

**STATEMENT BY THE COMMUNITY LAW CENTRE ON BEHALF OF THE ARTICLE 5
INITIATIVE, SUBMITTED TO THE AFRICAN COMMISSION ON HUMAN AND
PEOPLE'S RIGHTS AT THE 50TH ORDINARY SESSION**

24 OCTOBER – 7 NOVEMBER 2011, BANJUL, THE GAMBIA

This statement by the Community Law Centre on behalf of the *Article 5 Initiative* focuses on torture and other forms of cruel, inhuman or degrading treatment or punishment of those deprived of their liberty across the African continent. Article 5 of the Universal Declaration of Human Rights and Article 5 of the African Charter on Human and People's Rights (the African Charter) guarantee the right of all people to be free from torture and other cruel, inhuman and degrading treatment (hereafter, other ill treatment). The *Article 5 Initiative* draws its name from these two articles, and is a collaboration of four organisations working for the prevention and eradication of torture in Africa through research and the development of practice-aimed resources.¹

Despite the absolute character of the prohibition of torture, torture remains a widespread practice around the world and Africa is, unfortunately, no exception.² There is general recognition that torture is deeply rooted and widespread in the African continent.³ A broad range of obligations rests upon states under the 1984 United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and other international and regional instruments with regard to preventing, investigating and punishing torture, as well as ensuring redress to victims of torture.

¹ The *Article 5 Initiative* is a partnership between the University of Cape Town (Gender, Health and Justice Research Unit), the University of the Western Cape (Community Law Centre), the University of Bristol (Human Rights Implementation Centre) and the African Policing Civil Oversight Forum. The *Article 5 Initiative* is supported by the European Union through the European Instrument for the Development of Human Rights.

² See, for example, recent Concluding Observations of the Committee Against Torture in 2009 on Chad (CAT/C/TCD/CO/1, paras 17-19) and Kenya (CAT/C/KEN/CO/1, paras 13-15), in 2008 on Zambia (CAT/C/ZMB/CO/2, para 20) and in 2006 on South Africa (CAT/C/ZAF/CO/1, para 20 and 22). See also the submission by OMCT at the ACHPR 48th Session on the human rights situation in Africa, available in French at <http://www.omct.org/fr/monitoring-protection-mechanisms/statements/algeria/2010/11/d20924/> (last accessed 4 October 2011).

³ See the report on a conference on the implementation of the Optional Protocol to UNCAT held in Cape Town in April 2008, with relevant actors from across the continent, available at: <http://www.bris.ac.uk/law/research/centres-themes/opcat/opcatdocs/africaconference2008report.pdf> (last accessed 4 October 2011).

The *Article 5 Initiative* has recently conducted research on the challenges to the effective implementation of these obligations and standards in six post-conflict African states. In the post-conflict context, the state's focus is often on broad nation-building efforts and institutional governance. The treatment of people deprived of their liberty is often overlooked in these efforts, notwithstanding that they are particularly at risk of being subjected to torture and other ill-treatment and continue to be part of systemic secondary victimisation in that the balance of governance building activities are often aimed at 'mainstream society'.

Numerous challenges, as well as best practices have already been identified in the first phase of our research, and the *Article 5 Initiative*, in collaboration with regional and domestic institutions, now aims to develop practice-aimed resources for the effective implementation of the international prohibition of torture.

To illustrate the importance of preventing and combating torture, the *Article 5 Initiative* wishes to use this opportunity to re-emphasise some of the state's key obligations in this regard:

Prohibition of torture

Properly defining torture as a criminal act in domestic legislations is one of the key obligations under both UNCAT⁴ and Part 1 of the Robben Island Guidelines.⁵ Yet, fewer than ten of the African countries have currently properly **criminalised** torture.⁶ In his 2010 report the UN Special Rapporteur identified impunity as one of the main reasons for the persistent perpetration of torture and other ill treatment across the world.⁷ Whenever there are 'reasonable grounds' to believe that torture and/or ill treatment has occurred, the state has a duty to ensure that this is promptly **investigated** by competent authorities in an impartial manner and that those responsible are **punished** in proportion to the severity of the crime.

Prevention of torture

As Commissioner Atoki stressed in her address at a conference in Washington earlier this year, 'although considerable efforts have been deployed by some African countries to improve prison and detention conditions, these have remained inadequate and in most countries, the prevailing conditions are at best

⁴ UNCAT, articles 1 and 4

⁵ Adopted at the 32nd Ordinary Session of the ACHPR, Banjul, The Gambia, ACHPR/Res.61 (XXXII) 02.

