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To  
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African Commission on Human and Peoples' Rights  
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By Email

N'Djamena, 10 November 2017

Re: Introduction of Complaint in the case of *Clément Abaïfouta and 6, 999 Others*  
*(represented by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me Kemneloun Djiraibé,*  
*assisted by the Association Tchadienne pour la Promotion et la Défense des Droits de*  
*l'Homme (ATPDH), The Redress Trust (REDRESS), Human Rights Watch (HRW) and*  
*Freshfields Bruckhaus Deringer LLP) v The Republic of Chad*

Dear Dr Maboreke,

Pursuant to Articles 55 and 56 of the African Charter on Human and Peoples' Rights, read in conjunction with Rule 93 of the Rules of Procedure of the African Commission on Human and Peoples' Rights, this submission is presented as the introduction of a complaint submitted on behalf of Clément Abaïfouta and 6, 999 other victims of the Hissein Habré regime against the Republic of Chad, represented by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me

Delphine Kenneloun Djiraibé, assisted by ATPDH, REDRESS, HRW and Freshfields Bruckhaus Deringer LLP.

We respectfully request that the Commission be seized of this complaint pursuant to Rule 93 of the Rules of Procedure and for subsequent referral to the African Court on Human and Peoples' Rights pursuant to Rules 84 (2) and 118 (3) and Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

Sincerely,

Jacqueline Moudeïna

Lambi Soulgan

Delphine Kenneloun Djiraibé

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

BETWEEN:

**CLÉMENT ABAÏFOUTA AND 6, 999 OTHERS**

Applicants

AND

**REPUBLIC OF CHAD**

Respondent

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**COMMUNICATION**

**10 NOVEMBER 2017**

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## I. INTRODUCTION

1. This Communication is submitted to the African Commission on Human and Peoples' Rights (*African Commission*) on behalf of Clément Abaïfouta and 6,999 other victims of widespread violations of human rights (the *Applicants*) committed by the State of the Republic of Chad (the *Respondent State* or *Chad*) during the regime of Hissein Habré from 1982 to 1990. Mr. Abaïfouta, born on 15 April 1958 in Djouman, Mayo-Kebbi East, Chad, is the President of the Association des Victimes de Crimes du Régime de Hissène Habré (AVCRHH). He was arrested on 12 May 1989 in N'Djaména and was detained in the Prison called "Les Locaux" in N'Djaména. He was freed on 7 March 1990. Together with the 6,999 other applicants in this case, he participated in the proceedings before the Special Criminal Court of N'Djaména as a civil party.<sup>1</sup> The Applicants were represented before the Special Criminal Court of N'Djaména by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me Kenneloun Djiraibé.<sup>2</sup>

2. The Applicants are represented in this proceeding by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me Kenneloun Djiraibé,<sup>3</sup> assisted by the Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme (*ATPDH*), The Redress Trust (*REDRESS*) and Freshfields Bruckhaus Deringer LLP.

3. This Communication is submitted in accordance with Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the *Charter*) and Rule 83(1) of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the *Commission Rules*). The Applicants have not submitted this Communication to any other regional or international procedure of investigation or settlement.

4. In a judgment dated 25 March 2015 (the *2015 Decision*), the Special Criminal Court of N'Djaména, Chad, found 20 security agents of the Direction de la documentation et de la sécurité (DDS) guilty of crimes including murder, acts of torture and barbarism, kidnapping,

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<sup>1</sup> **Exhibit B**: République du Tchad, Cour Criminelle Spéciale de N'Djaména, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015.

<sup>2</sup> See **Exhibit A**, confirmation of representation of the interests of 7,000 civil parties before the Special Criminal Court of N'djaména, signed by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me Delphine Kenneloum Djiraibé, dated 7 November 2017.

<sup>3</sup> *Ibid*; see also specifically Power of Attorney for Mr Clement Abaïfouta dated 14 December 2012 (**Exhibit F**).

unlawful and arbitrary detention, intentional and lethal physical assault, cruel treatment and complicity.<sup>4</sup>

5. In the same judgment, the Court attributed civil responsibility to Chad (also finding the convicted agents civilly responsible).<sup>5</sup> The finding of Chad's civil responsibility was made on the basis that the security agents had acted as agents of the State.<sup>6</sup> The 7,000 individual applicants who are now the Applicants in this Communication joined the criminal proceedings in that matter as civil parties.

6. As discussed below (see paragraphs 18 to 20 below), in its judgment, the Court ordered the convicted agents and Chad to pay, in equal parts, a total of 75 billion CFA Francs (approximately \$125 million USD) to the civil parties.<sup>7</sup> The Court further ordered the Prime Minister to put in place a Commission charged with the execution of the order of compensation.<sup>8</sup> It also ordered the *Procureur Général* of the Court of Appeal of N'Djamena to take all measures to prevent the concealment, dissipation or sale of assets belonging to the convicted agents,<sup>9</sup> and charged the *Parquet général* of the Court of Appeal of N'Djamena with execution of the judgment in respect of the criminal convictions of the former DDS agents.<sup>10</sup>

7. To date, more than two and a half years since the 2015 Decision was rendered, the Respondent State has failed to take any action to comply with the judgment. It has not paid the Court-ordered reparations to the Applicants nor taken any steps to create the Commission charged with overseeing execution of the *order* of reparations.<sup>11</sup> This failure to provide any

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<sup>4</sup> **Exhibit B:** République du Tchad, Cour Criminelle Spéciale de N'Djamena, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015, pp 4, 10.

<sup>5</sup> *Ibid*, p 11.

<sup>6</sup> *Ibid*, p 12.

<sup>7</sup> *Ibid*, p 12.

<sup>8</sup> *Ibid*, p 13.

<sup>9</sup> *Ibid*, p 11.

<sup>10</sup> *Ibid*, p 13.

<sup>11</sup> **Exhibit E:** Letter from REDRESS et al to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 26 March 2017; **Exhibit D:** Letter from Ms Jacqueline Moudeïna to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 25 March 2017, transmitted by REDRESS, l'Association tchadienne pour la promotion et la défense des droits de l'Homme, l'Association des Victimes de Crimes du Régime d'Hissein Habré and the International Commission of Jurists, 28 March 2017, <http://www.redress.org/downloads/sr-de-greiffchadlette.pdf>; **Exhibit C:** Letter from Ms Jacqueline Moudeïna to the Prime Minister of Chad (Mr Albert

remedy is contrary to Articles 7, 14 and 1 of the Charter, individually and Articles 4, 5, 6, 7 and 14 in conjunction with Article 1.<sup>12</sup>

8. For reasons that will be explained in full in the body of this Communication, the Applicants respectfully request that the African Commission submit this case to the African Court on Human and Peoples' Rights (the **Court**) pursuant to Article 5(1)(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights<sup>13</sup> (the **Protocol**).

## II. FACTUAL BACKGROUND

### A. HISTORICAL CONTEXT FOR THE CRIMINAL PROCEEDINGS IN CHAD

9. Following its independence on 11 August 1960, Chad, a former French colony, faced numerous internal conflicts. In 1975, the first President of Chad, François Ngartha Tombalbaye, was overthrown following a military coup led by General Felix Malloum. Hisssein Habré, then head of a rebel group, supported General Malloum and became Prime Minister. On 2 February 1979, a conflict erupted between the supporters of Malloum, on the one hand, and Habré, on the other. This led to the Lagos Peace Accord of 10 November 1979 and the establishment of a Transitional Government of National Unity ("*Gouvernement d'Union Nationale de Transition*") (**GUNT**), presided over by a head of a different rebel group, Goukouni Wedeye. Hisssein Habré became Minister of Defence in the GUNT. As a result of new conflicts between Goukouni and Habré, Habré went into exile first in Cameroon and later in Sudan. In 1981, Goukouni and the Libyan President Muammar Gaddafi publicly declared their intention to merge Chad with Libya. The United States lent its support to the Habré-led Armed Forces of the North ("*Forces Armées du Nord*") (**FAN**) to prevent Libyan

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Pahimi Padacké), 16 February 2017; and Human Rights Watch, "Chad: Court Order, But No Cash, for Ex-Dictator's Victims", 24 March 2016.

