



THE AFRICA-EU PARTNERSHIP

LE PARTENARIAT AFRIQUE-UE

7th Civil Society Seminar
on the African Union (AU)-European Union (EU) Human Rights Dialogue
28th-29th October 2017
Banjul, the Gambia

Tackling Torture in Africa and Europe

SUMMARY OF DISCUSSIONS

Introduction

Civil society organisations (CSOs) from Africa and Europe met during the 7th AU-EU Civil Society Seminar on Human Rights, held in Banjul, The Gambia, from 28th to 29th October 2017, with the support of the European Instrument for Democracy and Human Rights (EIDHR). Upon the request of civil society organisations, this year's civil society seminar discussions centred on "Tackling torture in Africa and Europe," aimed at providing tangible recommendations for action by EU and AU officials.

Participants found that the main challenge faced by the AU, the EU and their member states is not a lack of policies and instruments on torture and ill treatment, but rather the failure to fully use these instruments and deliver on stated commitments in practice.

Civil society organisations from both continents aimed to exchange concrete ideas to curb torture in Europe and in Africa and to find ways to hold governments accountable where they fail to prevent, respond to and provide redress for torture.

Standing item: state of play on the enabling environment for civil society

Participants discussed funding, political, administrative and other restrictions on those working on torture and ill treatment, and the specific isolation of organisations working on torture, while raising concerns about the shrinking space for CSOs globally. The rights to freedom of expression, peaceful assembly and association defined civil society space, yet are currently embattled, hindering independent action by CSOs.

Many states attack and delegitimize human rights defenders (HRDs), activists and CSOs, targeting them with abuse, harassment and torture. One of the biggest challenges for CSOs are government restrictions in the name of national security and counter-terrorism, which hamper their independence and make them vulnerable to repression. One key issue of concern here is the resulting isolation of HRDs and CSOs, in particular where their personal data is misused and/or on- and offline harassment occurs.

Participants expressed concern that wherever states undermine CSOs' legitimacy or ways of working, civil society organisations end up spending the better part of their time defending themselves from stigmatisation and attack rather than on their important and legitimate work.

SESSION 1 - Tackling Torture: prevention, response, redress

Panel 1: Preventing and prohibiting torture

Participants discussed the absolute prohibition of torture, including in conflict settings, as well as in security, counter-terrorism and migration policies and practices. They discussed the role of national preventive mechanisms (NPM) and the Convention against Torture Initiative, and ways to strengthen public oversight and increase transparency in places of detention. They noted the importance of pre-trial protections and the role they play in the fight against torture. In this regard, participants highlighted the great importance of the EU's Procedural Rights Directive and the African Commission's Luanda Guidelines on Conditions of Arrest, Police Custody and Pretrial Detention in Africa. Such detailed and similar AU and EU standards governing the rights of arrested persons, provide fertile ground for ever deeper cooperation in the fight against torture.

All participants shared the major concern that states persist in using torture and called on states on both continents to ratify, domesticate and effectively implement the UN Convention Against Torture (UNCAT) and the Optional Protocol to the UNCAT (OPCAT) to ensure safeguards for all detainees. CSOs play a crucial role to complement the action of states by serving as watchdogs and conducting independent monitoring in detention centres.

Participants pointed to the unnecessary and arbitrary use of arrest and pre-trial detention as a major contributory factor in prison overcrowding. Participants urged African states to adopt and implement the AU Luanda Guidelines from the moment of arrest until trial, with the core objective of reducing the number of arbitrary and excessive arrests, and enhancing the rights of people subjected to arrest.

Participants listed a number of challenges that must be addressed to fully prevent torture and ensure its effective prohibition. These include: limited data and information available on pre-trial conditions, the absence of regular independent monitoring of police custody and other places of detention, limited and often inadequate access to legal aid, and weak or sometimes non-existent mechanisms of accountability. Decriminalization of petty offences was raised as a measure of interest, while participants likewise discussed how migration policies and cooperation between the continents increase the risks of torture. A participant indicated that a study to highlight the links between poverty and torture would be useful.

