

**INTER-SESSION ACTIVITY REPORT (MAY 2015 to  
NOVEMBER 2015)  
AND  
ANNUAL SITUATION OF TORTURE AND ILL-  
TREATMENT IN AFRICA REPORT**

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Presented to the 57<sup>th</sup> 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 which requires 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 Extractive Industries, the Environment and Human Rights Violations in Africa.
2. This Report covers the inter-session between the 56<sup>th</sup> and the 57<sup>th</sup> Ordinary Sessions of the African Commission during the period May 2015 – November 2015. It also provides an analysis of the general situation of judicial corporal punishment in Africa.
3. The Report is divided into this introduction; my inter-sessional activities; an analysis of the general situation of judicial corporal punishment 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. On 26 June 2015, in Nairobi, Kenya, I made an address at an event on the right to redress for victims of torture on the occasion of the International Day in Support of Victims of Torture.

- b. I also oversaw the preparation of the statement posted on the CPTA webpage marking the International Day in Support of Victims of Torture, which called on all relevant actors to ensure effective redress for victims of torture.<sup>1</sup>
- c. From 6 to 7 July 2015, in Accra, Ghana, I convened a Technical Meeting to discuss the modalities of drafting the proposed General Comment on the right to redress for victims of torture. The Technical Meeting explored the normative framework of the right to redress, the *status quo* regarding victims' access to redress on the continent; and identified good practices as well as challenges and gaps at the national, regional and international levels that the General Comment could usefully address. The meeting identified the next steps in drafting the General Comment and published a report of the outcome of the Meeting.<sup>2</sup>
- d. On 8 July 2015, I held a Joint Meeting with the Special Rapporteur on Prisons and Conditions of Detention on 'Implementing the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa and Combating Torture', held in Accra, Ghana. I made a presentation on torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention.
- e. On 13 July 2015, I gave a lecture at the University of Pretoria's Centre for Human Rights on the theme: 'Policing, Torture And Ill-Treatment: Issues And Responses', where I highlighted the role of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) in the prohibition of torture.

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<sup>1</sup> See 'Statement on the Occasion of the International Day in Support of Victims of Torture - 26 June 2015' available at <http://www.achpr.org/news/2015/06/d188>.

<sup>2</sup> See 'Report On Technical Meeting On Drafting A General Comment On The Right To Redress For Victims Of Torture And Ill-Treatment Under Article 5 Of The African Charter On Human And Peoples' Right' available at <http://www.achpr.org/news/2015/09/d191>.

- f. On 11 August 2015, I made a presentation on the 'African perspective on preserving human dignity by preventing torture and ill-treatment' at a Regional workshop organised by the Association of Southeast Asia Nations (ASEAN) in Bali, Indonesia.
- g. On 29 September 2015, in Nairobi, Kenya, I attended a meeting organised by the Redress Trust where I gave an address on the 'Role of Regional and International Mechanisms in the Promotion of Effective Anti-Torture Legislative Frameworks'.
- h. From 1 to 2 October 2015, I attended a meeting convened by the Pan-African Reparations Initiative (PARI) in Johannesburg, South Africa, where I gave a key note address on the 'Overview of CPTA's mandate to adopt General Comments on Article 5, and developments on the General Comment on Redress' and received inputs and comments to the proposed General Comment by PARI.
- i. During the 10<sup>th</sup> Biennial Conference of the Network of African National Human Rights Institutions, held from 20 to 23 October 2015 in Yaounde, Cameroon, I gave a key note address on the theme 'Torture prevention and prohibition in Africa: challenges, successes and opportunities'.

## **B: Activities as Member of the Working Group on Older Persons and Persons with Disabilities**

- 5. I undertook the following activities as member of the Working Group on Older Persons and Persons with Disabilities in Africa:
  - a. Between 8 and 10 September 2015, I attended a Regional Consultative Meeting convened by the African Union Commission and Partner States of the Economic Community of West African States and made a presentation on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

- b. I also attended the First Ordinary Session of the Fourth Pan-African Parliament on 8 October 2015 in Midrand, South Africa and made a presentation on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

### **C: Other activities as Member of the African Commission**

6. I undertook the following other activities as a member of the African Commission:
  - a. From 22 to 28 May 2015, in my capacity as Commissioner Rapporteur for the human rights situation in The Sudan, I led a delegation comprised of Commissioner Lucy Asuagbor, Chairperson of the Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV, and Commissioner Med. S. K. Kagawa, Special Rapporteur on Prisons and Conditions of Detention in Africa, on a Promotion Mission to The Sudan. During the Mission, the delegation held fruitful discussions with various Government bodies, independent state institutions, the African Union Liaison Office in The Sudan, civil society organisations, media practitioners and human rights defenders.<sup>3</sup>
  - b. On 16 June 2015, in Naivasha, Kenya, I attended a Regional Conference: 'Changing Spaces, Changing Faces', where I made opening remarks on 'Sexual Minorities in Africa: An African Commission on Human And Peoples' Rights Perspective'.
  - c. On 9 July 2015, I took part in a Working Visit by representatives of the African Commission to the Commission of Human Rights and Administrative Justice of Ghana (CHRAJ) in Accra, Ghana, where the two Institutions discussed possible areas of collaboration.

