

African Commission on Human and Peoples' Rights



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

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Punishment or Treatment (Article 5)**

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Preface

The African Commission on Human and Peoples' Rights (the Commission) is pleased to adopt this General Comment on the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (torture and other ill-treatment) under Article 5 of the African Charter on Human and Peoples' Rights (the African Charter).

Since its establishment in 2004, the Committee on the Prevention of Torture in Africa (the Committee) has been the focal point for the Commission in addressing issues of torture and other ill-treatment. In 2012, the Outcome Document of the Commemorative Seminar on the 10th Anniversary of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) tasked the Committee to prepare authoritative comments providing legal guidance and interpretation to facilitate the effective implementation of Article 5 of the African Charter.

The Commission decided to support the Committee's proposal to develop a General Comment on victims' right to redress at its 56th Ordinary Session held from 21 April to 7 May 2015, to further strengthen existing provisions on the right to redress in instruments adopted by the Commission, in particular the Robben Island Guidelines.

Subsequent to that, the Committee developed this General Comment in consultation with State and non-State stakeholders who provided invaluable feedback in face-to-face meetings and through electronic contributions.

The Commission expresses its gratitude to the Committee, States and all the other stakeholders who participated so whole-heartedly in the development of this General Comment.

Lawrence Murugu Mute

Commissioner and Chairperson of the
Committee for the Prevention of Torture in Africa

I: Introduction

1. State Parties to the African Charter on Human and Peoples' Rights (the African Charter) are obliged to ensure both in law and practice that victims of violations of the human rights enshrined in the African Charter have access to and obtain redress. The Africa Commission on Human and Peoples' Rights (the Commission) has confirmed this obligation through its adopted instruments and jurisprudence. Torture and other cruel, inhuman or degrading punishment or treatment (torture and other ill-treatment) remains a serious concern throughout the African continent and the Commission recognises the challenges which victims of torture and other ill-treatment experience in accessing and obtaining redress.
2. This General Comment focuses on the right to redress for victims of torture and other ill-treatment under Article 5 of the African Charter. That Article provides:
 - . "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."
3. Article 5 of the African Charter deals with a range of rights and obligations which form part of the wider commitment to respect the dignity inherent in every human being and the recognition of every person's legal status. Article 5 recognises that there is a mutually reinforcing link between the right to dignity and the absolute prohibition of torture and other ill-treatment.
4. This General Comment is founded and guided by existing regional and international norms and standards regarding the right to redress for victims of torture and other ill-treatment. It reaffirms and elaborates the jurisprudence of the Commission and relevant instruments adopted by African Union (AU) Member States, including in particular the African Charter, the AU Constitutive Act, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Charter on the

Rights and Welfare of the Child.

5. This General Comment also complements and is inspired by other legal instruments of the Commission, including the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) (2002); the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003); the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (2014); General Comment No. 3 on the African Charter on Human and Peoples' Rights on the Right to Life (Article 4) (2015); and the Principles and Guidelines on Human and Peoples' Rights While Countering Terrorism in Africa (2015).
6. Finally, the General Comment builds on the United Nations (UN) Committee against Torture's General Comment No. 3 on the Implementation of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Comment No. 3 of the UN Committee against Torture) (2012), and the UN 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 (2005).

II: Purpose of the General Comment

7. This General Comment provides authoritative interpretation on the scope and content of the right to redress for victims of torture and other ill-treatment in specific contexts pertinent to the African continent. It provides guidance on implementation and monitoring of the right to redress for victims of torture and other ill-treatment in law and practice by State Parties to the African Charter and other stakeholders, including national human rights institutions (NHRIs), national preventive mechanisms (NPMs) and civil society organisations (CSOs).
8. The right to redress encompasses the right to an effective remedy and to adequate, effective and comprehensive reparation. The ultimate goal of redress is transformation. Redress must occasion changes

in social, economic and political structures and relationships in a manner that deals effectively with the factors which allow for torture and other ill-treatment. This transformation envisages processes with long-term and sustainable perspectives that are responsive to the multiple justice needs of victims and therefore restore human dignity. It requires broad interpretation of State Parties' obligations to provide redress, including putting in place legal, administrative and institutional frameworks to give effect to the right to redress.

