Victims of Torture and the Search for Legal Redress in Cameroon

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PLAGIARISM DECLARATION

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DEDICATION

To my late Dad, Inspector Edumebong William Atabe (Ret.).

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My profound appreciation goes to the Centre for Human Rights, University of Pretoria, the European Union through the Global Campus of Human Rights, and other partners for their generous financial and material contributions, which granted me the opportunity to be part of the Masters in Human Rights and Democratisation in Africa programme.

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ACRONYMS AND ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
CAT Committee	Committee Against Torture
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHRC	Cameroon Human Rights Commission
CHRDA	Centre for Human Rights and Democracy in Africa
CPC	Criminal Procedure Code (Cameroon)
CPTA	Committee on the Prevention of Torture in Africa
DSC	*Division Spéciale de Contrôle des Services*
DSF	Defense and Security Forces
GC	General Comment
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
Maputo Protocol	Protocol on the African Charter on the Rights of Women in Africa
NPM	National Preventative Mechanism
OPCAT	Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PC	Penal Code (Cameroon)
SPT	Subcommittee on prevention of torture
SRT	UN Special Rapporteur on Torture
Robben Island Guidelines	Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa
UDHR	Universal Declaration on Human Rights

CHAPTER ONE

GENERAL INTRODUCTION

1. Background

Human rights violations are rampant in Cameroon.[1] In the context of its fight against terrorism[2] in the Northern regions[3] and its struggle to keep peace in the restive regions of the North-West and South-West of Cameroon,[4] the government of Cameroon has been accused of grave human rights violations, as well as violation of international humanitarian law. These accusations have also been levied against "Ambazonian" separatists fighting for independence[5] and the Boko Haram insurgents[6] in their different spheres of operation.

Torture and other cruel, inhuman or degrading treatment or punishment count as some of the numerous human rights violations. Torture in Cameroon is widespread and has steadily increased since the first visit of the United Nations Special Rapporteur on Torture.[7] In his report, Rodley noted torture as a standard for obtaining information concerning public security and maintaining law and order in Cameroon.[8] The report further noted that torture is condoned and sometimes

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[1] See, United States Department of State 'Cameroon 2022 Human Rights Report' March 20, 2023 https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/ (accessed 16 July 2023). See further, Amnesty International *The State of the World's Human Rights 2022/23* (2023) https://www.amnesty.org/en/location/africa/west-and-central-africa/cameroon/report-cameroon/ (accessed 16 July 2023); Human Rights Watch *World Report 2019* https://www.hrw.org/world-report/2019/country-chapters/cameroon (accessed 16 July 2023).

[2] E Ntuda *et al. The Boko Haram conflict in Cameroon Why is peace so elusive?* (2017) Friedrich Ebert Stiftung, Yaoundé, Cameroun.

[3] Amnesty International 'Camereoon's Secret Torture Chambers: Human Rights Violations and War Crimes in the fight against Boko Haram' July 2017 https://www.amnesty.org/en/latest/campaigns/2017/07/cameroon-torture-chambers/ (accessed 17 July 2023).

[4] Amnesty International 'A Turn for the Worse: Violence and Human Rights Violations in Anglophone Cameroon.' June 12, 2018 https://www.amnesty.org/en/documents/afr17/8481/2018/en/ (accessed 17 July 2023).

[5] Human Rights Watch 'Cameroon: Separatist Abuses in Anglophone Regions Prosecute, Sanction Fighters for Crimes Against Civilians.' June 27, 2022 https://www.hrw.org/news/2022/06/27/cameroon-separatist-abuses-anglophone-regions (accessed 17 July 2023).

[6] Amnesty International 'Cameroon: Human rights under fire: Attacks and violations in Cameroon's struggle with Boko Haram.' September 16, 2015 https://www.amnesty.org/en/documents/afr17/1991/2015/en/ (accessed 17 July 2023) 20.

[7] Sir Nigel Rodley, UN Special Rapporteur on Torture, visited Cameroon between 12 to 20 May 1999 for his first official visit to the country. His report 'Civil and Political Rights, Including Questions of Torture and Detention' documents practices of torture that have existed in Cameroon since its independence in 1960.

[8] Commission on Human Rights 'Visit by the Special Rapporteur to Cameroon: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38' (11 November 1999) E/CN .4/2000/9/ Add. 2. 26

encouraged by those in charge at the state security and political levels.[9] The practice of torture saw an upsurge at the start of counter-terrorism measures taken by the country to tackle the Boko Haram insurgency at the start of 2014.[10] Also, in the English-speaking regions, there have been reports of torture used by the state defence and security forces (DSF) against ordinary citizens and non-state armed groups.[11]

Torture does not only happen in the context of civil and political unrest and counter-terrorism efforts. Several cases of torture have been reported to have been perpetrated against journalists,[12] human rights defenders and other civilians throughout the country.[13] The continuous use of torture and other cruel, inhuman or degrading treatment or punishment in Cameroon highlights the high level of impunity in the ranks of state security forces and within the political class.

Cameroon has reported, and indeed, there has been an increase in the number of prosecutions of state security forces for acts of torture. Cameroon has also integrated the crime of torture within its penal code, localising but mirroring the definition provided under the Convention against Torture (CAT).[14] The county has ratified the CAT,[15] the African Charter on Human and Peoples' Rights (African Charter),[16] and the International Covenant on Civil and Political Rights (ICCPR). It has signed but not ratified the Optional Protocol to the Convention Against Torture.[17] As an implementation measure of the OPCAT, the country has implemented its national preventive

[9] As above.
[10] Amnesty International (n 3) 23
[11] Amnesty International 'Cameroon: Rampant atrocities amid Anglophone regions must be stopped and investigated' July 4, 2023 https://www.amnesty.org/en/latest/news/2023/07/cameroon-rampant-atrocities-amid-anglophone-regions-must-be-stopped/(accessed 17 July 2023).
[12] Human Rights Watch 'The Perils of Journalism in Cameroon High-Level Arrests as Another Journalist Murdered.' February 10, 2023, https://www.hrw.org/news/2023/02/10/perils-journalism-cameroon (accessed 17 July 2023)
[13] Human Rights Committee *Albert Womah Mukong v Cameroon* Communication No. 458/1991 CCPR/C/51/D/458/1991 https://ccprcentre.org/files/decisions/458_1991_Mukong_v__Cameroon.pdf (accessed 2 August 2023). Apart from these, the Human Rights Committee has found several cases of violation of Article 7 of the ICCPR by the Republic of Cameroon.
[14] Law No. 2016/007 relating to the Penal Code Section 277-3
[15] Cameroon acceded to the CAT on 19 December 1986. The Convention, however, was adopted on 10 December 1984 and came into force on 26 June 1987 by virtue of Article 27 (1).
[16] Article 5 of the African Charter prohibits torture, linking the right to be free from torture to be inherent to human dignity.
[17] Cameroon signed the OP-CAT on 15 December 2009.

mechanism (NPM).[18] This mandate has been given to the Cameroon Human Rights Commission (CHRC),[19] the national human rights institution.

The right to an effective remedy is an internationally recognised human right. Victims of torture, like victims of other human rights violations, have a right to an effective remedy at the national and international levels, as the case may be. The right to remedy is recognised under the CAT in Article 14. Similarly, ICCPR recognises the right to an effective remedy in Articles 2(3), 9(5) and 14(6). The remedies indicated in the normative framework are varied and, therefore, implemented case-by-case. However, several regional human rights decisions have set the standards for an adequate remedy. The African Commission, in the case of *Jawara v The Gambia,*[20] noted three elements of availability, effectiveness and sufficiency.

In Cameroon, the right to an effective remedy for victims of human rights violations is uncertain. Even more uncertain is the right to remedy for victims of torture. Torture in Cameroon can be described as institutional and systematic, mainly carried out by state security personnel with impunity.

Although there have been cases where Cameroon has been found for the violation of the right to be free from torture, there has not been adequate implementation of these decisions at the national level. As such, there is a lack of respect for the right to effective remedy nationally. More so, cases of torture handled in national courts against state security forces have been against junior-level forces, even though there are signs of institutionalisation pointing to "orders from above". Even in these cases, adequate remedies have not been provided to the victims. For example, there have been suspended sentences where the individual involved pays a fine. This is so despite the penal code providing a prison sentence and a fine.[21] Also, there have not been any cases of the death

[18] Article 17 of the OPCAT calls on state parties to establish national preventive mechanisms to contribute to the preventative role of the Sub-Committee on Prevention, which was set up under Article 2 of the Protocol.

[19] Cameroon Human Rights Commission was given the mandate of the national preventative mechanism by Law No. 2019/014 relating to the establishment, organisation and functioning of the Cameroon Human Rights Commission. Article 1(3) of the law notes that the Commission shall serve as the Cameroon National Mechanism for the Prevention of Torture (NMPT).

[20] *Jawara v The Gambia* 8 (2000) AHRLR 107, para 32.

[21] Article 277-3 provides fines and imprisonment (as opposed to fine or imprisonment) for different cases of torture that occasion slight harm, grave harm and death.

penalty handed down due to torture that occasioned death, despite this being provided for by the penal code.[22]

2. Problem Statement

Cameroon has ratified several international and regional normative frameworks prohibiting torture, inhuman and other cruel treatment or punishment. At the national level, the country's Constitution, the penal and criminal procedure codes all criminalise torture. However, there is continuous use of torture in the country's counter-terrorism efforts, struggle against political instability and ordinary citizens, both incarcerated and in everyday confrontations between state security forces and citizens. These incidents are not often reported in several cases due to inadequate knowledge and fear of state reprisal. Where they are reported, the institutions investigating these crimes are ineffective. Where these cases are prosecuted, the judgements handed down are not in line with the international standard toward the right to the appropriate remedy.

3. Research Questions

3.1. Main research question

The main research question for this research is as follows:

- What are the redress mechanisms for protecting the rights of victims of torture in Cameroon, and how can preventive measures be implemented to improve this right?

3.2. Specific research questions

- What are the rights of victims of torture in international law?
- What are the legal frameworks for the enforcement of the right to redress?
- What are the legal and institutional redress mechanisms for victims of torture in Cameroon? What are the challenges and opportunities to the national preventive mechanism in enhancing the right to redress for victims of torture?
- What measures can be taken to improve redress mechanisms for victims of torture?

[22] Cameroon is a *de facto* abolitionist state. Although the penal code provides for the death penalty, and I argue for adequate sanctions and remedies, it is important to state that I am against using the death penalty as a punishment for a crime and advocate for the abolition of the death penalty.

4. Research Methodology

This research makes use of the doctrinal research methodology. The research uses primary data from international, regional and national instruments relating to the right to be free from torture and the right to legal redress. The research relies mainly on the CAT, ICCPR and the African Charter, as well as their various implementation mechanisms, such as the Committee Against Torture, the Human Rights Committee, the African Commission and African Court, and the Committee for the Prevention of Torture in Africa, and their role in expanding on issues relating to prevention and prosecution of torture, as well as providing guidelines on the provision of redress for torture victims.

At the national level, reparation and redress mechanisms are analysed from the perspective of judicial enforcement of the right to be free from torture. The jurisprudence of these mechanisms is used in this research to determine the level at which persons subjected to torture in Cameroon can and have benefitted from redress mechanisms. Also, qualitative data is obtained from secondary sources such as books, journal articles, reports and other sources as they relate to the redress mechanisms for victims of torture in Cameroon. To establish the current state of redress for victims of torture, this research examines the annual human rights reports from the Ministry of Justice and those from the Cameroon Human Rights Commission between 2005 and 2022.

The cases examined at the domestic level are obtained from the state reports of Cameroon to the various treaty bodies. The cases focused on are those where torture occasioned death or loss of limbs. This is because several of these cases are not reported. As such, there are instances where not enough information about a case is provided in the context of the research. However, the decisions of the cases are highlighted and used to demonstrate the level of enforcement of the right to be free from torture, as well as the right to redress for torture.

5. Literature Review

- Definition of torture

Prior to the drafting and entry into force of the CAT, several international conventions, treaties and agreements prohibited torture and provided for the right to be from torture without defining what acts might constitute torture. The Universal Declaration of Human Rights (Universal

Declaration) (Art. 5), ICCPR (Art. 7), the African Charter (Art. 5) and several other international and regional instruments proscribe torture without defining it.

The 1984 Convention against Torture provides what has been described as the *locus classicus* definition for torture, which has been used by international tribunals and regional judicial and quasi-judicial bodies and instances, as well as by academics. This has been so despite the CAT providing in Article 1 that the definition is for the particular convention. In the case of *Prosecutor v Furundzija*, the International Criminal Tribunal for the Former Yugoslavia noted, while referring to previous judgements by the International Criminal Tribunal for Rwanda, that the CAT definition of torture provides a consensus representative of customary international law.[23]

Regarding the issue of the involvement of a public official, the 1998 Rome Statute of the International Criminal Court (ICC) defines torture without the requirement for the involvement of a public official. It defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."[24]

Another definitional and legal issue that has arisen since the initiation of the "war on terror", especially in the United States, focuses on the severity of pain and suffering rather than the purpose for which the act is committed. Without extensive analysis of the jurisprudence, this focus on the severity of pain can be traced to the jurisprudence of the European Court of Human Rights before 1999, which had also placed extensive focus on the severity of pain to determine whether an act constituted torture or inhuman and degrading treatment.[25] After this period, it is theorised that the European Court had been influenced by the CAT, which had come into force.[26] The European Court adopted a dual approach to include the severity of pain and the purpose of the act.[27]

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[23] *Prosecutor v Furundzija*, Case No.: IT-95-17/1-T ICTY (10 December 1998) at para 160.
[24] Article 7(2) (e) of the 1998 Rome Statute.
[25] In the 1978 *Ireland Case,* the European Court disagreed with the European Commission that torture had occurred, basing its judgement on the fact that severity of pain was the deciding factor as to whether an act amounted to torture or inhuman and degrading treatment.
[26] The case of *Selmouni v France* marked a change in the European Court's decisions. It found in this case that the fact that had previously been considered inhuman and degrading treatment could now be considered torture, given the increasing standard and need for human rights protection.
[27] J Barnes "The 'war on terror' and the battle for the definition of torture." (2016) 30 *International Relations* at 108.

An aspect of the definition not covered by current research is the role of traditional authorities in torture. As explored in this research, there has been a localisation of the definition to include a Cameroonian perspective of public officials to include traditional authorities within the administrative pyramid.

- Use of torture by 'liberal' democracies and autocratic states

The post-9/11 world and its struggle against terrorism and violent extremism have brought the use of torture into the limelight. Liberal democracies, autocracies, and other types have all used torture. Stritzke and Lewandowski[28] establish the link between terrorism and torture, highlighting the increased justification of torture by some liberal democracies. The ticking time bomb scenario has been used as a moral justification and necessity for the torture.[29]

d'Ambruoso,[30] Lukes,[31] and Lokaneeta[32] highlight the continuous use of torture by liberal democracies in their counter-terrorism efforts, internationally and within their national territories, despite the prohibition of torture in the national legislation of these countries. On the other side of the debate, autocratic states are noted to be more likely to ratify or sign the CAT, as opposed to liberal democracies.[33]

The difference between the use of torture between liberal democracies and autocratic nations seems to be the victims. While autocratic states are more likely to torture non-combatants and civilians, liberal democracies are more likely to torture perceived 'terrorists' and other individuals who threaten their national security (usually not their citizens). This situation can be linked to the ability of the victims to hold the perpetrator (the state) accountable for these acts. In both cases, however, torture is systemic and done with impunity.

