Strengthening the preventive role of the Committee for Prevention of Torture in Africa

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The article provides a critical insight into the legal framework for the prevention of torture in Africa, with specific reference to the Robben Island Guidelines (RIG) and its special mechanism, the Committee for the Prevention of Torture in Africa (CPTA). The Guidelines undoubtedly represent a milestone in the development of a torture preventive work in Africa. They bring together a number of provisions covering different aspects of the prohibition and prevention of torture. However they do not elaborate and clarify what is meant by prevention as a concept and what it entails as a legal obligation. Furthermore the CPTA's interpretative drive has largely focused on the other, normatively more robust, areas of intervention, namely the prohibition of torture and redress for victims, at times conflating prevention with the prohibition of torture. If it is to live up to its name, the CPTA needs to expand its understanding of prevention of torture. This in turn will allow it to play an important role in detecting, collecting, analysing data and information on situations of risk in Africa, and formulating new and appropriate context-sensitive strategies for the effective prevention of torture.

Key words: Torture, Robben Island Guidelines, Committee for the Prevention of Torture in Africa

1. Introduction

In 2002, during its 32nd ordinary session, the African Commission on Human and Peoples' Rights adopted a resolution containing the Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines or RIG).[1] In the preamble, the Guidelines refer to the need for 'the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard'.[2] For this purpose the Guidelines contain a series of provisions concerned with the prohibition, the prevention of torture and other forms of ill-treatment and effective remedies and reparation for victims. It is the first instrument adopted by the African Commission elaborating and providing guidance on States' obligations under Article 5 of the African Charter on Human and Peoples' rights (ACHPR), and devoting specific attention to the prevention of torture and other forms of ill-treatment. During its 35th session in 2004, the African Commission on Human and Peoples' Rights established a special mechanism: the Committee for the Prevention of Torture with a mandate to, among other things, develop strategies and 'promote and facilitate the implementation' of the RIG.

The RIG and its special mechanism, in spite of subsequent initiatives aimed at relaunching them,[3] are perceived as having 'so far failed to fulfil their potential to be used by the African Commission as a means to develop an effective strategy on the prevention of torture and other ill-treatment in Africa'.[4] A number of factors peculiar to the context and the institutional setting within which the RIG have developed, including lack of clarity in relation to their intended purpose are said to have influenced the rather modest impact of RIG and the CPTA.[5]

The present article argues that while these factors might be partly responsible for the modest successes of the RIG, a number of definitional and normative failures affecting the very concept of prevention might also have contributed to its rather limited impact. It is arguably of particular significance that the guidelines do not attempt to clarify what is meant by

[1] Robben Island Guidelines for the Prohibition and Prevention of Torture ACHPR/ Res. 61(XXXII) 02 (2002), Banjul, The Gambia.
[2] Ibid.
[3] ACHPR, '*Report on the Consultative Meeting on the Implementation of the Robben Island Guidelines'* held from 8-9 December 2003, Ouagadougou, Burkina Faso. ACHPR, APT, Amnesty International, 'Dakar Plan of Action: 8 Points for Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in Africa (Dakar Plan of Action)', 28 April 2010 available at https://www.apt.ch/content/files/region/africa/Dakar2010/Dak2010_PlanOfActionEng.pdf. The Johannesburg Declaration and Plan of Action on the Prevention and Criminalisation of Torture , South Africa from 21 - 23 August, 2012.
[4] R Murray and D Long 'Ten years of the Robben Island Guidelines and prevention of torture in Africa: For what purpose?' (2012) *African Human Rights Law Journal,* at 346. See also JB Niyizurugero and G P Lessène 'The Robben Island Guidelines: An essential tool for the prevention of torture in Africa' (2010) 6(2) *Essex Human Rights Review* 67.
[5] Murray and Long (n 4), at 312

prevention of torture and to elaborate on the content and scope of the duty to prevent torture. Instead they collect in a single document a variety of provisions relating to the prohibition, the prevention, and addressing the needs of victims of torture. Many of the RIG provisions are drawn from existing international hard and soft law instruments resulting in a 'patchwork'[6] of norms and standards. The copiousness of the provisions, however, eludes clarity. The subsequent attempts by the CPTA to clarify States' obligations with respect to combatting torture appear to conflate the prevention of torture with the arguably more developed and robust legal and normative framework of the prohibition. Yet, the duty to prevent, while clearly interrelated with the duty to prohibit torture, is a distinct and separate legal obligation. Furthermore, notwithstanding the CPTA's recent interpretative impetus with respect to the right to redress of victims of torture, the promise of RIG as a key instrument for the prevention of torture remains unfulfilled.

The lack of conceptual clarity hinders the clarity of the law and is also a practical limitation to the effective operation of RIG's special monitoring mechanisms, the CPTA, set up with the ambition of playing an effective role in the prevention of torture in Africa. The article argues that if this ambition is to be fulfilled the Committee has to elaborate a broader conceptual and normative preventive framework which is not only distinct from that of the prohibition but also one that goes beyond the narrow preventive provisions in the RIG and subsequent declarations and plans of action. Key to a preventive framework is identifying the conditions which make ill-treatment possible rather than a focus on classifying actual acts of extreme forms of abuse. While places of detention have traditionally been understood to create such conditions, the paper argues that this is not because of deprivation of liberty *per se* but because of the objective vulnerabilities induced by the factors underpinning deprivation of liberty and because of the individuals' subjective vulnerabilities. The article suggest that paying greater attention to these situational and widespread vulnerabilities in the African context may provide the opportunity of implementing new strategies and normative solutions for the effective prevention of torture.

In Section 2 the article briefly sets out the background to the RIG and the Committee for the Prevention of Torture in Africa. Section 3 analyses some of the conceptual and normative challenges limiting a clear elaboration of a torture preventive framework. Section 4 explores what the prevention of torture encompasses, or ought to encompass, conceptually and as a matter of legal obligation. It considers the circumstances that give rise to the risk of torture and considers the objective and subjective vulnerabilities of individuals arising beyond the traditional contexts of deprivation of liberty and what the duty to take measures entails for a state and for the work of the Committee. Section 5 sets out how this broader understanding of prevention could help the CPTA to develop its role and work in a strategic and effective way. Section 6 concludes.

2. The Robben Island Guidelines and the Committee for The Prevention of Torture in Africa

[6] Ibid, at 327.