<sup>12</sup> For the avoidance of doubt, the Applicants do not seek the re-examination of the Respondent State's original human rights violations that took place during the regime of Hisssein Habré, as these have already been established by the Respondent State's own court. The Applicants consider that, as a result of the Respondent State's failure to implement the 2015 Decision, those violations continue, and request that findings be made as to the Respondent State's failure to provide reparations for those violations.

<sup>13</sup> 9 June 1998, OAU Doc. OAU/LEG/EXP/AFCHPRIPROT(III).

expansion. Hisssein Habré took the capital of N’Djamena on 7 June 1982.<sup>14</sup> Following a coup d’état, Habré became President of the Republic of Chad on 7 June 1982.<sup>15</sup>

10. From 1982 to 1990, Hisssein Habré led an authoritarian regime responsible for massive and systematic human rights violations.<sup>16</sup>

11. On 26 January 1983, Habré created the DDS by decree, composed of several organs over which he had complete control.<sup>17</sup> The DDS quickly became a repressive organ of the Habré regime and perpetrated widespread human rights violations.<sup>18</sup>

12. On 1 December 1990, Idriss Deby Itno, leader of the Patriotic Salvation Movement (“*Mouvement Patriotique du Salut*”) (**MPS**) seized power in Chad and forced Hisssein Habré into exile in Cameroon and later Senegal.

13. President Idriss Deby Itno established the Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habré, his Accomplices and/or Accessories (the **Commission of Inquiry**). It produced a report on 7 May 1992 describing violations committed, notably within and by the DDS.<sup>19</sup> The report described mass executions and arbitrary arrests committed by DDS agents. The assets of individuals arrested were systematically seized.<sup>20</sup> The report also described the existence of seven detention centres in

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<sup>14</sup> Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habré, his Accomplices and/or Accessories: Investigation of Crimes against the Physical and Mental Integrity of Persons and their Possessions, 7 May 1992, pp 58-61; Human Rights Watch, “Chad: The Victims of Habré Still Awaiting Justice”, July 2005 Vol. 17, No. 10(A), pp 3 and 4, <https://www.hrw.org/reports/2005/chad0705/chad0705.pdf>.

<sup>15</sup> Consideration of Reports submitted by States Parties under article 19 of the Convention: Concluding observations of the Committee against Torture (CAT): Chad, CAT/C/TCD/CO/1, para 19; Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of Human Rights in Chad, E/CN.4/2005/121, para 11; CAT, *Suleymane Guengueng and others v Senegal*, Communication 181/2001, para 2.1; Human Rights Watch, “The Chad of Hisssein Habré: 1982 – 1990,” 2013, pp 58-59, (Human Rights Watch, “The Plain of the Dead”), [https://www.hrw.org/sites/default/files/reports/chad1013frwebwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/chad1013frwebwcover_0.pdf). See English version (summary) at [https://www.hrw.org/sites/default/files/reports/chad1213summary\\_english.pdf](https://www.hrw.org/sites/default/files/reports/chad1213summary_english.pdf).

<sup>16</sup> Appeals Chamber of the Extraordinary African Chambers, *The Prosecutor v. Hisssein Habré*, Decision of 27 April 2017; Human Rights Watch, “The Plain of the Dead”.

<sup>17</sup> Human Rights Watch, “Chad: The Victims of Habré Still Awaiting Justice”, p 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> Chad: Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habré, his Accomplices and/or Accessories, Decree No. 014 /P.CE/CJ/90, 29 December 1990, <https://www.usip.org/sites/default/files/file/resources/collections/commissions/Chad-Charter.pdf>.

<sup>20</sup> *Ibid.* p. 62 - 67 and 70.



Chad, including a swimming pool transformed into a prison that was located close to the premises of the DDS. According to testimonies collected by the Commission of Inquiry, systematic torture took place during interrogations in order to force the detained individuals to confess to crimes alleged against them. Moreover, the Commission of Inquiry called attention to the poor conditions in the detention centres, revealing: the small size of cells; overcrowding; unbearable heat in the summer; lack of food, water, hygiene and medical care; and asphyxiation, fatigue, poisoning and diseases resulting in the death of detainees.<sup>21</sup>

14. The Commission of Inquiry reported that “as a result of this oppression, more than 40,000 victims, 80,000 orphans, 30,000 widows and 200,000 persons were left without moral or material support”.<sup>22</sup> The Commission of Inquiry heard 1,726 witnesses and carried out 3 exhumations of mass graves.<sup>23</sup> Because of limited funds the Commission’s inquiry could not cover the entirety of Chad’s territory.

15. Additionally, victims of the Habré regime filed a complaint in Senegal against Habré as an individual. After years of proceedings,<sup>24</sup> Hisssein Habré was sentenced on 27 April 2017 by the Extraordinary African Chambers (the *EAC*) “to life imprisonment for war crimes, humanity and crimes of torture”.<sup>25</sup> The EAC also sentenced him to pay compensation equivalent to 82,290,000,000 CFA Francs (approximately \$148 million USD) for the benefit of the 7,396 civil parties.<sup>26</sup> Following the arrest of Habré in Senegal in July 2013, Ismael Hachim, President of the Chadian Association of Victims of Political Repression and Crime, said: “after the arrest of Hisssein Habré in Senegal, we realise that we could also demand that

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, p 97.

<sup>23</sup> *Ibid.*, p 14.

<sup>24</sup> Reed Brody, “The case of Hisssein Habré: Victims bring a dictator to Justice”, April 2017, pp 10-15, [https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2\\_Downloads/Fachinformationen/Analyse/Analysis70-The\\_Habre\\_Case.pdf](https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analysis70-The_Habre_Case.pdf).

<sup>25</sup> The Special Court of Senegal’s verdict condemning Hisssein Habré was welcomed by the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein: “I welcome the verdict against the former President of Chad, Hisssein Habré, for crimes against humanity, summary executions, torture and rape, by a special court in Senegal. After years of struggle and many setbacks on the road to justice, this verdict is as historical as hard-won.” Geneva, 30 May 2016,

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20033&LangID=F>.

<sup>26</sup> Appeals Chamber of the Extraordinary African Chambers, *The Prosecutor v. Hisssein HABRE*, dispositif, pp. 225-227.

justice be done here in our own country. It is now up to the Chadian justice system to do its duty.”<sup>27</sup>

## **B. THE CRIMINAL PROCEEDINGS IN CHAD**

16. On 25 October 2000, ten victims filed complaints as civil parties with the Registry of the “*juge d’instruction premier cabinet*” (the investigative judge of the First Chamber) of Chad against identified agents of Habré’s regime for acts of torture, murder and disappearances.<sup>28</sup>

17. As the process went on, additional victims filed complaints, and the number of civil parties that were admitted into the criminal proceedings totalled 7,000. For the lawyer Me Moudeïna, the trial was “a necessary step towards reconciliation in Chad, to end impunity and, above all else, to guarantee that the crimes of the past will never be repeated.”<sup>29</sup>

18. Following several delays due to jurisdictional disputes, the Special Criminal Court of N’Djamena delivered its verdict on 25 March 2015, and found 20 of the accused guilty<sup>30</sup> of “murder, acts of torture and barbarism, kidnapping, unlawful and arbitrary detention,

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<sup>27</sup> Quoted by Groupe d’Action Judiciaire (GAJ) of FIDH, “Pour le procès d’un dictateur - Retour sur l’affaire Hissein Habré”, November 2008, pp 23-24, <https://www.fidh.org/IMG/pdf/Hissenhabr511fr2008.pdf>.