[28] WGK Stritzke and S Lewandowsky 'The terrorism-torture link: when evil begets evil' in WGK Stritzke and others *Terrorism and Torture: An Interdisciplinary Perspective* (2009) 2.

[29] For an analysis of the ticking time bomb scenario, see D Luban "Liberalism, torture, and the ticking bomb." Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory (2007) Dordrecht: Springer Netherlands; S Opotow. "Moral exclusion and torture: The ticking bomb scenario and the slippery ethical slope." (2007) 13 *Peace and Conflict: Journal of Peace Psychology*; G Hunsinger "Torture Is the Ticking Time-Bomb: Why the Necessity Defense Fails." (2008) 47 *Dialog*.

[30] WL d'Ambruoso *American Torture from the Philippines to Iraq: A Recurring Nightmare* (2022) 18-20.

[31] S Lukes 'Liberal Democratic Torture.' (2006) 36 *British Journal of Political Science*, 13.

[32] J Lokaneeta *Transnational Torture: Law,Violence, and State Power in the United States and India* (2011) 199-208.

[33] J Vreeland 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture' (2008) 62 *International Organization*, 68-71.

Theoretical underpinnings and arguments for torture, such as the "one-off acts of torture,"[34] those that argue for justified torture[35] and those that reject a universal ban on torture,[36] have contributed to the institutionalisation of torture in several states worldwide. Even though several states have ratified international instruments, arguments around *ordre public,* national security and state sovereignty have influenced how states localise and implement the provisions of these instruments, including CAT. These arguments have not been explored in the case of Cameroon. As our research shows, in the case of Cameroon, the lines are blurred, and torture is used indiscriminately towards both citizens and perceived terrorists (who are most times citizens).

- Legal redress (reparation) as a human right

The right to redress is fundamental to protecting human rights in normative frameworks and jurisprudence.[37] Nonetheless, the remedies that should be offered as redress or reparation have hardly been resolved.[38] In their treaties, Shelton examines the controversies in contemplating the modes of remedies by courts, which is important in establishing a jurisprudence that other judicial and quasi-judicial bodies will use.

Considering the fleeting nature in which national, regional and international bodies have redressed violations, there is no established pattern. As Viljoen and Odinkalu noted, at the level of the African sub-regional system, the African Commission and the African Court have applied varied standards in their decision on remedies for victims of torture.[39] They conclude that remedies and reparations apply on a case-by-case basis. Joseph and others also arrived at the same conclusion while examining the UN treaty bodies' individual complaints procedures for torture victims.[40]

International and regional normative frameworks point to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as the primary forms of complete and effective reparation mechanisms. This is mainly laid down in the United Nations Basic Principles and

[34] D Sussman 'What's wrong with torture?' (2005) 33 *Philosophy and Public Affairs.*
[35] U Steinhoff 'Torture: the case for Dirty Harry and against Alan Dershowitz' (2006) 23 *Journal of Applied Philosophy* 337–353.
[36] O Gross 'The Prohibition of Torture and the Limits of the Law' in S Levinson (ed) *Torture: A Collection* (2006) Oxford.
[37] In the *Chorzów Factory* case, the PCIJ held that the right to an effective remedy is "a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."
[38] See generally, D Shelton *Remedies in International Human Rights Law* (3rd ed) (2015)
[39] F Viljoen and C Odinkalu *The Prohibition of Torture and Ill-treatment in the African Human Rights System* (2014) 112
[40] S Joseph and Others *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies* (2014) 201.

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 (Van Boven Principles).[41] On the forms of redress in local courts, an issue explored in this research is the negative effects of the unavailability of enforcement mechanisms for both international and national decisions and how that affects the rights of victims of torture.

6. Significance of the research

This research seeks to contribute to the gap in knowledge that exists in the right to redress for victims of torture that exists in the Cameroon context. As highlighted, an awareness and knowledge breach exist between the increasing torture occasioned[42] and the number of cases filed at the national, regional and international protection mechanisms. As such, this research seeks to clarify the substantive and procedural context in the country.

The study further contributes to highlighting the jurisprudence of the African Commission and African Court, as well as that of the Human Rights Committee, as it relates to the decision taken in favour of victims of torture. These cases are mostly not known to the broader public. The author believes this factor contributes to the timid number of cases filed for violating the right to be free from torture against the State of Cameroon at human rights compliance bodies.

The research further evaluates the national prevention mechanism (Cameroon Human Rights Commission) since its inception in 2019. This is done by examining how far it has come in terms of its contribution to victims of torture and its monitoring of the implementation of the CAT in the country.

7. Limitations of the research

This research may be limited by the availability of information on the cases handled at the national courts and institutions. Considering that there is almost a non-existence of platforms that document the jurisprudence of local courts in Cameroon, this might affect the full analysis of the right to redress in particular cases in the country.

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[41] These are set out in Principles 19 to 23 of the Van Boven Principles.

[42] Amnesty International "Cameroon: submission to the United Nations committee against torture. 62nd session, 6 November-6 December 2017 www.amnesty.org/fr/wp-content/uploads/2021/05/AFR1771902017ENGLISH.pdf (accessed 3 August 2023).

Also, since Cameroon does not always respect its reporting obligations to treaty bodies, it might be difficult to get the most recent information on fulfilling its obligation under particular treaties. This especially concerns how it has enforced the decisions taken against the country by the various treaty bodies regarding torture victims.

8. Synopsis of the research

The research constitutes five chapters. Chapter One is the introductory chapter, which dwells on the background of the study, statement of the problem, research questions, research objectives, methodology, literature review, and other preliminary research issues.

Chapter two analyses the international and regional normative framework for protecting victims of torture. At the regional level, the focus is on the AU system, including the institutions and how it has handled issues of torture concerning Cameroon. The chapter examines the treaty bodies of these international and regional frameworks and how they have handled cases of torture from Cameroon.

Chapter three analyses the international and regional normative framework for access to redress for victims of torture.

Chapter four examines the national legal and institutional framework for the prevention of torture in Cameroon, as well as the right to redress for victims of torture. The chapter provides an overview and background of its proliferation in Cameroon. This chapter focuses on the Cameroon Human Rights Commission and its role as the national prevention mechanism under the OP-CAT.

Finally, chapter five provides a general conclusion and recommendations for strengthening legal and institutional mechanisms at the national level.

CHAPTER TWO

INTERNATIONAL LAW ON TORTURE: LEGAL AND INSTITUTIONAL FRAMEWORKS

2.1 Introduction

This analyses the international and regional normative framework for protecting victims of torture and focuses on the redress rights for victims. At the regional level, the focus will be on the AU system, including the institutions and how it has handled issues of torture concerning Cameroon. The chapter examines the treaty bodies of these international and regional frameworks and how they have handled cases of torture from Cameroon.

2.2 International Legal Framework on the Prohibition of Torture

Several human rights instruments adopted prohibit torture and other ill-treatment. Also, the prohibition of torture is rooted in customary international law. As Viljoen and Odinkalu note, it has acquired *jus cogens* status.[43] Such status has the effect of binding all states and at all times, irrespective of whether the particular state has ratified international treaties prohibiting torture and other ill-treatment.

Since the end of the Second World War, international human rights law has developed to include the absolute prohibition of torture, which is non-derogable.[44] The Universal Declaration was the first international human rights instrument to prohibit torture. Article 5 of the Universal Declaration states that "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

Other international instruments prohibit torture, such as the Convention on the Prevention and Punishment of the Crime of Genocide;[45] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;[46] the International Convention

[43] F Viljoen and C Odinkalu, (n 48) 47.
[44] M Nowak and E McArthur *The United Nations Convention against Torture: A Commentary* (2008) 1
[45] Article II, the Convention was adopted on 9 December 1948.
[46] Article 5, the Supplementary Convention was adopted on 7 September 1956.

on the Suppression and Punishment of the Crime of Apartheid;[47] and the International Convention on the Elimination of All Forms of Racial Discrimination.[48]

Instruments concerning specific persons and vulnerable groups that also proscribe torture and other ill-treatment have also been adopted. These include the Convention on the Rights of the Child,[49] the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[50] and the Convention on the Rights of Persons with Disabilities.[51]

2.2.1 Convention Against Torture (CAT)

The continued use of torture by states after the Universal Declaration led to the adoption of several other international treaties, including the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1975.[52] The Declaration in Article 2 enforces the purpose of the provision under the Universal Declaration. Despite not binding, the Declaration provided a model for drafting the CAT, the first legally binding instrument to define torture. The CAT is one of Africa's most ratified international treaties, with 52 out of 54 countries having ratified it.[53]

The CAT is divided into three parts, with the first part, which is the focus of this section, dealing with substantive issues, one of which is the dual obligations of states to prohibit and prevent torture. On the obligation to prevent torture, the Convention states that states shall adopt "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."[54] The prevention of torture requires states to adopt measures that are in line with the Convention. Article 2(2) provides that national legislation and policies of a state must

[47] Article II, the Convention was adopted 30 November 1973.
[48] Article 5, the Convention was adopted on 7 March 1966.
[49] Article 37, the CRC was adopted on 20 November 1989.
[50] Article 10, the Convention was adopted on 18 December 1990.
[51] Articles 15(1) and (2) proscribe torture against PWDs. Convention was adopted on 13 December 2006.
[52] UN General Assembly, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 1975, A/RES/3452(XXX).
[53] Office of the High Commissioner for Human Rights "Status of Ratification Interactive Dashboard" https://indicators.ohchr.org/ (accessed on 16 August 2023).
[54] Article 2 of the CAT.

comply with the Convention. The obligation to prevent torture also includes the obligation to enact and enforce legislation for the criminalisation of torture.[55]

Further prevention measures are noted in Articles 10, 11 and 12 of the Convention and apply to torture and other ill-treatment. Conditions that give rise to ill-treatment are the same conditions that facilitate torture; therefore, the same preventative measures must apply.[56]

Another obligation provided for under CAT and relevant to the present research is the obligation to provide redress in cases of violation of the obligations under Article 14(1) of the Convention. This provision is complemented by Article 12 on the obligation to investigate cases of torture and Article 13 on the right to complain in cases of torture.[57]

2.2.2 Optional Protocol to the Convention against Torture (OPCAT)

The OPCAT[58] was adopted to protect the right to be free from torture for persons deprived of their liberty. Article 1 of OPCAT states that the Protocol is to prevent torture by establishing a system of regular visits to places of detention by independent bodies. As Murray *et al.* highlights, the inclusion of "prevention" within this provision was aimed at differentiating the subcommittee on the prevention of torture from other existing bodies within the UN human rights system.[59] As a measure of enforcing the OPCAT, the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is established under Article 2. Furthermore, Articles 3 and 4 give obligations to State Parties regarding their collaboration with the SPT.

An essential aspect of the OPCAT is a broad definition of deprivation of liberty and places of detention under Article 4. This provision gives the obligation to member states to allow visits of the SPT "…to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence."[60] The provision further states that "deprivation of liberty means any

[55] Association for the Prevention of Torture and the Center for Justice and International Law *Torture in International Law, a guide to jurisprudence* (2008) 18.
[56] CAT Committee General Comment No. 2: Implementation of Article 2 by States parties (2008) CAT/C/GC/2, at 2.
[57] M Nowak and E McArthur (n 53) at 453.
[58] The OPCAT was adopted in December 2002 and entered into force, June 2006.
[59] R Murray and others *The Optional Protocol to the UN Convention Against Torture* (2011) 68.
[60] Article 4(1) OPCAT.

form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."[61]

2.2.3 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR in Article 7 restates the provisions of the Universal Declaration and includes the prohibition of medical and scientific experiments without free consent. The ICCPR does not define what constitutes torture in the context of this provision.

The Human Rights Committee (HRC), the treaty body for implementing the ICCPR, has also veered from trying to define torture within the treaty context. It has stated that the HRC does not "consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied."[62] Despite this, Rodley notes that the HRC has adopted a rather global approach in its consideration of torture within its decisions.[63]

In addition, Article 4(2) of the ICCPR states that state parties may make no derogation regarding Article 7 and other sundry provisions. As such, ICCPR reinforces the *jus cogens* nature of freedom from torture in international law. In conflict within the state, the HRC has also clarified that an armed conflict does not give rise to an unlimited discretion of the state to make derogations under Article 4. It has stated that "even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation."[64]

Positive obligations are further noted in Article 10(1) concerning the obligation of state parties to treat persons deprived of their liberty with humanity and respect for inherent dignity. The ICCPR also envisages the positive obligation of states to prevent torture in detention facilities and other places. This can be done by ensuring that the security personnel are trained, there is a record of

[61] Article 4(2) OPCAT.
[62] HRC General Comment 20: Article 7 Prohibition of torture or other cruel, inhuman or degrading treatment or punishment (1992) HRI/GEN/1/Rev9 (Vol. I) para 4.
[63] N Rodley (n 7) 71.
[64] HRC General Comment 29: Article 4: Derogations during the State of Emergency (2001) CCPR/C/21/Rev1/Add.11, para 2

interrogation methods and practices, and the general population is sensitised and educated on the ban on torture.[65]

2.3 African Regional Legal Framework and the Freedom from Torture

The African human rights system has come a long way since adopting the African Charter on Human and Peoples' Rights (African Charter) in 1986 on the issue of torture and cruel, inhuman and degrading treatment. The African Commission on Human and Peoples' Rights (African Commission) has mainly been instrumental in interpreting the meaning of Article 5 of the Charter through general comments, establishing special mechanisms, passing decisions, developing guidelines and setting up follow-up committees.[66]

2.3.1 The African Charter on Human and Peoples' Rights

The African Charter proscribes torture in Article 5. Mujuzi has argued that the choice to include torture alongside slavery and the slave trade indicated the absolute prohibition of torture in Africa, contributing to the *just cogens* nature of the prohibition.[67] Viljoen and Odinkalu, however, note that including all these issues "complicates matters".[68] Nonetheless, the African Commission has been instrumental in preventing torture and protecting victims of torture in Africa, considering that it is the primary treaty body, together with the African Court on Human and Peoples' Rights, for implementing the African Charter.

Despite having ratified the Protocol creating the African Court,[69] Cameroon has not recognised the competence of the court to receive complaints from individuals and organisations.[70] However, the African Court still provides an avenue to protect torture victims on the continent where the

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[65] As above, para 11.

[66] B Manby "Civil and Political Rights in the African Charter on Human and Peoples' Rights: Articles 1–7" in M Evans and R Murray Eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (2008) 192.

[67] JD Mujuzi "An analysis of the approach to the right to freedom from torture adopted by the African Commission" (2006) 6 *African Human Rights Law Journal,* 429.

[68] F Viljoen and C Odinkalu (n 48) 48-49.

[69] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998.

