. In *Resolution ACHPR/Res. 343(LVIII)2016 on the Right to Dignity and Freedom from Torture or Ill-Treatment of Persons with Psychosocial Disabilities in Africa*,³ the African Commission reaffirms the rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD), and in particular, the right to equal recognition before the law, the prohibition of arbitrary deprivation of liberty, the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, and the right to receive treatment on the basis of free and informed consent.
13. As underscored in *Resolution ACHPR/Res. 349 (EXT.OS/XX) 2016 on the Attacks on Persons with Albinism in Malawi*,⁴ Article 18(4) of the African Charter provides that persons with disabilities also have the right to special measures of protection in keeping with their physical or moral needs, and Article 23 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides for the special protection of women with disabilities.
14. Article 13 (1) of the African Charter on the Rights and Welfare of the Child also provides that children with disabilities have the right to special measures of protection in keeping with their needs and under conditions which ensure their dignity.
15. In calling for the protection of persons with disabilities, the African Commission has reiterated Article 2 of the African Charter which guarantees every individual the enjoyment of the rights and freedoms recognised in the Charter regardless of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

³ See <http://www.achpr.org/sessions/58th/resolutions/343/>.

⁴ See <http://www.achpr.org/sessions/20th-eo/resolutions/349/>.

16. In *Purohit and Another v. The Gambia*⁵ the African Commission urged The Gambia to repeal the Lunatics Detention Act, create an expert body to review cases of all persons detained under the Act and make recommendations for their treatment or release, and provide adequate medical and material care for persons suffering from mental health problems.

C: Violations against Women and Girls with Disabilities

Attacks against persons with albinism

17. At its 54th Ordinary Session, held from 22 October to 5 November 2013 in Banjul, Islamic Republic of The Gambia, the African Commission adopted *Resolution ACHPR/Res.263 (LIV) 2013 on the prevention of attacks and discrimination against Persons with Albinism*⁶ in which it expressed concern about attacks on persons with albinism in Africa. More recently, the African Commission adopted *Resolution ACHPR/Res. 349 (EXT.OS/XX) 2016 on the Attacks on Persons with Albinism in Malawi*, in which it recognised that there is widespread violence, discrimination, stigma and social exclusion directed at persons with albinism in that country. There have been similar reports in a number of other African countries, including Tanzania, Burundi, Kenya and Mozambique.⁷

Forced sterilisation of women and girls with disabilities

18. An alarming number of women and girls with disabilities have been, and continue to be, denied the right to their sexuality, their legal capacity and their right to control their fertility through the practice of forced sterilisation.

⁵ Communication 241/01 - *Purohit and Another v. The Gambia*, available at http://www.achpr.org/files/sessions/33rd/comunications/241.01/achpr33_241_01_eng.pdf.

⁶ See <http://www.achpr.org/sessions/54th/resolutions/263/>.

⁷ DW 'UN report criticizes surge in attacks on people with albinism in Africa' 22 March 2016, available at <http://www.dw.com/en/un-report-criticizes-surge-in-attacks-on-people-with-albinism-in-africa/a-19135112>; Under the Sun 'Reported Attacks of Persons with Albinism – Most Recent Attacks Included' 27 September 2016,; and European Parliament 'Situation of persons with albinism in Africa, notably in Malawi' 7 July 2016, available at <http://globaldisability.org/wp-content/uploads/2016/01/EUResolutionalbinism.pdf>.

Sterilisation is an irreversible medical procedure with profound physical and psychological effects done for various purposes, including: eugenics-based practices of population control; menstrual management and personal care; and pregnancy prevention (including pregnancy that results from sexual abuse).⁸ It is an act of violence, a form of social control and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.⁹

19. Women with intellectual disabilities are particularly vulnerable to coercive and involuntary sterilisation, and are often treated as if they have no control, or should have no control, over their sexual and reproductive choices; they may be forcibly sterilized or forced to terminate wanted pregnancies.¹⁰

Institutionalisation of women and girls with disabilities

20. Women and girls with psychosocial and intellectual disabilities have been detained in psychiatric and social care institutions, psychiatric wards, prayer camps, secular and religious-based therapeutic boarding schools, boot camps, private residential treatment centres or traditional healing centres.¹¹ They have been held in isolation, chained, beaten, deprived of food and given psychiatric treatment without their free and informed consent. This has been the case in Ghana,¹² Somaliland,¹³ and Zambia.¹⁴ These actions are a violation of rights such as the right to liberty and security of the person and the right to health, in

⁸ Sterilisation of Women and Girls with Disabilities: A Briefing Paper, Human Rights Watch <https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities>.

⁹ As above.

¹⁰ OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO 'Eliminating forced, coercive and otherwise involuntary sterilization' 2014, page 5, available at http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf.

¹¹ Human Rights Watch 'Like a Death Sentence: Abuses Against Persons with Mental Disabilities in Ghana' 2 October 2012, available at <https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana>.

¹² As above.

¹³ Human Rights Watch "'Chained Like Prisoners' Abuses Against People with Psychosocial Disabilities in Somaliland' 25 October 2015, available at <https://www.hrw.org/report/2015/10/25/chained-prisoners/abuses-against-people-psychosocial-disabilities-somaliland>.

¹⁴ Mental Disability Advocacy Centre 'Human rights and mental health in Zambia' 2014, page 10, available at http://www.mdac.org/sites/mdac.info/files/zambia_layout_web4.pdf.

particular, the free and informed consent of a person before treatment. Further, these actions inflict severe pain or suffering on the individual.¹⁵

Sexual violence against women and girls with disabilities

21. Women and girls with disabilities continue to be exposed to intersecting and multiple forms of discrimination. Children, particularly girls, are targeted for ritual killings, and women for sexual violence. Sexual violence against women with disabilities is spurred by the belief that having intercourse with them can cure HIV/AIDS.¹⁶
22. Women and girls with disabilities have experienced higher rates of physical and sexual abuse and rape, both at the hands of family members and by their caregivers as a result of double discrimination due to their gender and disability.¹⁷

D: Recommendations

23. The Committee recommends:
 - i. State Parties pass legislation to ensure that persons with disabilities are not discriminated;
 - ii. State Parties take all measures necessary to ensure the effective protection of persons with albinism and members of their families;
 - iii. State Parties repeal all mental health laws that deprive persons with psychosocial disabilities their right to legal capacity;

¹⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, July 2008 para 65, available at www.un.org/disabilities/images/A.63.175.doc.

¹⁶ Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, Ikponwosa Ero A/HRC/31/63 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/63.

¹⁷ As above.

- iv. Provide legal guarantees for full, free and informed decision-making and the elimination of forced, coercive and otherwise involuntary sterilization, and review, amend and develop laws, regulations and policies in this regard.
- v. State Parties, national institutions for the promotion of human rights, and human rights non-governmental organisations to monitor on a regular basis, using effective mechanisms, institutions which provide services to persons with disabilities;
- vi. States implement Resolution ACHPR/Res. 343(LVIII) 2016 on the Right to Dignity and Freedom from Torture or Ill-treatment of Persons with Psychosocial Disabilities;
- vii. States implement Resolution ACHPR/Res.263 (LIV) 2013 on the prevention of attacks and discrimination against Persons with Albinism; and
- viii. The African Union to fast track the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.