Expert Report in the *Abaifouta et al. v. Chad* case

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Introduction

1. The author is a Professor of Human Rights and International Humanitarian Law at the School of Law, Queen's University Belfast. He has over a decade of experience working on victims' rights, reparations and international criminal justice. He is author of the books *Justice for Victims before the International Criminal Court* (Routledge 2014) and *Reparations and War: Finding Balance in Repairing the Past* (OUP 2023). He has written over 50 articles and book chapters on reparations and victims' rights, as well as over two dozen policy reports and amici to the International Criminal Court, International Court of Justice and Extraordinary Chambers in the Courts of Cambodia on his research expertise.
2. This report examines the scope of the right to reparation for gross violations of human rights, including the standards applicable in relation to the international responsibility of the State for its failure to implement judicial decisions awarding reparations. The report analyses the violation of the obligation to ensure an effective remedy, often incurred by States when they fail to comply with court-awarded reparations in favour of victims. In addition, the report addresses the obligation of States to adequately redress this lack of enforcement, and the measures that it should take, considering the delay in implementing reparations and the further violations caused to victims as a result. In particular it tackles the issue of the lack of implementation of adequate and effective reparations for victims of the Hissène Habré regime. Despite the Special Criminal Appeal Court of N'Djamena convicting 20 DDS agents for acts of torture, murder, and disappearances, among other crimes in 2015 and awarding 75,000,000,000 CFA francs in favour of the victims, it has not been implemented by the Chadian government. At the same time, the Extraordinary African Chambers found the former Chadian president Hissène Habré responsible for torture amongst other crimes in 2016, and in 2017 the Chambre d'assises d'appel found him responsible for 82,290,000,000 CFA francs in compensation.[1] Neither of these awards have been implemented.

[1] See Nader Iskandar Diab, Too Soon until It Got Too Late: Making Reparations a Reality for Hissène Habré's Victims, in C. Ferstman and M. Goetz (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Brill (2020), 505-524.

A. Relevant human rights standards on the implementation of reparations in contexts of transitional justice

3. The 2005 UN Basic Principles on the Right to Remedy and Reparations States are obliged to provide 'effective remedies to victims, including reparation'.[2] Dealing with numerous gross violations of human rights is a common occurrence in societies transitioning from authoritarianism, armed conflict and/or historical injustice. In such circumstances, States often establish large administrative reparation programmes to resolve victims' claims more speedily, rather than flooding the judicial system.[3] While States have some discretion on how to implement large administrative reparation programmes, human rights bodies have assessed their compliance with human rights standards and the right to remedy.[4]

4. Such discretion does not prohibit such human rights bodies from assessing their compliance with human rights, in particular the right to a remedy. The Inter-American Court requires that any domestic reparations need to satisfy the criteria of 'objectivity, reasonableness and effectiveness' in terms of the adequacy of such measures.[5] In such circumstance the role of human rights courts and bodies is to play a complementary and subsidiary role in monitoring the implementation of such measures.[6] The regional human rights courts have found that using administrative reparation programmes is 'one of the legitimate ways of satisfying the right to reparation' and that while awards through such a programme may be less than court-ordered ones, they still needed to be guided by human rights law and the criterion of justice so that they 'do not become illusory or derisory, and make a real contribution to helping the victim deal with the negative consequences of the human rights violations on his life'.[7] Such programmes are to be assessed in light of their ability to remedy the harm victims have suffered as a result of their violations, which includes requirements on,

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[2] Principle 3(d), A/RES/60/147.
[3] See Pablo de Greiff, Justice and Reparations, in P. de Greiff (ed.), The Handbook of Reparations, OUP (2006) 451-472, p458-459; and Luke Moffett, *Reparations and War: Finding Balance in Repairing the Past*, OUP (2023), p166-168.
[4] *Kopylov v Russia*, Application no.3933/ 04, 29 July 2010, para.144; *Demopoulos and Others v Turkey*, nos.46113/ 99 and 7 others, 1 March 2010, para.69; *Radanović v Croatia*, Judgment, no.9056/ 02, 21 December 2006, para.49.
[5] *Manuel Cepeda Vargas v Colombia,* Judgment, 26 May 2010, para.246; and *Gomes Lund et al. ('Guerrilha do Araguaia') v Brazil,* Judgment, 24 November 2010, para.303.
[6] Ibid.; and *Vereda la Esperanza v Colombia*, Judgment, Preliminary Objections, Merits, Reparations and Costs, Series C No.341, 31 August 2017, para.265.
[7] *Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v Colombia*, Judgment, 20 November 2013, paras.470–471.

