

# COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA

SUBMISSION ON THE DRAFT  
GENERAL COMMENT ON THE  
RIGHT TO REDRESS FOR  
VICTIMS OF TORTURE OR ILL-  
TREATMENT

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# INTRODUCTION

Amnesty International welcomes and strongly supports the important initiative taken by the Committee for the Prevention of Torture in Africa (hereafter: the Committee) to draft a General Comment on the Right to Redress for Victims of Torture or Ill-Treatment under Article 5 of the African Charter on Human and Peoples' Rights (hereafter: the African Charter).

The zero draft that has been circulated for consultation promises to make an important contribution towards ensuring that governments fulfil their obligations to provide effective remedies, including full and effective reparation to victims of torture and other ill-treatment. The General Comment will provide a key opportunity for the African Commission to clarify important principles underlying the right to redress for victims of torture and other ill-treatment. This will ultimately ensure better implementation of Article 5.

Following the decision by the Committee to open the draft text of the General Comment for public consultations, Amnesty International is very pleased to provide feedback and recommendations for the consideration of the Committee. The organization welcomes and appreciates the opportunity presented to it to provide this submission.

There are many positive elements of the draft. It recognizes the right to redress for victims of torture and other ill-treatment without discrimination; promotes all forms of reparation, including transformative measures to address underlying discrimination that leads to many violations and abuses; addresses the importance of redress for sexual violence, as well as torture committed in armed conflict; and clarifies the responsibilities of states in relation to torture and other ill-treatment committed by non-state actors.

However, there are also some aspects that could be interpreted narrowly by states to deny prompt, full, accessible and effective redress to victims in some cases. The following comments explain and provide recommendations to address these concerns, as well as other recommendations to further strengthen the draft.

# COMMENTS BY SECTIONS AND PARAGRAPHS OF THE GENERAL COMMENT

## INTRODUCTION

**Paragraph 1** – Amnesty International recommends that the Committee adds ‘other international human rights law and international humanitarian law’ at the end of the paragraph to recognize that states obligations to provide redress also arise in many other international human rights treaties and standards and is recognized by the International Committee of the Red Cross as a rule of customary international humanitarian law (Rule 150). This approach is already recognized in Articles 60 and 61 of the African Charter which provides that the Commission shall draw inspiration from international law, including instruments of the United Nations, international conventions, customs generally accepted as law, general principles of law, as well as legal precedents and doctrine.

**Paragraph 2** - To emphasise the close relationship between torture and other ill-treatment, Amnesty International recommends that in this paragraph and throughout the draft, the Committee uses the phrase ‘torture [and/or] **other** ill-treatment’, which is used in some but not all instances, as opposed to ‘torture [and/or] or ill-treatment.’

**Paragraph 5** –The Committee should also recognize that the prohibition against torture is a peremptory norm of international law (jus cogens).

**Paragraph 6** - Given the focus of this General Comment, Amnesty International recommends that the Committee also refers to the following relevant international standards in this paragraph:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
- Basic Principles 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;
- Updated Set of principles for the protection and promotion of human rights through action to combat impunity;
- Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules);
- Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa;
- Global Principles on National Security and the Right to Information (“Global Principles” or “Tshwane Principles”).

## PURPOSE OF THE GENERAL COMMENT

**Paragraph 10** – Amnesty International agrees that compensation is only one form of reparation and notes that unfortunately, too often, costs are used as an excuse to deny redress to victims. However, we are concerned that the last sentence, as drafted, may be interpreted as a conclusion that compensation is not feasible in many situations and that other cheaper measures should be favoured instead. For many victims of torture, especially those who are unable to work and support themselves and their families or to achieve their full potential as a result of their injuries, compensation (in addition to other measures) will be vital to address the economically assessable harm they have suffered. Indeed, the importance of compensation as a remedy for human rights violations and abuses is emphasised in Article 38 of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa and in the general principles of the Principles on Guidelines on Human and Peoples’ Rights while Countering Terrorism. The Committee should consider revising the language so that it promotes all forms of reparation without undermining the importance of compensation.

