INTER-SESSION ACTIVITY REPORT (MAY TO OCTOBER 2019)

AND

REPORT ON RAPE, WAR, AND TORTURE IN AFRICA

Presented to the 65th 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 Commission) which requires each Subsidiary Mechanism of the Commission to present a report on its work at each Ordinary Session of the 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 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 64th and the 65th Ordinary Sessions of the Commission during the period May to October 2019. It also provides an overview of rape, war, and torture in Africa.

3. The Report is divided into this introduction; my inter-sessional activities; an overview of rape, war, and torture in Africa; and recommendations.

II. **INTER-SESSIONAL ACTIVITIES**

A. Activities as Chairperson of CPTA

   i. **International Day in Support of Victims of Torture**

4. I oversaw the publication of the CPTA press statement to commemorate the International Day in Support of Victims of Torture on 26 June 2019, drawing attention to the situation of African migrants and refugees at risk of torture and cruel, inhuman and degrading treatment, in line with the African Union (AU) theme for 2019 - the year of Refugees, Returnees, and Internally Displaced Persons: Towards Durable Solutions to forced Displacement in Africa.

   ii. **Roundtable Discussion with Key Stakeholders on Providing Redress to Gambian Returnees who were subjected to Torture and other Ill-treatment**

5. I chaired a Roundtable Discussion with Key Stakeholders on Providing Redress to Gambian Returnees who were subjected to Torture and other Ill-treatment, on 15 July 2019, in Banjul, The Gambia. The Roundtable brought together twenty-four (24)
participants including governmental representatives, the International Organisation for Migration, as well as national and non-governmental institutions.

6. The Roundtable Discussion highlighted the overall migration pattern of Gambian nationals, as well as the torture and other ill-treatment that Gambian migrants are subjected to. The Roundtable noted the existing legislative, administrative and institutional framework on redress in The Gambia; identified gaps in the framework; agreed on interventions to address the gaps; and recognised the relevant stakeholders in that regard. The Roundtable further unpacked the content of redress for victims of torture and other ill-treatment, and highlighted the state obligation to provide redress to victims.

   iii. Panel on the Situation on Enforced Disappearances in Africa

7. On 22 October 2019, I chaired a Panel on the Situation of Enforced Disappearances in Africa. The CPTA organized the Panel in collaboration with the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, and REDRESS.

B. Activities as Member of the Commission


10. As Commissioner Rapporteur for the Human Rights Situation in Mauritius, from 13 to 17 August 2019, I undertook a Promotion Mission to the Republic of Mauritius, together with the Chairperson of the Commission and Commissioner Rémy Ngoy Lumbo. This mission was prepared and coordinated in collaboration with the authorities of Mauritius since 2018.

11. From 18 to 19 September 2019, I participated in a meeting organized in Tunis, Tunisia, by Samusocial International in collaboration with the Office Français de l'Immigration et de l'Intégration, on the theme “Facing challenges in international
protection: humanity, dignity and solidarity with persons in exile situations”. On 19 September, participants visited projects initiated by Tunisian migrants and asylum seekers, who had returned from France.

12. From 1 to 4 October 2019, I took part in the Commission’s Promotion Mission to Sao Tome and Principe, together with Commissioner Maria Teresa Manuela, the Country Rapporteur. This was the first such mission to be undertaken in the country since its accession to the Charter. It was an opportunity to raise awareness about the Charter and the Commission, as well as learn about the human rights situation in the country. At the end of the Mission, the Sao Tome NHRI submitted its request for the granting of affiliate status with the Commission.

13. On 18 October 2019, I participated in the 8th Annual Meeting between the Commission and African Court on Human and Peoples’ Rights (the Court), held in Banjul, The Gambia.


C. Letters of Appeal/Appreciation

15. On 08 October 2019, in my capacity as Chairperson of the CPTA, I sent a Letter of Appreciation to His Excellency Muhammadu Buhari, President of the Federal Republic of Nigeria, regarding the rescue of hundreds of boys and young men from a facility where they were being subjected to various forms of torture and other cruel, inhuman and degrading treatment or punishment, in Kaduna State.


III. Rape as a Weapon of War and Form of Torture
   a. Introduction
17. 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.

