
**INTER-SESSION ACTIVITY REPORT (MAY TO OCTOBER
2018)**

AND

**REPORT ON THE SITUATION OF AFRICAN MIGRANTS AT
RISK OF TORTURE AND OTHER ILL-TREATMENT**

Presented to the 63rd Ordinary Session of the African Commission on Human and
Peoples' Rights

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I: Introduction

1. This Report is prepared pursuant to Rule 23 (3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the African Commission) which requires each Subsidiary Mechanism of 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, Chairperson of the Committee for the Prevention of Torture in Africa ('CPTA' or 'the Committee'), Member of the Working Group on Economic, Social and Cultural Rights (ECOSOC), and Member of the Advisory Committee on Budgetary and Staff Matters.
2. This Report covers the inter-session between the 62nd and the 63rd Ordinary Sessions of the African Commission during the period May to October 2018. It also provides an overview of the situation of African migrants at risk of torture and other ill-treatment.
3. The Report is divided into this introduction; my inter-sessional activities; an overview of the situation of African migrants at risk of torture and other ill-treatment.

II: Inter-sessional Activities

A: Activities as Chairperson of CPTA

4. I undertook the following activities as Chairperson of CPTA:
 - a. On 3 May 2018, in my capacity as Chairperson of the CPTA, I sent a letter jointly with the Special Rapporteur on Human Rights Defenders in Africa and the Chairperson of the Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV. The appeal was addressed to His Excellency Mr Paul Biya, President of the Republic

of Cameroon, regarding the arrest of five human rights defenders accused of homosexual acts, who were allegedly threatened to undergo forced anal examinations to provide "evidence" of their homosexual acts.

- b. On 26 June 2018, I attended the commemoration ceremony of the International Day in Support of Victims of Torture and launch of the training module on the prevention of torture and ill-treatment in Abidjan, Cote d'Ivoire. Authorities of Cote d'Ivoire and non-governmental organisations (NGOs) also attended the commemoration ceremony.
- c. On 27 and 28 June, I participated in a seminar to monitor the project to combat unjustified pre-trial detention in 10 Ivoirian prisons, organised in Yamoussoukro by FIACAT and CAT-Côte d'Ivoire. The seminar brought together several Ivoirian magistrates, and officials of the police, gendarmerie and prisons administration.
- d. From 10 to 12 October 2018, I participated in a workshop on the legislative drafting of laws against torture that was organized, for 14 French-speaking countries, in Dakar, Senegal. The workshop brought together mainly members of parliament and officials of ministries of justice. The Workshop was organised by the Convention against Torture Initiative (CTI), Redress and the African Commission. The Workshop was organised in response to requests from a number of African governments for technical support in drafting anti-torture laws to implement key provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- e. On 25 October 2018, I chaired a Panel on the Situation of Migrants at Risk of Torture and other Ill-treatment in Africa: Alternative Approaches. CPTA organized the Panel in collaboration with the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons and the International Detention Coalition (IDC).

B: Activities as Member of ECOSOC

5. In my capacity as Member of ECOSOC, I participated in an ECOSOC Meeting on the Right to Water, on the side-lines of the 62nd Ordinary Session of the African Commission, held in May 2018, in Nouakchott, Mauritania.

C: Other Activities as Member of the African Commission

- a. From 4 to 5 June 2018, I attended the Joint Retreat of the Permanent Representatives Committee (PRC) of the African Union and the African Commission, held in Nairobi, Kenya. I made a presentation on the status of implementation of the decisions of the Assembly and the Executive Council.
- b. From 9 to 13 July 2018, I took part in the African Commission's Promotion Mission to the Republic of Botswana;
- c. On 29 July 2018, I attended the Introductory Session to International Humanitarian Law with the African Commission, organised by the International Committee of the Red Cross (ICRC), in Banjul, The Gambia;
- d. Between 30 July and 8 August 2018, I attended the 24th Extra-Ordinary Session of the African Commission, held in Banjul, The Gambia;
- e. From 9 to 10 August 2018, I attended the 7th Annual Meeting of the African Commission and the African Court on Human and Peoples' Rights, held in Banjul, The Gambia;
- f. On 9 August 2018, I attended the Joint Committee of the African Commission and the African Court on Publications, held in Banjul, The Gambia;
- g. From 11 - 12 August 2018, I attended the Tripartite Workshop on the Comparative Study and Proposed Joint Framework for Monitoring Decisions and Recommendations of the African Union Human Rights Organs;
- h. Between 17 and 22 September 2018, I took part in the African Commission's Promotion Mission to the Republic of Tunisia. On 19 September 2018, we met with representatives of international organisations accredited to Libya such as the International Organisation for Migration (IOM), the United Nations Children's

