

**INTER-SESSION ACTIVITY REPORT (OCTOBER 2016 TO
MAY 2017)**

AND

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

Presented to the 60th 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 Older Persons and Persons with Disabilities, and Member of the Working Group on Specific Issues Related to the work of the African Commission.
2. This Report covers the inter-session between the 59th and the 60th Ordinary Sessions of the African Commission during the period October 2016 – May 2017. It also provides an analysis of the general situation of torture and other ill-treatment in Africa in the period October 2016 to May 2017.
3. The Report is divided into this introduction; my inter-sessional activities; a general analysis of the situation of torture in Africa; and recommendations.

II: Inter-sessional Activities

A: Activities as Member of the African Commission

- a. Between 23 February and 4 March 2017, I attended the 21st Extra-Ordinary Session of the Commission held in Banjul, The Gambia;

B: Letters of Appeal

4. On 1 March 2017, in my capacity as Commissioner Rapporteur on the Human Rights Situation in the Republic of The Sudan, I sent a letter of appeal to His

Excellency Omar Hassan El-Bashir, President of the Republic of The Sudan regarding the alleged prolonged detention and unfair trial of Centre for Training and Human Rights Development (TRACKS) staff members Khalafalla A. Muktar and Midhat A. Hamdan, and Mustafa Adam from an affiliate organisation, Al Zarqa Organisation for Rural Development. The Government of the Republic of The Sudan has not responded to the Letter of Appeal.

5. The Commission, however, received information that the trial against the three people was concluded on 5 March 2017, with the conviction of Mr Mukhtar and Mr Hamdan for disseminating false information and possession of immoral material, and Mr Adams for espionage. They were each sentenced to one year imprisonment and fined 50,000 Sudanese Pounds. Information reaching the Commission indicated that they were all released on 6 March 2017 after paying their fines.

III: Situation of Torture and Other Ill-Treatment in Africa Report

A: Introduction

6. 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).
7. 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.”

8. The Robben Island Guidelines is an unprecedented instrument for supporting the prevention and eradication of torture and other cruel, inhuman or degrading punishment or treatment (other ill-treatment) in Africa. It is an essential tool for guiding States to fulfil their national, regional and international obligations on implementing the prohibition and prevention of torture and other ill-treatment. The African Commission and other stakeholders also use the Guidelines as a basis for reminding States and other parties of what actions they should take to prevent torture and other ill-treatment.

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

9. The United Nations Convention against Torture (CAT) principally calls for States to criminalise torture. To date, the following forty eight (48) African States have ratified CAT: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Republic of Congo, Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, 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.
10. Central African Republic ratified CAT on 11 October 2016, while Sao Tome and Principe ratified it on 10 January 2017.¹

¹ Status of Ratification available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CAT-OP&Lang=en.

11. The Optional Protocol to CAT (OPCAT) seeks the establishment of National Preventive Mechanisms (NPMs), and emphasises prevention rather than reaction, and cooperation with national authorities rather than condemnation.
12. Twenty-one (21) African States have ratified OPCAT: Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Democratic Republic of Congo, Gabon, Ghana, Liberia, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Sudan, Togo and Tunisia.
13. South Sudan ratified OPCAT on 30 April 2015, Ghana on 23 September 2016, and the Central African Republic on 11 October 2016.²
14. In line with OPCAT, seven (7) African States - Mali, Mauritania, Mauritius, Nigeria, Senegal, Togo and Tunisia - have designated their National Preventive Mechanisms (NPMs). Mali, Mauritius and Togo have designated their National Human Rights Institutions as NPMs, while the other countries have established completely new institutions.
15. During the inter-session, the following notable domestic anti-torture steps were taken:
 - i. Reports indicate that on 22 November 2016, a court in the Republic of Malawi sentenced Eric Aniva, a pre-eminent “hyena”³ to two (2) years in prison for engaging in harmful traditional practices further to the Gender Equality Act.⁴ This followed H.E. President Arthur Peter Mutharika’s order for Mr Aniva’s arrest following the latter’s interview with BBC⁵ where he admitted to performing sexual cleansing on women who have had abortion, on widows before they could bury their deceased husbands and on girls, as young as 12 years old, immediately after their first menstruation.⁶ He confessed that he

² Status of Ratification available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CAT-OP&Lang=en.

