



**CHRDA**

**Redress Mechanisms at the African Commission on Human and Peoples' Rights for Victims of Torture in Cameroon**

By the EIJI Research Team: Dorcas Baah, Henriette Berg, Finlay Perry, Lucy Reddiford and Stav Salpeter at the Edinburgh International Justice Initiative

**EIJI**

In collaboration with the CHRDA Research partners: Edumbong Smith Naseri and Benjamin Mekinde Tonga

## **ACKNOWLEDGMENTS**

We would like to thank the Centre for Human Rights and Democracy in Africa for giving us the opportunity to collaborate with them on this research project. We owe special thanks to Felix Agbor Nkongho, Benjamin Tonga and Edumbong Smith Naseri for their guidance and direction.

We would also like to acknowledge the Edinburgh International Justice Initiative Organisational Development team, headed by our Director Shy Zvouloun, for their support and hard work which has allowed the project to go as planned.

Finally, we would like to offer appreciation to our supervisors Finlay MacDougall and Cristina San Juan Serrano for their helpful guidance.

Thank you all.

## **LIST OF ABBREVIATIONS**

ACHPR – The African Commission on Human and Peoples’ Rights

AfCHPR – The African Court on Human and People’s Rights

ACtJHR – The African Court of Justice and Human Rights

AU – The African Union

CAT – The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CHRDA – The Centre for Human Rights and Democracy in Africa

CPTA – The Committee for the Prevention of Torture in Africa

EACJ – The East African Court of Justice

ECHR – The European Court of Human Rights

ECOWAS – The Economic Community Of West African States

EIJI – The Edinburgh International Justice Initiative

HRW – Human Rights Watch

IACHR – The Inter-American Court on Human Rights

ICC – The International Criminal Court

ICCPR – The International Covenant on Civil and Political Rights

ICTY – The International Criminal Tribunal for Yugoslavia

NGO – Non-governmental Organisation

OAU – Organisation of African Unity

OHCHR – The Office of the United Nations High Commissioner for Human Rights

04/2021

OPCAT – The Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

RIGs – Robben Island Guidelines

SADCT – The Southern African Development Community Tribunal

SED – State Defense Secretariat (Secretariat d'état a la defense)

UDHR – The Universal Declaration of Human Rights

UN – The United Nations

UNHRC – The United Nations Human Rights Committee

VCLT – The Vienna Convention on the Law of Treaties

## **TABLE OF CONTENTS**

<b>SECTION 1: INTRODUCTORY NOTE .....</b>	<b>6</b>
<b>SECTION 2: THE PROJECT .....</b>	<b>9</b>
<b>SECTION 3: BACKGROUND .....</b>	<b>11</b>
<b>SECTION 4: TORTURE ANALYSIS.....</b>	<b>17</b>
<b>SECTION 5: ENGAGING THE COMMISSION AND OTHER HUMAN RIGHTS BODIES .....</b>	<b>27</b>
<b>SECTION 6: TORTURE CASE EXAMPLES AND COMMENTARY SUPPLIED BY THE CHRDA.....</b>	<b>49</b>
<b>SECTION 7: RECOMMENDATIONS .....</b>	<b>53</b>
<b>SECTION 8: GENERAL SUMMARY .....</b>	<b>55</b>
<b>BIBLIOGRAPHY.....</b>	<b>56</b>

## **SECTION 1: INTRODUCTORY NOTE**

### **1.1. *The EIJI Research Team***

Dorcas Baah is a fourth-year Law (LLB Hons) student at the University of Edinburgh. She is the Research Coordinator and one of three Senior Legal Researchers for this project. She has previously drafted a report on behalf of the ICC Defence Counsel, and this is her third project with the Edinburgh International Justice Initiative (EIJI). She has studied modules of Public International Law and Private International Law at Ordinary level, and International Law, Atrocity Criminology, and Human Rights Law at Honours level. Her dissertation critiques the perceptions of elite women perpetrators of atrocity crimes and the gendered narratives that characterise their media and legal discourses. Completing this project has been incredibly enriching and stimulating and Dorcas is excited to continue researching international human rights issues.

Henriette Berg is a fourth-year undergraduate student, studying Law at the University of Edinburgh. She is a Senior Legal Researcher for this project, which is her second research project with the EIJI. She has previously undertaken research for a group preparing a case for the International Criminal Court and been involved with organisations such as Amnesty International. Focusing her degree on international law and human rights, Henriette has written her dissertation on UK counter-terrorism laws, analysing their compliance with international human rights law.

Finlay Perry is a fourth-year undergraduate student studying Chinese at the University of Edinburgh. She is a Junior Legal Researcher for this project. Finlay is advancing her interest in global human rights law in her final year dissertation. She will examine the impact of the Chinese Civil Code due to come into effect in January 2021 on human rights progression in mainland China, and more specifically on the urban female demographic.

Lucy Reddiford is a fourth-year undergraduate student studying Philosophy at the University of Edinburgh. She is a Senior Legal Researcher for this task. She has previously undertaken research for the Centre for Criminal Appeals and is involved in a number of rights-based initiatives such as The Hygiene Bank and the Back Off Chalmers campaign. This is Lucy's second research project with the EIJI, and she has found this to be an enriching experience which she hopes to take forward in pursuing a career in public and human rights law.

Stav Salpeter is studying for an MA (Hons) in International Relations and International Law at the University of Edinburgh, where she is researching human rights organizations in the Palestinian-Israeli context. She has a background in third sector work with

immigrants, refugees and informal legal education in the Norwegian Red Cross and is currently researching UK asylum-seeking policy for the human rights organisation René Cassin.

## **1.2. The CHRDA Research Partners**

The Research Team at the Centre for Human Rights and Democracy in Africa (CHRDA) contributed significantly to the completion of this report. The CHRDA is a non-governmental organisation that aims to advance human rights and promote democracy in Africa.<sup>1</sup> The CHRDA is committed to engaging in sensitive issues relating to human rights and democracy and frequently conducts research projects to this effect. They have previously collaborated with human rights activists, legal practitioners, graduate and undergraduate volunteers, interns and partner institutions. The present project typifies the benefits of the CHRDA's collaborative work and the value of facilitating an exchange of resources that furthers the work of human rights and democracy in Africa.

Edumbong Smith Naseri is a PhD research fellow at the University of Buea, Cameroon. He acts as coordinator of the team at the CHRDA for the current project. He is a human rights advocate and works with the human rights and humanitarian arms at the CHRDA. Naseri has previously worked on the protection of the rights of sexual minorities with other community-based organisations. His doctoral research which focuses on human rights and sustainable development looks into how sustainable development laws, policies and practices affect human rights in Cameroon and Africa at large.

Benjamin Mekinde Tonga is a PhD research fellow at the University of Buea, Cameroon. He is also currently studying through a fully-funded scholarship for a second master's in Human Rights and Democratisation in Africa, at the Centre for Human Rights – University of Pretoria. He works with the Human rights and humanitarian departments at the CHRDA. His doctoral research focuses on 'State sovereignty and the responsibility to protect human rights in Cameroon'. Benjamin is passionate about the advancement of human rights, democratic principles, and the increasing awareness of States' responsibility within the global human right systems.

## **1.3. Disclaimer of Legal Research**

As the EIJI Research Team are not lawyers, we are not giving legal advice. We are providing research assistance to the CHRDA, and do not assume any liability regarding how the information is used in the future. Furthermore, the EIJI is an apolitical body. The

---

<sup>1</sup> Centre for Human Rights and Democracy in Africa Website, About Section, Who we are <<https://www.chrda.org/about/>> accessed 25 November 2020.

04/2021

contents of this report are not to be taken as a political statement or as a form of advocacy work. The way in which this report is used by EIJI's partners is at their discretion and does not reflect the EIJI.



## **SECTION 2: THE PROJECT**

### **2.1. Research Task**

This research has been requested by the CHRDA. The EIJI Research Team have been tasked with writing a report detailing the implementation of the decisions made by the Committee for the Prevention of Torture in Africa (CPTA) in Cameroon. As the CPTA is a mechanism of the African Commission on Human and Peoples' Rights (ACHPR), the report ultimately researches the methods by which torture victims in Cameroon can get adequate redress from the ACHPR.

The report will assess the efficacy of the CPTA in combating torture in Cameroon by highlighting some case studies. The report will conclude with some legal recommendations to the ACHPR and the CPTA aimed at improving the situation in Cameroon through a robust response plan geared at prohibiting torture.

From the outset, the research team notes that complainants must ordinarily exhaust all domestic remedies before addressing the ACHPR directly. However, as the CHRDA alleges that the Cameroonian government's involvement in the torture cases has compromised the impartiality of the domestic courts, this research overlooks and omits the Cameroonian Courts as an effective redress mechanism. Instead, the report focuses on the mechanisms available at the ACHPR and CPTA. Ultimately, the CHRDA and EIJI joint research team intend to compile this work into a human rights booklet which may be used as a resource to combat torture in Cameroon.

### **2.2. Methodology**

Between five researchers, we began the project by retrieving relevant information from a bibliography provided by our supervisors. We then proceeded to categorise this information into subsections:

- Standing;
- Procedures and Admissibility;
- Enforcement: Remedies and Reparations; and
- Implementation for Human Rights Defenders.

The above division was intended to maximise the breadth of our research. We collated relevant information from our assigned individual readings into note form to allow other members of the team to familiarise themselves with applicable information. We arranged weekly meetings in order to stay updated with the progress of the report and address any questions that may have arisen. Additionally, we made frequent contact with the client

(CHRDA) throughout the process to review our progress and edit our report feedback received.

The report is divided into five substantive sections. Firstly, it includes brief background information on the general atmosphere of human rights violations in Cameroon and outlines the mechanisms available at the ACHPR and CPTA (Section 3). Secondly, it defines torture and how it has been conceptualised by international and regional bodies as well as in Cameroon (Section 4). Thirdly, it details how stakeholders can engage the ACHPR and other human rights bodies to gain adequate redress for victims of torture in Cameroon (Section 5). Fourthly, the CHRDA Research Team provides some Cameroonian case examples to support our analysis and emphasise the importance of our research (Section 6). Finally, the EIJI Research Team provide some general recommendations for the CHRDA and summarises our findings (Sections 7 and 8).

Overall, we aim to provide a comprehensive and analytical report that is accessible to human rights organisations, governmental bodies and the general public in Cameroon.

### **2.3. Definitions**

This section will define key concepts that are featured in the report. It defines ‘torture’, ‘victim’ and ‘adequate redress’.

In line with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>2</sup> *torture* is defined as an act causing severe pain or suffering, physical or mental that is intentionally inflicted on a person, whether for punishment, obtaining information, intimidation or discrimination. Such an act can qualify as torture even if it is committed by a public official. This definition will be explored in more detail in Section 4.

In the context of this report, *victims* are people or communities who are subjected to torture, as defined in the previous paragraph. A victim suffers harm, whether physical or mental, emotional suffering and economic loss. More generally, victims are denied fundamental human rights through acts that violate criminal laws, both international and domestic.

Finally, *adequate redress* is the receipt of financial reparations from the perpetrator of a crime to the victim. Reparations are necessary because the crime caused the victim harm or loss.

The next section will provide background context for this research.

---

<sup>2</sup> United Nations Convention Against Torture (adopted 10 December 1984, entered into force 26 June 1987) UNTS 1465 (UNCAT), Art 1(1).

## **SECTION 3: BACKGROUND**

### **3.1. *Human Rights Violations in Cameroon***

There have been protests in Cameroon's Anglophone regions since 2016 that have been predominantly led by English-speaking lawyers, students, and teachers. These scholars allege that they have been unsatisfactorily under-represented and marginalised by the central government.<sup>3</sup> The government security forces responded by killing civilians, torching villages, and using torture and incommunicado detention. Armed separatists have also committed similarly violent acts.<sup>4</sup> In 2019, Human Rights Watch (HRW) indicated that over 3,000 civilians and hundreds of security forces personnel had been killed in the Anglophone regions since the crisis started. Additionally, HRW estimates that the ongoing conflict between government forces and the Islamist armed group Boko Haram has killed thousands of Cameroonians and displaced over 270,000 since 2014.

International human rights organisations such as Amnesty International and HRW have condemned the Cameroonian Government's involvement in the violence. Human Rights Watch indicates that the Cameroonian authorities have 'cracked down on the political opposition, violently broke up peaceful protests, and arrested hundreds of opposition party leaders, members, and supporters'.<sup>5</sup> Victims are often taken to illegal detention facilities to be tortured, the most notorious one being the State Defense Secretariat (Secretariat d'état a la defense, "SED").<sup>6</sup>

At the SED there have been allegations of gendarmes and other security forces severely beating and using torture techniques to extract confessions from detainees suspected of ties to armed separatist groups. Amnesty International reported that in 2019 there were 101 documented individual cases of torture in undisclosed locations.<sup>7</sup> Of these 101 victims, 32 alleged that they had witnessed the deaths of other inmates following torture.<sup>8</sup> The Government has claimed that it conducts private investigations into allegations of crimes committed by security forces and does not publish findings publicly to avoid

---

<sup>3</sup> Human Rights Watch 'World Report 2019: Cameroon' [2020] <<https://www.hrw.org/world-report/2020/country-chapters/cameroon#03d283>> accessed 29 November 2020.

<sup>4</sup> Human Rights Watch (n 2).

<sup>5</sup> Human Rights Watch (n 2).

<sup>6</sup> Human Rights Watch 'Cameroon: Detainees Tortured. Abuse, Incommunicado Detention at Yaoundé Prison; Enforced Disappearances' [2019] <<https://www.hrw.org/news/2019/08/20/cameroon-detainees-tortured>> accessed 1 December 2020.

<sup>7</sup> Amnesty International, 'Secret Torture Chambers in Cameroon' <<https://www.amnesty.org/en/latest/campaigns/2017/07/cameroon-torture-chambers/>> accessed 1 December 2020.

<sup>8</sup> *ibid.*

endangering the morale of government troops.<sup>9</sup> However, the Advocates for Human Rights note that this lack of transparency seemingly ‘creates a climate of impunity and fuels further human rights violations, including the arbitrary detention and torture of Anglophones’.<sup>10</sup> Overall, the situation in Cameroon is increasingly hostile and human rights violations are pervasive.

### **3.2. Human Rights Bodies**

#### **3.2.1. The African Commission on Human and Peoples’ Rights**

The African Commission on Human and Peoples’ Rights (ACHPR) is one of the main independent institutions of the African Union.<sup>11</sup> It was established by Article 30 of the African [Banjul] Charter on Human and Peoples’ Rights (African Charter) in November 1987 and has its headquarters in Banjul, The Gambia.<sup>12</sup> It was first adopted by the Organisation of African Unity (OAU) and has been ratified by all African Union (AU) Member States; as of 2020 Burundi and Morocco are the only African States which have not ratified the ACHPR. The ACHPR’s operations are governed by the African Charter and its Rules of Procedure.<sup>13</sup>

As stipulated by the African Charter, the ACHPR is responsible for promoting and protecting human and peoples’ rights in Africa.<sup>14</sup> The ACHPR functions in four main areas, namely: interpreting the African Charter, promoting human rights, protecting human rights, and performing other tasks as instructed by the AU Assembly.<sup>15</sup> Over the years, the ACHPR has considered cases most commonly concerning the right to freedom of expression, association and assembly, and those involving the unlawful prosecution of journalists, lawyers, political actors and human rights activists. The ACHPR includes requirements for state parties to protect human rights, protect families and guarantee the independence of the judiciary.

---

<sup>9</sup> The Advocates for Human Rights ‘Cameroon’s Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, submission to the 70th Session of the Committee against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, p. 3 <[https://www.theadvocatesforhumanrights.org/uploads/ahr\\_loi\\_cameroon\\_report\\_on\\_anglophone\\_crisis\\_final.pdf](https://www.theadvocatesforhumanrights.org/uploads/ahr_loi_cameroon_report_on_anglophone_crisis_final.pdf)> accessed 4 December 2020.