18. Aspiration 4 of Agenda 2063: The Africa We Want seeks a peaceful and secure Africa and commits to put an end to “armed conflict, terrorism, extremism, intolerance and gender-based violence.”¹ Agenda 2063 also recognises that “good governance, democracy, social inclusion and respect for human rights, justice and the rule of law are the necessary pre-conditions for a peaceful and conflict-free continent.”²

19. Rape and other acts of sexual violence, are internationally regarded as being used as a weapon,³ strategy⁴ or tool⁵ of war, where they are used to “humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.”⁶ Rape and other forms of sexual violence can also constitute “a distinct category of torture.”⁷ Thus, rape is capable of constituting a violation of international humanitarian law, international criminal law and international human rights law.

20. Despite increasing awareness and mobilisation efforts, countries in situations of conflict still struggle to create an environment which holds perpetrators of sexual violence accountable, and prevent the use of rape as a weapon of war.

¹ AU Agenda 2063: The Africa We Want 2015, para 37.
² As above, para 35.
⁵ ACHPR 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) 2017, para 58.
21. This thematic report highlights the use of rape as a weapon of war and a form of torture in the continent. It looks at the existing legal framework, provides an analysis of the situation, and finally makes recommendations.

b. Legal Framework

i. Absolute prohibition of torture

22. The Robben Island Guidelines stress the absolute prohibition of torture, cruel, inhuman or degrading treatment or punishment (torture and other ill-treatment), regardless of circumstances such as state of war, political instability or any other public emergency.\(^8\) This is affirmed by *General Comment No. 4 on the African Charter on Human and People’s Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)* (General Comment No. 4) which states that State Parties cannot derogate from their obligations to prohibit torture and other ill-treatment under any circumstances, including war.\(^9\)

23. The Commission has also recognised the non-derogable and absolute prohibition of torture and other ill-treatment, including in times of conflict, public emergency or in the fight against terrorism, in its case law.\(^10\) The prohibition of torture and other ill-treatment has also been established as a rule of customary international law, and evolved into one of the few peremptory norms or *jus cogens* from which no derogation can be made, even during times of conflict or other public emergency.

ii. Rape as a form of torture

24. 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

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\(^8\) Robben Island Guidelines, para 9.

\(^9\) General Comment No. 4, para 62

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.”

25. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that 
“[r]ape causes severe pain and suffering, both physical and psychological. The 
psychological suffering of persons upon whom rape is inflicted may be exacerbated 
by social and cultural conditions and can be particularly acute and long lasting.”

The ICTY added that the elements of “punishment, coercion, discrimination or 
imimidation” are inherent in situations of armed conflict.

26. General Comment No. 4 provides that "acts of sexual and gender based violence, or 
the failure by States to prevent and respond to such acts, may amount to torture and 
other ill-treatment in violation of Article 5 of the African Charter.” It adds that “[a]ny 
person regardless of their gender may be a victim of sexual and gender-based 
violence.”

27. Perpetrators of rape could be State or non-State actors. A State has an obligation to 
ensure that rape is not committed by its own officials or by non-State actors.

iii. Prohibition of rape under international humanitarian law

28. Under international humanitarian law, the four Geneva Conventions of 1949 and the 
two additional Protocols, all prohibit torture and other forms of ill-treatment, which

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11 Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).
13 Prosecutor v Delalić and Others above.
14 General Comment No. 4, para 57. This is mirrored in the UN Committee against Torture’s General Comment 2 on the UN Convention against Torture United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT’s General Comment 2) 2008, para 18.
15 General Comment No. 4, para 59.
16 Non-state actors are individuals, organisations, institutions and other bodies acting outside the State and its organs. See General Comment No. 4, para 72.
17 General Comment No. 4, para 62.
are regarded as war crimes.\textsuperscript{18} In addition, \textit{Common Article 3 of the Geneva Conventions of 1949}, which relates specifically to non-international armed conflicts, prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment.