³ This is the traditional title given to a man hired to perform sexual cleansing in some parts of southern Malawi.

⁴ VOA News *Malawi hyena man jailed for 2 years over traditional sexual customs* 22 November 2016, available at <http://www.voanews.com/a/malawi-hyena-man-jailed-2-years-for-deflowering-women/3608116.html>.

⁵ BBC News *The man hired to have sex with children* 21 July 2016, available at <http://www.bbc.com/news/magazine-36843769>.

⁶ As above.

- was HIV positive but never revealed his status to his “clients” or their family members.⁷
- ii. On 1 July 2016,⁸ revisions adopted by the Assembly of the Representatives of the People (*Assemblée des représentants du peuple*; ARP) of the Republic of Tunisia, to the Criminal Procedure Code, came into force.⁹ The revisions: reduce the pre-trial detention period from three (3) days to 48 hours for felonies, and to 24 hours for misdemeanours, which is renewable once; grants an arrested person the right to request the presence of their lawyer during questioning; the right to a 30-minute consultation with the lawyer after the initial questioning; and the right to medical attention upon request by the detainee, his family or lawyer.¹⁰
- iii. The High Court of Kenya, on 9 February 2017, quashed the Government’s directive to close Daadab Refugee Camp¹¹ and declared that it was discriminatory as it targeted Somali refugees, unconstitutional, and a violation of Kenya’s international obligations under the 1951 UN Convention relating to the Status of Refugees and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugees in Africa.¹² The Court also ruled that collective repatriation of refugees would violate the principle of non-refoulement enshrined in the 1951 UN Convention, as well as in the country’s Refugee Act 2006.¹³

⁷ As above.

⁸ TUNISIA-TN.com *APR: Detention without charge cut, right to a lawyer established* 4 February 2016, available at <http://tunisia-tn.com/detention-without-charge-cut-right-to-a-lawyer-established/>.

⁹ Human Rights Watch *Tunisia: Landmark step for detainee rights*, 4 February 2016, available at <https://www.hrw.org/news/2016/02/04/tunisia-landmark-step-detainee-rights>.

¹⁰ As above.

¹¹ Daily Nation *Kenya vows to appeal verdict blocking Dadaab camp closure* 9 February 2017, available at <http://www.nation.co.ke/news/High-Court-cancels-closure-of-Dabaab/1056-3806030-7enmgdz/>.

¹² Kenya Law *Constitutional Petition 227 of 2016: Kenya National Commission on Human Rights and Another v The Republic of Kenya* available at <http://kenyalaw.org/caselaw/cases/view/131173/>.

¹³ As above.

- iv. Reports aver that on 13 April 2017, H.E. President Uhuru Kenyatta of the Republic of Kenya signed into law the Prevention of Torture Bill.¹⁴ The new law criminalises torture in accordance with CAT and gives the Kenya National Commission on Human Rights (KNCHR) the power to investigate allegations of torture and other ill-treatment, create public awareness, advise the government on prevention and recommend the necessary measures, among other functions.¹⁵ The law also provides for reparation for victims of torture and other ill-treatment.
- v. During the 21st Extra-Ordinary Session, the African Commission considered and adopted 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). General Comment No. 4 provides concrete and practical steps that State Parties should take to provide redress in specific contexts such as conflict and post-conflict situations, instances of collective harm, where perpetration of sexual and gender-based violence amounts to torture and other ill-treatment, or where perpetrators of the violations are non-state actors. The General Comment requires States to adopt a victim-centred approach to redress and emphasises that the ultimate goal of redress and reparation are transformation and healing for victims.

