

Pan-African Reparation Perspectives

Special Bulletin on Reparation for Victims of Torture in Africa

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Secondly, because it provides an opportunity for the Commission to clearly articulate how its broad mandate on promoting and protecting human and peoples' rights should be understood in relation to systematic and mass human rights violations.

Human rights violation cases brought before the Commission are often dealt with on a case by case basis and are generally confined to addressing the needs of individual victims. This does not always allow the Commission to address the systemic causes underlying these violations or widespread abuses that pertain to a given context. Outside its protection mandate, the interventions of the Commission do not always specifically address the systemic and structural dimensions of violations. A better understanding of the Commission's role in transitional justice processes can help address these shortcomings.

ACHPR Resolution on Transitional Justice: potential contribution to victims' rights in Africa

By Shuvai Busuman Nyoni, Regional Advocacy Officer, CSVR

Over the past three years, the issue of transitional justice in Africa has gained particular resonance within African Union (AU) institutions. Of note is the development of an African Transitional Justice Policy Framework coordinated by the African Union Commission.¹ Transitional Justice has emerged and evolved globally as both a field of study and practice over the last decades. Transitional justice describes accountability, justice and reconciliation processes aimed at dealing with legacies of large scale abuses and violations.² Victims and those who have suffered human rights violations are intended to be at the centre of transitional justice processes.

At its 53rd Ordinary Session in April 2013, the African Commission on Human and People's Rights passed a [Resolution on Transitional Justice in Africa](#) (ACHPR/Res.235) adding to the broader AU efforts towards a continental approach to Transitional Justice.

The resolution mandates a Commissioner to prepare a study on transitional justice in Africa with the objective of, *inter alia*, identifying opportunities and challenges for the Commission in encouraging and supporting transitional justice processes in Africa and analysing the possibility for the establishment by the Commission of a special mechanism on transitional justice in Africa.³ The resolution is important for several reasons: firstly, because it recognises the need for the Commission to become engaged in the ongoing continental debate on transitional justice.



Shuvai Busuman Nyoni, CSVR © CSVR

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Thirdly, over the past two decades, the continent has witnessed a mushrooming of transitional justice processes, which seek to comprehensively deal with mass scale abuses. Assessing its role in relation to such processes can potentially have important implications for the realisation of the mandate of the Commission. Finally, a more in depth analysis of transitional justice processes on the continent will require the Commission to reflect on its own role in providing justice, including reparation, to victims of violations of the African Charter.

The call for a study by the Commission is a response to these issues and may lead to the Commission establishing what role it should specifically play in addressing impunity, accountability, justice, reparation for victims and reconciliation in post-conflict contexts.⁴

For transitional justice in Africa to contribute to a ‘successful transition’ it must, of necessity, establish accountability, uncover truth, provide acknowledgment for past abuses, transform repressive systems and most importantly ensure reparation and redress for victims and survivors.

The African Commission, as the most accessible continental human rights mechanism for victims, can provide a much

needed impetus to continental efforts to determine the narrative and practice of transitional justice. Based on more than 25 years of experience in promoting and protecting human rights across the region and adjudicating more than 400 human rights cases, the Commission is ideally placed to develop a transitional justice policy that is based on the needs and rights of victims. This will require the Commission to examine in greater depth group or community rights’ violations as well as the transformation of systems that enable and foster violations. It will also require the Commission to encourage transitional justice processes based on citizen participation and national dialogue. National dialogue would ensure that victims are empowered, that their experiences and their needs are voiced and prioritised by society. ●

¹ Centre for the Study of Violence and Reconciliation (2011), ‘African Union Commission Consultation with African Union Member States on Transitional Justice’, Consultation Report: Cape Town, South Africa. 12-13 September 2011, accessible at <http://www.csvr.org.za/docs/AfricanUnionCommissionConsultationonTransitionalJustice.pdf>.

² United Nations Secretary General, “Guidance Note of the Secretary General: The United Nations Approach to Transitional Justice” (March 2010).

³ African Commission on Human and People’s Rights, ‘235: Resolution on Transitional Justice in Africa’, accessible at [<http://www.achpr.org/sessions/53rd/resolutions/235/>].

⁴ Ibid, ACHPR Resolution 235.