29. Rape of women is expressly prohibited under \textit{Article 27 of the Fourth Geneva Convention}. \textit{Protocol 1 of the Geneva Conventions of 1949}, which governs international armed conflicts requires the protection of women against rape.\textsuperscript{19} \textit{Protocol 2 of the Geneva Conventions of 1949}, relating to non-international armed conflicts prohibits rape against persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted.\textsuperscript{20}

c. Analysis

\textit{Overview}

30. General Comment No. 4 states that "[a]cts of sexual violence, particularly rape, are systematically used as a tool of war in armed conflict."\textsuperscript{21} Rape could be deployed as a tactic to further military objectives or as a means of repression, terrorism, punishment, a way of destroying an enemy or forcing them to flee,\textsuperscript{22} or to take control of contested land and other resources.\textsuperscript{23} In relation to terrorism, rape can be utilised to displace populations, to extract information, advance extremist ideologies and destabilise social structures by terrorising girls and women.\textsuperscript{24}

31. It is well established that women, girls, men, boys and the LGBTI community are all vulnerable to sexual violence,\textsuperscript{25} particularly during conflict, where it is utilised as a

\textsuperscript{18} Article 50 of First Geneva Convention; Article 51 of Second Geneva Convention; Article 130 of Third Geneva Convention; and Article 147 of Fourth Geneva Convention.
\textsuperscript{19} Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 76.
\textsuperscript{20} Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 4.
\textsuperscript{21} General Comment No. 4, para 58.
\textsuperscript{22} Guidelines on Combating Sexual Violence and its Consequences in Africa, para 3. 1. d.
\textsuperscript{23} \textit{Conflict Related Sexual Violence} Report (n 4 above), para 13.
\textsuperscript{24} As above, para 14.
\textsuperscript{25} General Comment No. 4, para 59.
means of “dominating, subordinating or humiliating the victim and/or group to which the victim belongs.”

32. The key challenge in addressing rape during armed conflict is significant underreporting due to the climate of fear created by stigma within the family and community. Other challenges for tackling rape stem from victims’ mistrust of the legal system; a culture of impunity for perpetrators; and the lack of availability of medical and psychosocial care.

Perpetrators

33. The majority of reported incidents of sexual violence across States involved in conflict are perpetrated by non-State actors, such as local militias, criminal elements and armed groups. The number of non-State parties to intra-State conflicts contributes to the climate of fear as victims are surrounded by potential perpetrators. According to the International Committee of the Red Cross (ICRC), there are an estimated 90 armed groups of differing levels of size and organisation, involved in the DRC conflict.

34. However, there is also a high prevalence of rape committed by State officials. State officials include “agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law.”

35. Civilians during times of conflict often find that they are vulnerable to rape from all sides and in all places, at home, in their daily routines, on journeys to safety, under the protection of the Government, or in detention. In DRC, of the 1,049 documented cases of conflict-related sexual violence by the UN Organization Stabilization Mission in the DRC (MONUSCO) in 2018, 308 were perpetrated by the Armed Forces of the DRC and the Congolese National Police. Furthermore, in Somalia, in 2018, the UN

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27 Conflict Related Sexual Violence Report (n 4 above), paras 50, 75, and 114.
28 As above, para 12.
30 CAT General Comment No. 2, para 15.
31 Conflict Related Sexual Violence Report (n 4 above), para 46.
Assistance Mission in Somalia (UNSOM) confirmed cases of rape and gang rape by members of the Somali National Army of 48 individuals (3 women, 44 girls and 1 boy), as well as cases of rape by officers of the Somali Police Force of 5 women and 12 girls.\(^{32}\)

36. *General Comment No. 4* recognises that “Article 1 of the African Charter requires State Parties to uphold the positive obligation to diligently prevent, investigate, prosecute and punish non-State actors who commit acts of torture and other ill-treatment and to redress the harm suffered. This also extends to acts by non-State actors at the instigation, consent and acquiescence of the State.”\(^{33}\)

*Sexual violence against men and boys*

37. Sexual violence against boys associated with armed forces and male child soldiers is extremely underreported. Sexual violence against men and boys has not been the focus of research or investigations, and therefore their needs have not been systematically incorporated into protection strategies or the design and implementation of survivor responses.\(^{34}\)

38. Both All Survivors Project and the UN Panel of Experts to the UN Sanctions Committee on the Central African Republic, have reported the use of sexual violence against men and boys in the CAR.\(^{35}\) One All Survivors Project interviewee reported being abducted by members of the UPC faction of ex-Séléka along with other men and subjected to rape and other sexual violence on a daily basis during a wave of violence in Basse-Kotto in 2017.\(^{36}\) An Institution providing psychosocial and medical support to survivors of gender-based violence in Obo, CAR, reported that 86 men and 35 boys presented themselves as sexual violence victims at its facilities between January and October 2017.\(^{37}\)

\(^{32}\) As above, para 74.