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

16. Acts of torture and other ill-treatment by State and non-state actors continued during the inter-session period (April 2016 to April 2017) in violation of Article 5

¹⁴ The Presidency- Official Website of the President *President Kenyatta assents to anti-torture law* 13 April 2017, available at <http://www.president.go.ke/2017/04/13/president-kenyatta-assents-to-anti-torture-law/>.

¹⁵ Prevention of Torture Bill 2016, available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2016/2016/PreventionofTortureBill2016.pdf>.

of the African Charter and the Robben Island Guidelines. There were reported violations as illustrated below:

i. State of Emergency

17. National security has been used by governments to pass draconian laws that give extensive powers to security personnel, increasing the susceptibility of civilians to acts of torture and other ill-treatment. On 16 February 2017, the Republic of Tunisia extended the state of emergency for another three months.¹⁶ The state of emergency was first declared in July 2015 following a terrorist attack in Sousse.¹⁷ There have been allegations of Article 5 violations during the state of emergency period, including reports of: arbitrary arrests, at times on grounds of discrimination such as appearance, or because a person is related to suspected terrorists; excessive use of force during searches; harassment and intimidation of suspects' family members; use of acts that amount to torture and other ill-treatment during interrogation such as sexual assault, placing detainees in stress positions, sleep deprivation, starvation, assault, humiliation by stripping them and using solitary confinement as punishment; the use of psychological torture by taunting detainees of their imminent death or threatening to harm their family members; and placing detainees in overcrowded cells.¹⁸
18. Arbitrary arrest and detention exposes an individual to the risk of torture and other ill-treatment. The Robben Island Guidelines provides that States should ensure that detained persons are informed immediately of the reasons for their detention¹⁹ and arrested persons are promptly informed of the charges against them.²⁰ The Federal Democratic Republic of Ethiopia declared a six-month state

¹⁶ Press TV *Tunisia extends state of emergency citing "terror threats"* 16 February 2017, available at <http://www.presstv.ir/Detail/2017/02/16/510836/Tunisia-Tunis-State-of-Emergency>.

¹⁷ Reuters *Tunisia's president declares state of emergency after hotel attack* 4 July 2015, available at <http://www.reuters.com/article/us-tunisia-security-emergency-idUSKCN0PE0JN20150704>.

¹⁸ Amnesty International *We want an end to the fear* (2017), available at <https://www.amnesty.org/en/documents/mde30/4911/2017/en/>.

¹⁹ Guideline 25 of the Robben Island Guidelines.

²⁰ Guideline 26 of the Robben Island Guidelines.

of emergency on 9 October 2016,²¹ following fresh protests against alleged police negligence which resulted in the deaths of 55 people and injuries to many others at a religious ceremony on 2 October 2016, in Bishoftu, Oromia Region.²² The emergency rules restricted a number of fundamental human rights and gave security forces wide powers to search, arrest and detain suspects without a court order; consequently 11,607 people were arrested,²³ of whom 9800 people were later released in December 2016.²⁴ On 30 March 2017, the Ethiopian Parliament voted to extend the state of emergency for another four months²⁵ however, the powers of security personnel to arbitrarily arrest and conduct searches without court order were taken away.²⁶

ii. *Extrajudicial killings and summary or arbitrary executions*

19. The Robben Island Guidelines provides that “public order”, “national emergency”²⁷ or superior orders²⁸ shall not be used as justification or excuse for acts of torture and other ill-treatment.

20. On 24 February 2017, the Deputy President of the Republic of Kenya issued a shoot-to-kill order against armed bandits during a peace rally in the country’s north Rift Valley.²⁹ The order came after a bandit attack in Baringo County led to the deaths of at least nine (9) people and the displacement of 3000 people. This

²¹ BBC News *Seven things banned under Ethiopia’s State of Emergency* 17 October 2016, available at <http://www.bbc.com/news/world-africa-37679165>.

²² Press Statement of the African Commission on the Human Rights Situation in the Federal Democratic Republic of Ethiopia 12 October 2016, available at <http://www.achpr.org/press/2016/10/d321/>.