<sup>28</sup> *Ibid*, pp 23 and on.

<sup>29</sup> Henri Thulliez, “Chad: Torture Survivors Finally Get Their Day in Court”, 5 December 2014, [https://www.huffingtonpost.com/henri-thulliez/chad-torture-survivors-fi\\_b\\_6269698.html?utm\\_hp\\_ref=tw](https://www.huffingtonpost.com/henri-thulliez/chad-torture-survivors-fi_b_6269698.html?utm_hp_ref=tw).

<sup>30</sup> The 20 officers who served the DDS accused by the Special Criminal Court of N’Djamena are: Saleh Younous Ali, former Director of the DDS (1983-1987); Mahamat (“El Djonto”) Djibrine, former coordinator of the services of the DDS and alleged member of the commissions in charge of repression against members of the ethnic groups Hadjarai and Zaghawa; Warou Fadou Ali, former head of River Security, an alleged member of the commission to crack down on members of the Zaghawa ethnic group; Nodjigoto Hauman, former Director of National Security, alleged member of the Commission of repression against members of the Zaghawa ethnic group; Saber Ribe, a former member of the Special Intervention Brigade (BSIR), an armed wing of the DDS, alleged member of the Commission to crack down on members of the Hadjarai ethnic group; Mahamat Wakaye Mahamat, former Deputy Director of National Security, alleged member of the committee responsible for repression against members of the Hadjarai ethnic group; Abdelkader Hassane Rangers, former chief of the foreign service of the DDS; Ibedou Abderlkerim, former agent open source DDS and former head of the external military liaison service of Ddsmbodou Boukari Moussa, former head of DDS and river safety; Mbaïkoubou Laoutaye Nestor, former controller of the DDS and former deputy director of the DDS DDS; Cherif Haliki Hagggar, former head of security for the DDS at N’Djaména airport; Abbas Abougrene Daoud, former head of river safety and research department of the DDS; Yalde Naffimbaye, former Deputy Chief of the DDS Intelligence Service and former Chief of Operations of the DDS, Nodjjanan Mayadingam Jerome, former Deputy Chief of Operations of the DDS in 1988-1989, Khalil Djibrine, DHA service in the south in 1983-1984, Koche Abdelkader, former director of National Security, Ali Mahamat Seid Ali Yec, former agent of River Security and N’Djamena airport, OUMAR SOUNI CHAHA commander of the BSIR, Mahamat Atteïb Abakar, former head of the DDS, Bechir Ali Hagggar, former zone commander in Moyen-Chari in 1984.

intentional and lethal physical assault, cruel treatment and complicity.”<sup>31</sup> The Court acquitted four of the accused and terminated the proceedings against five of the accused following their deaths. The judgment was welcomed by victims, civil society and was widely publicised by the press.<sup>32</sup> The lead Applicant in this Communication, Mr Clément Abaïfouta, who was a political prisoner under the Habré regime and forced to burry many of his co-detainees, stated after the verdict: “Finally, finally, the men who brutalised us and then laughed in our faces for decades have got their comeuppance”.<sup>33</sup>

19. The Court sentenced all convicted agents to forced labour. Seven were sentenced to life imprisonment; the others for a period ranging from five to 20 years. The Court ordered the State “to remove and exclude them from all public offices or positions; deprive them of all civil and political rights and of the right to wear military decorations; to seize all of their movable and immovable property; and ordered the *Procureur Général* of the N’Djamena Court of Appeal to take all measures to prevent the concealment, dissipation or sale of property belonging to the accused.”

20. Regarding civil liability, the Court ordered the convicted perpetrators to pay damages to the 7,000 civil parties the equivalent of 50% of 75,000,000,000 CFA francs (approximately \$125 million USD), with the remaining 50% to be borne by the Respondent State. The Court held that the Respondent State is liable for the acts of its agents.<sup>34</sup> Compensation to the

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<sup>31</sup> **Exhibit B** : République du Tchad, Cour Criminelle Spéciale de N’Djamena, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015, p 4, in accordance with articles 45, 46, 143, 149, 154, 239, 240, 241, 253, 256 of the Chad Penal Code, 1967.

<sup>32</sup> Human Rights Watch, “Chad : Habre-era Agents Convicted of Torture”, 25 March 2015, <http://reliefweb.int/report/chad/chad-habr-era-agents-convicted-torture-video>; Tchadinfo, “Tchad : lourdes peines de prison pour les complices de Habré”, 25 March 2015, <http://tchadinfos.com/politique/tchad-lourdes-peines-de-prison-complices-de-habr/>; LERAL, “Tchad : vingt-neuf présumés complices de Hissein Habré renvoyés pour jugement”, 27 October 2014, [http://www.leral.net/Tchad-Vingt-neuf-presumes-complices-de-Hissein-Habre-renvoies-pour-jugement\\_a127732.html#](http://www.leral.net/Tchad-Vingt-neuf-presumes-complices-de-Hissein-Habre-renvoies-pour-jugement_a127732.html#); Le Monde, “Tchad: perpétuité pour des agents de la police politique de l’ex Président Habré”, 25 March 2015, [http://www.lemonde.fr/afrique/article/2015/03/25/tchad-perpetuite-pour-des-agents-de-la-police-politique-de-l-ex-president-habre\\_4601071\\_3212.html](http://www.lemonde.fr/afrique/article/2015/03/25/tchad-perpetuite-pour-des-agents-de-la-police-politique-de-l-ex-president-habre_4601071_3212.html); Dakar actu, “ Justice: des agents du regime Habré condamnés au Tchad”, 25 March 2015, [http://www.dakaractu.com/Justice-Des-agents-du-Regime-Habre-condamnes-au-Tchad\\_a86912.html](http://www.dakaractu.com/Justice-Des-agents-du-Regime-Habre-condamnes-au-Tchad_a86912.html).

<sup>33</sup> HRW, ‘Chad: Habre-era Agents Convicted of Torture’, 25 March 2015, <https://www.hrw.org/news/2015/03/25/chad-habre-era-agents-convicted-torture>

<sup>34</sup> **Exhibit B** : République du Tchad, Cour Criminelle Spéciale de N’Djamena, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015, pp 11-12.

victims was to be allocated “according to the degree of the damage actually suffered.”<sup>35</sup> The Court ordered that the Prime Minister establish a Commission to implement the judgment, to be composed of two representatives from the Ministry of Justice, the collective counsel for the Civil Parties, a representative of the Ministry of Finance, two bailiffs and a representative of the SGG Ministry (*Implementation Commission*).<sup>36</sup> It also ordered the erection of a memorial to the victims within a period not exceeding one year from the date of the judgment. Additionally, the Court ordered that the headquarters of the former DDS be transformed into a museum.<sup>37</sup>

21. Article 475 of the Code of Criminal Procedure, which provides that contentious issues in relation to the execution of a judgment should be heard before the court or tribunal that rendered the decision,<sup>38</sup> does not apply to the 2015 Decision, which is instead governed by an *ad hoc* procedure set out in the 2015 Decision.<sup>39</sup> The execution of the 2015 Decision was tasked to an Implementation Commission to be presided over by the Prime Minister.<sup>40</sup> This Commission has not been established to date.