<sup>10</sup> *ibid*

<sup>11</sup> International Justice Resource Centre, ‘Advocacy before the African Human Rights System: A Manual for Attorneys and Advocates’ [2016] p 10. <<https://ijrCentre.org/wp-content/uploads/2017/11/2.-African-Human-Rights-System-Manual.pdf>> accessed 8 March 2021.

<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

<sup>14</sup> African (Banjul) Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986), OAU Doc. CAB/LEG/67/3 rev 5, 21 ILM 58, Arts 30 and 45. <<http://www.achpr.org/instruments/achpr>> accessed 25 September 2020. Hereinafter the African Charter.

<sup>15</sup> International Justice Resource Centre (n 11) p11.

The ACHPR **protects** human rights by operating an individual complaints system, examining State reports<sup>16</sup> (which it uses to monitor compliance with the African Charter), and conducting fact-finding missions in Member States. Due to the individual complaints system, the ACHPR can receive communications from States, individuals and non-governmental organisations (NGOs) on alleged human rights abuses.<sup>17</sup> In such cases, the Commission may issue a provisional measure if the threat of harm is sufficiently urgent.<sup>18</sup> The ACHPR can also establish special mechanisms to **promote** human rights.<sup>19</sup> These special mechanisms include special rapporteurs, committees, and working groups, which have a specific mandate.<sup>20</sup>

### 3.2.2. The Committee for the Prevention of Torture in Africa

The Committee for the Prevention of Torture in Africa (CPTA) is one of the special mechanisms and was established in 2002 during the ACHPR's 32nd Ordinary Session. The CPTA was established to promote the implementation of the Robben Island Guidelines (RIGs) which elaborated on the prohibition of torture, cruel, inhuman, or degrading treatment in Article 5 and the right of liberty and security of person in Article 6 of the African Charter.

The RIGs are a form of soft law which call upon States to take action to prevent torture and other cruel, inhuman or degrading treatment and punishment, and prosecute any perpetrators. States are encouraged to coordinate national laws with ratified regional and international treaties, to safeguard those deprived of their right to liberty and security and implement monitoring mechanisms. The guidelines advise States to support NGOs and other members of civil society to raise awareness. They declare that victims of torture and Human Rights Defenders (HRDs) specifically should receive protection.

In cases of article 5 violations, the CPTA sends letters of appeals to State Parties requesting them to provide clarification, reiterates the State's obligations under the African Charter, and requests States to take specific remedial measures.<sup>21</sup> According to Resolution ACHPR/Res.61 (XXXII) 02, the CPTA's mandate includes:<sup>22</sup>

3. organising, with the support of interested partners, seminars to disseminate the RIGs to national and regional stakeholders;

---

<sup>16</sup> The African Charter, Art 62.

<sup>17</sup> International Justice Resource Centre (n 11).

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

<sup>21</sup> The African Commission Website/ Special Mechanisms/ Committee for the Prevention of torture in Africa - <https://www.achpr.org/specialmechanisms/detailmech?id=7>.

<sup>22</sup> The African Commission Website/ Special Mechanisms/ Committee for the Prevention of torture in Africa - <https://www.achpr.org/specialmechanisms/detailmech?id=7> accessed 8 March 2021.

4. developing and proposing to the ACHPR strategies to promote and implement the RIGs at the national and regional levels;
5. promoting and facilitating the implementation of the RIGs within State Parties; and
6. making a progress report to the ACHPR at each Ordinary Session.

Overall, the CPTA is overseen by the ACHPR and its work supports the ACHPR's mandate to promote and protect human rights.

### **3.3. Human Rights Bodies' Responses to the Situation in Cameroon**

#### 3.3.1. The African Commission on Human and Peoples' Rights' response

Since 2016 when the violence initiated, the ACHPR has addressed the ongoing violence in the Anglophone region.<sup>23</sup> In December 2016, an ACHPR press release described the protests as a cause by “discontented Anglophone” persons in the English speaking Cameroon who were “legitimately and peacefully seeking a halt to: the gradual, but systematic destruction and obliteration of the Common Law Legal System and the Anglo-Saxon System of Education”.<sup>24</sup> Further, in 2018 the ACHPR passed two resolutions concerning the situation in Cameroon. Resolution 395 “condemn[ed] the various human rights violations committed” in Cameroon since October 2016 and recalled the right of Cameroonian citizens to be treated equally.<sup>25</sup> As such, the ACHPR decided to undertake a general human rights promotion mission to Cameroon. Moreover, Resolution 405 called on the Cameroonian authorities to “increase efforts towards finding a speedy solution to the Anglophone crisis” to restore peace and stability in the region.<sup>26</sup>

In a December 2019 press release, the ACHPR restated its concerns about the ongoing violence and reiterated its request to conduct a visit to Cameroon to assess the situation

---

<sup>23</sup> Press Release on the Human Rights Situation in Cameroon Following strike actions of Lawyers, Teachers and Civil Society [13 December 2016] <<https://www.achpr.org/pressrelease/detail?id=103>>; Press Release on the human rights situation in Cameroon [29 January 2018] <<https://www.achpr.org/pressrelease/detail?id=63>>; Press Statement on Letter of Concern Issued on Human Rights Issues Arising from the Violent Crisis in the Republic of Cameroon [14 November 2019] <<https://www.achpr.org/pressrelease/detail?id=457>> all accessed 22 January 2021.

<sup>24</sup> Press Release on the Human Rights Situation in Cameroon Following strike actions of Lawyers, Teachers and Civil Society [13 December 2016] <<https://www.achpr.org/pressrelease/detail?id=103>> accessed 22 January 2021.

<sup>25</sup> The African Commission ‘Resolution on the Human Rights Situation in the Republic of Cameroon’ ACHPR/Res. 395 (LXII) [2018] <<https://www.achpr.org/sessions/resolutions?id=404>> accessed 19 January 2021.

<sup>26</sup> The African Commission ‘Resolution on the Continuing Human Rights Violations in the Republic of Cameroon’ ACHPR/Res. 405 (LXIII) [2018] <<https://www.achpr.org/sessions/resolutions?id=425>> accessed 19 January 2021.

more thoroughly as a means to bring about a peaceful resolution.<sup>27</sup> In its most recent resolution concerning Cameroon, the ACHPR urged Cameroon to “establish mechanisms for peace and reconciliation by addressing the historical causes of the crisis, including systemic discrimination against the English-speaking minority”.<sup>28</sup> Additionally, the ACHPR considered the Combined 4th-6th Period Report of Cameroon at the 67th Ordinary Session. The report mentioned torture allegations and suggested that some institutional changes had been implemented to combat the culture of impunity regarding torture violations.<sup>29</sup> However, Honourable Commissioner Solomon Ayele Dersso (the Chairperson of the ACHPR) urged Cameroon to address the ACHPR’s observations “including the urgent need [to] resol[ve] the conflict in the Anglophone regions” in his closing statement,<sup>30</sup> signalling that there is still progress to be made in Cameroon to ensure the effective protection of human rights violations.

### 3.3.2. The Committee for the Prevention of Torture in Africa’s response

The CPTA has similarly addressed the escalating situation in Cameroon. In 2017, its 60th Intersession report condemned the “excessive use of force by security personnel” against protesters in the English-speaking regions which had already resulted in some deaths and injuries by then.<sup>31</sup> Similarly, the 64th Intersession report highlighted the “extrajudicial killings, abductions, armed confrontations” in the English-speaking regions of Cameroon.<sup>32</sup> Significantly, the CPTA referenced some NGO reports which highlighted that the Cameroonian government forces are “responsible for killings, the excessive use of force, burning down of houses, arbitrary detentions and torture”.<sup>33</sup> Most recently, in its 66th Intersession report, the CPTA expressed concern about “reports of a pattern of unlawful killings in the Anglophone regions”.<sup>34</sup>

---

<sup>27</sup> Press statement on Letter of Concern issued on human rights issues arising from the violent crisis in the Republic of Cameroon [14 November 2019] <<https://www.achpr.org/pressrelease/detail?id=457>> accessed 22 January 2021.

<sup>28</sup> The African Commission ‘Resolution on the Deterioration of the Human Rights Situation in Cameroon during the Covid-19 Period’ ACHPR/Res. 442 (LXVI) [2020] <<https://www.achpr.org/sessions/resolutions?id=473>> accessed 19 January 2021.

<sup>29</sup> The African Commission ‘Cameroon: 4th - 6th Periodic Report, 2015 - 2019’ <<https://www.achpr.org/states/statereport?id=130>> accessed 19 January 2021.

<sup>30</sup> The African Commission, Closing Ceremony of the 67th Ordinary Session ‘Closing Statement of the Chairperson of the African Commission on Human and Peoples’ Rights, Honourable Commissioner Solomon Ayele Dersso’ [3 December 2020] <<https://www.achpr.org/sessions/statements?id=140>> accessed 20 January 2021.

<sup>31</sup> The African Commission ‘Committee for the Prevention of Torture in Africa 60th Intersession Report’ [May 2017] <<https://www.achpr.org/sessions/intersession?id=271>> accessed 22 January 2021.

<sup>32</sup> The African Commission ‘Committee for the Prevention of Torture in Africa 64th Intersession Report’ [May 2019] <<https://www.achpr.org/sessions/intersession?id=317>> accessed 22 January 2021

<sup>33</sup> The African Commission (n 29).

<sup>34</sup> The African Commission ‘Committee for the Prevention of Torture in Africa 66th Intersession Report’ [August 2020] <<https://www.achpr.org/sessions/intersession?id=339>> accessed 22 January 2021.

04/2021

Overall, the ACHPR and CPTA's steady observance of the developments of the situation in Cameroon is promising. This report hopes to contribute a useful resource for both institutions to work towards an effective resolution and halt to the torture violations in Cameroon.



## **SECTION 4: TORTURE ANALYSIS**

### **4.1. General Overview**

Article 1(1) of the United Nations Convention Against Torture (CAT) outlines the clearest definition of torture, stating that:

*“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’<sup>35</sup>*

#### 4.1.1. Torture in the International Human Rights Treaties

A key feature of the human rights treaties’ statements on torture is that they perceive it as inexcusable. Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 7 of the ICCPR state that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*<sup>36</sup> Although the declaration is non-binding, it reflects the UN’s perception of torture as intrinsically wrong. This is reflected by Article 2(2) of CAT, which states that *‘no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.’*<sup>37</sup>

#### 4.1.2. Torture in African Human Rights Treaties

Article 5 of The African Charter on Human and Peoples’ Rights (ACPHR) states 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,”* and thus prohibits torture as a form of exploitation and degradation of man.<sup>38</sup>

Echoing the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child make further statements on torture. Article

---

<sup>35</sup> United Nations Convention Against Torture (adopted 10 December 1984, entered into force 26 June 1987) UNTS 1465 (UNCAT), Art 1(1).

<sup>36</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), Art 5.

<sup>37</sup> United Nations Convention Against Torture, Art 2(2).

<sup>38</sup> African Charter on Human and Peoples’ Rights, Art 5.

04/2021

16(1) declares that State parties to the Charter should take “*legislative, administrative, social and educational measures to protect the child from all forms of torture*”.<sup>39</sup> This places a responsibility on Cameroon and other State parties to take preventative measures against the torture of children. These measures should include procedures for establishing monitoring units in order to provide necessary support for the child. They should include measures for “*reporting referral investigation, treatment, and follow-up of instance of child abuse and neglect*.”<sup>40</sup> Thus, Cameroon has both preventative and reactionary responsibilities in cases of the torture of children.

Moreover, Article 17(2)(a) of the African Charter on the Rights and Welfare of the Child demand that no child who is detained or imprisoned is subject to torture, inhuman or degrading treatment or punishment.<sup>41</sup> This serves as a reminder for those in charge of places of detention that torture is inexcusable, towards either children or adults.

#### 4.1.3. Cameroon’s Ratification of the Relevant Treaties on Torture

Cameroon ratified the ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1984, and the CAT in 1986. It ratified the UNCRC in 1993.<sup>42</sup> Thus, it is obliged to act in accordance with these treaties in regard to their prohibitions on torture.

Additionally, Cameroon ratified the African Charter on Human and Peoples’ Rights in 1989, and the African Charter on the Rights and Welfare of the Child in 1997.<sup>43</sup>

However, it is yet to ratify the CAT optional protocol (OPCAT), despite signing it in 2009.<sup>44</sup> The CAT-OP is different to CAT in that it is written in light of the UN being convinced that further measures are necessary to achieve the original convention. Practically, it is important in establishing the requirement for non-judicial preventive means, such as “*regular visits from independent international and national bodies to places where people are deprived of their liberty*.”<sup>45</sup> By not ratifying the protocol, Cameroon has not agreed to the establishment of such preventive means.

---

<sup>39</sup> African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999).

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> United Nations Human Rights Treaty Bodies, UN Treaty Body Database, <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=30&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=30&Lang=EN)> Accessed 05/02/2021.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Optional Protocol of the Prevention Against Torture (adopted 18 December 2002, entered into force 22 June 2006), UNGA A/RES/57/199, Art 1.

## 4.2. Detailed Analysis

The following elements are of particular relevance to the crime of torture. We have split them up as such in this section to allow for a detailed analysis of the courts and tribunals' interpretations of each element.

### 4.2.1. 'severe pain or suffering'

Overall, the test of 'severity' is a standard that depends on the context of each individual case. The European Court of Human Rights (ECtHR) has applied its 'living instrument' doctrine to assessments of this test. The 'living instrument' doctrine mandates that the European Convention (ECHR) should be interpreted in light of the present-day conditions.<sup>46</sup> Thus, in *Selmouni v France*, the court intimated that acts previously considered "inhuman and degrading treatment" may be reclassified as torture in the future.<sup>47</sup> This was subsequently affirmed in *Dikme* which suggests that the 'severity' threshold is constantly evolving and can be modified by subsequent courts.<sup>48</sup>

Notwithstanding this, the ECtHR and the International Criminal Tribunal for the former Yugoslavia (ICTY) have contributed extensively to the development of the 'severity' threshold. The ECHR has iterated that 'ill-treatment must attain a **minimum level of severity**'<sup>49</sup> to fall within the scope of Article 3 of the ECHR. Furthermore, the assessment of this minimum level of severity is relative. The assessment is dependent on 'all circumstances of the case' including factors such as 'duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health of the victim'.<sup>50</sup> These factors have been reiterated by the ECHR,<sup>51</sup> United Nations Human Rights Committee (UNHRC),<sup>52</sup> and the ICTY.<sup>53</sup> Since the assessment of the factors depends on 'all circumstances', the stated factors are not exhaustive and are only indicative examples.

<sup>46</sup> *Tyrer v The United Kingdom*, 5856/72, Council of Europe: European Court of Human Rights, 15 March 1978.

<sup>47</sup> *Selmouni v France* [1999] ECHR 66, para 101.

<sup>48</sup> *Dikme v Turkey* App no 20869/92 (ECtHR, 11 July 2000) para 92.

<sup>49</sup> *Ireland v UK* [1978] ECHR 1, para 162.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Tekin v Turkey* App no 22496/93 (ECtHR, 9 June 1998), para 51; *Labita v Italy* App no 26772/95 (ECtHR, 6 April 2000), para 120; *Keenan v UK* App no 27229/95 (ECtHR, 3 April 2001), para 109; *Soering v UK* [1989] ECHR 14, para 100; *Selmouni v France* [1999] ECHR 66 para 100; *Dikme v Turkey* App no 20869/92 (ECtHR, 11 July 2000) para 96; *Akkoc v Turkey* App No 22947/93 and 22948/93 (ECtHR, 10 October 2000) para 114; *Ilhan v Turkey* [2000] ECHR 354, para 84.

<sup>52</sup> UN Human Rights Committee, *Vuolanne v Finland* (2 May 1989), UN Doc. CCPR/C/35/D/265/1987, para 9.2.