²³ Ethiopian Broadcasting Corporation *State of Emergency Inquiry Board publicizes names of detainees* 11 November 2016, available at <http://www.ebc.et/web/ennews/-/state-of-emergency-inquiry-board-publicizes-names-of-detainees>.

²⁴ Ethiopian Broadcasting Corporation *9,800 suspects arrested under State of Emergency to be released* 17 December 2016, available at <http://www.ebc.et/web/ennews/-/9-800-suspects-arrested-under-state-of-emergency-to-be-released>.

²⁵ Aljazeera *Ethiopia extends state of emergency by four months* 30 March 2017, available at <http://www.aljazeera.com/news/2017/03/ethiopia-extends-state-emergency-months-170330110807086.html>.

²⁶ Capital Ethiopia *Some state of emergency restrictions lifted, parliament to decide on extension* 20 March 2017, available at <http://capitalethiopia.com/2017/03/20/state-emergency-restrictions-lifted-parliament-decide-extension/>.

²⁷ Guideline 10 of the Robben Island Guidelines.

²⁸ Guideline 11 of the Robben Island Guidelines.

²⁹ Africa Review *Kenya police ordered to shoot and kill bandits on sight* 24 February 2017, available at <http://www.africareview.com/news/Kenya-police-ordered-to-shoot-and-kill-bandits-on-sight/979180-3826994-mjurtl/>.

order was condemned by the KNCHR which pointed out that in the past, such orders were followed by massive security operations which led to killings, rape and destruction of property.³⁰

21. Two leaders in the Republic of South Sudan issued shoot-to-kill orders during the intersession period. First, the acting Governor of Gbudue State in Western Equatoria issued a shoot-to-kill order against all criminals found committing crimes.³¹ This order followed incidences of insecurity resulting in the deaths of seven (7) people during that week. Similarly, H.E. Gen. President Salva Kiir Mayardit, while visiting a town near the Ugandan border, ordered that soldiers “who rape” should be condemned to execution by a firing squad. This followed the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) Report which revealed that rape was often committed under an agreement of “do what you can and take what you can” during the attacks by the Sudan People’s Liberation Army (SPLA).³²

iii. Conditions of Detention

22. The Robben Island Guidelines encourage States to improve conditions in places of detention³³ and reduce overcrowding.³⁴ Poor conditions of detention could amount to torture and other ill-treatment. In September 2016, it was reported that there was a fire outbreak in Qilinto Prison, in the Federal Democratic Republic of Ethiopia resulting in the deaths of 23 inmates.³⁵ Reports allege that anti-

³⁰ Daily Nation *KNCHR concerned over shoot-to-kill order* 02 March 2017, available at <http://www.nation.co.ke/news/Human-rights-agency-concerned-over-shoot-to-kill-order/1056-3833798-emirrkz/>.

³¹ Sudan Tribune *W. Equatoria’s Gbudue state orders shoot to kill* 10 September 2016, available at <http://www.sudantribune.com/spip.php?article60187>.

³² United Nations (UN), *Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings*, (2016) 48 para 209, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-CRP-6_en.doc.

³³ Guideline 34 of the Robben Island Guidelines.

³⁴ Guideline 37 of the Robben Island Guidelines.

³⁵ INDEPENDENT *Kilinto Fire: Ethiopian government accused of gunning down political prisoners as they flee burning jail* 6 September 2016, available at <http://www.independent.co.uk/news/world/africa/kilinto-fire-ethiopian-government-accused-of-gunning-down-political-prisoners-as-they-flee-burning-a7228756.html>.