[70] Article 34 of the African Court Protocol provides that "at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State which has not made such a declaration."

national protection mechanism has failed to provide such protection.[71] Unfortunately, the African Court is yet to find specifically for the violation of Article 5 within its jurisprudence, despite having granted provisional measures on issues where Article 5 violations were alleged, among other violations of the African Charter.[72]

In addition to the African Charter, the African human rights system has developed additional protocols to elaborate on and provide further protection for specific groups such as children, women, older persons and persons with disabilities (PWDs) in Africa. Some of these instruments further include the prohibition of torture or other ill-treatment.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)[73] prohibits harmful cultural traditional practices and violence against women[74] and obligates states to adopt "appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."[75]

Although not yet in force, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol)[76] provides comprehensive protection for PWDs in Africa. Article 10 of the Protocol provides freedom against torture and implores states to take appropriate measures to prosecute perpetrators and ensure the provision of remedies.

As an implementation measure of Article 5, the African Commission adopted the Robben Island Guidelines (the Guidelines)[77] with the Association for the Prevention of Torture (APT).[78] The

[71] See, F Viljoen and C Odinkalu (n 48).
[72] See, *African Commission on Human and Peoples' Rights v The Great Socialist People's Libyan Arab Jamahiriya* Application 004/2011 (Order for Provisional Measures) African Court (2011).
[73] The Maputo Protocol was adopted in 2003 and came into force in 2005. Cameroon ratified the Protocol in 2012.
[74] Maputo Protocol, Article 2.
[75] Maputo Protocol, Article 3(4).
[76] African Disability Protocol was adopted in 2018. Cameroon has signed but has not ratified the Protocol.
[77] African Commission, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted at the 32nd Session, Oct. 2002, ACHPR/ Res. 61(XXXII) 02 (2002).
[78] See, J Niyizurugero and P Lessene *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guide for Implementation* (2008).

Guidelines were adopted as part of the promotional mandate of the African Commission in its attempt to provide further context to Article 5 of the African Charter.[79]

The Guidelines are designed to provide a roadmap for states on how to prevent torture at the domestic level. Further, it provides for prevention measures and safeguards in situations where there is potential for torture to occur, such as arrest, custody, temporary detention, trial and imprisonment in general.[80] Where such violations occur, there is a requirement for comprehensive independent investigations and follow-up mechanisms. Finally, the Guidelines provide a requirement and duty for the State to provide assistance and redress for victims of torture.

The Follow-Up Committee on the Implementation of the Robben Island Guidelines,[81] now known as the Committee for the Prevention of Torture in Africa (CPTA),[82] was put in place to monitor the implementation of the Guidelines. The mandate of the CPTA has not changed since its creation.[83]

2.3.2 The African Charter on the Rights and Welfare of the Child (ACRWC)[84]

The ACRWC was adopted with the recognition that children require legal protection due to their physical and mental development needs.[85] Viljoen and Odinkalu note that in addressing torture concerning children in Africa, the ACRWC has five specific aspects of the prohibition, which include traditional practices, protection against child labour, the protection of children from abuse and violence, due process protection and the protection of children in armed conflict or other situations of forced displacement.[86]

The ACRWC provides in Article 16 that state parties have obligations to provide specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect

[79] D Long and R Murray "Ten years of the Robben Island Guidelines and prevention of torture in Africa: For what purpose?" (2012) 12 *African Human Rights Law Journal*, 332.
[80] Robben Island Guidelines, paras. 20-32.
[81] The African Commission established the Follow-Up Committee in 2004.
[82] The African Commission, Resolution on the Change of Name of the Robben Island Guidelines Follow-Up Committee ACHPR/Res.158(XLVI)09.
[83] African Commission, CPTA https://achpr.au.int/en/mechanisms/committee-prevention-torture-africa (accessed on 24 August 2023).
[84] The Charter was adopted in 1990 and came into force in 1999.
[85] ACRWC, Preambular provisions.
[86] F Viljoen and C Odinkalu (n 48) 68.

or maltreatment, including sexual abuse, while in the care of the child.[87] Further, Article 17(2)(a) of the ACRWC requires member states to ensure that no child in penal facilities faces torture or inhumane or degrading treatment or punishment.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established in Article 32 of the ACRWC to promote and protect the rights and welfare of the child. The functions of the ACERWC are set out in Article 42 to include the promotion and protection of the rights in the Charter, monitoring the implementation of the Charter, and interpreting the provisions of the Charter when requested.

Further, the ACERWC is mandated to receive reports from state parties and issue concluding observations.[88] Thus far, Cameroon has made two reports, the initial report and the first report, to which concluding observations have been made to the first report.[89] The ACERWC also has the prerogative to carry out investigative missions by collaborating with state parties and reporting on its activities and any communication.[90] The ACERWC is mandated to receive individual complaints under Article 44 where there has been a violation of any part of the Charter. Thus far, there has only been one communication from Cameroon, which has been decided on the merits.

2.4 Institutional Framework on the Prohibition and Prevention of Torture

2.4.1 Committee Against Torture

Part II of the Convention establishes the Committee against Torture (CAT Committee or the Committee) under Article 17. The Committee is one of the treaty monitoring bodies within the UN system, in charge of monitoring the implementation of the prevention and prohibition of torture and the punishment of torture.[91] The Committee monitors enforcement through mechanisms such as consideration of state reports, individual complaints, general comments, interstate complaints, and special inquiries.

[87] In Article 2, the Charter defines a child as anyone below eighteen.
[88] ACRWC, Article 43.
[89] ACERWC State Reporting http://www.acerwc.africa/en/states-parties/reporting/overview (accessed on 24 August 2023).
[90] ACRWC, Article 45.
[91] L Wendland *A Handbook on State Obligations under the UN Convention against Torture* (2002) 17

The Convention provides for the relevant declaration to be made to allow individuals within the jurisdiction of a state party who are alleged to be torture victims to file complaints with the CAT Committee.[92]

Despite making the Article 22 declaration over two decades ago, only one case against Cameroon has been decided upon by the CAT Committee. This was filed in 2022, and the case was ruled inadmissible on the grounds of non-exhaustion of local remedies[93] as required by the Convention.[94] It is somewhat surprising that despite the increasing use of torture in the country, including as highlighted in the most recent concluding observation on the periodic report by Cameroon to the Committee.[95] This could be attributed to the reluctance that has resulted from the limited implementation of previous decisions by other UN and AU-level treaty bodies, the limited knowledge of the existence of the Committee, the reluctance of lawyers to take up such cases for fear of reprisal, the inadequacy of strategic litigation efforts within the country, and several other potential reasons.

Another element for this reluctance could be the choice of forum, considering that similar bodies exist at the regional level and under different treaties, especially the Human Rights Council, which has dealt with several cases of torture relating to Cameroon.

2.4.2 Human Rights Committee (HRC)

The HRC is established under Article 28 of the ICCPR and is mandated to monitor the implementation of the provisions therein. The HRC has four central mandates within the Covenant, which include consideration of reports of implementation by state parties and submission of concluding observations;[96] consideration of individual complaints from persons who allege a violation of rights under the ICCPR;[97] the elaboration of and issuance of general comments on the

[92] Article 22 of the Convention against Torture.
[93] *SB v Cameroon* Communication 1034/2020, Committee against Torture (4 November 2022) CAT/C/75/D/1034/2020.
[94] CAT, Art 22(4)(b).
[95] CAT Committee "Concluding observations on the fifth periodic report of Cameroon" (18 December 2017) CAT/C/CMR/CO/5, at 6.
[96] Article 40 ICCPR.
[97] Additionally, for an individual complaint to be considered, the state must have ratified the Optional Protocol to the ICCPR.

substantive and procedural provisions of the Covenant; and lastly, the consideration of interstate complaints.[98]

This research focuses on the consideration of the individual complaints function, which is the function that directly deals with the right to remedy for victims of torture. For an individual complaint to be considered fully by the HRC, there is a requirement for the complainant to have exhausted local remedies to meet specific admissibility criteria.

As opposed to the Committee against Torture, the HRC has received more cases alleging a violation of, among other rights, freedom from torture against the State of Cameroon.

The case of *Philip Afuson Njaru v Cameroon* was the first case where HRC found that Cameroon had violated its obligation to prohibit torture under Article 7 of the Covenant. In this case, the complainant alleged torture due to systematic physical and mental incidents that had led to a fractured jaw, hearing damage and other effects, as substantiated by medical reports. In the case, the HRC found that there had been torture within the meaning of Article 7 in the absence of collaboration by Cameroon during the case.[99] Due to the absence of collaboration, the HRC found that it had no reason to believe that there had not been torture, given the evidence, CSO reports, and previous concluding observations on state party reports.[100]

It should be noted that the HRC had found a violation of Article 7 in a previous case. However, the Committee noted that the complainant, in that case, had only "been subject to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant."[101] In this case, the HRC did not indicate its reason for only finding ill-treatment, as opposed to torture, despite the complainant alleging torture. This is surprising, especially since the HRC noted in the case that the burden of proof is on the state party to refute the allegation and evidence provided by the complainant. Cameroon had stated in this case that the burden of proof for torture lies on the complainant.[102]

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[98] Article 41(1)(a) ICCPR.
[99] *Philip Afuson Njaru v Cameroon* Communication 1353/2005 HRC (19 March 2007) CCPR/C/89/D/1353/2005.
[100] As above, para 4.
[101] *Albert Womah Mukong v Cameroon* Communication 458/1991 HRC (8 July 1992) CCPR/C/51/O/458/1991, para 9.4. This followed several complaints of torture and ill-treatment against members of the SCNC and SCAPO, which were political parties that fought for the self-determination of the Anglophones, "Ambazonia".
[102] As above, paras 9.1 and 9.2.

Similarly, in the case of *Dorothy Kakem Titiahonjo v Cameroon*,[103] the HRC adjudged that the rights of the complainant under Article 7 had been violated. In this case, the complainant had filed for herself and her deceased husband, who had died in custody. The HRC concluded that the deceased had been subjected to cruel, inhuman and degrading treatment, considering "the State party has not contested these allegations, and the author has provided a detailed account of the treatment and beatings her husband was subjected to."[104] The HRC also concluded that the complainant had been a victim of a violation under Article 7 of the Covenant.[105] The Committee did not specify which form of violation under Article 7 the complainant had been subjected to. This will considerably affect the type of remedy which the complainant will be granted and its implementation by the respondent state.

In the cases of *Ebenezer Derek Mbongo Akwanga v Cameroon*[106] and *John Njie Monika v Cameroon*,[107] the HRC found that the complainants had been subjected to violations under Article 7 of the Covenant. In the *Ebenezer Akwanga* case, the HRC did not specify whether it was torture or ill-treatment. The complainant had alleged torture in the case. In the *John Njie* case, the HRC found a violation of Article 7 alone and in conjunction with Article 2(3).[108] The HRC found other cases against Cameroon inadmissible due to either unsubstantiated claims[109] or non-exhaustion of local remedies.[110]

The difference between torture and other ill-treatment forms may be based either on the status of the perpetrator, the severity of pain, the purpose of the act or the purpose and use of the information acquired from the act.[111] Although this might not matter to the treaty bodies, this difference matters to states and their reputation in their relationship with other states.

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[103] *Dorothy Kakem Titiahonjo v Cameroon* Communication 1186/2003 HRC (26 October 2007) CCPR/C/91/D/1186/2003.
[104] As above, para 6.3.
[105] As above, para 6.4.
[106] *Ebenezer Derek Mbongo Akwanga v Cameroon* Communication 1813/2008 HRC (22 March 2011) CCPR/C/101/D/1813/2008.
[107] *John Njie Monika v Cameroon* Communication 1965/2010 HRC (21 October 2014) CCPR/C/112/D/1965/2010.
[108] As above, para 13.
[109] *Fongum Gorji-Dinka v Cameroon* Communication No. 1134/2002 HRC (17 March 2005) CCPR/C/83/D/1134/2002.
[110] *Urbain Olanguena Awono v Cameroon* Communication No. 2660/2015 HRC (19 July 2018) CCPR/C/123/D/2660/2015.
[111] For an in-depth discussion on what constitutes and differentiates torture from other ill-treatment, see N Rodley and M Pollard *The Treatment of Prisoners under International Law* (2009) 82-144.

When the HRC fails to specify if a violation under Article 7 amounts to torture or ill-treatment, it diminishes the state party's culpability and the type of redress that can be offered to the complainant. This also affects the implementation of the Views of the Committee at the domestic level.

2.4.3 African Commission on Human and Peoples' Rights

The African Commission was established under Article 30 of the African Charter, with its mandate listed in Article 45. Additionally, the Commission is mandated, per Article 55, to receive "other communications." This usually comprises communications from individuals, non-governmental organisations and other persons. In terms of its decisions, although the African Commission has shown a zero-tolerance standard for torture, it does not distinguish between torture and ill-treatment.

In the case of *Kevin Mgwanga Gunme et al v Cameroon*, the African Commission found a violation of Article 5 of the African Charter, where the victims were subjected to torture, amputations and denial of medical treatment by law enforcement officers.[112] In the case, Cameroon had responded to these allegations by indicating that these acts were conducted in line with the fight against terrorism. The African Commission noted in response that this was not a justifiable reason to subject the victims to torture and ill-treatment.[113] The African Commission also noted in this case that it is competent to handle violations that took place before the country became a party to the Charter if those violations are of a continuing nature, in this case, enforced disappearance.

Similarly, in the case of *Titanji Duga Ernest (on behalf of Cheonumu Martin and Others) v Cameroon*, the African Commission noted that the prohibition of torture is absolute and may not be subject to restriction, and no exceptional circumstances may justify torture.[114]

Apart from the individual communications that constitute the protective mandate, it is essential to examine the promotional mandate that constitutes preventative mechanisms the Commission put in place to prevent torture on the continent.

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[112] *Kevin Mgwanga Gunme et al. v Cameroon*, Communication 266/03 ACHPR (27 May 2009) 45th Ordinary Session, para 113.
[113] As above, para 114.
[114] *Titanji Duga Ernest (on behalf of Cheonumu Martin and others) v Cameroon* Communication 287/04 ACHPR (14 March 2014) 15th Extra-Ordinary Session, para 53.

General Comment (GC) 4, which will be analysed in the next chapter, Concluding Observations to periodic reports and country-specific resolutions are some ways in which the Commission expands upon and evaluates the implementation of Article 5. Regarding the concluding observation, the African Commission, as opposed to other treaty bodies such as the HRC and CAT, has not been noted to provide enough analysis and concrete recommendations. The recommendations in the four concluding observations and recommendations on the state reporting of Cameroon, made between 1989 and 2019, have generally not focused on specific issues of torture and ill-treatment, not even in cases where there have been Communications before the African Commission.

In the latest concluding observation,[115] the Commission highlighted the lack of a national mechanism to prevent and combat torture. It recommended the creation of such a mechanism in line with the OPCAT. This national preventive mechanism has been created within the national human rights institution. This can be considered a success of the promotional powers of the Commission.

The African Commission has put in place special rapporteurs on prisons, conditions of detention and policing in Africa, which is one of the several special mechanisms created by the African Commission since 1996 and is the first special mechanism created under the Commission. The rapporteur has a preventive and promotional role. Although the Special Rapporteur has been criticised for its creation process, which relied on civil society and not being the idea of the Commission,[116] Viljoen has noted that the Special Rapporteur is an innovative procedure whose most significant "achievement so far has been the impact through visits to places of detention in eleven African Union member states" and that it "has also played an important promotional role."[117]

[115] African Commission, Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon, adopted at 15th Extraordinary Session 2014.
[116] R Murray "The Special Rapporteurs in the African System" in M Evans and R Murray Eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (2008) 345.
[117] F Viljoen "The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities" (2005) 27 *Human Rights Quarterly*, 125.