### C. CHAD’S FAILURE TO COMPLY WITH THE 2015 DECISION

22. The Respondent State has failed to take any measures to implement the reparations ordered by the Court and, to date, it has failed to comply with the 2015 Decision.

23. Faced with the non-implementation of the decision, Me Moudeïna, one of the lawyers representing the 7,000 victims, requested twice to meet with the Prime Minister as the person responsible for the establishment of the Implementation Commission but without success. Due to the continued delays, Me Moudeïna then sent a letter to the Prime Minister on 16 February 2017 to request the implementation of the reparations ordered by the court.<sup>41</sup> She

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<sup>35</sup> *Ibid*, p13.

<sup>36</sup> *Ibid*, pp12-13.

<sup>37</sup> *Ibid*, p12.

<sup>38</sup> Code of Criminal Procedure, 1967, Article 475 : “*Tous incidents contentieux relatifs à l’exécution sont portés devant le tribunal ou la cour qui a prononcé la sentence. Cette juridiction peut également procéder à la rectification des erreurs purement matérielles contenues dans ses décisions.*”

<sup>39</sup> **Exhibit B**: République du Tchad, Cour D’Appel de N’Djamena, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015, p13-14.

<sup>40</sup> *Ibid*.

<sup>41</sup> **Exhibit C**: Letter from Ms Jacqueline Moudeïna to the Prime Minister of Chad (Mr Albert Pahimi Padacké), 16 February 2017.

also seized the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on 25 March 2017, two years after the 2015 Decision was rendered.<sup>42</sup> In response to this letter, the Chadian government declared to the media on 25 March 2017 that it is in the process of establishing a monitoring committee and that this will be “done very quickly”. However, the government claimed that, in light of the financial crisis, it will not be easy to raise money, but that there is certainly no lack of political will.<sup>43</sup>

24. At the time of submission of this Communication, no compensation had been paid to the civil parties and no steps were taken to implement the reparations ordered by the Special Criminal Court of 25 March 2015.

25. In this case, remedies for thousands of victims have been unduly prolonged. Seventeen years after the first complaints were filed, and more than two and a half years since the March 2015 Decision was rendered, the reparations ordered by the Special Criminal Court of N’Djamena in favour of the Habré regime’s victims remain unpaid. This is despite the seriousness of the crimes, which were committed more than thirty years ago, and that some victims who were still alive when the Court rendered its 2015 Decision have now passed away without ever having received a tangible form of reparation. Prompt implementation of the 2015 Decision is therefore essential to ensure that as many victims as possible are able to still benefit from the Court-ordered reparation.

### **III. SUBJECT MATTER OF THIS COMMUNICATION**

26. The subject matter of this Communication is the Respondent State’s failure to comply with the 2015 Decision, including its failure to pay compensation to the Applicants, to erect a memorial for the victims and to turn the headquarters of the DDS into a museum.

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<sup>42</sup> **Exhibit D:** Letter from Ms Jacqueline Moudeřna to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 25 March 2017, transmitted by REDRESS, l’Association tchadienne pour la promotion et la défense des droits de l’Homme, l’Association des Victimes de Crimes du Ręgime d’Hissein Habré and the International Commission of Jurists, 28 March 2017, <http://www.redress.org/downloads/sr-de-greiffchadlette.pdf>. See also Human Rights Watch, “Chad: Court Order, But No Cash, for Ex-Dictator’s Victims”, 24 March 2016, <https://www.hrw.org/news/2016/03/24/chad-court-order-no-cash-ex-dictators-victims>.

<sup>43</sup> RFI Afrique, “Tchad: les victimes du ręgime Habré toujours dans l’attente de réparations”, 25 March 2017, <http://www.rfi.fr/afrique/20170325-tchad-habre-reparations-financieres-ONU-pablo-greiff>.

27. The Respondent State's own court found that its agents were responsible for serious violations of human rights as also enshrined in the African Charter, such as the right to life (Article 4), right to freedom from torture (Article 5) and right to liberty (Article 6). This Communication does not, therefore, require the Commission or the Court to re-examine the facts as established in the criminal proceedings.

28. The failure to comply with the 2015 Decision gives rise to violations of the following provisions of the Charter:

- (a) Article 7 (Right to a Fair Trial), for failure to implement the Court's judgment, which is an integral part of the trial;
- (b) Article 14 (Right to Property), by failing to pay compensation awarded by the Court; and
- (c) The right to redress (in regards to violations of Articles 4, 5, 6, 7 and 14, read in conjunction with Article 1)

#### **IV. JURISDICTION OF THE COMMISSION AND THE COURT**

##### **A. JURISDICTION *RATIONE PERSONAE***

29. The Applicants submit that the Commission has jurisdiction to consider this Communication and to hear complaints against the Respondent State. Chad signed the Charter on 29 May 1986, ratified it on 9 October 1986, and deposited its instrument of ratification on 11 November 1986. Individuals and NGOs may submit communications to the Commission pursuant to Article 55 of the Charter.

30. Chad ratified the Protocol on 27 January 2016, and deposited its instrument of ratification with the African Union Commission on 8 February 2016. It has not, however, made an Article 34(6) declaration accepting the jurisdiction of the Court in respect of cases submitted by individuals and NGOs. It follows that the Applicants do not, as individuals, have standing to seize the Court in respect of matters concerning Chad.

31. Although the Applicants do not have standing to submit the case to the Court directly, the Applicants respectfully request that the Commission refer the present Communication to the Court under Rule 84 (2) of the Commission Rules<sup>44</sup> in conformity with Article 5 of the Protocol and Rule 118(3) of the Commission Rules on the basis that this case and Chad's failure to comply with the 2015 Decision constitutes a serious or massive violation of human rights. Indeed, Chad's continued failure to comply results in a denial of rights guaranteed under the Charter to 7,000 victims of the most serious crimes including "murder, acts of torture and barbarism, kidnapping, unlawful and arbitrary detention, intentional and lethal physical assault, cruel treatment and complicity."

32. In circumstances where the Commission submits a case to the Court, the Court need not consider whether the State against which the application is lodged has made an Article 34(6) declaration.<sup>45</sup> In May 2017, the Court confirmed in *African Commission on Human and Peoples' Rights v Republic of Kenya (Commission v Kenya)* case that "the Commission now has the power to refer any matter to the Court, including matters which reveal a series of serious or massive violations of human rights."<sup>46</sup>

33. The Commission Rules expressly provide that the Commission may refer cases to the Court. Rule 118(3) of the Commission Rules provides:

"The Commission may [...] submit a communication before the Court against a State Party if a situation that, in its view, constitutes one of serious or massive violations of human rights as provided for under Article 58 of the Charter, has come to its attention."

34. This is further confirmed in Rule 84(2) of the Commission Rules.<sup>47</sup> The Commission's ability to submit cases to the Court is also echoed in Article 5(1)(a) of the Protocol.<sup>48</sup>

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<sup>44</sup> Rules of Procedure of the African Commission on Human and Peoples' Rights (2010), Rule 84: "(1) When the Commission considers that one or more Communications relate to a series of serious or massive human rights violations [...] (2) The Commission may also, in conformity with Article 5 of the African Court Protocol and Rule 118(3) of the present Rules of Procedure, refer the matter to the African Court."