**Paragraph 11** - Amnesty International welcomes the emphasis in paragraph 11 that ‘the right to redress encompasses the right to an effective remedy and to full and adequate reparation’. Given that ‘redress’ is the central focus of the General Comment, yet it is undefined in most standards, we recommend this description should be provided earlier in the General Comment and presented clearly as the Commission’s definition of ‘redress’.

Amnesty International also recommends that, in this paragraph and throughout the General Comment, the Committee should use the strongest language in support of victims obtaining effective redress. Although ‘fair’ and ‘adequate’ are sometimes used in other standards, such language is not as strong as ‘full and effective’ reparation used for example in paragraph 5 of the Committee against Torture’s general Comment No. 3 and Principle 18 of the UN Basic Principles and Guidelines.

## THE PLACE OF THE VICTIM

**Paragraph 16** – Amnesty International recommends that in addition to recognizing the definition of ‘victim’ in ‘a variety of instruments’ that the General Comment expressly adopts or endorses the Committee against Torture’s definition of victim in General Comment No. 3, which is consistent with definitions in other standards, including the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles on the Right to a Remedy and Reparation:

*Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term ‘victim’ also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.*

**Paragraph 18** – The Committee should consider expanding the paragraph on treatment of victims to further emphasise states obligations to protect and support them, in particular

during justice and reparation processes. In particular, we recommend that the Committee consider incorporating language from Principle 10 of the Basic Principles and Guidelines on the Right to a Remedy:

*Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.*

## VULNERABLE GROUPS

**Paragraph 19-23** – This section contains important guidance for states to address individual, institutional and structural inequalities that result in certain groups being subjected to torture and other ill-treatment. However, Amnesty International is concerned that the draft focusses on the abstract concept of vulnerability instead of discrimination, which is clearly prohibited in international human rights law and standards. The use of ‘vulnerable’ to define groups and individual victims, in this section and elsewhere, takes the focus away from the discrimination that underlies the commission of torture and other ill-treatment in many cases and may undermine the important aim of empowering victims, emphasised in paragraph 23. We recommend that this section should be reframed under the heading of ‘groups suffering from discrimination’ and that groups, as appropriate, such be referred to as ‘marginalized’, ‘discriminated against’, ‘groups suffering from discrimination’ or ‘groups targeted for discriminatory reasons’. Such language reflects that the victims’ situation is the result of their treatment by others that is prohibited by international human rights law, as opposed to any personal or group weakness.

Amnesty International notes that the phrase ‘creating a sense of empowerment’ in paragraph 23 implies that the aim is to create perceptions of empowerment. However, this sense of empowerment should also achieve concrete results. It is therefore recommended that the sentence should be strengthened to state that the aim is to empower victims to fully exercise their human rights.

## PROMPT, FAIR ACCESSIBLE AND EFFECTIVE REMEDIES

**Paragraph 24** – Amnesty International urges the Committee also to provide guidance to states regarding their obligations to provide redress to victims of torture committed outside its territory reflecting the Committee against Torture’s statements in General Comment No. 3:

*The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State Party. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.*

**Paragraph 26** – Amnesty International recommends that ‘administrative traditional and other processes’ should be added at the end of the second sentence to clarify that access to reparation applies to all reparation processes, not just judicial and quasi-judicial processes.

In addition, the Committee should state that civil claims should not be subject to statutory limitations as stated in paragraph 40 of the Committee against Torture’s General Comment No. 3 and Principle 23 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

**Paragraph 27 and 31** – The availability of multi-disciplinary procedures and mechanisms for seeking and obtaining redress (paragraph 27) and victim support mechanisms (paragraph 31) will be crucial for all victims. We are concerned that the inclusion of ‘including in particular vulnerable groups’ at the end may be read by states as these procedures and mechanisms only being available to groups that they consider fall into this category. Amnesty International therefore suggests replacing this phrase with *‘taking into account the specific challenges faced by marginalized and discriminated against groups’*.