9. State Parties are required to ensure that victims of torture and other ill-treatment are able in law and in practice to claim redress by providing victims with access to effective remedies. This includes the adoption of relevant legislation and the establishment of judicial, quasi-judicial, administrative, traditional and other processes. These processes should adhere to standards of due process and comply with the measures and protections envisaged under Article 1 of the African Charter.
10. Reparation includes restitution, compensation, rehabilitation, satisfaction - including the right to the truth, and guarantees of non-repetition. The overarching goal of these forms of reparation is to provide healing for victims of torture and other ill-treatment. Healing entails making whole that which has been broken and wounded. It seeks to restore the dignity, humanity and trust violated by torture and other ill-treatment. It recognises and facilitates the journey of coming to terms with the torture and other ill-treatment and dealing with the consequences of trauma and other injuries. It has physical, psychological, social, cultural and spiritual dimensions and helps break the cycle of violence at individual, family, collective, institutional and societal levels.
11. The responses required to give effect to the rights and needs of individual victims and victimised communities to determine how best to realise the right to redress must be tailored to the specific contexts in Africa. These contexts include general policing, detention and imprisonment, post and on-going conflict situations, legacies of the colonial experience, and the fight against terrorism.
12. Responses are guided by the recognition that torture and other ill-

treatment is committed by State officials, including law-enforcement and security agencies and armed forces, as well as non-State actors.

13. Individual, institutional, structural and systemic inequalities, as well as discrimination, marginalisation and other disadvantageous situations place certain persons or groups at heightened risk to acts of torture and other ill-treatment.
14. Significant challenges exist which prevent victims of torture and other ill-treatment from realising the right to redress. Victims are unable to obtain redress because of the lack of comprehensive anti-torture legislation, the existence of laws which legalise or permit torture and other ill-treatment, and the absence of effective policies, programmes, administrative measures and institutional arrangements designed to give effect to this right. Impunity, gaps in the rule of law, corruption, inadequate torture prevention safeguards and a lack of implementation of legislation where it exists, especially in conflict and post-conflict States, present significant obstacles to victims seeking redress. Discrimination, marginalisation and socio-economic challenges as well as institutional and structural inequalities are further systemic barriers to accessing justice for disadvantaged people.
15. Where they exist, redress procedures tend to be time-consuming, bureaucratic, expensive and cumbersome. In many instances the procedures themselves can be an additional barrier to redress and can result in re-traumatisation. Mechanisms for enforcing reparation awards are frequently ineffectual, preventing enforcement of reparation orders by domestic courts as well as decisions of the Commission. Courts and quasi-judicial mechanisms such as NHRIs and Ombudspersons are often under-resourced or lack technical competencies to determine and award effective reparation to victims and/or to enforce their decisions and recommendations.

III: The place of the victim in the redress process

16. The right to redress applies to all persons subjected to torture and other ill-treatment without discrimination. Such persons

may identify themselves as ‘victims’ or ‘survivors’. This General Comment uses the term ‘victim’ without prejudice to other terms. Victims are persons who individually or collectively suffer harm, including physical or psychological harm, through acts or omissions that constitute violations of the African Charter.

17. An individual is a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term ‘victim’ also includes affected immediate family or dependants of the victim as well as persons who have suffered harm while intervening to assist victims or to prevent victimisation.
18. State Parties are required to protect the dignity of victims at all times and ensure that victims are at the centre of the redress process. A victim-centred approach to redress requires an analysis and full understanding of the harm suffered and of the victims’ wishes. It needs to reflect their experiences and realities, so that the provided redress is responsive to their needs. States should ensure that victims have ownership of the redress process, and relevant actors providing redress are expected to work with the victims, and not on the victims. Victims should be enabled to play active and participatory roles in the process of obtaining redress, without fear of stigma and reprisals.
19. The identification of victims should be made on a case-by-case basis without discrimination, and it should be guided by the particular harm experienced by the individual or collective, rather than on the basis of exclusive focus on the act or omission itself. States should take into account the gendered nature of torture and other ill-treatment, including the particular effects of sexual and gender based violence, the aggravated impact of torture and other ill-treatment on children and the unique experiences of people with disabilities subjected to torture and other ill-treatment.
20. This General Comment uses a non-exhaustive list of grounds of discrimination. These include race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin,

gender, sexual orientation, gender identity, disability (including psychosocial and intellectual disability), health status, economic or indigenous status, reason for which one is detained (including accusations of political offences or terrorist acts), asylum-seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalised or made susceptible on bases such as those above.