<sup>45</sup> African Court, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application 006/2012, Judgment, 26 May 2017, para 60 (citing *Commission v Libya*); *African Commission on Human and Peoples' Rights v Libya*, Application 002/2013, Judgment, 3 June 2016, para 51.

<sup>46</sup> African Court, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application 006/2012, Judgment, 26 May 2017, para 53.

<sup>47</sup> Rules of Procedure of the African Commission on Human and Peoples' Rights (2010), Rule 84(2).

35. The Commission need not refer a matter to the Assembly of States before seizing the Court. In the *Commission v Kenya* case, the Respondent State, Kenya, objected to the Court's jurisdiction on the basis that the Commission should have, in the first instance, brought the matter to the attention of the Assembly under Article 58(1).<sup>49</sup> The Court rejected this jurisdictional objection, and held that:

“In circumstances where the Commission files a case before the Court pursuant to Article 5(1)(a) of the Protocol, Article 3(1) of the same provides no additional requirements to be fulfilled before this Court exercises its jurisdiction. Article 58 of the Charter mandates the Commission to draw the attention of the Assembly of Heads of State and Government where communications lodged before it reveal cases of serious or massive violations of human and peoples' rights. With the establishment of the Court, and in application of the principle of complementarity enshrined under Article 2 of the Protocol, the Commission now has the power to refer any matter to the Court, including matters which reveal a series of serious or massive violations of human rights. The Respondent's preliminary objection that the Commission did not comply with Article 58 of the Charter is thus not relevant as far as the material jurisdiction of the Court is concerned.”<sup>50</sup>

36. It follows that, pursuant to Articles 84(2) and 118(3) of the Commission Rules, the Commission has the power to refer directly to the Court Chad's failure to comply with the 2015 Decision concerning reparation for the serious human rights violations suffered by 7,000 victims of Habré's regime.

#### **B. JURISDICTION *RATIONE TEMPORIS***

37. The Commission has jurisdiction *ratione temporis* in respect of Chad's failure to comply with the 2015 Decision. Chad ratified the Charter in 1986, almost 30 years before the 2015 Decision was rendered.

38. Chad ratified the Protocol pursuant to which the Court was established on 27 January 2016. The Applicants submit that Chad's failure to comply with the 2015 Decision is a

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<sup>48</sup> Protocol to the African Charter on Human and Peoples' Rights, Article 5(1)(a): “The following are entitled to submit cases to the Court: a) the Commission [...]”.

<sup>49</sup> African Court, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application 006/2012, Judgment, 26 May 2017, para 48 (Respondent's objection).

<sup>50</sup> African Court, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application 006/2012, Judgment, 26 May 2017, para 53.



“continuing violation” that started before that ratification and continues to the present day. It follows that the general rule that the Court can only hear cases relating to violations that took place *after* the date on which the Contracting State ratified the Protocol is satisfied. However, it is submitted that the continuing nature of Chad’s failure to implement the decision of the Special Criminal Court of N’Djamena provides both the Commission and the Court with jurisdiction *ratione temporis*.

39. The Commission has made clear that “violations that occurred prior to the entry into force of the Charter, in respect of a State Party, shall be deemed to be within the jurisdiction *ratione temporis* of the Commission, if they continue, after the entry into force of the Charter”.<sup>51</sup>

40. Similarly, the UN Committee Against Torture has held that the failure to provide reparation for torture – such as in this Communication - is a continuing violation. In *Gerasimov v Kazakhstan* the alleged torture occurred before the State Party’s ratification of the Convention against Torture, but the State’s “failure to fulfil its obligations to investigate the complainant’s allegations and to provide him with redress continued after the State Party recognized the Committee’s competence under article 22 of the Convention”. In the circumstances, the Committee considered that it was not precluded *ratione temporis* from considering the complaint in its entirety.<sup>52</sup>

41. In addition, as addressed below, the European Court of Human Rights (*ECHR*) has established that the failure to pay a reparation award made by the State’s courts against it “creates a continuing situation”.<sup>53</sup>

### **C. JURISDICTION *RATIONE MATERIAE***

42. The Commission and the Court may deal with matters relating to violations of provisions of the Charter. As explained in more detail in Part VI below, Chad’s failure to

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<sup>51</sup> African Commission, *Kevin Mgwanga Gunme et al v Cameroon*, Comm No 266/03, para 96. *See also* African Commission, *JE Zitha & P.JL Zitha v Mozambique*, Comm No 361/08; African Commission, *John K Modise v Botswana*, Comm No 97/93.

<sup>52</sup> UN Committee Against Torture, *Gerasimov v Kazakhstan*, Comm No 433/2001, 25 July 2012, para 11.2.

<sup>53</sup> *See, eg*, ECHR, *Driza v Albania* (2011) App No 10810/05, 15 March 2011, para 60; ECHR, *Marini v Albania* (2007) App No 3738/02, 18 December 2007, para 95, ECHR 2007-XIV (extracts).

comply with the 2015 Decision constitutes a violation of Chad’s obligations under Articles 5, 7 (1), 14 and 1 of the Charter.

43. The Protocol expressly provides that the jurisdiction of the Court extends to cases concerning the interpretation and application of instruments other than the Charter, including “any other relevant human rights instruments ratified by the States concerned.”<sup>54</sup> Recent decisions of the Court confirm that it will consider (including *proprio motu*) the human rights protections afforded by instruments other than the Charter and determine whether such instruments have been violated.

44. Although the Charter does not expressly provide that communications may be submitted to the Commission in respect of violations of human rights instruments other than the Charter, reference to rights other than those set out in the Charter is consistent with Article 60 of the Charter, which provides as follows –

“[the Commission] shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of [...] the Universal Declaration of Human Rights, [and] other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights [...]”

45. Although, the Universal Declaration of Human Rights has no legally binding obligation on Chad, Article 8 nonetheless provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”<sup>55</sup> Further support may be found in the International Covenant on Civil and Political Rights (*ICCPR*), ratified by Chad on 9 June 1995, which guarantees the right to an effective remedy.<sup>56</sup>

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<sup>54</sup> Protocol to the African Charter on Human and Peoples’ Rights, Articles 3 and 7.

<sup>55</sup> Universal Declaration of Human Rights, Article 8.

<sup>56</sup> International Covenant on Civil and Political Rights (ratified by UN General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976), Article 2(3): “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”

46. The Applicants reserve the right to elaborate on Chad's violation of that right as well as any additional rights contained in other human rights instruments.

## **V. EXHAUSTION OF DOMESTIC REMEDIES**

47. The Applicants submit that they have exhausted domestic remedies pursuant to Rule 93 (i) of the Commission Rules and Article 56 (5) of the Charter.<sup>57</sup>

### **A. THE APPLICANTS HAVE EXHAUSTED LOCAL REMEDIES**

48. As summarised above, the Applicants constituted themselves as civil parties in the criminal proceedings before the N'Djamena Special Criminal Court and were awarded reparation in the form of compensation and measures of non-recurrence. The 2015 Decision is final and binding on Chad and it is Chad's responsibility to implement the reparation award by its Court. It cannot require the Applicants to undertake enforcement procedures. Indeed, recognising the complexity in this case arising as a result of the large number of victims participating as civil parties and the amount of compensation ordered, the Court decided that the execution of its reparation award required an Implementation Commission. The government of Chad was tasked with its establishment. As outlined above, this has yet to happen. In the absence of a judicial procedure to enforce the Court's decision and to force the government to establish such a Commission, the Applicants' lawyers sought to meet with, and wrote to the Prime Minister. These attempts met with no response, underlining the government's unwillingness to engage the Applicants' and their lawyers in this process and to implement the 2015 Decision.