In 2002 the African Commission on Human and Peoples' Rights adopted a resolution containing the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines -RIG).[7] In July 2003, the African Union Summit of Heads of State and Government endorsed the RIG as a result of the adoption of the 16th report of the ACHPR. It is the first instrument adopted by the African Commission elaborating and providing guidance on States' obligations under Article 5 of the ACHPR. Article 5 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'.

The Commission has grappled with the implementation of this provision through an extensive and rich body of decisions concerning violations of the prohibition of torture and other forms of ill-treatment,[8] as well as in its concluding observations to country periodic reports under the Charter reporting system.[9] The Guidelines are, however, the first document in which the Commission devoted specific attention and attempted to elaborate a framework for the prevention as well as the protection of victims of torture. Importantly, the adoption of the RIG by the ACHPR and its endorsement by the African Union provides a formal recognition of the obligation for states to take effective steps to prevent torture and other ill-treatment.[10]

The Guidelines contain fifty provisions divided into three clearly distinct sections concerned with: the prohibition, the prevention, and responding to the needs of victims of torture and other forms of ill-treatment. The first section of the Guidelines focuses on the prohibition of torture and contains a set of provisions ranging from the criminalisation of torture, the principle of *non refoulement*, combating impunity, to complaints and investigation procedures.[11] The second section contains a number of provisions aimed at the prevention of torture encompassing standards and procedural safeguards for those deprived of their liberty, specific safeguards for pre-trial detention, conditions of detention and mechanisms of

[7] Robben Island Guidelines, n 1.

[8] To mention a few, see: *Amnesty International and others v Sudan* (Comm. Nos 48/90, 50/91, 52/91 and 89/93), *International Pen, Constitutional Rights Project, Interights (on behalf of Ken Saro-Wiwa) v Nigeria* (Comm. nos 137/94, 139/94, 154/96 and 161/97), *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v DRC* (Comm. Nos 25/89-47/90-56/91-100/93), *Hurilaws v Nigeria* (Communication 225/98), *Purohit and Another v the Gambia* (Communication 241/01), *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt* (Communication 323/06), *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan* (Communication 379/09), *Abdel Hadi, Ali Radi & Others v Republic of Sudan* (Communication 368/09), *Gabriel Shumba v the Republic of Zimbabwe* (Communication 288/04).

[9] P Tigere 'State reporting to the African Commission: The case of Zimbabwe' (1994) 38(1) *Journal of African Law*, 64. Some examples of observations on state reports: Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan (12th Extra-ordinary Session of the African Commission on Human and Peoples' Rights held from 29 July to 4 August 2012, Algiers, Algeria), Concluding Observations on the 4th Periodic Report of the Republic of Uganda (49th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, the Gambia from 28 April to 12 May 2011), Concluding Observations and Recommendations on the Initial Periodic Report of the Republic of Botswana (Forty-Seventh Ordinary Session of the African Commission on Human and Peoples' Rights, held in in Banjul, The Gambia from 12 to 26 May 2010).

[10] JB Niyizurugero and G P Lessène (n 4) 67.

[11] Robben Island Guidelines Part I Articles 4-19.

oversight.[12] The final section covers provisions relating to the protection of the victims of torture from reprisals and the right to reparations and 'recognition that families and communities who have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims'.[13] Most of the provisions either repeat or paraphrase obligations already found in other treaties and international instruments such as the UN Convention against Torture (CAT), the International Convention on Civil and Political Rights (ICCPR), the UN Standard Minimum Rules for the Treatment of Prisoners.[14]

The scope of the Guidelines is arguably very wide spanning across three distinct areas in the fight against torture: the prohibition, prevention of torture and redress for victims. The wide scope and the copiousness of the provisions, however, elude clarity. As discussed in the next section this is particularly true in respect of prevention of torture. Furthermore the Committee for the Prevention of Torture (CPTA), the mechanisms established to promote the Guidelines, has arguably struggled to clarify its role and competences in relation to the prevention of torture. The CPTA was established at the same time as the adoption of the RIG by the African Commission to develop strategies and 'promote and facilitate the implementation' of the guidelines. Originally the Committee set up in accordance with the 2002 resolution was named the Follow-up Committee on the Implementation of the Robben Island Guidelines and was assigned the following mandate:

> -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; and
> - to make a progress report to the African Commission at each ordinary session.[15]

There are two points worth highlighting. Firstly, unlike other preventive mechanisms such as the UN Sub-Committee for the Prevention of Torture (SPT) established under the OPCAT[16] or the European Committee for the Prevention of Torture (CPT),[17] the Committee's mandate does not include the setting up of a system of regular visits to places of detention. The absence of such system is, at first glance, odd given that the RIG were developed initially 'to build support in the region for the concept of the prevention of torture advocated for by the OPCAT'.[18] The absence can be partly explained by the fact that the CPT and SPT systems of visit to places of detention are treaty based while the Guidelines were developed, as the name suggests, as a soft law instrument. Furthermore the African Commission already had a

[12] Robben Island Guidelines Part II Article 20-44.
[13] Robben Island Guidelines Part III Article 50.
[14] Murray and Long 'Ten years of Robben Island Guidelines and prevention of torture in Africa' n 4, 328
[15] Preamble paragraph 2 of the Robben Island Guidelines for the Prohibition and Prevention of Torture
[16] UN, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (9 January 2003) UN doc A/RES/57/199.
[17] The CPT was set up by the Council of Europe under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26 November 1987).
[18] L Muntingh and D Long, 'The Committee for the Prevention of Torture in Africa (CPTA) as regional catalyst in the prevention of torture' Paper prepared for the 10 year Anniversary of the Robben Island Guidelines 21- 23 August 2012, Johannesburg, South Africa p2.

mechanism with a mandate to visit prisons -although not all places of detention-, namely the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa. Murray and Long argue that the initial interest in establishing a regional system of visits to places of detention was abandoned during the drafting process in favour of a wider document covering different aspects of the prohibition and prevention of torture.[19] Whatever the reasons for not adopting a visiting system, a possible unintended consequence was a perception that the Committee lacked an established means or approach through which to fulfil its preventive mandate, which in turn may have affected the initial perceived lack of purpose and the Committee's own sense of direction.[20] However, as argued in the following sections, the lack of a visiting mandate, far from being a hindrance to the CPTA's effectiveness, has the potential of bolstering its role in the prevention of torture at the regional level beyond a detention centric monitoring model.