<sup>53</sup> *Prosecutor v Kvočka* (Appeal Judgement) ICTY-98-30/1-A (28 February 2005), para 143; *Prosecutor v Brdanin* (Trial Judgement) ICTY-99-36, para 484.

04/2021

To illustrate, the ICTY has found that rape<sup>54</sup> and sexual violence<sup>55</sup> can constitute torture, which has contributed to the gradual expansion of the definition of torture.

Additionally the UNHRC has stated that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7 of the ICCPR.<sup>56</sup> Furthermore, the nature and context of the treatment or punishment and the manner and method of its execution has been taken into account at the ECtHR,<sup>57</sup> UNHRC,<sup>58</sup> and ICTY.<sup>59</sup> The *Soering* case summarised these additional factors.<sup>60</sup> Moreover, the Special Rapporteur's 2005 report on torture and other cruel, inhuman or degrading treatment or punishment outlined that the purpose of the conduct and powerlessness of the victim are the decisive criteria when distinguishing torture from cruel, inhuman or degrading treatment.<sup>61</sup> The ICTY has reiterated the vulnerability of the victim<sup>62</sup> or inferiority<sup>63</sup> as a factor, and similarly the UNHRC has placed some emphasis on the victim's vulnerability in evaluating the severity threshold.<sup>64</sup>

Moreover, the ECtHR has intimated that suffering and humiliation has to extend beyond the inevitable element of suffering or humiliation connected to legitimate forms of treatment or punishment, including measures depriving a person of their liberty.<sup>65</sup>

#### 4.2.2. 'whether physical or mental'

Many human rights bodies have asserted that a physical element is not a prerequisite for establishing torture or inhuman treatment. In the *Soering* case the ECtHR found that a suspected criminal could not be extradited to the United States due to the alleged

<sup>54</sup> *Prosecutor v Zdravko Mucic (aka 'Pavo'), Hazim Delic, Esad Landzo (aka 'Zenga') and Zejnil Delalic* (Trial Judgement) IT-96-21-T (16 November 1998) p10.

<sup>55</sup> *Čelebići Case, Prosecutor v Zejnil Delalić, Zdravko Mucic (aka 'Pavo'), Hazim Delic and Esad Landžo (aka 'Zenga')* (Appeal Judgment) IT-96-21-A (20 February 2001).

<sup>56</sup> UN Human Rights Committee, 'CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel Inhuman or Degrading Treatment or Punishment)' (10 March 1992), UN Doc. A/44/40, para 6.

<sup>57</sup> *Soering v UK* [1989] ECHR 14, para 100.

<sup>58</sup> UN Human Rights Committee, *Vuolanne v Finland* (2 May 1989), UN Doc. CCPR/C/35/D/265/1987, para 9.2.

<sup>59</sup> *Prosecutor v Milorad Krnojelac* (Trial Judgement) ICTY-97-25-T (15 March 2002), para 182; *Prosecutor v Brdanin* (Judgment) ICTY-99-36, para 484.

<sup>60</sup> *Soering v UK* [1989] ECHR 14, para 100.

<sup>61</sup> UNHRC, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak' (23 December 2005), UN Doc. E/CN.4/2006/6, para 39.

<sup>62</sup> *Prosecutor v Tihomir Blaskic* (Trial Judgement) ICTY-95-14-T (18 July 1997), para 1442

<sup>63</sup> *Prosecutor v Milorad Krnojelac* (Appeal Judgement) ICTY-97-25-T (15 March 2002), para 182;

*Prosecutor v Brdanin* (Judgment) ICTY-99-36, para 484.

<sup>64</sup> UN Committee Against Torture (CAT), *Hajrizi Dzemail et al v Yugoslavia* (2 December 2002), UN Doc CAT/C/29/D/161/2000, para 9.2.

<sup>65</sup> ECtHR, *Wainwright v United Kingdom*, no 12350/04, ECHR 2006-X, Judgment of 26 September 2006, para 41.

psychological harm that he would suffer while on death row. Furthermore, the African Commission has stated that acts purposed to humiliate individuals and cause psychological suffering can constitute torture and also violate the right to human dignity.<sup>66</sup> Comparatively, the Inter-American Court has also determined that torture is capable of being inflicted through not only physical violence but also ‘through acts that produce severe physical, psychological or moral suffering in the victim’.<sup>67</sup> Overall, it has been solidified that both physical and mental acts constitute torture provided that they meet the severity test within the circumstances of each individual case.

#### 4.2.3. ‘for such purposes as obtaining information, obtaining confession, punishment or discrimination’

Once an act has been established as an act of torture, the element of the act constituting the purpose for the act is straight forward to establish. The case law is clear that there is no legitimate reason or purpose for an act of torture. The Elements of Crime accompanying the Rome Statute holds that no specific purpose needs to be established for the crime of torture.<sup>68</sup> Hence, obtaining vital information or punishing the most heinous crime are not legitimate reasons.

##### 4.2.3.1. Interpretation by International and Regional Bodies and Treaties

The Committee Against Torture affirms this in General Comment No. 4 stating that Article 1 is absolute.<sup>69</sup> There can be no derogation, even in extreme circumstances such as war, internal political instability, or other public emergencies.<sup>70</sup> The same is true for any form of ill-treatment.<sup>71</sup> The Human Rights Council (HRC) supports this. Article 7 of the International Covenant on Civil and Political Rights prohibits torture and ill-treatment, and no limitation or derogation is allowed and that no extenuating circumstances can justify torture.<sup>72</sup>

---

<sup>66</sup> ACommHPR, *Malawi African Association et al v Mauritania*, Communication Nos 54/91, 61/91, 96/93, 98/93, 164/97, 196/97, 210/98, Merits Decision, 27th Ordinary Session (2000); International Justice Resource Centre ‘Thematic Research Guide: Torture’ (IJRC Website) <<https://ijrcentre.org/thematic-research-guides/torture/>> accessed 15 February 2021.

<sup>67</sup> I/A Court H.R., *Cantoral-Benavides v Peru*. Merits. Judgment of 18 August 2000. Series C no 69, para 100.

<sup>68</sup> Elements of Crime to the Rome Statute to the International Criminal Court 1998, footnote 14.

<sup>69</sup> General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para 8.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> CCPR General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), para 3.

Regional treaties show a similar zero-tolerance policy towards torture, such as the European Convention on Human Rights (ECHR),<sup>73</sup> the Inter-American Charter on Human Rights,<sup>74</sup> and the African Charter on Peoples' and Human Rights.<sup>75</sup> Most notably, international humanitarian law and the laws of war include an absolute prohibition of torture and ill-treatment.<sup>76</sup> This provides explicit protection for prisoners of war, combatants, and civilians in the most extreme circumstances.

Hence, the widespread view is that there can be no limitation or derogation to the prohibition, nor any extenuating circumstances justifying an act of torture. In practice, this means those accused of torture never argue that it was justified; they argue about whether the act constitutes torture at all. Because of the non-derogable nature of the prohibition of torture it has led to the principle attaining a *jus cogens* status. This is the highest status any international law norm can have and in short means that there is a universal consensus that there should be a prohibition of torture.

#### 4.2.3.2. Case Law

European cases, such as *Selmouni v. France*<sup>77</sup> and *Ireland v. United Kingdom*,<sup>78</sup> does not refer to the purpose of the torture as the ECHR prohibits the act regardless. In *Ireland v. United Kingdom*, it is clarify that this prohibition extends to cases involving torture and public danger.<sup>79</sup> In the case of *Ali v Tunisia*, the Committee Against Torture explained the purpose in the facts but gave it no weight in the decision; medical records and other factors showing the act of torture was committed the focus of the discussion and decision-making process.<sup>80</sup> This shows that even though the CAT imposes an element to the prohibition of torture that requires a purpose for the act, it is a concept that is straightforward enough. The discussions focus on whether the act counts as torture, and if this is established there are no justifications for it which warrants a discussion.

#### 4.2.3.3. Cameroon

---

<sup>73</sup> European Convention on Human Rights 1950, Art 3.

<sup>74</sup> Inter-American Convention on Human Rights, Art 5.

<sup>75</sup> African Charter on Peoples' and Human Rights, Art 5.

<sup>76</sup> Torture is prohibited by Article 3 common to the four Geneva Conventions, Art 12 of the First and Second Conventions, Arts 17 and 87 of the Third Convention, Art 32 of the Fourth Convention, Article 75 (2 a & e) of Additional Protocol I and Art 4 (2 a & h) of Additional Protocol II. In international armed conflict, torture constitutes a grave breach under Arts 50, 51, 130 and 147 respectively of these Conventions. Under Art 85 of Additional Protocol I, these breaches constitute war crimes. In non-international armed conflicts, they are considered serious violations.

See: <https://www.icrc.org/en/doc/resources/documents/faq/torture-law-2011-06-24.htm>.

<sup>77</sup> *Selmouni v France* , (00025803/94), [1999] ECHR (July 28, 1999).

<sup>78</sup> *Ireland v United Kingdom*, (5310/71) [1978] ECHR 1 (18 January 1978).

<sup>79</sup> *ibid*, para 95.

<sup>80</sup> *Ali v Tunisia*, CAT/C/41/D/291/2006 (26 November 2008).

Decisions of international tribunals are only binding on the state parties to the individual cases. Cameroon has been the subject of a number of cases to the HRC where the Committee (later the Council) focused on the act of torture as opposed to its purpose. In *Titiahonjo v Cameroon*, no purpose was mentioned when discussing an Article 7 violation.<sup>81</sup> The same is true for *Akwanga v Cameroon*<sup>82</sup> and *Andela v Cameroon*.<sup>83</sup> Despite not mentioning the need for a purpose, the HRC's decisions binds Cameroon in relation to acts of torture. Failing to comply could result in the HRC referring the situation to the United Nations Security Council (UNSC) which has the power to take concrete action to ensure compliance.<sup>84</sup> This mainly consists of economic sanctions but can also extend to the use of force in very severe and extreme cases where there is a threat to peace.<sup>85</sup>

4.2.4. 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'

Article 1 (1) of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that pain and suffering can constitute 'torture' when it is "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>86</sup> There is conflict as to whether mere presence of a public official can constitute inflicting 'torture'. The Convention Against Torture Regulation has ruled that prior awareness of the activity constitutes 'acquiescence' in an act of torture, and States' noncompliance does not necessarily constitute acquiescence.<sup>87</sup> This is conflicting with findings by Courts in the US, who determined that "actual knowledge and 'wilful blindness' constitute 'acquiescence'".<sup>88</sup> For example, *Zheng v Ashcroft*, involving the alleged deportation of a Chinese citizen, that his return to China would result in the acquiescence of Chinese officials in his torture and subsequent death, qualified Li Chen Zheng for relief under Article 1 (1) of the Convention.<sup>89</sup>

---

<sup>81</sup> *Titiahonjo v Cameroon*, CCPR/C/91/D/1186/2003 (13 November 2007), paras 6.3 and 6.4. Article 7 of the ICCPR (Prohibition of Torture).

<sup>82</sup> *Akwanga v Cameroon*, CCPR/C/121/D/2764/2016 (19 December 2017), paras 7.2 and 7.3.

<sup>83</sup> *Andela v Cameroon*, CCPR/C/101/D/1813/2008 (19 May 2011), paras 5.1 and 6.10.

<sup>84</sup> Charter of the United Nations, Articles 39-43, and 44-49.

<sup>85</sup> *ibid*

<sup>86</sup> United Nations Convention Against Torture, Art 1(1).

<sup>87</sup> Weissbrodt, D., & Heilman, C. (2011). Defining Torture and Cruel, Inhuman, and Degrading Treatment. *Law & Ineq.*, 29, 392.

<sup>88</sup> *Ibid.*, 366.

<sup>89</sup> *Zheng v Ashcroft*, 332 F.3d 1186 (9th Cir. 2003).

The *Prosecutor v Jean-Paul Akeyesu* case<sup>90</sup> ruled that torture can be considered a crime against humanity pursuant to Article 3 (f) of the Statute<sup>91</sup> and in accordance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment.<sup>92</sup> The Tribunal found that multiple acts committed by Akeyesu constitute torture as they were at his instigation, or with his consent or acquiescence.<sup>93</sup>

Implementation of the Convention against Torture in Cameroon has, based on article 1 (1), ensured “an order from a superior officer or a public authority may not be invoked as a justification of torture”.<sup>94</sup> Incorporation into domestic law (Criminal Code Annex 1) has been consistent with the regulations outlined in the Convention.<sup>95</sup>

However, there is significant evidence to suggest implementation of Article 1 (1) has not been sufficient. Human Rights Watch<sup>96</sup> and Amnesty International<sup>97</sup> have detailed the endemic nature of torture by officials in Cameroon. The authorities have tortured, and detained people incommunicado and security forces have carried out acts of torture at the SED (Secrétariat d’Etat à la défense).<sup>98</sup> Instances of torture at the hands of security forces, whilst not condoned by the Cameroonian Government, they have made no attempt to show progress in investigation or punishment. Therefore, the Republic of Cameroon has not upheld its obligations under the Convention.

#### 4.2.5. Excluding ‘pain or suffering arising only from, inherent in or incidental to lawful sanctions’

Acts which cause pain and suffering that arise from or are inherent to lawful sanctions is excluded from the definition of torture. This is qualified by Article 1(2), which states that further international instruments or national legislations may widen this restriction. Overall, the general state practice implied that lawful sanctions refer to acts that are legal both under national and international law. Importantly, the OPCAT further restricts what can constitute lawful sanctions. This outlaws applying sanctions to persons for communicating issues related to torture to the Subcommittee on Prevention or to national

<sup>90</sup> *Prosecutor v Jean-Paul Akeyesu* (2001) Case No ICTR-96-4-T.

<sup>91</sup> The International Tribunal for Rwanda, Art 3 (f).

<sup>92</sup> United Nations Convention Against Torture, Art 1(1).

<sup>93</sup> *Prosecutor v Jean-Paul Akeyesu* (2001) Case No ICTR-96-4-T.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> Human Rights Watch, 2019, Cameroon: Routine Torture, Incommunicado Detention.

<https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention>

<sup>97</sup> Amnesty International, 2019, Cameroon 2019

<https://www.amnesty.org/en/countries/africa/cameroon/report-cameroon/> accessed 18 March 2021.

<sup>98</sup> Human Rights Watch, 2019, Cameroon: Routine Torture, Incommunicado Detention.

<https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention> accessed 18 March 2021.



preventive mechanisms.<sup>99</sup> This ensures that States do not erect arbitrary laws under the guise of 'lawful sanctions' to punish individuals for communicating with the international committees about human rights abuses in their country.

### 4.3. Summary

Overall, the CAT Article 1 provides the clearest definition of what constitutes torture.

Whether or not an act is deemed severe enough to amount to torture depends on the context of each case. However, multiple decisions of the ECtHR, IACHR, ICTY and UNHRC have established that certain factors contribute to the assessment of an act's severity.

These include:

- Duration;
- Physical and mental effects;
- Victims' age;
- Victim's sex;
- Victim's state of health;
- Victims' powerlessness and/or vulnerability;
- The nature and context of treatment; and
- The manner and execution of treatment.

Notwithstanding these stated factors, it is essential to note that the concept of **severity** is continually evolving. Ultimately, in seeking to successfully establish a complaint of torture individuals and organisations must highlight and stress the overall circumstances as the decisionmaker will base their assessment of torture on the totality of contextual factors.

If torture is found to have occurred, the **purpose** is fairly straightforward to establish. There is absolutely no derogation or limitation allowed to the prohibition. There are no defences or extenuating circumstances justifying torture under international law.

Moreover, there is no definitive standard for the 'acquiescence' of a public official. While the US courts have held that actual knowledge and wilful blindness both satisfy the test of acquiescence, the Convention Against Torture Regulation has, thus far, confirmed that prior awareness by the official will constitute acquiescence.

