INTER-SESSION ACTIVITY REPORT (NOVEMBER 2018 TO APRIL 2019)

AND

ANNUAL REPORT ON THE SITUATION OF TORTURE AND OTHER ILL-TREATMENT IN AFRICA

Presented to the 64th 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 63rd and the 64th Ordinary Sessions of the African Commission during the period November 2018 to April 2019. It also provides an overview of the general situation of torture and other ill-treatment in Africa in the period April 2018 to April 2019.

3. The Report is divided into this introduction; my inter-sessional activities; an overview of the general situation of torture and other ill-treatment in Africa; and recommendations.

II: Inter-sessional Activities

A: Activities as Chairperson of CPTA

i. Participation in an international seminar on the Universal Protocol on Investigative Interviews and Related Guarantees

4. The former Special Rapporteur on Torture, Mr. Juan Mendez, in his report to the United Nations General Assembly in October, 2016 called for the formulation of a universal protocol on standards relating to non-coercive investigation techniques and related procedural guarantees.
5. Preparatory meetings were held in 2017 but the process was launched in May 2018 with the setting up of a Steering Committee made up of 15 experts in thematic areas such as criminal justice, psychology, human rights and prevention of torture. The Committee’s first meeting was held on 18 and 19 May, 2018 in Rio de Janeiro while the second was held in Tunis on 10 and 11 December, 2018.

6. The Association for the Prevention of Torture (APT) and the Danish Institute Against Torture “Dignity” took the opportunity offered by the presence of the Steering Committee Experts in Tunis to organise a seminar on the Universal Protocol on Investigative Interviews and Related Guarantees on 12 December. The seminar sought to raise awareness among the participants on the contribution of the Protocol and to exchange ideas with the Tunisian authorities.

7. Mr. Juan Mendez further indicated that apart from the Steering Committee, a 11-member Drafting Committee was established to formulate the Draft Protocol. An Advisory Council made up of 50 Experts from across the world will advise the two Committees. I was appointed to be part of the Advisory Council in my capacity as Chairperson of the CPTA.

8. The Drafting Committee will hold a meeting in OSLO in April 2019. Mr. Mendez was of the view that the formulation of the Protocol would be completed in the autumn of 2019.

9. In my intervention, I indicated that we attach great importance to the finalisation of the Protocol. It will help investigators to establish the truth and bring relief to defendants. The seminar also offered the platform to discuss opportunities for cooperation with the APT and Dignity as well as with the National Institution against Torture.

**B: Activities as Member of ECOSOC**

10. In my capacity as Member of ECOSOC, I participated in a Joint ECOSOC and Working Group on Extractive Industries, Environment and Human Rights Meeting, from 17 to 18 February 2019, in Banjul, The Gambia. The Meeting was
held towards implementation of *Resolution 236 on Illicit Capital Flight from Africa* which tasked the two Special Mechanisms to undertake an in-depth study on the impact of illicit capital flight on human rights in Africa. The Meeting also discussed other areas of collaboration between the Special Mechanisms, including on a Joint Study on Climate Change and Human Rights.

**C: Activities as Member of the African Commission**


12. The speakers from the Maghreb indicated that the discussions on equality of inheritance was initiated in Algeria and Morocco. The Tunisian Parliament had before it a draft bill on equal rights to inheritance.

13. The ATFD expressed the willingness to obtain Observer Status with the ACHPR. This affiliation will be fruitful in the fight for human rights by Tunisian women. I forwarded Resolution 361 on the requirements for granting Observer Status to the ATFD and reaffirmed my availability to support them in their efforts.

ii. *Participation in the Meeting of the Working Group on Specific Issues*
14. I participated in the meeting of the Working Group on Specific Issues held in Kigali from 18 to 20 December, 2018. The meeting was an opportunity for the presentation of and familiarisation with new rules governing administrative and financial management. The new approach adopted by the African Union Commission which advocates for more rigorous and rational mechanisms was presented by an SPPERM Expert.

15. The exercise was a very fruitful one for the participants who will be in a better position to negotiate and discuss administrative and financial issues with the AUC and to organise their annual work plan. The ACHPR is therefore bound to align its strategic plan with the AU Agenda 2063 and with the first ten-year plan for the period 2013 to 2023.