IV: Prompt, full and effective access to redress

21. State Parties are required to establish judicial, quasi-judicial, administrative, traditional and other processes to enable victims to access and obtain redress. Relevant State institutions should have the necessary legal mandate and independence, and adequate financial, human, technical and other resources to effectively provide redress. CSOs, community based organisations and others may complement services offered by State institutions in order to ensure full realisation of the right to redress.
22. It is necessary that State Parties put in place multi-sectoral redress procedures and mechanisms that are readily accessible to all victims. Special measures should be taken to provide access for victims in places of detention and to discriminated, marginalised or disadvantaged persons or groups, who are often unable to access full and effective redress or may even be exposed to re-victimisation and stigmatisation. These measures may include the establishment of clinics with staff trained in providing trauma counselling; the use of legal advice centres or mobile law clinics; the development of outreach programmes to ensure all victims can access redress; and support of relevant civil society initiatives and community based organisations assisting victims. State Parties should also provide reasonable accommodation measures on a case-by-case basis to persons with disabilities and others who may require such support. They should ensure the availability of child-sensitive redress measures for children who are victims of torture and other ill-treatment.
23. As part of their right to redress, victims of torture and other ill-

treatment have a right to an effective remedy, which is interlinked with their right to access justice. For a remedy to be effective, it must be available without impediment, offer victims with a prospect of success, and be sufficient to repair the harm suffered. While remedies should be judicial in nature, victims may choose to pursue reparation through non-judicial avenues and victims must be able to seek and obtain reparation irrespective of whether they pursued formal judicial, quasi-judicial, administrative, traditional or other processes.

24. State Parties are obligated to avail legal aid to victims in order for them to access effective redress. Legal aid should be broadly understood as encompassing legal representation, legal assistance, legal advice, legal education and information, mechanisms for alternative dispute resolution, and restorative justice processes.
25. State Parties shall carry out prompt, impartial, independent and thorough investigations when there are reasonable grounds to believe that torture and other ill-treatment has been committed, prosecute those responsible, and provide adequate, effective and comprehensive reparation to victims. Investigations should be in line with the standards enshrined in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).
26. Victims of torture and other ill-treatment should access and obtain redress promptly. Promptness is also required during hearing claims for civil damages and when victims seek other means of reparation, including rehabilitation, which is crucial for the recovery process of victims. Promptness is further required for the effective enforcement of decisions by domestic, regional and international judicial and quasi-judicial mechanisms. Failure to provide prompt access to redress constitutes *de facto* denial of redress. To this end, State Parties are required to establish effective independent mechanisms for verifying compliance and enforcement of such decisions. They should include in their national budgets funds for reparation for victims of human rights violations, including victims of

torture and other ill-treatment.

27. Victims of torture or other ill-treatment have a right to full and effective redress irrespective of where the torture and other ill-treatment were committed. State Parties are obliged to prosecute or extradite alleged perpetrators of torture when they are present in any territory under their jurisdiction and to adopt the necessary legislation to make this possible. State Parties should also ensure that means of reparation are accessible to victims who were subjected to torture and other ill-treatment outside their territory.
28. Amnesty laws in relation to acts of torture violate the victims' right to judicial protection and to have their cause heard under Article 7 (1) of the African Charter. This is particularly the case where the State has not met its obligations of investigating the violations, prosecuting the perpetrators, providing victims with redress for injuries suffered, and acting to stop the recurrence of such atrocities. Hence, States should not extend blanket amnesty to individuals for acts of torture. Similarly, States should not grant immunity to individuals for acts of torture since this is contrary to the obligation to prosecute and to provide redress for victims.