government protestors and opposition leaders were held in Qilinto Prison, and that it was over-crowded. It is alleged that 21 died in a stampede while 2 others were shot while trying to escape.³⁶ It was also reported that there had been two earlier prison fires in Ethiopia.³⁷ Reports allege that the Government later charged 38 inmates for the fire outbreak, for inciting riots and trying to recruit for extremist groups from within the prison.³⁸ It is however disputed that detainees caused the fire, because the prison was heavily guarded and it would be difficult for them to have access to matches.³⁹

iv. Excessive use of force against protestors

23. Violence, specifically excessive use of force against protestors by security personnel, persisted in the inter-session period. Protests erupted in November 2016 in the English-speaking regions of the Republic of Cameroon regarding the alleged dominance and imposition of the French language in state media, public national examinations and official documents and laws, despite both French and English being the official languages of the country.⁴⁰ Reports indicate that the Government responded by deploying armed military personnel and special security forces to the regions resulting in the excessive and disproportionate use of force to disperse protestors, leading to deaths and injuries.⁴¹ The security forces were also accused of rape, arbitrary arrests and detentions, kidnappings and beatings of protestors.⁴²

24. Reports allege that on 18 November 2016, ahead of a planned protest against the introduction of the bond notes in the Republic of Zimbabwe, six (6) activists were

³⁶ As above.

³⁷ United States Department of State *Ethiopia Human Rights Report 2016* page 5, available at <https://www.state.gov/documents/organization/265466.pdf>.

³⁸ BBC News *Ethiopia Kilinto prison inmates charged over deadly fire* 24 November 2016, available at <http://www.bbc.com/news/world-africa-38091258>.

³⁹ See INDEPENDENT (footnote 35 above).

⁴⁰ CNN News *Rights groups call for probe into protestors' deaths in Cameroon* 15 December 2016, available at <http://edition.cnn.com/2016/12/15/world/cameroon-protesters-deaths/>.

⁴¹ As above.

⁴² Press Release on the Human Rights Situation in Cameroon following strike actions of lawyers, teachers and civil society <http://www.achpr.org/press/2016/12/d340/>.

abducted by unidentified men who dragged them out of their cars and beat them.⁴³ Reports further indicate that their cars were found torched, and that three (3) of the protestors were hospitalised, while three others remain missing.⁴⁴

25. The Democratic Republic of Congo (DRC) was rocked with protests calling for H.E. President Joseph Kabila to step down at the expiry of his term on 19 December 2016, after the National Independence Electoral Commission announced that elections would not be held within the constitutional timeframe.⁴⁵ The country's security forces were accused of excessive use of force resulting in deaths of protestors,⁴⁶ extra-judicial killings,⁴⁷ abductions, *incommunicado* detentions and torture and other ill-treatment.⁴⁸ Reports also allege that attacks targeting civilians were launched in Eastern DRC in the form of extrajudicial killings and sexual violence against women and girls, by both government and rebel forces.⁴⁹

v. *Secret and unauthorised detention centres*

26. The Robben Island Guidelines prohibit the use of secret and unauthorised places of detention⁵⁰ and the use of *incommunicado* detention.⁵¹ It requires State Parties to ensure that holding persons in such places is a punishable offence.⁵² In April

⁴³ Press TV *Zimbabwe police prevent planned anti-govt. protest* 18 November 2016, available at <http://presstv.ir/Detail/2016/11/18/494187/Zimbabwe-police-protests-Harare>.

⁴⁴ As above.

⁴⁵ Amnesty International *Democratic Republic of Congo 2016/2017*, available at <https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/>.

⁴⁶ The Guardian *"20 dead" in DRC protests after president's term expires* 20 September 2016, available at <https://www.theguardian.com/world/2016/dec/20/drc-protests-grow-as-kabila-clings-to-power-despite-his-term-ending>.

⁴⁷ U.S Department of State *Recent Killings in the Democratic Republic of Congo* 19 February 2017, available at <https://www.state.gov/r/pa/prs/ps/2017/02/267729.html>.

⁴⁸ Amnesty International *Democratic Republic of Congo 2016/2017*, available at <https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/>.

⁴⁹ The Guardian *Thirty-six people are killed in DRC in 'revenge' attack by ADF rebels* 14 August 2016, available at <https://www.theguardian.com/world/2016/aug/14/thirty-six-people-are-killed-in-drc-in-revenge-attack-by-adf-rebels>.

⁵⁰ Guideline 23 of the Robben Island Guidelines.

⁵¹ Guideline 24 of the Robben Island Guidelines.

