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**Expert Meeting: Right to Reparation for Torture: the role of African  
Human Rights Mechanisms**

**5-6 April 2013, Kololi, The Gambia**

**In collaboration with the**

**Egyptian Initiative for Personal Rights (EIPR), International Medico-  
Legal Unit (IMLU), the Actions pour la Protection des Droits de  
l'Homme (APDH) and Prisoners Rehabilitation and Welfare Action  
(PRAWA)**

**Draft Concept Note**

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*"Redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them. The Committee emphasizes that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations."<sup>1</sup>*

**1. Background and Rationale**

The African Commission on Human and Peoples' Rights (ACHPR or Commission) 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 twenty five years of its existence, the ACHPR has rendered important decisions providing justice to thousands of victims and holding States responsible for violations of the African Charter on Human and Peoples' Rights (African Charter), including torture and ill-treatment under Article 5. The Commission's response to torture committed on the

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<sup>1</sup> UN Committee Against Torture, 'General Comment No.3 (2012), Implementation of Article 14 by State Parties', 13 December 2012, UN CAT/C/GC/3, para. 6.

continent gained further strength through the adoption of the Robben Island Guidelines (RIGs) in February 2002 as the main regional instrument providing guidance to the Commission, as well as to States, regarding States' obligations under Article 5. The establishment in 2004 of the Committee for the Prevention of Torture in Africa (CPTA), tasked with the implementation of the RIGs by States, has further contributed to the Commission's efforts in fighting torture on the continent. The Commission has, through the CPTA, trained national authorities in the prevention of torture, carried out consultation activities and provided advice and practical guidance to States on how to implement the RIGs, with an emphasis on the adoption of implementing legislation criminalizing torture on a domestic level.

Similarly, sub-regional human rights mechanisms, namely the ECOWAS and EAC Courts of Justice and the SADC Tribunal have provided victims of torture with specific forms of reparation, ordering States to investigate allegations and prosecute those responsible for torture, and to pay compensation to victims.<sup>2</sup> Together, the Commission and sub-regional mechanisms (together 'the Mechanisms') are the key (sub-) regional actors in ensuring States' compliance with their obligations under the African Charter and international law.

However, despite significant progress made in combating torture on the continent, the Mechanisms frequently fail in ordering States found in violation of the Charter to provide victims with adequate reparation: The Commission's jurisprudence on reparation is inconsistent and where it does rule on reparation, it is mainly limited to ordering a State to pay compensation, while leaving it up to the State to decide on the amount of compensation. Only in very few cases did the Commission go further and order for instance the commencement of an independent enquiry to clarify the fate of disappeared persons, the restitution of property and a change of legislation so as to avoid future violations of Article 5.<sup>3</sup> Sub-regional mechanisms such as the ECOWAS Court of Justice have specified amounts of compensation to be paid where it found a violation of Article 5 and ordered States to release prisoners from unlawful detention yet do not award other measures of reparation.

The Mechanisms' jurisprudence to date suggests that more recent developments in international law regarding victims' right to reparation are not consistently considered in reparation rulings, particularly the obligation to provide full and adequate reparation to victims of serious human rights violations, including restitution, compensation, rehabilitation, guarantees of non-repetition and satisfaction.<sup>4</sup>

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<sup>2</sup> See e.g. ECOWAS Court of Justice, *Chief Ebrimah Manneh v The Republic of The Gambia*, paras. 29-43.

<sup>3</sup> African Commission, Communications 54/91, 61/91, 96/93, 98/93, 164/97-196/97, 210/98, *Malawi African Association and Others v Mauritania*.

<sup>4</sup> See further below.

Accordingly, there is a need to strengthen the right of victims to reparation within Africa's regional and sub-regional human rights system and to ensure that their jurisprudence is in line with international law.

## **2. The Expert Meeting**

The Centre for the Study of Violence and Reconciliation (CSVR) and The REDRESS Trust (REDRESS), in collaboration 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, therefore host a 1.5 days expert meeting addressing the role of the ACHPR and sub-regional human rights mechanisms in Africa in providing reparation to victims of torture and other serious human rights violations ('Expert Meeting'). **The Expert Meeting will take place in the margins of the 53<sup>rd</sup> Ordinary Session of the African Commission on 5-6 April 2013 in Banjul, The Gambia.**

The Expert Meeting builds on the experience of the organisations in supporting victims of torture and other serious international crimes to access justice and obtain reparation in Africa, before national, sub-regional and regional courts and human rights mechanisms. It follows a variety of initiatives, including two consultation meetings organised by the CSVR on the right to redress for victims of torture and Part III of the Robben Island Guidelines (RIGs) in 2012, as well as mapping out an African response to General Comment No.3 (2012) on Article 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('General Comment'). It also takes into account the conclusions of a meeting of victims' lawyers and human rights activists advocating for victims' rights held in Banjul during the 51<sup>st</sup> Ordinary Session of the ACHPR in April 2012 on 'The Rights of Victims of Systemic Crimes in Africa.'