The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter.[118] The modes of work supplement this general mandate.[119]

2.5 Conclusion

There is a comprehensive substantive international legal framework for the prohibition and prevention of torture at global and regional levels. Further, the legal frameworks provide extensive protection mechanisms for victims of torture, including, as we have seen in the African context, protection for specific groups such as women, children and persons with disabilities. The existing institutional framework, both the treaty implementation bodies and special mechanisms at the UN and AU levels, monitor the prohibition and prevention of torture and ensure the protection of victims.

[118] African Commission "Special Mechanisms" https://achpr.au.int/en/mechanisms/special-rapporteur-prisons-conditions-detention-and-policing-africa (accessed on 24 August 2023).

[119] See, R Murray and M Evans eds *Documents of the African Commission on Human and Peoples' Rights - Volume 1, 1987-1998,* 424.

CHAPTER THREE

INTERNATIONAL LAW OF REDRESS FOR TORTURE: FORMS OF REDRESS AND LEGAL FRAMEWORKS

3.1 Introduction

This chapter analyses the international and regional normative framework for access to redress for victims of torture. The chapter begins by analysing the international legal right to redress before analysing the specific rights to redress for human rights violations, particularly torture. The chapter examines the dual meaning of remedies in international law, the right to redress perspective under the African human rights system and the various international human rights bodies, and their follow-up mechanisms.

3.2 State Obligation and Redress in International Law

For an individual to claim damages, there needs to be a breach of a legal obligation that harms an identifiable individual(s). In the *Chorzów Factory* case, the Permanent Court of International Justice (PCIJ) held that the right to an effective remedy is a 'principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.'[120] International human rights law has further developed this to ensure that individuals may bring actions against states in international tribunals and be able to obtain redress. In the case of *Reverend Christopher Mtikila v The United Republic of Tanzania*, the African Court on Human and Peoples' Rights highlighted that "any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation", recognising that this is a fundamental principle of contemporary international law on State responsibility, that constitutes a customary norm of international law.[121]

[120] *Factory At Chorzów, (Germany v Poland), Judgment, Claim for Indemnity,* Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255, 29.
[121] *Reverend Christopher R. Mtikila v Tanzania* (reparations) (2014) 1 AfCLR 72.

The African Charter,[122] ICCPR,[123] UDHR,[124] CAT[125] and other international human rights treaties provide substantive and procedural rights to remedy. The substantive remedies provided for by the courts or other institutions are hinged on the ability of the individual to access these institutions. As such, the procedural rights are provided for in these instruments.

3.3 Exhaustion of Local Remedies

A major requirement for the admissibility of an international claim is the exhaustion of remedies at the domestic level. As stated earlier, states should provide effective remedies for human rights violations at the domestic level. Without such remedies, the state will be held to have violated its obligation under international law. However, thresholds exist, which the remedies provided must meet to be considered effective for any particular human rights violation. Several human rights treaty bodies such as the HRC, CAT, African Commission and others require the exhaustion of local remedies. This allows the state to address an alleged wrong domestically before it can be brought to the international level.[126]

Furthermore, the international human rights system requires the need for judicial remedies. In the case of *Nyida Erika v Colombia,* the HRC indicated that "purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies…particularly serious violations of human rights, notably in the event of an alleged violation of the right to life."[127] As such, even in the case of amnesty, the HRC has held that those responsible for enforced disappearance must be brought to justice.[128]

The African Commission and Court have well-established jurisprudence on the exhaustion of local remedies. It has been held that there is only a requirement to exhaust ordinary judicial remedies at the domestic level.[129] However, the requirement for exhaustion of domestic remedies must not impede the ability of an individual to obtain justice. Therefore, the African Commission has stated

[122] The Charter has several provisions on the right to remedy. These include Articles 7, 21 and 27.
[123] The ICCPR has three provisions on the right to remedy. These include; Articles Article 2(3), Articles 9(5) and 14(6).
[124] Article 8 Universal Declaration 1948.
[125] Article 14 CAT.
[126] C Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its rationale in the international protection of individual rights* (1983).
[127] *Nyaia Erika Bautista de Arellana v Colombia,* Communication 563/1993 (October 1995) para 8.2.
[128] *Ana Rosario Celis Laureano v Peru,* Communication 540/1993 (March 1996).
[129] *Abubakari Mohamed v The United Republic of Tanzania*, Merits, Application 007/2013 (3 June 2016) para 64.

that such a remedy must be available, effective and sufficient.[130] The African Commission has, in subsequent cases,[131] expanded on these elements, which it interprets in line with the right to a fair trial.[132]

Regarding the availability and effectiveness of domestic remedies, the African Commission has further stated that exhaustion of local remedies "does not mean, however, that complainants are required to exhaust any local remedy which is found to be, as a practical matter, unavailable or ineffective."[133] In cases relating to torture, the Commission has noted that where the victim flees a country for fear of their lives and is granted refugee status in another country, they are not, therefore, able to exhaust local remedies in the country where the torture took place, and have declared such cases admissible on the "principle of constructive exhaustion of local remedies."[134] In each case, the body concerned must determine whether domestic remedies have been exhausted based on the surrounding circumstances.

3.4 Scope of Remedy in International Law

Principle 11 of the Van Boven Principles provides that remedies for gross violations of human rights must include the following elements:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered;
- Access to relevant information concerning violations and reparation mechanisms.

3.4.1 Procedural Remedy

The procedural right to remedy, which can be described as the right to access justice, is a prior requirement for granting substantive redress. The African Charter in Article 26 provides for the duty to guarantee the independence of national courts, as well as create institutions for the promotion and protection of human rights. Similar provisions can also be found in other human

[130] See, *Jawara v The Gambia* (n 20) para 32.
[131] *Alfred B Cudjoe v Ghana*, Communication 221/98 (availability of remedy); *Amnesty International v Sudan,* Communication 48/9 (effectiveness); *Constitutional Rights Project v Nigeria*, Communication 102/93 (sufficient remedy).
[132] African Charter, Article 7.
[133] See, *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* Communication 71/92, para 11.
[134] *John D. Ouko v Kenya* Communication 232/99 (2000) ACHPR 27; See also, *Rights International v Nigeria* Communication No. 215/98.

rights instruments. The ICCPR notes that "any person claiming such a remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy."[135]

Shelton has noted that access to justice "implies access to procedures that will investigate, prosecute, and punish violators and includes the right of victims to participate in the investigative process and the criminal proceedings in some manner."[136] This argument relies on Article 13 of CAT, which protects the right to procedural remedy and aptly comes before the right to remedy provided for in Article 14. Article 13 provides the right to complain, a precursor to the right to remedy.

Part VIII of the Van Boven Principles, which includes Principles 12 to 14, elaborates on the obligations of states in relation to ensuring access to justice, which is a precursor to obtaining reparation for harm suffered. These obligations include disseminating information about all available remedies, assisting victims seeking justice, and making available means for victims to exercise their rights to remedy. It further covers requirements for possible paths for group victims to make complaints and receive reparation.[137]

The CAT Committee has noted that there is no requirement for a formal torture complaint. Stating that a mere allegation should give rise to an investigation.[138] However, there must be a laid down procedure which should be void of any form of bureaucracy and must not be solely dependent on the discretionary powers of a state official.[139] More so, there should be provision for oral, written and even anonymous complaints in places of detention as a measure of avoiding reprisals.[140]

After a complaint has been made or where there has been an allegation of torture, the state has a further obligation to ensure that there is a prompt and impartial investigation that must be carried out to determine the veracity of the claims or complaints. This requirement is also provided under

[135] Article 2(3)(b) ICCPR.
[136] D Shelton (n 47) 18.
[137] Principle 13 of Van Boven Principles.
[138] See, *Henri Unai Parot v Spain*, Communication 6/1990, CAT Committee (1995) U.N. Doc. A/50/44, 62. In further cases, the Committee has interpreted this provision liberally, and this can be attributed to the *jus cogens* nature of torture; see *Blanco Abad v Spain* Communication 59/96; *Abdelli v Tunisia*, Communication. 188/2001; *Besim Osmani v Serbia*, Communication 261/2005; *Damien Ndarisigaranye v Burundi* Communication 493/2012.
[139] See, M Nowak and E McArthur (n 53) 449.
[140] As above.

Article 12 CAT, where the state must launch an *ex officio* investigation where there is reasonable ground to believe that torture has occurred.

More so, Article 13 provides that steps must be taken to protect victims and witnesses from reprisal, an obligation which furthers the protection of procedural rights. This requirement is essential for persons in detention facilities prone to more torture and risk a violation of their right to life for lodging complaints of torture. The Robben Island Guidelines provide specific safeguards for persons in detention by obliging states to ensure that any statements obtained through torture shall not be admissible against the complainant.[141]

The African Commission has clarified that state parties are required to "establish judicial, quasi-judicial, administrative, traditional and other processes to enable victims to access and obtain redress."[142] There are further requirements for "multi-sectoral redress procedures and mechanisms"[143] accessible to victims. Additionally, the state must carry out "prompt, impartial, independent and thorough investigations" when there are reasonable grounds to believe that there has been torture.

Finally, regarding access to justice, the African Commission highlights the issue of promptness in the hearing of claims during judicial and non-judicial mechanisms.[144] The CAT Committee has clarified the same issues in its General Comment 3 (GC 3). The CAT Committee notes that Article 14 is to the effect that states should enact effective legislation to ensure procedural rights, provide effective mechanisms for complaints, ensure access to mechanisms for obtaining redress, and work towards reducing obstacles to the right to redress.[145] Additionally, the Robben Island Guidelines oblige states to ensure the availability of independent mechanisms for complainants to bring allegations of torture and ensure that investigations are initiated[146] and carried out promptly, impartially and effectively.[147]

[141] Robben Island Guidelines, para 29.
[142] African Commission, GC 4 on the African Charter: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, para 21.
[143] As above, para 22.
[144] As above. See also *Halimi-Nedzibi v Austria*, Communication 8/1991 CAT Committee, para 13.5.
[145] CAT Committee General Comment No. 3 (2012) Implementation of Article 14 by State Parties. CAT/C/GC/3.
[146] Robben Island Guidelines, para 17.
[147] As above, para 19.

3.4.2 Substantive Remedy

Principle 15 of the Van Boven Principles states that "adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law." The Van Boven Principles indicate five forms of redress or reparation, and it will be essential to discuss these forms briefly.

a) Restitution

Restitution ensures that a victim of a human rights violation is restored to their original situation, which they were in before the violation occurred. Although Principle 19 provides a list of restitutive actions that must be taken in cases of human rights violation,[148] this list is not nearly exhaustive. As the CAT Committee has noted, in cases of torture, the victim can sometimes have faced irreparable damage and thus cannot be taken to their original situation.[149] Therefore, the reparative action that must be taken in each case depends on the situation and peculiarity. The CAT Committee further notes that for restitution to be effective, the state must address the structural causes of the violation, including issues relating to any form of discrimination resulting in the violation.[150] Where the violation is of a continuing nature, such as incommunicado detention in 'black sites' and in cases of enforced disappearances, restitution should address such root causes and structural causes of torture.[151] Therefore, restitution hinges on states' obligation to take legislative, administrative, judicial and other measures to address the victims' political, economic and social situation and other potential victims and complainants. This is because more modern forms of restitutive actions focus on the victim, offender and general population, especially in oppressive regimes.[152]

b) Compensation

Compensation for human rights violations includes awards for pecuniary and non-pecuniary damages suffered. International instruments have emphasised the need to provide adequate

[148] The Van Boven Principles.
[149] CAT Committee (n 66) para 8.
[150] As above.
[151] Redress *Implementing Victims' Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation* (2006) 34.
[152] See, C Cunneen 'Exploring the Relationship Between Reparations, the Gross Violation of Human Rights, and Restorative Justice' in D Sullivan & L Tifft (eds.) *Handbook of Restorative Justice: A Global Perspective* (2008) 558.

compensation for all economically assessable damage, which should include physical, mental and moral damages proportionate to the gravity of the violation in the particular case.[153]

As the CAT Committee has indicated, monetary compensation alone may not be sufficient redress for torture, and further notes that for States to fulfil their obligation under Article 14, compensation should include other considerations.[154] As such, this precludes states from compensating symbolic amounts decided without considering the particular circumstance.[155] The African Commission has underscored the imperative for the State to ensure the right of the victim to receive just and adequate reparation for the torture and trauma suffered.[156] The State must compensate the victims per international human rights standards.[157] Determining what constitutes just and adequate compensation hinges on the specific context of each case, the nature of the rights violation, and the extent of the harm inflicted upon the victim. However, in its jurisprudence, the African Commission has not been seen to offer pecuniary compensation.[158] Nonetheless, the case of the *Egyptian Initiative for Personal Rights and Interights v Egypt* marked a sort of change in the direction of the jurisprudence of the Commission.[159] In this case, the Commission awarded 57,000 Egyptian Pounds in compensation requested by each complainant.[160] Viljoen and Odinkalu suggest that this indicates that future applicants should include specific compensation amounts in their applications to the Commission.[161] The African Court has, in specific cases not related to torture or ill-treatment, awarded both damages for physical and moral loss that are economically assessable.[162]

[153] The Van Boven Principles, Principle 20; Robben Island Guidelines, para 50(c); Committee Against Torture (n 66) para 10; African Commission (n 142) para 38.
[154] See, CAT Committee (n 66) para 9.
[155] See the Views of the HRC in *Bozize v Central African Republic*.
[156] *Gabriel Shumba v Zimbabwe*, Communication 288/04 African Commission (2012) para 194.
[157] *Egyptian Initiative for Personal Rights and Interights v Egypt*, Communication 334/06 (2011).
[158] In the case of *Antoine Bissangou v Republic of Congo*, Communication 253/2002, the African Commission noted it does not consider itself in a position to put a figure to the loss. It left the determination of the compensation amount to the domestic legislation.
[159] The cases of *Mbiankeu Genevieve v Cameroon* (Communication 389/10, 2015) and *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia* (Communication 341/2007, 2015) are instructive of cases of compensation awarded by the African Commission.
[160] *Egyptian Initiative for Personal Rights and Interights v Sudan* (n 146).
[161] F Viljoen and C Odinkalu, (n 48) 115.
[162] See *Sebastien Germain Ajavon v Republic of Benin* Application 013/2017; *Lohe Issa Konate v Burkina Faso* Application 004/2013 Judgement on Reparations; *Beneficiaries of late Norbert Zongo v Burkina Faso* Application No 013/2011.

c) Rehabilitation

The CAT Committee indicates that rehabilitation refers to "the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment."[163] Regarding jurisprudence, the African Commission has not been expansive and specific in providing specific recommendations for rehabilitation. However, the Inter-American system is instructive in this aspect. The Inter-American Court has specified that States have the obligation to provide medical and psychological treatment to torture victims.[164] The Inter-American Commission, in handling the same case, had also requested the provision of health services, including psycho-social and family support programs for the next of kin affected by the disappearance," which was later granted by the Court.[165]