PANEL 2: Realising rights of torture victims

Participants discussed how existing legal provisions and good practices could be taken forward to ensure the provision of rehabilitation services to torture victims. Participants recalled states' obligations to establish and support rehabilitation facilities and to provide other forms of reparation, and discussed how to meaningfully deliver on these obligations and monitor the outcomes. Participants shared experiences with the European framework on rights of victims of torture, as well as experiences in seeking to enforce decisions and judgements of regional mechanisms. Of particular interest here was the African Commission's adoption of 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) in March 2017, which can serve as a guideline for states in reporting to the Commission.

As victims of torture do not easily disclose what they have experienced, participants encouraged the EU to provide support to its member states to develop protocols to systematically identify torture victims among asylum seekers and to provide them with immediate access to rehabilitation. In particular, CSOs agreed that states should stop relying on credibility assessments and pointed out the challenges confronting torture cases in Europe such as the lack of investigation, statute of limitations, and limited options for accessing reparations. In response to these concerns, participants urged states to eliminate statutes of limitations and expand the legal bases for reparation.

Although the AU Constitutive Act features a strong value system and principles, participants pointed to low implementation and compliance, highlighting the need to move from standards to practice. To this end, judges must rigorously pursue all allegations, inquire when there are signs of abuse even if the detainee does not specifically allege abuse, and be prepared to hold authorities in contempt of court if they do not comply.

PANEL 3: Investigating, prosecuting and sanctioning torture

Participants discussed the different options available on both continents to fight impunity and ensure accountability. Key points of discussion included: national prosecutions and universal jurisdiction, ways to address responsibility of state and non-state actors, how to improve independence and effectiveness of torture investigations, and how to ensure adequate consideration of torture trauma and victims' needs in judicial processes.

Even as investigation and prosecution of torture cases advance in African countries, there is still a need to build domestic jurisprudence relevant for national courts. CSOs called for all states to ensure they have effective national legal frameworks with specific provisions to prohibit and prevent torture in line with international human rights obligations, and to put in place mechanisms for complaints and investigation of torture allegations.

Another paramount issue is the need to train judges and law enforcement officials on how to identify cases of torture, and how to investigate and prosecute cases of torture. The rights of victims risk being ignored wherever the definition of torture is not established in national legal frameworks nor understood by judicial and law enforcement personnel¹.

¹ A contribution sent in by an absent participant highlighted that Female Genital Mutilation (FGM) is also a form of inhumane treatment and violence against women and girls. Measures to prioritise its abandonment include the ratification of relevant international and regional conventions, the domestication and implementation of obligations to

National authorities in Europe are obliged to hold perpetrators accountable for acts of torture committed outside of Europe. Nevertheless, participants pointed out that criminal litigation has not led to much success due to several factors including the absence of legislation at national level, the absence of legal representation, the application of statute of limitations, the lack of political will, and sometimes the lack of independent prosecution mechanisms. These obstacles result in undue delays in the review of cases and/or acquittal of perpetrators.

SESSION 2 - The way forward

PANEL 1: Mainstreaming the fight against torture in foreign policy and cooperation: challenges and opportunities

Participants discussed the role of states in addressing and upholding the absolute prohibition of torture in foreign policy and cooperation, including the importance of monitoring and reporting mechanisms at regional and international levels, and cooperation between states and civil society.

Participants raised concerns about several outstanding challenges. At times, the AU lacks a consistent voice in addressing human rights abuses such as torture. Moreover, the need for accountability and redress is not sufficiently addressed, most often due to inadequate national legal frameworks, a lack of political will and the absence of an independent judiciary.

Participants called for better implementation of the Nelson Mandela Rules in Europe and Africa. If effectively followed, these rules will reduce occurrences of torture and put an end to problems such as overcrowding in prisons and other forms of ill-treatment. Participants also advocated raising awareness about what these rules entail and diffusing them including among detainees.

Participants urged AU and EU member states to comply in a timely manner with the reporting mechanisms offered by international institutions, so as to allow CSOs to submit alternative reports and encourage more meaningful exchange on shared human rights concerns such as the prevalence of torture. To this end, CSOs recalled that it will be paramount to keep channels of communication open between states and civil society.

PANEL 2: Key areas of future inter-continental cooperation to tackle torture

Participants discussed the utility and impact of available means for the EU and the AU in the fight against torture, and the concrete priorities in specific areas of cooperation.