> 'their legitimacy— especially, based on the consultation with and participation of the victims; their adoption in good faith; the degree of social inclusion they allow; the reasonableness and proportionality of the pecuniary measures; the type of reasons given to provide reparations by family group and not individually; the distribution criteria among members of a family (succession order or percentages); parameters for a fair distribution that take into account the position of the women among the members of the family or other differentiated aspects…'[8]

5. Beyond this adjudication of victims within a domestic reparation programme, supranational human rights courts have also ordered States to provide further compensation and other forms of reparations, given their jurisdiction over the right to remedy and finding of violations for individuals before them.[9] The Inter-American Court has regularly awarded compensation to victims, despite domestic compensation awards, for non-pecuniary damage on the basis of equity taking into account 'the circumstances of this case, the violations committed, the suffering caused and experienced to different degrees, the time elapsed, the denial of justice, as well as the change in the living conditions of some of the next of kin, the harm caused to the personal integrity of the victims' families and other consequences of a non-pecuniary nature'.[10] Accordingly arguments over double compensation or cumulative awards by different courts, does not preclude the awarding of further compensation or other forms of reparations, given the grave nature of torture, extrajudicial executions and disappearances and their continuing effects on victims.

6. A common issue in the non-fulfilment of compensation awards is a lack of funding. The Colombian Truth Commission and the Inter-American Court have both noted the inadequate funding that has caused delay in the delivery of reparations in Colombia undermines the prompt nature of the right to remedy within a reasonable time,[11] with the Court stipulating that a State has to prioritise awards of reparations to those individuals before it.[12] The African Commission and the UN Committee against Torture have both stated that limited resources do not justify or excuse a State from fulfilling its obligation to provide comprehensive reparations, and States can do this through a special trust fund for

[8] Ibid.; and *Yarce et al. v Colombia*, Judgment, 22 November 2016, para.327.
[9] For instance see *Bedoya Lima et al. v Colombia*, Judgment, 26 August 2021, para.209.
[10] *Peasant Community of Santa Bárbara v. Peru*, Judgment, Preliminary Objections, Merits, Reparations and Costs, 1 September 2015, para.338.
[11] Hallazgos y recomendaciones de la Comisión de la Verdad de Colombia, *Hay futuro si hay Verdad: Informe Final*, 28 Junio 2022, p792–793.
[12] *Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v Colombia*, Judgment, 20 November 2013, para.475.

torture victims.[13] The Disappeared Convention stipulates that the right to remedy cannot be 'suspended or restricted in any circumstance',[14] including the lack of financial resources. More recently, the UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence has found that the failure to fund reparations 're-victimizes victims whose expectations were raised by those policies; it also discourages citizens, donors and reparations advocates from supporting reparations programmes.'[15] The European Court of Human Rights has held that a State cannot use the political context as a means to justify its non-compliance in ensuring an effective remedy for victims.[16]

7. Trust funds do not absolve the State from fulfilling its obligation to ensure an effective remedy for gross violations of human rights. Trust funds are financial instruments to facilitate the implementation of reparation orders or programmes, they are not in themselves a solution for a State that is unwilling to fulfil their obligation to remedy torture. The experience in transitional justice in other countries dealing with gross violations of human rights has consistently found that despite the best intentions, they are unsuccessful due to their chronic underfunding.[17] This stems from the lack of a legal hook to compel compliance. Donors can be unwilling to support such trust funds as they can have little transparency, oversight and monitoring, when their resources can be better invested elsewhere, or does not encourage the State to improve its practice on human rights compliance.[18] In addition, a State is obliged to ensure an effective remedy for such gross violations and to enforce such reparations ordered by domestic courts and 'valid foreign legal judgements', that is not satisfied by the creation of a trust fund alone.[19]

8. Where a financial instrument is ineffective in meeting such an obligation, the budget of the State should be directed to ensure such compliance.[20] As the UN Special Rapporteur for Truth, Justice, Reparations and Guarantees of Non-Recurrence has stated, reparations are not a 'policy choice', but the 'fulfilment of an obligation owed to victims as a result of an

[13] 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), adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia, para.34.
[14] Article 20(2), International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, A/RES/47/133.
[15] Financing of reparation for victims of serious violations of human rights and humanitarian law, A/78/181, 14 July 2023, para.25.
[16] *Cyprus v. Turkey*, (Application no. 25781/94) Judgment, 10 May 2001, para.193.
[17] Ibid., A/78/181, 14 July 2023, para.70.
[18] See *Handbook on Civil Society Organisations and Donors Engagement on Reparations*, RRV (2022), p39-48.
[19] Principle 17, UN Basic Principles 2005, A/RES/60/147.
[20] Principle 14(a), Belfast Guidelines on Reparations in Post-Conflict Societies (2022).

unlawful breach of international and domestic law'.[21] Moreover making contributions to an external trust fund that includes victims within the jurisdiction of a State, does not release it from its obligation to ensure an 'adequate, effective and prompt' remedy for torture.[22] Instead States should establish domestic reparation mechanisms to enforce reparation awards and fulfil the State's obligation to an effective reparation beyond any compensation awarded, even in situations where other individuals found responsible are 'unable or unwilling to meet their obligations' for redress.[23] The African Commission's Guidelines on Enforced Disappearances explicitly requires that States 'shall' have a domestic legal system which allows for the 'effective enforcement of reparation judgements' in such cases.[24] In the situation in Chad it is apparent that the State remains responsible for ensuring victims' right to an effective remedy for torture committed during the Habré regime.