Reparation for Torture Survivors: the role of African Human Rights mechanisms, Banjul, April 2013

By Jürgen Schurr, REDRESS

The African Commission on Human and Peoples’ Rights is the main regional forum for victims of torture and other serious human rights violations to obtain justice where domestic justice systems are not available, effective or sufficient. Over more than 25 years, the Commission has rendered important decisions upholding the rights of thousands of victims and holding States responsible for violations under the African Charter on Human and Peoples’ Rights (African Charter).

The Commission’s response to torture and ill-treatment under Article 5 of the Charter has been spurred on by the adoption of the Robben Island Guidelines (RIG) in February 2002. Part III of the RIGs set out in some detail the rights and needs of torture victims.¹ Similarly, sub-regional human rights mechanisms, such as the ECOWAS and East African Courts of Justice and, until its suspension in 2010-11, the SADC Tribunal,² provide a forum for torture victims to obtain reparation. The African Court on Human and Peoples’ Rights can also provide such a forum, particularly where a State party to the Protocol establishing the Court has made a declaration allowing individuals and NGOs direct access to the Court.

Despite significant progress in combating torture within the region, developments in international law on victims’ right to reparation could receive further attention. New instruments such as the ‘UN Basic Principles and Guidelines on the Right to a Remedy and Reparation’³ of 2005, the ‘Nairobi Principles on Women and Girl’s Right to a Remedy and Reparation’⁴ of

2007 and the Committee Against Torture’s *General Comment on Article 14* of the Torture Convention, adopted in December 2012,⁵ provide holistic frameworks for ensuring adequate reparation.

However, the right to reparation does not feature as a prominent issue on the agenda of the key human rights mechanisms in the region. Gaps remain between regional jurisprudence and international standards on victims’ rights generally, demonstrating the need to strengthen expertise on reparation in particular. In pursuing its mandate to promote hu-



Participants at Expert Meeting © REDRESS

man rights on the continent, the Commission has yet to clearly articulate a position on the right of victims to reparation.

Against this background, the Centre for the Study of Violence and Reconciliation (CSV) and REDRESS hosted an Expert Meeting in the margins of the 53rd Ordinary Session of the African Commission. The meeting, entitled "*The Right to Reparation for Victims of Torture and the Role of African Human Rights Mechanisms*" was held in the Gambia from 5-6 April 2013. CSV and REDRESS collaborated with the Egyptian Initiative for Personal Rights (EIPR), Egypt, the International Medico-Legal Unit (IMLU), Kenya, the Actions pour la Protection des Droits de l'Homme (APDH), Ivory Coast and Prisoners Rehabilitation and Welfare Action (PRAWA), Nigeria, in organising the event.⁶

There was a consensus among participants that there was a discrepancy between the mandates of human rights mechanisms on the continent, and their marginal impact on victims' right to reparation. As an important building block in delivering justice to victims, the regional human rights mechanisms need to help to bridge the gap between international standards, which specifically recognise victims' right to reparation, and realities on the ground, where victims' rights are largely unrealised. Regional mechanisms can provide redress, including an effective remedy and reparation, where national systems failed to do so. They can address systemic problems that go beyond a specific case, and provide guidance to national judiciaries through decisions that ensure compliance with national institutions and international law.

Reparation for victims - key challenges at (sub) regional level:

- (i) narrow understanding of "reparation", mainly limited to compensation; and
- (ii) failure of States to implement decisions of regional Human rights bodies.

A variety of options for the way forward were identified to strengthen victims' right to reparation at national and (sub-) regional level:

- Development of a handbook or manual on the right to reparation by the Mechanisms to ensure greater awareness of the concept of reparation and consistency of reparation rulings and compliance with international law;
- Development of an '*African General Comment*' on part III of the Robben Island Guidelines by the CPTA in consultation with State parties and civil society. This document would set out States' obligations regarding the right to reparation for victims of torture in detail. It would take into account the adoption of General Comment No.3 by the UN Committee Against Torture on Article 14 of the UN Convention against Torture;⁷

- Mapping of various continental civil society initiatives that exist to respond to the needs of victims of torture; and
- Compiling relevant jurisprudence of the regional mechanisms and of best practices, supplementing information on efforts towards reparation in Africa.