V: Protection against intimidation, retaliation and reprisals

29. The right to protection against intimidation, retaliation and reprisals is an integral component of victims' right to redress and a condition precedent to obtaining justice. Victims, witnesses, their relatives and members of their communities shall enjoy this protection before, during and after the judicial and other proceedings which they pursue to obtain redress. This right to protection is also extended to investigators, lawyers, health-care personnel, human rights defenders, monitoring bodies such as NHRIs and NPMs and any other individual or institution assisting victims in accessing redress.
30. States are required to ensure that they put in place specific protection mechanisms in situations where victims might be dependent on perpetrators for care, such as in health-care institutions or detention facilities. Alternative support should be provided to ensure that

victims are not dependent on the perpetrator in any way. Victims of torture and other ill-treatment shall have their privacy and confidentiality, including in relation to information about their health, protected at all times.

31. Failure to provide protection in itself constitutes a violation of the African Charter and State Parties are required to adopt necessary legislation and put in place policy and implementation measures to ensure that such protection is granted in an effective and independent manner. This shall include legislation providing for the criminalisation of threats, harassment, intimidation and omission by State officials to prevent any of these acts, as well as the establishment of independent oversight institutions over all places of detention. Persons against whom there is reasonable suspicion or who are implicated in the perpetration of torture and other ill-treatment shall be removed, in accordance with standards of due process, from any position of control or power, whether direct or indirect, over complainants, victims, witnesses and their families as well as those conducting investigations.
32. State Parties should comply promptly and fully with provisional measures so as to prevent irreparable harm.

VI: Forms of reparation for acts of torture and other ill-treatment

33. States are obliged to provide adequate, effective and comprehensive reparation to victims of torture and other ill-treatment. They should provide reparation to victims for acts and omissions which can be attributed to the State. In cases where an individual, legal person or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim. Victims' access to reparation shall not depend 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. Victims of torture and other ill-treatment shall be able to seek and obtain

reparation in a fair and non-discriminatory manner, requiring State Parties to ensure the independence of institutions providing reparation, including complaints and investigative mechanisms, forensic services, medical, psychological and other programmes providing rehabilitation, the judiciary, NHRIs, NPMs as well as traditional mechanisms.

34. Limited resources shall not justify a State's failure to fulfil its obligation to provide comprehensive reparation, and a State may establish special reparation funds. National legislation shall provide for all forms of reparation and State Parties shall ensure that the reparation provided is appropriate for the particular circumstances of the victim and that it is proportionate to the gravity of the harm suffered. When providing reparation, State Parties shall take into account the situation of victims, including their culture, personality, history and background as critical components of the victim-centred approach to providing reparation.
35. This General Comment endorses the definitions of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition contained in General Comment No. 3 of the UN Committee against Torture. Additionally, this General Comment proceeds to reflect on the particular context of victims on the African continent in relation to reparation.

Restitution

36. 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 which may include the restoration of citizenship, employment, land or property rights, accommodations, the release of persons arbitrarily detained or restoration of the ability for victims to exercise the right to return. Where the violation results from the victims' position of vulnerability and marginalisation which predated the violation, restitutive measures shall be complemented by measures designed to address the structural causes of the vulnerability and marginalisation, including any kind of discrimination. This shall also include measures aimed

to remedy socio-economic disadvantage occasioned by collective and historical trauma caused by oppressive regimes.

Compensation

37. Compensation shall be fair, adequate and proportionate to the material, non-material and other harm suffered.
38. The right to compensation for torture and other ill-treatment is multi-layered and compensation awarded to a victim shall be sufficient to compensate for any economically assessable damage resulting from torture and other ill-treatment. Compensation shall cover, where applicable, for instance, reimbursement of medical expenses and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; material and non-material damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or other ill-treatment; and lost opportunities such as employment and education.
39. Compensation shall also cover damage caused to a victim's anticipated personal and professional development as a result of the torture and other ill-treatment. In addition, adequate compensation awarded by State Parties to victims of torture and other ill-treatment shall provide for legal aid or specialised assistance, and other costs associated with bringing a claim for redress.