B. The Failure to Ensure the Right to Remedy for Torture, Extrajudicial Killings and Disappearances

9. On the face of it, the *Abaifouta et al v Chad* case is concerned with the lack of enforcement of the 2015 compensation award. However, the failure to implement the award is part of a more systemic problem of the Chadian government's lack of implementation of the right to remedy for the gross violations raised in the case. This leads to three questions at this stage: 1. What is the obligation to remedy torture, extrajudicial killings and disappearances? 2. At what point should delay be considered in implementing the obligation to remedy? 3. What is the impact of delay or non-compliance on the right to remedy and the appropriate forms of reparation to remedy this breach?

I. Obligation to remedy torture, extrajudicial killings and disappearances

10. Under international human rights law, the right to a remedy for gross violations of human rights articulated under the right to reparations is a separate form of remedy from investigations and prosecutions.[25] This speaks to the need for a comprehensive remedy, in

[21] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 11 July 2019, A/HRC/42/45, para.28.
[22] Principle 15, UN Basic Principles 2005, A/RES/60/147.
[23] Principles 16 and 17, UN Basic Principles 2005, A/RES/60/147.
[24] African Commission on Human and Peoples' Rights, Guidelines on the Protection of All Persons from Enforced Disappearances in Africa 25 October 2022, 4.1.9, p84.
[25] For instance see Articles 7 and 14, UN Convention Against Torture 1984; Articles 6 and 9, Inter-American Convention to Prevent and Punish Torture 1985; Principles 4 and 15, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

that the investigation, prosecution and punishment of those responsible established the wrongful nature of individuals in such violations, but also inform society of what occurred. The African Commission on Human and Peoples' Rights has found that the 'ultimate goal of redress is transformation…[which] envisages processes with long-term and sustainable perspectives that are responsive to the multiple justice needs of victims and therefore restore human dignity.'[26] The development of the right to an effective remedy, and in particular the obligation to provide reparations to victims is on par with the obligation to investigate, prosecute or extradite those responsible for torture, extrajudicial killings and disappearances. It is well recognised that prosecution and punishment of perpetrators, while it is important to victims, is insufficient to remedy the personal harm they and their family continue to suffer for the rest of their life as a result of such gross violations.[27] The European Court has found that in order for wilful torture be appropriately and sufficiently redressed it requires two mutually secondary obligations - a 'thorough and effective investigation capable of leading to the identification and punishment of those responsible' *and* 'an award of compensation', given the nature of the violation.[28] Similarly the Human Rights Committee has stated that investigations are required into extrajudicial killings and disappearances, alongside other remedies in the form of reparations.[29]

11. The UN Committee against Torture has held that the obligation to remedy torture is 'two-fold': procedural and substantive. The procedural aspect pertains to States enacting,

> 'legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims.'[30]

Part of this obligation is to ensure that there is effective regulation in national law to effect victims' right to compensation.[31]

12. The UN Committee against Torture has stipulated that States must enact 'specific legislation' to guarantee that victims of torture have access to effective remedies and

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Serious Violations of International Humanitarian Law 2005; Articles 6 and 24, International Convention for the Protection of All Persons from Enforced Disappearance 2010; AFCommHPR Guidelines on Enforced Disappearances, para.3.1, p34; *Rodríguez v Uruguay*, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994), para.14; and *T.C. v Peru*, CAT/C/75/D/930/2019, 14 February 2023, para.9.1.

[26] General Comment no.4, para.8.

[27] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 14 October 2014, A/69/518, para.10.

[28] *Gäfgen v. Germany* (Application no. 22978/05) Judgment, 1 June 2010, paras.116-118.

[29] General Comment No.36, para.4.

[30] General Comment 3, CAT/C/GC/3, para.5.

[31] Article 9, Inter-American Convention to Prevent and Punish Torture 1985.

reparations.[32] Importantly, the Committee has interpreted the obligation to remedy torture to include the need to establish independent redress mechanisms that are 'competent to render enforceable final decisions through a procedure established by law'.[33] The African Commission considers the creation of legislation, administrative and institutional frameworks as part of the broader goals of redress being transformative so as to 'give effect' in 'law and practice' to the rights of victims of torture and disappearances.[34] Similarly in the case of *O'Keefe v Ireland*, the European Court assessed in terms of the effectiveness of a remedy for a human rights violation the Court considers 'the proposed procedures constituted effective remedies which were available to the applicant in theory and in practice, that is to say, were accessible, capable of providing redress and offered reasonable prospects of success.' [35]