Civil society will continue to play an important role in making sure that this issue stays on the agenda of relevant decision makers, to advocate for further discussion on the above mentioned options and to foster an informed debate with key practitioners working with the regional mechanisms and other stakeholders. The organisation of the Expert Meeting was, in this respect, only one step of many more to come in the pursuit of justice and reparation for victims of torture. ●

Casewatch: *Gabriel Shumba v Zimbabwe (288/04)*, African Commission on Human and Peoples' Rights



Mr Shumba, human rights lawyer and Director of Zimbabwe Exiles Forum, had filed a case before the African Commission against Zimbabwe

for torture and other human rights violations. In March 2013, the Commission informed Mr Shumba that it found the government of Zimbabwe in breach of Article 5 of the African Charter and ordered the government, inter alia, to pay compensation to Mr Shumba. The government has yet to comply with the decision.

For further information on the Expert meeting, please contact Jürgen Schurr at REDRESS at juergen@redress.org or Shuvai Busuman Nyoni at CSV at snyoni@csv.org.

¹ *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, See for further information, African Commission on Human and Peoples' Rights: http://www.achpr.org/files/special-mechanisms/cpta/robben_island_guidelines_2nd.pdf.

² See further in this Newsletter, 'SADC Tribunal's role in providing redress for torture victims under review.'

³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

⁴ Nairobi Principles on Women and Girls' Right to a Remedy and Reparation <http://www.redress.org/downloads/publications/Nairobi%20Principles%20Non%20Women%20and%20Girls.pdf>

⁵ Committee against Torture, General comment No. 3 (2012), Implementation of article 14 by States parties, CAT C/GC/3, 13 December 2012, at http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.3_en.doc

⁶ See Background paper for the meeting here: http://www.redress.org/downloads/Concept-Note_Expert-meeting-on-Reparation_Eng.pdf and the agenda:http://www.redress.org/downloads/Programme_ExpertMeeting_Reparation_African-HR-Mechanisms_April2013_Final.pdf.

⁷ See also in this Newsletter, 'The Committee for the Prevention of Torture in Africa: facilitating justice and redress for victims of torture.'

The Committee for the Prevention of Torture in Africa: facilitating justice and redress for victims of torture

By Jean-Baptiste Niyizurugero, Vice-President of the CPTA



The International Day in Support of Victims of Torture, 26 June 2013, is an occasion for the Committee for the Prevention of Torture in Africa (CPTA) to express its compassion to victims of torture, in particular, to all victims of human rights violations. It is an opportunity to recall the important work of the CPTA and its contribution to justice and redress for torture victims.

Article 5 of the African Charter on Human and Peoples' Rights (the Charter) prohibits in absolute terms all forms of torture, cruel, inhuman or degrading treatment or punishment. This was further clarified in the Robben Island Guidelines¹, adopted by the African Commission on Human and Peoples' Rights (ACHPR) in 2002. Subsequently, in 2004, the ACHPR established the CPTA² with the mandate to, inter alia, promote and facilitate the implementation of the Robben Island Guidelines within States Parties to the African Charter.

Despite its absolute prohibition, widespread torture on the continent has resulted in many victims suffering from untold physical pain and suffering, including post-traumatic stress disorder, as well as feelings of guilt, shame and humiliation. Added to these are the risks of reporting torture which may see alleged victims, their families, witnesses and those conducting investigations being exposed to violence, threats and other forms of reprisals.

The provisions of Part III of the Robben Island Guidelines on '*Responding to the Needs of Victims*' outline specific measures that States must put in place to cater for the needs of survivors of torture and their relatives. The practical implementation of these measures within national jurisdictions is a primary focus of the CPTA in the discharge of its mandate.

Redress for victims of torture can only be effective where there is legislation that provides for measures to protect victims and guarantees access to adequate reparation. The CPTA has been playing a fundamental role in advocating for the adoption of comprehensive anti-torture legislation by State parties, that clearly defines torture and provides a framework for investigations and prosecutions and fully addresses the needs of victims in accordance with international law.³

The CPTA also plays a critical role issuing urgent appeals in situations where allegations of torture are brought to its attention by victims or third parties. It is the practice of the CPTA to send letters of appeals to the highest authorities of the State Party allegedly responsible for the torture, requesting the concerned State to take measures aimed at protecting the mental and physical integrity of the alleged victim, investigating the allegations, bringing the perpetrators to justice and providing redress to the victim. These urgent appeals have had a significant influence and shaped the response of authorities in State parties in the way they treat victims.