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<sup>3</sup> See 'Press Release on the Human Rights Promotion Mission Undertaken by the African Commission on Human and Peoples' Rights to the Republic of The Sudan from 22 to 28 May 2015' available at <http://www.achpr.org/press/2015/06/d266/>.

- d. On 21 July 2015, I attended the Fourth Annual Meeting of the African Court on Human and Peoples' Rights and the African Commission held in Nairobi, Kenya.
- e. From 29 July to 7 August 2015, I attended the 18<sup>th</sup> Extra-ordinary Session of the African Commission, held in Nairobi, Kenya.
- f. As focal point for the dialogue between the African, Inter-American and United Nations human rights systems regarding sexual orientation and gender identity, I took part in a conference call on 30 August 2015 in preparation for the joint dialogue at the 57<sup>th</sup> Ordinary Session of the African Commission.
- g. On 23 September 2015 in Nairobi, Kenya, I held a Meeting with various civil society organisations working on the rights of sexual minorities in Kenya to discuss how they can give their input to the proposed General Comment on the right to redress for victims of torture.
- h. Again as focal point for the dialogue between the African, Inter-American and United Nations regarding issues of sexual orientation and gender identity, on 3 November 2015, I participated in the Joint Thematic Dialogue on Sexual Orientation and Gender Identity, held in Banjul, The Gambia.

## **D: Letters of Appeal**

7. I forwarded the following four letters of appeal to the Republic of The Gambia, the Republic of Congo, the Kingdom of Lesotho and the Republic of Burundi, in my capacity as Commissioner-Rapporteur for the Human Rights Situation in The Gambia, and as Chairperson of the Committee for the Prevention of Torture in Africa:
  - a. On 20 July 2015, I sent a letter of appeal, jointly with the Special Rapporteur on Freedom of Expression and Access to Information in Africa, to His Excellency Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh

Babili Mansa, President of the Republic of The Gambia, concerning the safety and security of Mr Alagie Abdoulie Ceesay, the manager of Taranga FM, a community based radio station in Sinchu Alhagie, a village in the Kombo North District of The Gambia. The letter was sent following reports which alleged that on 2 July 2015, Mr Ceesay was arrested by two men in plain clothes. The Government of the Republic of The Gambia has not responded to the letter of appeal.

- b. On 23 July 2015, I sent a letter of appeal, jointly with the Special Rapporteur on Prisons and Conditions of Detention in Africa, to His Excellency Mr Denis Sassou Nguesso, President of the Republic of Congo, regarding the alleged arrest and detention of Mr Jean Léonard Mbarusha. The Government of the Republic of Congo is yet to respond to the letter of appeal.
- c. On 8 September 2015, I sent a letter of appeal, jointly with the Commissioner Rapporteur on the Human Rights Situation in the Kingdom of Lesotho and the Special Rapporteur on Prisons and Conditions of Detention in Africa, to His Excellency Dr Pakalitha Bethuel Mosisili, Prime Minister of the Kingdom of Lesotho, regarding the alleged arrest and prolonged detention of at least twenty-two (22) members of the Lesotho Defence Force. On 28 October 2015, a response was received from the Government of Lesotho regarding the joint letter of appeal. In response to the allegations, the Government noted the following: the continuing detention of the arrested members of LDF fell within the parameters of the law and allegations of abductions of members of the LDF were found by the Courts of law to be unfounded; no cases had been lodged before the Courts dealing with torture, save for the habeas corpus applications which did not specifically deal with the issue of torture; therefore the reports received by the Commission relating to the alleged



torture of some LDF members were meant to tarnish the image of the country since the authors of such reports had a political agenda.

- d. On 5 October 2015, I sent a letter of appeal to His Excellency Mr Pierre NKURUNZIZA, President of the Republic of Burundi, regarding the alleged torture and ill-treatment of persons suspected of participating in demonstrations in Bujumbura between April and June 2015, in relation to the July 2015 elections. The Government of the Republic of Burundi has not responded to the letter of appeal.