\(^{33}\) General Comment No. 4, para 73. See also, CAT General Comment No. 2, para 18.


\(^{36}\) All Survivors Project (n 34 above), p. 20.

\(^{37}\) As above, p. 22.
Refugees and internally displaced persons

39. Refugees and internally displaced persons (IDPs) find themselves particularly vulnerable to rape, where they may be under the control or alleged protection of state authorities, armed groups, smugglers, traffickers or those who control resources.\(^{38}\) This is of particular concern, as displacement of persons within and from the African region, is prevalent in the continent.\(^{39}\) Furthermore, several countries which are countries of origin for many IDPs as a result of conflict and violence, such as South Sudan, also host a significant number of refugees.\(^{40}\)

Country situations

40. In South Sudan, villages were indiscriminately attacked in Southern Unity by Government and Government-aligned forces between April and May 2018.\(^{41}\) This involved the rape and gang-rape of at least 120 women and girls across 40 targeted villages, including girls as young as four-years-old and pregnant women.\(^{42}\) The attacks allegedly aimed to demonstrate power over victims, humiliate, destroy dignity, and fracture communities as women were sometimes stripped and subjected to forced nudity before being gang-raped.\(^{43}\)

41. Despite parties signing the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) on 12 September 2018 which led to an overall reduction in violence, sexual violence continues to be endemic in Northern Unity.\(^{44}\)

42. As a result of the renewal of the Sudanese conflict in parts of Jebel Marra between Government forces and the Abdul Wahid faction of the Sudan Liberation Army, sexual violence remains a concern and displaces civilians from their homes and prevents

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\(^{38}\) Conflict Related Sexual Violence Report (n 4 above), para 15.


\(^{40}\) As above.


\(^{42}\) As above, para 30.

\(^{43}\) As above, para 31.

\(^{44}\) UNMISS & OHCHR Conflict-related Sexual Violence in Northern Unity September - December 2018 (2019), paras 2 and 3.
their return. In 2018, the AU-UN Hybrid Operation in Darfur documented 122 incidents of sexual violence, of which 31 percent could be attributed to security forces.

43. According to a report by the International Commission of Inquiry on Burundi, numerous cases of rape at the hands of the ruling party’s youth league, the Imbonerakure, were reported in Burundi, since May 2018. The victims were primarily women who were targeted because they or their family member were considered to support the opposition or because they refused to join the ranks of the Government forces or the Imbonerakure. The report further adds that “[t]hese acts committed for a specific purpose such as intimidation or punishment because of the victim’s supposed political view, constitute acts of torture.”

44. The UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) documented 239 cases of rape or attempted rape, out of which 101 cases were attributed to multiple non-state actors. The Panel of Experts on the CAR “noted a high percentage of reported cases occurring in rural areas, where victims are often assaulted by multiple armed aggressors.”

Accountability

45. Perpetrators of rape during times of conflict, whether committed by state or non-state actors, are rarely held accountable for their crimes. Prosecutions for rape by State actors are rare, if not non-existent across all of the sites of live and post-conflict. Prosecution of members of terrorist groups who use rape strategically is also lacking. For example, Boko Haram members who kidnapped girls from a secondary school in North-East Nigeria, and subjected them to sexual violence, including rape, have been tried mainly under the 2013 Terrorism (Prevention) (Amendment) Act, and the

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45 Conflict Related Sexual Violence Report (n 4 above), para 85.
46 As above, para 86.
48 As above.
49 As above.
50 Conflict Related Sexual Violence Report (n 4 above), para 36.
51 As above.
accused have not been charged with sexual violence.\textsuperscript{52} Similarly, counter-terrorism prosecutions in Mali have not included sexual crimes.\textsuperscript{53}

47. In post-conflict Côte d'Ivoire, no cases of sexual violence committed during the 2010–2011 post-electoral crisis have progressed to trial.\textsuperscript{54} Furthermore, a presidential decree on 8 August 2018, caused concern because it granted amnesty “to those individuals prosecuted or convicted for offences related to the post-electoral crisis.”\textsuperscript{55} Although the President has alleged that perpetrators of serious crimes will not enjoy impunity, concerns have been raised about protection for high-level military officers, members of armed groups and political leaders.\textsuperscript{56}