49. There is also no possibility for Applicants to enforce the decision by seizing government assets. Even if that possibility existed, the Commission considers that enforcement actions to seize assets do not form part of exhaustion of remedies. In circumstances where a State is found liable to pay damages and local remedies have been

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<sup>57</sup> African Charter on Human and Peoples' Rights, Article 56(5): "Communications relating to human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they: [...] Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged [...].". See also Article 50, which provides: "The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged."

exhausted such that there is an obligation on the part of the State to pay, no procedures for seizure of debts need be undertaken. This was clearly established by the Commission in the case of *Bissangou v. Congo*.<sup>58</sup> In that case, the Commission considered the State's non-enforcement of a judgment delivered in favour of an individual lawyer. The State Party argued that the applicant should have appealed against a Minister's decision not to pay the compensation and undertaken proceedings for seizure against the State under the Administrative Procedure Code. The Commission rejected Congo's argument, holding that "it is unreasonable to require from a citizen who has won the case of a payable debt against the State at the end of a legal proceedings to institute procedures of seizure against it".<sup>59</sup> It held further that "the Complainant having duly notified his judgment to the competent authorities [...] had a right to expect the immediate execution of his judgment".<sup>60</sup>

50. This is consistent with the jurisprudence of the ECHR, which has considered several cases of non-enforcement of judgments rendered against a State. As the ECHR reiterated in the case of *Burdov*:

"A person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. [...]"

The Court thus considers that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable."<sup>61</sup>

51. The ECHR has repeatedly found there to be no merit in arguments that a beneficiary of an enforceable judgment should initiate procedures for the seizure of assets.<sup>62</sup>

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<sup>58</sup>African Commission, *Bissangou v Congo*, Comm No 253/02.

<sup>59</sup> *Ibid*, para 59.

<sup>60</sup> African Commission, *Bissangou v Congo*, Comm No 253/02, para 59.

<sup>61</sup> ECHR, *Burdov v Russia (No. 2)* (2011) App No 33509/04, 15 January 2009, paras 68-70.

<sup>62</sup> See, eg, ECHR, *Beshiri v Albania* (2006) App. No 7352/03, 22 August 2006, para 54 ("In particular, as to the Government's argument relating to the applicants' failure to initiate enforcement proceedings, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Koltsov v.*

52. There is therefore no avenue available to the Applicants in Chad to seek the enforcement of the 2015 Decision.

**B. THE ‘REASONABLE TIME PERIOD’ REQUIREMENT OF ARTICLE 56(6) AND RULE 93 (2) (H) IS MET**

53. According to Rule 93 (2) (h), Communications addressed to the Commission for seizure shall comply with the period prescribed in the African Charter for submission of the Communication. Article 56(6) of the Charter requires communications to be submitted within “a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter”. The rationale for the reasonable time requirement is to prevent challenges to domestic decisions long after they have been delivered, in the interests of legal stability and certainty.

54. However, where a final judgment has been delivered by domestic courts, and the onus is on the State to provide reparation ordered to repair serious violations of human rights, a continuing situation arises such that there is no deadline to file communications with the Commission. The breach exists up to the present on a continuing basis and so is within any time limit. In cases involving the failure to enforce domestic judgments, the ECHR has held that an analogous six-month time limit for bringing complaints under the European Convention on Human Rights did not render application inadmissible.<sup>63</sup>

55. Even if the Commission considered that the time limit stipulated in Article 56 (6) were relevant, the Applicants have complied with it. Indeed, counsel for the civil parties brought this complaint within six months of it becoming clear that the State had no intention of complying with the 2015 Decision. The judgment was issued on 25 March 2015. On several occasions, most recently on 16 February 2017, counsel for the civil parties brought Chad’s failure to execute the award of reparations in favour of the civil parties to the attention of the Prime Minister of Chad.<sup>64</sup> On 25 March 2017, counsel for the civil parties also brought

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*Russia*, no. 41304/02, § 16, 24 February 2005; and *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005.”).

<sup>63</sup> See, eg, ECHR, *Driza v Albania* (2011) App No 10810/05, 15 March 2011, para 60; *See Marini v Albania* (2007) App No 3738/02, 18 December 2007, para 95, ECHR 2007-XIV (extracts).

<sup>64</sup> **Exhibit C:** Letter from Ms Jacqueline Moudeïna to the Prime Minister of Chad (Mr Albert Pahimi Padacké), 16 February 2017.

Chad's non-execution of the decision to the attention of Mr Pablo de Greiff, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.<sup>65</sup>

In March 2017, the Chadian Minister of Justice made a statement that Chad would make efforts in relation to the implementation of the 2015 Decision yet highlighted that it was difficult to proceed due to financial constraints.<sup>66</sup> The Applicants' legal representatives then waited for the government to follow up on its undertaking. However, eight months later there is no indication of any effort made nor of any steps taken by the government to implement the 2015 Decision. It is therefore submitted that this Communication was submitted within a reasonable period of time.

## **VI. VIOLATIONS OF THE AFRICAN CHARTER ARISING FROM CHAD'S FAILURE TO COMPLY WITH THE 2015 DECISION**

56. The Respondent State's failure to comply with the 2015 Decision gives rise to several violations of the Charter, in particular the right to a fair trial, the right to redress, and the right to property. Each of these violations will be examined in turn and expanded upon once the Communication has been declared admissible. In this respect, guidance may be drawn from the jurisprudence of the international and regional human rights bodies that have considered these issues.

### **A. VIOLATION OF THE RIGHT TO A FAIR TRIAL (ARTICLE 7 OF THE CHARTER)**

57. The Commission and other human rights bodies have established that the failure to implement a domestic Court judgment against the State is a violation of the right to a fair trial.

58. In the case of *Bissangou v. Congo*,<sup>67</sup> Congo had not paid compensation awarded by its courts in the applicant's favour. The Commission held that there had been a violation of Article 7 concerning the right to a fair trial, even though this had not been argued by the

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<sup>65</sup> **Exhibit D:** Letter from Ms Jacqueline Moudeïna to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 25 March 2017, transmitted by REDRESS, l'Association tchadienne pour la promotion et la défense des droits de l'Homme, l'Association des Victimes de Crimes du Régime d'Hissein Habré and the International Commission of Jurists, 28 March 2017, <http://www.redress.org/downloads/sr-de-greiffchadlette.pdf>.

<sup>66</sup> RFI Afrique, "Tchad: les victimes du régime Habré toujours dans l'attente de réparations", 25 March 2017, <http://www.rfi.fr/afrique/20170325-tchad-habre-reparations-financieres-ONU-pablo-greiff>.

<sup>67</sup> African Commission, *Bissangou v Congo*, Comm No 253/02.

applicant. In reaching its decision, the Commission stressed that “[t]he effective exercise of this right by individuals requires that: ‘All State Institutions against which an appeal has been lodged or a legal ruling has been pronounced conform fully with this ruling or this appeal’”.<sup>68</sup>

59. The Commission held that -

“the right to be heard guaranteed by Article 7 of the African Charter includes the right to the execution of a judgment. It would therefore be inconceivable for this Article to grant the right for an individual to bring an appeal before all the national courts in relation to any act violating the fundamental rights without guaranteeing the execution of judicial rulings. To interpret Article 14 any other way would lead to situations which are incompatible with the rule of law. As a result, the execution of a final judgment passed by a Tribunal or legal court should be considered as an integral part of the right to be heard which is protected by Article 7.”<sup>69</sup>

60. The Commission referred to the case law of the ECHR, which has consistently held that –

“the right of access to a tribunal guaranteed by Article 6§1 of the Convention would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an *integral part* of the ‘trial’ for the purposes of Article 6.”<sup>70</sup> (emphasis added)

61. The ECHR has consistently held that, under Article 6 of the European Convention on Human Rights, the execution of a legal ruling must not be unduly prevented, nullified or delayed. In relation to the length of time within which the ECHR expects national authorities to comply with judgments of their own courts, the ECHR has held that the period for execution “should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable”.<sup>71</sup>

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<sup>68</sup> *Ibid*, para 74.