---

<sup>99</sup> Optional Protocol of the Prevention Against Torture (adopted 18 December 2002, entered into force 22 June 2006), UNGA A/RES/57/199, Arts 15, 21.

Lastly, although there is little academic discourse on what constitutes ‘lawful sanctions’, it can be taken to mean acts that are legal in national *and* international law due to Article 27 of the Vienna Convention on the Law of Treaties. This article asserts that State parties to a treaty may not justify breaches through their internal (domestic) law. Cameroon ratified the VCLT on 23 October 1991<sup>100</sup> which means that it is bound by this provision.

---

<sup>100</sup> United Nations Treaty Collection, ‘Chapter XXIII, Laws of Treaties: Vienna Convention on the Law of Treaties’ (*United Nations Treaty Collection*)  
<[https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en)> accessed 12 April 2021.

## **SECTION 5: ENGAGING THE COMMISSION AND OTHER HUMAN RIGHTS BODIES**

This section outlines and discusses the process by which victims of torture can bring their cases to the Commission and other human rights bodies to get effective redress for torture violations.

### 5.1. **Standing**

#### 5.1.1. The African Commission on Human and Peoples' Rights (The Commission)

The ability to bring a complaint is determinant on whether the complainant has standing (*locus standi*). The African Charter does not explicitly address standing; however the Commission's approach, which gives access to victims and NGOs, is a very broad one.<sup>101</sup> Any legal or natural person may initiate a communication notwithstanding them not being victims, family members, or persons authorised by them.<sup>102</sup> Additionally, authors do not need to be citizens or residents of a State party to the Charter, nor a resident of, or located in, any AU Member State.<sup>103</sup> The *Haregewoin Gebre-Sellaise & IHRDA v Ethiopia* case affirmed this as the Commission held that the Institute for Human Rights and Development in Africa (IHRDA) could bring a complaint although it was not registered in Ethiopia.<sup>104</sup> Importantly, NGOs do not need to have observer status with the Commission to attain standing to submit a communication.<sup>105</sup>

#### 5.1.2. The Committee for the Prevention of Torture in Africa

As it is a special mechanism, the CPTA does not accept individual complaints or requests for provisional measures.<sup>106</sup> These communications must rather be addressed to the ACHPR.<sup>107</sup> Thus, the relevant rules on standing remain the same as above.

---

<sup>101</sup> ACHPR *Organisation Mondiale contre la Torture (OMCT) v Zaire* Comm No 25/89, para 92; ACHPR *Haregewoin Gebre-Sellassie & IHRDA (on behalf of former Dergue Officials) v Ethiopia* Comm No 301/05, para 105.

<sup>102</sup> ACHPR (n 34).

<sup>103</sup> ACHPR *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v Botswana* Comm No 277/03 10th Extraordinary Session (12 October 2013).

<sup>104</sup> ACHPR *Haregewoin Gebre-Sellassie & IHRDA (on behalf of former Dergue Officials) v Ethiopia* Comm No 301/05, para 64.

<sup>105</sup> Frans Viljoen and Chidi Odinkalu, *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and their Advocates*, Vol 3 (2nd edn, OMCT 2014) 79 <[https://www.omct.org/files/2014/11/22956/v3\\_web\\_african\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v3_web_african_en_omc14.pdf)> accessed 1 December 2020.

<sup>106</sup> International Justice Resource Centre (n 66).

<sup>107</sup> International Justice Resource Centre (n 66).

### 5.1.3. African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (AfCHPR) is a regional human rights tribunal with advisory and contentious jurisdiction over interpretations of the African Charter<sup>108</sup> and whose jurisdiction extends to States who have ratified the Protocol to the Charter.<sup>109</sup> Cameroon has ratified the Protocol and thus accepted the Court's jurisdiction.<sup>110</sup> According to the AfCHPR Protocol, the following entities may raise contentious cases before the Court:<sup>111</sup>

- the African Commission;
- a State party in a case in which it was a Complainant before the Commission;
- a State party in a case in which it was a Respondent before the Commission;
- a State party whose citizen has been a victim of human rights violations; and
- African intergovernmental organisations.

In practice, the ordinary route to the AfCHPR is through the Commission referral procedure, meaning that individual communications are generally submitted to the Commission in the first instance<sup>112</sup> (see procedure and admissibility section below). After deciding the case, the Commission retains the power to forward the case to the AfCHPR under Rule 118(1) of the Commission's Rules of Procedure. In the past, the Commission has referred to the AfCHPR in cases where a State party has failed to comply with the Commission's decision, or those involving serious or large-scale human rights violations.<sup>113</sup>

Additionally, though States may also submit cases to the AfCHPR, they are unlikely to do so to circumvent any potential negative publicity or a negative legally binding decision.

---

<sup>108</sup> International Justice Resource Centre 'African Human Rights System' <[https://ijrCentre.org/regional/african/#African\\_Court\\_on\\_Human\\_and\\_Peoples8217\\_Rights](https://ijrCentre.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights)> accessed 22 January 2021.

<sup>109</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998 OAU/LEG/AFCHPR/PROT (III), <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>> accessed 22 January 2021. Hereinafter the Protocol to the Charter.

<sup>110</sup> African Court on Human and Peoples' Rights Website / Basic Information <<https://www.african-court.org/wpafc/basic-information/>> accessed 22 January 2021

<sup>111</sup> ACHPR Protocol to the Charter, Art 5(1).

<sup>112</sup> Rules of Procedure to the African Charter on Human and Peoples' Rights.

<sup>113</sup> African Court on Human and Peoples' Rights *African Commission on Human and Peoples' Rights v Libya*, App No 004/2011; *African Commission v Libya*, App No 002/2013; *African Commission v Kenya*, App No 006/2012.

The AfCHPR may also receive cases directly from individuals and NGOs who have **observer status** with the African Commission. This re-emphasises the complementary mandates of the AfCHPR and the Commission. Observer status constitutes the formal recognition of individual organisations by the Commission<sup>114</sup> and NGOs with observer status may only submit cases provided that the relevant State has made a **declaration** under Article 34(6) of the Protocol.<sup>115</sup>

The requirements for an applicant NGO to acquire observer status:<sup>116</sup>

- NGO must work in the human rights field
- NGO objectives and activities must align with the principles and objectives in the:
  - a. African Union Constitutive Act,
  - b. African Charter Preamble, and
  - c. Maputo Protocol.
- NGO must provide information on its finances and other documents required in the application process.

The application process to apply for observer status:

- NGO submits an application to the Secretariat of the ACHPR at least three months prior to an ordinary session which includes:
  - a. Letter addressed to the Secretariat requesting observer status;
  - b. List of Board members and other members of the NGO applicant;
  - c. Signed and authenticated constitutive statute of the NGO;
  - d. Certificate of the NGO's legal status granted by the host country;<sup>117</sup>
  - e. Sources of funding;
  - f. Most recent independently audited financial statement;
  - g. Most recent annual activity report;
  - h. Strategic plan approved and signed by the members of the NGO covering its the NGO's objectives, activities, timeline, geographic location of activities, target groups, and strategies for implementation over at least a two-year period
- Application is processed by the Secretariat before consideration by a rapporteur appointed by the Commission's Bureau.

---

<sup>114</sup> International Justice Resource Centre 'Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights' [2018] 8 <<https://ijrCentre.org/wp-content/uploads/2018/10/Civil-Society-Access-ACHPR-2018.pdf>> accessed 22 January 2021

<sup>115</sup> *ibid.* Articles 5(3), 34(6); International Justice Resource Centre (n 66)

<sup>116</sup> International Justice Resource Centre (n 66)

<sup>117</sup> International Justice Resource Centre (n 66) p. 9 - "*While the application requires a certificate of legal status, in practice, the Commission has granted observer status to organisations that are not legally recognised at the national level.*"

This procedure of allowing individuals and NGOs with observer status to submit complaints to the AfCHPR provides the potential of speedy judicial action, which is desirable in torture cases. However, as of January 2021, Cameroon has not made the declaration under Article 34(6) of the Protocol which would grant the AfCHPR jurisdiction even if Cameroonian NGOs had observer status at the Commission.<sup>118</sup>

## 5.2. *Procedure and Admissibility - 5 Stages*

This section discusses the five procedural stages of submitting a communication to the African Commission: submission, registry, seizure, admissibility, and merits. At each stage, the explanation of the Commission's Rules of Procedure is supplemented by case law to suggest promising tactics to submit torture cases to the Commission.

### 5.2.1. Submission of Communication

There are several technical pieces of information that must be included in complaint submissions in order to be considered by the African Commission.<sup>119</sup>

Rule 93 of the African Commission Rules of Procedure states what information is required for admissibility purposes. Initial complaint submissions must include: (1) identity of the victim although anonymity can be requested; (2) identity of the author of the communication - including connection to the victim; (3) State responsible for the alleged violation due to its action, acquiescence, or omission; (4) date, place, time, and further details of the alleged violation of either (A) a right protected by the African Charter or (B) a basic principle of the Constitutive Act of the African Union; (5) steps taken to exhaust domestic remedies, or an indication of the reasons why it was impossible to do so; (6) timeliness: the communication must have been submitted within a reasonable time after domestic remedies were exhausted; (7) non-duplication: an indication of the degree to which the issue has been settled by another international settlement proceeding; (8) whether the victim's life, personal integrity, or health is in imminent danger.

The complaint must be submitted in writing in one of the African Union working languages (Arabic, English, French, and Portuguese) and must be addressed to the Secretary or Chairman of the African Commission. The complainant should request acknowledgement of receipt and keep the ACHPR informed of significant developments (or changes in contact information/representation) in writing. For stylistic considerations, please consult the section on admissibility below.

---

<sup>118</sup> International Justice Resource Centre 'African Human Rights System' <[https://ijrCentre.org/regional/african/#African\\_Court\\_on\\_Human\\_and\\_Peoples8217\\_Rights](https://ijrCentre.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights)> accessed 22 January 2021.

<sup>119</sup> International Justice Resource Centre (n 11) pp 65-68.

The submission should be complete when it is submitted - secondary submissions would allow the state party three months to respond and should be avoided.<sup>120</sup>

#### 5.2.2. Registry

At this stage the Secretariat assigns a file number to the communication, while ensuring that the alleged violating State is party to the African Charter.<sup>121</sup>

#### 5.2.3. Seizure

At this stage, the African Commission determines whether the communication meets the basic requirements and forms a prima facie violation of the African Charter by the State Party. Once the Secretariat confirms that all necessary information has been submitted, the African Commission Working Group on Communications will review the communication and make a decision regarding seizure. Once a communication is seized, the ACHPR informs the state party. This is the first time the State is formally informed of the complaint.<sup>122</sup>

#### 5.2.4. Admissibility

Both parties can present arguments and evidence before an admissibility decision is made. Once the State party makes a submission, the complainant has one month to submit comments in response. The African Commission may hold an oral hearing. Admissibility Decisions are generally final but can be reviewed in cases wherein the complainant submits a written request with new evidence. The complainant has the burden of proof to show they have met all the admissibility requirements. If the Commission is satisfied the requirements are met, the burden of proof shifts to the State to refute each complaint.<sup>123</sup>

Article 56 of the African Charter sets out admissibility requirements and must be satisfied in addition to the basic information required by Rule 93 of the African Commission Rules of Procedure (see “Submission of Complaint” Section above).

Submissions must satisfy the jurisdiction requirement on four bases. (1) jurisdiction *ratione materiae* - subject matter jurisdiction: an alleged violation of a substantive right protected by articles 1 through 26 of the African Charter or in the Constitutive Act of the

---

<sup>120</sup> Viljoen and Odinkalu (n 105) p 75.

<sup>121</sup> International Justice Resource Centre (n 11) p 69.

<sup>122</sup> *ibid*, pp 69-70.

<sup>123</sup> *ibid*, p 79.

African Union. (2) jurisdiction *ratione temporis* - temporal jurisdiction: the alleged violation happened after the State became party to the African Charter (3) jurisdiction *ratione personae* - personal jurisdiction: the alleged violation must be attributable to a State party to the African Charter and the complainant must have standing under the African Charter Articles 47 and 55(1). (4) jurisdiction *ratione loci* - territorial jurisdiction: the alleged violation must have occurred within the State's territory. With regards to territorial jurisdiction, there is a debate as to whether the African Commission has extraterritorial jurisdiction, with cases such as *Democratic Republic of Congo v Burundi, Rwanda, and Uganda* where the Commission noted the respondent Countries violated human rights on territory over which they had "effective control".<sup>124</sup> The effective control test, as established in the Nicaragua case, stipulates less control than the "strict control" test, meaning that while an external territory is not *de facto* part of the state, it is partially reliant on that state. Note that this is still a more stringent requirement than the "overall control" test established by the ICTY or the "effective overall control" test proposed by the European Court of Human Rights.<sup>125</sup>

In addition to jurisdiction requirements, submissions must satisfy two requirements related to presentation. Firstly, the language of the communication must not be insulting as per Article 56(3) of the African Charter. For example, in the case *Ligue Camerounaise des Droits de l'Homme v Cameroon* the Commission declared the complaint inadmissible because of disparaging language. The Commission clarified its position on this matter in *Zimbabwe Lawyers for Human Rights v Zimbabwe*, where "The State was required to show the "detrimental effect" of the statements contained in the communication, or to produce evidence that "the statements were used in bad faith or calculated to poison the mind of the public against the government and its institution.""<sup>126</sup>

The second admissibility requirement relating to presentation stipulates that the complaint cannot be based exclusively on media reports, as per Article 56(4) of the African Charter. The Commission clarified its position in *Sir Dawda K Jawara v The Gambia* where it decided that complaints can rely on media reports to some degree as long as it is not the only focus. This is especially important for cases relating to torture, which may be harder to prove using other sources.<sup>127</sup>

In addition to requirements of jurisdiction and presentation, complaints should demonstrate that local judicial remedies must be exhausted, that is that all the remedies available in the complainant's local jurisdiction were pursued as fully as possible and not

---

<sup>124</sup> International Justice Resource Centre (n 11) p 75.

<sup>125</sup> Stefan Talmon, 'The Responsibility of Outside Powers for Acts of Secessionist Entities' (2009) 58 ICLQ 493.

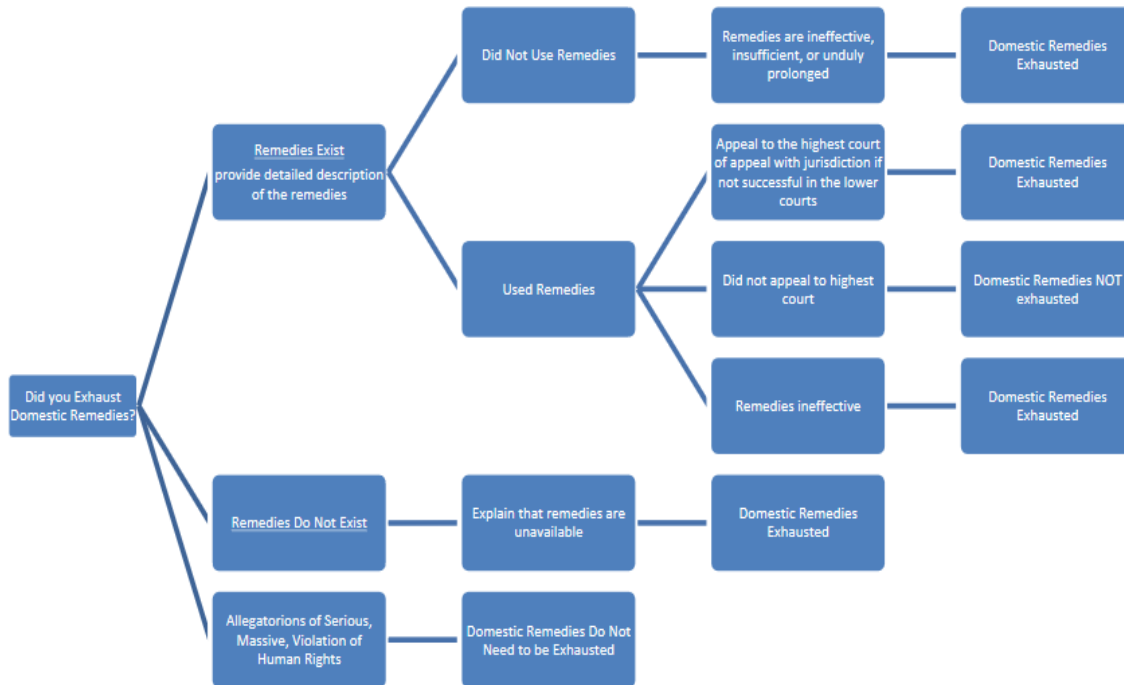
<sup>126</sup> International Justice Resource Centre (n 11) p 74.