Secondly, and partly related to the first point, the mandate expressly links the Committee's activities and objectives to the RIG wide normative framework ranging from the prohibition, the prevention of torture to the redress for victims. However, as argued in the next section, when it comes to the prevention of torture the Guidelines provide a rather limited basis on which to operate a broad torture preventive mandate. The aspiration of embracing an expansive approach was certainly there when, in November 2009, a resolution[21] was adopted to change the name of the Follow-up Committee to the Committee for the Prevention of Torture in Africa (CPTA). The resolution acknowledged the fact that the Committee's former name somehow obscured its torture prevention mandate to interested stakeholders and signalled the intention to ensure that the special mechanism should be clearly identifiable as having a mandate to look at the prevention of torture in Africa more broadly.[22] Yet, in spite of the name change and the accompanying sense of anticipation, the CPTA and the RIG are said to 'have so far failed to fulfil their potential to be used by the African Commission as a means to develop an effective strategy on the prevention of torture and other ill-treatment in Africa'.[23] This conclusion appears to be underpinned by evidence indicating a limited range of activities undertaken by the CPTA as well as a scarce, if any, use and referencing of the RIG by domestic actors including government officials, the judiciary, law enforcement officials, NHRIs and civil society and campaigners.[24] A number of factors peculiar to the

[19] Murray and Long 'Ten years of Robben Island Guidelines and prevention of torture in Africa' n 4, 322
[20] Ibid, 340
[21] Resolution 158 on the Change of Name of the Robben Island Guidelines Follow-Up Committee" to the "Committee for the Prevention of Torture in Africa" and the Reappointment of the Chairperson and Members of the Committee" 46th Ordinary Session, the Gambia, 11 to 25 November 2009.
[22] The resolution reads 'Mindful of the difficulty of national, regional and international stakeholders and partners in associating the name "Robben Island Guidelines Follow-Up Committee" with its torture prevention mandate; Recognising the need for all stakeholders to easily identify with the name of the Committee as a torture prevention mechanism'. See also F Viljoen, *International Human Rights Law in Africa* (OUP, 2012) at 378.
[23] Murray and Long 'Ten years of Robben Island Guidelines and prevention of torture in Africa' n 4, 346
[24] JB Niyizurugero and G P Lessène 'The Robben Island Guidelines: An essential tool for the prevention of torture in Africa' n 4. Human Rights Implementation Centre (HRIC), University of Bristol 'Policy paper on the possible future role and activities of the Committee for the Prevention of Torture in Africa (CPTA)' (July 2011), 6. Available at http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/cptafuturepolicy.pdf (last accessed April 2018).

context and the institutional setting within which the RIG have developed, including lack of clarity in relation to their intended purpose are said to have influenced the rather modest impact of RIG and the CPTA.[25] The present article argues that while these factors might be partly responsible for the modest successes of the RIG, a number of definitional and normative failures affecting the very concept of prevention might also have contributed to its rather limited impact. The CPTA has struggled to clarify and devote interpretative energy to this specific area of intervention in the fight against torture. Arguably a clear and authoritative legal and normative framework could assist in the implementation and effective use of the RIG, strengthen the role of the CPTA and overall it could contribute towards the development of a novel and effective strategy for the prevention of torture in the region.

3. The Robben Island Guidelines and the Committee for the Prevention of Torture: Conceptual and Normative Challenges

In the preamble the Guidelines refer to Article 5 of the African Charter on Human and Peoples' Rights (ACHPR) 'which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment'.[26] The preamble also refers to Articles 2 (1) and 16 (1) of the United Nations Convention against Torture (UNCAT) which require member State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.[27] However while reference to Article 2 and 16 of UNCAT endorses the duty to prevent torture and other forms of ill-treatment, the Guidelines do not offer a definition of the concept and do not attempt to elaborate on the content of the obligation. Interestingly, the booklet produced after the adoption of the Guidelines to provide some practical guidance on their implementation stresses the existence of the separate but interrelated obligations to prohibit and to prevent torture.[28] The practical guide goes on to state that 'The obligation to prevent torture means that governments must take positive action' and provides some examples of preventive measures such as 'introducing oversight and monitoring mechanisms; implementing measures to improve conditions of detention'.[29] In spite of this distinction highlighting the proactive and positive nature of the duty to prevent torture, subsequent attempts to elaborate further on the concept and scope of the duty ultimately appear to conflate or prioritize the prohibition over the prevention of torture. The Committee's 2013 periodic report is an example of this unwitting preference. Here the CPTA's recommendations to States appear to emphasise enacting and speeding up legislation criminalizing torture in national legislation and providing redress for victims of torture. Notwithstanding the importance of criminalizing torture, this is essentially

[25] Murray and Long 'Ten years of Robben Island Guidelines and prevention of torture in Africa' n 4, at 312
[26] Preamble, Robben Island Guidelines for the Prohibition and Prevention of Torture, n 1.
[27] Article 2(1) UNCAT reads 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.
[28] ACHPR and APT, 'Robben Island Guidelines for the Prohibition and Prevention of Torture. A practical Guide for Implementation' (2008) at 7. Available at http://www.achpr.org/files/special-mechanisms/cpta/rig_practical_use_book.pdf
[29] Ibid.

functional to the prohibition.[30] Torture preventive recommendations to States mention the ratification of the OPCAT and training of those responsible for dealing with persons deprived of their liberty but without further specific elaboration, except for setting up effective National Preventive Mechanisms (NPM).[31] As for the recommendations to National Human Rights Institutions (NHRIs) and civil society organizations, the CPTA exhorts them 'To accompany the efforts of the CPTA in sensitizing the general public on the absolute and irrevocable nature of the prohibition against torture and help in disseminating the Robben Island Guidelines' as well as to 'promote the criminalization of torture in national legislation and advocate for the ratification and effective implementation of the OPCAT'.[32]