The objective of rehabilitation for victims is to reinstate their autonomy and physical, psychological, social, and vocational capacities, ensuring their complete integration and active participation within society.[166]

Notably, the Committee has indicated that rehabilitation of victims of torture may not be postponed and must not be subject to realisation within the available resources.[167] As such, there is a requirement for the State to adopt a long-term, integrated approach and ensure that specialist services for victims of torture or ill-treatment are available, appropriate and readily accessible.[168] Another essential element that the Committee has highlighted is that rehabilitation programmes must not depend on victims pursuing judicial remedies. As such, states can provide direct rehabilitative services through funding to medical centres and legal and other facilities, including those administered by non-governmental organisations.[169] The African Commission adopts similar obligations and provisions. Further, it requires that States ensure that domestic legislation provides specialised services to torture victims and other ill-treatment that are available, appropriate and promptly accessible.[170]

[163] CAT Committee (n 66) para 11.
[164] Case of *19 Merchants v Colombia*. Inter-American Court Judgment (5 July 2004) Series C No. 109.
[165] As above, para 254.
[166] CAT Committee (n 66) para 11.
[167] As above para 12.
[168] As above, para 13.
[169] As above, para 15.
[170] African Commission (n 142) para 41.

d) Satisfaction and the right to truth

The African Commission has highlighted that "satisfaction includes the right to truth, the State's recognition of its responsibility, the effective recording of complaints, and investigation and prosecution."[171] The Van Boven Principles indicate that satisfaction should include elements such as cessation of continuing violations; apology, including public acknowledgement of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; commemorations and tributes to the victims; and preventing the recurrence of violations.[172]

The African Commission has made similar recommendations while finding a violation under Article 5 of the African Charter. It has especially focused on requesting that states conduct investigations into violations and prosecute those responsible.[173] The Inter-American Court, on the other hand, has been expansive in its recommendations to states, including recommending the sanction of public officials and private individuals, as well as the recovery of remains of deceased victims.[174] The Court has also requested public acknowledgement of violation and public apologies by States, which it indicates as constituting "important symbolic measures for victims and serves goals of restorative justice."[175] The African Court, on the other hand, has established that the publication of the judgement amounts to satisfaction as a form of reparation.[176] As a progressive measure, African human rights mechanisms should be more explicit and in-depth with their recommendation, especially on the issue of torture, considering the adoption of the GC 4 by the African Commission.

e) Guarantees of non-repetition

The discontinuance of a continuing human rights violation and guarantees that similar events do not occur in the future are relevant to the protection of victims of torture, as well as serving as

[171] As above, para 44.
[172] The Van Boven Principles, Principle 22.
[173] See the cases of *Gabriel Shumba v Zimbabwe*, *Egyptian Initiative for Personal Rights and Interights v Egypt, Malawi African Association and others v Mauritania*.
[174] See, *Myrna Mack Chang v Guatemala* Judgment (25 November 2003), *Moiwana Community v Suriname* Judgment (15 June 2005).
[175] *Plan de Sánchez Massacre v Guatemala* Judgment (19 November 2004) para 102.
[176] *Beneficiaries of late Norbert Zongo v Burkina Faso* - (Judgment on reparations) Application 013/2011 African Court (2015) para 100. The court in this case relied on its judgement in *Christopher Mtkila v Tanzania*, where the same recommendation was made *proprio motu*.

preventive measures. The African Commission provides that the aim of this 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."[177]

The Special Rapporteur on Torture has indicated that "amending relevant laws, fighting impunity and taking effective preventive or deterrent measures" can prevent torture and guarantee non-repetition.[178] The African Court has directed a respondent state to abolish custodial sentence as a penalty for defamation and to amend its laws to guarantee that punishments meet the proportionality test.[179] Furthermore, the HRC has been categorical in calling on States to prevent further harm to detainees whether or not the person is released,[180] as well as calling on a state to either improve prison conditions or release a detainee who had alleged torture.[181]

The guarantee of non-repetition is directly linked with the positive obligation to prevent torture. Indeed, the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts states that "assurances and guarantees serve a preventive function and may be described as a positive reinforcement of future performances."[182]

Since non-repetition hinges on preventing torture for future purposes, states have requirements or obligations to ensure that law enforcement officers are trained on issues of torture, as well as ensure regular independent monitoring of places of detention and other measures of prevention. As such, the work of the SRT, the SPT, the CPTA, and other domestic and international monitoring and preventive frameworks must be employed to prevent torture.

[177] African Commission (n 142) para 45.
[178] Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (15 January 2007) UN Doc A/HRC/4/33, para 65.
[179] *Lohe Issa Konate v Bokina Faso* (n 198).
[180] *Francis et al. v Trinidad and Tobago* Communication 899/1999 (2002) HRC UN Doc. CCPR/C/75/D/899/1999, para 7.
[181] *Sandy Sextus v Trinidad and Tobago*, Communication 818/1998 (2001) HRC U.N. Doc. CCPR/C/72/D/818/1998, para 9.
[182] Commentary on Article 30 of ILC Draft Articles on State Responsibility, Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001) Document A/56/10, 88.

3.5 Conclusion

International law has evolved from solely inter-state claims to include individuals' right to redress and reparations for human rights and humanitarian law violations. Therefore, human rights law has developed to entrench the right to redress for victims of human rights violations within the relevant human rights treaties and instruments. The adoption of soft law instruments has provided guidance on interpreting and implementing these provisions towards enhancing the right to redress. The right of the complainant or victim of torture to enjoy their substantive rights to redress hinges on the obligation of the state to put in place procedural mechanisms to protect, promote and enforce this right.

CHAPTER FOUR

TORTURE AND RIGHT TO REDRESS IN CAMEROON: STATE OBLIGATIONS AND ENFORCEMENT MECHANISMS

4.1 Introduction

The chapter examines and evaluates the national legal and institutional framework for the prevention of torture in Cameroon, as well as the right to redress for victims of torture, through the prism of the analysis provided in the previous chapters. The chapter also looks at the obligation to prevent torture through an analysis of the national preventative mechanism, the Cameroon Human Rights Commission.

4.2 Freedom from Torture under the Cameroon Legal Framework

Cameroon has signed and ratified several international human rights instruments prohibiting torture and other ill-treatment, including the UDHR, ICCPR, African Charter, CAT, OPCAT and several other instruments discussed above. By virtue of the Constitution of Cameroon, the country operates a monist legal system where ratified treaties and international agreements override national laws.[183] As such, these international human rights instruments, once ratified, become operational in the country without the need for an instrument of domestication and also allow for the international instruments to take prominence where there is a conflict of laws.

CAT obliges states to take 'effective legislative, administrative, judicial or other measures to prevent acts of torture.'[184] Cameroon has since taken such measures at the domestic level to prevent acts of torture and impunity through its Constitution, the Penal Code (PC), the Criminal Procedure Code (CPC), its courts, and other institutions. However, the prevalence of state-sanctioned torture in the country, especially in the restive North-West, South-West and Far North regions, would suggest a weakness on the part of the State to fulfil its domestic and international obligations.

As much as the measures have been put in place, we have seen previously that the failure to implement these measures also amounts to a violation of the CAT and the international obligation

[183] Law N° 96/06 of 18 Jan. 1996 to amend the Constitution of 2 June 1972, Article 45.
[184] CAT, Article 2 (1).

of the state. Providing remedies includes procedural mechanisms such as the obligation to investigate allegations and claims of torture. Even in cases where the state believes that torture occurs, it has the obligation to launch *ex-officio* investigations.[185] The public availability of the findings of such investigations would amount to the right to truth, which also forms part of substantive remedies.

4.3 State Obligation to Criminalise Torture

As part of the amendments made to its Constitution in 1996, Cameroon proclaimed, in the Preamble, the right to life, physical and moral integrity and humane treatment in all circumstances, further proscribing torture and inhumane or degrading treatment.[186] Despite being a preambular provision, it is important to note that the Constitution provides that its 'Preamble shall be part and parcel of this Constitution.'[187] The inclusion of this provision can be seen as an attempt to fulfil its obligation under Article 2(1) CAT, which the country had ratified in 1986.

In implementing its obligation under Article 4 of the CAT and Article 7, read together with Article 2 of the ICCPR, Cameroon has incorporated the right to freedom from torture within its penal code (PC). Torture is defined in the PC,[188] similar to that provided in Article 1 of the CAT, and just like the CAT, it talks about "severe pain or suffering"; the Penal Code does not provide what could be considered to be within the threshold for "acute pain or suffering". However, as we have seen, the CAT Committee and the HRC have adopted very liberal definitions for the term within their decisions, and this has been done to show the inviolability and non-derogable nature of the right.

However, the inclusion of traditional leaders within the category of public officials who can be held accountable for perpetrating acts of torture widens the definition of torture to apply to the peculiarities of the local context. In Cameroon, traditional leaders are considered as "auxiliaries" of the administration and are under the authority of the Ministry of Territorial Administration.[189] Traditional leaders have authority over their subjects and facilitate the transmission of administrative directives to the population and ensure their execution.[190] They are further

[185] Article 12 CAT
[186] Cameroon Constitution, Preamble, Para 5 (12).
[187] As above, Article 65.
[188] Law No. 2016/001 of 12 July 2016 Relating to the Penal Code, Article 277-3(5).
[189] Presidential Decree No 77/245, which relating to the organisation of chiefdoms, Article 20.
[190] As above, Article 20(1).

mandated to contribute, under the direction of the competent administrative authorities, to the maintenance of public order within their communities.[191] As such, their inclusion into the categorisation of "public officials" serves an important purpose within the prohibition of torture in Cameroon.

Adopting the wording of Article 2(2) of the CAT, the Penal Code (PC) further provides that there shall not be any exceptional circumstances where torture is allowed, including during a state of war or threat of war, internal political stability or state of exception.[192]

Article 277-3 of the PC provides extensively for the criminalisation of torture. It prescribes life imprisonment, where torture leads to the death of the victim.[193] Where torture causes a permanent deprivation of the use of all or part of a limb, organ or sense, the penalty is imprisonment from 10 to 20 years.[194] Furthermore, the penalty shall be imprisonment from five to ten years with a fine of CFAF 100,000 to CFAF 1,000,000 where torture leads to illness or incapacity to work for more than 30 days.[195] Finally, the penalty shall be imprisonment from two to five years with a fine of from CFAF 50,000 to CFAF 200,000 where torture leads to illness or incapacity to work of up to 30 days, pain or mental or psychological injury.[196]

4.4 Obligation to Prosecute Torture

The criminalisation of torture in Cameroon has led to the prosecution of members of state DSF for acts of torture committed while carrying out their duties. Despite a plethora of cases that have led to the handing down of judicial and administrative sanctions for acts of torture,[197] the CAT Committee has "noted with concern…most of the sentences handed down for acts of torture were very light."[198] Worthy of note is the fact that mitigating circumstances that can lead to a reduction of sentences still apply to the crime of torture in Cameroon, as can be decided by the court on a

[191] As above, Article 20(2).
[192] Penal Code, Article 277-3(6).
[193] As above, Article 277-3(1).
[194] As above, Article 277-3(2).
[195] As above, Article 277-3(3).
[196] As above, Article 277-3(4).
[197] For an extensive list of cases of convictions relating to torture and other ill-treatment, see the Fourth Periodic Report of Cameroon to the Human Rights Committee (31 March 2009) CCPR/C/CMR/4. Several of the cases, however, lack specificity as to the type of torture and the resultant outcome.
[198] CAT Committee (n 62) para 21.

case-by-case basis.[199] Furthermore, the law provides that the court may hand down suspended sentences in cases where the offender has not previously been sentenced to imprisonment or where, after such sentence, their conviction has been expunged.[200] This can be one of the reasons, together with executive intervention[201] and *ordre public*, for the reduced sentencing provided in several cases of torture occasioned by DSF. It would be necessary to do an overview of some of the cases and decisions where torture occasioned death or loss of limb as provided for in the PC as a measure of comparing the decisions taken to the provisions of the law.

In recent times, the case of *Ibrahim Bello* is illustrative. This case concerned a 16-year-old who lost both legs and left arm due to severe torture while in detention. The Mbam and Inoubou High Court found the two police officers guilty of torture and grievous harm. In the case, Police Inspector D.S.J. received a 4-year prison sentence, whereas Judicial Police Officer B.N. was given a 3-year suspended jail term. Both were ordered to pay the sum of CFAF 50,000,000 to the victim as damages.[202] The Court, in this case, failed to sentence the individuals in line with the provisions of Article 277-3(2) PC. This case is an indication of impunity that exists within the DSF in Cameroon. The judgement, in this case, fails to meet the thresholds in both domestic and international instruments. Surprisingly, this decision was appealed by the State of Cameroon through the state counsel office, requesting the Court to reduce the damages ordered in the case.[203]

Similarly, the Yaounde Military Tribunal sentenced Lazare Leroy to 30 months in prison for acts of torture inflicted on Moussa Moupain in a cell at the Central Service of Judicial Research of the Gendarmerie in Yaounde in March 2016. The victim later died due to these acts of torture. The State of Cameroon was required to pay the sum of CFAF 10,000,000 as damages to the rightful claimants of the deceased.[204]

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[199] See, Article 90 *et seq* PC.
[200] Article 54 PC.
[201] See generally, GE Kamdem Kamga "The political (in) dependence of the judiciary in Cameroon: fact or fiction?" (2019) 11 *Africa Review*; LE Enonchong "Judicial Independence and Accountability in Cameroon: Balancing a Tenuous Relationship" (2012) 5 *African Journal of Legal Studies*; ST Tabe "The Judiciary and the Enforcement of Constitutional Rights in Cameroon" (2018) *21 Recht in Afrika – Law in Africa – Droit en Afrique*.
[202] Committee against Torture Sixth periodic report submitted by Cameroon (21 March 2022) CAT/C/CMR/6, para 10.
[203] As above.
[204] *The People v D.M. Lazare Leroy* Military Tribunal Yaounde Judgement of 20 September 2018 cited in CAT/C/CMR/6 (n 202) para 22.

Again, in the case concerning four state and security forces who were tried for torture and murder, Constables KAM John Brice, Bimoga Louis Legrand and Greboudai Michel were found guilty of torture and murder of a detainee and sentenced to 5 years imprisonment each by the Mfoundi High Court. Inspector Etoundi Marc was found guilty of failing to offer assistance and consequently sentenced to three months imprisonment.[205]

Also, in the case concerning *Afuh Bernard Weriwo*, an individual who later died from being beaten, allegedly forced to drink kerosene and burnt, the suspect, Inspector Stephen NGU, was on 24 October 2005 sentenced by the Meme High Court to years imprisonment for torture and 5 and 3 years for serious injuries.[206]

In another case, the accused, a police officer, was found guilty of assault occasioning death and was sentenced to 3 years imprisonment suspended for three years. He was ordered to pay a fine of FCFA 400,000 and damages of CFA 8,000,000.[207] Similarly, in the case of a police officer found guilty of assault occasioning death, the Wouri High Court sentenced him to 3 years imprisonment, suspended for three years. He was ordered to pay damages of FCFA 12,000,000.[208]

Although there have been several cases of torture that have been prosecuted, these examples paint a rather bleak picture of the situation of prosecution of torture in Cameroon. As shown in several of these cases, torture led to the death of the victim and, in other circumstances, led to the loss of limbs. However, the sentences are in no way close to those provided for in the PC. In other cases, suspended sentences were handed down, all of which not only show a failure of the obligation to prosecute and punish acts of torture adequately but also show a failure of the obligation to provide adequate redress to the victims of torture.