<sup>127</sup> Viljoen and Odinkalu (n 105) pp 88-89.



received. However, Article 56(5) sets out four exceptions under which local remedies do not need to be exhausted: (1) if the process is “unduly prolonged”; (2) if remedies are unavailable (3) if remedies are inadequate or insufficient; (4) if remedies are ineffective.<sup>128</sup>

### Exhaustion of Domestic Remedies Flow Chart



**Image 1: Exhaustion of Domestic Remedies Flow Chart**<sup>129</sup>

For admissibility requirements to be met, the alleged violations must have occurred after the ratification of the African Charter by the State in question. However, *Kevin Mgwanga Gunme et al. v Cameroon* showed that the effects of violations themselves constitute violations. That is to say, if the effects of a violation are felt after the entry into force of the Charter, they are admissible.

Under Article 56(6) of the African Charter, complaints must be submitted following a “reasonable period” after the alleged crime. This usually means six months, but the Commission’s interpretation of this article changes over time and appears to be applied increasingly restrictively.<sup>130</sup>

<sup>128</sup> Viljoen and Odinkalu (n 105) p 89.

<sup>129</sup> International Justice Resource Centre (n 11) p 76.

<sup>130</sup> Viljoen and Odinkalu (n 105) p 100.

### 5.2.5. Merits

At this stage, the Commission considers the substantive issues of the case. The complainant has sixty days to submit arguments and evidence, after which the State has sixty days to do the same. If the State submits observations, the complainant has 30 additional days to reply with additional information and arguments.

If the complainant wishes the Commission to hold a hearing, they must request it ninety days before the beginning of the session.

The complainant must meet the burden of proof: giving evidence of allegations or explaining why that evidence cannot be obtained. Next, the burden shifts to the State to refute the allegations. If the State offers no evidence, the Commission considers the allegations as proven, plausible or probable. In cases wherein complainants cannot provide clear evidence of a violation due to the nature of the case (for example, violence in detention) the presumption arises that the person was subjected to ill treatment. Following this, the State has the burden to offer a satisfactory explanation of the injuries or to detail the steps it took to investigate the incident. As per Article 46 of the African Charter, the Commission can “resort to any appropriate method of investigation” including drawing on information from third parties.<sup>131</sup>

After the consideration of the substantive issues, the ACHPR reaches a decision if a violation has occurred. If it has, the ACHPR issues recommendations to the State.

### 5.3. *The Remedies and Reparations for Article 5 Violations*

This section will set out the relevant provisions, documents, and jurisprudence for reparations and remedies for victims of Article 5 violations, looking at both the Commission and the African Court of Justice and Human Rights. Then briefly look at alternative options of seeking reparations through sub-regional justice mechanisms. Lastly it will give an account of how these systems work in practice.

The African Commission on Human and People’s Rights (the Commission) produces decisions that are non-binding on the State Parties to the case. This leads to difficulties in ensuring that its decisions are enforced, and States comply with them. For victims of Article 5 violations - the Prohibition of Torture and Cruel, Inhuman and Degrading Treatment - obtaining individual reparations, such as monetary compensation or medical treatment is not a guarantee.

---

<sup>131</sup> International Justice Resource Centre (n 11) p 79.

### 5.3.1. The African Commission on Human and Peoples' Rights

The two key documents governing the Commission is the African Charter on Human and People's Rights (the Charter) and the Commission's Rules of Procedure.<sup>132</sup> Neither of the documents mention remedies or reparations. The Commission's decisions have been inconsistent as a result, ranging from not mentioning reparations to giving slightly more specific and detailed reparations in more recent years.<sup>133</sup> Cases rewarding specific monetary compensation to individual victims are rare.

However, in the last few years the Commission has clarified the obligations States have in relation to Article 5. In 2015 it adopted *Resolution ACHPR/Res.303 (LVI) 2015 - Resolution on the Right to Rehabilitation for Victims of Torture*, urging States to implement domestic legislation and other measures enabling victims to receive rehabilitation. Additionally, it called upon all Member States to adopt the Robben Island Guidelines, as well as ratify and implement the United Nations Convention Against Torture and its Optional Protocol. Additionally, Article 61 of the Charter allows the Commission to consider international customary law norms.<sup>134</sup> As providing compensation or remedy for violations is enshrined in most international and regional treaties and conventions, and state practice establishes it as a norm, reparations for victims of human rights abuses is increasingly considered as customary international law.<sup>135</sup> This means the Commission can be flexible and consider remedies despite the Charter not explicitly mentioning it.

In 2017 the Commission issued General Comment No. 4,<sup>136</sup> which explicitly states that victims of Article 5 violations are entitled to reparations from the State found guilty of the violations.

"States are obliged to provide adequate, effective and comprehensive reparation to victims of torture and other ill-treatment."<sup>137</sup>

The obligation extends to where "an individual, legal person or other entity is found liable for reparation".<sup>138</sup> The party should either provide reparation or compensate the State for

---

<sup>132</sup> African Commission Website / Resources <<https://www.achpr.org/resources>> accessed 8 March 2021.

<sup>133</sup> Viljoen and Odinkalu (n 105) p 112.

<sup>134</sup> The African Charter, Art 61.

<sup>135</sup> Most notable conventions: United Nations Convention Against Torture, Art 14; International Covenant on Civil and Political Rights, Art 2; The Hague Convention IV 1907, Art 3.

<sup>136</sup> General Comment No 4 on the African Charter on Human and People's Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), Section VI.

<sup>137</sup> General Comment No 4 (n 136) para 33.

<sup>138</sup> *ibid*

reparations it provides.<sup>139</sup> The Commission closes a previous gap between international standards for reparations<sup>140</sup> and its own, endorsing “the definitions of restitution, compensation, rehabilitation, satisfaction and guarantees of nonrepetition contained in General Comment No. 3 of the UN Committee against Torture.”<sup>141</sup> In addition, it holds that the right of victims to receive reparations is not dependent on:

*... the initiation of and/or successful outcome of an investigation or criminal proceedings against a perpetrator. States shall ensure that reparation is accessible independently from the identification, apprehension, investigation, prosecution or conviction of the perpetrator”.*<sup>142</sup>

One of the issues, which will be discussed below, is the failure by States to comply with Commission decisions. A frequent “excuse” given by States is a lack of funds to make structural changes suggested or provide monetary compensation to victims. General Comment No. 4 explicitly states that “[l]imited resources shall not justify a State’s failure to fulfil its obligation to provide comprehensive reparation”.<sup>143</sup> Additionally, States should ensure a victim-centred approach when providing reparations, accounting for the individual circumstances of victims, such as background, culture, current situation, personality, and history of the victims.<sup>144</sup>

The Commission sets out several forms of reparations: restitution, compensation, rehabilitation, satisfaction and the right to the truth, and guarantees of non-repetition.

#### A. Restitution:

“Restitutive measures shall, taking into consideration the specificities of each case, aim to put the victim back to the situation they were in before the violation”.<sup>145</sup> This includes restoration of “citizenship, employment, land or property rights, accommodations, the release of persons arbitrarily detained or restoration of the ability or victims to exercise the right to return”.<sup>146</sup>

In cases where the violation is a result of the victims’ “position of vulnerability and marginalisation”<sup>147</sup>, predating the violation, restitution is not enough. The State will be expected to complement it with “measures designed to address the structural causes of

---

<sup>139</sup> *ibid*

<sup>140</sup> *The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147* (16 December 2005); See also *General Comment No 3 of the UN Committee Against Torture CAT/C/GC/3* (13 December 2012).

<sup>141</sup> General Comment No 4 (n 136) para 33.

<sup>142</sup> *ibid* para 33.

<sup>143</sup> *ibid* para 34.

<sup>144</sup> *ibid*

<sup>145</sup> *ibid* para 36.

<sup>146</sup> *ibid*

<sup>147</sup> *ibid*

the vulnerability and marginalisation, including discrimination”.<sup>148</sup> Additionally, the measures should aim to “remedy the socio-economic disadvantage occasioned by collective and historical trauma caused by oppressive regimes”.<sup>149</sup>

#### B. Compensation:

“Compensation shall be fair, adequate and proportionate to the material, non-material and other harm suffered”.<sup>150</sup> Fair, adequate and proportionate compensation refers to any economically assessable damage suffered as a result of torture or ill-treatment.<sup>151</sup> This includes reimbursement of medical expenses and funds covering future medical or rehabilitative services needed for as full rehabilitation as possible for the victims.<sup>152</sup> It should cover both material and non-material damage resulting from physical and mental harm caused.<sup>153</sup>

The “loss of earnings and earning potential due to disabilities caused by the torture or other ill-treatment” and loss of employment or education opportunities should also be compensated for.<sup>154</sup> Additionally, “damage caused to a victim’s anticipated personal and professional development” resulting from torture or other ill-treatment shall be compensated for.<sup>155</sup>

To aid in proceedings, the Commission notes that State Parties to victims of Article 5 violations, should provide specialised assistance, legal aid, and “other costs associated with bringing a claim for redress”.<sup>156</sup> In doing so, the Commission has brought its practice closer to that of other international standards.<sup>157</sup>

#### C. Rehabilitation:

General Comment No.4 affirms the right to rehabilitation for victims of torture. “Rehabilitation refers to the restoration of function or the acquisition of new skills required by the change in circumstances of a victim”.<sup>158</sup> This is a vital part of restoring the victim, as far as possible, to its position before suffering from torture or other ill-treatment. This can be ensured either through State run rehabilitation services, or funding of privately owned services.<sup>159</sup>

---

<sup>148</sup> General Comment No 4 (n 136).

<sup>149</sup> *ibid*

<sup>150</sup> *ibid*, para 37.

<sup>151</sup> *ibid*, para 38.

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> *ibid*

<sup>155</sup> *ibid*, para 39.

<sup>156</sup> *ibid*

<sup>157</sup> UN Basic Principles A/RES/60/147 (n 140).

<sup>158</sup> General Comment No 4 (n 136) para 40.

<sup>159</sup> General Comment No 4 (n 136) para 43.

The aim of the measures should be to help the victim regain as much independence and self-sufficiency as possible. This includes their “physical, mental, social, cultural, spiritual and vocational ability, and full inclusion and participation in society”.<sup>160</sup> States are required to provide a “holistic, long-term and integrated approach to rehabilitation”, as well as ensuring that domestic legislation provides for victims’ access to rehabilitative services.<sup>161</sup> Victims should also have the right of choice in service providers.<sup>162</sup>

#### D. Satisfaction and the right to the truth:

The Commission states that the victim has a right to satisfaction. This includes:

- the right to the truth;
- the State’s recognition of its responsibility;
- the effective recording of complaints;
- investigation and prosecution;
- effective measures aimed at the cessation of continuing violence;
- verification of the facts and full public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- the search for disappeared victims, abducted children and the bodies of those killed, and assistance in the recovery, identification and reburial of victims’ bodies in accordance with the expressed or presumed wishes of the victims or affected families;
- official declaration or judicial decision restoring the dignity, reputation and rights of the victims and of persons closely connected with the victims;
- judicial and administrative sanctions against persons liable for the violations;
- public apologies, including acknowledgement of the facts and acceptance of responsibility; and
- commemorations and tributes to the victims.<sup>163</sup>

#### E. Guarantees of non-repetition:

The guarantee of non-repetition is vital. The Commission states that the aim of non-repetition is “to break the structural causes of societal violence, which are often conducive

---

<sup>160</sup> *ibid*, para 40.

<sup>161</sup> *ibid*, para 41.

<sup>162</sup> *ibid*, para 43.

<sup>163</sup> *ibid*, para 44.

to an environment in which dehumanising experiences such as acts of torture and other ill-treatment take place and are not publicly condemned or adequately punished”.<sup>164</sup> The State Parties should adopt measures to “combat impunity for violations”.<sup>165</sup>

For Article 5 violations, restitution and compensation are costly but vital. The cost has been an issue for States and a reason for failing to comply with Commission decisions. However, with the adoption of the 2015 Resolution<sup>166</sup> and General Comment No. 4,<sup>167</sup> the Commission has closed a gap between its own practice and international standards of providing reparations to victims of human rights violations.<sup>168</sup> With this change it is worth seeking compensation and restitution, and changes to rehabilitation are likely to follow. However, the Commission still faces the issue of their decisions not being binding upon the State Parties. This can be seen in the case of Cameroon, discussed below under subsection 4. Guarantees of non-repetition are therefore difficult to give, but often ordered by the Commission regardless as cases of non-compliance can be referred to the African Court of Justice and Human Rights - an authority whose decisions are binding.

### 5.3.2. The African Court of Justice and Human Rights

The Protocol on the Statute of the African Court of Justice and Human Rights (the Protocol) explicitly provides for “appropriate orders” to remedy violations, “including granting fair compensation”.<sup>169</sup> Despite this the Court has not, as of 2020, delivered a judgement where reparations or compensation has been required.<sup>170</sup> This may be due to complainants in cases being referred to the Court not being able to make a separate submission for compensation or reparations.<sup>171</sup> Complainants who have not explicitly mentioned individual reparations for the victims in their case to the Commission will not be entitled to change that at a later stage. Hence, Complainants should always explicitly specify individual reparations in their complaints, as this is the most successful way to obtain them either through the Commission or the Court.

Although Cameroon has not signed or ratified the Protocol to the ACtJHR, the Court has jurisdiction over matters related to the African Charter of Human and People’s Rights.<sup>172</sup> Under Article 46 of the Protocol, Cameroon would be bound to comply with the Court’s judgments. Failure to comply with a judgement is referred to the Assembly, which in turn

---

<sup>164</sup> General Comment No 4 (n 136) para 45.

<sup>165</sup> *ibid*, para 46.

<sup>166</sup> ACHPR *Resolution on the Right to Rehabilitation for Victims of Torture* ACHPR/Res.303 (LVI) 2015.

<sup>167</sup> General Comment No 4 (n 136).

<sup>168</sup> Viljoen and Odinkalu (n 105) p 112.

<sup>169</sup> ACHPR Protocol to the Charter, Art 4.

<sup>170</sup> Viljoen and Odinkalu (n 105) p 117.

<sup>171</sup> *ibid*

<sup>172</sup> ACHPR Protocol to the Charter, Art 28(c).

has the power to impose sanctions on the State.<sup>173</sup> The Assembly has yet to impose sanctions as a result of non-compliance with Court judgements and have been reluctant to impose them in general due to their adverse effect on the civilian population.<sup>174</sup> Non-compliance is therefore unlikely to have more serious consequences for a State than unwanted attention, similar to that of non-compliance with a Commission decision.

### 5.3.3. Sub-Regional Justice Mechanisms

Victims of human rights violations can seek remedies and reparations from smaller courts as well. Sub-regional justice mechanisms such as the Economic Community of West African States (ECOWAS) Court of Justice, the East African Court of Justice (EACJ), and the Southern African Development Community Tribunal (SADCT), all accept complaints. Of these, the ECOWAS Court of Justice proves the most progressive having awarded specific and significant remedies and reparations.<sup>175</sup> Its Supplementary Protocol allows it to consider complaints of alleged human rights violations, regardless of whether the victim is a national of a member state.<sup>176</sup> Therefore, victims of human rights violations in Cameroon can submit a complaint, despite Cameroon not being a member of ECOWAS.