More recently the Committee for the Prevention of Torture in Africa adopted a 'Concept paper on the development of a general comment on Article 5 of the African Charter on Human and Peoples' Rights'.[33] The intention is to bring the CPTA in line with the UN treaty bodies' general comments practice whereby they adopt interpretative texts as a tool for the interpretation and further the elaboration of the provisions of relevant human rights instruments. The rationale for adopting the concept note is 'to fill a number of notable gaps in current standards, and clarify the normative content of Article 5.'[34] The concept note stresses that 'the preparation of general comments on Article 5 will be additional and complementary to the Robben Island Guidelines as well as providing additional standards for enabling realisation of *the absolute prohibition of torture* (emphasis added) as legislated in Article 5 of the African Charter'.[35] The comment goes on to provide a non-exhaustive list of possible general comments to be adopted ranging from the state duty to end impunity to oversight mechanisms.[36] The Committee decided to begin by preparing a General Comment on victims' right to redress under Article 5 of the African Charter. Following extended consultations a final draft was submitted to the African Commission on Human and Peoples' Rights which, at its 21st Extra–Ordinary Session in March 2017, adopted the General Comment on the Right to Redress.[37] The general comment is a significant and important development of the CPTA's own body of opinion, elaborating on the essential elements of restitution, compensation, rehabilitation, satisfaction and the right to truth and guarantees of non-repetition. Combating torture requires action across all three of the interlinked but distinct areas identified in the Guidelines: the prohibition, the prevention of torture and the

[30] A Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law' 1998 (1) *European Journal of International law* at 6.
[31] Periodic Progress Report of the Committee for the Prevention of Torture in Africa, Presented to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights (9 – 23 April 2013 Banjul, The Gambia), Section 4.A.
[32] Ibid section 4.B.
[33] ACHPR, 'Concept Paper on the Development of a General Comment on Article 5 of the African Charter on Human and Peoples' Rights' (2015). Available at http://www.achpr.org/files/news/2015/05/d182/concept_paper.pdf (last accessed June 2018).
[34] Ibid para 9.
[35] Ibid para 6.
[36] Ibid para 13.
[37] ACHPR, General Comment on the Right to Redress for Victims of Torture or Ill-treatment under Article 5 of the African Charter on Human and Peoples' Rights, adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia. Available http://www.achpr.org/files/instruments/general-comment-right-to-redress/achpr_general_comment_no._4_english.pdf

rights of the victims. However, while the prohibition and, more recently, the obligation to provide redress to victims of torture have been the object of guidance notes, interpretative texts, and general comments, this is not the case with respect to torture prevention. What prevention means and what it entails as a legal obligation remains uncertain. While it can be argued that criminalizing and offering redress are fundamental strategies in realizing the right to be free from torture and have a broad preventive function, these remain embedded in a legal framework addressing the victims' and survivors' rights after the breach. Prevention as such still remains in the background of the range of obligations arising from Article 5 of the Charter, which arguably go beyond the absolute prohibition of torture and ill-treatment.[38] As the Committee strengthens its interpretative work it becomes equally important to clarify States' obligations in combatting torture and in particular in relation to States' obligation to prevent torture with a view to assist State Parties to the African Charter and other relevant stakeholders to meet their obligations under the African Charter.

4. States Obligation to Prevent Torture

Notwithstanding the importance of the prohibition and its overlap with the prevention of torture, these are clearly distinct concepts entailing different sets of obligations. The duty to prohibit torture is generally engaged after the actions are committed. Indeed state and/or individual criminal responsibility is engaged once the act(s) has taken place. In this sense it could be said that the prohibition is essentially retrospective or reactive in character. As an obligation, the prohibition of torture can be conceptualised as a negative duty, in the sense that a State must refrain from using or condoning the use of torture. This is underpinned by a corollary set of procedural obligations regulating certain aspects of domestic criminal law and criminal justice system, such as requiring States to criminalize, to prosecute and to punish those responsible for acts amounting to torture. Notwithstanding the fact that criminal sanctions may be said to be preventive, in so far as their deterrent effect is concerned, this kind of action remains essentially remedial. Similarly to the prohibition, the duty to provide redress to victims of torture is part of a restorative justice approach and intended as a reaction to a breach of the right to be free from torture.

The right to be free from torture is not only a negative but also a positive right giving rise to a corresponding positive duty on the state to give effect to it. In contrast with a negative duty approach, the duty to prevent is, or ought to be, concerned with a state's obligation to take action before torture may occur and irrespective of whether it does.[39] In this sense the duty to prevent can be said to focus on 'before the act is committed' situations, to be proactive and anticipatory in nature and requiring the state to act or put in place a framework that will lessen the likelihood of torture. Prevention of torture as a strategy as well as a duty does not necessarily need to focus on actual acts of extreme forms of abuse and their classification. Therefore, in a torture preventive context, establishing whether an act or treatment amounts to torture or to another form of ill-treatment is not essential; the focus is rather on the

[38] Ibid para 3.
[39] OHCHR, APT and APF, *Preventing Torture: An Operational Guide for National Human Rights Institutions (*HR/PUB/10/1 May 2010), at 9.

conditions which generate risks of or vulnerability to ill-treatment more generally. The next section considers these conditions of risk and the scope of application of the duty.

4.1 Vulnerability to ill-treatment

The reports on the use of ill-treatment as well as the jurisprudence have been primarily, but not exclusively, concerned with ill-treatment, here understood as including torture as well as cruel, inhuman and degrading treatment, of detainees.[40] And indeed the practice of torture preventive mechanisms, such as the UN Special Rapporteur on Torture, the European Committee for the Prevention of Torture (CPT), and the UN Sub-Committee for the Prevention of Torture (SPT), reflect the prima facie assumption that detainees are at risk. Though their mandate and working methods differ in many respects they are all tasked with carrying out visits to places of deprivation of liberty.

It seems therefore important to analyse and deconstruct deprivation of liberty and what determines the conditions which, in a torture preventive context, create a risk assumption. A broad understanding appears to underpin the jurisprudence on deprivation of liberty as well as the practice of torture preventive mechanisms. Article 4(2) of the Optional Protocol to the Convention against Torture (OPCAT) defines 'deprivation of liberty' as 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority'.[41] The ECtHR has found that in order to determine whether there has been a deprivation of liberty, 'the starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and restriction upon, liberty is merely one of degree or intensity and not one of nature or substance'.[42] In determining the existence of a deprivation of liberty the courts will typically consider whether someone is under continuous supervision and control, and is not free to leave.[43] According to academic commentators detained individuals are 'those who are so positioned as to be unable to

[40] For African Commission cases see above n 8. European Convention on Human Rights jurisprudence include, just to mention a few, cases where ill-treatment of detainees was directly inflicted by police and security forces, *Ireland v UK* Application no. 5310/71 (Judgment of 18 January 1978). and more recently the case of *Blair and Others v Italy*, Applications nos. 1442/14, 21319/14 and 21911/14 (Judgment of 26 October2017), *Azzolina and Others v Italy* Applications nos. 28923/09 and 67599/10 (Judgment of 26 October 2017), as well cases dealing with different aspects of conditions of detention and failure to provide adequate care as in *Price v UK* Application no. 33394/96 (Judgment 10 July 2001), *Peers v Greece* Application no. 28524/95 (Judgment of 19 April 2001), *Keenan v UK* Application no. 27229/95 (Judgment of 3 April 2001).