Rehabilitation

40. Rehabilitation refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture and other ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the victim (individual and or collective), and may involve adjustments to the victim's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, and physical, mental, social, cultural, spiritual and vocational ability; and full inclusion and participation in society.

41. State Parties are required to adopt a holistic, long-term and integrated approach to rehabilitation and ensure that domestic legislation provides for specialised services to victims of torture and other ill-treatment that are available, appropriate and promptly accessible. Such services include procedures for the assessment and evaluation of an individual's or collective's therapeutic and other needs. Other services may include a wide range of interdisciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community reconciliation and community therapy; socio-therapy and social integration; family-oriented assistance and services; and vocational training and education.
42. A holistic approach to rehabilitation shall take into account the strength and resilience of the victim and the risk of re-traumatisation, requiring a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.
43. Victims shall be provided access to rehabilitation programmes as soon as possible after the torture experience. The obligation to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by State Parties, or through the funding of private medical, legal and other facilities, including those administered by CSOs, in which case State Parties shall ensure that no reprisals or intimidation are directed at them. Victim participation in the selection of the service providers is essential. Services shall be available in relevant languages.

Satisfaction and the right to truth

44. Satisfaction includes the right to truth, the State's recognition of its responsibility, the effective recording of complaints, and investigation and prosecution. Satisfaction also includes: effective measures aimed at the cessation of continuing violations; verification of the facts and full and 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.

Guarantees of non-repetition

45. The overall aim of guarantees of non-repetition is to break the structural causes of societal violence, which are often conducive 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.
46. To guarantee non-repetition of torture and other ill-treatment, State Parties should undertake measures to combat impunity for violations. Such measures include:
 - I. Establishing effective and clear instructions to and continued training of public officials, including law-enforcement officials as well as military and security forces, on the obligations of State Parties to the African Charter, especially regarding the absolute prohibition of torture and on the specific needs of marginalised, disadvantaged and discriminated populations;
 - II. Establishing independent investigative mechanisms with the capacity, skills, powers and resources to effectively investigate allegations of torture and other ill-treatment;
 - III. Ensuring that both individual perpetrators and those in command and/or management positions are held accountable;

- IV. Ensuring that judicial proceedings conform with international due process standards, fairness and impartiality;
 - V. Strengthening the independence of the judiciary; and
 - VI. Reviewing and reforming laws contributing to or allowing torture and other ill-treatment.
47. Other measures shall include any or all of the following: civilian oversight of military and security forces; establishing systems for regular and independent monitoring of all places of detention; specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; protecting human rights defenders and legal, health and other professionals who assist torture victims; promoting the observance of regional and international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; ensuring compliance with the prohibition of refoulement; and ensuring the availability of relevant services, for individuals or groups of individuals, such as shelters for victims of gender-related torture and other ill-treatment.
48. Additionally, guarantees of non-repetition offer an important potential for institutional and social transformation that may be required to address the underlying causes of violence. This may include addressing psychosocial effects of collective and/or historical trauma on political, social and religious leaders and other role-models in society, who may themselves have been tortured or traumatised and are likely, if their trauma is unaddressed, to either perpetuate the same atrocities that they had experienced or to create an environment that enables the commission of such acts. Healing and/or rehabilitation for leaders is therefore an important aspect of guarantees of non-repetition.
49. Guarantees of non-repetition shall also include rehabilitation and/or healing for perpetrators who are in some instances previous victims themselves.

VII: Collective harm

50. State Parties have an obligation to provide redress for collective harm. While violations of torture and other ill-treatment are essentially perpetrated against individual persons, they may nevertheless also be directed against and impact upon groups of persons who are targeted collectively.
51. Collective harm may be identified in respect of torture and other ill-treatment perpetrated on structurally disadvantaged, persecuted, marginalised or otherwise discriminated groups; groups of people that have suffered individually, but because of their common experience, may have developed a common identity; a particular community that self-defines or self-identifies as a collective; a collective occupying a shared geographic area; or persons who may have been subjected to torture and other ill-treatment in a manner that constitutes a violation of their other collective rights, including peoples' rights as enshrined under the African Charter.
52. State Parties are required to conduct full assessments of the nature of harm and the extent of its effects as well as the specific needs of the collective and design respective redress measures accordingly. In providing reparation for collective harm, State Parties shall determine the appropriate form(s) and content of reparation by following a process that is sensitive to the collective harm suffered. Victims who are part of a collective may have varying opinions and needs on the nature or form of the reparation they seek. State Parties shall ensure that there is full and informed participation of the collective in the reparation process, and special measures may need to be taken to ensure that the voices of the most at risk members of the collective can be heard and taken into account.
53. State Parties shall also take into account that inequalities within the collective may have an impact on victim participation. Even where victims have been provided with space to participate, there is no guarantee that all individual members of a collective have equal levels of influence.
54. Collective reparation, particularly when it seeks to redress the most