13. The substantive part of the obligation to remedy torture requires States to ensure that victims of torture 'obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.'[36] This is focused on the outcomes of a remedial process, which serve to acknowledge and alleviate victims' continuing harm, as well as more public dimensions in society being made aware of the wrongdoing and the State making efforts to cease their continuation and prevent their recurrence.
14. The failure to remedy torture is considered a 'continuing violation'[37] and the obligation to secure reparations can include violations that occurred before the ratification date. The UN Committee against Torture has found that 'effects continued after' a State ratifies a convention and those effects 'constitute in themselves a violation'.[38] The UN Human Rights Committee has required there to be 'an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.'[39] Yet the European Court does not require affirmation, given the grave nature of gross violations of human rights for issues of torture, extrajudicial murders and enforced disappearances.[40]

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[32] CAT/C/GC/3, para.20.
[33] CAT/C/GC/3, para.24.
[34] General Comment No.4, paras.8-9. Reflects the general obligation under Article 1 of the African Charter, see AFCommHPR Guidelines on Enforced Disappearances, para.4.1, p56.
[35] *O'Keeffe v. Ireland* (Application no. 35810/09) Judgment, 28 January 2014, para.177.
[36] Ibid.
[37] Grażyna Baranowska, How long does the past endure? 'Continuing violations' and the 'very distant past' before the UN Human Rights Committee, *Netherlands Quarterly of Human Rights* 41(2) (2023) 97-114.
[38] *N.Z. v Kazakhstan*, CAT/C/53/D/495/2012, 19 January 2015, para.12.3.
[39] *A. A. v. Azerbaijan*, Communication No. 247/2004, 25 November 2005, para.6.4.
[40] See *Cyprus v. Turkey,* para.136; and *Varnava and Others v Turkey*, para.148.

15. The UN Committee against Torture has made obiter remarks on the right to remedy for acts of the former regime that had not ratified the Convention, that a State remains 'morally bound to provide a remedy to victims of torture and to their dependants…The Committee urges the State party not to leave the victims of torture and their dependants wholly without a remedy….[and] would welcome, in the spirit of article 14 of the Convention, the enactment of appropriate legislation to render applications for compensations viable.'[41] Torture, extrajudicial/arbitrary killings and disappearances amount to international crimes and jus cogens, that require their investigation and appropriate reparations to victims.[42] Time cannot be used to perpetuate injustice until all the victims and those who remember them are dead. As Judge Cançado Trindade stated in the *Belgium v Senegal* ICJ ruling,

> 'the passing of time does not heal the profound scars in human dignity inflicted by torture. Such scars can even be transmitted from one generation to another. Victims of such a grave breach of their inherent rights (as torture), who furthermore have no access to justice (*lato sensu*, i.e., no realization of justice), are victims also of a *continuing* violation (denial of justice), to be taken into account as a whole, without the imposition of time-limits decharacterizing the continuing breach, until that violation ceases.'[43]

This view was more recently shared by the Judge Harutyunyan in the European Court's Advisory Opinion on torture in Armenia that,

> 'Victims of torture who have no access to justice are victims of a continuing violation until that violation ceases. The passing of time for such a grave violation of inherent rights cannot lead to subsequent impunity. Impunity is an additional violation of human rights. The imperative of the preservation of the integrity of human dignity stands well above pleas of non-retroactivity'.[44]

16. The European Court has recognised that the failure to remedy violations caused by extrajudicial killings and disappearances can amount to a continuing violation that 'imposes a particular burden on the relatives of missing persons who are kept in ignorance of the fate of their loved ones and suffer the anguish of uncertainty'.[45] Accordingly such a violation can continue even where those responsible, including the State have been held responsible for a disappearance, but the continuing failure of the State to fully remedy the

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[41] *O.R., M.M., and M.S. v. Argentina,* Communications No. 1/1988, 2/1988 and 3/1988, November 1989, CAT/C/WG/3/DR/1, 2 and 3/1988, para.9.

[42] E.g. Articles 4(2), 6 and 7, ICCPR. See Article 7, Rome Statute of the International Criminal Court. The obligation to provide a remedy for gross violations of human rights is considered non-derogable given it is an obligation 'inherent' in key human rights treaties – see Human Rights Committee, General Comment No.29, CCPR/C/21/Rev.1/Add.11 31 August 2001, para.14.

[43] Separate opinion of Judge Cançado Trindade, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 20 July 2012, para.149.

[44] Concurring opinion of Judge Harutyunyan, Advisory Opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture, Requested by the Armenian Court of Cassation, Request no. P16-2021-001, 26 April 2022.

