

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY
OF WEST AFRICAN STATES (ECOWAS)
ABUJA, NIGERIA**

SUIT NO: ECW/CCJ/APP/36/15

BETWEEN:

1. THE FEDERATION OF AFRICAN JOURNALISTS
2. FATOU CAMARA
3. FATAOU JAW MANNEH
4. ALHAGIE JOBE**Applicants**

- AND -

THE REPUBLIC OF THE GAMBIA**Defendant**

AMICUS CURIAE BRIEF OF THE REDRESS TRUST

INTRODUCTION

1. The Redress Trust (REDRESS) submits these comments pursuant to leave granted by the Community Court of Justice of the Economic Community of West African States (this Court).
2. REDRESS is an international human rights organisation registered and based in London, United Kingdom. It assists torture survivors to seek justice and other forms of reparation for the harm suffered. REDRESS has extensive experience representing torture survivors and intervening before national, regional and international courts and tribunals, including the United Nations Committee against Torture and Human Rights Committee, the African Commission on Human and Peoples' Rights (the African Commission), the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, the International Criminal Court, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.
3. This case concerns alleged persecution, violence and injustice perpetrated against journalists in The Gambia. Two of the applicants contend they were tortured as a reprisal for carrying out their professional work as journalists. This Court has previously examined attacks against journalists in The Gambia.¹ This case provides an opportunity for the Court to consider further States' positive obligations to protect journalists from torture and ill-treatment and the spectrum of remedies resulting from such treatment.

¹ See *Musa Saidhykhan v Republic of the Gambia* ECW/CCJ/APP/11/07, 16 December 2010; *Deyda Hydara Jr. v The Gambia* ECW/CCJ/APP/30/11, 10 June 2014; *Chief Ebrima Manneh v The Gambia*, ECW/CCJ/APP/04/07, 5 June 2007.

PART 1: Particular vulnerability of journalists to torture and related abuses

4. Journalists and media workers are crucial watchdogs that help to hold governments, businesses and others to account. By carrying out independent fact-finding and by reporting to the public on their findings, journalists and media workers help the public to access information about an array of subjects and to form independent and often critical views about those subjects. This increases debate within society and can challenge official versions of events put forward by governments or others exercising power or authority. This ability to foster pluralistic views is important for fostering citizens' access to information and underpins democracy. It also enables journalists to broaden and influence views and opinions. Consequently, attacks against journalists are not only a violation of journalists' right to impart information; they also undermine the right of individuals and society to seek and receive information.² An attack against a journalist is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy.³ Risks of violence deter journalists from their work, or encourage self-censorship on sensitive matters impeding society's access to information.⁴
5. Attacks on journalists and media workers are most prevalent as a form of reprisal used to silence those who investigate, document and report on issues perceived by authorities to be sensitive, such as human rights violations, environmental degradation, corruption, organised crime, drug trafficking, public crises, emergencies or public demonstrations.⁵
6. In many cases, freedom of expression will be limited by banning independent newspapers, criminalising the publishing or disseminating of certain information and prosecuting editors and journalists. The African Commission has made clear that such limitations on freedom of expression and infringements on liberty are inconsistent with the African Charter.⁶ Attacks may also include harassment, intimidation and threats of violence to journalists and their families; expulsion; unlawful or arbitrary arrest and detention; abduction; torture; sexual violence and murder.
7. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recognised the precarious situations in which many journalists work, noting that torture and other ill-treatment and arbitrary arrests and detention are challenges journalists face in their daily work.⁷ For an act to amount to

² UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34, 12 September 2011, para. 11.

³ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc A/HRC/20/17, 4 June 2012, para. 54 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf.

⁴ *Ibid.*, para. 95.

⁵ UN General Assembly, Report of the Secretary General, The safety of journalists and the issue of impunity, UN Doc A/69/268, 6 August 2014, para. 3, available at <http://www.ohchr.org/EN/newyork/Pages/HRreportstothe69thsessionGA.aspx>.