socially and economically marginalised victims, may overlap with the State obligation to address the social and economic needs of citizens in general. There should be clear distinction between measures of reparation which target harm suffered by particular victims and wider developmental programmes.

55. Collective reparation must clearly acknowledge that victims have been subjected to torture and other ill-treatment, and equally acknowledge the State's responsibility for such treatment. It must establish a link between the service, benefit or measure intended to be provided and the harm it is meant to repair.
56. Reparation for collective harm must not substitute the individual's right to reparation.

VIII: Sexual and gender based violence

57. Acts of sexual and gender based violence, or the failure by States to prevent and respond to such acts, may amount to torture and other ill-treatment in violation of Article 5 of the African Charter. This General Comment specifically refers to those acts of sexual and gender based violence that amount to a form of torture and other ill-treatment in view of the specific, traumatic and gendered impact of sexual violence on victims, including the individual, the family and the collective.
58. These include physical and psychological acts committed against victims without their consent or under coercive circumstances, such as rape (including so-called 'corrective rape'), domestic violence, verbal attacks and humiliation, forced marriage, isolation, dowry-related violence, trafficking for sexual exploitation, enforced prostitution, indecent assault, denial of reproductive rights including forced or coerced pregnancy, abortion and sterilisation, forced nudity, mutilation of sexual organs, virginity tests, sexual slavery, sexual exploitation, sexual intimidation, abuse, assault or harassment, forced anal testing, or any form of sexual or gender based violence of comparable gravity. These acts may occur in public or private and include force or coercion caused by fear of violence, duress, detention, psychological oppression or abuse of power. Acts of

sexual violence, particularly rape, are also systematically used as a tool of war in armed conflict.

59. Any person regardless of their gender may be a victim of sexual and gender-based violence. There is wide prevalence of sexual and gender-based violence perpetrated against women and girls. Acts of sexual violence against men and boys, persons with psychosocial disabilities, and lesbian, gay, bisexual, transgender and intersex persons are of equal concern, and must also be adequately and effectively addressed by State Parties.
60. State Parties are required to adopt specific measures to address the barriers that prevent access to redress for sexual and gender based violence. Effective redress for acts of sexual and gender based violence is hindered by the fact that they are often hidden and over-looked as taboos. Stigma, feelings of guilt or shame, fear of retribution, and the unavailability of support or lack of information about available support, often prevent victims from coming forward. Further, injuries, both physical and psychological, may be less obvious than those caused by other forms of violence.
61. State Parties are required to take a range of measures to ensure that victims of sexual and gender based violence obtain redress. These measures may include ensuring adequate documentation; criminalising all forms of sexual and gender based violence; ensuring accountability of perpetrators; providing support to victims at all stages of the legal process; identifying the causes and consequences of sexual and gender based violence and taking all necessary measures to prevent and eradicate it; putting in place efficient and accessible reparation programmes and ensuring participation of victims in the elaboration, adoption and implementation of the programmes; providing unimpeded and regular access to comprehensive health care, including sexual and reproductive health-care services, physical rehabilitation, psychological and psychosocial support, and socio-economic support; and observing the need to ensure the dignity and safety of victims and the importance of confidentiality and privacy.

