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**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

FACT SHEET ON FILING REPARATION CLAIMS

**ADOPTED DURING THE FIFTY-THIRD ORDINARY SESSION OF THE AFRICAN COURT ON
HUMAN AND PEOPLES' RIGHTS, ARUSHA, TANZANIA**

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Guidance on Preparing and Filing a Reparations Claim

This fact sheet is intended to provide information and guidance on reparations to applicants intending to file cases with the African Court. On this point, the African Court Protocol and Rules of Procedure set forth the following provisions giving the Court the mandate to order reparations:

Article 27 (1), African Court Protocol: “If the Court finds that there has been a violation of a human or peoples’ rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”

Rule 33 (5), Rules of Court: “Any applicant who on his/her own behalf or on behalf of the victim wishes to be granted reparation pursuant to article 27 (1) of the Protocol shall include the request for the reparation in the application in accordance with sub-rule 4 above. The amount of the reparation and the evidence relating thereto may be submitted subsequently within the time limit set by the Court.”

As must be clear from the above two provisions, the Court has the power to order reparation in appropriate cases. As emphasized by Rule 33(5), however, applicants seeking reparation ought to provide the Court with adequate information to enable it make a proper determination on the reparations due/not due.

Making a claim for reparations: When making a claim for reparations, certain information should be included in the application to provide the Court with a basis for making an award for reparations. Relevant terms and definitions for making reparations claims are set out below followed by guidance on filing a reparations claim.

Terms & definitions: the most relevant terms and definitions that an applicant should be familiar with before preparing a claim for reparations include the following:

- **Reparation:** Reparation for the breach of human rights is a fundamental principle of international law. Reparations render justice by removing or minimising the consequences of the wrongful act and by preventing and deterring violations. In practice, the obligation translates to specific actions:

- (1) to take appropriate measures to prevent violations;
- (2) to investigate violations effectively, promptly, thoroughly and impartially and take action against the perpetrators;
- (3) to provide effective justice to victims of human rights violations; and

Reparation includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The overarching goal of these forms of reparation is to provide healing for victims of human rights violations.

- **Victim:** Person(s) who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of their fundamental rights, through acts or omissions that constitute violations of international human rights law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
- **Individual or Group:** Cases that come before the Court may involve one or more victims, and sometimes groups of victims. In cases involving one or more victims, each person may experience different forms and degrees of harm that should be individually appreciated.

Victims may also be entire communities, peoples’ or groups with a common identity, ethnicity, religion, language or other common distinguishing physical, social, cultural characteristic that links the group. Indigenous peoples and other minority groups are examples of these; they have collective rights, including the right to culture, development, self-determination, a language and property in some cases. Group rights are recognized in the African Charter and have featured in the jurisprudence of the African Court, the ACHPR and the ACERWC.¹

¹ E.g. African Commission on Human and Peoples’ Rights v. Kenya, African Court on Human and Peoples’ Rights, App. No. 006/2012, Judgment (May 26, 2017); Centre for Minority Rights Development (Kenya) et al. v. Kenya, Comm. No. 276/03, African Commission on Human and Peoples’ Rights, Decision (Nov. 25, 2009); The Nubian Community in Kenya v. Kenya, Comm. No. 317/2006, African Commission on Human and Peoples’ Rights (Feb. 2015); Open Society Justice Initiative v. Cote d’Ivoire, Comm. No. 318/06, African Commission on Human and Peoples’ Rights, Decision, (Feb. 2015); Malawi Africa Association et al. v. Mauritania, Comm. Nos. 54/91-61/91-96/93-98/93-164/97_196/97-210/98, African Commission on Human and Peoples’ Rights, Recommendation (May 11, 2000); Centre for Minority Rights (Kenya) and Minority Rights Group (on behalf of Enderois Welfare Council) No.276/03, African Commission on Human and Peoples’ Rights. IHRDA and Open Society Justice Initiative (OSJI)

Forms of Reparations: when making a claim for reparations, consideration should be given to the forms of reparations being sought for the harm suffered. There are five internationally recognized forms of reparations. The requested form of reparation may vary depending on the type and degree of harm suffered by the victim or group of victims. An applicant must consider the following forms of reparation with respect to each victim and determine which are the most appropriate forms in his/her case. A claim may include a request for one or more forms of reparations, often a combination of forms is necessary to achieve (as close as possible) full reparation.

