

ACHPR/Res.61 (XXXII) 02: RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the provisions of -:

- Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

Noting the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

Recognising the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

Mindful of the need to assist African States to meet their international obligations in this regard;

Recalling the recommendations of the *Workshop on the Prohibition and the Prevention of Torture and Ill-treatment*, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. **Adopts** the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

2. **Establishes** a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.

3. **Assigns** the following mandate to the Follow-up Committee -:
 - To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
 - To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
 - To promote and facilitate the implementation of the Robben Island Guidelines within Member States.
 - To make a progress report to the African Commission at each ordinary session.

4. **Urges** Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.

5. **Encourages** States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.

6. **Invites** NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)

Part I: Prohibition of Torture

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

- a. Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
- b. Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;
- c. Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
- d. Ratification of or accession to the Rome Statute establishing the International Criminal Court;

B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.
3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C. Criminalisation of Torture

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as “necessity”, “national emergency”, “public order”, and “ordre public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

D. Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E. Combating Impunity

16. In order to combat impunity States should:
 - a. Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.

- b. Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.
- c. Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.
- d. Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.
- e. Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

F. Complaints and Investigation Procedures

- 17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.
- 18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.
- 19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).

E. Part II: Prevention of Torture

- A. Basic Procedural Safeguards for those deprived of their liberty
- 20. all persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

- a. The right that a relative or other appropriate third person is notified of the detention;
- b. The right to an independent medical examination;
- c. The right of access to a lawyer;
- d. Notification of the above rights in a language, which the person deprived of their liberty understands;

B. Safeguards during the Pre-trial process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ².
22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.
23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.
24. Prohibit the use of incommunicado detention.
25. Ensure that all detained persons are informed immediately of the reasons for their detention.
26. Ensure that all persons arrested are promptly informed of any charges against them.
27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.
29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any

proceedings except against persons accused of torture as evidence that the statement was made.

¹

Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.

² UN GA/Res. 43/173, 9 Dec.1988

30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.
31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C. Conditions of Detention

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the un standard minimum rules for the treatment of prisoners³.
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.
36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce over-crowding in places of detention by inter alia, encouraging the use of non-custodial sentences for minor crimes.

D. Mechanisms of Oversight

States should:

³ UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.⁴
39. Encourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights⁵.
42. Encourage and facilitate visits by NGOs to places of detention.
43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

D. Training and empowerment

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

⁴ UN Doc. E/CN.4/1995/39

⁵ UN A/Res/48/134, 20 Dec. 1993

E. Civil Society Education and Empowerment

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

Part III: Responding to the Needs of Victims

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
 - a. Offered appropriate medical care;

 - b. Have access to appropriate social and medical rehabilitation;

 - c. Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.