The needs of victims of torture are most often at the center of the CPTA's preventive and promotion missions to State parties. The CPTA has carried out missions to a number of African countries and engaged in a constructive dialogue on the implemen-

tation of key principles in the Guidelines such as the need to fight impunity and the obligation to establish readily accessible and effective complaints mechanisms where victims can seek redress etc.

The CPTA also provides advice and technical support to national actors on the implementation of the RIG in general and advocates for the establishment for a reparation fund for victims of torture to meet the physical, psychological and social needs of victims. This was particularly highlighted in the Johannesburg Declaration⁴ adopted in the framework of the 10th anniversary of the RIG. The efforts of the CPTA are geared towards creating a legislative and institutional framework at national level, enabling effective prohibition and prevention of torture including victims' adequate access to the full range of reparations that they are entitled to under international law.



The CPTA at conference in Dakar © ACHPR

In this context, the CPTA looks forward to drafting and adopting a model anti-torture law as well as developing a general comment on Part III of the RIG in consultation with State parties to the Charter and civil society. This will enable the CPTA to provide, in the near future, State Parties and other stakeholders with authoritative views and guidance for ensuring that victims of torture obtain justice, including adequate reparation. ●

¹ Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines or RIG). See for further information, African Commission on Human and Peoples' Rights: http://www.achpr.org/files/special-mechanisms/cpta/robben_island_guidelines_2nd.pdf.

² See ACHPR : <http://www.achpr.org/mechanisms/cpta/>.

³ See for instance the CPTA's database which provides information on African States that have ratified the Convention against Torture and its Optional Protocol, and those that have criminalized torture along with the applicable penalties, at <http://www.achpr.org/mechanisms/cpta/torture-db/>.

⁴ See Association for the Prevention of Torture, at http://www.apt.ch/en/news_on_prevention/johannesburg-declaration-a-platform-for-torture-prevention-action/#.UbX6xpyGdeI.

SADC Tribunal's role in providing redress for torture victims under review

By Justice Charles Mkandawire, Registrar of the SADC Tribunal



The Southern African Development Community (SADC) was established through the Treaty in Windhoek, Namibia in 1992. The SADC Tribunal was established in Article 9 of that Treaty and its role is to ensure adherence to the Treaty, SADC Protocols and any other SADC legal instruments.

Protection and promotion of Human rights protection - a SADC priority

At first glance, promotion and protection may not appear to be a priority for an organization established to further socio-economic, political and security cooperation and integration. Nonetheless, there are many human-rights related provisions in the SADC legal framework including direct and indirect references to regional integration and human rights in the document.¹

In its preamble, the SADC Treaty recognizes the need to involve the people in the region in the process of development and integration, particularly through guaranteeing democratic rights, and observing human rights and the rule of law. The preamble's contents are given effect in subsequent provisions. Chapter 3 specifically addresses principles of human rights, democracy and the rule of law.

Applicable Law of SADC in terms of Article 21 (b) of the Protocol on the SADC Tribunal

While SADC does not have a protocol on human rights or torture, and the Tribunal is not a human rights court, its jurisprudence establishes that SADC does not need a human rights Protocol to give effect to principles already provided for in the SADC Treaty, namely human rights principles. In *Mike Campbell (Pvt) Ltd v. The Republic of Zimbabwe*, the tribunal relied on Article 21 (b) of the Protocol on Tribunal and Rules thereof as read with Article 4 (c) to assert its human rights jurisdiction:

In deciding this issue, the Tribunal first referred to Article 21 (b) which, in addition to enjoining the Tribunal to develop its own jurisprudence, also instructs the Tribunal to do so 'having regard to applicable treaties, general principles and rules of public international law' which are sources of the Tribunal.²

This decision provides an adequate response to the question of whether the Tribunal can look elsewhere to find answers where it appears that the Treaty is silent.