⁶ African Commission, *Article 19 v Eritrea* (2007) Communication 275/03 para. 105, "Any law ... which permits a wholesale ban on the press and the imprisonment of those whose views contradict those of the Government's is contrary to both the spirit and the purpose of Article 9. The Commission reiterates its own statement in communications 105/93, 128/94, 130/94 and 152/96: '[A]ccording to Article 9.2 of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedence over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter'."

⁷ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012, para 48.

torture, it is necessary for it to be carried out for a specific purpose.⁸ There are a range of purposes that may satisfy this purposive requirement, including to obtain a confession, to punish, discriminate or intimidate. The intimidation of journalists and other media workers to discourage or prevent them from exercising their right to impart information or as a form of punishment for having imparted information, are two connected purposes which are consistent with the purposive requirement of the definition of torture.

PART 2: The nature and applicability of the absolute prohibition of torture

8. The prohibition of torture and other forms of ill-treatment is absolute. All of the international instruments that contain a prohibition expressly recognise its absolute⁹ and non-derogable character,¹⁰ which has also been underscored by human rights courts¹¹ and monitoring bodies.¹² Torture and ill-treatment are absolutely prohibited irrespective of the circumstances and of the victim's behavior.¹³
9. The African Charter on Human and Peoples' Rights (African Charter) prohibits torture and ill-treatment in article 5. In its jurisprudence on Article 5, the African Commission has affirmed that the prohibition applies even in the most difficult circumstances, including public emergencies.¹⁴ The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa stipulate that States shall not invoke notions such as necessity, national emergency, public order, and *ordre public* as a justification of torture or ill-treatment.¹⁵
10. The African Commission has recognised that the absolute prohibition applies to cases involving journalists and the protection of freedom of expression. In *Article 19 v. Eritrea* it held that the political situation described by Eritrea did not excuse its actions, as Article 5, permits no restrictions or limitations on the right to be free from torture and cruel, inhuman or degrading punishment or treatment. The African Commission found that Eritrea had violated Article 5, by holding journalists and political dissidents incommunicado without allowing them access to their families.¹⁶

PART 3: States' positive obligations to protect journalists from violence, including torture and other prohibited ill-treatment

11. The prohibition of torture imposes specific obligations on States. According to the African Commission, in cases involving non-derogable rights, "the positive obligations of

⁸ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, article 1.

⁹ See for example article 2 (2) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); article 5 of the Inter-American Convention to Prevent and Punish Torture.

¹⁰ The prohibition is expressly excluded from the derogation provisions of human rights treaties of general scope: article 4 (2) of the International Covenant on Civil and Political Rights (ICCPR); Article 3 UN Torture Declaration; Article 15 European Convention of Human Rights; Article 59 Arab Charter of Human Rights.

¹¹ See for instance European Court of Human Rights (ECtHR), *Ireland v the UK*, Series A No 25, (1978) 2 EHRR 25, para.163; Inter-American Court of Human Rights (IACtHR), *Maritza Urrutia v Guatemala* (Merits, Reparations and Costs), Series C N. 103, 27 November 2003, para.89. See also, International Court of Justice (ICJ), *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* Judgment, 20 July 2012, ICJ Reports 2012, para. 99.

¹² See e.g., UN Human Rights Committee, General Comment No. 20: Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (article 7) UN Doc A/44/40, 10 March 1992, para.5; UN Committee Against Torture, General Comment No. 2: Implementation of article 2 by states parties, UN Doc. CAT/C/GC/2, 24 January 2008, para.1.

¹³ See for instance, ECtHR, *Labita v Italy*, application no. 26772/95, 6 April 2000, para.119.

¹⁴ African Commission, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/09, para. 69; *Huri-Laws v Nigeria* Communication 225/98, para. 41; *Gabriel Shumba v Zimbabwe* Communication 288/04, para.164.

¹⁵ African Commission, Robben Island Guidelines, para.10.

¹⁶ African Commission, *Article 19 v Eritrea* (2007) Communication 275/03 para. 102.