\textit{Redress for victims}

48. General Comment No. 4 recognises the existence of significant obstacles to victims in accessing redress in conflict and post-conflict situations.\textsuperscript{57} State Parties are required to ensure the existence of an enabling environment for humanitarian agencies and other stakeholders who possess a mandate to document, report, investigate and provide assistance to victims.\textsuperscript{58} It adds that it is also incumbent on organised non-State armed groups that are party to an armed conflict to provide free access particularly to humanitarian agencies that deliver protection and assistance to victims of torture and other ill-treatment.\textsuperscript{59}

49. Access to the necessary medical and psychosocial support for survivors of rape is particularly limited during times of conflict. A significant access challenge arises for humanitarian workers in providing medical and psychosocial support for internally displaced victims who take refuge in rural areas.\textsuperscript{60} Lack of access is further compounded by the risk of attacks on humanitarian workers by armed groups.\textsuperscript{61}

\textsuperscript{52} As above, para 120.
\textsuperscript{53} As above, para 25.
\textsuperscript{54} As above, para 104.
\textsuperscript{55} As above. See also, Ordonnance présidentielle No. 2018-669.
\textsuperscript{56} As above at n. 4, para. 104
\textsuperscript{57} General Comment No. 4, para 14.
\textsuperscript{58} As above, para 65.
\textsuperscript{59} As above.
\textsuperscript{61} ICRC’s \textit{Response to Sexual Violence} (n 29 above), p. 28.
50. On 1 October 2018, Burundi suspended the activities of international non-governmental organisations which has hindered the provision of health and psychosocial care.\footnote{Conflict Related Sexual Violence Report (n 4 above), para 114.}

51. Generally, access to redress for victims of rape in conflict situations is hampered by lack of infrastructure to access the services, lack of availability, and lack of awareness about these services, which means that survivors usually do not receive the assistance they require.

d. Recommendations

52. CPTA calls upon:

i. States which have ratified UNCAT and OPCAT to domesticate and implement the treaties, and States which have not yet ratified these instruments to expedite ratification, domestication and implementation of the instruments;

ii. State Parties to criminalise acts of sexual and gender based violence, including rape, and recognise that these acts may amount to torture and other ill-treatment, war crime, or crimes against humanity, in accordance with regional and international standards.

iii. State Parties to recognise and ensure the absolute prohibition of all acts of torture and other ill-treatment, including rape, under their domestic laws;

iv. State Parties to uphold their obligations by both precluding their agents from committing acts of torture and other ill-treatment and intervening where non-State actors in armed conflict commit similar violations;

v. State Parties and non-State actors to create an enabling environment for humanitarian agencies and other stakeholders who possess a mandate to document, report, investigate and provide assistance to victims;

vi. State Parties to investigate and prosecute those responsible for torture and other ill-treatment, including rape, and to provide redress to victims in armed conflict (regardless of the victims’ status as asylum-seekers, refugees or others under international protection);
vii. State Parties to take measures to ensure that victims of sexual and gender based violence, including survivors of rape, obtain redress, by:
   a. ensuring adequate documentation;
   b. providing support to victims at all stages of the legal process;
   c. identifying the causes and consequences of sexual and gender based violence and taking all necessary measures to prevent and eradicate it;
   d. raising awareness to lift the stigma, guilt, shame, fear, and lack of information associated with acts of sexual and gender based violence;
   e. systematically incorporating the needs of men, boys, and LGBTI, in awareness raising activities and other programmes for the protection of survivors of sexual and gender based violence;
   f. putting in place efficient and accessible reparation programmes and ensuring participation of victims in the elaboration, adoption and implementation of the programmes;
   g. providing unimpeded and regular access to comprehensive health care, including sexual and reproductive health-care services, physical rehabilitation, psychological and psychosocial support, and socio-economic support; and
   h. observing the need to ensure the dignity and safety of victims and the importance of confidentiality and privacy.

IV. Positive Development

53. CPTA welcomes the ratification by the Republic of Angola of UNCAT on 2 October 2019. The ratification by Angola brings Africa closer to regional universal ratification of UNCAT, as only three (3) African States are yet to ratify UNCAT. CPTA encourages the regional universal ratification of UNCAT and stands ready to assist any State Party in the ratification process.