⁵² Guideline 23 of the Robben Island Guidelines.

2016, the OHCHR expressed deep concern at the existence of illegal detention facilities and the sharp increase in the use of torture and other ill-treatment by security personnel in these facilities in the Republic of Burundi.⁵³ Reports received by the Commission allege that agents of the national intelligence service (*Service nationale de renseignement, SNR*) tortured opposition sympathizers by beating them with hammers and steel bars and rod, dripping melted plastic on them, tying cords around men's genitals, using electrocution methods, smashing their bones, removing their teeth, and holding them in poor conditions such as in windowless cells as well as inside toilets as a means of torture and to also hide them from international monitors.⁵⁴ Detainees were allegedly not allowed access to lawyers during interrogation.⁵⁵

vi. Discriminated, marginalised or disadvantaged persons/groups

27. Acts of torture and other ill-treatment on migrant African domestic workers continued in Middle Eastern countries. A video released in April 2017 showed an Ethiopian woman who worked as a maid hanging from a seven-storey apartment building in Kuwait City crying for help, while her employer recorded and taunted her from inside the apartment.⁵⁶ The woman eventually fell and broke her arm.⁵⁷ Although her employer was initially arrested for failing to help her, she was eventually released and the woman's fall was documented as an attempted suicide. Despite the prevalence of acts which amount to torture and other ill-treatment being committed on African migrant domestic workers in the Middle East by their employers, at times leading to deaths, particularly under

⁵³ United Nations Office of the High Commissioner for Human Rights *torture and illegal detention on the rise in Burundi* – Zeid 18 April 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19835&LangID=E>.

⁵⁴ Human Rights Watch *Burundi: Intelligence Services torture suspected opponents* 7 July 2016, available at <https://www.hrw.org/news/2016/07/07/burundi-intelligence-services-torture-suspected-opponents>.

⁵⁵ As above.

⁵⁶ Miami Herald *A maid dangling from a high-rise window begged for help. Her boss filmed her instead* 5 April 2017, available at <http://www.miamiherald.com/news/nation-world/world/article142845844.html>.

⁵⁷ As above.

the *kafala* system,⁵⁸ Governments do not offer sufficient protection to migrant workers, and neither do the judicial systems.⁵⁹

28. Abuses amounting to torture and other ill-treatment against migrants and refugees in the hands of human traffickers continued to take place in Libya in the inter-session period. Reports indicate that victims were held captive while ransom was extracted from their families. Reports also indicate that some were repeatedly sexually assaulted, raped or gang raped, tortured, sold to gang captives as slaves, starved, electrocuted, thrown off moving cars and forced to change their religion.⁶⁰

29. Reports indicate that in October 2016, government officials in the Federal Republic of Nigeria charged with the responsibility of protecting vulnerable women and girls displaced by the Boko Haram conflict were accused of preying on them and sexually assaulting them.⁶¹ The reports add that some victims were drugged and raped, while others were coerced into sex with false promises of marriage, material and financial assistance, but were abandoned when they fell pregnant. It is reported that H.E President Muhammadu Buhari ordered an investigation into these allegations⁶² and 100 female police officers were deployed to protect women and girls in the Internally Displaced Persons (IDP) camps.⁶³ In December, the Inspector General of Police announced the arrest of several government officials and security personnel.⁶⁴

⁵⁸ Kafala system is a system where the employer sponsors a migrant worker to come into a country and work. The system gives the employer control over his workers such that they cannot change jobs, quit or leave the country without their permission. More available at <http://internationalrelations.org/kafala-system/>.

⁵⁹ All Africa *Ethiopia: Escaping the heat into the fire- migration of Ethiopian women domestic workers to the Gulf countries* 16 June 2016, available at <http://allafrica.com/stories/201606171106.html>.

⁶⁰ Amnesty International *Libya: new testimonies reveal horrors inflicted on refugees and migrants by traffickers* 01 July 2016, available at <https://www.amnesty.org.uk/press-releases/libya-new-testimonies-reveal-horrors-inflicted-refugees-and-migrants-traffickers>.