States go further than in other areas.”¹⁷ States violate the African Charter if they neglect to take all necessary positive steps to ensure those rights.¹⁸

The positive obligation to prevent violence against journalists

12. Regional and international legal standards on the prohibition of torture emphasise States’ obligation to take positive measures to prevent torture. In applying these principles in the context of journalism, it is submitted that the Court should have regard to the particular vulnerability of journalists and the paramount obligations on States to protect them from torture, to prevent torture and to investigate allegations. In a case against Turkey involving a journalist who was killed following the publication of several controversial articles, the European Court of Human Rights considered that the State had failed to “create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear.”¹⁹ According to the Court, the “State must not just refrain from any interference with the individual’s freedom of expression but was also under a positive obligation to protect his or her right to freedom of expression against attack, including by private individuals.”²⁰
13. Thus, it is not enough for States to ensure that their own cadres refrain from carrying out violence, including torture or ill-treatment of journalists and media workers; they must also do everything within their power to prevent such violence from being perpetrated by private actors. Part of this includes fostering an environment in which freedom of expression is allowed to flourish, and is tolerated even when views are expressed which may be contrary to government policies or perspectives. Similar reasoning has been adopted by the Inter-American Court of Human Rights, which was held that:

The effective exercise of freedom of expression depends upon social conditions and practices that stimulate such exercise. It is possible to illegally restrict such freedom by the legal or administrative actions of the State or by *de facto* conditions that put, directly or indirectly, in a situation of risk or greater vulnerability those who exercise or attempt to exercise such freedom, by actions or omissions of state agents or private individuals. Within the framework of the obligations to guarantee the rights enshrined in the Convention, the State must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation, as well as, where appropriate, investigate the facts that affect them.²¹

14. Also, under article 1 of the African Charter, States are obliged to adopt legislative or other measures to give effect to the rights in the Charter. For torture, this requires, at a minimum, States to criminalise torture and other prohibited ill-treatment and ensure that those who threaten or carry out such acts are subject to appropriate sanctions that reflect

¹⁷ African Commission, *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) Communication 245/02, para. 155.

¹⁸ African Commission, *Commission Nationale des Droits de l’Homme et des Libertés v Chad*, Communication No. 74/1992, para 20.

¹⁹ See ECtHR, *Dink v Turkey*, applications no.2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, para.137 (in French).

²⁰ *Ibid*, para.138; See also UN Secretary-General, *The safety of journalists and the issue of impunity*, A/69/268 para 51.

²¹ Inter-American Court of Human Rights, *Perozo et al v Venezuela*, Series C, No.195, 28 January 2009, para. 118.

the gravity of the offence.²² In this regard, necessary resources must be dedicated to bringing those responsible for attacks against journalists to justice.²³

The duty to investigate allegations of torture and ill-treatment

15. A key aspect of the obligation to prevent and prohibit torture and ill-treatment is the obligation to investigate allegations including threats of such treatment. The African Commission has affirmed that State obligations under the Charter include a positive obligation to prosecute and punish perpetrators of abuses.²⁴ According to it, the mere existence of a legal system criminalising and providing sanctions for assault and violence is not sufficient; States parties to the Charter need to effectively ensure that incidents of violence are actually investigated, prosecuted and punished.²⁵
16. The need for rigorous investigations into attacks on journalists is important as their vulnerability to attacks is increased when they are committed with impunity. The UN General Assembly for instance, in its resolution on the safety of journalists and the issue of impunity, called on States to "... ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers."²⁶ The UN Secretary General subsequently released a report focusing on the same theme, noting "with grave concern that impunity for attacks against journalists remains the biggest obstacle to effectively ensuring the safety of journalists."²⁷ The African Commission has also adopted a resolution on the safety of journalists and media practitioners in Africa, calling on States Parties to "fulfill their obligation on preventing and investigating all crimes allegedly committed against journalists and media practitioners and also to bring the perpetrators to justice."²⁸
17. With impunity as the biggest obstacle to journalists' safety, it is imperative that States ensure that investigations are conducted effectively, promptly, thoroughly, independently and impartially, and that prosecutions are brought where supported by evidence.²⁹ In its Declaration of Principles on Freedom of Expression in Africa, the African Commission has restated that States are obliged to investigate violations of Article 9 of the Charter, including attacks on those exercising their right to freedom of expression and to punish perpetrators and ensure that victims have access to effective remedies.³⁰
18. Regional and international human rights bodies have found that a failure by a State to investigate allegations of torture or other ill-treatment is a violation of the right to an