[45] *Varnava and others v Turkey*, Judgment, 18 September 2009, para.200.

harm suffered, such as responding to information of the fate of those killed leaving the victims to 'bear the brunt of the efforts' in dealing with the consequences of such violations.[46]

17. Such an obligation to ensure access to an effective remedy extends to torture committed by State officials of the former regime. The finding of criminal responsibility and even their payment of reparations to victims, does not extinguish the State's obligation to ensure an effective remedy for torture.[47] Under the UN Basic Principles on the Right to Remedy and Reparations, a State '*shall* provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law…'[48] The use of 'shall' rather than 'should', reflects the binding norms in customary international law in this regard.[49] Responsibility can be attributed to the Chadian State for acts of torture, extrajudicial killings and disappearances under the Habré regime on the basis of official acts of organs of the State[50] and actions of State officials.[51] The institution directly implicated in torture, extrajudicial killings and disappearance, the Directorate of Documentation and Security was an organ of the State under Habré, and those convicted in the 2015 case, include leading officials of the DDS.[52] As such, the continuing nature of the violation obligates the Chadian government to implement the right to remedy for victims of the Habré regime and actions of the DDS.
18. In relation to the *Abaifouta et al. v. Chad* the breach of Chad's obligation to remedy torture, extrajudicial killings and disappearances requires consideration of the need for 'prompt' redress in such circumstances and whether undue delay can in itself be considered a violation. The UN Committee against Torture and the African Commission have held that the failure to 'provide prompt access to redress constitutes de facto denial of redress' and amounts to a violation of the obligation to an effective remedy.[53] The failure to implement

[46] Ibid.
[47] See *Kepa Urra Guridi v. Spain*, Communication No. 212/2002, U.N. Doc. CAT/C/34/D/212/2002 (2005).
[48] Principle 15, A/RES/60/147, emphasis added.
[49] Gabriela Echeverria, *The UN Principles and Guidelines on Reparation: Is There an Enforceable Right to Reparation for Victims of Human Rights and International Humanitarian Law Violations?,* PhD thesis, University of Essex (2017), p247.
[50] Responsibility can be attributed to the State, where the 'conduct of any State organ shall be considered an act of that State under international law' under Article 4, ARISWA.
[51] Even if the DDS is not considered an organ, its officials acting as persons empowered by Chadian law as having governmental authority can also attribute responsibility to the State. Article 5, ARISWA.
[52] Including Saleh Younous former head of the DDS and Mahamat Djibrine, Chief of Internal Security, Coordinator of Documentation of the DDS. Needless to say, Habré as President of the Chadian State, was found responsible for torture before the EAC during his official position.
[53] General Comment No.3, CAT/C/GC/3, para.17; and AFCommHPR, General Comment No. 4, para.26.

the court ordered compensation awards to victims of the Habré regime, amounts to a violation of the obligation to ensure an effective remedy. It is a basic tenet of law that for rights to be effective, remedies for their breach must be enforced,[54] as the European Court has held, 'it would be inconceivable that Article 13 provided the right to have a remedy, and for it to be effective, without protecting the implementation of remedies afforded. To hold the contrary would lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention.'[55] Moreover, the failure of the Chadian government to put legislation and mechanisms in place to provide reparations beyond compensation to victims of the Habré regime also violates the right to an effective remedy for torture, extrajudicial killings and disappearances,[56] which has to implemented 'without unjustified delays'.[57] The obligation to remedy for gross violations of human rights such as torture is 'regulated in all its aspects (scope, nature, modes, and establishment of the beneficiaries) by international law, cannot be modified or not fulfilled by the obligated State by invoking domestic legal provisions.'[58]

II. Temporal scope of delay

19. The question of at what point should the delay on behalf of the Chadian government be counted from could be argued as not from the sentencing decision in 2015, but from the date of the occurrence of the violation or after the end of the Habré regime and there were 'reasonable grounds to believe' that torture had taken place, even in the absence of a complaint.[59] The European Court orders default interest to be paid in the event that that time-limit is exceeded for compensation awards. This is a simple interest to be payable on the awarded compensation amounts 'at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.'[60] The Inter-American Court has ordered interest on any delayed payments to be in line with the rate in the relevant country's banking system.[61] In the Chadian context the amount of compensation that is owed to the victims should be increased in light of the interest rates

[54] Dinah Shelton, *Remedies in International Human Rights Law*, (3rd edn.) OUP (2015), p377.
[55] *Kaić and Others v. Croatia*, (Application no. 22014/04) Judgment, 17 October 2008, para.40.
[56] CAT/C/GC/3, para.20; CCPR/C/GC/36, para.13; and AFCommHPR General Comment No.4, paras.8-9.
[57] AFCommHPR Guidelines on Enforced Disappearances, para.4.1.9, p82.
[58] *Gómez-Paquiyauri Brothers v. Peru*, Judgment, 8 July 2004 (Merits, Reparations and Costs), para.189; citing *Myrna Mack Chang v. Guatemala,* Judgment 25November 2003 (Merits, Reparations and Costs), para.236.
[59] UN Committee against Torture, General Comment No. 2 on the Implementation of article 2 of the Convention by States parties, (2007), para.18; and AFCommPHR, General Comment No.4, para.25.
[60] *Varnava and Others v. Turkey*, para.231.
[61] *Loayza-Tamayo v. Peru,* Judgment, 27 November 1998 (Reparations and Costs), para.190; and more recently *Members and Militants of the Patriotic Union v. Colombia,* Judgment 27 July 2022 (Preliminary Objections, Merits, Reparations and Costs), para.652.

of the past eight years since the 2015 compensation award, but the failure to implement the obligation of an effective remedy should stretch back to the point where the State was aware there were 'reasonable grounds to believe' that torture had taken place.

