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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1996

CHAD

[4 September 2007]

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CONTENTS

Introduction

1. The present report has been prepared in accordance with the provisions of article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"), which recommends that the States parties submit reports on the measures they have taken to give effect to their undertakings.

2. Chad acceded to the Convention on 9 June1995. It made no reservation and no interpretative statement at that time.

3. Owing to special circumstances that led it to seek technical cooperation from the United Nations, the Chadian Government has thus far been unable to submit a report, making it necessary to submit an initial report, due on 9 July 1996, and two periodic reports, due on 9 July 2000 and 2004 respectively.

4. The present report responds to the obligation on States parties to submit reports. The special characteristic of this report is that it is cumulative, inasmuch as it combines Chad's initial and second and third periodic reports.

5. The context in which this report was prepared is marked by the proclamation of a state of emergency. This state of emergency, instituted by Decree No. 1014 of 13 December 2006, is intended to put an end to the serious breaches of the peace in the wake of the insecurity that has been plaguing the six regions concerned as a result of the troubles, as well as the town of N'Djamena.

6. Pursuant to article 124 of the Constitution and of Ordinance No. 44 of 27 October 1962 proclaiming the state of emergency, which sets forth the conditions for the enforcement of this regime restricting public freedoms, the Council of Ministers, meeting on 13 November 2006, decreed the state of emergency and the Government informed the Bureau of the National Assembly.

7. Since the state of emergency falls under the law and may be extended beyond 12 days only with the authorization of the National Assembly, the Government requested authorization from the Assembly to extend it for a period of six months, which was granted through National Assembly resolution No. 004/AN/2006 of 23 November 2006. To that end, resident ministers were appointed to govern these troubled regions.

8. The terms of reference of the mission of the resident ministers specifying the context of this regime that restricts public freedoms point out that the state of emergency was decreed following intercommunal clashes that cost the lives of many people and a great deal of livestock. Villagers have been destroyed, causing large-scale displacement of villagers. The humanitarian agencies working in the east of the country in connection with the Darfur conflict estimate that 120,000 persons have been displaced.

PART I

GENERAL LEGAL FRAMEWORK FOR THE PROHIBITION AND ELIMINATION OF TORTURE

I. GENERAL LEGAL FRAMEWORK

9. The general legal framework for the protection of human rights is fairly solid inasmuch as all international legal instruments, once ratified, form part of domestic legislation, to which must be added the Constitution, the Criminal Code and the other laws that we shall be examining in the course of the report.

10. Since the early years of independence the Republic of Chad has had a long tradition of secret detentions, torture and disappearances, fed by intercommunal conflicts and bloody internecine civil wars in the struggle for power.

11. While illegal arrests, arbitrary detentions and abductions are prohibited and severely punished under the 1967 Criminal Code, torture is not a separate offence in our current national legal instruments.

12. This situation is linked to the lack of harmonization of our domestic legal framework with the Convention that is the subject of this report. However, the 1967 legislature defined torture as an aggravating circumstance in criminal proceedings.

13. The Constitution, the supreme law of the country, reaffirms in its preamble Chad's attachment to the general principles of human rights as defined by the Charter of the United Nations, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights; the principle of the inviolability of the human person is also affirmed. Thus, the Constitution, in its article 17, paragraph 1, stipulates that: "The human person is sacred and inviolable."

14. In thus establishing through its Constitution some provisions that prohibit the practice of torture, Chad unquestionably adheres to the perception of international law to the effect that torture is a crime and as such destroys the victim's personality and is no less than a negation of the dignity inherent in the human person.

15. However, so as better to define the context in which acts of torture nowadays considered as violations of human rights are practised, one must remember that French colonization, abetted by the traditional authorities, had institutionalized corporal punishment in cotton cultivation, the construction of roads and administrative buildings, and porterage (*tipoye*) and hard labour in a prison context.

16. It is worthwhile pointing out that torture was already sometimes used in our traditional societies either to inflict a lesson or to punish a member who breached traditional law. The most frequent forms of torture were castration, flagellation and various types of mutilation.

17. To this must be added the fact that after independence Chad entered a period of political instability that favoured the systematic practice of torture and inhuman and degrading treatment of civilians, captured soldiers and political detainees among others.