16. It must be noted that the meeting was initially expected to be a joint one with the ACBSM but the unavailability of the Chairperson of ACBSM made it impossible to organise such a joint meeting.

iii. Participation in the African Union’s 32nd Summit and Executive Council Meetings

17. It is a tradition at the ACHPR that Commissioners accompany the Executive Bureau on rotating basis during Executive Council Meetings and the AU Summit. In this regard, I attended the Executive Council meetings and the 32nd AU Summit in Addis Ababa from 7 to 11 February, 2019.

18. Together with the ACHPR delegation, I attended the 32nd Executive Council Meetings which considered the Commission’s 45th Activity Report. After a long period of discussions between the Chairperson of the Commission and the Ambassadors of several countries, the Executive Council authorised the publication of the 45th Activity Report.

19. Furthermore, the African Union Assembly elected the President of the Arab Republic of Egypt as the head of its Bureau.
20. I attended the launch of the Volume Two of the African Human Rights Directory on 9 February, on the sidelines of the AU Summit. Several partners and members of the three Organs as well as journalists participated in the event.

21. Finally, the ACHPR delegation had a working session with Ms. Michelle Bachelet, United Nations High Commissioner for Human Rights. Ms. Bachelet reiterated her support for the ACHPR at a time when some parties are attacking it and limiting its prerogatives.

22. Several issues were addressed during the meeting, particularly, the work of the Commission, its achievements and challenges, the collaboration and cooperation between the two institutions as part of the Addis Ababa roadmap, the preservation of the independence of the Commission.

23. Ms. Bachelet informed the ACHPR delegation that her Office and the African Court had signed a Memorandum of Understanding on Cooperation/Collaboration on the margins of the AU Summit and expressed the hope that the same cooperation would be established with the Commission.

24. For my part, I presented the activities of the CPTA and solicited the support of the HRC and UN Organs for the Committee. This support could be in the form of organising joint events or taking up the responsibility of translating or printing instruments on torture. Ms. Bachelet promised to study the issue.

25. From 14 to 15 April 2019, I participated in the International Conference on National, Regional and International Mechanisms to Combat Impunity and Ensure Accountability under International Law, in Qatar, Doha. The Conference was organized by the National Human Rights Committee in Qatar (NHRC) in cooperation with the United Nations Office of the High Commissioner for Human Rights and the European Parliament. The Conference discussed the national, regional and international mechanisms that combat impunity for gross
violations of human rights law and serious violations of international humanitarian law, and ways of ensuring accountability. The Conference further took stock of the relevant international law principles in this regard, and how the principles are applied by sharing the experience of the various mechanisms in enforcing these principles and in enhancing accountability.

**D: Letters of Appeal**

26. On 27 March 2019, I sent a joint letter of appeal with the Commissioner Rapporteur on the Human Rights Situation in the Republic of Equatorial Guinea, to His Excellency, Mr. Obiang Nguema Mbasogo, President of the Republic of Equatorial Guinea, concerning the alleged arbitrary detention and torture of Joaquin Elo Ayeto, as well as denial of his fair trial rights. The Government of the Republic of Equatorial Guinea has not responded to the letter of appeal.

27. On 10 January 2019, I forwarded the following joint letters of appeal with the Commissioner Rapporteur on the Human Rights Situation in the Arab Republic of Egypt and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, to His Excellency, Mr. Abdel Fatah al-Sisi, President of the Arab Republic of Egypt in my capacity as Chairperson of the CPTA:

i. I sent a joint letter concerning the alleged denial of medical treatment to Mr. Mohamed Maksod Bhy Eldeen who is being detained at the State Security Agency in Damanhur City.

ii. I sent a joint letter concerning allegations of the arbitrary arrest and detention, torture and ill-treatment, lack of fair trial, and denial of urgent medical care to Mr. Salah Ahmed Metwally Galal in Egypt.

iii. I sent a joint letter concerning the alleged torture and ill-treatment, denial of fair trial, denial of access to lawyers and family members, poor conditions of detention, as well as arbitrary detention of Mr. Walid Ahmed Shawky El-Sayed and Mr. El-Motaaz Mohammed Shams El-Dien Abd Al-Haleem in Egypt.
28. The Government of the Arab Republic of Egypt has not responded to the above-stated letters of appeal.

III: Annual Report on the Situation of Torture and other Ill-Treatment in Africa

A: Introduction

29. 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.”