[41] Similarly the Inter-American Commission's acknowledges the breadth of the concept in the General Provision of the 'Principles and Best Practices on The Protection of Persons Deprived of Liberty in the Americas' (OEA/Ser/L/V/II.131 doc. 26). Here deprivation of liberty is understood as 'Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority, for reasons of humanitarian assistance..."

[42] ECtHR, *Guzzardi v Italy* Application No 7367/76 (Judgment of 6 November 1980), at para 92.

[43] ECtHR, *HL v UK* Application No 45508/99 (Judgment of 5 October 2004) para 91; *P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents)* [2014] UKSC 19; EACJ, *Sam Mukira Mohochi v Uganda*, 05/2011 (Judgment of 17 May 2013), at paras 104-105, ACHPR, *Purohit & Another v The Gambia* Communication No 241/2001.

remove themselves from the ambit of official action'.[44] The Inter-American Court of Human rights has held that the State is placed in a special position of guarantor in relation to persons deprived of their freedom, since in places of deprivation of liberty, such as prisons, 'authorities have full control over the persons subjected to their custody'. [45]

These elaborations appear to suggest that vulnerability to ill-treatment is produced in the context of the unequal power relations which are intrinsic to deprivation of liberty. The imbalance of power manifests itself through the control exercised by the authorities, the interference with an individual's autonomy, and the degree of social isolation and dependency of the individuals at risk. These elements – control, lack of autonomy, dependency and social isolation - underpin the special relationship of subordination between persons subject to custody and those exercising control on behalf of the State.[46] These elements, rather than the deprivation of liberty in itself, generate an objective vulnerability to ill-treatment, with the risk of ill-treatment being directly proportional to the degree of control, dependency and isolation over the individual. While prisons are the archetypal site of deprivation of liberty with the highest risk of torture because of the full control exercised over the detainee, there are several settings, or sites, where varying degrees of control and supervision and the concurrent relative loss of autonomy of concerned individuals induce an objective vulnerability to ill-treatment. Hence, torture preventive monitoring approaches have expanded the range of sites of potential risk beyond the more traditional sites of prisons and police cells to include 'also psychiatric hospitals, detention facilities for foreigners held under aliens legislation, juvenile and military detention centres and social care homes'.[47]

But, to state the obvious, ill-treatment does not happen merely within the physical confines of a specific place of detention and indeed ill-treatment may occur in a variety of situations.[48] Some academic commentators would, furthermore, argue that the UN Convention against Torture, and the protection it provides, including under Article 2, is not only applicable in a situation in which a person has been deprived of his liberty.[49] The jurisprudence and cases of international and domestic courts and mechanisms have indeed addressed instances of torture and other forms of ill-treatment occurring 'outside' actual places of deprivation of liberty.

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[44] N Rodley and M Pollard, *The Treatment of Prisoners under International Law* (OUP, 2009), at 6.

[45] Inter-American Court of Human Rights (IACtHR), *Case of the "Juvenile Reeducation Institute" (*Judgment of 2 September 2004), Series C No. 112, at paras 152-153

[46] Ibid.

[47] Council of Europe, 'The CPT at 25: taking stock and moving forward' Background Conference Paper, Strasbourg, France, 2 March 2015 at 2. The UN Committee against Torture also has commented that 'each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm' CAT, 'General Comment No. 2: Implementation of Article 2 by States Parties' UN doc CAT/C/GC/2 (24 January 2008), para15.

[48] For example, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has reported on a variety of gender specific forms of torture, see for example UN Doc A/55/290 (11 August 2000). See also the recent report on migration-related torture and ill-treatment of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment UN Doc A/HRC/37/50 (26 February 2018).

[49] Evans M, 'Book Review: *The UN Committee Against Torture: An Assessment*. By Ingelse Chris (The Hague: Kluwer Law International, 2001)' (2002) 51:3 *ICLQ* 751.

Generally courts have found a breach where ill-treatment occurs because of failure of the authorities to take action when they knew or ought to have known of the risk. Denial of welfare support to a 'dependant' asylum seeker, 'living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs',[50] can drive a person into a state of destitution which exposes individuals to a real prospect of inhuman and degrading conditions.[51]

The African Commission found a violation of Article 5 of the African Charter in the case of the abduction and rape of a 13 year old girl compelled to sign a purported marriage certificate while kept captive. The Commission found that the girl's autonomy, control and personal volition over her body and life, and thus her dignity, were seriously infringed.[52] The authorities had failed to take action in relation to private actors, in a dominant position vis-à-vis the victim, in a situation overwhelmingly controlled by the State. The Commission held that the government "failed in its 'duty to protect'"[53] under Article 1 of the Charter by failing to prevent the rape, particularly in light of its awareness of the rampant practice of marriage by abduction and noted that awareness of the prevalence of the practice of marriage by abduction "required escalated measures beyond the criminalisation of abduction and rape under the criminal law that existed at the time".[54] In both cases the structural imbalance of power, social isolation and the discriminatory practices affecting a particular class of people,[55] such as asylum seekers and women, induce and heighten a risk of ill-treatment.

From a torture preventive perspective, when the risk is assessed against these objective conditions, or elements, as well as against the individuals' subjective vulnerabilities, the focus expands from actual places of deprivation of liberty, as sites of vulnerability, to vulnerability itself. The next sections explore what the duty to prevent torture and ill-treatment entails, or should entail, and how mechanisms, such as the CPTA, could help states implement the duty.

4.2 A positive obligation approach to the prevention of torture

As mentioned earlier prevention is understood as proactive and anticipatory in nature and as

[50] ECtHR, *M.S.S. v Belgium* Application No. 30696/09 (Judgment of 21 January 2011) §263. The Court clarified that providing for an asylum seekers basic needs under Article 3 cannot be interpreted as obliging a state party to provide everyone within its jurisdiction a home and to give financial assistance to enable them to maintain a certain standard of living (§ 251).