²² Robben Island Guidelines, paras. 4, 6 and 12; See also African Commission, *Malawi African Association and Others v. Mauritania*, Communications 54/91, 61/91, 98/93, 164/97, 196/97, 210/98, para.142; African Commission, Resolution 105 on the Prevention and Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 16-30 May 2007, calling on States parties to "criminalise and penalise all acts of torture, promote and support cooperation with international mechanisms, establish complaints and investigation procedures, establish and support training and awareness-raising programmes for enforcement agents."

²³ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, para 102.

²⁴ *Ibid*, para. 159. See also *Amnesty International and Others v Sudan* (1999), para 56; *Law Office of Ghazi Suleiman v Sudan* (2003), para. 45–46; *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso* (2001), para. 42.

²⁵ *Ibid*, Zimbabwe Human Rights NGO Forum v Zimbabwe (2006), para 159.

²⁶ UN General Assembly, Resolution 68/163, The safety of journalists and the issue of impunity, A/RES/68/163, 18 December 2013, para.5.

²⁷ UN General Assembly, UN Secretary-General, The safety of journalists and the issue of impunity, A/69/268, para.50.

²⁸ African Commission, Resolution 185: On the Safety of Journalists and Media Practitioners in Africa, 12 May 2011, at <http://www.achpr.org/sessions/49th/resolutions/185/>.

²⁹ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012, para 65.

³⁰ African Commission, Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa, October 2002, principle XI (2), at <http://www.achpr.org/sessions/32nd/resolutions/62/>.

effective remedy and the right not to be subjected to torture.³¹ The obligation to investigate exists independent of a complaint filed by the victim,³² and may help to deter future violations. As the Inter-American Court has found in a case concerning threats, harassment and verbal and physical abuse of media workers in Venezuela:

The investigation of the violation of a specific substantive right may be a way to shelter, protect, or guarantee that right... In cases of extrajudicial killings, forced disappearances, torture, and other grave violations to human rights, the Tribunal has considered that carrying out an investigation ex officio, without delay and in a serious, fair, and effective manner is a fundamental element that contributes to the protection of certain rights affected by those situations, such as personal freedom, the right to humane treatment, and life. It is considered that in those cases impunity will not be eradicated without the determination of the general responsibilities –of the State – and individuals – criminal and of any other nature of its agents or individuals , which complement each other.³³

19. This Court has already affirmed a State's obligation to conduct a thorough, rigorous, and independent investigation into the violent death of a journalist,³⁴ as has the African Court on Human and Peoples' Rights in a case concerning the assassination of an investigative journalist and newspaper director. The Court determined that Burkina Faso failed in its obligation to take measures, other than legislative ones, to ensure that the rights of the Applicants to have their case heard by competent national courts were respected, and failed to have acted with due diligence in seeking, trying and judging those who had carried out the assassination.³⁵ The European Court of Human Rights has determined that for an investigation to be compliant with a State's positive obligation to investigate attacks against journalists, the State must take "adequate steps to investigate the possibility that the attack could have been linked to the applicant's work as a journalist."³⁶ The Inter-American Commission on Human Rights came to a similar conclusion in a case concerning the murder of a Mexican journalist:

A State's refusal to conduct a full investigation of the murder of a journalist is particularly serious because of its impact on society. And that is the case here, because the impunity of any of the parties responsible for an act of aggression against a reporter--the most serious of which is assuredly deprivation of the right to life--or against any person engaged in the activity of public expression of information or ideas, constitutes an incentive for all violators of human rights. At the same time, the murder of a journalist clearly has a "chilling effect", most notably on other journalists but also on ordinary citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts. The Commission considers that such an effect can only be avoided by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law. The Mexican State must send a strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.³⁷

...