IX: Armed conflict

62. Situations of armed conflict involving conventional hostilities, asymmetric warfare or counterterrorism operations pose particular challenges with respect to the protection of human and peoples' rights including the freedom from torture and other ill-treatment. State Parties are not permitted to derogate from their treaty obligations which prohibit torture and other ill-treatment under any circumstances, even during emergency situations such as war, insurgency or severe social unrest. State Parties are therefore required in times of armed conflict to uphold their obligations by both precluding their agents from committing acts in violation of Article 5 of the African Charter and intervening where non-State actors in armed conflict commit similar violations. State Parties are obliged to provide redress to victims as outlined in this General Comment including in the context of armed conflict.
63. The prohibition of torture and other ill-treatment in the context of armed conflict is well established under treaty and customary international humanitarian law. Torture and other ill-treatment may constitute war crimes in both international and non-international armed conflicts. The prohibition under international humanitarian law is upheld as part of the general principles of law recognised by African States in terms of Articles 60 and 61 of the African Charter. The ban applies not only with respect to the armed forces of State Parties but also dissident armed forces and other organised non-State forces who are party to a non-international armed conflict. Torture under international criminal law is also a recognised element of crimes against humanity and war crimes and may also form part of the *actus reus* of genocide, all of which attract individual rather than State responsibility. However, individual responsibility must encompass responsibility of all officials implicated in the commission of an offence throughout the chain of command.
64. State Parties therefore have the obligation to investigate and prosecute those responsible for torture and other ill-treatment and to provide redress to victims in an armed conflict. Though complementary, where there is doubt as to whether international

human rights law or international humanitarian law prevails, preference should be given to the category of law that offers the best protection for the rights of victims.

65. The prohibition of torture and other ill-treatment requires State Parties to ensure the existence of an enabling environment for independent institutions, protecting powers, humanitarian agencies, CSOs, regional observer missions, the media and other stakeholders who possess a mandate to document, report, investigate and provide assistance to victims of torture and other ill-treatment, so that they may undertake their activities without undue restrictions. It is incumbent on organised non-State armed groups that are party to an armed conflict to provide free access particularly to humanitarian agencies that deliver protection and assistance to affected communities including victims of torture and other ill-treatment.

X: Transitional justice

66. Transitional justice seeks to address the legacy of large-scale past abuses occasioned by conflicts and oppressive rule. Transitional justice is meant to facilitate accountability, reparation, sustainable peace, healing and reconciliation. These goals are embodied in Article 4 (o) of the AU Constitutive Act which calls for respect of the sanctity of human life and the condemnation and rejection of impunity.
67. Redress for victims of torture and other ill-treatment is a matter of foremost concern in the pursuit of transitional justice. Transitional justice processes must therefore seek to understand and document the institutionalisation of torture and other ill-treatment, work to eliminate opportunities for their continued use and occasion institutional and legal reforms.
68. State Parties shall facilitate the right of individual victims and their relatives to acquire all relevant information pertaining to incidences of torture and other ill-treatment and document such information in a manner that contributes to the collective memory of society and advances the goal of healing, including through accountability and

guarantees of non-repetition. State Parties shall repeal legislative measures that inhibit prospects for truth such as broad based laws on State secrecy and indemnity laws that have often been utilised to obscure State responsibility for large-scale acts of torture in times of conflict and repression. At the conclusion of truth commissions or other processes aimed to ensure peace and stability, State Parties shall have comprehensive policies for establishing archives that embody the right to know and for facilitating memorialisation initiatives that honour victims of torture and other ill-treatment.

69. In observing the right to a fair and effective remedy for victims of torture in the context of transitional justice, State Parties shall adopt a complementary and holistic approach to justice that incorporates the retributive, restorative and redistributive elements of justice with a view to upholding the requirements of accountability, reparation, sustainable peace, healing and reconciliation. Retributive justice shall be applied in a manner that re-affirms and upholds the rule of law and maintains general deterrence within society and prevents recidivism. Restorative justice shall be utilised to foster dialogue between victim and perpetrator at community level as a pathway to healing. Redistributive justice should interrogate the different levels in society and address structural and systematic injustices and distributive inequalities.
70. In addressing large-scale acts of torture and other ill-treatment, State Parties shall ensure that their justice approaches are premised on a consultative, all-inclusive and participatory approach that ensures both respect for the dignity and rights of victims and victim communities and the demands for building a common future transcending the divisions that conflicts occasion and guaranteeing non-repetition. Reparation programmes established by State Parties shall adhere to the threshold of prompt, full and effective access to redress; consist of all forms of reparation and provide redress for collective harm as outlined in this General Comment.
71. State Parties shall address structural conditions that allow for the perpetuation of torture and other ill-treatment. State Parties shall undertake security sector reforms that advance civilian oversight,

enable training of relevant personnel and enhance awareness among the public on relevant regional and international standards. Such reform shall also entail comprehensive and transparent vetting processes that expel persons deemed responsible for undertaking torture and other ill-treatment from the ranks of security services and associated State offices.

