

The fierce urgency of now

BY LAURA A. WYTSMA

For more than a decade, Isaiah advocated for democracy and self-determination by participating in peaceful political rallies and demonstrations in his homeland of Cameroon. As a result of his political expression, Isaiah suffered severe persecution at the hands of *gendarmes*. He was repeatedly arrested, held without charges under inhumane conditions, interrogated and tortured. Isaiah's family also suffered; the *gendarmes* frequently arrested Isaiah's aunt, a well-known political activist, and ultimately beat her so severely that she died from her injuries. After surviving repeated arrests, beatings and interrogations, Isaiah—fearful of still further persecution—fled his country and began a long and arduous journey across an ocean and two continents, ultimately seeking refuge in the United States where he obtained political asylum.

Prisca is a Cameroonian mother who, along with her husband, joined the Southern Cameroon National Council (SCNC) to advocate for equal rights. While she was holding a SCNC meeting in her home, the police arrested Prisca and her husband. During her time in custody, Prisca was interrogated, beaten and tortured. She bears scars on her feet, back, abdomen and buttocks from the torture. After their release, Prisca and her husband continued to support the SCNC. During another meeting in their home, the police arrested Prisca and her husband again. This time she was not only beaten but raped—she later learned that she contracted HIV as a result of the rape. After being held for



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three months without charges, Prisca was released. Fearful for her life, she fled Cameroon for the safety of the United States, where she was granted political asylum.

Dr. Ambua is a physician from the Democratic Republic of Congo who was detained and tortured by his government because he treated civilian victims of police repression and cooperated with international human rights observers documenting the dead and injured. For speaking with "white" human rights workers, Dr. Ambua was deemed a traitor to his country and threatened with extermination. Fearing for his life when the police attempted to arrest him a second time, Dr. Ambua fled the country. After arriving in the United States, an immigration judge granted Dr. Ambua political asylum.

Justice was served in each of these cases, right?

Wrong.

Isaiah is the father of two. His son was five when Isaiah fled; his daughter just three. Isaiah would not see them again for another five-plus years.

Isaiah applied for asylum in August 2002. It took more than four years for his asylum claim to be resolved. After his court case was continued four times, an immigration judge concluded that Isaiah had been tortured but nevertheless denied him

asylum on impermissible grounds. Thus, Isaiah was forced to continue fighting his asylum claim on appeal. Even with the assistance of pro bono counsel and the government's capitulation in a new hearing, it took another year for Isaiah to obtain asylum. During the many years that Isaiah spent fighting his case, he was separated from his young children.

When Prisca fled Cameroon in 2003, she was unable to take her children—two sons, aged 10 and 14, and a daughter, just two years old. Prisca would not see them again for over six years. For many of those years, she did not know where her children were living.

Prisca applied for asylum in August 2004 and was placed in immigration removal proceedings in November 2004. Her case languished in the immigration courts for five long years. On at least five occasions, her case was continued—usually at the government's request. Each time that Prisca prepared to attend a hearing, she relived the horror of being raped. And each time that her case was continued, Prisca broke down, realizing she could not yet put the nightmare behind her.

After Prisca's brother—also tortured in the Cameroon—sought refuge in the United States, she learned that her father, mother, husband and brother had all died. Her mother died of AIDS, which she contracted while being raped in police custody. Her husband and brother died while in police custody. And her father died from lack of medical treatment.

Without any surviving family in Cameroon, Prisca's children had no one to care for them. A missionary pastor eventually looked after the children,

but they lived in a primitive one-room structure. The children did not attend school and often went without food. They begged on the streets for survival. Prisca's eldest son contracted typhoid and survived only through the intervention of a visiting doctor. It was not until 2010, after significant lobbying efforts and media attention, that Prisca finally embraced her children again as they disembarked a plane at LAX after eight years of painful separation.

At the time Dr. Ambua fled the Democratic Republic of Congo in 2008, his son was six and his daughter was eight. Shortly after he left, the country, police arrested his wife and raped her—twice. Recently, Dr. Ambua's son was diagnosed with a life-threatening tumor that cannot be adequately treated in Africa.

Although the immigration judge believed Dr. Ambua and granted him asylum, the government appealed the decision, making it impossible for Dr. Ambua's family to join him here for the next several years while his case remains on appeal. Daily, Dr. Ambua questions whether he should abandon his asylum case and return to a place where he is not safe but can care for his son.

These are not rare stories. Asylum claims often take years to resolve. In California, the average immigration case takes 674 days to complete. That figure is even higher in cases in which relief is granted. Bear in mind that, barring exceptional circumstances, the law requires the completion of asylum claims within 180 days, and that by the time an asylum case arrives in immigration court, it has already been pending for many months, if not longer.

Despite significant scrutiny from the media and U.S. circuit courts in the past few years, the situation has not improved. An October 2012 report prepared by the U.S. Department of Justice's Office of Inspector General notes that the "overall efficiency of the [immigration] courts" did not improve between 2006 and 2010 despite an increased number of judges.

You may respond that this is simply

how our justice system works. But if this is how the system works, we need to stop calling it just. For there is nothing just in justice so long delayed.

"To delay justice, is injustice"

We are all familiar with the expression "justice delayed is justice denied." It is frequently attributed to Sir William Gladstone, a prime minister of Great Britain who used the expression in a March 16, 1868, speech addressing Ireland: "If we be chivalrous men, I trust we shall endeavour to wipe away the stains which the civilized world has for so long seen, or seemed to see, upon the shield of England in her treatment of Ireland. If we be compassionate men, I hope we shall now...listen to that tale of sorrow which comes from her....But, above all, if we be just men, we shall go forward in the name of truth and right, and shall bear this in mind: that, when the case is ripe and the hour has come, justice delayed is justice denied."

However, the expression actually appeared decades earlier, in an 1842 article in the *Louisiana Law Journal* entitled "Observations on the Present Judiciary System, in the Western Districts of the State of Louisiana": "If it be admitted, that the State does not prosecute vindictively, but merely to warn and hold up her punishments as a beacon to others, then it is a most important requisite, that the penalty should speedily follow the commission of crime. If in civil matters 'justice delayed is justice denied,' in criminal cases tardy punishments are worse than useless."

A Yale Book of Quotations, however, suggests that the concept was well-rooted in the law as early as the late 1600s. William Penn, founder of Pennsylvania, wrote on 165 subjects in *Some Fruits of Solitude in Reflections and Maxims* (1693). He observed: "Delays have been more injurious than direct Injustice....Our law says well, 'To delay justice, is injustice.' "

Indeed, the concept can be traced back to 1215, when clause 40 of the Magna Carta declared: "To no one will we sell, to no one will we refuse or delay, right or justice."

Seven centuries later, the point remained just as poignant when Dr. Martin Luther King delivered a sermon in April 1967 entitled, "Beyond Vietnam, A time to Break Silence." His sermon closed with the following observation: "We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history there is such a thing as being too late. "

Dr. King was correct—there is such a thing as justice being too late. Justice came too late for the families of Isaiah, Prisca and Dr. Ambua.

Laura A. Wytsma is an intellectual property partner in the Los Angeles office of Loeb & Loeb, where she is actively involved in pro bono litigation. She has represented more than a dozen refugees seeking asylum from China, Cameroon, Côte d'Ivoire, El Salvador, Ethiopia, Guatemala, Iran, Mexico, Russia and Syria in immigration court, the U.S. courts of appeals, and the U.S. Supreme Court. She can be reached at lwytsma@loeb.com. For family safety reasons, the real names of Isaiah, Prisca and Dr. Ambua have not been used.