4.4.1 Prosecution of torture within the "war on terror" in Cameroon

Considering the ever-increasing reports of torture by the DSF in Cameroon, which has been occasioned in the North-West, South-West and Far North regions, in line with the fight against

[205] *The People v KAM John Brice and 3 ors.* Mfoundi High Court Judgement No.318/CRIM of 26 August 2003.
[206] *The People v Stephen Ngu,* cited in, Cameroon Second Periodic Report to the African Commission on the African Charter 2003-2005 (May 28, 2010) para 85.
[207] *The People v Police Constable Ndiwa Joseph*, Wouri High Court, cited in Cameroon Second Periodic Report (n 206) para 87.
[208] *The People v Police Constable Mpacko Dikoume*, as above.

terrorism and secession,[209] it would be ideal to examine, albeit to a limited extent, the implementation of Article 2(2) CAT and Article 277-3(6) PC which both indicate that neither war, political instability or other circumstances may justify the use to torture.

In terms of the prosecution of individuals in line with the fight against terrorism, the Military Tribunal has material jurisdiction. According to Article 8(e) of the Code of Military Justice, the military tribunal has jurisdiction to determine offences by servicemen in the exercise of their duties.[210]

In the case concerning *Tsobonyi Alphonse Tatia,* the Buea Military Tribunal found five gendarmes guilty of violation of instructions and torture and handed down a 3-year suspended prison sentence.[211] The victim, in this case, was alleged to have led a group involved in the kidnapping of civilians and the killing of DSF in line with the Anglophone crisis.

The annual human rights report from the Ministry of Justice, as well as the state reports made to the different treaty bodies, including the CAT Committee, have tended only to provide a general overview of administrative and judicial sanctions taken against personnel of the DSF, as it relates to their actions in the restive regions. In most cases, the reports do not give further information or follow-up on investigations that have been initiated, except in specific cases that have been reported by human rights organisations and media outlets, like those indicated above. Nonetheless, the trend in sanctions given by the military tribunals for torture seems to follow that of the ordinary courts seen above.

To illustrate, in its fifth periodic report to the HRC, Cameroon reported that in 2011, statistics obtained from Military Tribunals indicate that 22 cases were filed against military officers, out of which two judgments were rendered. Some military and gendarme officers received suspended sentences for torture.[212]

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[209] Human Rights Watch "Cameroon: Routine Torture, Incommunicado Detention. UN Security Council Should Condemn Abuses, Demand Reforms" https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention (accessed on 19 August 2023)

[210] Law No 2017/012 of 12 July 2017 to lay down the Code of Military Justice.

[211] Military Tribunal Buea Judgment No. 6/19 of 22 January 2019.

[212] Human Rights Committee Cameroon: Fifth periodic reports of States parties due in 2013 (29 December 2016) CCPR/C/CMR/5, para 70.

More so, although the law allows for claims of damages to be entered during trials at the military tribunals, the likelihood of this happening is slim, considering that the outcomes of investigations ordered into the conduct of DSF are rarely ever made public.

4.5 State obligation to prevent torture: the role of Cameroon Human Rights Commission (CHRC) as NPM

In the protection of the right to be free from torture, priority is given to prevention. As such, states are obliged to put in place measures of torture prevention that include investigation by independent bodies, establishing complaint mechanisms that are devoid of reprisals and the prosecution of persons found guilty of the crime of torture. States are obliged under Articles 3 and 17 OPCAT to establish national preventative mechanisms.

The NPM aims to monitor and report on detention facilities to prevent torture and other ill-treatment. As we will see, despite not having ratified the OPCAT, Cameroon has created and maintains its NPM under the national human rights institution.

In Cameroon, prior to 2019, there existed no independent torture prevention mechanism nor, in fact, an oversight body for the actions of state security forces. However, the *Division Spéciale de Contrôle des Services* (DSC, Polices' Police), which is an internal oversight mechanism that exists within the Delegation of National Security, was charged with the role of conducting administrative and judicial investigations concerning national security personnel, as well as conducting investigations into the civil, administrative and moral actions of security personnel.[213]

This 'oversight' body has been criticised for not being independent, which results in it picking and choosing which crimes to investigate. More so, the results of their investigations are not open to the public. The CAT Committee had, in several instances, through concluding observations, recommended that an independent oversight mechanism be allowed to investigate claims of torture in places of detention.[214]

[213] *Décret n°2005/065 du 23 février 2005 portant organisation et fonctionnement de la division spéciale de contrôle des services*, Articles 2 and 11.
[214] See, CAT Committee (n 62).

The Cameroon Human Rights Commission (CHRC),[215] before its reconstitution in 2019, carried out visits to detention centres with the authorisation of prison officials. However, in a bid to strengthen the independence[216] and effectiveness of the national human rights institution, it was given the mandate of a national mechanism for the prevention of torture in places of detention,[217] making it a national preventative mechanism (NPM) envisaged under the OPCAT,[218] despite not ratifying the treaty. The Commission executes this role through the Sub-commission on the Prevention of Torture in Places of Detention, which is a standing working sub-commission.[219]

As the NPM, the CHRC has the duty to;[220]

- carry out regular visits to all places of detention;
- initiate constructive dialogue with the authorities in charge of the administration and management of places of detention or any other authority;
- participate in monitoring the implementation of the observations made by the United Nations Subcommittee on Prevention of Torture.

These duties are expanded upon within Article 9 of the instrument. A change which has come with the amended instrument is the extensive powers given to the CHRC in relation to the visits to detention facilities.[221] The provision gives the CHRC the ability to carry out impromptu visits, where necessary, in the presence of either the State Counsel or the head of the place of detention concerned.[222]

Importantly, the legislation, in line with Article 4 OPCAT, defines places of detention within the meaning of the law to include all places where people are or could be detained.[223] This is a marked improvement and gives the CHRC wide-ranging powers in terms of its ability to carry out

[215] Law No 2019/014 of July 2019 relating to the establishment, organisation and functioning of the Cameroon Human Rights Commission.
[216] As above, Article 59(1) provides that Commission staff may not take instructions from State public authorities or any interest group while executing their role.
[217] As above, Article 1(3).
[218] OPCAT, Article 17.
[219] Law No 2019/014, Article 34.
[220] As above, Article 8(1).
[221] In its Sixth periodic report to the CAT Committee (March 2022), Cameroon reported that the CHRC visited 16 judicial police units, 9 prisons and 1 psychiatric hospital in the North, Far North, West, Littoral, South and South West Regions and to the Jamot Hospital in the Centre Region. It is not, however, clear if these were impromptu visits or not.
[222] As above, Article 9.
[223] As above, Article 8(2).

impromptu visits to incommunicado detention facilities, especially those in the Far North of Cameroon. In fact, one such detention facility saw the death of 25 inmates who died due to "collective chemical poisoning after ingestion of unidentified chemicals and traditional products"[224] and the enforced disappearance of 130 persons who were arrested in a raid.[225]

This provision is essential to the situation of torture in Cameroon, as several persons arrested in line with the counter-insurgency measures adopted in the northern regions, as well as the North-West and South-West regions of the country, and even some activists and opposition party leaders are kept in facilities that may not fit into the standard definition of prisons. Several persons arrested and accused of being part of Boko Haram have been held in military detention facilities and other unofficial detention centres.[226] In the case of journalists, activists, and persons arrested within the context of the Anglophone conflict, there have been reports of incommunicado detention, interrogation and torture at the State Defense Secretariat (*Secrétariat d'Etat à la défense*, SED).[227]

The CHRC also can conduct private interviews with detainees or any other person or entity deemed relevant. This serves as an avenue for detainees to lodge complaints of torture that the Commission can investigate. This is important because the Law further provides that information obtained during these interviews remains confidential.[228] In the conduct of its investigations, all persons and institutions, except otherwise prevented by the law, have an obligation to provide "any information and intelligence or document requested by the Commission within the framework of its investigations."[229]

Despite these supposed wide-ranging abilities, the law includes clawback clauses which may affect the role of the Commission in conducting impromptu visits and properly executing its role as a preventative mechanism. Firstly, on its ability to conduct impromptu or notified visits, the law

[224] Ministry of Justice Report of the Ministry of Justice on Human Rights in Cameroon in 2015 (29 September 2016) para 935. There has not been public release of the report of the investigations.
[225] Amnesty International Cameroon: Two years on and the families of 25 people who died in detention still do not know where they are buried https://www.amnesty.org/en/latest/press-release/2017/03/cameroun-deux-ans-aprs-la-confirmation-de-la-mort-en-dtention-de-25-personnes-leurs-familles-ignorent-toujours-leur-lieu-dnhumation/ (accessed on 26 September 2023).
[226] CAT Committee (n 62) 3.
[227] Human Rights Watch "Cameroon: Routine Torture, Incommunicado Detention. UN Security Council Should Condemn Abuses, Demand Reforms" https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention (accessed on 19 August 2023).
[228] Law No 2019/014, Article 9.
[229] As above, Article 3(2).

further provides that "in any case, the State Counsel or the State Prosecutor in a Military Tribunal, where applicable, shall be informed of the planned visit."[230]

Secondly, the law provides such visits may be opposed in view of being rescheduled in cases of "serious and overring grounds relating to national defence, safety, security and public order and serious disturbances in the places visited."[231] Further stating that the authorities involved shall provide written information on the status of detainees in their facilities. Unfortunately, the law does not define these concepts, leaving room for authorities concerned to apply them without the need for justification. Although this provision seems to mirror the provisions of Article 14(2) OPCAT, it must be noted that the scenarios provided for within Article 14(2) OPCAT are indicated to only "temporarily prevent" such visits.

Thirdly, another clawback clause that is worthy of note within the law states that "visits to places of detention shall focus on detention conditions."[232] It is not immediately clear what effect this provision may have on the ability of the CHRC to investigate issues of torture. As Enonchong notes, the provision may imply that the CHRC is precluded from making observations on evidence of torture itself, thereby giving the authorities the ability to prevent such investigations.[233] Finally, concerning the reports and recommendations, the Commission has the prerogative of producing annual, special or thematic reports. However, the law provides that recommendations and opinions that are made in relation to visits to places of detention shall be exclusively forwarded to the competent authorities.[234]

These clawback clauses have the potential and, in fact, do hamper the execution of the role of the CHRC as an NPM. This is especially true in detention facilities where alleged terrorists and separatists are held in the restive regions of the country. In its public reports on visits to detention facilities, the CHRC has failed to provide details on the situation of torture. It has tended to focus on conditions of detention, as provided for under the law.[235] In carrying out its visits to detention

[230] As above.
[231] As above, Article 11.
[232] As above, Article 10.
[233] LE Enonchong *The Constitution and Governance in Cameroon* (2021) 229.
[234] Law No 2019/014, Article 40(2). The competent authorities stated within Article 42(2) include the President of the Republic, the Ministers in charge of justice, territorial administration, defence and public health and the Delegate General for National Security, as well as any other relevant government service.
[235] Cameroon Human Rights Commission *Summary information on visits to detention facilities conducted in 2021 and 2022.* https://www.cdhc.cm/admin/fichiers/Reports2022-11-0509-00-48.pdf (accessed on 9 October 2023).

facilities, the CHRC does this either through self-initiated investigation or allegations of torture reported in the media or by reports of other human rights organisations. The CHRC can also carry out prison visits due to complaints lodged with it on issues relating to detention conditions. Whether these visits are carried out *ex-officio* or impromptu or through complaints lodged with the CHRC, the inability of the CHRC to make public its report on torture in detention facilities promotes impunity.[236]

The need for the CHRC to access these incommunicado detention facilities cannot be overstated. This is because several of the persons in these facilities are facing life imprisonment and the death penalty and are tried in military tribunals. These detainees, several of whom do not have access to medical facilities, legal representation and family visitation, are at high risk of torture and other forms of ill-treatment. These clauses will also affect the quality of recommendations that can be made to the competent authorities to improve the treatment and situation of detainees and to prevent torture, which is one of the roles of the CHRC.

Considering the current state of affairs as regards the reports and recommendations by the Commission in line with its visits to detention facilities, it would be difficult to evaluate the role of the Commission in preventing torture. It would also be ideal to highlight the human and budgetary resource constraints faced by the CHRC, which the CAT Committee has highlighted in previous concluding observations. These factors work together to hinder the role of the Commission in its role as a preventative mechanism. Moreover, it goes without saying that its duty to participate in monitoring the implementation of the observations made by the SPT cannot at the moment be carried out since Cameroon has yet to ratify the OPCAT, which will then give the SPT to carry out visits and make such observations.

In addition to this, although Cameroon has not ratified the OPCAT and thus has not recognised the competency of the SPT to make such visits, it has similar obligations under the ICCPR and the African Charter, with the roles of some special rapporteurs that cover detention facilities, albeit not with as broad definition of detention and powers as envisaged under the OPCAT.[237]

[236] See, National Commission on Human Rights and Freedoms Report on the State of Human Rights in Cameroon in 2019 (March 2022).

[237] The UN and African human rights systems have special rapporteurships that deal with other aspects of detention, including Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, UN Special Rapporteur

As much as this research does not set out to evaluate the role of the Special Rapporteur, it is crucial to indicate that there has not been a noticeable improvement in the prison situation in Cameroon since the visit of the UN Special Rapporteur on Torture in 1999.[238] It has gotten noticeably worse, especially considering the counter-terrorism efforts.[239] Nonetheless, another country visit or a follow-up or other measures, such as the urgent action procedure, will be required by the Special Rapporteur.

4.6 Redress and Enforcement Mechanisms in Cameroon

In terms of the legal framework protecting the right to redress, in this case, reparations for victims of torture in Cameroon, the international legal frameworks which Cameroon has ratified are instructive in light of Article 45 of the Cameroon Constitution. This is relevant because the domestic legal framework can only be described as insufficient. Currently, there does not exist specific legal instruments that guarantee reparation for victims of torture. The provisions within Article 277-3 PC are fines, which are paid not to the victims but to the State.

Nonetheless, it is relevant to resort to general criminal law in Cameroon. After all, Shelton agrees that,

> Certain human rights violations are deemed to be so serious that society labels them criminal. Criminal punishment is seen as optimal because lesser sanctions do not correspond to the severity of gross human rights violations. Punishment of these offences does not constitute restitution to the victim, who cannot be 'un-tortured' but imposes a penalty on the perpetrator, as well as restraints to avoid a repetition of the offence. It also places society on the side of the victim in condemning the wrong and honouring the victim's moral claims.[240]

In this regard, the CPC provides that a civil claim or action[241] may be made alongside a criminal action before the same court as long as they arise from the same offence.[242] Such civil action can also be made separately from the criminal action.[243] However, to make such an action separately,

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on Torture, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Working Group on Arbitrary Detention, and others.