⁶¹ Human Rights Watch *Nigeria: officials abusing displaced women, girls* 31 October 2016, available at <https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls>.

⁶² BBC News *Boko Haram: Nigerian Officials 'sexually abusing' victims* 31 October 2016, available at <http://www.bbc.com/news/world-africa-37823738>.

⁶³ The Guardian *Nigeria Sexual Abuse: police deploy 100 female personnel to Borno IDP camps* 06 November 2016, available at <https://guardian.ng/news/sexual-abuse-police-deploy-100-female-personnel-to-borno-idp-camps/>.

⁶⁴ United States Department of State *Nigeria Human Rights Report 2016* page 23, available at <https://www.state.gov/documents/organization/265500.pdf>.

30. Reports allege that, in a bid to cut costs, between March and December 2016, the Health Department of Gauteng, in the Republic of South Africa, transferred more than 1,300 mentally-ill patients from a licenced government institution to 27 unlicensed charitable care organisations, without their families' consent, leading to the deaths of 94 patients.⁶⁵ It is further alleged that of the 94 patients, only one died from mental-illness while the rest succumbed to pneumonia, dehydration, diarrhoea, epilepsy, heart attack and other illnesses.⁶⁶ Reports also aver that investigation revealed that the patients were neglected, not provided with enough food and water, sometimes eating rotten food; they were severely malnourished and underweight, while others went for weeks without their medication.⁶⁷
31. Reports allege that the Republic of Rwanda continued to subject persons in situations of vulnerability such as homeless persons, street vendors, sex workers and street children to arbitrary detention in transit centres.⁶⁸ It is alleged that some detainees were not formally charged or represented by a lawyer before their detention.⁶⁹ Reports further indicate that the detainees were held in overcrowded centres and were frequently beaten, and generally kept in poor conditions of detention, and were provided with inadequate food, water and health care.⁷⁰ There has been no reported investigation by the government into these allegations.⁷¹ The Rwandan Parliament is currently in the process of debating a law to establish the National Rehabilitation Service which will be

⁶⁵ New York Times *94 psychiatric patients in South Africa died of negligence , report finds* 02 February 2017, available at <https://www.nytimes.com/2017/02/02/world/africa/south-africa-mental-health-patients.html? r=0>.

⁶⁶ As above.

⁶⁷ As above.

⁶⁸ Human Rights Watch *Rwanda: Locking up the Poor* 21 July 2016, available at <https://www.hrw.org/news/2016/07/21/rwanda-locking-poor>.

⁶⁹ As above.

⁷⁰ As above.

⁷¹ As above.

charged with coordinating government efforts to prevent, rehabilitate, and reintegrate the vulnerable persons back to society.⁷²

vii. Retrogressive Legislation

32. On 28 October 2016, the National Assembly of the Republic of Senegal adopted amendments to the Criminal Code and the Criminal Procedure Code that are regressive in the fight against torture and other ill-treatment.⁷³ The amendments give the police power to detain suspected terrorists for 96 hours which may be extended twice with the authorisation of the investigating judge or public prosecutor. These amendments do not clearly stipulate if the arrested person has the right to access a lawyer at the first instance of arrest.⁷⁴ The amendments limit access to a lawyer for a time not exceeding 30 minutes and the lawyer is not allowed to report on anything that happens to his client during the period under police custody.

viii. Forced examination to obtain physical evidence of homosexuality

33. Forced examination to obtain physical evidence of homosexuality, which takes the form of non-consensual anal examination, is “medically worthless and amounts to torture and ill-treatment.”⁷⁵ Reports allege that two (2) men arrested in the Republic of Tunisia on 8 December 2016 were subjected to forced anal examination⁷⁶ then prosecuted and sentenced for homosexuality.⁷⁷ In the United

⁷² The New Times *Plans to set up national rehab authority hits a snag* 30 March 2017, available at <http://www.newtimes.co.rw/section/article/2017-03-30/209835/>.