The ECOWAS Court of Justice has awarded reparations in large sums based on the effect of the human rights violations on the victims. These include the cases of *Hadijatou Mani Koraou v Niger*<sup>177</sup> and *Djot Bayi and 14 Others v Nigeria and 4 Others*,<sup>178</sup> where the ECOWAS Court awarded compensation in the amount of approximately US\$20,500 and US\$42,720 respectively. A notable example concerning, amongst others, an Article 5 violation is the case of *Musa Saïdykhan v The Gambia*.<sup>179</sup> Here the ECOWAS Court accounted for the loss of job and earnings resulting from the illegal detention, in addition to physical damage when determining the extent of reparations. The complainant requested US\$2 million and was awarded US\$200,000. These Courts are therefore a viable option for seeking remedies and reparations and have a more progressive record of awarding monetary compensation for human rights violations.

### 5.3.4. Remedies and Reparations in Practice

#### 5.3.4.1. General Practice

---

<sup>173</sup> ACHPR Protocol to the Charter, Art 46; Constitutive Act, Art 23(2).

<sup>174</sup> African Union 'Resolution on the Impact of Sanction and Unilateral Coercive Measures' Assembly/AU/Res.1(XXXIII).

<sup>175</sup> Viljoen and Odinkalu (n 105) p 116.

<sup>176</sup> ECOWAS Supplementary Protocol, Art 19(1) (of 1991 Protocol to the Court). This Article allows for the adoption of Art 38(1) of the Statute to the International Court of Justice.

<sup>177</sup> ECOWAS Court of Justice, *Hadijatou Mani Koraou v Niger* App No ECW/CCJ/APP/08/08.

<sup>178</sup> ECOWAS Court of Justice, *Djot Bayi & Others v Nigeria & Others* App No ECW/CCJ/APP/10/06.

<sup>179</sup> SADCT, *Musa Saïdykhan v The Gambia* Suit App No ECW/CCJ/APP/11/07.



With the adoption of the 2015 Resolution and General Comment No 4, the Commission takes a big step to ensure individual reparations for victims of Article 5 violations. However, it does not fully address some of the main issues of enforcement of its decisions. Ensuring that its decisions are implemented remains one of the Commission's biggest challenges, and is a problem facing the African human rights system as a whole.<sup>180</sup>

The monitoring of State compliance is carried out by the African Commission's Working Group on Communications.<sup>181</sup> Their mandate has been criticised for being ineffective compared to other regional mechanisms, such as the Committee of Ministers of the Council of Europe.<sup>182</sup> This is mainly due to their follow-up procedure being unclear. Rule 112 of the Commission's Rules of Procedure provides a procedure for enforcement, but no binding mechanisms for enforcement.<sup>183</sup> This means the "burden of enforcement in the majority of cases up to 2013 rests on the complainant".<sup>184</sup>

Despite implementing monitoring and follow-up procedures, in an estimated 60% of cases States fail to comply.<sup>185</sup> Full compliance by a State has only been recorded in about 14% of cases, as of 2013. By 2018 as many as 44 of the 54 States who have ratified the Charter have failed to fulfil their obligation to submit reports on their compliance.<sup>186</sup> In such cases of non-compliance the Commission can refer cases to a sub-committee of the African Union, which could lead to sanctions being imposed on the State, but no sanctions have ever followed a complaint in practice. Cases of non-compliance will be featured in the Commission's annual report, and the most realistic consequence of non-compliance is therefore unwanted attention.<sup>187</sup> This being the most realistic consequence is due to the Commission's decisions not being binding on States. The Commission can also refer cases to the African Court, as mentioned above, but it is too early to tell if this helps ensure compliance with decisions.<sup>188</sup>

One of the main challenges faced by States in implementing the reparations recommended by the Commission is a lack of financial resources to compensate victims. General Comment No. 4 specifically states that "[l]imited resources shall not justify a

---

<sup>180</sup> Viljoen and Odinkalu (n 105) p 117.

<sup>181</sup> ACHPR Rules of Procedure, Rule 112.

<sup>182</sup> Viljoen and Odinkalu (n 105) p 117.

<sup>183</sup> *ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *ibid.*

<sup>186</sup> Chairman Okoloise 'Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights' (2018) 18 African Human Rights Law Journal 27, 42.

<sup>187</sup> Viljoen and Odinkalu (n 105).

<sup>188</sup> Viljoen and Odinkalu (n 105).

State's failure to fulfil its obligation to provide comprehensive reparation",<sup>189</sup> but with the limited consequences for non-compliance it is unlikely that it will incentivise implementation of the Commission's decisions by States. However, it is a step towards a stricter regime that in turn will limit States' justifications for non-compliance, and in turn shift the agenda towards implementing decisions in order to avoid a poor reputation.

#### 5.3.4.2. Practice in Cameroon

As of 2020, the Commission has ordered reparations in cases against Cameroon, involving Article 5 violations, but none have been individual forms of remedies or compensation. In the case of *Kevin Mgwanga Gunme et al. v Cameroon*, the Commission's recommendations sought to help stop tensions between the Anglophone and Francophone provinces, urging the government to create a dialogue with the Complainants on how to best solve issues threatening national unity.<sup>190</sup> There is only one mention of monetary compensation, which is meant to help businesses who have suffered from discrimination from banks. This is a case that predates both the adoption of the 2015 Resolution and General Comment No. 4, being a good example of the Commission's past approach of leaving remedies and reparations for individual victims unmentioned.

The case of *Titanji Duga Ernest (on behalf of Cheonumu Martin and others) v Cameroon*, shows the Commission's progression. Here the Commission "recognize[d] the inherent principle of the right to reparation for damages suffered as a result of a violation of the provisions of the African Charter".<sup>191</sup> The Commission held that restitution should be sought where possible, and where it is not States may resort to other forms of reparations. Remedies and compensation were ordered by the Commission in this case but left the specific amount to be decided by Cameroon's domestic Courts.

Though a step in the right direction, it simultaneously takes a step back, forcing victims to rely on domestic justice systems that may already have failed them. Additionally, it could provide a loophole for States in that they are simply required to provide some remedies, but not a specific amount. As a result, victims may be awarded less than they would in a regional or sub-regional court. Should the domestic justice system be functional however, this would help ensure that the victims *actually* receive some monetary compensation, as the Courts would account for the State's capacity to pay.

---

<sup>189</sup> General Comment No 4 (n 136) para 34.

<sup>190</sup> ACHPR, *Kevin Mgwanga Gunme et al v Cameroon* Comm No 266/03, para 114.

<sup>191</sup> ACHPR, *Titanji Duga Ernest (on behalf of Cheonumu Martin and others) C Cameroun*, Communication 287/04 (17 February 2015).

The Commission's recommendations are non-binding on State Parties, and States have rarely complied with all recommendations in Commission decisions.<sup>192</sup> In such cases where the State Parties fail to comply with a Commission decision, the Commission can refer the case to the African Court of Justice and Human Rights.<sup>193</sup> As of 2020, there have not been any cases involving Cameroon brought to the Court.

#### 5.3.5. Conclusion

Overall, victims of Article 5 violations have in recent years been granted more detailed and comprehensive rights to reparations through the implementation of the 2015 Resolution and General Comment No. 4. In practice, States' implementation of the Commission's decisions is poor and has few consequences other than unwanted attention from the international community. This unfortunately includes States' failure to provide individual reparations for victims of Article 5 violations.

Lack of funding, implementation and enforceability of the Commission's recommendations pose a significant challenge for victims seeking reparations through this way of redress. Other mechanisms such as the African Court of Justice and Human Rights and sub-regional justice mechanisms like the ECOWAS Court of Justice, are more likely to result in individual reparations for victims of Article 5 violations.

### 5.4. *Implementation of ACHPR's decisions in HRDs emergencies*

This section first covers the provisional measures and urgent appeals issued by the African Commission in the case of HRDs emergencies, highlighting their differences and analysing their effectiveness. The section then covers the strategies used by the African Commission to ensure the implementation of their decisions is successful. This is generally in the form of requests for report-backs, which are yet to be proven hugely successful.

#### 5.4.1. Provisional Measures

##### 5.4.1.1. Provisional Measures in Theory

During the communications procedure, the African Commission may 'issue provisional measures calling for the state subject of the complaint to desist from action or take

---

<sup>192</sup> Viljoen and Odinkalu (n 105) p 117.

<sup>193</sup> Protocol on the Statute of the African Court of Justice and Human Rights, Art 30(b).

immediate temporary actions to remedy a situation.<sup>194</sup> As stated by Rule 98(1) of The Rules of Procedure of the African Commission, the aim of issuing provisional measures is to 'prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.'<sup>195</sup>

Provisional measures may be issued by the Commission in order to demand medical care for Human Rights Defenders (HRDs), or where a state's action has threatened the ability of a complaint to be investigated.<sup>196</sup>

Provisional measures can be issued between seizing a communication and before determination of the merits of the communication.<sup>197</sup> In issuing provisional measures before merits have been concluded, the Commission is not prejudging the case. At this point, the State, victim, AU Assembly, AU Commission and AU Peace and Security Council are to be simultaneously informed of the measures.<sup>198</sup>

The issuing of provisional measures can be requested. If the request is issued whilst the Commission is in session, then the Commission will decide whether to issue provisional measures. If the request is issued whilst the Commission is not in session, the Chairperson or Vice-Chairperson of the Commission will decide whether to issue provisional measures.<sup>199</sup>

The implementation of provisional measures involves a follow-up process, in which the Commission requires States to report back in 15 days on the implementation of the provisional measures.

#### 5.4.1.2. Provisional Measures in Practice

The effectiveness of provisional measures in preventing further emergencies are hindered by restrictions on access to the provisional measures granted by the Commission. This is only published upon the conclusion of a communication and thus a decision made. The lack of accessibility to the provisional measures issued by the Commission hinders the work of HRDs: they are unable to fully participate in advocacy for implementation of the provisional measures.<sup>200</sup>

---

<sup>194</sup> The Institute for Human Rights and Development in Africa (IHDRA), and the International Service for Human Rights (ISHR) 'A Human Rights' Defenders' Guide to the African Commission on Human and Peoples' Rights' (2012) 32.

<sup>195</sup> ACHPR Rules of Procedure, Rule 98.

<sup>196</sup> IHRDA and ISHR (n 194).

<sup>197</sup> International Justice Resource Centre (n 8) p 83.

<sup>198</sup> *ibid*, p 85.

<sup>199</sup> *ibid*

<sup>200</sup> IHRDA and ISHR (n 194).

However, provisional measures have occasionally been effective for advocacy. An example of this is *International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights v Nigeria*.<sup>201</sup> Nigeria did not honour the requests laid out in the provisional measures issued by the Commission. However, advocacy groups highlighted the provisional measures to put further pressure on the Nigerian government to wait with executions for the Commission's decision. Therefore, the provisional measures issued by a body such as the Commission gives greater backing for advocacy groups to further the message.

It is not clear whether state authorities act as urged by the provisional measures issued by the Commission. It has been suggested that the success of the provisional measures could be improved by publishing follow-up reports that are transparent about whether there has been action based on provisional measures. This is hoped to encourage complying States whilst also keeping pressure on States that are not complying with the measures.<sup>202</sup>

#### 5.4.2. Urgent Appeals

##### 5.4.2.1. Urgent Appeals in Theory

Urgent appeals are sent out in emergencies where there are “serious or massive human rights violations, “danger or irreparable harm” and thus the need for “urgent action to avoid irreparable damage.”<sup>203</sup>

The issuing of urgent appeals differs from the issuing of provisional measures. Unlike provisional measures, urgent appeals do not take place where a complaint has been filed. Urgent appeals do not involve informing the AU Assembly, AU Commission and AU Peace and Security Council of the appeals. Instead, the appeals are made directly to the relevant government officials of the state where the violation against HRDs is taking place, before being announced in press releases.<sup>204</sup>

The appeals typically involve reminding the state of their human rights obligations under law or reminding the state that ACHPR-protected rights are to be upheld in emergency situations. Often, an appeal is also made to the States to guarantee the physical and

---

<sup>201</sup> *International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights v Nigeria* [1998], 137/94, 139/94, 254/96 and 161/97.

<sup>202</sup> IHRDA and ISHR (n 194) p 56.

<sup>203</sup> ACHPR Rules of Procedure, Rule 80(2).

<sup>204</sup> IHRDA and ISHR (n 194) p 33.

psychological integrity of HRDs. More specific appeals are also made, such as a call for dialogue with state and opposing unions, or to launch inquiries.<sup>205</sup>

#### 5.4.2.2. Urgent Appeals in Practice

It is unclear whether State authorities recognise and act as they are advised by urgent appeals and press releases. “The African Commission could do well to publish follow-up reports both as a way of encouraging any complying States but also keeping pressure on those that do not.”<sup>206</sup>

In the formal communications procedure of urgent appeals, the Africa Commission has failed to note the violation of the rights of HRDs, nor even the phrase ‘human rights defenders’ in a number of appeals. This was the case in the Statement on the Situation in Cote d’Ivoire (December 2010),<sup>207</sup> the Press Release on the human rights situation in the Democratic Republic of Congo (December 2012)<sup>208</sup> and the Press Release on the human rights situation in Senegal (February 2012).<sup>209</sup> All three referred significant HRD work in demanding democracy at the time of elections, yet the situation of HRDs was not mentioned<sup>210</sup>. This is a failure of these urgent appeals for it does not attempt to ensure the specific protection of HRDs.

The Commission could improve the appeals procedure through standardisation of the form of appeal outside the formal communications procedure. The pronouncements of the appeals in press releases often involve the varying terms of ‘statement’, ‘communique’ or ‘urgent appeal’ to describe the appeals.<sup>211</sup> It seems that pronouncement of appeals should be standardised to one term. Standardisation would reflect the urgency of the appeals, and ‘solidify the protective effect of these pronouncements for procedure.’<sup>212</sup>

---

<sup>205</sup> *ibid*, pp 57-102.

<sup>206</sup> *ibid*, p 56.

<sup>207</sup> African Commission ‘Press Release on the Deteriorating Situation of Human Rights in Cote d’Ivoire’ [27 February 2011] <<https://www.achpr.org/pressrelease/detail?id=316>> accessed 8 March 2021.

<sup>208</sup> African Commission ‘Press Release on the Human Rights Situation in Eastern Democratic Republic of Congo’ [19 December 2021] <<https://www.achpr.org/pressrelease/detail?id=271>> accessed 8 March 2021.

<sup>209</sup> African Commission ‘Press Release on the human rights situation in Senegal’ [22 February 2012] <<https://www.achpr.org/pressrelease/detail?id=301>> accessed 8 March 2021.

<sup>210</sup> IHRDA and ISHR (n 194) p 34.

<sup>211</sup> *ibid*

<sup>212</sup> IHRDA and ISHR (n 194).

In addition, as noted earlier,<sup>213</sup> the juridical status of urgent appeals and press releases and their inconsistent formulation are causes of concern for effective protection of HRDs.<sup>214</sup>

#### 5.4.3. Strategies for the Implementation of the African Commission on Human and Peoples' Rights' Decisions

##### 5.4.3.1. Implementation in Theory

The follow-up strategy of the Commission aims to put pressure on States to report back after the issuing of provisional measures and urgent appeals. They request that States report back within six months on measures it has taken to implement the Court's decisions.<sup>215</sup>

Parties must inform the Commission of measures taken to implement its decision within 180 days of the decision being issued. Afterwards, the Commission may ask the State for more information if the report within 180 days is not sufficient. The State is required to send this within 90 days.<sup>216</sup> The Commission will also appoint a Commissioner to monitor the State and report on its compliance in the public sessions of the Commission's ordinary sessions.<sup>217</sup>

##### 5.4.3.2. Implementation in Practice

The implementation strategy of a six-month report back has not been hugely successful. The strategy was fairly inconsistent from the start of its practice. In 2009, a year after its introduction, the Commission demanded a report back within 3 months in one case.<sup>218</sup>

Furthermore, by 2012 the Commission had not issued public statements of any report backs under the recommended six-month time frame,<sup>219</sup> suggesting that problems with this mechanism extended beyond its early usage.