[238] Commission on Human Rights (n 8)

[239] Recent reports, such as the US Department of State's "Cameroon 2021 Human Rights Report," Amnesty International's "Cameroon: Impunity Underpins Persistent Abuse," and several others, document the worsening situation of torture in detention facilities nationwide.

[240] D Shelton (n 47) 21.

[241] Article 59(3) states that a civil action is intended to provide compensation for damages resulting from an offence.

[242] Cameroon CPC, Article 61.

[243] As above.

the CPC requires that a decision must have been pronounced in the criminal action.[244] The CAT Committee has criticised this requirement as limiting the ability of the victim to seek redress, considering the often-fraught investigation process relating to torture,[245] especially in detention facilities.

Referencing the cases cited above, it is noted that the focus of substantive remedies granted by the courts, both ordinary and special courts, have been compensation, specifically pecuniary compensation. It should, however, be stated that some of these compensations combine damages for physical, moral and psychological pain suffered by the victim.

The CPC further provides that an individual who has suffered an injury resulting from a felony or misdemeanour may file for damages when lodging their complaints to the competent authorities.[246]

It is observed that after compensations have been awarded to the victim, the mechanism for the enforcement of these decisions is limited. In the case where the state is held to be directly liable to pay damages to the victim, there is an assurance that this will be paid, either to the victim or their legal heirs or representatives. These processes have been noted to involve several administrative bottlenecks, which tend to discourage the victim. However, as is the practice, the State recoups the compensation from the salaries of the perpetrator.

However, in the case where the individual perpetrator alone is held liable to pay damages, the enforcement mechanism becomes difficult to enforce, especially if the individual is dismissed from service. The court, after handing down a judgment, is usually not in the place to help the victim enforce such judgment. In the case of Cameroon, however, the law allows the use of bailiffs to enforce court judgments.[247] Further, the penal code prescribes punishment for anyone who refuses to enforce a court judgment that has become final.[248] Therefore, it is imperative in cases of torture occasioned by DSF for the state to be held liable for civil damages. This has been the situation in

[244] As above.
[245] CAT Committee (n 62) para 45.
[246] Article 157(1) CPC.
[247] Section 1 (1) (b) of Decree No. 79/448 of November 5, 1979, modified by Decree No. 85/238 of February 22, 1985 and Decree No. 98/170 of August 7, 1998 regulating the functions and laying down the status of Bailiffs & process servers, provides that, "*bailiffs are officers of the court (or court officers) who have quality (legal standing) to carry out the enforcement of judgements and all other acts eligible for forceful or compulsory enforcement*".
[248] Law No. 2016/001, Article 181-1.

some cases, as such, it will not be too forward-thinking for the courts, not even for the military tribunals in Cameroon.

As a measure of protecting the victim, the law on enforcement of court decisions notes that a court may order provisional execution on behalf of a civil party, notwithstanding any appeal, in respect of compensation for damage resulting from injury to the physical integrity of a person, for justified costs and expenses required for emergency care and limited exclusively to transport or transfer costs, pharmaceutical, medical and hospitalisation costs.[249] This emergency measure is especially important to the situation of victims of torture who sometimes need emergency care to ameliorate their condition. Additionally, the CPC provides that "if the court is not yet in a position to assess the quantum of damages due to the civil party, it may, subject to the conditions provided by law, make an award to him which should be enforced notwithstanding any object or appeal."[250] The provision further indicates that such an award shall bear interest in case of non-payment.[251]

In regard to cases decided by international institutions, the HRC, the African Commission, and the ACERWC have awarded compensation to victims of torture in Cameroon. There have been varying levels of enforcement of compensation at the domestic level. It has been noted that the process, which usually involves setting up inter-ministerial committees and discussions with the victims, some of whom have been forced into exile, takes extremely long periods of time. To illustrate, as of 2017, Cameroon had complied with one out of the eight decisions taken against it by the HRC.[252] Moreover, using the compensation of victims of false arrest and illegal detention[253] as a yardstick for comparison of the compensation of victims of torture, it will be realised that the system of compensation for victims of violations by DSF is dismal beyond inadequacy. The Commission for Compensation of Victims of Abusive Detention, which is set up in the Supreme Court, is created within the CPC.[254]

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[249] *Loi No 92/008 du 14 Aout 1992 fixant certaines dispositions relatives a l'execution des decisions de justice,* as amended by Law No 97/018 of 7 August 1997, Article 3(b).

[250] Cameroon CPC, Article 392(1).

[251] As above, Article 392(2).

[252] Redress The Failure of Cameroon to Implement Views in Individual Communications Shadow Report to HRC (September 2017) https://ccprcentre.org/files/documents/INT_CCPR_CSS_CMR_28984_E-2.pdf (accessed on 27 September 2023).

[253] Article 236 *et seq* of the CPC provides compensation for victims of illegal detention within the meaning of the law.

[254] Cameroon CPC, Article 237. The Ministry of Justice Human Rights Report (2019) notes that the rigorous formalism of proceedings at the level of the Supreme Court still eludes many claimants, whose applications are delayed due to failure to comply with certain legal requirements, leading to adjournments of sessions of the Commission.

Apart from compensation, the courts have, in limited cases, prescribed rehabilitation as a form of redress for victims of torture; the case of *Ibrahim Bello* is instructive. Cameroon has integrated the provision of rehabilitation services to the Cardinal Paul Emile Leger National Centre for Rehabilitation of Persons with Disabilities. The centre is designed to implement government policies on rehabilitation and provide psychosocial care.[255]

It could be said that the fact that only the case concerning *Ibrahim Bello* has been reported as having been forwarded to the rehabilitation centre[256] points to the level of unpreparedness of the state in terms of offering rehabilitation services for victims of torture. More so, it is not clear whether these services are available for persons in detention. Nonetheless, civil society organisations have been instrumental in offering psycho-social services to detainees who are victims of torture while in detention.[257]

The relative absence of other forms of substantive redress measures, such as guarantees of non-repetition, satisfaction and right to truth, and the limited access to rehabilitation, points to the fact that although redress mechanisms are available for victims of torture, they are ineffective to meet international standards. More so, there is an absence of truth and public recognition of torture in the country. This is compounded by the fact that the NHRI is not able to make public the reports of its visits to detention facilities. Also, the only other institution that investigates such abuses is a non-independent body within the national security department, the DSC. The State has also reported that it does not track or keep reports of compensations ordered by courts and other institutions. As such, there is a total lack of accountability measures, which fuels impunity among DSF.

The place of disciplinary sanctions and other administrative measures taken by the State against DSF cannot, however, be overlooked as an attempt to guarantee non-repetition. These will not, however, need to be analysed in-depth due to the fact that they are not victim-focused. A quick glance at the disciplinary measures reported to have been taken for torture occasioning grievous

[255] CAT Committee Sixth periodic report submitted by Cameroon, para 145.
[256] As above.
[257] See, for example, the Centre for Human Rights and Democracy in Africa (CHRDA) project at https://www.chrda.org/from-crisis-response-to-system-change-in-times-of-covid-19-strengthening-and-sustaining-civil-society-organizations-csos-action-to-improving-the-safety-of-people-deprived-of-liberty-and-preventing/ (accessed on 27 September 2023); the role of Trauma Centre Cameroon has also been indicated in periodic reports by Cameroon.

harm, including loss of limb and sometimes death, shows a "slap-on-the-wrist" approach taken by the State. Besides, as has been stated by the HRC in *Bautista de Arellana v. Colombia*[258] and other instances seen earlier, purely administrative and disciplinary sanctions do not constitute an effective remedy.

4.7 Conclusion

There is a robust legal framework criminalising torture in Cameroon. However, the existing institutions for implementation are either weak, fraught with external interference or not willing to protect victims of torture adequately, and this includes the courts. The prosecution of torture shows a dismal application of the sanctions prescribed by the law. The CHRC has not been given the opportunity to succeed considering the clawback clauses that exist in the law on its creation and functioning. Lastly, the limited existing redress mechanisms are inadequate, and the enforcement mechanisms for redress take lengthy periods of time.

[258] *Bautista de Arellana v Colombia*, Communication 563/1993, Human Rights Council, U.N. Doc. CCPR/C/55/D/563/1993 (1995).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The research has shown that the right to be free from torture has fully developed in international law and achieved the status of a *jus cogens* norm. The right has been enshrined in several universal and regional human rights systems through legal instruments, principles, policies, institutions and otherwise. Considering the doctrine of exhaustion of local remedies that has developed in international law to ensure that the State has the opportunity to address violations that occur within their territory, states have an obligation to take legislative, administrative, judicial and other measures towards the prohibition and prevention of torture. In case where torture does occur, the state must investigate, prosecute and provide adequate redress to the victims.

An aspect of the right to be free from torture is the right of the victim or their dependents to have access to redress. The right to redress begins at the domestic level, where the relevant international instruments urge each state to ensure access to both substantive and procedural remedies for violations of human rights that occur within the territory of said state. The adoption of soft law instruments has given further guidance to domestic frameworks on the implementation of the right to redress for victims of torture.

Despite making the Article 22 OPCAT declaration over two decades ago, only one case against Cameroon has been decided by the CAT Committee. This was filed in 2022, and the case was ruled inadmissible on the grounds of non-exhaustion of local remedies[259] as required by the Convention.[260] This is somewhat surprising that despite the increasing use of torture in the country, including as highlighted in the most recent concluding observation on the periodic report by Cameroon to the Committee.[261]

Another element for this reluctance could be the choice of forum, considering that similar bodies exist at the regional level and under different treaties, especially the HRC, which has dealt with several cases of torture relating to Cameroon.

[259] *SB v Cameroon* (n 70).
[260] CAT, Art 22(4)(b).
[261] CAT Committee against Torture (n 62) 6.

The research has shown that Cameroon has been active on the global and regional stage in terms of its ratification of international human rights instruments, including the instruments that prevent torture. Cameroon has also been active in its reporting to the various human rights treaty bodies on its role in prohibiting, preventing and prosecuting torture at the domestic level. Cameron has achieved positive strides in integrating the right to be free from torture within its Constitution and making torture a crime within its PC.

However, as the research has shown, the State has not prosecuted torture based on the gravity of the crime, as prescribed by the national laws. The judiciary, both regular and those with special jurisdiction (military tribunals), have constantly failed to hand down sentences that are provided for within the PC. Impunity continues to ensue within the rank and file of the DSF because the state has failed to investigate and prosecute perpetrators of torture adequately.

As it has to do with the prevention of torture, the research has shown that the CHRC, which has been given the mandate of NPM, has wide-ranging powers without a means of enforcement or recourse. The research has also shown that clawback clauses within the law creating the institution further limit the ability of the CHRC to perform its role as NPM. Furthermore, the non-ratification of the OPCAT by Cameroon has also contributed negatively to the operationalisation of the CHRC.

On the enforcement of the right to redress in Cameroon, we have seen that the implementation of decisions by international treaty bodies has been slow and sometimes not enforced. At the domestic level, although the courts have been instrumental in providing damages to victims of torture, the means of implementation are either weak or non-existent. Moreover, we see that the State has favoured administrative sanctions over judicial prosecution in several cases of torture.

5.2 Recommendations

- **Legislative Measures**

i. There is a need for Cameroon to ratify the OPCAT, which will allow the SPT to conduct visits to places of detention in Cameroon, including incommunicado detention facilities in areas where Cameroon is conducting its counter-insurgency measures. To contribute towards the prevention of torture in Cameroon, under the OPCAT, Cameroon will have an obligation to allow access to these facilities to the SPT. This will be essential in creating a more substantial report and providing legitimacy to proposed legal, institutional and policy

changes in ways that reports from civil society organisations might not be able to achieve. As has been seen under the European system, the right to unrestricted visits under the European Convention for the Prevention of Torture has improved the treatment of persons and a reduction of incidents of torture in detention facilities.[262]

ii. Cameroon should adopt specific legislation on the prosecution of torture, as well as address issues relating to the redress mechanisms for victims of torture. Such legislation should put in place institutional frameworks for the implementation and enforcement of this legislation, as well as provide punitive sanctions.

- **Judicial Measures**

i. Mitigating circumstances should not apply in cases of torture, especially those that lead to the loss of life or limbs of the victim. Furthermore, the courts should hand down sentences provided for within the PC, including other administrative measures, as a way of limiting impunity. As such, redress measures must be victim-centred, ensuring that the needs of the victim are met, and the victim is satisfied with the outcome of the decision.

ii. Victims of torture and dependents should have means of enforcing civil damages in cases of torture, as well as should be able to pursue civil cases before the beginning of a criminal investigation, as this is still not a possibility under the CPC. In cases where the State is ordered to pay damages, the court should provide stated timelines for the execution of such judgements.

iii. In all cases of torture, and especially those that occasion death or loss of limbs, courts should make orders that are in with the forms of redress provided for within the Van Boven Principles. It is especially relevant to ensure that victims are rehabilitated, investigations are done, and reports, as well as judgements, are made public as measures of redress.

- **Institutional Measures**

i. In regard to the prevention of torture, the CHRC should have the ability to make public its reports on torture in detention facilities. Furthermore, the CHRC should be able to enforce its powers of impromptu visits, even on incommunicado detention facilities, as well as other secret torture sites where alleged terrorists are held.

[262] N Rodley and M Pollard (n 86) 245.

ii. There is a need to widen the powers of the NPM to conduct investigations on torture outside detention facilities. Therefore, the investigative powers of the DSC should be given to the CHRC. The CHRC should then be able to provide recommended administrative sanctions as well as referral of cases for prosecution in a more independent manner.
iii. The CHRC should be strengthened to provide more substantial *amici curiae* briefs on behalf of victims in cases of torture where it has carried out its investigations. As such, the CHRC should be invited by the court to submit such briefs, especially in cases of widespread use of torture. More so, the CHRC should have *locus standi* on matters relating to the violation of *jus cogens* norms, such as torture.

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BIBLIOGRAPHY

Books

Anyangwe, C *Criminal Law in Cameroon: Specific Offences* (Langaa RPCIG, 2011).

Association for the Prevention of Torture and the Center for Justice and International Law *Torture in International Law, a guide to jurisprudence* (2008).

d'Ambruoso, WL *American Torture from the Philippines to Iraq: A Recurring Nightmare* (Oxford University Press, 2022).

Enonchong, LE *The Constitution and Governance in Cameroon* (Routledge, 2021).

Joseph, S and Others *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies* (World Organisation Against Torture, 2014).

Lokaneeta, J *Transnational Torture: Law, Violence, and State Power in the United States and India* (Orient Blackswan, 2012).

Luban, D 'Liberalism, torture, and the ticking bomb.' *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory* (Springer Netherlands, 2007).

Murray, R and others *The Optional Protocol to the UN Convention Against Torture* (Oxford University Press, 2011)

Niyizurugero, J and Lessene, P *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guide for Implementation* (Association for the Prevention of Torture, 2008).

Nowak, M and McArthur, E *The United Nations Convention against Torture: A Commentary* (Oxford University Press, 2008).

Ntuda, E *et al. The Boko Haram conflict in Cameroon: Why is peace so elusive?* (Friedrich Ebert Stiftung, 2017).

Redress *Implementing Victims' Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation* (The Redress Trust, 2006).