## **E: Letters of Appreciation**

8. I forwarded the following two letters of appreciation to the Federal Democratic Republic of Ethiopia and the Republic of The Gambia, in my capacity as Commissioner-Rapporteur for the Human Rights Situation in these countries:
  - a. On 1 August 2015, I sent a letter of appreciation, jointly with the Special Rapporteur on Freedom of Expression and Access to Information in Africa, to His Excellency Dr. Mulatu Teshome, President of the Federal Democratic Republic of Ethiopia, regarding the release of five Zone Nine members, including two bloggers: Zelalem Kiberet and Mahlet Fantahun; and three journalists: Edom Kassaye, Tesfalem Weldeyes and Asmamaw Hailegiorgis.
  - b. On 6 August 2015, I sent a letter of appreciation, jointly with the Special Rapporteur on Prisons and Conditions of Detention in Africa, to His Excellency, Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh Babili Mansa, President of the Republic of The Gambia, regarding the pardon granted by His Excellency, the President to over two hundred (200) prisoners during the celebrations of the 21<sup>st</sup> Anniversary of the 22<sup>nd</sup> July Revolution.

### III: Judicial Corporal Punishment in Africa

#### A: Introduction

9. 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 man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.
10. This section focuses on the prohibition of cruel, inhuman or degrading punishment and treatment, in relation to the practice of judicial corporal punishment in State Parties.
11. Corporal punishment is defined as 'physical punishment with the deliberate infliction of pain, intended as correction or punishment'.<sup>4</sup>
12. Judicial corporal punishment remains rife around the world and takes the form of flogging, whipping, caning, beating, and in some instances amputation.
13. Judicial corporal punishment is handed down for offences such as adultery or drinking in Sharia compliant States; and for minor offences such as theft, in secular States. It may be ordered against adult and child offenders and may be meted out alongside a custodial sentence. Judicial corporal punishment may be ordered by a court of law or through traditional justice systems and is therefore administered by State authorities.
14. Proponents of judicial corporal punishment say that it acts as a deterrent, is retributive and is rehabilitative. However, those who oppose it say that it amounts to cruel, inhuman or degrading punishment.<sup>5</sup>

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<sup>4</sup> BA Garner *Black's Law Dictionary* 8<sup>th</sup> ed (2004) 1269.

<sup>5</sup> Chandrasekharan K 'Pros and Cons of Judicial Corporal Punishment' 2010, available at <http://chandrasekharank.hubpages.com/hub/Corporate-Punishment-Pros-Cons>.

15. Judicial corporal punishment is considered to be cruel, inhuman or degrading because the punishment is carried out in public, oftentimes on the bare backside of a victim, and in the case of flogging, the injuries sustained are severe and in most cases a medical doctor is not availed to ascertain the medical fitness of the victim before the punishment is administered or medical care is not offered thereafter.

## **B: Judicial Corporal Punishment in Africa**

16. Judicial corporal punishment in Africa is still prevalent in a number of countries.
17. In the Republic of Botswana, caning is meted out as a punishment especially in '*kgotla*' which are tribal/customary courts. Official courts may also order males, between 14 and 40 to be caned on their bare backside for any crime as an alternative to imprisonment.<sup>6</sup> In 2005, following a promotion mission to that country, the African Commission recommended that the government of Botswana explore alternatives to corporal punishment because it was degrading and inhuman punishment. Further, such punishment was administered to men of a certain age and it was therefore discriminatory.<sup>7</sup>
18. In the United Republic of Tanzania, courts still use the cane with the exception of the semi-autonomous Island of Zanzibar, where it was abolished in 2004. The Minimum Sentences Act gives judicial discretion for the prescription of corporal punishment.<sup>8</sup>
19. In The Sudan, corporal punishment takes the form of lashes with a leather whip and applies to offences such as adultery and drinking. Amputation is also used as a form of punishment. For instance, three men had their right hands

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<sup>6</sup> World Corporal Punishment Research 'Botswana Country Profile' 2015, available at <http://www.corpun.com/rules.htm#botswana>.

<sup>7</sup> African Commission on Human and Peoples' Rights 'Botswana Mission Report' 2005, available at <http://www.achpr.org/states/botswana/missions/promo-2005/>.

<sup>8</sup> World Corporal Punishment Research (n 6 above), available at <http://www.corpun.com/rules3.htm>.

