

Torture in the African Regional System: An IAJ preliminary review

African Regional System: Article 5 Charter, Commission & Court Jurisprudence, and Reparations

This preliminary review integrates binding and authoritative African sources on the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment (CIDT). It is designed to provide court-ready authorities—treaty text, Commission/Court decisions, and Commission guidelines—that judges regularly cite when adjudicating Article 5 questions. Where appropriate, persuasive studies and NGO analyses that have informed African and UN bodies are paired with binding sources for maximum judicial utility.

A. Black-Letter Charter Text

- African Charter on Human and Peoples’ Rights, art. 5 — “All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” [Charter: OAU Doc. CAB/LEG/67/3 rev.5 (1981), in force 1986].

B. Authoritative ACHPR “Soft-Law” that Courts Use to Structure Duties

- Robben Island Guidelines (ACHPR, 2002) — comprehensive measures on prohibition, prevention (training, registers, medical access), and responses (investigation, accountability).
- Luanda Guidelines (ACHPR, 2014) — detailed standards for arrest, police custody, and pre-trial detention (screening for injuries, access to counsel/medical care, recording of interviews, oversight and inquiries).
- General Comment No. 4 (ACHPR, 2017) — the right to redress under Article 5: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition; effective investigations; survivor-centred approach.

C. African Commission Case-Law on Torture/CIDT (Art. 5)

- *Curtis Francis Doebbler v. Sudan*, Comm. No. 236/00 (Afr. Comm’n H.P.R. May 4, 2003) — held that judicial corporal punishment (lashes) violates Article 5; ordered Sudan to abolish lashes and amend the Criminal Law of 1991.

- *Amnesty International & Others v. Sudan*, Comms. Nos. 48/90, 50/91, 52/91, 89/93 (Afr. Comm’n H.P.R. Nov. 15, 1999) — found grave violations including torture/CIDT and ordered legal and institutional reforms.
- *Malawi African Association & Others v. Mauritania*, Comms. Nos. 54/91, 61/91, 98/93, 164/97–196/97, 210/98 (Afr. Comm’n H.P.R. May 11, 2000) — found violations of Article 5 among other rights in a pattern of abuses; emphasized state duties to investigate and redress.
- *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. No. 323/06 (Merits, Afr. Comm’n H.P.R. 2011) — found violations of Articles 1, 2, 3, 5, 9(2), 16(1), 18(3), 26; underscores duty to prevent ill-treatment during assemblies and to investigate and remedy.

D. African Court on Human and Peoples’ Rights (AfCHPR): Corporal Punishment, Fair Trial, and Remedies

- *Maige v. United Republic of Tanzania*, App. No. 018/2017 (AfCHPR, 5 Sept. 2023) — held that judicial corporal punishment violates Article 5 and ordered Tanzania to remove corporal punishment from its laws; also reaffirmed the right to free legal assistance for indigent defendants in serious cases (Art. 7(1)(c)).

E. ECOWAS Court of Justice: Torture Findings and Damages

- *Musa Saidykhan v. The Gambia*, ECW/CCJ/JUD/08/10 (Dec. 16, 2010) — journalist arrested, detained, and tortured by state agents; Court found violations of Articles 5, 6, 7 of the African Charter (applicable via ECOWAS law) and awarded compensation.

F. Reparations Doctrine in African Practice

- ACHPR General Comment No. 4 and AfCHPR judgments emphasize full redress: restitution, compensation, rehabilitation, satisfaction (including public acknowledgment and apology), and guarantees of non-repetition (legal reform, training, oversight).
- AfCHPR, Comparative Study on the Law and Practice of Reparations for Human Rights Violations (2019) — comparative, Court-issued synthesis on forms of reparation and implementation; persuasive authority to guide remedial orders.

G. Bridge to Global Standards (for Judicial Notice and Harmonisation)

African authorities align with UNCAT core duties (Arts. 2, 12–15) and ECHR Article 3 jurisprudence. In particular: (i) absolute prohibition; (ii) effective investigation; (iii) exclusion of torture-tainted evidence; (iv) survivor-centred redress. Courts can therefore read Article 5 consistently with UNCAT and comparative regional practice when addressing judicially ordered penalties, court-process abuse, and state acquiescence.

Authorities Cited (Official / Judicially Noticeable Sources)

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IAJ Document Version Control Log

Document ID: IAJ-LRV-20250903-001-PUB
Initial Release Date: 2025-09-03

Version History

Version	Date	Author(s)	Summary of Changes
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v1.0	2025-09-03	CH_AI	Initial release

Classification: LRV (Review of Law)
Access Level: Public Release