[51] *R (on the application of Limbuela) v Secretary of State for the Home Department R (on the application of Tesema) v Secretary of State for the Home Department R (on the application of Adam) v Secretary of State for the Home Department* [2005] UKHL 66; ECtHR, *Budina v Russia* Application No. 45603/05 (Judgment of 18 June 2009).

[52] *Equality Now and Ethiopian Women Lawyers Association (EWLA) v The Federal Democratic Republic of Ethiopia* (Communication No 341/2007), at paras117-121.

[53] Ibid para 124.

[54] Ibid para 126.

[55] Subcommittee on Prevention of Torture includes among vulnerable class of people 'women, juveniles, members of minority groups, foreign nationals, persons with disabilities, and persons with acute medical or psychological dependencies or conditions'. 'The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' UN Doc CAT/OP/12/6 (2010), Guiding principle 5(i).

an obligation it requires the state to act or put in place a framework that will lessen the likelihood of torture. According to the tripartite typology of how human rights obligations should be secured, the duty to prevent is grounded in the positive obligation to protect as well as in the positive obligation to fulfil.[56] Both types of obligation are conduct based. Under the duty to protect the obligation to prevent is triggered when the state authorities know or should know about an immediate or impending risk. As a positive obligation to fulfil, the duty to prevent torture requires the state to adopt appropriate general measures- legislative, administrative, budgetary, judicial, educational, and other measures-[57] irrespective of the immediacy of a risk of torture.

Thus the duty to prevent torture requires States to put in place a number of measures that are likely to reduce the opportunities or the chances of torture. In the context of detention, the preventive measures may be general in scope, targeting common issues associated with deprivation of liberty, for example setting up systems of oversight and independent monitoring visits to places of detention. They can also be specific in the sense that they take into account the relevant context and vulnerabilities of those at risk. As the Subcommittee for the Prevention of Torture has explained the prevention of torture and ill-treatment:

'...embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific'.[58]

Torture preventive mechanisms have developed an extensive and detailed array of recommendations pertaining to custodial policies, concerning reasons and level of occupancy in prisons' cells, guidelines and standards on juveniles in police custody as well as migrants and asylum seekers in administrative detention, children in social care homes and standards on psychiatric confinement, [59] just to name a few. Preventive measures may well include the reduction of the use of detention itself and arranging non-custodial measures in specific circumstances.[60]

It is beyond doubt that provisions and standards concerning the material conditions and institutional arrangements pertaining to deprivation of liberty are an important and well established aspect of the prevention of torture. However, it is only one aspect, and given that the risk of ill-treatment is not confined to places of detention and states have a duty to prevent

[56] I Renzulli 'A Critical reflection on the conceptual and legal foundations of the duty to prevent torture' (2016) 20 *The International Journal of Human Rights*, at 1249.
[57] Article 2 (1) of the United Nations Convention against Torture reads: 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.
[58] Se above n 55, at para 3.
[59] CPT 'The CPT at 25', n 47 at 16.
[60] United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) A/RES/45/110 (April 1991), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) A/RES/65/229 (16 March 2011).

it, what does the duty to take measures look like beyond actual 'places' of deprivation of liberty? And what is the role of a mechanism, such as the CPTA, with a broad torture preventive mandate?

A positive obligation approach to prevention of ill-treatment will be concerned with putting in place a whole range of measures tackling both the short term, situational risks as well as the structural factors which place individuals and groups of individuals at risk, irrespective of the physical confines of places of detention. Importantly when the preventive focus is broadened to vulnerabilities and structural unequal relationships a torture preventive framework will be premised on a human rights paradigm which, depending on the context, seeks and interacts with one or more areas of law and policy frameworks which regulate structural power differentials, such as employment and labour law, migration policies, equality and discrimination law, social welfare and family law, public health and medical law and so forth. Given the variety of vulnerabilities and contexts a 'one size fits all' approach is not possible and the nature of preventive measures, policies and techniques will be both dynamic and context dependent. Effective preventive measures will require a thorough risk assessment of the specific vulnerabilities and circumstances which lead or could lead to ill-treatment. It is submitted that the CPTA has an important role to play in this respect. The collection, processing and monitoring of data and information, documentation and research becomes a crucial aspect in the work of a preventive mechanism that can help to identify trends and patterns of forms of abuse, violence and discrimination and to formulate appropriate context sensitive measures and alternative regulatory frameworks.

5. Strengthening the CPTA's preventive role

The RIG identify some general measures for the prevention of torture pertaining to basic procedural safeguards for those deprived of their liberty, conditions of detention, and the establishment of mechanisms of oversight with a mandate to visit places of detention.[61] The preventive standards and measures contained in the RIG are particularly relevant in the context of the criminal justice system. Subsequent elaborations such as the Ouagadougou Declaration and Plan of Action (2003) confirm the focus on reforming the prison and penal system in Africa.[62] However, notwithstanding the crucial importance of these measures and without detracting from the RIG's catalyst role in the development of a torture preventive work at the regional level, the prevention of torture, as discussed, has a wider scope encompassing more than the collection of measures set out in the Robben Island Guidelines. The mismatch between the broad legal and normative scope of the prevention of torture and the narrow RIG framework is somehow problematic for a mechanism with the ambition, as the decision to change its name suggests, of playing a broader role in the prevention of torture in Africa. If the CPTA is to develop and strengthen its role and activities it needs to move beyond the promotion and implementation of the few preventive provisions contained RIG.

[61] Articles 20 to 44 of the Robben Island Guidelines, n 2.

[62] Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (2003) adopted at the 34th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, ACHPR/Res.64 (XXXIV) 03. See also ACHPR and APT, 'Robben Island Guidelines for the Prohibition and Prevention of Torture. A practical Guide for Implementation' (2008), n 27.