20. As the 2005 UN Basic Principles on the Right to Remedy and Reparations along with other bodies, such as the UN Committee against Torture has iterated, that redress for gross violations of human rights, including torture, extrajudicial killings and disappearances, should be available independently of any criminal liability being established without undue delay.[62] The UN Committee against Torture has held that even where individual State officials have been prosecuted and ordered to provide compensation, the State still has a 'duty to guarantee compensation for the victim of an act of torture.'[63] Such an obligation to remedy torture 'should cover all the damages suffered by the victim, which includes, among other measures, restitution, compensation, and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case.'[64] There are similar obligations for other gross violations of human rights, including extrajudicial killings and disappearances. Where the direct victim of torture has died awaiting reparations, their dependents, family and next of kin are entitled to benefit from such an award and any other further measures that are appropriate to remedy the harm caused.[65] Similarly for extrajudicial killings and disappearances the obligation to remedy should be prompt and allow family members to have their family member official declared deceased in order to receive reparations.[66] The Inter-American Court in the case of Peru required the State to allow the next of kin of those killed and disappeared to transfer their eligibility for reparations to children or grandchildren, given the passage of time since the violation and the delivery of redress.[67]

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[62] Principle 9, A/RES/60/147; and CAT/C/GC/3, paras.26-27.
[63] *Kepa Urra Guridi v. Spain*, Communication No. 212/2002, U.N. Doc. CAT/C/34/D/212/2002 (2005), para.6.8. In other jurisdictions the State has been held responsible alongside individuals convicted of such gross violations of human rights and ordered to make reparations, see for instance Molina Theissen case, C-01077-1998-00002 de.1ro. Tribunal Primero De Sentencia Penal, Narcoactividad y Delitos Contra El Ambiente De Mayor Riesgo Grupo "C", Guatemala, 3 May 2018; T. Jiménez López, 2 December 2010, paras.440–52.
[64] *Guridi v Spain* ibid.
[65] UN CAT Article 14(1). See Clara Sandoval-Villalba, The Concepts of 'Injured Party' and 'Victim' of Gross Human Rights Violations in the Jurisprudence of the Inter-American Court of Human Rights: A Commentary on their Implications for Reparations, in C. Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Brill (2009), 243-282.
[66] CCPR/C/GC/36, para.58.
[67] *Tenorio Roca and Others v Peru*, Judgment, 22 June 2016, paras.296–298.

III. The impact of delay and appropriate reparations

21. In relation to the third question on the impact of delay on the right to remedy and appropriate reparations to redress such a breach, the European Court has found in a number of cases that 'there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage.'[68] Furthermore, the Court has held 'this presumption to be particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success.'[69] The failure to implement a reparation order serves to continue victims' harm caused by the initial violations and the culture of impunity and silence around them. As such, this increases the gravity of the nature of the violation and the need to prioritise the implementation of such an order. Fikfak in analysing the compensation practice of the European Court, found that torture attracts some of the highest awards, given the special stigma attached to it and as a means to dissuade the State from continuation or repetition of such violations.[70] In addition, the imposition of non-pecuniary compensation awards for delay in cases of extrajudicial killings and disappearances, often means that States are more willing to pay compensation than comply with other orders of the Court.[71]

22. The obligation to remedy the breach of implementing the right to remedy for victims of gross violations of human rights requires in the first instance for the State to cease the continuing violation, i.e. to implement the compensation already ordered, but as outlined above the obligation to remedy torture, extrajudicial killings and disappearances requires more than compensation. Three forms of reparations are appropriate beyond the delivery of the compensation awarded: rehabilitation; measures of satisfaction; and guarantees of non-repetition - we turn to each of these forms in turn.

a. Rehabilitation

23. The ongoing failure to comply with reparations for victims only serves to deteriorate victims' physical and mental health. Thus the obligation to remedy such harm is long-term to remedy the life-long effects of torture on a victim. The 2005 UN Basic Principles on

[68] *Cordino v. Italy* (No.1) (Application no. 36813/97) Judgment, 29 March 2006, para.203; and *Wasserman v. Russia* (No. 2) (Application no. 21071/05) Judgment, 10 April 2008, para.50.
[69] *Burdov v. Russia* (No.2) (Application no. 33509/04) Judgment, 15 January 2009, para.100.
[70] Veronika Fikfak, Non-pecuniary damages before the European Court of Human Rights: Forget the victim; it's all about the state, *Leiden Journal of International Law* (2020), 33, 335–369, p356.
[71] See Veronika Fikfak, Changing State Behaviour: Damages before the European Court of Human Rights, *European Journal of International Law*, 29(4) (2018), 1091–1125.