Fund (UNICEF), the United Nations Support Mission in Libya (UNSMIL), and Médecins sans Frontières regarding the human rights situation in Libya, particularly the abuse and suffering of migrants in Libya.

- i. On 28 September 2018, I participated and made a presentation on the death penalty and the African Commission at the Youth Forum for the Right to Life: Abolishing the Death Penalty, organised by the Tunisian Coalition against the Death Penalty in Tunis, Tunisia. The Forum brought together the youth from Tunisia, Algeria, Morocco, Mauritania and Lebanon.

III: Situation of African Migrants at Risk of Torture and other Ill-treatment

A: Introduction

6. The 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 elaborate 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.
7. The *2030 Agenda for Sustainable Development* adopted by the United Nations (UN) in 2015 recognises the positive impact of migration on development and inclusive growth.¹ Over 200 million international migrants send remittances, which in 2016 amounted to USD 445 billion.² Remittances have been recognized as the most visible contribution to the achievement of the 2015 UN Sustainable

¹ United Nations (UN) General Assembly "Transforming our World: the 2030 Agenda for Sustainable Development" 25 September 2015, para 29, available at http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf.

² International Fund for Agricultural Development (IFAD) "Global Forum on Remittances, Investment and Development 2017: Official Report" 2017, p. 16, available at http://www.remittancesgateway.org/wp-content/uploads/2018/02/GFRID2017_official_report.pdf.

Development Goals.³ The 2030 Agenda includes targets which directly relate to migration, mobility or migrants, and target 10.7 aims to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”.

8. Despite the positive impact migration could have in countries of origin, transit and destination, refugees and migrants are regularly exposed to human rights violations, including torture and other cruel, inhuman and degrading treatment or punishment.
9. This thematic report highlights how African migrants and refugees are increasingly being subjected to acts of torture and other ill-treatment. It also makes recommendations on measures that should be taken to remedy this situation.

B: Legal Framework

10. Torture is “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.”⁴
11. Article 3 of *CAT* and paragraph 15 of the *Robben Island Guidelines* explicitly provide for the principle of non-refoulement, prohibiting States from expelling or extraditing persons to another country where “there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture”. Non-refoulement is one of the guiding principles in international refugee and migrant

³ As above, p. 9.

⁴ Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

law. Article 2 of the 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa* and Article 33 of the 1951 *United Nations Convention relating to the Status of Refugees* prohibits rejection, return or expulsion of refugees which would compel them to return to or remain in a territory where their life, physical integrity or liberty would be threatened.

12. *General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)* (General Comment No. 4), provides that the right to redress applies to all persons subjected to torture and other ill-treatment without discrimination, including asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. Article 14 of CAT and *General Comment No. 3 of the UN Committee against Torture* establish the right to redress for victims of torture and other ill-treatment, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
13. Other relevant legal instruments include the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention); the *African Charter on the Rights and Welfare of the Child*; the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo Protocol); the *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Rights of the Child* (CRC); the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW); the *Convention on the Elimination of Racial Discrimination* (CERD); the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (Migrant Workers Convention); the *UN Convention against Transnational Organized Crime*; the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; the *Protocol against the Smuggling of Migrants by Land, Sea and Air*; the *Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the*

Slave Trade, and Institutions and Practices Similar to Slavery; the International Labour Organization conventions on promoting decent work and labour migration; and the 2030 Agenda for Sustainable Development.