**Paragraph 28** – Amnesty International welcomes the strong focus on the need for prompt redress to victims of torture or other ill-treatment in this paragraph. Recognizing that delays before judicial, quasi-judicial and administrative processes are common, Amnesty International recommends that the General Comment should also emphasise the need for states to provide interim measures to provide immediate assistance to victims experiencing serious on-going harm pending the completion of such processes.

Although Amnesty International generally supports mechanisms seeking to provide reparation for victims of torture and other ill-treatment, we are not convinced that the national funds recommended in the last sentence of this paragraph are an appropriate alternative to state funded reparation or that they will be effective in all situations. States have an obligation to provide effective remedies, including full and effective reparation, to victims of torture and other ill-treatment. The state is directly responsible for providing reparation to victims of torture and other ill-treatment by state actors and agents and where it fails to provide effective remedies to victims of abuses by non-state actors. As noted in paragraph 36, ‘limited state resources shall not be a justification for the State to withdraw from its obligation’. At the same time, reparation must not be conditional on private fundraising. While authorities sometimes cite limited state resources as an excuse for not providing redress to victims, more often than not those states have failed to prioritize reparation. The assertion that, in such circumstances, private actors will step in to provide the resources required may not be appropriate or realistic. Indeed, the Committee against Torture in General Comment No. 3 limits its recommendation for the establishment of national funds to situations where ‘existing civil proceedings are unable to provide adequate redress to victims’. The Committee should reconsider the content of this recommendation, ensuring that such funds are not used by states to circumvent their obligations and that they are established only where they appropriate and are likely to provide sufficient resources to advance redress efforts.

## PROTECTION AGAINST INTIMIDATION, RETALIATION AND REPRISALS

**Paragraph 33** – This paragraph should be revised to state that any individual against whom

there are reasonable suspicions of having committed torture or other ill-treatment should be excluded completely from the security forces - not just from positions of control or power over complainants, victims, witnesses and their families as well as those conducting investigations - pending an independent judicial investigation.

## FORMS OF REPARATION

**Paragraphs 34-41** – Amnesty International welcomes that the Committee endorses the definitions of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in the Committee against Torture's General Comment No.3 and emphasises the importance of all these forms. However, the brief summaries of each form on paragraphs 37-41 are not sufficiently detailed and may confuse states seeking to fulfil their obligations. It is therefore recommended that either the Committee against Torture's definitions are included in an Annex or that paragraphs 37-41 are expanded so that they are more consistent with those definitions and the guidance provided to states in General Comment No. 3.

## REDRESS FOR COLLECTIVE HARM

**Paragraphs 42-46** – Amnesty International welcomes the recognition that torture and other ill-treatment may cause collective in addition to individual harm. However, we are concerned that, as drafted, this section may be read to extend a right to redress to members of a group who do not fall within the definition of victims adopted by the Committee against Torture and reflected in other standards (see recommendations on paragraph 16 above). This may confuse states and lead to criticism of the General Comment. Our organization agrees that torture and other ill-treatment has a broader impact on society, in particular, when members of specific groups are targeted. Persons who suffer harm through acts or omissions amounting to torture or other ill-treatment, affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimisation are entitled to individual or collective reparation. However, we are not convinced that the right to redress in international human rights law extends to other members of a targeted group unless it can be shown that they fall within this recognized definition of victims. Instead, the General Comment should emphasise that the state must ensure, respect and protect the human rights of all members of targeted groups, whether or not they have been subjected to torture or other ill-treatment. In particular, the General Comment should recognize states' obligations to address continuing victimisation within victim's communities through attitudes and treatment of victims which stigmatise and disempower them, not least victims of sexual forms of torture and other ill-treatment. This may include transformative measures, in particular guarantees of non-recurrence, provided in the course of providing redress to the victims.

## SEXUAL VIOLENCE

**Paragraph 47-50** – Amnesty International welcomes the guidance provided to states in this section in providing redress to victims of sexual violence. In addition, we encourage the Committee to expand and incorporate into this section guidance on providing redress to victims of other forms of gender-based violence, which are also disturbingly common forms of torture and ill-treatment but are not always recognized when providing redress to victims.