The SADC Protocol and rules thereof in relation to Torture

The SADC Tribunal started developing jurisprudence on the crime of torture using Article 21 (b) of the protocol on Tribunal. In the case of *United Republic of Tanzania v Cimexpan (Mauritius) Ltd*, the Tribunal defined torture as provided for in Article 1 of the 1984 Convention Against Torture.³

In the above case, due to the respondent's failure to adduce evidence to substantiate the allegations of torture or ill treatment, the Tribunal could not consider the claim. However, the Tribunal's reference to UNCAT demonstrated its willingness to apply international human rights instruments as an applicable law of SADC.

In *Gondo and Others v The Republic of Zimbabwe*, SADC (T) 5/2008, while the applicants alleged torture the Tribunal's decision did not include any reference to torture. The Tribunal referred to the human rights violations committed against the applicants as "acts of violence", probably because all the matters were brought before domestic courts as civil actions to recover damages. The substance of the petition to the Tribunal was the violation of the applicants' right to an effective remedy as the Member State concerned refused to comply with court orders to pay compensation due. In finding the State in breach of its obligations under the SADC Treaty and other relevant obligations, the Tribunal emphasised in unequivocal terms that victims of human rights violations have a right to an effective remedy in law and in practice.



The SADC Tribunal in Windhoek, Namibia © OSISA***

It is very clear that before the judicial activities of the SADC Tribunal were suspended at the 2010-11 Summit, pending the review of the terms of reference of the Tribunal, the judicial body had started developing flourishing jurisprudence in areas of human rights and, in particular, torture, and recognising victims' right to reparation. Further development of this jurisprudence is now uncertain given the attempts to curtail the jurisdiction of the Tribunal and confine it to an inter-state body. Such a decision will certainly rob SADC citizens of an opportunity to seek redress for torture and other human rights violations. ●

¹ See Treaty of the Southern Africa Development Community, 17 August 1992, at http://www.sadc.int/files/9113/5292/9434/SADC_Treaty.pdf.

² See SADC Tribunal, *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2/2007) [2008] SADC (T) 2 (28 November 2008), page 24, at <http://www.saflii.org/sa/cases/SADCT/2008/2.pdf>.

³ See SADC Tribunal, *United Republic of Tanzania v Cimexpan (Mauritius) Ltd and Others* (01/2009) [2010] SADCT 5 (11 June 2010), at <http://www.saflii.org/sa/cases/SADCT/2010/5.pdf>.

Reparation for torture: recent jurisprudence of the Inter-American System on Human Rights

By María Claudia Pulido, Principal Specialist, Inter-American Commission¹



For half a century, the Inter-American Commission of Human Rights (IACtHR) has been 'the engine of the Inter-American System'.² Since 1961, it has carried out more than 106 visits to members of the Organisation of American States (OAS) and published 95 country and thematic reports. As a quasi-judicial body, the Commission's main role has shifted over the past two decades from promotional country visits to the processing of individual complaints.

The Commission has handed down landmark decisions including declaring amnesty laws for egregious human rights violations as incompatible with the Inter-American Convention on Human Rights, as well as decisions on the right to vote, the right to freedom of expression and the rights of women and indigenous peoples. Through recommendations addressing structural problems that prevent millions of people from fully enjoying their rights, the IACtHR has also played a vital role in preventing violations.

The protective/contentious work of the Commission is complemented by the Inter-American Court of Human Rights (IACtHR) which, upon referral from the Commission, examines complaints of violations of the American Convention on Human Rights allegedly committed by State parties.

The Inter-American Commission's jurisprudence on reparation for victims of torture

The Inter-American Commission seeks to establish friendly settlements between States and victims. Where cases do not settle, the Commission refers cases to the Court, thereby playing a key role in litigating cases before the Court, representing the 'public interest'. While the Commission renders its own decisions on reparation, in the context of potential friendly settlements, it also plays a role presenting its findings on reparation to the Court in contentious cases. Friendly settlements can include the commitment of the State to review convictions based on evidence obtained under torture, leading to the release of those convicted and sentenced in such proceedings; a commitment to provide medical and psychological care to the victim and her/his family and the payment of compensation for loss of earnings and for any impact of torture on a victim's 'life plan'.

In the case of *Luis Rey García Villagrán v Mexico*³, involving a victim of illegal detention, torture and violations of due process, the friendly settlement led to the torture survivors' release. The State committed itself to providing rehabilitation and to paying one million pesos (around \$78.000 USD) to install a printing workshop and an accounting firm, so that he and his family could resume their life and make a living. The State also acknowledged in a public event that the victim had been tortured and illegally deprived of his liberty by the State Judicial Police in 1997. It publicly apologized for the violations committed against him.