30. This annual report on the situation of torture and other ill-treatment in Africa is prepared pursuant to one of the terms of reference of the CPTA which mandates the Committee to report to each Ordinary Session of the African Commission on the status of 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 provide concrete guidance to State and non-state actors on how to implement Article 5 of the African Charter on Human and Peoples’ Rights (the African Charter) which provides that:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

1 Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
31. The CPTA promotes implementation of the Robben Island Guidelines and other important instruments in the prevention and prohibition of torture and other ill-treatment, including the United Nations Convention against Torture (UNCAT) and the Optional Protocol to UNCAT (OPCAT). It also strives for the establishment of effective National Preventive Mechanisms (NPMs) in African States in accordance with OPCAT.

B: Positive Developments in the Prohibition and Prevention of Torture and Other Ill-Treatment in Africa

i. UNCAT

32. The UNCAT principally calls for States to criminalise torture. To date, the following fifty (50) African States have ratified CAT: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Republic of Congo, Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Swaziland, Togo, Tunisia, Uganda and Zambia.2

28. Comoros and The Gambia are the latest African States to ratify UNCAT on 25 May 2017 and 28 September 2018 respectively.

33. The State Party reports of Mauritania, Senegal, and Seychelles were considered by the UN Committee against Torture in 2018.

ii. OPCAT

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34. The OPCAT seeks the establishment of NPMs, and emphasises prevention rather than reaction, and cooperation with national authorities rather than condemnation.

35. Twenty-two (22) African States have ratified OPCAT: Benin, Burkina Faso, Burundi, Cabo Verde, Central African Republic, Democratic Republic of Congo, Gabon, Ghana, Liberia, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Sudan, Togo and Tunisia.3

36. Madagascar is the latest African State to ratify OPCAT on 21 September 2017.

37. In line with OPCAT, twelve (12) African States – Burkina Faso, Cabo Verde, Mali, Mauritania, Mauritius, Morocco, Mozambique, Nigeria, Rwanda, Senegal, Togo and Tunisia - have designated their NPMs.4

38. Rwanda has formally designated its National Human Rights Commission to carry out the functions of the NPM in accordance with the OPCAT with the adoption of Law N° 61/2018 OF 24/08/2018, which entered into force on 17 September 2018.5

39. Between 29 October and 2 November 2018, the UN Subcommittee on Prevention of Torture (SPT) carried out a visit to Liberia which is a State party to the OPCAT.6

iii. Prosecutions and court decisions

40. Forced examination to obtain physical evidence of homosexuality, which takes the form of non-consensual anal examination, is “medically worthless and

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amounts to torture and ill-treatment.” In a landmark decision, in March 2018, the Court of Appeal in Mombasa, Kenya, found that the use of forced anal examination on people who are accused of same-sex relations is unconstitutional. The Court of Appeal’s decision overturned a 2016 decision of the High Court involving two men accused of homosexuality, in which the High Court held that forced anal examination to find evidence of homosexuality is lawful.

41. In December 2018, in Chad, Police Colonel Senoussi Ahmat Ochi was arrested after a video of him torturing a man suspected of theft was circulated on social media. The victim, Oumar Hissein, later died as a result of the injuries he sustained.

42. Malawi has completed investigations into the abduction, killing and mutilation of 22-year-old MacDonald Masambuka who is a person with albinism. The authorities identified 12 defendants including a police officer, clinician and priest on a series of charges. Prosecution of the alleged perpetrators is ongoing.

iv. Other positive developments

43. The African Commission has in its case law held that executions may amount to cruel, inhuman and degrading treatment or punishment if the suffering caused

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9 As above.
11 As above.
13 As above.
in execution is excessive and goes beyond what is strictly necessary. In this regard, the CPTA welcomes the ratification by The Gambia of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty on 28 September 2018.

44. On 15 October 2018, the Truth, Reconciliation and Reparations Commission of The Gambia (TRRC) was launched, to investigate and establish an impartial historical record of the nature, causes and extent of the violations and abuses of human rights committed during the period July 1994 to January 2017 and to consider the granting of reparations to victims and for connected matters. As indicated in The Gambia’s latest report to the African Commission, acts of torture and ill-treatment were systemically committed in The Gambia by the former regime. It is expected that the TRRC will provide healing and reconciliation to all, including the victims of torture and other ill-treatment.