<sup>69</sup> African Commission, *Bissangou v Congo*, Comm No 253/2002, para 75.

<sup>70</sup> ECHR [GC], *Scordino v Italy (no. 1)* (1996) App No 36813/97, 29 March 2006, para 196. *See also* ECHR, *Hornsby v Greece* (1997) App No 18357/91, 19 March 1997, para 40 ff; ECHR, *Metaxas v Greece* (2004) App No 8415/02, 27 May 2004, para 25; ECHR, *Musci v Italy* (2006) App No 64699/01, 29 March 2006, para 88.

<sup>71</sup> ECHR, *Cocchiarella v Italy* (2006) App No 64886/01, 29 March 2006, para 89; ECHR, *Scordino v Italy (no. 1)* (1996) App No 36813/97, 29 March 2006, para 198.

62. As the ECHR has stated, “[i]t is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation” to enforce a binding and enforceable judicial decision within a reasonable time.<sup>72</sup> If they do not, they will breach the right to a fair trial.<sup>73</sup>

63. The UN Human Rights Committee has similarly found that the right to a fair trial is engaged where a State fails to comply with a judgment rendered by its courts. The Committee has held that “protection guaranteed by article 2, paragraph 3 and article 14, paragraph 1 [right to a fair trial] of the [ICCPR] would not be complete if it did not extend to the enforcement of decisions adopted by courts in full respect of the conditions set up in article 14”.<sup>74</sup>

**B. VIOLATION OF THE RIGHT TO PROPERTY (ARTICLE 14 OF THE CHARTER)**

64. The Commission’s jurisprudence establishes that a State’s failure to pay a final judicial award of compensation amounts to a violation of the right to property protected by Article 14 of the Charter. In the case of *Bissangou v. Congo*, the Commission held that –

“monetary compensation granted by judgment having acquired the authority of res judicata should be considered as an asset. Therefore, the unjustified refusal of the Respondent State to honour the final judgment passed in favour of the Complainant hindered the enjoyment of his assets.”<sup>75</sup>

65. As such, the applicant in that case was held to have been the victim of a violation of Article 14. The same principles apply in the present case.

**C. VIOLATION OF THE RIGHT TO A REMEDY (ARTICLE 1 IN CONJUNCTION WITH ARTICLES 4, 5, 6, 7 AND 14 OF THE CHARTER)**

66. The Respondent State has been found by its own court to be responsible for serious human rights violations committed by former security agents of the Habré regime, including

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<sup>72</sup> ECHR, *Burdov v Russia (no. 2)* (2009) App No 33509/04, 4 May 2009, paras 68-70, citing ECHR, *Comingersoll S.A. v Portugal* [GC], App No 35382/97, para 24, ECHR 2000-IV, and ECHR, *Frydlender v France* [GC], App No 30979/96, para 45, ECHR 2000-VII.

<sup>73</sup> African Commission, *Bissangou v Congo*, Comm No 253/2002, para 75.

<sup>74</sup> UN Human Rights Committee, *Sechremelis et al v Greece*, Communication No 1507/2006, U.N. Doc. CCPR/C/100/D/1507/2006 (2011), para 10.4.



murder, acts of torture and barbarism, kidnapping, unlawful and arbitrary detention, intentional and lethal physical assault, cruel treatment and complicity. These amount to violations of a number of rights protected in the African Charter, including Articles 4 (right to life), 5 (prohibition of torture and ill-treatment) and 6 (right to liberty).

67. The State has failed in its obligation to comply with the judgment and thus failed to provide effective remedies for the violations committed against the Applicants, as required by Articles 1 in conjunction with Articles 4, 5, 6, 7 and 14 of the Charter.

68. The Commission underlined in its 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) (*General Comment No.4*) that State parties to the African Charter "are obliged to ensure both in law and in practice that victims of violations of the human rights enshrined in the African Charter have access to and obtain redress."<sup>76</sup> The Commission considers that this encompasses the right to an effective remedy and to "adequate, effective and comprehensive reparation."<sup>77</sup>

69. The right to an effective remedy and reparation is also embodied in major international human rights treaties.<sup>78</sup> It has been affirmed and elaborated upon by United Nations treaty bodies,<sup>79</sup> regional courts,<sup>80</sup> as well as in a series of declarative instruments, in particular the

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<sup>75</sup> African Commission, *Bissangou v Congo*, Comm No 253/02, para 76.

<sup>76</sup> African Commission, 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 21<sup>st</sup> 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 1. The right to an effective remedy is also enshrined in Article 1 of the Commission's Resolution on the Right to Recourse and Fair Trial, adopted by the African Commission on Human and Peoples' Rights, meeting at its 26th Ordinary Session, held in Kigali, Rwanda, from 1-15 November 1999.

<sup>77</sup> *Ibid*, para 8.

<sup>78</sup> For example, Articles 2(3), 9(5) and 14(6) of the International Covenant on Civil and Political Rights (1966), Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 39 of the Convention on the Rights of the Child (1989), Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and Article 75 of the Rome Statute for an International Criminal Court (1998). It has also figured in regional instruments, e.g. Articles 5(5), 13 and 41 of the European Convention on Human Rights and Articles 25, 63(1) and 68 of the American Convention on Human Rights (1969).

<sup>79</sup> See, for example, Human Rights Committee, General Comment No 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 29 March 2004, paras 15-17; UN Committee Against Torture, General Comment No 2: Implementation of article 2 by States Parties, CAT/C/GC/2/CRP.1/Rev.4, 23 November 2007, para 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 Serious Violations of International Humanitarian Law<sup>81</sup> and the Robben Island Guidelines.<sup>82</sup>

70. According to the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, the right to an effective remedy includes (i) access to justice; (ii) reparation for the harm suffered; and (iii) access to factual information concerning the violations.<sup>83</sup>

71. An integral part of the right to an effective remedy is therefore the provision of reparation for the violation. As the UN Human Rights Committee has recognised, “[w]ithout reparation to individuals whose [...] rights have been violated, the obligation to provide an effective remedy [...] is not discharged.”<sup>84</sup>

72. International and regional human rights bodies recognise that the obligation to provide reparation for serious violations generally requires the provision of adequate compensation.<sup>85</sup>

73. Where a State is responsible for a violation of human rights, but fails to provide appropriate reparation, that failure will amount to a violation in and of itself. In *Horvath v. Australia*, the UN Human Rights Committee held that –

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<sup>80</sup> See, for example, African Commission, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Comm No 245/2002, para 159; IACHR, *Velasquez Rodriguez v Honduras*, Series C No 4, Judgment (Merits) of 29 July 1988, para 174; and ECHR *Papamichalopoulos v Greece* (1995) App No 14556/89, 31 October 1995, para 36.

<sup>81</sup> 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 Law: Human Rights Resolution, UN General Assembly Resolution 60/147, A/RES/60/147, 16 December 2005 (*UN Basic Principles and Guidelines on the Right to Remedy and Reparation*). See also the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34, A/RES/40/34, 29 November 1985; and the Universal Declaration of Human Rights (1948) (Article 8).