- **Restitution:** is the act of ending any ongoing violations and restoring the victim, to the greatest extent possible, to his or her original situation before the commission of the human rights violation. Because of its power to undo the effects of the violation, it is the preferred remedy for breaches of international law.

- **Compensation:** A monetary award to redress a violation where there is no other way to undo the effects of a violation through other measures such as restitution or rehabilitation. Compensation is the most-requested and subsequently most-awarded form of reparation by human rights bodies and regional courts. It is a “substitute remedy” and cannot restore or replace rights that have been violated, undo harms such as torture, the return of family members who have been killed, or restore the physical capacities of those who have been injured.
 - **Pecuniary/material damage:** refer to the financial loss of the victim, including any expenses incurred and any special or consequential damages, as a result of the violation. Types of pecuniary loss may include:
 - ❖ **Lost income or loss of future earnings**
 - ❖ **Lost property**
 - ❖ **Lost opportunities**
 - ❖ **Medical expenses and others**

(on behalf of children of Nubian descent in Kenya) v. Kenya, Comm. No. 002/09, African Committee of Experts on the on the Rights and Welfare of the Child, Decision, (Mar. 22, 2011).

- **Non-Pecuniary/moral damage:** compensate for the loss in dignity and reputation of the victim, as well as mental and emotional harm. An award of non-pecuniary damages is intended to compensate victims for this suffering, including the psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation. In addition to these emotional harms, non-pecuniary awards may also compensate a victim for the effect of the violation or crime on his or her family life and relationships. The next of kin are frequently awarded non-pecuniary damages, particularly when the family member is removed from the family, such as through prolonged detention, disappearance, or death.
- **Rehabilitation:** aims to restore the victim's health and well-being through the provision of medical and psychological care as well as legal and social services. It includes the provision of on-going social, medical, legal and/or psychological care to victims. It also includes measures to restore the dignity and reputation of victims. Although individualized, rehabilitation measures are designed to redress the physical or psychological harm to victims. Courts can also order collective rehabilitation where the case at hand concerns a failure to provide adequate systemic medical or psychological support, or where entire communities were affected by the human rights violations.
- **Satisfaction:** refers to reparations awards that concede and acknowledge that the harm occurred. They aim to end continuing abuses, and to restore the dignity and reputation of the victim. At the most basic level, a judgment in favour of a victim is in itself a form of satisfaction.
- **Guarantees of Non-Repetition:** seek to prevent the commission of similar human rights violations, whether against the same or multiple victims. These measures are rooted in the recognition that human rights violations frequently arise from a larger context of abuse that must be systemically changed in order to prevent future harms. The ACHPR General Comment states that, the overall aim of guarantees of non-repetition is to *break the structural causes of societal violence, which are often conducive to an environment in which [human rights violations] take place and are not*

*publicly condemned or adequately punished.*² This type of reparation is essential to eradicate structural and systemic human rights violations.

Forms of evidence & evidentiary standards: the Court applies the following standards when making a reparation determination:

- **Causation:** this is where a proven causal link between the wrongful act and the harm is established for entitlement to reparations. The principle covers not only direct harms incurred by a violation, such as physical injury from torture, but also secondary and consequential harms, such as inability to work due to the lasting effects of the violation and therefore a loss of income.
- **Burden of proof:** this is proof that the victim suffered harm and that the harm suffered was caused by the violation perpetrated by the Respondent State. The burden of proof is generally on the applicant(s); however, the burden may shift to the Respondent State in certain circumstances where the applicant can demonstrate that the other party has more, or exclusive access to relevant information about the case.
- **Standard of proof:** The *preponderance of the evidence* is the standard of proof to be met, meaning that the applicant carries the burden of providing proof to show that what has occurred is *more probable than not*. As a human rights court, the Court is not bound to apply the standard strictly, but like other regional human rights courts may remain flexible, allowing for the circumstances of each case to be considered and remaining sensitive to victim conditions of vulnerability affecting their access to evidence.
- **Forms of evidence:** The Court has wide latitude to admit and consider a broad array of evidence relevant to the question of reparations. As a human rights court it is not bound by strict rules of evidence or domestic rules regarding admissibility of evidence. It may rely on all forms of evidence. The Court is guided by the principles of equity, fairness and reasonableness in the process of allowing and considering

² African Commission on Human and Peoples' Rights, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), ¶ 10 (2017).

evidence. Nevertheless, for any claim of material loss as contrasted to a claim for moral loss, an applicant is required to adduce specific evidence of the precise loss that he/she has suffered as a result of the violation.