## 5.5. **Summary**

---

<sup>213</sup> Subparagraph 5.4.2.1.

<sup>214</sup> IHRDA and ISHR (n 194) p 56.

<sup>215</sup> *ibid*, p 39.

<sup>216</sup> International Justice Resource Centre (n 11) p 82.

<sup>217</sup> *ibid*

<sup>218</sup> *Centre for Minority Rights Development & Minority Rights Group v Kenya* ACHPR 276/2003 (4 February 2010).

<sup>219</sup> IHRDA and ISHR (n 194) p 40.

04/2021

Section 5 has been divided into four subsections to assess the main mechanisms at the ACHPR that attempt to provide adequate redress to victims of torture. These sections are Standing, Procedure and Admissibility, Remedies and Reparations, and Implementation.

It is clear that the areas of Standing and Procedure and Admissibility are relatively well established at the Commission. However, notably, the Remedies and Reparations mechanism is inconsistent due to their omission in both the Charter and the Rules of Procedure. The mechanism in place for implementation of decisions is also inconsistent due to a lack of standardisation of the appeals format and an inefficient follow up system.



## **SECTION 6: TORTURE CASE EXAMPLES AND COMMENTARY SUPPLIED BY THE CHRDA**

### **6.1. *The Situation of Cameroon in the ACHPR***

Presently, there are no pending cases of torture against Cameroon that have been lodged at the ACHPR. There are also no pending cases relating to violations of Article 5 specifically against Cameroon. However, there have been cases such as *Albert Mukong v Cameroon*<sup>220</sup> lodged with the United Nations Human Rights Committee where Mukong was arrested and detained in inhumane conditions after criticising the Government and President of Cameroon and for advocating the introduction of multi-party democracy. Moreover, as has been highlighted earlier in the research,<sup>221</sup> the Commission has expressed concerns on the human rights situation in the country and has pushed on the government to find pacific means of resolving the ongoing conflict.

However, this has not stopped the exacerbation of arbitrary killings, torture, burning of villages, amongst other things.<sup>222</sup> The situation of torture in the country is dire, even more so with the ongoing pandemic. CHRDA and other human rights non-governmental organisations have recorded several cases of torture in the illegal detention facilities of the security forces. The current situation has seen the creation of makeshift camps created by military forces in areas where they believe are hideouts for separatist forces. Young boys, older men, and even women have been victims of arbitrary arrests and torture by state security forces. Persons are arrested, detained and tortured based on suspicion. Cases are never taken to court and persons have also been released based on bribery which they managed to borrow and pay for their release. Although many human rights violations have stemmed from this situation, such as arbitrary detention, denial of access to justice or access to a fair trial, we narrow our scope in this report to analyse particularly serious instances of torture.

### **6.2. *Examples of Cases***

---

<sup>220</sup> Communication No 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994) <<http://hrlibrary.umn.edu/undocs/html/vws458.htm>> accessed 18 March 2021.

<sup>221</sup> Subsubsection 3.3.1.

<sup>222</sup> Aljazeera, 'Violence in Cameroon's Anglophone Crisis Takes High Civilian toll' (*Aljazeera*, 1 April 2021) <<https://www.aljazeera.com/news/2021/4/1/violence-in-cameroon-anglophone-crisis-takes-high-civilian-toll>> accessed 26 April 2021. See also, Human Rights Watch, 'Cameroon: Civilians Killed in Anglophone Regions' (*Human Rights Watch*, 27 July 2020) <<https://www.hrw.org/news/2020/07/27/cameroon-civilians-killed-anglophone-regions>> accessed 24 April 2021; Amnesty International, 'Cameroon: Rise in Killings in Anglophone Regions Ahead of Parliamentary Elections' (*Amnesty International*, 6 February 2020) <<https://www.amnesty.org/en/latest/news/2020/02/cameroon-rise-in-killings-in-anglophone-regions/>> accessed 24 April 2021.

04/2021

Mr Che was arrested in his home after returning from the village for the burial of his wife and brother who, together with his wife, were shot during a military raid in Muea. He was tied, blindfolded and taken to a makeshift illegal detention facility in Tole because he was suspected of meeting with separatist fighters while in the village. Images and hospital receipts and records show that Mr Che's back was gorged and sustained several injuries to his whole body due to the torture. He was moved around from Buea to Yaoundé and back and was finally able to secure bail. He has been receiving treatment since.

Unfortunately, his case is not unique. A young girl, Essa Florence Tabi, was arrested at the tender age of 17 in Mamfe. She was moved to Buea and transferred back to Mamfe. She was charged with acts of terrorism and hostilities against the fatherland. While in detention, evidence shows that she sustained serious bodily injuries as a result of torture by the gendarmerie officers. A pro bono appearance was entered on her behalf and bail secured. The case suffered several adjournments due to the failure of prosecution witnesses to show up, which has led to the termination of the case at the High Court of Mamfe.

Tanyi Robert Tataw's case is another documented act of torture and horrendous mistreatment. Tanyi Robert was one of those arrested during a mass arrest conducted in July 2018. Mr Tanyi's legal representatives provided evidence of torture and related stories of him being forced to eat excrement and losing an eye during torture, before being transferred naked to the Yaoundé central prison.

The popular case of the journalist Samuel Wazizi who was arrested in Buea while covering the news. He was severely tortured while in detention in Buea as well as in Yaoundé. He died from injuries sustained in the process, several months before the government officially announced his demise.

In some cases documented by the CHRDA, although the victims of torture have not died during the torture, the damage inflicted has been so severe that it has caused death subsequently. In such cases, there is a clear case for manslaughter with causation. Additionally, the subsequent deaths indicate the severity of the initial torture and highlights the connection between the two crimes. Consequently, there are reported cases of young boys dying as a result of severe injuries sustained while in detention, falling sick and dying in detention. This was the unfortunate case of Agbortoko Eyong who was arrested for 'looking like an "Amba" boy'.<sup>223</sup> He was tortured, injured and died from his injuries a few days later.

---

<sup>223</sup> 'Amba boys' is a colloquial term for Anglophone separatist fighters. See DW, 'Who Are Cameroon's "Ambazonia" Secessionists?' <<https://amp.dw.com/en/who-are-camerouns-self-named-ambazonia->

In all these cases, the government has either denied allegations of the existence of these illegal torture facilities or agreed on carrying out investigations with no comprehensive report at the end of such investigations. The names of officers and their trials are hidden from public scrutiny.

### **6.3. Critique on the Situation of the African Human Rights System**

As stated earlier,<sup>224</sup> the 66th Intersession report of the CPTA expressed concerns about a pattern of unlawful killings in the Anglophone regions. After this, there have nonetheless been several killings including the latest in January 2021 in Maoutu. It is also concerning that in same report, the CPTA failed to include the several cases of torture in places of detention and poor conditions of detention. This omission is in spite of several deaths in detention facilities due to severe torture that has been reported by CHRDA and other human rights NGOs.

Nonetheless, the ACHPR and other treaty bodies can be credited for the progress made in the prevention of torture in Cameroon. Based on the 'Single Report comprising the 4th, 5th and 6<sup>th</sup> Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights',<sup>225</sup> Cameroon reported the following noteworthy improvements to the prohibition of torture;

- Initiating proceedings against 32 soldiers for crimes of torture.
- The national human rights watchdog, the National Commission on Human Rights and Freedoms has also been given the mandate of National Mechanism for the Prevention of Torture provided for by the Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Meting out of sanctions on 2,956 for crimes including torture of detainees.
- On the Anglophone crisis, five gendarmerie officers were given three years suspended sentenced for 'torture and violation of instruction.'

Based on these changes made between the reporting periods of 2013 to 2018 and submitted in 2019, it could be said that the country has made, at most, cosmetic improvements concerning the situation of preventing torture violations within the country.

---

[secessionists/a-50639426](#)> accessed 14 March 2021; Farouk Chothia, 'Cameroon's Anglophone Crisis: Red Dragons and Tigers - the Rebels Fighting for Independence' BBC News (4 October 2018) <<https://www.bbc.co.uk/news/world-africa-45723211>> accessed 14 March 2021.

<sup>224</sup> Subsubsection 3.3.2.

<sup>225</sup> Single Report comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights' <<https://www.achpr.org/states/statereport?id=130>> accessed 18 March 2021.

A simple observation of the prisons and detention facilities in the Anglophone regions demonstrates that there are constant situations of torture of suspected separatist fighters. Moreover, the effective protection of victims of torture within the national legal system is in a dismal state, especially as pertains to torture perpetrated in the course of the Anglophone crisis. As noted above, most of the violators have been given suspended sentences or had their cases dismissed. Also, the forces have totally ignored or refused the perpetration of torture. This suggests a greater need for strong international, regional and sub-regional mechanisms.

As aforementioned,<sup>226</sup> there have been press releases expressing concerns on the human rights situation in Cameroon. However, the CHRDA believes that the Commission can do more for the improvement of the overall human rights situation in Cameroon by introducing these cases through the African Court. This is especially necessary since there is little accountability for these crimes at the domestic level, which is why NGOs like the CHRDA advocate for regional mechanisms to review such cases. Additionally, the Commission can support civil society organisations to effectively navigate the African Court system to enable these organisations to represent victims of torture. Finally, the supporting sub-regional human rights systems such as the ECOWAS system can be utilised as they have provided reparation for victims of human rights violations as observed above.<sup>227</sup>

Overall, the current state of the African human rights system, whose primary mechanism is the African Commission, suffers inadequacy in the enforcement of its decisions. Further, although the African Court exists, there are fewer avenues for individual victims to approach it. Therefore, individuals in Cameroon are less able to seek justice in torture cases and other human rights violations in general.

---

<sup>226</sup> Subsection 3.3.

<sup>227</sup> Subsubsection 5.3.3.

## **SECTION 7: RECOMMENDATIONS**

This section provides some recommendations based on the legal research and analysis stated above. The EIJI Research Team would like to reiterate that it is not intended as legal advice.

The EIJI Research Team recommends that the Centre for Human Rights and Democracy in Africa:

1. Request that the CPTA clarify its criteria for assessing complaints of torture. The CPTA should confirm whether this criteria is the same as the ACHPR's rules. This would provide greater certainty for complainants and allow them to tailor their submissions for a better chance of success.
2. Encourage the ACHPR to urge all Member States to ratify the Optional Protocol to the Convention Against Torture. Since this outlaws applying sanctions to persons for communicating issues related to torture to the Subcommittee on Prevention or to national preventive mechanisms, it would provide an additional layer of protections to victims of torture. Moreover, it would ensure independent international and national bodies that they are open to non-judicial regular visits from them, which could act as a preventative measure against torture.
3. Remind the ACHPR of its commitment to implement the 5th recommendation of the Forum on the Participation of NGOs in its 44th Ordinary Session. These recommendations align with the Robben Island Guidelines and concern Member States' development of curriculums for primary, secondary and tertiary schools. This would include human rights education on issues of torture prohibition, prevention, redress and the rehabilitation of victims.<sup>228</sup> Such implementation would also help to raise citizen's awareness of their rights and the available procedural means to pursue redress should they be violated.
4. Encourage the ACHPR to adopt stricter rules on what constitutes a reasonable excuse for non-compliance with its recommendations. States would be required to prioritise remedies for victims to the extent that it is possible to do so.
5. Urge the ACHPR to adopt a common practice for all cases in which a violation of Article 5 is found, which ensures that all victims are awarded remedies and/or reparations. This would align the Commission's practice with international standards on remedies and reparations for victims.

---

<sup>228</sup> Recommendation on Torture and Prisons in Africa <<https://www.acdhrs.org/2008/11/recommendation-on-torture-and-prisons-in-africa/>> accessed 14 March 2021.

6. Encourage the ACHPR to develop a handbook on the right to reparation, as highlighted in subsection 5.3 in this report, in consultation with CHRDA and other relevant civil society organisations and experts.
7. Implore the ACHPR to standardise the description of an urgent appeal and avoid the varying descriptors of 'statement' or 'communique' that occur in news reports [see section 5(4)(b)]. The standardisation of the label 'urgent appeal' would lessen confusion and may better reflect the importance of such communications.
8. Request the development of a more consistent six-month follow-up procedure from the ACHPR following the issuance of provisional measures and urgent appeals. This could put greater pressure on States to comply with the Commission's requests and prevent further human rights abuses.
9. Collaborate with other civil society organisations to organise a fund for victims of torture. This initiative led by the CHRDA would provide financial assistance while victims pursue legal action at the Court or ACHPR and/or seek counselling services. Additionally, this would increase victims' access to justice and lessen some of the challenges inherent in the African human rights system as discussed in the report.
10. Encourage the ACHPR to remind all States, including Cameroon,<sup>229</sup> to make a declaration under Article 34(6) of the Protocol. This would grant the African Court on Human and Peoples' Rights jurisdiction in cases where individuals and NGOs in Cameroon have Observer status at the Commission. This would provide the possibility of prompt judicial action which is essential in torture cases.
11. Encourage the African Court and the ACHPR to facilitate a more open and transparent procedure that favours the effective participation of victims and civil society organisations. This would address the issues highlighted in subsection 6.3. and improve the overall situation of human rights protection in Cameroon.

---

<sup>229</sup> International Justice Resource Centre (n 11).

## **SECTION 8: GENERAL SUMMARY**

This report has evaluated the redress mechanisms available at the African Commission on Human and Peoples' Rights for victims of torture in Cameroon. The report has outlined the background of human rights violations in Cameroon and the human rights bodies that can exercise jurisdiction (Section 3). Subsequently, the report analysed the definition of torture. We conclude that Article 1(1) of the United Nations Convention Against Torture (CAT) offers the clearest definition and have highlighted further case law and treaties which provide criteria that helps ascertain whether an act is severe enough to qualify as torture or inhumane and degrading treatment (Section 4).

After establishing the factual and legal background, we explained the procedural elements of employing redress mechanisms offered by the ACHPR and other human rights bodies (Section 5). Finally, we analysed case studies documented by CHRDA and other NGOs regarding individuals who had been victims of torture and inhumane and degrading treatment (Section 6). Section 6 concluded that although there are currently no pending cases of torture against Cameroon, there is ample opportunity to improve the effectiveness of the African human rights system in order to provide victims of torture with justice.

Based on Sections 3 to 6, we provided a series of recommendations (Section 7). A number of the recommendations relate to clarifying and standardising the ACHPR's approach to assessing complaints of torture, especially in relation to reparations and remedies and urgent appeals. Further, other recommendations relate to encouraging States to make a declaration under Article 34(6) of the Protocol, ratify the Optional Protocol to the Convention Against Torture and pursue the recommendation of the 44th Session of the ACHPR in relation to human rights education in relation to torture. Such an endeavour by the ACHPR would make informational reports of this nature more accessible to the public. Finally, we recommended the Commission should adopt stricter rules on what constitutes a reasonable excuse for a State's non-compliance with its recommendations. Implementation of this recommendation would strengthen the Commission's ability to carry out the rest of the recommendations.

Overall, this report has outlined the available redress mechanisms at the African Commission on Human and Peoples' Rights for victims of torture in Cameroon. We hope it will provide the CHRDA, other NGOs and all relevant stakeholders with a clear overview of the legal mechanisms available to pursue the rights of victims of torture in Cameroon.