⁷³ Amnesty International *Analysis of the laws amending the criminal code and the code of criminal procedure* December 2016, available at <https://www.amnesty.org/download/Documents/AFR4960062017ENGLISH.PDF>.

⁷⁴ As above.

⁷⁵ United Nations *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment* 5 January 2016, available at <http://www.refworld.org/docid/56c435714.html>.

⁷⁶ L'Express *Tunisie: Deux jeunes home poursuivis pour homosexualité à Sousse* 13 December 2016, available at http://www.lexpress.fr/actualite/monde/afrique/tunisie-deux-jeunes-hommes-poursuivis-pour-homosexualite-a-sousse_1860057.html.

⁷⁷ Huffpost *Tunisie: huit mois de prison pour sodomie à l'encontre de jeunes. Les ONG réagissent* 15 March 2017, available at http://www.huffpostmaghreb.com/2017/03/15/tunisie-sodomie-ong_n_15384550.html.

Republic of Tanzania, reports indicate that in December 2016, policemen arrested 12 men in Zanzibar on suspicion of homosexuality and forced them to undergo forced anal examination in a hospital as some of the policemen watched.⁷⁸ In the Republic of Kenya, where homosexuality is criminalised as an unnatural offence,⁷⁹ two (2) men arrested on suspicion of homosexuality, filed a case citing the violation of their constitutional rights after being forced to undergo anal examination, HIV and Hepatitis tests.⁸⁰ The High Court in Mombasa however ruled on 16 June 2016 that “on matters of sodomy or acts against the order of nature... rectal or anal examination is according to current medical science, and constitution of the human anatomy, the only way of examination... There is no other part of the human body upon which to carry out the medical examination.”⁸¹

D: Recommendations

34. In view of the foregoing, I wish to make the following recommendations particularly in relation to the CPTA’s mandate of preventing and prohibiting torture and other ill-treatment:
- i. States should avoid the use of broad laws such as anti-terror legislation, state of emergency laws and other state security legislation to carry out arbitrary arrests, searches and detentions contrary to international and regional standards;
 - ii. States should pass legislation criminalising torture and other ill-treatment in accordance with CAT;
 - iii. States should ratify OPCAT and establish NPMs to monitor places of detention;

⁷⁸ BuzzFeed News *How Tanzania is cracking down on LGBT people- and getting away with it* 8 April 2017, available at https://www.buzzfeed.com/edithonon/how-tanzania-is-cracking-down-on-lgbt-people-and-getting?utm_term=.jhoLOxX29#.hjka8XRJm.

⁷⁹ Section 162 of the Penal Code, available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063>.

⁸⁰ International Business Times *Kenya: High Court rules anal tests permissible as proof of gay sex* 16 June 2016, available at <http://www.ibtimes.co.uk/kenya-high-court-rules-anal-tests-permissible-proof-gay-sex-1565807>.

⁸¹ Petition 15 of 2015, available at <http://kenyalaw.org/caselaw/cases/view/123715/>.

- iv. States should take steps to improve conditions of detention in accordance with the Guidelines on the Condition of Arrest, Police Custody and Pre-Trial-Detention in Africa (the Luanda Guidelines);
- v. States should review national laws to protect individuals from enforced disappearance, torture and other ill-treatment by prohibiting *incommunicado* detention and criminalizing the use of secret or unauthorised detention centres in accordance with the Robben Island Guidelines and OPCAT;
- vi. States should 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. States should establish complaints mechanisms empowered to receive complaints of torture and conduct prompt, independent, thorough, impartial investigations and make findings;
- viii. States should 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;
- ix. States should respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including persons with intellectual or psychosocial disabilities, homeless persons, women and children, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, migrants, refugees, and IDPs and to ensure that perpetrators are held accountable;
- x. States should 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);

- xi. All parties to conflicts should respect international humanitarian law set out in the Geneva Conventions, in their treatment of civilians and civilian property; and
- xii. Last, CPTA calls upon everyone with information regarding allegations of torture and other ill-treatment to bring the allegations to its attention and that of the Commission.