- **Presumptions:** the application of legal presumptions is one way in which the Court remains flexible and sensitive to the conditions within which applicants are making claims for reparations. For example, presumptions may be applied in matters of assessing non-pecuniary harm. In particular, where the direct victim suffered a serious violation to his physical integrity, especially right to life or in cases where the family members were witnesses to the violation, the Court may presume that the victim and his/her immediate family members suffered emotional harm related to the violation.

Making a reparations claim checklist:

When making a claim for reparations, applicants should address the following:

Victim(s)	<ul style="list-style-type: none"> ▪ Who is the victim named in the application? ▪ Explain whether/how s/he suffered harm due to the violation? ▪ Individual(s) or a Group? ▪ Direct victim(s) or indirect victim(s)? ▪ If an individual victim(s) - elaborate the harm suffered ▪ If a group of victims – elaborate the group harm suffered
Violations	<ul style="list-style-type: none"> ▪ Which articles and instruments were violated? ▪ Nature of the violation (how was the violation carried out?) ▪ Impact of the violation on the Applicant, next-of-kin, the community (if applicable)
Forms of reparations sought (if applicable)	<p>Explain the types of reparations sought, linking them to the degrees/forms of harm suffered (Applicants can claim one form of reparation or a combination of the forms of reparation).</p> <ul style="list-style-type: none"> ▪ Restitution ▪ Compensation ▪ Rehabilitation ▪ Satisfaction ▪ Guarantees of Non-Repetition ▪ Costs
Evidence	<p>For each claim, provide as much documentary evidence as possible. Explain challenges, or limitations encountered in providing evidence due to circumstances of the case, conditions of the applicant or the victims.</p>

Selected reparations jurisprudence by the African Court:

- *Mtikila v. Tanzania*, App. No. 011/2011, AfCHPR http://en.african-court.org/images/Cases/Ruling%20on%20Reparation/Ruling_on_Reparation_Appl.011-2011.pdf
- *Zongo v. Burkina Faso*, App. No. 013/2011, AfCHPR <http://en.african-court.org/images/Cases/Ruling%20on%20Reparation/Application%20No%20013-2011%20-%20Beneficiaries%20of%20late%20Norbert%20%20Zongo-Ruling%20on%20Reparation.PDF>
- *Konate v. Burkina Faso*, App. No. 004/2013, AfCHPR [http://en.african-court.org/images/Cases/Ruling%20on%20Reparation/Konate%20Judgement%20on%20Reparation%20\(English\).pdf](http://en.african-court.org/images/Cases/Ruling%20on%20Reparation/Konate%20Judgement%20on%20Reparation%20(English).pdf)
- *Ingabire Victoire Umuhoza v Republic of Rwanda*, App.No.003/2014, AfCHPR http://en.african-court.org/images/Cases/Judgment/APPLICATION%20003-2014%20-%20INGABIRE%20VICTOIRE%20UMUHOZA%20V.%20REPUBLIC%20OF%20RWANDA_A,....pdf
- *Armand Guehi v United Republic of Tanzania*, App. No. 001/2015, AfCHPR <http://en.african-court.org/images/Cases/Judgment/APPLICATION%20001-2015%20-%20ARMAND%20GUEHI%20V%20COTE%20D'IVOIRE%20INTERVENING%20-%20JUDGNM....pdf>
- *Minani Evarist v United Republic of Tanzania*, App. No. 027/2015, AfCHPR <http://en.african-court.org/images/Cases/Judgment/Judgement%20MINANI%20Vs%20URT%20-%20Optimized.pdf>
- *Anaclet Paulo v United Republic of Tanzania*, App.020/2016, AfCHPR <http://en.african-court.org/images/Cases/Judgment/020%20-%202016%20-%20Judgement%20in%20the%20Matter%20of%20Anaclet%20PAULO%20Versus%20United%20Republic%20of%20Tanzania%20Dated%2021%20September%202018%20-%20Optimized.pdf>
- *Lucien Ikili Rashid v United Republic of Tanzania* App. No. 009/2015 <http://en.african-court.org/images/Cases/Judgment/222Judgement%20on%20Merits%20and%20Reparations%20in%20the%20Matter%20of%20Lucien%20IKILI.pdf>
- *Kenedy Ivan v United Republic of Tanzania* App. No. 025/2016 <http://en.african-court.org/images/Cases/Judgment/3333Judgement%20on%20Merits%20and%20Reparations%20in%20the%20Matter%20of%20Kenedy.pdf>