18. The regime of President Ngarta Tombalbaye was marked by the 1965 uprising of the population of Mangalmé, which was brutally put down. The emergence of the armed rebellion in 1966 marks the starting-point of political instability that became virtually institutional and led to the outbreak of civil war in 1979. This civil war eventually brought FRONILAT (Chad National Liberation Front) to power in November 1979. A government of national union and transition was set up and headed by President Goukouni Weddeye, who, unfortunately, had to resort to martial law and public executions in order to put a stop to widespread banditry

19. That respite was brief, for on 21 March 1980 Hissène Habré's Armed Forces of the North (FAN) and Goukouni Weddeye's Popular Armed Forces (FAP) clashed in N'Djamena. When Habré retreated a mass grave was discovered close to his home in N'Djamena.

20. After Hissène Habré returned to N'Djamena and seized power on 7 June 1982 human rights violation was to reach its apogee in Chad with the creation of the formidable political police, known as the Documentation and Security Directorate (DDS), created by Decree No. 005/PR/83 of 26 January 1983 and answerable directly to the Office of the President of the Republic.

21. The powers of the DDS were to:

a) Collect and collate all information emanating from the country and abroad concerning foreign or foreign-instigated activities likely to jeopardize national unity;

b) Identify foreign agents;

c) Detect possible networks (information or action) and their organization;

d) Identify the immediate or future aims being pursued;

e) Prepare counter-espionage, counter-interference and, if necessary, counter-propaganda measures;

f) Collaborate in enforcement by establishing files on individuals, groups and communities suspected of activities that ran counter to or were merely injurious to the national interest;

g) Provide security protection for Chad's embassies abroad and for diplomatic mail.

22. These powers, as envisaged, were no different from those of similar bodies in countries where democracy and respect for human rights are guaranteed. The eloquence of the text creating the DDS was a front for the dangerous mission to terrorize the population the better to enslave them. One of the methods systematically used to accomplish this macabre mission was torture.

23. The report of the Commission of Inquiry into former President Habré's crimes and abuses of power[1], created by Decree No. 014/PR/P.CE/CJ/90 of 29 December 1990, showed that DDS agents used various forms of torture, such as:

[1] Report of the Commission of Inquiry into the crimes and abuses of power committed by former President Habré, his co/perpetrators and/or accomplices, Ministry of Justice, N'Djamena, 1992, published under the title *Les crimes et détournements de l'ex-Président Habré et de ses complices*, Paris, L'Harmattan, 1993.

(a) A form of binding hands and feet together known as “arbatachar”;

(b) Forced swallowing of water;

(c) Spraying with gas (in the eyes, nose, etc.);

(d) Exhaust pipe (in the mouth, etc.);

(e) Burning with red-hot substances;

(f) Cohabitation with corpses;

(g) Stick torture;

(h) The “black diet”;

(i) Pulling out of fingernails;

(j) Poisoning;

(k) Withholding of medical care; and

(l) Electric shocks.

24. The same report points out that the outcome of eight years (1982-1990) of President Habré’s rule was some 40,000 dead and thousands of widows and orphans. This figure does not cover the real number of victims, inasmuch as the work of the Commission encountered a number of difficulties and was restricted to N’Djamena and some of the country’s larger towns.

25. The problems faced by the members of the Commission included the short time given them for their mission, the lack of appropriate logistical resources, and problems of funding and equipment. This handicap prevented the investigators from being deployed to the interior of the country throughout the initial six-month period.

26. Another not negligible difficulty was the victims’ fear of testifying, since they were suspicious of the Commission of Inquiry’s real mission and were afraid of being identified and executed. Some members of the Commission considered the mission too dangerous and chose to withdraw. All these obstacles prevented the Commission from accomplishing the whole of its task, despite the meticulous work done by its members.

27. Several recommendations were submitted to the Government following the inquiry, including a recommendation to review the powers and structures of the very first special service, the General Directorate of the Centre for Research and Coordination of Information (DGCRCR) to make it once again an instrument in the service of the people and for its welfare rather than an engine of oppression and torture.

28. This recommendation, which appeared on the agenda of the Sovereign National Conference in 1993, was studied in detail and led to the creation of the National Security Agency (ANS) by Decree No. 302 of 8 June 1993. The definition of its tasks, organization and powers were the subject of Presidential Order No. 1024/PR/96 of 12 April 1996, in accordance with the spirit of article 6 of the decree by which it was created.