45. In July 2018, the Government of Ethiopia dismissed five prison officials, including the Federal Prison Chief, as part of efforts to address the systemic torture and abuse that takes place in detention centres. However, in accordance with the Robben Island Guidelines, beyond dismissing perpetrators of torture, Ethiopia should subject the perpetrators to the legal process and provide full redress to the victims of torture.

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C: Negative Developments in the Prohibition and Prevention of Torture and Other Ill-Treatment in Africa

i. Terrorism

46. The Robben Island Guidelines provides that “public order”, “national emergency”\(^{20}\) or superior orders\(^{21}\) shall not be used as justification or excuse for acts of torture and other ill-treatment. Torture has been used against persons suspected of terrorism or against persons allegedly associated with persons suspected of terrorism, to obtain information and to punish them for their alleged roles in the terrorist act. Terrorist groups have also used means akin to torture on populations. States have in turn reacted with the use of excessive force, including torture and ill-treatment to combat the scourge of terrorism in their territories.

47. During the inter-session period, “in Cameroon, there were continued reports of killings, kidnappings and plundering attributed to Boko Haram in the Far North region.”\(^{22}\) Further, a shocking video reportedly showing members of the armed forces in Cameroon executing two women, a child and a baby accused of being members of Boko Haram was released.\(^{23}\)

ii. Extrajudicial killings and arbitrary executions

48. The African Commission has in its case law held that executions may amount to cruel, inhuman and degrading treatment or punishment.\(^{24}\) In Cameroon, “in the English-speaking regions, fighting between security forces and armed elements continued to cause casualties... Civilians, children, in those regions were victims of extrajudicial killings, abductions, restrictions of movement and access to

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\(^{20}\) Guideline 10 of the Robben Island Guidelines.
\(^{21}\) Guideline 11 of the Robben Island Guidelines.
\(^{24}\) Communication 277/03: Spilg and mack & Ditshwanelo (Kobedi) v. Botswana (ACHPR 2011) para 167.
health and education, as armed confrontations continued.”25 “There are also reports that Government forces are responsible for killings, the excessive use of force, burning down of houses, arbitrary detentions and torture.”26

49. In February 2019, the African Commission received reports that a total of 15 people were executed in Egypt amid allegations that confessions were obtained through torture, and that due process and fair trial guarantees may not have been followed.27 Nine men were executed,28 following convictions on the basis of evidence allegedly obtained under torture.29 It is further reported that “a detailed account of the torture used to obtain the confessions, in some cases during periods of enforced disappearance, was brought up during the trial of the nine men, but was allegedly ignored by the East Cairo Felonies Court. Evidence in the case also reportedly showed major inconsistencies. Three of the executed men were made to confess on national television.”30

iii. Torture in places of detention and poor conditions of detention

50. The Robben Island Guidelines encourage States to improve conditions in places of detention31 and reduce overcrowding.32 Poor conditions of detention could amount to torture and other ill-treatment. Torture and ill-treatment in places of

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28 The nine men executed under case 7122/2016 “Case of the assassination of the public prosecutor” are: Ahmed Mohamed Taha Wahdan; Abu el-Qasem Ahmed Ali Youssef; Mahmoud el-Ahmady Abdul Rahman; Abdul Rahman Soliman Mohamed; Ahmed Mahrous el-Sayed; Islam Mohamed Ahmed Mekkawy; Abu Bakr el-Sayed Abdul Mageed Mohamed; Ahmed el-Degwi and Ahmed Gamal Hegazy.
30 As above.
31 Guideline 34 of the Robben Island Guidelines.
32 Guideline 37 of the Robben Island Guidelines.
detention remains widespread in the continent and is often deeply rooted in the culture of security officials. Persons in detention are often tortured by law enforcement officials to extract confessions.

51. In the inter-session, a report detailing allegations of abuse and torture at Jail Ogaden, in Ethiopia’s Somali Regional State, was released. It is reported that prisoners were routinely harassed, beaten, humiliated, and punished, and that female prisoners were raped. Further, the report avers that the Prison is overcrowded with poor conditions of detention, including inadequate medical care, water, sanitation, food, and water.

52. It is reported that on 14 August 2018, Robert Kyagulanyi, an opposition politician, was arrested and detained by Ugandan authorities, during which time he was tortured. According to his lawyer and family, he “showed visible signs of torture and other ill-treatment with injuries and swellings on his face and body.”