³¹ See UN Human Rights Committee, *Avadanov v. Azerbaijan*, UN Doc CCPR/c/100/D/1633/2007 (2010) paras. 9.3-9.5; *Aydin v. Turkey* (Grand Chamber) Application No. 23178/94 (1997) para. 103; UN Human Rights Committee, General Comment no 31, The nature of the general legal obligation imposed on State Parties to the Covenant, UN Doc CCPR/c/21/Rev.1/Add.13, 26 May 2004, paras. 15-16; UNCAT, article 12.

³² UN Committee Against Torture, General Comment No 3, Implementation of Article 14 by States Parties, 19 November 2012, UN Doc. CAT/C/GC/3, para 27.

³³ Inter-American Court of Human Rights, Case of *Rios et. al. v. Venezuela*, Series C No. 194, 28 January 2009, para. 283.

³⁴ See this Court's decision in *Deyda Hydara Jr. v The Gambia* ECW/CCJ/APP/30/11, 10 June 2014.

³⁵ African Court on Human and Peoples' Rights, *Claimants of Late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Blaise Llobouo, Ernest Zongo and the Burkinabe Human and Peoples' Rights Movement v. Burkina Faso*, Application No. 013/2011, 5 June 2015.

³⁶ ECtHR, Case of *Uzeyir Jafarov v Azerbaijan*, Application no. 54204/08, 29 January 2015, para. 52.

³⁷ Inter-American Commission on Human Rights, *Hector Felix Miranda v Mexico*, Case 11.730, Report No. 5/99, OEA/Ser.L/V/II.95 Doc.7 rev. at 755 (1998), para. 52.

the killing of this journalist constitutes an attack on the duty to denounce arbitrary conduct and abuses against society, aggravated by the impunity of one or more of the intellectual authors. Accordingly, the absence of a serious and complete investigation of the facts in the present case generates the international responsibility of the Mexican State for violating Héctor Félix Miranda's right to freedom of expression and that of the citizens in general to receive information freely and to learn the truth about the events that took place.³⁸

20. The obligation to investigate allegations of torture and ill-treatment also forms part of the African Commission's jurisprudence on Article 5.³⁹ The Robben Island Guidelines provide specific criteria for investigations into torture allegations, indicating that investigations shall be conducted promptly, impartially and effectively.⁴⁰ They stipulate further that investigations into all allegations of torture or ill-treatment should be conducted with guidance from the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).⁴¹ The Protocol emphasises the key components of a torture investigation to be the clarification of facts and establishment of responsibility, identification of measures to prevent recurrence and facilitation of prosecution.⁴² The Protocol also stipulates that special care should be taken during witness interviews, accumulation of physical evidence, and medical and psychological examinations in order to properly document incidents and bring those responsible to justice.⁴³

PART 4: The right to redress for tortured journalists in forced exile

21. Journalists forced into exile after being tortured or ill-treated must contend with the added challenges of re-establishing themselves in new countries, frequently without the support of families, friends and colleagues. These challenges, including dealing with trauma resulting from torture, have been documented by various organisations.⁴⁴
22. Under international human rights law, States have an obligation to provide redress to victims of torture and ill-treatment, a well-established and basic human right that today is

³⁸ Ibid, para. 56.

³⁹ *Malawi African Association and Others v. Mauritania*, Communications 54/91, 61/91, 98/93, 164/97-196/97, 210/98, para.142. In this case, the African Commission instructed Mauritania to launch an independent inquiry in order to clarify the fates of disappeared and to "identify and bring to book the authors of the violations perpetrated." See also *Amnesty International and Others v. Sudan*, Communications 48/90, 50/91, 52/91, 89/93, para.51; *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communications 245/02, paras. 68-70.

⁴⁰ African Commission, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, para. 19.

⁴¹ HR/P/PT/8/Rev.1, 2004. See also, *Abdel Hadi, Ali Radi & Others v Republic of Sudan* 368/09 , para 92.

⁴² Ibid, para. 74.

⁴³ Id, paras. 83, 99, 102-106.