To assist states in ensuring redress for victims of sexual violence and gender-based violence, the Committee is encouraged to provide examples of measures that states parties should take to address the barriers that prevent victims from seeking redress identified in paragraph 49. In particular the Committee should consider the following guidance of the Committee against Torture in General Comment No.3:

*With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as it should be for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation, and trafficking are able to come forward and seek and obtain redress.*

## REDRESS IN THE CONTEXT OF ARMED CONFLICT

**Paragraph 52** – The phrase ‘and have control over part of a State’s territory’ should be deleted. Such control is not required by Common Article 3, which applies the prohibition of violence to life and person, in particular cruel treatment and torture to all types of non-international armed conflicts, including those fought only between non-state armed groups.

**Paragraph 53** – Amnesty International recommends that the Committee should add ‘including by exercising universal jurisdiction over grave breaches’ at the end of the first sentence. This is mandatory as demonstrated in Rule 158 of the ICRC’s Customary International Humanitarian Law.

It is also recommended that this paragraph should emphasise states obligations, where sufficient evidence exist, to prosecute those suspected of command responsibility in accordance with Rules 152 and 153 of the ICRC’s Customary International Humanitarian Law.

The paragraph should also set out the obligations of non-state actors to ensure that allegations of torture and other ill-treatment are investigated and those suspected of committing such acts are removed from their ranks and prosecuted in fair trials without recourse to the death penalty.

Recognizing that both international human rights law and international humanitarian law apply during armed conflict, Amnesty International recommends that the last sentence should be amended to state ‘where there is doubt as to whether human rights law or international humanitarian law *prevails...*’ instead of applies.

**Paragraph 54** – Amnesty International recommends that specific mention should be made in this paragraph to the obligation of state security agents and non-state security forces to provide access to persons deprived of their liberty.

## TRANSITIONAL JUSTICE

**Paragraph 59** – Amnesty International is concerned that, as drafted, the characterization of “the narrow concept of criminal justice” and endorsement of recognition of restorative and redistributive justice may be used by states not to fulfil their obligations to investigate and prosecute allegations of torture and other ill-treatment emphasised in several paragraphs of the General Comment. Our organization recognizes that in appropriate circumstances, where victims agree, restorative and redistributive justice initiatives can form an important part of redress efforts. However, especially in a ‘transitional justice’ context, there is significant potential for states to seek to impose such systems on victims as alternatives to justice in order to protect perpetrators instead of providing redress to victims of torture and other ill-treatment. Amnesty International recommends that the paragraph should be revised so that it states that in some circumstances, and with the full consent of the victims in each case, ‘restorative and redistributive justice’ may complement criminal justice but should not be imposed as alternatives on victims. The Committee should also state that such mechanisms must comply with human rights.

**Paragraph 60** – Further to comments on paragraph 33, the vetting process in this paragraph should not be limited to ‘officials deemed responsible for presiding over a legacy of torture’ but should instead apply to any individual against whom there is reasonable suspicion of having committed torture or other ill-treatment.

**Paragraph 61** – Amnesty International is concerned that, as currently worded, this paragraph is ambiguous and may be interpreted as permitting amnesties for acts of torture and other ill-treatment in some circumstances, including when they amount to crimes against humanity and war crimes. Instead, the Commission should adopt a clear statement that amnesties should not apply to torture and other ill-treatment and add, as ‘a crime against humanity or as a war crime’ after ‘States are therefore precluded from extending amnesty for torture as a gross violation of international human rights law.’

## NON-STATE ACTORS

**Paragraph 63** – Amnesty International recommends that this paragraph should be revised to fully reflect the responsibility of states for acts by non-state actors when torture and other ill-treatment are committed at the ‘instigation, consent or acquiescence’ of the state or where the state fails to exercise ‘due diligence’ to prevent such acts or to provide victims with effective remedies against non-state actors.

## IMPLEMENTATION OF THE GENERAL COMMENT

**Paragraph 65** – Amnesty International recommends that the Committee should emphasise the need for dissemination of the General Comment to victims and their representatives.



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