Participants will discuss practices of (sub-) regional mechanisms in Africa and explore how best practices of other mechanisms can be applied in the African context as well as the potential contribution of a 'reparation guidelines' for Commissioners, Judges and other practitioners to respond to the needs and rights of victims in line with international law. The discussions will take place in the context of developments in international law regarding victims' right to reparation since the adoption of the RIGs in February 2002, in particular 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 of December 2005 ('UN Basic Principles'), the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation of May 2007 ('Nairobi Declaration') as well as the General Comment. Experts from the Inter-American system will participate and the Expert Meeting will therefore take into account the experiences and expertise made in the Inter-American Commission and Court of Human Rights.

The Expert Meeting provides a timely opportunity to take stock of developments to date in providing victims with justice and reparation through the Mechanisms, to consider how best to build on the practice of mechanisms elsewhere and to discuss how progress made under international law in regards to rights of victims can be adequately taken into account by the Mechanisms in Africa.

### **3. Objectives**

The objectives of the Expert Meeting are therefore to:

***(a) Outline and share information with Commissioners, Judges of sub-regional mechanisms and the Secretariat of the Commission of developments under international law regarding victims' right to reparation and redress***

There are several instruments setting out victims' right to reparation under international law, specifically in the African context, including the RIGs and the Nairobi Declaration. These are complemented on an international level by the UN Basic Principles and the General Comment. The Expert Meeting will help to clarify the concept of reparation in light of these developments, and highlight the contribution of these instruments for the mechanisms when deciding on reparation for victims of torture and other serious human rights violations.

***(b) Identify best practice in awarding reparation by regional and sub-regional human rights mechanisms in and outside Africa***

Some key decisions of the ACHPR and for instance the ECOWAS Court of Justice stand out in recognising a range of reparation measures. These decisions can provide helpful guidance for progressing the jurisprudence of the mechanisms. Furthermore, lessons learned from the experiences in the Inter-American System, which is considered most progressive in its approach to awarding reparation to victims, can further shape the jurisprudence of the Mechanisms in line with international law.

***(c) Develop Part III of the RIG to reflect developments in international law, and to incorporate the General Comment into the work of the ACHPR and the CPTA***

The RIGs are the key soft law instrument to combat torture in Africa and are an important tool for the CPTA and ACHPR in reminding States of their obligations under the Charter. They expand on States' obligations and the absolute prohibition of torture as enshrined in Article 5 of the Charter. Part III of the RIG provides for reparation for victims of torture. However, since its adoption in 2002, there have been significant developments regarding rights of victims to reparation that are not reflected in the RIGs, and the Expert Seminar will explore how and whether a revision of the RIGs could be helpful to hone in on specific African responses to recent developments under international law, including in particular the General Comment.

***(d) Discuss how to collaborate with the ACHPR and other regional mechanisms in ensuring that rulings on reparation are in line with international standards***

Participants will discuss how and whether ‘reparation sourcebook or guidelines’ on awarding reparation to victims aimed at regional mechanisms could render a meaningful contribution to the work of the Mechanisms. To that end, participants will explore the challenges for commissioners, judges and other practitioners within the (sub-) regional mechanisms in awarding reparation, as well as for civil society in / litigants in requesting reparation before these mechanisms.

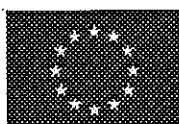
#### **4. Participants**

Participants of the Expert Seminar will include victims’ lawyers and other experts with experience in assisting victims of torture and other serious human rights violations in obtaining reparation on a national and (sub-)regional level. Experts from the Inter-American system will also participate.

Specifically, we are hoping to have representatives from South Africa, Sudan, Kenya, Burundi, Sudan, Zimbabwe, Uganda, DRC, Nigeria, Egypt as well as experts from the Mechanisms, the Inter- American system, the Department of Political Affairs of the African Union Commission and the NANHRI Secretariat.

#### **5. Expected Outcomes**

- Strengthen and formalize a network of experts on reparation for victims of torture and other serious human rights violations on the continent
- Develop a plan of Action for organisations working with mechanisms in pursuit of reparation for victims
- Develop content for a manual for Mechanisms when deciding on reparation for victims
- Recommendations for the development of part III of the RIGs



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