29. The mission of the ANS is to:

(a) Research, collect and use information relating to the security of the State;

(b) Detect, forestall or prevent all activities of espionage, subversion and destabilization directed against the interests of the State and Nation, in coordination with the other services or bodies;

(c) Carry out, as part of its powers and prerogatives, any mission with which the political authority may entrust it.

30. No evaluation of the activities of this new agency, the ANS, can be made, owing to the secret nature of its task. According to article 3 of the decree by which it was created, "The identity of the staff of the Agency, the tasks entrusted to it, the activities it undertakes in that context, and all administrative and financial documents are covered by defence secrecy".

31. This situation is not necessarily to be interpreted as a deliberate attempt to violate human rights, since the Government takes pains to ensure that the regular functioning of this body is in keeping with general human rights principles. Presidential Order No. 1024/PR/96 of 12 April 1996, which defines ANS missions, organization and powers, obeys these principles.

32. These principles are enshrined in articles 3, 4 and 5 of the normative text, which comprises:

(a) The distinction between the ANS mission and that of the national police and the gendarmerie (art. 3);

(b) Strict respect for the laws and regulations of the Republic, as well as the international commitments undertaken by the State, and an absence of power to arrest and detain suspects (art. 4);

(c) Referral to the police and gendarmerie for arrest or detention with respect for the laws in force (art. 5).

33. It should also be noted that the emergence of democracy, and particularly that of political parties and civil society (the latter essentially composed of well-structured human rights defence associations), has helped to reduce cases of torture, owing to regular complaints.

34. This state of affairs is corroborated by the report established in January 2005 by the Independent Expert on the situation of human rights in Chad, Mónica Pinto, who pointed out, when referring to human rights and security, that the Working Group on Enforced or Involuntary Disappearances has brought no new cases to the Government's attention since 2000 (E/CN.4/2005/121).

35. In pursuance of the recommendations of the Commission of Inquiry, the former DDS agents were removed from their positions of responsibility. The Government is ensuring that they are not re-employed in the new service, even though article 3 of the regulatory text creating the Agency provides that the identity of the Agency's staff is covered by defence secrecy.

36. On the contrary, the most frequent complaints from human rights associations concern the practice of torture in police and gendarmerie stations. These practices, which the Government

consistently punishes, are linked to the inadequate training of criminal investigation officers in interrogation techniques.

37. The introduction of education in human rights and international humanitarian law in the syllabuses of the National Police, National Gendarmerie and Army Officers' Colleges, as well as the creation of the Reference Centre for International Humanitarian Law, will make it possible to make good that deficiency.

The status of Chad's ratification of the international instruments likely to contain provisions for broader application than that provided in the Convention, and the status of domestic legislation

38. Chad is a member of several international and regional organizations and a party to a number of international and regional instruments, including some that contain provisions of broader application than the Convention against Torture. The international instruments to which Chad is a party are contained in the table below:

Table 1: Instruments to which Chad is a party

Serial No.	*Title of the instrument*	*Organizations*	*Date of ratification*
International instruments *General instruments*			
	International Covenant on Economic, Social and Cultural Rights	UN	1995
	International Covenant on Civil and Political Rights	UN	1995
	Optional Protocol to the International Covenant on Civil and Political Rights	UN	1995
Instruments concerning specific issues			
	International Convention on the Elimination of All Forms of Racial Discrimination	UN	1977
	International Convention on the Suppression and Punishment of the Crime of *Apartheid*	UN	1974
Instruments relating to genocide, war crimes and crimes against humanity			
	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	UN	1995
Instruments relating to protection of specific groups			
	Convention relating to the Status of Refugees	UN	1981
	Protocol relating to the Status of Refugees	UN	1981