C: Analysis

14. The International Organisation for Migration (IOM) reports that migration is caused by several factors including economic challenges or opportunities, inequality, demography, violence and conflict, and environmental change.⁵ The IOM adds that “[w]hile the overwhelming majority of people migrate internationally for reasons related to work, family and study, many people leave their homes and countries for other compelling reasons, such as conflict, persecution and disaster.”⁶ The IOM further states that “displaced populations such as refugees and internally displaced persons (IDPs) comprise a relatively small percentage of all migrants; however, they often capture and demand collective attention and action as they frequently find themselves in highly vulnerable situations.”⁷
15. African migrants travelling irregularly are at risk of torture and other cruel, inhuman or degrading treatment or punishment. A person may even become a migrant to as a result of torture and other ill-treatment. Migrants may experience torture and other ill-treatment during their journey or while in detention if they are apprehended. Those committing acts of torture and ill-treatment on migrants are not always non-state or criminal actors, but at times state agents who intercept migrants during their journey. Migrants who are tortured often do not have access to justice or redress.
16. According to the International Rehabilitation Council for Torture Victims (IRCT), “displacement and migration can lead to severely negative and complex mental

⁵ International Organisation for Migration (IOM) “IOM World Migration Report 2018” 2018, p. 13, available at http://publications.iom.int/system/files/pdf/wmr_2018_en.pdf.

⁶ As above.

⁷ As above.

health problems.”⁸ Migrants or refugees who are on the move due to war, conflict, persecution or torture are traumatised, and this is made worse by dangerous journeys to safety.⁹ They often lack basic necessities such as food, water, shelter and access to medical attention.¹⁰ Further, they may be “perceived by the local population to be competing for scarce resources and public services, which can lead to greater marginalisation and compound existing mental health disorders.”¹¹

17. IRCT further states that migrants are often alienated and disoriented, having left behind most of their resources, not being able to speak the language in the country, and not having support networks such as families or communities.¹²

18. The IOM reports that “[s]ince 1990, the number of African migrants living outside of [Africa] has more than doubled, with [particular increase in Europe]... In 2015 over 16 million Africans were living in another African country, while an additional 16 million were living in a different region.”¹³

19. “Some of the largest migration corridors involving African countries... are between North African countries... to France, Spain and Italy.”¹⁴ Although primarily a migrant transit area, the North African sub-region also hosts large populations of international migrants, including refugees.¹⁵ “Libya had the largest number of international migrants... at over 770,000 in 2015.”¹⁶

20. IOM reports that North Africa faces major difficulties in protecting migrants, as it is a key hub of transit for irregular migration to Europe.¹⁷ IOM states that:

⁸ IRCT “People on the Move: Torture and Migration - Data in the Fight against Impunity Thematic Report 2017” 2017, p. 26, available at https://irct.org/assets/uploads/pdf_20170906095246.pdf.

⁹ As above.

¹⁰ As above.

¹¹ As above, p. 38.

¹² As above, p. 31

¹³ IOM (n 5 above), p. 44.

¹⁴ As above, p. 46.

¹⁵ As above, p. 49.

¹⁶ As above.

¹⁷ As above, p. 50

“[b]etween 2011 and 2016, approximately 630,000 people used the “Central Mediterranean route” to reach Italy... [t]he majority departed from Libya (almost 90%), with other departure countries including Egypt, Algeria and Tunisia. Of those who disembarked in Italy in 2016, the majority were from Western and Eastern Africa (Nigeria, Eritrea, Guinea, Côte d’Ivoire, Gambia, Senegal, Mali and Somalia)...”¹⁸

21. In terms of women and children, IOM provides that “[o]f the more than 180,000 migrants who disembarked in Italy in 2016, 13 per cent (approximately 24,000) were women, while 15 per cent (28,000) were children – the vast majority (91%) of whom were unaccompanied. The proportion of children, including unaccompanied children, has increased.”¹⁹
22. The IOM found that these corridors present profound protection challenges and serious human rights violations including “deaths at sea, in the desert and in other transit locations; missing migrants, exploitation, physical and emotional abuse, trafficking, smuggling, sexual and gender-based violence, arbitrary detention, forced labour, ransom demands and extortion; and other human rights violations.”²⁰
23. With regards to Libya, reports indicate that refugees and migrants crossing through Libya to reach Europe are routinely exposed to abuse.²¹ Reports add that “[t]hey suffer torture and other ill-treatment and arbitrary detention in appalling conditions, extortion, forced labour and killings at the hands of [various actors including] militias and smugglers... [they] have become a resource to be exploited – a commodity around which an industry has grown...”²²

¹⁸ As above. Others travelled from Morocco and Algeria to Spain, along the so-called “Western Mediterranean” route.