Reparations, state that rehabilitation covers 'medical and psychological care as well as legal and social services',[72] so as to 're-establish the dignity of the victims'.[73] The UN Committee against Torture defines rehabilitation as the 'restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.'[74]

24. Rehabilitation serves an important function in aiming to rebuild some of the functional capacity of the victim, improve their quality of life and live in a more dignified way. Rehabilitation often serves as a precondition for victims to benefit from other forms of reparations.[75] The African Commission has outlined that rehabilitation,

> 'seeks to enable the maximum possible self-sufficiency and function for the victim (individual and or collective), and may involve adjustments to the victim's physical and social environment….[and] should aim to restore, as far as possible, their independence, and physical, mental, social, cultural, spiritual and vocational ability; and full inclusion and participation in society. '[76]

25. The Tunisian Truth and Dignity Commission found that rehabilitation is 'a comprehensive process aiming to assist individuals in regaining their adaption capability in all areas of life' and a means to 'help victims to overcome the sense of exclusion and marginalization through regaining self-confidence and trust ... leaving behind the status of victim and growing a sense of belonging to the community'.[77] For Judge Cançado Trindade, rehabilitation of victims goes beyond the material services that can be provided by also contributing to their social reintegration,

> 'Rehabilitation nourishes the victims' hope in a minimum of social justice. Rehabilitation helps to restructure the psyche of the victims, in their difficult quest for recovery from the injustice of humiliation. Rehabilitation as a form of reparation is intended to reorder ultimately the human relations disrupted by acts of cruelty, in breach of human rights. In sum, rehabilitation restores one's faith in human justice.'[78]

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[72] Principle 21.
[73] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012 p332, separate opinion of Judge Cançado Trindade, para.51
[74] General Comment No. 3 of the Committee against Torture, 19 November 2012, CAT/C/GC/3, para.11.
[75] See Clara Sandoval, *Rehabilitation as a Form of Reparation under International Law*, (REDRESS, 2009).
[76] para.40.
[77] TDC Final Report (2020), p423.
[78] *Diallo*, Separate Opinion, para.85.

26. For victims of torture, they often need a long-term package of services as their physical and psychological needs can change through old age and deteriorating health. The African Commission recommends that medical rehabilitation should include 'unimpeded and regular access to comprehensive healthcare',[79] and requires States to 'adopt a holistic, long-term and integrated approach to rehabilitation and ensure that domestic legislation provides for specialised services to victims of torture and other ill-treatment that are available, appropriate and promptly accessible.'[80] The Inter-American Court has regularly ordered treatment to be provided as long as necessary or permanently for the life of the victim,[81] essential costs (such as transport and interpretation) are covered,[82] priority access to treatments,[83] and where the state is unable to provide specialist services to meet the costs through the use of private or civil society institutions.[84] Rehabilitation should be freely provided to victims,[85] including those exiled,[86] so as to ensure that victims' resources or compensation is not absorbed in meeting their health, social and legal needs. In this case, Chad is obliged to ensure the specialist, free delivery of rehabilitation to victims of torture during the Habré regime.

b. Measures of Satisfaction

27. Measures of satisfaction are supposed to officially reaffirm the victim's dignity and acknowledge their suffering.[87] As public-facing measures they can also 'awaken […] public awareness to avoid repetition', and 'maintain remembrance of the victim'.[88] Accordingly measures of satisfaction are an important way to reiterate the truth around who suffered

[79] General Comment No.4, para.61.
[80] Ibid. para.41.
[81] *Véliz Franco et al. v. Guatemala*, Judgment, Preliminary Objections, Merits, Reparations and Costs, Series C No. 277, 19 May 2014, para.280; *Rosendo Cantú and Another v. Mexico,* Preliminary Objection, Merits, Reparations and Costs, Judgment 31 August 2010, Series C No.216, para.252; and *The Massacres of El Mozote and Nearby Places v El Salvador*, Judgment, Merits, reparations and costs, Series C No. 252, 25 October 2012, para.352.
[82] *Fernández Ortega et al. v Mexico*. Judgment, Preliminary Objection, Merits, Reparations, and Costs, Series C No.215, 30 August 30 2010, para.251
[83] *Women Victims of Sexual Torture in Atenco v. Mexico,* Preliminary Objections, Merits, Reparations, and Costs, Judgment, 28 November 2018, Series C No.371, para.341.
[84] *Rosendo Cantú and Another v. Mexico,* Preliminary Objection, Merits, Reparations and Costs, Judgment 31 August 2010, Series C No.216, para.253.
[85] *Castro Castro v Peru*, para.449. See state practice - Law on Principles of Social Protection, Protection of Civil Victims of War, and Protection of Families with Children ("Official Gazette of the Federation of Bosnia and Herzegovina", no. 36/99); and Law on Civilian Invalids of War ("Official Gazette of RS", No. 52/96).
[86] *Castro Castro v Peru*, para. 450; and *García Lucero et al. v. Chile*, Judgment, 28 August 2013, para.233.
[87] *Plan de Sánchez Massacre v. Guatemala*, Judgment, Reparations, 19 November 2004, Series C No.116, para.93; AND Shelton (2015), p.157.
[88] Principle 22, UNBPG; *19 Tradesmen v. Colombia*, Judgment 5 July 2004, Reparations and Costs, Series C No.109, paras 272–273; and *Myrna Mack-Chang v. Guatemala*, Judgment 25 November 2003, Merits, reparations and costs, Series C No.101, para. 286.