In this context, the broader framework expounded in the previous paragraphs might contribute to identify some priority and strategic areas for the development of the CPTA's work. It is submitted that a first important step would be for the CPTA to retrace its way back to the 2008 Practical Implementation Guide[63] and elaborate further on the distinction between the prohibition and the prevention of torture and the interrelation between the two separate obligations. The distinction might have functional implications in terms of the way the Committee might want to organize its work. For example, following RIG's tripartite structure, the Committee might arrange different sub-working groups focusing on the prohibition, the prevention and the needs of victims. From a substantive point of view, as already argued, distinguishing the different types of obligations, which the right to be free from torture gives rise to, is important to avoid subsuming or prioritizing the implementation of measures that are essentially functional to the prohibition -such as States obligation to end impunity and criminalization of torture- over preventive measures. Clarifying what prevention of torture means enables a wider understanding of the issues and devising new strategies to fight all forms of ill-treatment.

5.1 Vulnerabilities to ill-treatment in the African context

In order to identify and develop standards and recommendations that can help African States meet their international obligation to prevent torture, the Committee needs to carry out research and further elaborate on the vulnerabilities and conditions that give rise to a risk of torture in the African contexts.

While initially the Committee's work focused on promotional visits to States,[64] the CPTA has in recent years developed the practice of collecting, processing and analysing information on ill-treatment across Africa and mapping the occurrence and situations of risk of torture in the African context. Recent inter-session activity and annual situation reports on torture and ill-treatment in Africa compile recent domestic as well as regional case-law and interventions pertaining to torture and ill-treatment. Themes[65] and trends[66] are identified yielding a regional picture of some of the achievements and the challenges to an effective preventive work.

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[63] APT, 'Robben Island Guidelines for the Prohibition and Prevention of Torture. A practical Guide for Implementation', n 27.

[64] See promotional visits to: Nigeria (2008) in the *Report of Activities by Commissioner Dupe Atoki*, 2008 at 1-2; Liberia (September 2008) reported in Inter-sessional activity reports of Commissioner Dupe Atoki presented at the 44th, Ordinary Sessions of the African Commission; Benin (October 2009) reported in Inter-sessional activity reports of Commissioner Dupe Atoki presented at the 45th Ordinary Sessions of the African Commission; Uganda (October 2009) reported in Inter-sessional activity reports of Commissioner Dupe Atoki presented at the 46th Ordinary Sessions of the African Commission; Mauritania (March 2012) Report of the Promotion Mission of the Committee for the Prevention of Torture in Africa to the Islamic Republic Of Mauritania (26 March – 01 April 2012) available http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion_mission-2012/mission_report_mauritania_cpta_eng.pdf (last accessed April 2018) and the joint mission with the African Commission to the Republic of Sudan (May 2015) reported in Report of the Joint Promotion Mission to the Republic of The Sudan (22-28 May 2015)

[65] On ill-treatment in state of emergency, the use of secret and unauthorised detention centres, conditions of detention See Inter-session Activity Report (October 2016 to May 2017) and Annual Situation of Torture and Ill-treatment in Africa report of Commissioner Lawrence M. Mute, Presented to the 60th Ordinary Session of the African Commission on Human and Peoples' Rights (May 2017) available at http://www.achpr.org/sessions/60th/intersession-activity-reports/cpta/ (accessed June 2018)

Importantly, the Committee has paid increasing attention to vulnerable groups. The 2016 report covers the institutionalisation and ill-treatment, in some African countries, of women and girls with disabilities 'detained in psychiatric and social care institutions, psychiatric wards, prayer camps, secular and religious-based therapeutic boarding schools, boot camps, private residential treatment centres or traditional healing centres'.[67] The report recommends that 'State Parties repeal all mental health laws that deprive persons with psychosocial disabilities their right to legal capacity'. It does not elaborate in greater depth on the matter and on other relevant preventive measures States should consider in these circumstances. Admittedly this can be a challenging task because the preventive measures are inevitably going to be context specific and might require specific knowledge and expertise. One way of dealing with this potential shortcoming could be either to ensure the Committee's membership composition reflects a variety of professional skills –members with different legal expertise as well as non-legal experts-, establish a roster or call on specialists with relevant expertise when needed. In the initial stages the SPT faced similar problems in terms of ensuring a breadth of expertise[68] and while the SPT's composition is still biased towards legal experts there has been a gradual expansion towards other professions, such as psychology, medical and policing experts.[69]A more multidisciplinary composition is particularly evident in the composition of the ECPT whose mandate is expressly confined to monitoring places of detention.[70]

More recently, the Committee has reported on specific situations of vulnerability involving persons with albinism[71] and women and girls in relation to the denial of safe and legal abortion services and post-abortion care.[72] In the latter case, the report indicates that an estimated 90% of women of child-bearing age in Africa live in countries with restrictive laws which force women to seek unsafe abortions.[73] These procedures and the lack of legal abortion and post-abortion care services often carry a high risk, if not tragic consequences, for women's health and lives and their right to dignity and security. The report contains some recommendations concerning measures that states should enact to prevent exposing women and girls to ill-treatment in these specific circumstances. These include repealing restrictive

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[66] For example on ill-treatment in the context of anti-terrorism operations, as well as in the context of demonstrations, and elections see Inter-session Activity Report (November 2015 to April 2016) and Annual Situation of Torture and Ill-treatment in Africa report of Commissioner Lawrence M. Mute, Presented to the 58th Ordinary Session of the African Commission on Human and Peoples' Rights (April 2016) available at http://www.achpr.org/sessions/58th/intersession-activity-reports/cpta/ (accessed April 2018)

[67] Inter-Session Activity Report (April 2016 to October 2016) and Annual Situation of Torture and Ill-treatment in Africa Report, 59th Ordinary Session of the African Commission on Human and Peoples' Rights (the Gambia October 2016), at para 20 http://www.achpr.org/sessions/59th/intersession-activity-reports/cpta/ (accessed April 2018)

[68] A Hallo de Wolf, 'Visits to Less Traditional Places of Detention' (2009) 6(1) *Essex Human Rights Law Review*, at 88.

[69] http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Membership.aspx

[70] https://www.coe.int/en/web/cpt/cpt-members

[71] Inter-session Report and Thematic Report on Denial of Abortion and Annual Situation Of Torture And Ill-treatment in Africa Report , 59th Ordinary Session of the African Commission on Human and Peoples' Rights (Banjul, The Gambia, November 2016).

[72] Inter-session Report and Thematic Report on Denial of Abortion and Post-Abortion Care as Torture and other Cruel, Inhuman or Degrading Punishment or Treatment , 61st Ordinary Session of the African Commission on Human and Peoples' Rights (Banjul, The Gambia, November 2017).