XI: Non-state actors

72. Non-State actors are individuals, organisations, institutions and other bodies acting outside the State and its organs. Non-State actors through their behaviour, actions or policies can impact the enjoyment of human rights and can therefore occasion a violation of Article 5 of the African Charter.
73. Article 1 of the African Charter requires State Parties to uphold the positive obligation to diligently prevent, investigate, prosecute and punish non-State actors who commit acts of torture and other ill-treatment and to redress the harm suffered. This also extends to acts by non-State actors at the instigation, consent and acquiescence of the State.
74. This General Comment notes that the jurisdiction of the African Court of Justice and Human and Peoples' Rights provides for corporate criminal liability for crimes against humanity including torture and other ill-treatment when deemed to be part of a widespread or systematic attack against any civilian population.
75. In line with State Parties' obligations under Article 7 of the African Charter, the option of private prosecution for acts of torture and other ill-treatment by non-State actors should be availed and sufficiently facilitated by the State when utilised by a victim, including by addressing practical challenges to private prosecution such as prohibitive costs or the impossibility in practice to access all relevant evidence. State Parties shall ensure that legislation providing for a reparation framework and in particular the sources of funds for reparation contains provisions that allow for orders, fines, forfeiture, freezing and seizure of property belonging to non-State actors deemed responsible for acts of torture and other ill-

treatment.

XII: Implementation of the General Comment

76. In implementing this General Comment, State Parties are bound by the principle of non-discrimination and they are required to ensure that victims obtain redress regardless of their status.
77. State Parties shall disseminate this General Comment at national level, including to all relevant authorities, lawyers, CSOs and non-governmental organisations, community based organisations, and the public, and translate the General Comment into local languages and accessible formats. States shall also ensure that the measures and obligations set out in the General Comment are incorporated into public policy, law and national budgets and all relevant training programmes of relevant authorities and officials. Authorities shall develop outreach programmes and education initiatives to raise awareness on the right to redress of victims of torture and other ill-treatment and on how to access and participate in redress mechanisms.
78. State Parties shall establish a system to oversee, monitor, evaluate and report on their provision of redress measures to victims of torture and other ill-treatment.
79. State Parties shall include in their periodic reports to the Commission information on the measures taken to implement their obligations under Article 5 of the African Charter to provide redress to victims of torture and other ill-treatment. State Parties shall provide information, including qualitative and quantitative data disaggregated by age, gender, nationality, disability and other key factors, on the following:
 - I. The domestic legislation providing for the right to redress for victims of torture and other ill-treatment, including relevant measures of implementation of such legislation;
 - II. The number of victims of torture and other ill-treatment who have sought redress and the number of victims who have received redress, including availed forms of reparation;

- III. The complaints mechanisms available for victims of torture and other ill-treatment, and the number of complaints received and the outcomes of those complaints;
- IV. The protection available to victims of torture and other ill-treatment;
- V. The steps taken to implement judgments by national, regional or international courts and human rights mechanisms, including the Commission;
- VI. The policy and legislative measures in place to ensure access to redress for victims belonging to marginalised and other disadvantaged groups;
- VII. The policy and legislative measures in place to ensure access to redress for victims of sexual and gender based violence;
- VIII. The rehabilitation facilities available to victims of torture and other ill-treatment, their accessibility and the number of victims who have received rehabilitation through those facilities;
- IX. Where applicable, the measures taken to ensure that victims of torture and other ill-treatment obtain redress during armed conflict and in the context of transitional justice processes; and
- X. Any other relevant information.

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