⁴⁴ Committee to Protect Journalists, "Exiled: When the most dangerous place for journalists is your country" 17 June 2015, <https://cpj.org/reports/2015/06/exiled-when-most-dangerous-place-for-journalists-is-your-country-world-refugee-day.php>; "Journalists flee East African countries – region's free expression deteriorates" 24 June 2012, <http://humanrightshouse.org/Articles/18262.html>; National Union of Journalists U.K., "Exiled Journalists" <https://www.nuj.org.uk/rights/health-and-safety/exiled-journalists/>.

enshrined in a range of treaties,⁴⁵ and declarative instruments⁴⁶ and has been confirmed by UN bodies⁴⁷ and regional courts⁴⁸ including this Court.⁴⁹

23. In the context of the African Charter, the African Commission's jurisprudence has recognised the right to redress for torture and ill-treatment in violation of article 5.⁵⁰ The right to redress is also prominent in a range of instruments adopted by the Commission.⁵¹ Recognising that the right to redress for victims of torture and other ill-treatment is a "fundamental right under the African Charter", the Commission has tasked its Committee for the Prevention of Torture in Africa to draft a "General Comment on the Right to Redress for Victims of Torture or Ill-treatment under Article 5 of the African Charter."⁵²
24. The UN Human Rights Committee has held that Article 2 (3) [on victim's right to an effective remedy] and Article 7 [prohibition of torture and ill-treatment] of the International Covenant on Civil and Political Rights (ICCPR) oblige States Parties to the ICCPR to ensure that victims of torture and ill-treatment have accessible and effective remedies and receive reparation.⁵³ Article 14 of the UN Convention Against Torture similarly provides that "[E]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."⁵⁴
25. The right to redress obliges States to ensure that victims are able to obtain reparation in law and practice. The UN Human Rights Committee and Committee Against Torture have spelled out the procedural and substantive elements of States' obligations to afford victims with redress, including a right to an effective remedy and adequate reparation. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁵⁵ provides that reparation should be proportional to the gravity of the violations and the harm suffered and victims should be provided with full and effective reparation.⁵⁶ The UN Committee against Torture has stressed in its

⁴⁵ E.g. the International Covenant of Civil and Political Rights (ICCPR) (1966) (Arts. 2(3), 9(5) and 14(6)); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) (Art. 6); Convention of the Rights of the Child (1989) (Art. 39); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (UNCAT) (Art. 14) and Rome Statute for an International Criminal Court (1998) (art. 75). It also figures in regional instruments, e.g. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950) (Arts. 5(5), 13 and 41); the American Convention on Human Rights (ACHR) (1969) (Arts. 25, 63(1) and 68) and the African Charter on Human and Peoples' Rights (ACHPR) (1981) (Art. 21(2)); CPED, (Art. 24).

⁴⁶ Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, Resolution 2005/35 (UN Doc. No. E/CN.4/RES/2005/35 (2005)) and General Assembly (GA) Res'n 60/147 (UN Doc. A/RES/60/147 (2006)) (the "Basic Principles and Guidelines"); See also the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 Nov. 1985; and the Universal Declaration of Human Rights (UDHR) (1948) (Art. 8).

⁴⁷ See, e.g., UN HRC, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant 26/05/2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, at paras. 15–17; CAT, General Comment No. 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007) at para. 15.

⁴⁸ See, e.g., IACtHR, *Velásquez Rodríguez v. Honduras*, para. 174; ECtHR, *Papamichalopoulos v. Greece*, (Art. 50) (Appl. No. 14556/89), 31 October 1995, para. 36.

⁴⁹ *Musa Saïdykhan v The Gambia*. ECW/CCJ/APP/11/07 16 December 2010.

⁵⁰ G. Musila, 'The right to an effective remedy under the African Charter on Human and Peoples' Rights', in *African Human Rights Law Journal*, (2006), p. 442. See also M. Cherif Bassiouni, "International Recognition of Victims' Rights," *Human Rights Law Review*, Vol. 6, No. 2 (2006), pp. 203-279, at p. 207; REDRESS, 'Reaching for Justice: the right to reparation in the African Human Rights System', October 2013, at <http://www.redress.org/downloads/publications/1310Reaching%20For%20JusticeFinal.pdf>.