The EU is currently updating its main tool to fight against torture through its external action, the EU Guidelines on Torture and Ill Treatment. The fight against torture remains a priority for the European Union, and a key issue in the Human Rights Action Plan and many human rights country strategies..

end violence against women and girls, including FGM, the inclusion of indicators and benchmarks in agreements between the EU, the AU and their Member States.

Participants called for AU and EU member states that are yet to ratify the UNCAT and the OPCAT to do so, and called for every state to facilitate the visit of the Committee on Prevention of Torture to places of detention. Moreover, participants emphasized the need for adequate support of NPMs, including support to the exchange of good practices between the two continents.

Conclusion

In conclusion, participants agreed that several key actions were needed, including: reviewing national laws, reducing the use of torture during investigations by law enforcement officers, employing independent medical experts, and ensuring rehabilitation of victims of torture. As torture continues to persist over the years, it is time to address the issue of accountability of states. Here, the transparency of governments and courts in dealing with torture victims will be crucial.

Participants agreed that the legal instruments and frameworks to fight torture and impunity, and to ensure rehabilitation to torture victims exist – and that it is now high time to fully and effectively implement them, both on the African and European continents.

At the end of the two days, participants provided concrete recommendations to EU and AU officials on ways forward to tackle torture on both continents and in their cooperation.



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Tackling Torture in Africa and Europe

RECOMMENDATIONS

While 2017 marked several milestones in terms of normative and legislative measures in the fight against torture², recent global developments demonstrate the need for the European Union (EU), the African Union (AU) and their Member States to improve and adapt their implementation to rapidly changing realities and newly emerging challenges, such as refugee and migration crises, counter-terrorism measures, the continued shrinking space of independent civil society and repression in electoral contexts.

Both the AU and the EU are challenged to further develop strategies to enable them to react quickly to early warnings and systematically speak out when torture happens. The EU and the AU also need to reinforce their Member States' delivery on their international and regional commitments with regard to torture and ill-treatment and guarantee the application of rulings of their regional courts.

It is in this context that representatives of civil society organisations from the AU and the EU met on 28-29th October in Banjul, the Gambia, within the framework of the 7th African Union-European Union Civil Society Seminar, for an expert exchange on tackling torture in Africa and Europe. This was the first AU-EU Civil Society Seminar specifically focusing on eradicating torture and ill-treatment and ensuring redress for victims on both continents, in inter-continental relations and at multilateral level. It is a strong and encouraging sign of the commitment of both the EU and the AU on this crucial issue.

This issue is of particular importance given that torture and ill-treatment are a reality on both continents and committed in a range of contexts, including in the fight against terrorism, general policing, detention, imprisonment, as well as during conflict. Torture and ill-treatment are cross-cutting issues linked to practically all human rights work, including rights to freedom of expression, association and peaceful assembly, rights of women and minorities, protection of human rights defenders, enforced disappearances,

² These include:

- African Commission on Human and Peoples' Rights adoption of a [General Comment on the right to redress for torture victims](#) (under article 5 of the Charter)
- The forthcoming revision of the [Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment](#)
- European Union recently [stepping up](#) its financial support to the African Commission on Human and Peoples' Rights and the African Court, with a focus on litigation, access to justice and compensation for victims
- The European Union's reform of the Common European Asylum System with significant influence on protection and rehabilitation for torture victims
- The last African Union-European Union Civil Society Seminar (January 2017) on counter-terrorism and human rights and its [recommendations](#) (in particular recommendations 2.6, 4.2, 5.3)
- The last [EU NGO Forum on torture](#) (December 2016), attended by numerous civil society representatives from both continents
- The EU's recent launch of the [Global Alliance for Torture-free Trade](#), a global effort by countries from all over the world to stop the trade in goods used for torture and the death penalty.

rights of refugees and migrants and the shrinking space for civil society. Perpetrators of torture and ill-treatment frequently benefit from impunity while victims, already difficult to identify, struggle to obtain full redress.

Following discussions on the prevention of torture, the provision of rehabilitation services to victims, and the prosecution and sanction of torture, as well as the fight against torture and impunity in foreign policy and cooperation, the participants agreed that *the problem was not the absence of human rights standards but their lack of implementation*.