Serial No.	*Title of the instrument*	*Organizations*	*Date of ratification*
	Convention on the Reduction of Statelessness	UN	1999
	Convention on the Elimination of All Forms of Discrimination against Women	UN	1995
	Convention on the Rights of the Child	UN	1990
Instruments relating to slavery, servitude, forced labour and similar institutions and practices			
	Convention No. 29 (1930) concerning forced labour	ILO	1960
	Convention No. 105 (1957) concerning the abolition of forced labour	ILO	1961
	Convention No. 182 (1999) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, and accompanying Recommendation No.º 190	ILO	2000
	Convention No.138 (1973) concerning the minimum age for admission to employment	ILO	2005
African regional instruments *General instruments*			
	African Charter on Human and Peoples' Rights	OAU	1986
Instruments relating to protection of specific groups			
	Convention of the Organization of African Unity concerning the specific aspects of refugee problems in Africa	AU	1976
	African Charter on the Rights and Welfare of the Child	AU	2000
	Regional Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children	ECCAS/ECOWAS	2006 (signature)

39. For its implementation of the international instruments, Chad has embarked on a vast range of legislative reforms in the judicial, criminal, civil and other fields. However, the many crises with which the country has been faced in recent years, including armed rebellions, social crises, intercommunal clashes and the Darfur conflict, have slowed the process down to some degree.

40. Despite this situation, Act No. 6/PR/2002 on the promotion of reproductive health was promulgated on 15 April 2002. The Act prohibits acts of torture and cruel, inhuman and degrading treatment of a person-s body generally and of his or her reproductive organs in particular.

II. THE JUDICIAL AND ADMINISTRATIVE AUTHORITIES OR OTHER COMPETENT BODIES CONCERNED WITH AREAS TARGETED BY THE CONVENTION

A. The judicial authorities

41. The areas targeted by the Convention fall, by their very nature, under criminal jurisdictions. According to Act No. 004/PR/98 of 28 May 1998 on the organization of the judiciary, the competent judicial authorities are:

(a) The Public Prosecutor attached to the Supreme Court;

(b) The Public Prosecutor attached to the court of appeal;

(c) The district prosecutor attached to the court of first instance;

(d) The investigating judge of the court of first instance; and

(e) The justice of the peace in the magistrates' courts.

42. The above authorities (with the exception of the Public Prosecutor attached to the Supreme Court) are empowered to initiate a public action. Depending on the seriousness of the allegation and the designation of the act, the proceedings continue before the competent jurisdiction, which may be the court of first instance or the criminal court.

43. The criminal court is a temporary court attached to each court of appeal, called upon to hear criminal cases that are brought before it in accordance with the provisions of the Code of Criminal Procedure (CCP). It sits twice a year. Additional sessions may be held if the number of cases to be heard makes this necessary (art. 319 of the CCP).

44. Its members are appointed by order of the president of the court of appeal and are as follows:

(a) The president of the court of appeal or a counsellor (who presides);

(b) Two counsellors of the court of appeal (members); and

(c) Four jurors (members).

45. In the event of an insufficient number of counsellors, the president of the court of appeal may appoint one or two magistrates of the court of first instance to supplement the criminal court (art. 19 of Act No. 004/PR/98).

46. It should also be pointed out that a juror may not be a member of the Government, hold a parliamentary mandate or be a police or military official of any armed force (art. 20 of Act No. 004/PR/98).

47. However, because of the criminal nature of torture and the seriousness of other areas targeted by the Convention, magistrates, with limited competence in criminal matters, will only be able to refer the file to the district prosecutor.

48. Moreover, traditional chiefs may, under Ordinance No. 6 of 6 May 1970 conferring certain judicial police functions on traditional chiefs, under the control of criminal investigators and should they be called upon, "pursue criminals as rural police officers, arrest them and bring them or have them brought before the judicial authorities".

B. Administrative authorities

49. The competent administrative authorities are those that collaborate through their respective technical services with the competent judicial authorities. They are:

(a) The director of the criminal investigation service and Interpol (Minister of Public Security); and

(b) The director of the gendarmerie through the gendarmerie brigades or specialized services such as the National Judicial Research Section (SNRJ), which comes under the Ministry of Defence.

1. The prefects

50. The powers of the prefects are defined in Decree No. 267/PR/INT of 2 November 1972. Under the direct authority of the President of the Republic and under the overall control of the Minister of the Interior, the prefect is the Government representative in his district. As such, he is the repository of the powers of the Republic. He thus ensures the enforcement of the laws, regulations and government decisions (art. 1 of the decree).

51. Thus he ensures public order and the security of persons and property and may assume police powers to that end. The units responsible for maintaining order and security in the district are answerable to him (art. 9 of Decree No. 267/PR/INT).