## **BIBLIOGRAPHY**

### **I. TABLE OF CASES**

ACHPR Haregewoin Gebre-Sellassie & IHRDA (on behalf of former Dergue Officials) v Ethiopia Comm No 301/05

ACHPR, Kevin Mgwanga Gunme et al v Cameroon Comm No 266/03

ACHPR, Malawi African Association et al v Mauritania, Communication Nos 54/91, 61/91, 96/93, 98/93, 164/97, 196/97, 210/98, Merits Decision, 27th Ordinary Session (2000)

ACHPR Organisation Mondiale contre la Torture (OMCT) v Zaire Comm No 25/89, para 92; ACHPR Haregewoin Gebre-Sellassie & IHRDA (on behalf of former Dergue Officials) v Ethiopia Comm No 301/05

ACHPR Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v Botswana Comm No 277/03 10th Extraordinary Session (12 October 2013)

ACHPR, Titanji Duga Ernest (on behalf of Cheonumu Martin and others) v Cameroon, Communication 287/04 (17 February 2015)

African Commission v Kenya, App No 006/2012

African Commission v Libya, App No 002/2013

African Court on Human and Peoples' Rights African Commission on Human and Peoples' Rights v Libya, App No 004/201

Akkoc v Turkey App No 22947/93 and 22948/93 (ECtHR, 10 October 2000)

Akwanga v Cameroon, CCPR/C/121/D/2764/2016 (19 December 2017)

Ali v Tunisia, CAT/C/41/D/291/2006 (26 November 2008)

Andela v Cameroon, CCPR/C/101/D/1813/2008 (19 May 2011)

Čelebići Case, Prosecutor v Zejnil Delalić, Zdravko Mucic (aka 'Pavo'), Hazim Delic and Esad Landžo (aka 'Zenga')(Appeal Judgment) IT-96-21-A (20 February 2001).

Centre for Minority Rights Development & Minority Rights Group v Kenya ACHPR 276/2003 (4 February 2010)

Communication No 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994)  
<<http://hrlibrary.umn.edu/undocs/html/vws458.htm>> accessed 18 March 2021

Dikme v Turkey App no 20869/92 (ECtHR, 11 July 2000)

ECOWAS Court of Justice, Djot Bayi & Others v Nigeria & Others App No ECW/CCJ/APP/10/06

ECOWAS Court of Justice, Hadijatou Mani Koraou v Niger App No ECW/CCJ/APP/08/08



04/2021

Inter-American Court of Human Rights, Cantoral-Benavides v Peru. Merits. Judgment of 18 August 2000. Series C no 69

Ilhan v Turkey [2000] ECHR 354, para 84

International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights v Nigeria [1998], 137/94, 139/94, 254/96 and 161/97

Ireland v United Kingdom, (5310/71) [1978] ECHR 1 (18 January 1978)

Keenan v UK App no 27229/95 (ECtHR, 3 April 2001)

Labita v Italy App no 26772/95 (ECtHR, 6 April 2000)

Prosecutor v Brdanin (Judgment) ICTY-99-36

Prosecutor v Brdanin (Trial Judgement) ICTY-99-36

Prosecutor v Jean-Paul Akeyesu (2001) Case No ICTR-96-4-T

Prosecutor v Kvočka (Appeal Judgement) ICTY-98-30/1-A (28 February 2005)

Prosecutor v Milorad Krnojelac (Appeal Judgement) ICTY-97-25-T (15 March 2002),

Prosecutor v Milorad Krnojelac (Trial Judgement) ICTY-97-25-T (15 March 2002)

Prosecutor v Tihomir Blaskic (Trial Judgement) ICTY-95-14-T (18 July 1997)

Prosecutor v Zdravko Mucic (aka 'Pavo'), Hazim Delic, Esad Landzo (aka 'Zenga') and Zejnil Delalic (Trial Judgement) IT-96-21-T (16 November 1998)

SADCT, Musa Saidykhan v The Gambia Suit App No ECW/CCJ/APP/11/07

Selmouni v France App no 00025803/94 (ECtHR, 28 July 1999)

Soering v UK [1989] ECHR 14

Tekin v Turkey App no 22496/93 (ECtHR, 9 June 1998)

Titiahonjo v Cameroon, CCPR/C/91/D/1186/2003 (13 November 2007)

Tyrer v The United Kingdom, 5856/72, Council of Europe: European Court of Human Rights, 15 March 1978

UN Committee Against Torture (CAT), Hajrizi Dzemajl et al v Yugoslavia (2 December 2002), UN Doc CAT/C/29/D/161/2000

UN Human Rights Committee, Vuolanne v Finland (2 May 1989), UN Doc. CCPR/C/35/D/265/1987

Wainwright v United Kingdom, App no 12350/04 (ECtHR, 26 September 2006)

04/2021

Zheng v Ashcroft, 332 F.3d 1186 (9th Cir. 2003)

## II. TABLE OF INTERNATIONAL TREATIES AND CONVENTIONS

African (Banjul) Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), OAU Doc. CAB/LEG/67/3 rev 5, 21 ILM 58, Arts 30 and 45.

<<http://www.achpr.org/instruments/achpr>> accessed 25 September 2020. Hereinafter the African Charter

African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999)

Charter of the United Nations

ECOWAS Supplementary Protocol, Art 19(1) (of 1991 Protocol to the Court). This Article allows for the adoption of Art 38(1) of the Statute to the International Court of Justice

Elements of Crime to the Rome Statute to the International Criminal Court 1998

European Convention on Human Rights 1950

Inter-American Convention on Human Rights

International Covenant on Civil and Political Rights

Optional Protocol of the Prevention Against Torture (adopted 18 December 2002, entered into force 22 June 2006), UNGA A/RES/57/199

Protocol on the Statute of the African Court of Justice and Human Rights

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998 OAU/LEG/AFCHPR/PROT (III), <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>> accessed 22 January 2021

The Hague Convention IV 1907

The International Tribunal for Rwanda, Art 3 (f)

United Nations Convention Against Torture (adopted 10 December 1984, entered into force 26 June 1987) UNTS 1465 (UNCAT)

United Nations Treaty Collection, 'Chapter XXIII, Laws of Treaties: Vienna Convention on the Law of Treaties' (*United Nations Treaty Collection*)

<[https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en)> accessed 12 April 2021

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

### III. TABLE OF SUBMISSIONS, RESOLUTIONS AND REPORTS

ACHPR *Resolution on the Right to Rehabilitation for Victims of Torture* ACHPR/Res.303 (LVI) 2015

African Union 'Resolution on the Impact of Sanction and Unilateral Coercive Measures'  
Assembly/AU/Res.1(XXXIII)

CCPR General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)

Forum on the Participation of NGOs in the 44th Ordinary Session of the African Commission on Human and Peoples' Rights 2008, 'Recommendation on Torture and Prisons in Africa' Available at: <<https://www.acdhrs.org/2008/11/recommendation-on-torture-and-prisons-in-africa/>> accessed 14 March 2021

General Comment No 3 of the UN Committee Against Torture CAT/C/GC/3 (13 December 2012)

General Comment No 4 on the African Charter on Human and People's Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), Section VI

General Comment No 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22

Rules of Procedure to the African Charter on Human and Peoples' Rights

Single Report comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights' <<https://www.achpr.org/states/statereport?id=130>> 18 March 2021

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 (16 December 2005)

#### a. **The African Commission**

The African Commission 'Cameroon: 4th - 6th Periodic Report, 2015 - 2019'  
<<https://www.achpr.org/states/statereport?id=130>> accessed 19 January 2021

The African Commission 'Committee for the Prevention of Torture in Africa 60th Intersession Report' [May 2017] <<https://www.achpr.org/sessions/intersession?id=271>> accessed 22 January 2021

The African Commission 'Committee for the Prevention of Torture in Africa 64th Intersession Report' [May 2019] <<https://www.achpr.org/sessions/intersession?id=317>> accessed 22 January 2021

04/2021

The African Commission 'Committee for the Prevention of Torture in Africa 66th Intersession Report' [August 2020] <<https://www.achpr.org/sessions/intersession?id=339>> accessed 22 January 2021

The African Commission 'Resolution on the Deterioration of the Human Rights Situation in Cameroon during the Covid-19 Period' ACHPR/Res. 442 (LXVI) [2020] <<https://www.achpr.org/sessions/resolutions?id=473>> accessed 19 January 2021

The African Commission 'Resolution on the Human Rights Situation in the Republic of Cameroon' ACHPR/Res. 395 (LXII) [2018] <<https://www.achpr.org/sessions/resolutions?id=404>> accessed 19 January 2021

The African Commission 'Resolution on the Continuing Human Rights Violations in the Republic of Cameroon' ACHPR/Res. 405 (LXIII) [2018] <<https://www.achpr.org/sessions/resolutions?id=425>> accessed 19 January 2021

#### **b. Committee Against Torture**

The Advocates for Human Rights, 'Cameroon's Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', submission to the 70th Session of the Committee against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment <[https://www.theadvocatesforhumanrights.org/uploads/ahr\\_loi\\_cameroon\\_report\\_on\\_anglophone\\_crisis\\_final.pdf](https://www.theadvocatesforhumanrights.org/uploads/ahr_loi_cameroon_report_on_anglophone_crisis_final.pdf)> accessed 4 December 2020

#### **c. UN Human Rights Committee**

UN Human Rights Committee, 'CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel Inhuman or Degrading Treatment or Punishment)' (10 March 1992), UN Doc. A/44/40

UN Human Rights Committee, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak' (23 December 2005), UN Doc. E/CN.4/2006/6, para 39

### **IV. TABLE OF SECONDARY SOURCES**

African Court on Human and Peoples' Rights Website / Basic Information <<https://www.african-court.org/wpafc/basic-information/>> accessed 22 January 2021

Amnesty International, 2019, Cameroon 2019 <<https://www.amnesty.org/en/countries/africa/cameroon/report-cameroon/>> accessed 18 March 2021

Amnesty International, 'Secret Torture Chambers in Cameroon' <<https://www.amnesty.org/en/latest/campaigns/2017/07/cameroon-torture-chambers/>> accessed 1 December 2020.

04/2021

Centre for Human Rights and Democracy in Africa Website, About Section, Who we are  
<<https://www.chrda.org/about/>> accessed 25 November 2020.

Chairman Okoloise 'Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights' (2018) 18 African Human Rights Law Journal 27.

Chothia F, 'Cameroon's Anglophone Crisis: Red Dragons and Tigers - the Rebels Fighting for Independence' BBC News (4 October 2018) <<https://www.bbc.co.uk/news/world-africa-45723211>> accessed 14 March 2021

DW, 'Who Are Cameroon's "Ambazonia" Secessionists?' <<https://amp.dw.com/en/who-are-cameroots-self-named-ambazonia-secessionists/a-50639426>> accessed 14 March 2021

Frans Viljoen and Chidi Odinkalu, *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and their Advocates*, Vol 3 (2nd edn, OMCT 2014) 79  
<[https://www.omct.org/files/2014/11/22956/v3\\_web\\_african\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v3_web_african_en_omc14.pdf)> accessed 1 December 2020

Human Rights Watch 'Cameroon: Detainees Tortured. Abuse, Incommunicado Detention at Yaoundé Prison; Enforced Disappearances' [2019] <<https://www.hrw.org/news/2019/08/20/cameroon-detainees-tortured>> accessed 1 December 2020

Human Rights Watch, 2019, Cameroon: Routine Torture, Incommunicado Detention.  
<<https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention>> accessed 18 March 2021

Human Rights Watch 'World Report 2019: Cameroon' [2020] <<https://www.hrw.org/world-report/2020/country-chapters/cameroon#03d283>> accessed 29 November 2020

International Committee of the Red Cross [2011] 'What does the law say about torture?' Available at:  
<<https://www.icrc.org/en/doc/resources/documents/faq/torture-law-2011-06-24.htm>>

International Justice Resource Centre, 'Advocacy before the African Human Rights System: A Manual for Attorneys and Advocates' [2016] <<https://ijrCentre.org/wp-content/uploads/2017/11/2.-African-Human-Rights-System-Manual.pdf>> accessed 8 March 2021

International Justice Resource Centre 'African Human Rights System'  
<[https://ijrCentre.org/regional/african/#African\\_Court\\_on\\_Human\\_and\\_Peoples8217\\_Rights](https://ijrCentre.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights)> accessed 22 January 2021

International Justice Resource Centre, 'Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights' [2018] 8 <<https://ijrCentre.org/wp-content/uploads/2018/10/Civil-Society-Access-ACHPR-2018.pdf>> accessed 22 January 2021

International Justice Resource Centre, 'Committee for the Prevention of Torture in Africa'  
<[https://ijrCentre.org/regional/african/committee-for-the-prevention-of-torture-in-africa/#RECEIVING\\_INFORMATION](https://ijrCentre.org/regional/african/committee-for-the-prevention-of-torture-in-africa/#RECEIVING_INFORMATION)> accessed 22 January 2021

International Justice Resource Centre, 'Thematic Research Guide: Torture' (IJRC Website)  
<<https://ijrCentre.org/thematic-research-guides/torture/>> accessed 15 February 2021

04/2021

Talmon S, 'The Responsibility of Outside Powers for Acts of Secessionist Entities' (2009) 58 ICLQ 493

The African Commission Website, 'Special Mechanisms: Committee for the Prevention of torture in Africa' <<https://www.achpr.org/specialmechanisms/detailmech?id=7>> accessed 8 March 2021

The Institute for Human Rights and Development in Africa (IHDRA), and the International Service for Human Rights (ISHR) 'A Human Rights' Defenders' Guide to the African Commission on Human and Peoples' Rights' (2012) 32

United Nations Human Rights Treaty Bodies, UN Treaty Body Database, <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=30&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=30&Lang=EN)> Accessed 05/02/2021

Weissbrodt D and Heilman C, 'Defining Torture and Cruel, Inhuman, and Degrading Treatment' (2011) 29 Minnesota Journal of Law & Inequality 334 <[https://scholarship.law.umn.edu/faculty\\_articles/366](https://scholarship.law.umn.edu/faculty_articles/366)> accessed 20 January 2021

#### a. Press Releases and Speeches

African Commission on Human and Peoples' Rights, Closing Ceremony of the 67th Ordinary Session 'Closing Statement of the Chairperson of the African Commission on Human and Peoples' Rights, Honourable Commissioner Solomon Ayele Dersso' [3 December 2020] <<https://www.achpr.org/sessions/statements?id=140>> accessed 20 January 2021

African Commission 'Press Release on the Deteriorating Situation of Human Rights in Cote d'Ivoire' [27 February 2011] <<https://www.achpr.org/pressrelease/detail?id=316>> accessed 8 March 2021

African Commission on Human and Peoples' Rights, 'Press Release on the Human Rights Situation in Cameroon' [29 January 2018] <<https://www.achpr.org/pressrelease/detail?id=63>> accessed 20 January 2021

African Commission on Human and Peoples' Rights, 'Press Release on the Human Rights Situation in Cameroon following strike actions of Lawyers, Teachers and Civil Society' [13 December 2016] <<https://www.achpr.org/pressrelease/detail?id=103>> accessed 20 January 2021

African Commission on Human and Peoples' Rights, 'Press Release on the Human Rights Situation in Cameroon following strike actions of Lawyers, Teachers and Civil Society' [13 December 2016] <<https://www.achpr.org/pressrelease/detail?id=103>> accessed 22 January 2021

African Commission 'Press Release on the Human Rights Situation in Eastern Democratic Republic of Congo' [19 December 2021] <<https://www.achpr.org/pressrelease/detail?id=271>> accessed 8 March 2021

African Commission on Human and Peoples' Rights, 'Press Release on the Human Rights Situation in Senegal' [22 February 2012] <<https://www.achpr.org/pressrelease/detail?id=301>> accessed 8 March 2021

African Commission on Human and Peoples' Rights, 'Press Statement on Letter of Concern issued on human rights issues arising from the violent crisis in the Republic of Cameroon' [14 November 2019] <<https://www.achpr.org/pressrelease/detail?id=457>> accessed 22 January 2021