<sup>82</sup> Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted by the African Commission meeting at its 32nd Session, 17-23 October 2002 in Banjul, The Gambia, para 50 (hereinafter Robben Island Guidelines).

<sup>83</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001, adopted by the African Commission, meeting at its 33<sup>rd</sup> session in Niamey, Niger, 29 May 2003, Principle C.

<sup>84</sup> UN Human Rights Committee, “General Comment No 31: Nature of the General Legal Obligation on States Parties to the Covenant”, CCPR/C/21/Rev.1/Add.13, 29 March 2004, para 16.

<sup>85</sup> *Ibid.* See, eg, ECHR, *Kopylov v Russia* (2010) App No 3933/04, 29 July 2010, para 130 (in the case of a breach of Article 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress). See also UN Basic Principles and Guidelines on the Right to Remedy and Reparation, para 20; UN Convention Against Torture, Article 14; Inter-American Convention to Prevent and Punish Torture, Article 9.

“the obligation of States under article 2, paragraph 3 [of the ICCPR] encompasses not only the obligation to provide an effective remedy, but also the obligation to ensure that the competent authorities enforce such remedies when granted. This obligation, enshrined in article 2, paragraph 3(c) means that State authorities have the burden to enforce judgments of domestic courts which provide effective remedies to victims. In order to ensure this, State parties should use all appropriate means and organize their legal system in such a way so as to guarantee the enforcement of remedies in a manner that is consistent with their obligations under the Covenant.”<sup>86</sup>

74. Specifically in regards to torture and other prohibited ill-treatment in violation of Article 5 of the African Charter, the Commission considered that “failure to provide prompt access to redress constitutes a *de facto* denial of redress [including reparation]” in violation of the African Charter.<sup>87</sup> The Commission also emphasised that “limited resources shall not justify a State’s failure to fulfil its obligation to provide comprehensive reparation...”<sup>88</sup>

75. The Inter-American Court of Human Rights (*IACHR*) has also held that failure to provide appropriate reparation, including compensation, amounts to a violation of the right to an effective remedy, as expressed in the right to judicial protection (Article 25) and the general obligation to respect and guarantee rights and freedoms established in Article 1(1) of the American Convention on Human Rights. In the case of *Acevedo-Jaramillo et. al. v. Peru*,<sup>89</sup> a judgment had been issued in favour of the applicants concerning labour rights, but had not been enforced by the respondent State. The IACHR held that –

“in order to satisfy the right to access to an effective remedy it is not sufficient that final judgments be delivered in the appeal for legal protection proceedings, ordering protection of plaintiffs’ rights. It is also necessary that there are effective mechanisms to execute the decisions or judgments, so that the declared rights are protected effectively. As it is established [...] one of the effects of the judgment is its binding

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<sup>86</sup> UN Human Rights Committee, *Horvath v Australia*, Communication No 1885/2009, U.N. Doc. CCPR/C/110/D/1885/2009 (2014), para 8.6.

<sup>87</sup> African Commission, General Comment No. 4, paras 1, 26.

<sup>88</sup> *Ibid*, para 34.

<sup>89</sup> IACHR, *Acevedo-Jaramillo et. al. v Peru*, Series C, No 144, Judgment (Preliminary Objections, Merits, Reparations and Costs) of 7 February 2006; see also IACHR, *Access to Justice as a Guarantee of Economic, Social and Cultural Rights: A review of the standards adopted by the Inter-American system of human rights*, Chapter V: The substance of the right to effective judicial protection against violation of social rights, 7 September 2007, paras 321-322 (which references the case in its discussion of the right to access to an effective remedy).

character. The enforcement of judgments should be considered an integral part of the right to access the remedy, encompassing also full compliance with the respective decision. The contrary would imply the denial of this right.”<sup>90</sup>

76. Since the judgment had not been enforced, the IACHR found the State Party to be in violation of the right to judicial protection and of the general obligation under Article 1(1) to respect and guarantee rights.

77. With respect to reparation for torture in particular, the UN Committee Against Torture recognised in its General Comment No. 3 that “the failure of a State Party to execute judgments providing reparative measures for a victim of torture, handed down by national, international or regional courts, constitutes a significant impediment to the right to redress” enjoyed by an individual under Article 14 of the Convention Against Torture.<sup>91</sup>

78. Similarly, as a result of its failure to implement the 2015 Judgment, Chad has breached its obligation to provide effective remedies for the violations committed against the Applicants, as required by Article 1, read in conjunction with Articles 4, 5, 6, 7 and 14 of the Charter.

#### **D. VIOLATION OF ARTICLE 1 OF THE CHARTER**

79. The violations described above, taken together, constitute a failure by the Respondent State to put in place a system for the effective execution of court-ordered reparation in cases concerning serious human rights violations for which it is responsible. This is in violation of Article 1 of the Charter, which provides that:

“The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.”

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<sup>90</sup> IACHR, *Acevedo-Jaramillo et al v Peru*, Series C, No 144, Judgment (Preliminary Objections, Merits, Reparations and Costs) of 7 February 2006, para 220.

<sup>91</sup> CAT General Comment No 3, para 38.

80. In order to give effect to the right to redress for violations of the African Charter States must “use all appropriate means and organize their legal system in such a way so as to guarantee the enforcement of remedies” ordered by the Courts.<sup>92</sup>

## **VII. REMEDIES SOUGHT**

81. The Applicants respectfully request the Commission to refer the present case to the Court. In the alternative, should the Commission decline to refer the case to the Court, the Applicants seek a decision of the Commission on the merits.

82. The Applicants respectfully request the Court, or the Commission, to declare that their rights under Articles 1, 7 and 14 of the Charter individually, and under Articles 4, 5, 6, 7 and 14 in conjunction with Article 1 have been violated and award compensation to the Applicants in an amount to be determined at a later stage of this proceeding. The Applicants also seek the payment of interest on the compensation owed to them, at a rate to be specified in their submissions on the merits. The Applicants reserve their right to seek additional forms of compensation and other reparation at a later stage of these proceedings, including the forms of reparation granted in the 2015 Decision.

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<sup>92</sup> See above paragraph 75; UN Human Rights Committee, *Horvath v Australia*, Communication No. 1885/2009, U.N. Doc. CCPR/C/110/D/1885/2009 (2014), para 8.6.

## **EXHIBITS**

**Exhibit A:** Confirmation of representation of the interests of 7,000 civil parties before the Special Criminal Court of N'djamena, signed by Me Jacqueline Moudeïna, Me Lambi Soulgan and Me Delphine Kemneloum Djiraibé, dated 7 November 2017

**Exhibit B:** République du Tchad, Cour Criminelle Spéciale de N'Djamena, Arrêt Criminel, Répertoire No 01/15 du 25 mars 2015 (annexed separately to this Communication)

**Exhibit C:** Letter from Ms Jacqueline Moudeïna to the Prime Minister of Chad (Mr Albert Pahimi Padacké), 16 February 2017

**Exhibit D:** Letter from Ms Jacqueline Moudeïna to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 25 March 2017, transmitted by REDRESS, l'Association tchadienne pour la promotion et la défense des droits de l'Homme, l'Association des Victimes de Crimes du Régime d'Hissein Habré and the International Commission of Jurists, 28 March 2017

**Exhibit E:** Letter from REDRESS et al to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Mr Pablo de Greiff), 26 March 2017

**Exhibit F:** Power of Attorney for Mr Clement Abaïfouta, dated 14 December 2012