52. The prefect's power is exercised in many fields. The field connected with this report is the judicial field. In this way, at the judicial level the prefects are among the officials of administration on whom special laws confer the power of cognizance and prosecution within fixed conditions and limits.

53. Accordingly, under article 189 of the Code of Criminal Procedure, in the event of an emergency the prefects (and in N'Djamena the Government representative) may in person or in writing request that the competent officers of the criminal investigation service do all in their power to report infringements, offences or crimes committed against the internal or external security of the State, with a view to bringing the authors of such acts before the courts.

54. The prefect or Government representative is required to inform the district prosecutor or the resident magistrate, depending on the case, submit the evidence to him within 24 hours and hand those apprehended over to him.

2. The sub-prefects

55. Judicial powers are granted to the sub-prefects within the scope of their competence. In the absence of professional magistrates they may exercise the powers of the latter. The sub-prefects are therefore empowered *ex officio* and take up their duties once they have sworn the magistrates' oath in writing.

56. The judicial powers of the sub-prefects gain their legitimacy from article 84 of Act No. 004/PR/98 of 28 May 1998 on the organization of the judiciary regarding the magisterial functions to be assumed by sub-prefects when the professional magistrates cannot cover all districts. A sub-prefect of an adjacent district or any other qualified person may also be appointed to serve as a justice of the peace.

57. Accordingly, in the exercise of their judicial powers the sub-prefects come under the authority and control of the Minister of Justice and Keeper of the Seals, who may withdraw the exercise of these powers for reasons of incompetence, incapacity or grave and repeated professional errors.

58. In order to alleviate the aforementioned shortfall in personnel, which affects the entire judicial corps (composed of magistrates and justices of the peace), training is being offered both at the National College for Administration and the Magistracy (ENAM) of Chad and in other colleges abroad.

C. Other competent authorities

1. The National Commission on Human Rights

59. This body was created by Act No. 31/PR/94 of 9 September 1994. Over and above the power conferred on it to take a matter up on its own initiative, the National Commission on Human Rights (CNDH) may also address applications from persons who consider that one of their human rights has been violated, especially a civil, political, social or cultural right, as a result of an act or omission of the administration or any other moral or physical person.

2. The National Ombudsman

60. Thanks to the Sovereign National Conference of 1993, three posts of Ombudsman were created by Decree No. 380/PR/93 of 24 July 1993. Despite the powers and operating resources conferred by this decree, the latter was never enforced and was abrogated by Decree No. 340/P/97 of 12 August 1997, which created a new post of National Ombudsman, placed under the authority of the Prime Minister. The National Ombudsman is responsible for restoring and maintaining civil and political peace.

3. The Minister responsible for human rights

61. The Minister responsible for human rights is in practice the authority to whom victims appeal. In his turn he refers the complaints to the relevant ministries or other authorities.

62. This new ministerial department, although lacking in sufficient qualified staff, carries out several activities that contribute to the protection and promotion of human rights. The preparation of periodic reports on the implementation of the legal human rights instruments will enable it to analyse the human rights situation and evaluate the progress made in that particular. These elements will also enable the Minister to define detailed policies with a view to drawing up his organization chart, which is very shortly to be adopted.

III. ACTUAL STATUS OF IMPLEMENTATION OF THE CONVENTION

63. Not only does the Constitution unequivocally reaffirm the attachment of the Republic of Chad to the general principles of human rights as set forth in the international instruments, especially the Charter of the United Nations, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights; it also establishes provisions banning torture and other cruel, inhuman and degrading treatment or punishment.

64. Certain laws and regulations also contain specific provisions prohibiting torture or any form of cruel, inhuman and degrading treatment. Examples are the Act on reproductive health and the Code of Ethics of the National Police.

A. The Act on reproductive health

65. Harmful traditional practices and the lessons drawn from the torture practised by President Habré's political police, which spared no organ of the human body, were the inspiration for the promulgation of Act No. 6/PR/2002 of 15 April 2002 on the promotion of reproductive health, article 9 of which states that: "All persons have the right not to be subjected to torture and to cruel, inhuman and degrading treatment of their body in general and of their reproductive organs in particular. All forms of violence such as female genital mutilation (FGM), early marriage, domestic violence and sexual abuse of a human being are prohibited."