Thus, the participants encourage the EU and the AU to address torture and ill-treatment in a comprehensive manner including measures of prevention, accountability and rehabilitation and in particular to:

I. Adopt positive measures to step up prevention and realise the absolute prohibition of torture

Torture mainly happens in hidden places and in the first moments of detention. As such, it is important to: adopt and implement procedural safeguards from the outset of custody; train all actors in the penal chain; and to monitor places of deprivation of liberty to prevent torture. National Preventive Mechanisms (NPMs) play a crucial role and should therefore be supported and encouraged to exchange among themselves. It is also essential that states and regional organisations address key factors that increase the risk of torture and other forms of cruel, inhuman, degrading treatment or punishment, like the illegal practice of secret detention places and the excessive use of pre-trial detention leading to prison overcrowding.

The AU and the EU should:

1. Uphold the absolute prohibition of torture and ill treatment and make the risk of torture and ill treatment a standing item when developing counter-terrorism, security, migration and other forms of EU, AU and member state cooperation, in line with international human rights law and with the recommendations of the January 2017 AU-EU civil society seminar on counter-terrorism and human rights³.
2. Work with their Member States to ensure they all sign, ratify and implement the OPCAT, Optional Protocol to the United Nations Convention against Torture (UNCAT), without exception and to enable sustained exchange of good practice between the two continents in this regard.
3. Make Procedural Rights Standards a centrepiece of their cooperation related to human rights and torture, in particular as related to the procedural rights of suspects and accused persons.
4. Organise a joint conference, in collaboration with regional and international mechanisms, to share good practices in monitoring places of deprivation of liberty, and to start a sustainable process of experience sharing.
5. Develop a joint programme to provide sustainable capacity building and technical assistance to public agents (such as police officers, security forces, prosecutors, judges), lawyers and National Human Rights Institutions (NHRI) to reinforce their capacities to prevent torture and other forms of cruel, inhuman, degrading treatment or punishment.

³ AU-EU Civil Society Seminar on Counter-Terrorism and Human Rights, 9-10 January 2017 http://www.africa-eu-partnership.org/sites/default/files/userfiles/summary_and_recommendations_au_eu_cso_seminar_january_20173.pdf

6. Promote the development and implementation of non-coercive models of interviewing and attendant procedural safeguards in Member States, through the development of model templates for investigative interviewing and training programmes.
7. Encourage Member States to establish strict human rights vetting, training and monitoring mechanisms as a condition for any support for refugee-, or migration-related initiatives; and to include safeguards to ensure refugees and migrants are not subjected to torture or other forms of ill-treatment in such initiatives and in bilateral agreements.
8. Develop a joint project on disseminating and implementing the *Nelson Mandela Rules*⁴ (including events around the 18th July) to raise awareness among actors of the penal chain and detainees and to encourage implementation of these rules in prison regulations and practice.
9. Ensure that Member States provide data on all places of detention and on all persons in detention in their respective jurisdictions. Steps should also be taken to ensure that the data reflect detainees' age, gender, vulnerabilities and other relevant information about socio-demographic and legal status.
10. Organise, in cooperation with all relevant actors, awareness raising activities on the 25th April (Africa Pretrial Detention Day) on human rights concerns related to pre-trial detention (including good practices e.g. alternative measures to detention) and encourage Member States to report on what has been done to address those issues.
11. Conduct a study on the use of less-lethal weapons to provide better training, regulate their use or prohibit them if necessary⁵ and ensure accountability for compliance with human rights.

The EU should:

12. Ensure that Member States protect refugees and migrants by not returning them or effectively pushing them back through bilateral or multilateral agreements to any unsafe third country that does not have the resources, infrastructures or legal framework to protect them from human rights violations including torture and ill-treatment.
13. Step up support to civil society work to address torture and other forms of cruel, inhuman and degrading treatment or punishment, including regular meetings between EU and member state delegations and local CSOs active in this field.