53. Reports further indicate that in Equatorial Guinea, Joaquin Elo Ayeto, a human rights activist, was arrested on 25 February 2019 for allegedly plotting to kill the President. It is reported that while in detention at the Central Police Station in Malabo he was tortured at least twice.

iv. Excessive use of force against protestors

54. Violence, specifically excessive use of force against protestors by security personnel, persisted in the inter-session period. Excessive use of force is the use of force beyond the force a reasonable law enforcement officer would use under

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34 As above.
35 As above.
38 As above.
the circumstances, and this could amount to a violation of Article 5 of the African Charter. In December 2018, at least two protestors, including a 12 year old boy, were killed during protests by security forces while many others were injured by gunshot wounds, in Lomé, Togo.\(^{39}\) It is reported that members of the security forces were also injured.\(^{40}\)

55. In January 2019, Zimbabwean security forces used live ammunition to disperse protests, resulting in deaths and injuries to civilians.\(^{41}\) There are also reports of beatings, rape, torture and other abuses, as well as the arbitrary arrest and detention of civilians.\(^{42}\) The Zimbabwe Human Rights Commission found that “in the aftermath of the 14\(^{th}\) of January 2019 disturbances, armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police instigated systematic torture... Torture was perpetrated through beating the men with baton sticks on their backs while they lay on the ground, including falanga, i.e. beating under the feet and beating them with open hands.”\(^{43}\) The Zimbabwean Human Rights Commission further found that “the amount of force, evidenced by the injuries sustained by some of the Complainants...and the

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\(^{40}\) As above.


deaths that occurred which were supported by medical records reveal a case of police brutality.”

56. In The Sudan, protests which began in December 2018, were met with excessive and disproportionate force, resulting in deaths and injuries to civilians. Reports further aver that persons suspected of participating in or supporting the protests were subjected to arbitrary arrest and detention, as well as torture and ill-treatment in detention centres. It is reported that the Government of The Sudan admitted to the death of one detainee as a result of torture.

v. Attacks on persons with albinism

57. During the inter-session period, persons with albinism continued to be physically attacked due to prevailing myths such as the misbelief that their body parts, when used in witchcraft rituals and potions or amulets, induce wealth, good luck and political success. And these acts violate the right to life, the right to security of person and the prohibition of torture and ill-treatment of these persons. In Malawi, there has been a resurgence of attacks on persons with albinism, with the savage killing and dismemberment of a 54 year old man, and the abduction of a 12 year old boy and a 1 year old baby. The UN reports that “these two incidents are part of a larger disturbing pattern in Malawi where

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48 As above, para 17.
ritual killings and egregious human rights violations of the worst kind are instigated specifically against persons with albinism... The UN adds that “the attacks and violations are astonishing in their brutality.”

D: Recommendations

vi. In view of the foregoing, I wish to make the following recommendations to State Parties:

i. enact legislation criminalising torture and other ill-treatment in accordance with the Robben Island Guidelines and UNCAT;

ii. ratify OPCAT and establish NPMs to monitor places of detention;

iii. eradicate torture or ill-treatment in correctional institutions and other places of detention, including by establishing a system of unannounced and unrestricted visits to all places of detention;

iv. improve conditions of detention in accordance with the Guidelines on the Condition of Arrest, Police Custody and Pre-Trial-Detention in Africa;

v. prohibit the admission of evidence obtained through torture;

vi. initiate prompt, thorough, independent, and impartial investigations into all allegations of torture and other ill treatment and ensure that perpetrators are held accountable, and subjected to appropriate sanctions that reflect the gravity of the offences, in accordance with the relevant international and regional standards;

vii. establish accessible complaints mechanisms empowered to receive complaints of torture and conduct prompt, independent, thorough, impartial investigations and make findings;

viii. ensure that security personnel do not use excessive force against civilians and that they respond to protests in accordance with the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa;

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50 As above.
ix. ensure that persons suspected of terrorism or persons allegedly associated with persons suspected of terrorism are not subjected to acts of torture and other ill-treatment, and respect their due process rights;

x. respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including persons with albinism, persons with disabilities, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, migrants, refugees, and internally displaced persons, and ensure that perpetrators are held accountable;

xi. ensure that victims of torture and ill-treatment have the right to all forms of redress including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in accordance with 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);

xii. Lastly, CPTA calls upon everyone with information regarding allegations of torture and other ill-treatment to bring such information to the attention of the Committee and the Commission.