B. Code of Ethics of the National Police

66. Decree No. 269 of 4 April 1995 establishing the Code of Ethics of the National Police stipulates in its article 10 that: "No person apprehended and taken into police custody may be subjected to any form of violence or inhuman or degrading treatment by police officers or third persons."

67. This provision requires the criminal investigation officers and their collaborators to treat persons apprehended with the humanity and respect due to the dignity of the human person, especially inasmuch as such persons are entitled to the presumption of innocence, a constitutional principle enshrined in article 24 of the Constitution.

68. Failure to respect article 10 of the Code of Ethics entails for offenders the penalties laid down in articles 252 to 254 of the Criminal Code, which target offences against physical and mental integrity committed by the forces of law and order, including wilful assault, but not acts of torture.

69. Although this legal vacuum is taken into account in Act No. 6/PR/2002 of 15 April 2002, which prohibits acts of torture in the area of reproductive health, it remains a preventive measure without a specific penalty. By thus linking the conditions for prosecution and punishment of violations of human rights pertaining to reproductive health, as defined in the aforementioned Act, to the laws in force, Act No. 6/PR/2002 ignores the principle of the strict interpretation of criminal law.

70. In actual fact, the trial judge would be unable to impose for acts of torture a sentence intended for a different act. Should he do so, the ruling thus handed down would have no legal basis. "No person may be arrested or accused except under a law promulgated prior to the acts of which the person is accused" (art. 23 of the Constitution).

71. This is why a police officer found guilty of torture may not be prosecuted for that offence, but only for wilful assault because, as our domestic legislation stands, torture as such is not penalized. It is no more than an aggravating circumstance. Hence the penalty that will be handed down to the offender will not be appropriate to the gravity of the offence (as stipulated in article 4, paragraph 2, of the Convention).

72. However, this legal lacuna will soon be remedied by the draft law amending and supplementing certain provisions of the Criminal Code. This draft, prepared in connection with the implementation of the Convention on the Rights of the Child, and more precisely the implementation of its article 37, has criminalized torture and taken pains to define it. It has also provided for appropriate penalties and aggravating circumstances.

73. Torture is defined in article 18 of the aforesaid draft law as follows: "Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind."

74. The penalty, established in article 19 of the draft law, is imprisonment of five to ten years and a fine of CFA francs (CFAF) 600,000 to CFAF 2 million.

75. The draft law provides for a penalty of imprisonment with hard labour for between 10 and 20 years when the torture has been committed against a minor under 18 years of age or when the perpetrator of the acts of torture is a public official or any other person acting in his or her official capacity or at that person's instigation, or with that person's express or tacit consent (arts. 20 and 21).

76. At the same time, article 22 likens cruel, inhuman or degrading treatment to acts of torture and penalizes it as such.

77. Implementation of the recommendations of the Estates General on Justice will effectively contribute to strengthening the existing legal framework for better implementation of the Convention.

78. The programme of judicial reform approved by Decree No. 065/PR/PM/MJ/2005 of 18 February 2005 establishes six main lines of action, including training of judicial personnel and harmonization of the legal and judicial arsenal with human rights treaties. These lines of action are:

(a) Reform and review of texts and documentation;

(b) Strengthening of law courts' human resources;

(c) Promotion and protection of human rights;

(d) Information, education and communication;

(e) Infrastructure and equipment; and

(f) Fighting corruption and impunity.

PART II

INFORMATION CONCERNING EACH SUBSTANTIVE ARTICLE OF THE CONVENTION (ARTICLES 2-16)

ARTICLE 2 (Measures taken to prevent torture)

79. Apart from the Constitution, which has established the principle of the prohibition of torture, very few measures have been taken for the implementation of article 2 of the Convention. However, although the Criminal Code predates the Convention, it contains some quite pertinent provisions. To these are added some regulatory or administrative measures.

A. Legislative measures

1. The Constitution

80. Article 17 of the Constitution states that: "The human person is sacred and inviolable. Every individual has the right to life, to physical integrity […] and to protection of privacy and possessions."

81. Article 18 specifies that: "No one may be subjected to cruelty or degrading and humiliating treatment or to torture."

82. Article 19 states that: "Each individual has the right to the free development of his or her person while respecting the rights of others, morality and public order."