violations and those responsible.[89] Such measures can include memorials, apologies, acknowledgements of responsibility and memorial prayers as a 'communal process of remembering and commemorating the pain and victories of the past.'[90] Measures of satisfaction can include memorials and monuments to publicly commemorate victims as 'a way of dignifying them and as a reminder of the context of violence they experienced, which the State undertakes to prevent in the future'.[91] Such physical edifices need to take into account local social and cultural practices through 'multilayered strategies for honoring victims, and advancing justice and social reconciliation'.[92] For victims of torture and disappearances, memorials have been used in Nepal, Kenya and Chile to publicly commemorate such violations.[93]

28. Measures of satisfaction are symbolic measures intended to covey 'an acknowledgement of the breach, an expression of regret, [or] a formal apology', but must not be disproportionate to the injured or humiliating to the responsible State.[94] In the case of Chad, victims should be consulted on the most appropriate forms of satisfaction. Such measures do not replace compensation awards or rehabilitation services, but complement them.

c. Guarantees of non-repetition

29. Guarantees of non-repetition are a key form of reparations and redress.[95] Reforming domestic law is a key part of guaranteeing the non-repetition of violations.[96] Measures such as bringing in new legislation, regulation of security organisations in compliance with human rights and international humanitarian law, alongside training on best practices on investigations as well as victim-centred, gender and trauma-sensitive reparation procedures can help to avoid re-traumatisation of victims.[97] Greece introduced domestic legislation to facilitate the implementation of supranational decisions and judgments, and Serbia used an extraordinary remedy to implement the decision of the UN Committee against Torture.[98]

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[89] ACPHR General Comment 4, paras.10 and 44.
[90] South Africa Truth and Reconciliation Commission, Final Report, Volume 5, Chapter 5, p175.
[91] *Gonzáles et al. ('Cotton Field') v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Series C No.205, 16 November 2009, para.471.
[92] Robin Adèle Greeley, Michael R. Orwicz, José Luis Falconi, Ana María Reyes, Fernando J. Rosenberg and Lisa J. Laplante, Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights, *International Journal of Transitional Justice*, 14(1) (2020), 165–192, p167.
[93] Though they are not without their controversy – see Katrien Klep, Tracing collective memory: Chilean truth commissions and memorial sites, *Memory Studies* 5(3)(2012) 259-269.
[94] Article 37(3), RSIWA.
[95] UN Committee against Torture, General comment No. 3 (2012), CAT/C/GC/3, para.2; and African Commission, General Comment 4, para.10.
[96] CAT/C/GC/3, para.18.
[97] See Principle 23, UN Basic Principles 2005.
[98] For further examples see - Providing reparation for human rights cases: A practical guide for African States, The Human Rights Implementation Centre, University of Bristol Law School, p16.

In 2017 Kenya introduced the Prevention of Torture Act to enable victims of torture to obtain rehabilitation and for the costs to be recovered by a convicted perpetrator. For Chad adopting domestic laws to facilitate an effective remedy for victims of torture, extrajudicial killings and disappearances will be crucial to prevent the repetition of the violations of the obligation to remedy such violations.

C. Conclusion

30. The obligation to remedy torture, extrajudicial killings and disappearances is a fundamental right to victims of such gross violations of human rights. Such an obligation is not discharged by the issuance of court orders on compensation against responsible individuals, but by ensuring the implementation of such orders and any other measure required to provide holistic redress to victims. As such, the Chadian government is responsible for fulfilling the obligation to remedy the harm suffered by victims of the Habré regime, including the payment of compensation where or not the responsible former State officials are indigent, as well as to provide a more comprehensive range of reparations including rehabilitation, satisfaction and guarantees of non-repetition. The obligation to remedy such gross violations rests with the State, it is up to the State to seek recovery of the cost of reparations from any perpetrator of such gross violations.[99] Given the undue delay in implementing the compensation awards and establishing mechanisms for the creation of other forms of reparations, the Chadian government is responsible for paying non-pecuniary compensation to victims for such an unreasonable delay as well as interest on any previous compensation awards. The justification of inadequate resources, ongoing security issues or availability of external trust funds, do not mitigate or extinguish the Chadian government's obligation to ensure an adequate, effective and prompt remedy to victims of the Habré regime and any others who have suffered such violations.

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8th November 2023,
Derry, Northern Ireland

[99] Principle 15, A/RES/60/147.