- amputated in April 2013 in North Darfur. They were found guilty of stealing cooking oil worth US\$ 3,300.<sup>9</sup>
20. In 2003, in a Communication about the conviction and sentencing of eight students in Sudan to between 25 and 40 lashes, the African Commission found that legislation permitting flogging violated Article 5 of the Charter and is incompatible with international human rights law.<sup>10</sup> The Commission held that “[t]here is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty.”<sup>11</sup> It requested that the government of The Sudan amend the criminal law in question and abolish the penalty of lashes.<sup>12</sup>
  21. Judicial corporal punishment is prevalent in the Northern parts of the Federal Republic of Nigeria, where corporal punishment under Sharia law is handed down for crimes such as theft and drinking.<sup>13</sup>
  22. Several African countries have achieved legal reform to prohibit corporal punishment. These include: Benin, Cape Verde, Kenya, The Republic of Congo, Togo, Tunisia and South Africa.<sup>14</sup>
  23. It should also be noted that there is close to universal abolition of school corporal punishment around the continent.

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<sup>9</sup> Amnesty International ‘Torture in 2014: 30 years of broken promises, 2014, available at <https://www.amnestyusa.org/sites/default/files/act400042014en.pdf>.

<sup>10</sup> Communication 236/00 - *Curtis Francis Doeblor v The Sudan* (2003) ACHPR available at [http://www.achpr.org/files/sessions/33rd/comunications/236.00/achpr33\\_236\\_00\\_eng.pdf](http://www.achpr.org/files/sessions/33rd/comunications/236.00/achpr33_236_00_eng.pdf) para 44.

<sup>11</sup> As above, para 42.

<sup>12</sup> As above, para 44.

<sup>13</sup> Inside a Sharia Court, Available at [http://news.bbc.co.uk/2/hi/programmes/this\\_world/7015896.stm](http://news.bbc.co.uk/2/hi/programmes/this_world/7015896.stm)

<sup>14</sup> See Committee against Torture: Recommendations and observations on corporal punishment (as at May 2015), available at <http://www.endcorporalpunishment.org/assets/pdfs/tb-upr-analyses/CAT%20analysis.pdf>.

## C: International Context

24. There is considerable jurisprudence on corporal punishment at the international level, notably by the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) in General Comment No. 20 on Article 7 of the ICCPR, where the Committee notes that prohibition of torture in Article 7 of the International Covenant on Civil and Political Rights should extend to corporal punishment.<sup>15</sup>
25. Manfred Nowack, the former Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in his report to the Human Rights Council stated that:

*“What is common to all forms of corporal punishment is that physical force is used intentionally against a person in order to cause a considerable level of pain. Furthermore, without exception, corporal punishment has a degrading and humiliating component. All forms of corporal punishment must be considered as amounting to cruel, inhuman or degrading punishment in violation of international treaty and customary law.”*<sup>16</sup>
26. In the landmark case of *Osbourne v. Jamaica*, where the applicant had been sentenced to 10 strokes of the tamarind switch, the Human Rights Committee agreed with the applicant that sentences of corporal punishment were impermissibly cruel, inhuman and degrading.<sup>17</sup>
27. The Committee on the Rights of the Child in General Comment No. 8 on the prohibition of all corporal punishment notes that *“[i]n a minority of States, corporal punishment using canes or whips is still authorised as a sentence of the courts for child*

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<sup>15</sup> Human Rights Committee ‘General Comment No. 20 on Article 7 of the ICCPR - prohibition of torture or other cruel, inhuman treatment or degrading treatment or punishment’ 1992, para 5, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621&Lang=en).

<sup>16</sup> Human Rights Council ‘Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’ 9 February 2010, para 63, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf>.

<sup>17</sup> *Communication No. 759/1997 – Osbourne v. Jamaica* (2000) ICCPR Human Rights Committee, available at <http://www.unhcr.ch/tbs/doc.nsf/0/339e324bcf148a04c125690c00359dd6?Opendocument>.

*offenders. As frequently reiterated by the Committee, the Convention requires the repeal of all such provisions.*"<sup>18</sup>

## **D: Recommendations**

28. Though clearly a punishment of the past, judicial corporal punishment is still in force in some countries. Judicial corporal punishment amounts to torture or other cruel, inhuman or degrading treatment or punishment. The CPTA therefore makes the following recommendations:
- a. All states which have not done so should repeal statutes which provide for the use of judicial corporal punishment;
  - b. Under no circumstance should judicial corporal punishment be meted out on children;
  - c. Sentences which include corporal punishment should as a matter of urgency be stayed;
  - d. All states should take measures to eradicate so-called 'mob justice'; and
  - e. Finally, the CPTA offers technical and political support to states which may wish to engage with it in exploring ways of ensuring the absolute eradication of judicial corporal punishment.

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<sup>18</sup> Committee on the Rights of the Child 'General Comment No. 8 on the Prohibition of all forms of Corporal Punishment, 2006, para 32, available at [https://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/GRC-C-GC-8\\_EN.pdf](https://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/GRC-C-GC-8_EN.pdf).