Redress *Reaching for Justice: The Right to Reparation in the African Human Rights System* (The Redress Trust, 2013).

Redress *Reparation*: *A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law* (The Redress Trust, 2003).

Rodley, N and Pollard, M *The Treatment of Prisoners under International Law* (Oxford University Press, 2009).

Shelton, D *Remedies in International Human Rights Law* (3rd ed) (Oxford University Press, 2015).

Trindade, C *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its rationale in the international protection of individual rights* (Cambridge University Press, 1983).

Viljoen, F and Odinkalu, C *The Prohibition of Torture and Ill-treatment in the African Human Rights System* (World Organisation Against Torture, 2014).

Wendland, L *A Handbook on State Obligations under the UN Convention against Torture* (Association for the Prevention of Torture, 2002).

Chapters in Books

Cunneen, C 'Exploring the Relationship Between Reparations, the Gross Violation of Human Rights, and Restorative Justice' in De Sullivan & L Tifft (eds.) *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2007).

Evans, M "The UN Special Rapporteur on Torture in the Developing Architecture of UN Torture Protection" in Nolan, A and Others *The United Nations special procedures system* (Brill Nijhoff, 2017).

Gross, O 'The Prohibition of Torture and the Limits of the Law' in S Levinson (ed) *Torture: A Collection* (Oxford University Press, 2006).

Manby, B 'Civil and Political Rights in the African Charter on Human and Peoples' Rights: Articles 1–7' in Evans, M and Murray, R Eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (Cambridge University Press, 2008).

Murray, R 'The Special Rapporteurs in the African System' in M Evans and R Murray Eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (Cambridge University Press, 2008).

Stritzke, WGK and Lewandowsky, S 'The terrorism-torture link: when evil begets evil' in WGK Stritzke and others *Terrorism and Torture: An Interdisciplinary Perspective* (Cambridge University Press, 2009).

Journal Articles

Barnes, J 'The 'war on terror' and the battle for the definition of torture.' (2016) 30 *International Relations*.

Echeverria, G 'Do victims of torture and other serious human rights violations have an independent and enforceable right to reparation?' (2012) 16 *The International Journal of Human Rights*.

Hunsinger, G 'Torture Is the Ticking Time-Bomb: Why the Necessity Defense Fails.' (2008) 47 *Dialog*.

Long, D and Murray, R 'Ten years of the Robben Island Guidelines and prevention of torture in Africa: For what purpose?' (2012) 12 *African Human Rights Law Journal*.

Lukes, S 'Liberal Democratic Torture.' (2006) 36 *British Journal of Political Science.*

Mujuzi, JD 'An analysis of the approach to the right to freedom from torture adopted by the African Commission' (2006) 6 *African Human Rights Law Journal*.

Naldi, GJ 'Reparations in the Practice of the African Commission on Human and Peoples' Rights' (2001) 14 *Leiden Journal of International Law*.

Opotow, S 'Moral exclusion and torture: The ticking bomb scenario and the slippery ethical slope.' (2007) 13 *Peace and Conflict: Journal of Peace Psychology*.

Pinto, LG "The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action" (2022) 14 *Journal of Human Rights Practice.*

Renzulli, I 'Strengthening the Preventive Role of the Committee for the Prevention of Torture in Africa' (2018) 7 *International Human Rights Law Review*.

Steinhoff, U 'Torture: the case for Dirty Harry and against Alan Dershowitz' (2006) 23 *Journal of Applied Philosophy*.

Sussman, D 'What's wrong with torture?' (2005) 33 *Philosophy and Public Affairs.*

Sveaass, N, Gaer, F and Grossman, C 'Rehabilitation in Article 14 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment' (2018) 51 *The International Lawyer*.

Viljoen, F 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities' (2005) 27 *Human Rights Quarterly*.

Viljoen, F and Louw, L 'The Status of the Findings of the African Commission: From Moral Persuasion to Legal Obligation.' (2004) 48 *Journal of African Law*.

Vreeland, J 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture' (2008) 62 *International Organization.*

Reports

Amnesty International 'A Turn for the Worse: Violence and Human Rights Violations in Anglophone Cameroon.' June 12, 2018 https://www.amnesty.org/en/documents/afr17/8481/2018/en/ (accessed 17 July 2023).

Amnesty International *The State of the World's Human Rights 2022/23* (2023) https://www.amnesty.org/en/location/africa/west-and-central-africa/cameroon/report-cameroon/ (accessed 16 July 2023).

Amnesty International 'Camereoon's Secret Torture Chambers: Human Rights Violations and War Crimes in the fight against Boko Haram' July 2017 https://www.amnesty.org/en/latest/campaigns/2017/07/cameroon-torture-chambers/ (accessed 17 July 2023).

Amnesty International 'Cameroon: Human rights under fire: Attacks and violations in Cameroon's struggle with Boko Haram.' September 16, 2015 https://www.amnesty.org/en/documents/afr17/1991/2015/en/ (accessed 17 July 2023) 20.

Amnesty International 'Cameroon: Rampant atrocities amid Anglophone regions must be stopped and investigated' July 4, 2023 https://www.amnesty.org/en/latest/news/2023/07/cameroon-rampant-atrocities-amid-anglophone-regions-must-be-stopped/(accessed 17 July 2023).

Amnesty International 'Cameroon: submission to the United Nations committee against torture. 62nd session, 6 November-6 December 2017 www.amnesty.org/fr/wp-content/uploads/2021/05/AFR1771902017ENGLISH.pdf (accessed 3 August 2023).

Amnesty International Cameroon: Two years on and the families of 25 people who died in detention still do not know where they are buried https://www.amnesty.org/en/latest/press-release/2017/03/cameroun-deux-ans-aprs-la-confirmation-de-la-mort-en-dtention-de-25-personnes-leurs-familles-ignorent-toujours-leur-lieu-dnhumation/ (accessed on 26 September 2023).

Cameroon Human Rights Commission *Summary information on visits to detention facilities conducted in 2021 and 2022.* https://www.cdhc.cm/admin/fichiers/Reports2022-11-0509-00-48.pdf (accessed on 9 October 2023).

Centre for Human Rights and Democracy in Africa (CHRDA) project at https://www.chrda.org/from-crisis-response-to-system-change-in-times-of-covid-19-strengthening-and-sustaining-civil-society-organizations-csos-action-to-improving-the-safety-of-people-deprived-of-liberty-and-preventing/ (accessed on 27 September 2023).

Commission on Human Rights 'Visit by the Special Rapporteur to Cameroon: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38' (11 November 1999) E/CN .4/2000/9/ Add. 2. 26

Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (15 January 2007) UN Doc A/HRC/4/33.

Human Rights Watch 'Cameroon: Routine Torture, Incommunicado Detention. UN Security Council Should Condemn Abuses, Demand Reforms'

https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention (accessed on 19 August 2023).

Human Rights Watch 'Cameroon: Separatist Abuses in Anglophone Regions Prosecute, Sanction Fighters for Crimes Against Civilians.' June 27, 2022 https://www.hrw.org/news/2022/06/27/cameroon-separatist-abuses-anglophone-regions (accessed 17 July 2023).

Human Rights Watch 'The Perils of Journalism in Cameroon High-Level Arrests as Another Journalist Murdered.' February 10, 2023, https://www.hrw.org/news/2023/02/10/perils-journalism-cameroon (accessed 17 July 2023).

Human Rights Watch *World Report 2019* https://www.hrw.org/world-report/2019/country-chapters/cameroon (accessed 16 July 2023).

Ministry of Justice *Report of the Ministry of Justice on Human Rights in Cameroon in 2015* (29 September 2016).

National Commission on Human Rights and Freedoms *Report on the State of Human Rights in Cameroon in 2019* (March 2022).

Redress The Failure of Cameroon to Implement Views in Individual Communications Shadow Report to HRC (September 2017) https://ccprcentre.org/files/documents/INT_CCPR_CSS_CMR_28984_E-2.pdf (accessed on 27 September 2023).

United States Department of State 'Cameroon 2022 Human Rights Report' March 20, 2023 https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/ (accessed 16 July 2023).

International Law

African Charter on Human and Peoples' Rights 1981.

African Charter on the Rights and Welfare of the Child 1990.

Convention Against Torture.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 1975, A/RES/3452(XXX).

International Covenant on Civil and Political Rights 1966.

Optional Protocol to the Convention against Torture 2002.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998.

The Rome Statute of the International Criminal Court 1998.

Universal Declaration on Human Rights.

National Legislation

Decree No. 79/448 of November 5, 1979, modified by Decree No. 85/238 of February 22, 1985, and Decree No. 98/170 of August 7, 1998, regulating the functions and laying down the status of Bailiffs & process servers.

Décret n°2005/065 du 23 février 2005 portant organisation et fonctionnement de la division spéciale de contrôle des services.

Law N° 96/06 of 18 Jan. 1996 to amend the Constitution of 2 June 1972.

Law No 2005 of 27 July 2005 on the Criminal Procedure Code.

Law No 2017/012 of 12 July 2017 to lay down the Code of Military Justice.

Law No 2019/014 of July 2019 relating to the establishment, organisation and functioning of the Cameroon Human Rights Commission.

Law No. 2016/007 relating to the Penal Code.

Loi No 92/008 du 14 Aout 1992 fixant certaines dispositions relatives a l'execution des decisions de justice, as amended by Law No 97/018 of 7 August 1997.

Presidential Decree No 77/245, relating to the organisation of chiefdoms.

International Case Law

- **CAT Committee**

SB v Cameroon Communication 1034/2020, CAT Committee (4 November 2022) CAT/C/75/D/1034/2020.

Henri Unai Parot v. Spain, Communication 6/1990, CAT Committee (1995) U.N. Doc. A/50/44.

Halimi-Nedzibi v. Austria, Communication 8/1991 CAT Committee U.N. Doc. A/49/44 (1993).

- **Human Rights Committee**

Albert Womah Mukong v Cameroon Communication No. 458/1991 HRC CCPR/C/51/D/458/1991.

Bautista de Arellana v Colombia, Communication 563/1993, HRC, U.N. Doc. CCPR/C/55/D/563/1993 (1995).

Dorothy Kakem Titiahonjo v Cameroon Communication 1186/2003 HRC (26 October 2007) CCPR/C/91/D/1186/2003.

Ebenezer Derek Mbongo Akwanga v Cameroon Communication 1813/2008 HRC (22 March 2011) CCPR/C/101/D/1813/2008.

Fongum Gorji-Dinka v Cameroon Communication No. 1134/2002 HRC (17 March 2005) CCPR/C/83/D/1134/2002.

Francis et al. v Trinidad and Tobago Communication 899/1999 (2002) HRC UN Doc. CCPR/C/75/D/899/1999.

John Njie Monika v Cameroon Communication 1965/2010 HRC (21 October 2014) CCPR/C/112/D/1965/2010.

Philip Afuson Njaru v Cameroon Communication 1353/2005 HRC (19 March 2007) CCPR/C/89/D/1353/2005.

Sandy Sextus v Trinidad and Tobago, Communication 818/1998 (2001) HRC U.N. Doc. CCPR/C/72/D/818/1998.

Urbain Olanguena Awono v Cameroon Communication No. 2660/2015 HRC (19 July 2018) CCPR/C/123/D/2660/2015.

- **African Commission**

Antoine Bissangou v Republic of Congo, Communication 253/2002.

Egyptian Initiative for Personal Rights and Interights v Egypt, Communication 334/06 (2011).

Gabriel Shumba v Zimbabwe, Communication 288/04 African Commission (2012).

Jawara v The Gambia 8 (2000) AHRLR 107.

John D. Ouko v Kenya Communication 232/99 (2000) ACHPR 27.

Kevin Mgwanga Gunme et al. v Cameroon, Communication 266/03 ACHPR (27 May 2009) 45th Ordinary Session.

Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia Communication 71/92.

Rights International v Nigeria Communication No. 215/98.

Titanji Duga Ernest (on behalf of Cheonumu Martin and others) v Cameroon Communication 287/04 ACHPR (14 March 2014).

- **African Court**

Beneficiaries of late Norbert Zongo v Burkina Faso - (Judgment on reparations) Application 013/2011 African Court (2015).

African Commission on Human and Peoples' Rights v. The Great Socialist People's Libyan Arab Jamahiriya Application 004/2011 (Order for Provisional Measures) African Court (2011).

Abubakari Mohamed v The United Republic of Tanzania, Merits, Application 007/2013 (3 June 2016).

Reverend Christopher R. Mtikila v Tanzania (reparations) (2014) 1 AfCLR 72.

- **Inter-American Commission/Other Jurisdictions**

19 Merchants v. Colombia. Inter-American Court Judgment (5 July 2004) Series C No. 109.

Ana Rosario Celis Laureano v Peru, Communication 540/1993 (March 1996).

Factory At Chorzów, (Germany v Poland), Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255, 29.

Nyaia Erika Bautista de Arellana v Colombia, Communication 563/1993 (October 1995).

National Case Law

The People v D.M. Lazare Leroy Military Tribunal Yaounde Judgement of 20 September 2018 cited in CAT/C/CMR/6.

The People v KAM John Brice and three ors. Mfoundi High Court Judgement No.318/CRIM of 26th August 2003.

The People v Police Constable Ndiwa Joseph, Wouri High Court, cited in Cameroon Second Periodic Report to the African Commission on the African Charter 2003-2005 (May 28, 2010).

The People v Stephen Ngu, cited in Cameroon Second Periodic Report to the African Commission on the African Charter 2003-2005 (May 28, 2010).

Soft Law Instruments

African Commission, GC 4 on the African Charter: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment.

African Commission, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted at the 32nd Session, Oct. 2002, ACHPR/ Res. 61(XXXII) 02 (2002).

CAT Committee General Comment No. 2: Implementation of Article 2 by States parties (2008).

CAT Committee General Comment No. 3 (2012) Implementation of Article 14 by State Parties. CAT/C/GC/3.

HRC General Comment 20: Article 7 Prohibition of torture or other cruel, inhuman or degrading treatment or punishment (1992) HRI/GEN/1/Rev.9 (Vol. I).

HRC General Comment 29: Article 4: Derogations during the State of Emergency (2001) CCPR/C/21/Rev.1/Add.11.

The African Commission, Resolution on the Change of Name of the Robben Island Guidelines Follow-Up Committee ACHPR/Res.158(XLVI)09.

Other Documents

ACERWC State Reporting http://www.acerwc.africa/en/states-parties/reporting/overview (accessed on 24 August 2023).

African Commission 'Special Mechanisms' https://achpr.au.int/en/mechanisms/special-rapporteur-prisons-conditions-detention-and-policing-africa (accessed on 24 August 2023).

African Commission, Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon, adopted at 15th Extraordinary Session 2014.

CAT Committee 'Concluding observations on the fifth periodic report of Cameroon' (18 December 2017) CAT/C/CMR/CO/5.

CAT Committee Sixth periodic report submitted by Cameroon (21 March 2022) CAT/C/CMR/6.

HRC Fourth Periodic Report of Cameroon to the Human Rights Committee (31 March 2009) CCPR/C/CMR/4.

Human Rights Committee Cameroon: Fifth periodic reports of States parties due in 2013 (29 December 2016) CCPR/C/CMR/5.