In another case, the friendly settlement included a commitment to provide psychological care for the victim as well as scholarships for his sons and a house for him and his family which was fully subsidized by the Government.⁴



Inter-American Commission on Human Rights © IACtHR

The Inter-American Court's recent jurisprudence on reparation for torture⁵

Where the Court makes a finding of torture, it consistently orders the State found responsible to investigate the facts according to set criteria, including in particular criteria set out in the Istanbul Protocol, and to identify, judge and, if appropriate, sentence those responsible.

The Court orders violating States to provide victims with specific forms of reparation, including:

- **satisfaction** (for instance publicising the Court's judgment; deleting the victims' names from all criminal records);
- **rehabilitation**, including medical and psychological care based on the victims' needs;
- **guarantees of non-repetition**, such as establishing a compulsory training course on national and international human rights for violating authorities or the reform of legislation incompatible with the Convention or other treaties in the Inter-American System.

The Court has developed a sophisticated system of awarding **compensation** for: (a) *pecuniary damage*, taking into account the victim's loss of earnings, as well as consequential damages to a victim's life plan;⁶ (b) *non-pecuniary damage* related to the circumstances of each case. Importantly, where the Court makes a finding of torture, there is no need to prove non-pecuniary damage, since the Court considers that any person subjected to torture experiences profound suffering, anguish, terror, feelings of powerlessness and insecurity, so this harm does not need to be proved.

While the Inter-American System has been effective in protecting torture victims' rights to reparation, this does not always translate into justice at the national level despite the decisions of its bodies. The implementation of the decisions of the Commission and the Court by the States in the region remains a challenge.

mains a constant challenge for victims of torture and other human rights violations in their struggles to obtain justice. ●

¹ This article is based on a presentation made at the Expert Meeting: 'The Right to Reparation for Torture: the Role of African Human Rights Mechanisms', 5-6 April 2013.

² Tara J. Melish, 'The Inter-American Commission on Human Rights Defending Social Rights Through Case-Based Petitions', in *Social Rights Jurisprudence Emerging Trends in International and Comparative Law* 339 (Malcolm Langford ed. 2008).

³ IACtHR, Report No. 164/10 (friendly settlement), Petition 12.623, *Luis Rey García Villagrán, Mexico*.

⁴ IACtHR, Report No. 101/05 (friendly settlement), Petition 388/01, *Alejandro Ortiz Ramírez, Mexico*.

⁵ This is based on an analysis of the Court's judgments in the following cases: *Lysisas Fleury et al. v. Haiti*, Judgment of November 23, 2011; *Torres Millacura et al v. Argentina*, Judgment of August 26, 2011; *Cabrera Garcia and Montiel Flores v. México*, Judgment of November 26, 2010; *Bayarri v. Argentina*, Judgment of October 30, 2008; *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005.

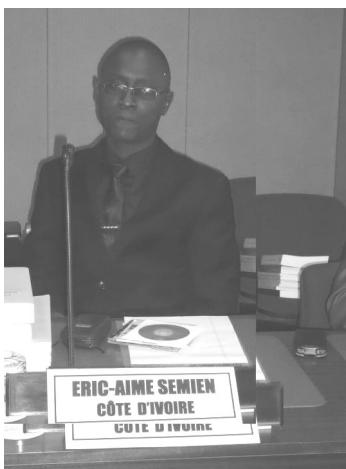
⁶ See for instance *Loayza-Tamayo v. Peru (Merits)*, Judgment of 17 September 1997, I/A Court H.R., Series C No. 33, p. 14.

Interview: Dr Uju Agomoh, Director, PRAWA and Eric-Aimé Semien, President, APDH The potential role of the ECOWAS Court

The ECOWAS Court of Justice is an important forum for victims of torture in the sub-region. However, it can do more to realise its potential, say Dr Uju Agomoh, Executive Director of PRAWA, and Eric-Aimé SEMIEN, President of APDH.



Dr Uju Agomoh, PRAWA



Eric-Aimé Semien, APDH

Q: How do your organisations assist torture victims?