[73] Ibid, at para 19.

abortion laws, the removal of restrictions on training of health-care workers on provision of safe abortion services or comprehensive abortion care, removal of third party authorisation for women and adolescents that hinder access to and timely provision of safe abortion care. The Committee also recommended amending penal and criminal laws to remove criminal sanctions related to abortion, and immediately placing a moratorium on the prosecution and detention of women who have illegal abortions.[74]

At the same time, as already mentioned, the CPTA might also want to keep expanding its outlook to other vulnerabilities in the African context. By way of example these could include internally displaced people (IDP) camps,[75] a necessary and lawful arrangement for the protection of IDPs, where nevertheless people live with complex social, medical and health needs and where their liberty is restricted.[76] While it is understood that the African Commission already has a Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons, it might be useful to collaborate with the mandate and perhaps identify areas where the CPTA may expand its mandate and offer its expertise. A further area of investigation could be migratory transit and destination routes in Africa and the laws, policies and practices which contribute to the uncertainty, danger, violence and abuse, which migrants and asylum seekers experience throughout their journey at the hands of both State officials and non-State actors.[77] Preventive work could also include examining failed asylum seekers' post-deportation and return journeys.[78] Another example could be identifying patterns and trends of unlawful modern slavery practices, such as domestic slavery, in the regional context.[79] These unlawful practices are generally based on a high degree of control exercised by the perpetrator and the physical and social isolation of the victim.[80] It is well documented that children, migrants, minorities and women, who find themselves trapped in these abusive relationships, are often exposed to abuse and the risk of ill-treatment.[81] More research and

[74] Ibid, at para 21.

[75] Across Africa over 12 million persons are Internally Displaced Persons. Internal Displacement Monitoring Centre and Norwegian Refugee Council 'Africa Report on Internal Displacement' (December 2016) (last accessed April 2018), available at: <hhttp://www.internal-displacement.org/assets/publications/2016/2016-Africa-Report/20161209-IDMC-Africa-report-web-en.pdf>

[76] R Cohen and F M Deng *Masses in Flight: The Global Crisis of Internal Displacement* (1998, Brooking Institution Press), at 98.

[77] Report of UN Special Rapporteur on Torture UN doc A/HRC/37/50, n 48 at paras 8-9; see also OHCHR, 'Situation of Migrants in Transit' UN doc A/HRC/31/35 (27 January 2016).

[78] Human Rights Watch, 'Algeria: Inhumane Treatment of Migrants Pregnant Women, Children, Asylum Seekers Among Thousand Expelled to Desert' (28 June 2018) https://www.hrw.org/news/2018/06/28/algeria-inhumane-treatment-migrants . It has also been reported that often the very fact that deportees have applied for asylum put them at risk in L Podeszfa and F Vetter, 'Post-deportation Monitoring: Why, How and by Whom?' September 2013 *Forced Migration Review*, at 68

[79] The prohibition of slavery exists in customary international law but also has a *jus cogens* status. Slavery is prohibited in various international treaties, particularly the Convention to Suppress the Slave Trade and Slavery 1926, Article 1(1) defines slavery as: 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'. Article 5 of the ACHPR lists slavery as a denial of human dignity alongside with torture.

[80] Report of Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences UN Doc A/HRC/15/20 (18 June 2010), at paras17-18.

[81] A recent case before the African Committee of Experts on the Rights and Welfare of the Child concerning the case of two boys held as domestic slaves found a violation, among others, of Article 16 (Protection against child abuse and torture) of the African Charter on the rights and Welfare of the Child. ACERWC, *Minority Group International and SOS-Escalves on behalf Said Ould Salem and Yarg Ould Salem v the Republic of Mauritania*,

analysis into these widespread vulnerabilities might help to formulate adequate torture preventive and human rights compliant responses and frameworks.

These are just some examples of areas into which the Committee might want to expand its activities. The recent systematic collection of information on vulnerable groups indicates the CPTA's willingness to embrace a broader understanding of its mandate and role in the prevention of torture. While at the present time the Committee may have neither the capability nor the expertise to make recommendations and offer solutions to existing complex realities and widespread vulnerabilities, as Nigel Rodley, in his capacity of UN Special Rapporteur on Torture said '…as long as national societies and, indeed, the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as exposure to the risk of torture is concerned, directly contributing to the vicious circle of brutalization that is a blot on and a threat to our aspirations for a life of dignity and respect for all.'[82] The CPTA may not be in a position, just yet, to make recommendations, offer guidance and solutions but it certainly has a role to play in gathering and analysing information, documenting and examining the more complex root causes and conditions of widespread instances of vulnerability to ill-treatment in Africa.

6. Conclusions

Fifteen years on since the adoption of the Robben Island Guidelines, the CPTA is gradually finding and fashioning a role for itself in the prevention of torture in Africa. Notwithstanding the CPTA's name was changed to reflect a wider approach to the prevention of torture this has been limited by the lack of a clear legal and normative framework which has largely prioritized the prohibition and, more recently, the redress for victims of torture in the fight against torture. While these are equally important and interrelated areas of intervention in the fight against torture, they are different and distinct. Furthermore, the envisioned wider preventive approach has not necessarily been underpinned by a simultaneous broader understanding of the prevention of torture, which has been mainly equated with the Robben Island Guidelines preventive provisions. While the instrument represents a pivotal moment in the development of torture preventive work in Africa it is a narrow framework to be operating under. In a preventive context the focus is, or should be, on addressing the conditions which make ill-treatment possible and on individuals' underlying vulnerabilities. Widespread and perhaps less flagrant vulnerabilities deserve greater attention if the prevention of torture is to be more than remedial action and if the Committee for the Prevention of Torture in Africa is to offer contextual and alternative normative frameworks and approaches in the fight against torture. The CPTA has an important contribution to make, but to live up to its name and enhance its effectiveness it will need to go beyond the narrow preventive framework set out in the RIG and to engage strategically with the arguably more complex and multi-layered dimensions of the prevention of torture.

Communication N. 007/Com/003/2015, Decision N.003/2017. The CPTA also undertook a Promotion Mission to the Islamic Republic of Mauritania from 26 March to 1 April 2012 and focused on prison conditions as well as modern slavery. Report of the Promotion Mission of the Committee for the Prevention of Torture in Africa to the Islamic Republic of Mauritania, 26 March – 01 April 2012.

[82] Report of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment UN Doc A/55/290 (11 August 2000), at para 37.