¹⁹ As above.

²⁰ As above.

²¹ Amnesty International “Libya’s Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants” 2017, p. 6, available at <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>.

²² As above.

24. “[F]ollowing the uprising... in 2011, Libyan government institutions gradually weakened and fractured, exacerbating the problems of refugees and migrants... In the absence of a central state authority with effective control on the ground or a security apparatus able to counter the criminal gangs, smuggling of people has thrived as an industry, through deeply embedded and well-organized networks... Amid [the] insecurity, even refugees and migrants who had lived in Libya for years have felt compelled to leave the country.”²³
25. With the increasing number of refugees and migrants crossing into Europe and growing public concern, the political priorities of European governments changed, exploring ways to outsource border control and asylum processing to transit countries outside of Europe, with the aim of preventing refugees and migrants from entering Europe.²⁴
26. Reports further indicate that “despite being fully aware of the serious violations to which refugees and migrants are subjected in Libya, European governments... implement migration-control policies that... are trapping thousands of women, men, and children in a country where they are systematically exposed to abuse and where they have little chance to seek and obtain protection.”²⁵

D: Recommendations

27. CPTA recommends:

- i. States should cooperate internationally to ensure safe, orderly and regular migration involving full respect for the dignity, human rights and the humane treatment of migrants regardless of the migration status of refugees and of displaced persons;²⁶
- ii. States should strictly apply and respect the principle of non-refoulement;

²³ As above, p. 15.

²⁴ As above, p. 18.

²⁵ As above, p. 8.

²⁶ 2030 Agenda for Sustainable Development (n 1 above), para 29.

- iii. States should adhere to international refugee, migrant, and anti-torture laws and standards;
- iv. States which have ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the UN Convention relating to the Status of Refugees, and CAT should take the necessary legislative and administrative measures to implement their treaty obligations. States which have not yet ratified these instruments should expedite ratification and implementation of the instruments;
- v. States should establish a mechanism to issue identification and documentation to refugees and migrants, to ensure they are not vulnerable to arbitrary and indefinite detention or deportation while their case is under assessment;
- vi. States and other entities should carry out sensitization and awareness raising activities to ensure refugees and migrants are well-received and not discriminated or marginalized by host communities;
- vii. States should refrain from arbitrarily and indefinitely detaining migrants and put in place migrant, refugee or asylum laws and procedures that are fully compliant with international human rights laws and standards;
- viii. States should ensure that victims of torture and other ill-treatment have access to full redress - including restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction, regardless of their status as “asylum-seekers, refugees or others under international protection” in accordance with the African Commission’s General Comment No. 4 on the Right to Redress;
- ix. States should collect data on the population size, background and needs of victims of torture among their migrant and refugee population to allocate appropriate budget and seek help from external actors as necessary;²⁷ and

²⁷ IRCT Report (n 8 above), p. 41.

- x. European governments and institutions should replace their external policies on migration with human rights-compliant policies that focus primarily on safe and legal pathways for refugees and migrants, and that seriously address the root causes of forced displacement: conflict, human rights violations, and poverty.²⁸

E: Positive Developments

28. CPTA welcomes the ratification by The Gambia of CAT on 28 September 2018. This is an important step towards addressing past abuses and preventing future violations. It further brings Africa closer to regional universal ratification of CAT, as only four (4) African States are yet to ratify CAT. CPTA encourages the regional universal ratification of CAT and stands ready to assist any State Party in the ratification process.

²⁸ Amnesty International Report (n 21 above) 60.