Dr. Uju Agomoh: Prisoners Rehabilitation and Welfare Action (PRAWA) is a human rights organisation working in Nigeria and several other African countries. We provide direct psychological rehabilitation and medical intervention to victims of torture and prison inmates. In light of the prevalence of torture committed in prisons and in the course of police interrogations, we also carry out capacity building of healthcare departments in prisons, police officers and members of academia on the prevention and documentation of torture.

Eric-Aimé Semien: APDH stands for 'Actions pour la Protection des Droits de l'Homme (APDH) and was founded in Ivory Coast in 2003. We provide legal assistance to victims of human rights violations committed in Ivory Coast. One of our priorities are victims of the post-election crisis in 2010-11 which left many victims without any support and assistance.

We are documenting their cases in ten communities throughout the country with a view to initiating legal action before national as well as regional mechanisms. We are currently advocating for the adoption of a law against torture which will help bring cases to the courts.

Q. What is the role of the ECOWAS Court in enabling victims of torture to obtain justice, including adequate reparation?

Eric-Aimé Semien: Since the exhaustion of domestic remedies is not a requirement for a submission to the ECOWAS Court of Justice, it is very accessible and provides an essential complement to domestic remedies, especially in countries where crimes such as torture are not criminalized, such as Ivory Coast. The Court's significant decisions to date are a testimony to the crucial role it can play in providing victims with access to reparation.

However, the Court and its judgments are not very well known in Ivory Coast and it should do more to reach out to victims and civil society here. In addition, it needs to make sure that its judgments provide full and adequate reparation, and that its judgments are executed by the States.

Dr. Uju Agomoh: It is very important for victims to be able to make themselves heard beyond their own legal system, as otherwise they may not have a remedy, for instance, in cases that are indefinitely delayed. The ECOWAS Court of Justice can provide an alternative forum for torture victims in Nigeria and elsewhere in the sub-region. It may also be easier for victims, especially female victims, to file a case against the State outside Nigeria because of their fear of reprisals by law enforcement agents and the absence of witness protection mechanisms in Nigeria.

Q: What do you see as key challenges for the Court in providing victims of torture with adequate reparation?

Eric-Aimé Semien: The biggest challenge for the Court, as far as Ivory Coast is concerned, is related to the reluctance of victims to come forward and testify because of their fear of reprisals. What could reassure victims to come forward and file their cases with the Court is probably the effectiveness of the mechanism in terms of reparation and execution of its decisions by States. This would help to convince victims of torture in Ivory Coast that the ECOWAS Court of Justice is a viable forum where they can obtain redress. Civil society in the sub-region has an important role to play, too, to inform and sensitize others about the Court and its important decisions.

Dr. Uju Agomoh: Not many victims in Nigeria know that the Court exists, and lawyers are often not trained in seeking a

remedy from the Court either. Most legal representatives in Nigeria are not aware of the five different forms of reparation that can be requested when submitting a case on behalf of a torture victim to the Court.

It is important for lawyers and others assisting torture victims to know that the Court only decides on what the parties request. If the legal representative fails to request a specific form of reparation, such as rehabilitation, the Court will not award such reparation, even if it finds a State responsible for torture. This is a somewhat limited approach that fails to take into account the rights of victims to reparation under international law. ●



Factbox : ECOWAS Community Court

Background: Established pursuant to Articles 6 and 15 of the Revised Treaty of the Economic Community of West African States (ECOWAS).

Human Rights Jurisdiction: The Court by virtue of Article 9(4) and 10 (d) of the Supplementary Protocol A/SP.1/01/05 has jurisdiction to hear human rights cases filed by victims of human rights violations in any ECOWAS Member State provided that such application is not anonymous and not made while the same matter is pending before another international court for adjudication. Exhaustion of domestic remedies is not a requirement.

Composition: 7 independent Judges

Applicable Law in Human Rights cases: 'International instruments relating to human rights and ratified by the State party to the case'; African Charter on Human and Peoples' Rights.

Judgments: Not subject to appeal; binding on each Member State.

Location: Court is based in Abuja, Nigeria, but can hear cases outside the seat of the Court.

Website of the Court: <http://www.courtecowas.org/>

Jurisprudence of the Court: <http://caselaw.ihrda.org/ecowas/>

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