⁵¹ This includes for instance the Robben Island Guidelines, Section C; the Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa as well as the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines).

⁵² Public Consultation on the Zero Draft, <http://www.achpr.org/news/2016/04/d214/>.

⁵³ UN Human Rights Committee, General Comment No.31, para.15; UN Human Rights Committee, General Comment No.20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 1992, para.14.

⁵⁴ UNCAT, Article 14 (1).

⁵⁵ A/RES/60/147, paras 19 -23.

⁵⁶ *Ibid*, UN Basic Principles, para 9.

General Comment 3 on Article 14 of the Convention against Torture that reparation must be adequate, effective and comprehensive and tailored to the needs of the victim. The Committee explicitly endorsed the elements of full redress under international law and practice as outlined in the UN Basic Principles, namely that full and effective reparation for torture takes the forms of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee also stressed that the provision of monetary compensation only is inadequate to comply with article 14.⁵⁷

26. These different forms of reparation are also reflected in the jurisprudence of international and regional human rights courts and monitoring mechanisms, including the African Commission. It is standard practice for these mechanisms to request a range of different forms of reparation, in particular in cases of torture, so as to repair the multiple dimensions of harm the victim suffered.
27. **Restitution** as a measure of reparation can be particularly relevant in cases where victims have been forced into exile or lost their citizenship in violation of the African Charter. The UN Basic Principles and Guidelines provide for instance that restitution can include the restoration of citizenship and return to one's place of residence. In *John D. Ouko v Kenya*, the complainant submitted, *inter alia*, that he was forced to flee the country due to fear for his life as a result of his outspoken political opinions. The African Commission found the State responsible for a violation of the African Charter and as a measure of reparation, urged "the Government of the Republic of Kenya to facilitate the safe return of the Complainant to the Republic of Kenya, if he so wishes."⁵⁸ The Inter-American Court, in a case concerning the attempted kidnapping of a journalist who subsequently was forced into exile⁵⁹ ordered the State of Colombia to, *inter alia*, carry out an effective investigation and guarantee the conditions for the members of the Vélez Román family to return to live in Colombia, if they decide to do so. The Court stressed that in light of the applicants' fear for their safety in Colombia, the State's compliance with the measure of reparation "requires the victims' prior expression of their real and true intention to return to Colombia" and, if they do decide to return, that the "State must pay the expenses of the return of the members of the family and their belongings."⁶⁰
28. Regarding **compensation**, the African Commission usually leaves it to the parties to agree on an amount to be paid to compensate for the (pecuniary and non-pecuniary) damages suffered, emphasising that compensation should be adequate and in line with international standards. In *Gabriel Shumba v Zimbabwe*, a case concerning the torture of a human rights lawyer in detention, including through prolonged electric shocks of his genitals, and subsequently forcing him into exile, the Commission recommended that the Respondent State pay adequate compensation to the victim for the torture and trauma caused.⁶¹ The Commission's practice appears to be in contrast to the approach taken by this Court, which in several cases found a violation of Article 5 of the Charter, has awarded specific amounts of compensation, including up to \$200,000.00 USD for a victim who had been arbitrarily detained and tortured for twenty-two days in The Gambia. In arriving at the amount of compensation required to repair the damage caused

⁵⁷ UN Committee Against Torture, General Comment No. 3, Implementation of article 14 by States parties", CAT/C/GC/3, 19 November 2012, para. 9.

⁵⁸ *John D. Ouko v Kenya (2000) Communication 232/99*

⁵⁹ *Vélez Restrepo and family v Colombia*, Judgement of 3 September 2012, paras 259 -289

⁶⁰ *Ibid*, paras. 264-265.

⁶¹ *Gabriel Shumba v Zimbabwe*, Communication 288/04, 21 March 2013; the Commission also requested that Zimbabwe carry out an inquiry and investigation so as to bring perpetrators to justice.