⁶ See the Committee for the Prevention of Torture in Africa (CPTA) 'torture database'. Available at http://www.achpr.org/english/other/TORTURE%20DATABASE%20_CPTA.pdf (last accessed 4 October 2011)

⁷ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment*, UN Doc A/HRC/13/39/add.5, 5 February 2010, para. 132.

deplorable.⁸ Poor **conditions of detention** and overcrowding often lead to treatment that can be qualified as inhuman and degrading. Action, therefore, needs to be taken to address this issue. As overcrowding is often most problematic in awaiting trial sections, and awaiting trial prisoners are often most vulnerable to torture,⁹ it is of great importance that states commit to finding better, more humane and cheaper **alternatives to pre-trial detention**. Furthermore, states should ensure that the needs of **vulnerable groups** of prisoners – including women, children, people suffering from mental health problems or HIV/Aids – are adequately considered, and that they are detained in separate facilities or have access to a minimum level of care where necessary. Adequate and continuous **training** of personnel working with people deprived of their liberty is another effective measure for preventing torture, as is the empowerment and education of civil society.

Given that prisons and other places of deprivation of liberty generally remain closed structures in most African societies, **effective and independent oversight** by domestic, regional and international bodies is of great importance. The Optional Protocol to the UNCAT (OPCAT)¹⁰ created an international body for oversight, the Sub-Committee for the Prevention of Torture (SPT) and (in Part IV) obligates states to establish so called 'national preventive mechanisms' (NPM). Similarly, Section D of Part II of the Robben Island Guidelines calls for the establishment of independent mechanisms of oversight.

Redress for victims

Finally, victims of torture and ill treatment have a **right to redress** and are often in dire need of assistance in order to be able to continue with their lives.¹¹ States are encouraged to put **rehabilitation**

⁸ Atoki D, *Protecting vulnerable groups in Africa through prison visits*, March 18 2011, presentation at conference organised by the American University Washington College of Law and the Association for the Prevention of Torture in Washington DC to address the crucial role of visits to detention facilities around the world in ensuring that safeguards for detainees are enforced. Commissioner Dupe Atoki was invited in her dual capacity as the Chairperson of the CPTA and the Special Rapporteur on Prisons and Places of Detention in Africa to present the African perspective on detention visits and vulnerable groups. Full presentation available at http://www.achpr.org/english/Special%20Mechanisms/Robben%20Island%20Guidelines/paper/presentation_prison_washington_visits.pdf (last accessed 4 October 2011)

⁹ See, for example, Open Society Foundations, *Pretrial detention and torture: Why pretrial detainees face the greatest risk*, New York, 2011. Available at http://www.soros.org/initiatives/justice/articles_publications/publications/pretrial-detention-and-torture-20110624 (last accessed 4 October 2011).

¹⁰ Currently only ten African countries have ratified OPCAT. These are (in chronological order): Liberia (22 September 2004), Mali (12 May 2005), Mauritius (21 June 2005), Benin (20 September 2006), Senegal (18 October 2006), Nigeria (27 July 2009), Burkina Faso (7 July 2010), Togo (20 July 2010), Gabon (22 September 2010) and the Democratic Republic of Congo (23 September 2010).

¹¹ UNCAT, article 14.

programmes in place, in collaboration with civil society, to care for victims of torture and ill treatment and, where possible, should set up **national compensation funds**, which would be managed by a transparent and independent body.

Conclusion

The *Article 5 Initiative* was established in order to support, in cooperation with the African Commission, the mandates of two Special Mechanisms of the African Commission on Human and Peoples' Rights, namely the Special Rapporteur on Prisons and Conditions of Detention in Africa and the Committee for the Prevention of Torture in Africa and to support six post-conflict African countries with their implementation of UNCAT. The *Article 5 Initiative* calls upon the African Commission to keep the prevention and eradication of torture on its agenda as a matter of priority, to provide all necessary support for the two above-mentioned mandates to function to the best of their ability and to urge states:

- To sign and ratify UNCAT and to take effective legislative, administrative, judicial and other measures to prevent acts of torture, including the criminalisation of torture;
- To sign and ratify OPCAT and to ensure effective independent oversight over places of deprivation of liberty; and
- To cooperate with regional and international mechanisms in a shared effort to prevent and eradicate torture.

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To access more information on the *Article 5 Initiative*, including preliminary findings and background research, please visit our website, which will go live in early 2012: <http://www.A5i.org>