II. Ensure the full realisation of the rights of torture victims

States play an essential role in eradicating torture including by guaranteeing that full redress and rehabilitation measures are available to victims. Redress in particular has an immediate impact on the quality

⁴ The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, 20 July 2017, <http://undocs.org/A/72/178>

of life of the individual, but also a broader, often under-estimated social impact. Despite state obligations to provide redress for victims of torture and ill-treatment, including access to effective remedy and full reparation, state actors often lack awareness of victims' rights, and how they can be meaningfully and effectively upheld. Many victims of torture do not disclose immediately and thus very often remain unidentified and unacknowledged as victims, especially in refugee and migration contexts. Further obstacles to reparation have been identified, such as the lack of independent investigative mechanisms, and the existence and application of statutes of limitation. Frequently, reparation available to victims are limited to compensation despite clear obligations in international and regional human rights law to make available all five forms of reparation: Restitution, compensation, rehabilitation satisfaction and guarantee of non-repetition. General Comment No 4 of the African Commission on Human and Peoples' Rights (ACHPR) is a very strong tool on the issue of redress and much more should be done to ensure its implementation.

The AU and the EU should:

14. Support the development of National Action Plans and indicators for the implementation of the Committee Against Torture (CAT) General Comment No 3 and African Commission on Human and Peoples' Rights (ACHPR) General Comment No 4.
15. Encourage and assist Member States to promptly and fully implement the decisions of regional human rights mechanisms, including the ones of the African Commission on Human and Peoples' Rights, the African Court of Human Rights and the European Court of Human Rights.
16. Encourage Member States to include information on the implementation of these instruments in the reporting process before regional and international institutions as applicable.
17. Conduct a study on models and policies for the establishment and financing of rehabilitation services with a view to supporting AU and EU Member States to establish and/or support programmes to ensure all torture victims' rights to rehabilitation.

The EU should:

18. Provide support to EU Member States to develop policies, protocols and capacity to systematically identify torture victims among asylum seekers and provide holistic rehabilitation services.
19. Ensure that asylum seekers identified as torture victims benefit from appropriate reception conditions and access to adapted asylum determination procedures. Specifically, Member States should not rely on credibility assessments and ensure that victims have access to a forensic medical examination where their victim status is disputed by the authorities.

III. Ensure accountability for torture

The fight against impunity for torture remains a challenge. Impunity and the lack of political will still represent the main obstacles to accountability for torture. International human rights law explicitly requires that perpetrators of torture and cruel, inhuman and degrading treatment or punishment be held accountable. However, despite explicit obligations to investigate and prosecute allegations of torture, torture remains

pervasive around the globe, and impunity of perpetrators remains widespread. This impunity is mainly due to the lack of specific criminalisation of torture in still many countries and the lack of independent and effective investigations. Furthermore, when cases are prosecuted, many acts are charged as assault and not torture, leading to acquittals, undermining social and political trust and propelling forward a vicious circle leading to more instances of torture.

The AU and the EU should:

20. Foster legal reform in Member States to ensure that domestic legal frameworks comply comprehensively with states' obligations under international law pertaining to the absolute prohibition of torture. In particular, domestic legislation shall:
 - criminalise torture;
 - exclude amnesty, immunity and statutes of limitation for torture;
 - exclude any evidence obtained under torture or other forms of ill-treatment; and
 - provide for victims' right to redress.
21. Support Member States to investigate promptly, thoroughly and independently, in accordance with the standards in the Istanbul Protocol, all allegations of torture and other forms of ill-treatment and to prosecute those responsible. State officials in charge of investigations should receive the appropriate training and resources, including by applying standards contained in the Istanbul Protocol.
22. Ensure the existence of independent oversight and complaint mechanisms in line with international standards and the African Commission on Human and People's Rights (ACHPR) Resolution on police oversight⁶.
23. Ensure that Member States facilitate prompt access to independent complaint mechanisms for all persons deprived of liberty.
24. Ensure that Member States put in place legislative and practical arrangements to protect victims, witnesses and others affected by the investigation and prosecution of torture and other forms of ill-treatment.
25. Support initiatives aimed at ensuring accountability and redress for victims of torture, including training to the civil society and law practitioners on strategic litigation.
26. Encourage Member States to ensure that victims' rights are fully implemented, including their right to reparation, and that victims' voices are heard from the outset of each case.
27. Support Member States exercising universal jurisdiction over torture to ensure accountability and justice for victims.

⁶ African Commission on Human and People's Rights, Resolution 103a on Police Reform, Accountability and Civilian Police Oversight in Africa, ACHRP 40th Ordinary Session, November 2006, <http://www.achpr.org/sessions/40th/resolutions/103a/>