(to the extent possible), this Court as well as other regional courts takes into account issues such as the loss of income, loss of personal property as well as physical and mental injury and suffering.⁶² This Court has also awarded compensation for the “prejudice suffered as a result of the [State’s] failure to investigate” a violation of the Charter.⁶³

29. The right to **rehabilitation** is a fundamentally important component of the right to reparation, aimed at restoring “as far as possible, their independence, physical, mental, social and vocational ability, and full inclusion and participation in society.”⁶⁴ It is explicitly highlighted in Article 14 of the UN Convention Against Torture and the Robben Island Guidelines. International and regional human rights bodies have requested States to rehabilitate victims of torture and ill-treatment, including in cases where the torture forced victims and their families into exile. The Inter-American Court for instance held in the *Vélez Restrepo case*, that in the event that the victims express their willingness to return and reside in Colombia, the State should provide them with health care through the specialized health institutions, and if they do not return to provide them with fixed amounts to contribute toward the payment of their health costs.⁶⁵
30. In addition to ‘individual’ measures of reparation, it is furthermore common practice of human rights courts and monitoring bodies to request forms of reparation that are designed to remedy the structural causes of the violation.⁶⁶ Requesting States to take measures that guarantee non-repetition is particularly relevant in cases which involve a pattern of or systemic violations, for instance torture and ill-treatment committed against a certain group, such as human rights defenders, journalists or women, or by the same actors, such as police or security agents. In addition to requesting States to investigate violations and prosecute those responsible, measures of non-repetition ordered by the African Commission for instance have included requesting States to repeal legislation found to be incompatible with the Charter;⁶⁷ to take measures to ensure that States’ law enforcement organs, particularly the police respect the rights of detainees;⁶⁸ to put in place safeguards or clear procedures/policies that guarantee for all persons deprived of their liberty effective access to competent authorities.

Conclusion

31. In awarding reparation, this Court should take into account factors such as the seriousness of the violations, the length of time over which the violations continued and the costs of the medical care incurred. Case law of this Court indicates that the failure to investigate torture and enforced disappearances are amongst those violations for which monetary compensation is ordered.⁶⁹ The Court is empowered to consider additional measures of satisfaction by ordering a State to conduct an impartial investigation in line with the principles of competence, impartiality, independence, promptness and thoroughness.⁷⁰

⁷⁰ European Court of Human Rights, *Ipek v Turkey*, application no. 25760/94, Judgment of 17 February 2004, paras.228-229. ⁶²

⁶³ *Deyda Hydar Jr. v The Gambia* ECW/CCJ/APP/30/11, 10 June 2014, pp.10-11.

⁶⁴ UN Committee Against Torture, General Comment No.3, para.11.

⁶⁵ *Vélez Restrepo and family v Colombia*, Judgement of 3 September 2012.

⁶⁶ UN Committee Against Torture, General Comment No.3, para.18.

⁶⁷ African Commission, *Purohit and Moore v The Gambia (2001),241/01*; *Curtis Francis Doebbler v Sudan*, (2003) 236/2000; *EIPR & Interights v Egypt*, Communication (2011) 323/06.

⁶⁸ *EIPR & Interights v Egypt*, Communication (2011) 334/06.

⁶⁹ See, *Musa Saidhykhan v Republic of the Gambia* ECW/CCJ/APP/11/07 16 December 2010; *Deyda Hydar Jr. v The Gambia* ECW/CCJ/APP/30/11, Chief Ebrima Manneh ECW/CCJ/APP/04/07

⁷⁰ The Istanbul Protocol para 74.

32. There is a strong body of regional and international law and jurisprudence detailing risks that journalists are subject to. These principles support the view that States' positive obligations must extend to preventing acts of violence including torture and other prohibited ill-treatment and to providing redress when such violations occur.
33. We submit that should the Court accept the allegations, it should consider explicitly a range of reparation measures, according to the circumstances of the case and the needs of the victims, taking into account the gravity of the violations and the harm suffered. Beyond compensation, other forms of reparation that may be appropriate include just satisfaction, guarantees of non-repetition, symbolic reparations such a public apology, diligent investigation and prosecution, and access to rehabilitation.