83. Article 20 adds that: "No one may be held in slavery or servitude."

84. The principle of the ban on illegal and arbitrary arrest and detention is enshrined in article 21 as follows. "No one may be detained in a penitentiary institution unless he or she falls under the effects of a penal law in force" (art. 22).

85. It is also a requirement that any arrest or charge is not valid except by virtue of a law promulgated prior to the acts with which a person is charged (article 23). To these guarantees are to be added the presumption of innocence that any accused person must enjoy until the establishment of that person's guilt following a regular trial offering indispensable guarantees for his or her defence (art. 24).

2. The Criminal Code

86. The provisions of article 12 ff of the Constitution are translated into terms of infractions in the Criminal Code, especially its article 149, which provides for the infraction; the penalties applicable are expressed in article 150, while article 151 specifies its aggravating circumstances when the arrest is made with a false uniform, under a false name or on a forged warrant from the public authority.

87. Any agreement affecting personal liberty, such as transfer, enslavement and bonding of labour shall be subject to the penalties provided for arbitrary detention (art. 152).

88. Still in penal terms, article 247 of the Criminal Code provides that: “Criminals, whatever their categorization, who use torture or commit acts of barbarism in the execution of their crimes shall be punished as if guilty of wilful murder.”

89. Article 145 of the same Code affirms that: “Public officials responsible for carrying out administrative police or criminal investigation functions who refuse or neglect to respond to a lawful request to report illegal or arbitrary detentions, either at detention facilities or elsewhere, and who fail to prove that they have reported it to a higher authority, shall be liable to imprisonment for one month to one year and required to pay damages.”

90. Articles 252 to 254 of the Criminal Code govern attacks against physical or mental integrity.

91. Under article 252, “Any individual who has wilfully beaten, injured or committed any other act of violence or assault against the person of another shall be sentenced to imprisonment of six days to one year and a fine of CFAF 500 to CFAF 50,000. If there was premeditation, ambush or the use of a weapon, the prison term will be six months to five years and the fine will range from CFAF 5,000 to CFAF 100,000”.

92. Article 253 adds that “If an illness or personal incapacity for work for more than 20 days results from beatings or other forms of violence or assault, the penalty shall be imprisonment of one to five years and a fine of CFAF 5,000 to CFAF 100,000.”

93. According to the same article, “When there is mutilation, amputation or loss of use of a limb, blindness, loss of an eye or other infirmities or if the wilful assault or injury causes death, but in the absence of intention to do so, the guilty party shall be sentenced to imprisonment of 5 to 10 years and a fine of CFAF 10,000 to CFAF 500,000.”

94. Premeditation or ambush constitutes an aggravating circumstance for these offences, and the sentence is imprisonment with hard labour in the second case.

95. Article 257 provides that: “Any person guilty of the crime of castration shall be punished by imprisonment with hard labour. If death ensues, the guilty person shall suffer the penalty of life imprisonment with hard labour.”

96. The Chadian Government’s political will to respect and protect the citizens in this area was translated into the ratification on 9 June 1995 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by the creation a year later of the National Commission on Human Rights.

97. The Sovereign National Conference of 1993 confirmed this institution, which has its origin in one of the recommendations of the Commission of Inquiry into the crimes and abuses of power of former President Habré in 1991.

3. The National Commission on Human Rights

98. The National Commission on Human Rights (CNDH), created by Act No. 031/PR/94 of 9 September 1994, is composed of members from four categories, namely the ministries, the human rights defence associations, the trade unions and eminent private individuals, pursuant to article 7 of that Act. The Commission has the following membership:

(a) Representatives of the ministries:

A representative of the Ministry of Communications and an alternate;

A representative of the Ministry for Justice and an alternate;

A representative of the Ministry of Public Health and an alternate;

A representative of the Ministry for Foreign Affairs and an alternate; and

A representative of the Ministry for the Status of Women and Social Affairs;

(b) Representatives of the associations:

Eight representatives of associations working in Chad in the field of human rights and eight alternates;

(c) Representatives of the trade union confederations:

Four representatives of those confederations and four alternates;

(d) Three eminent private individuals chosen for their integrity and their expertise in the field of human rights, as follows:

One person appointed by the President of the Republic;

One person appointed by the Prime Minister; and

One person appointed by the legislature.

99. The ministries with representatives on the CNDH are those whose tasks include responsibility, in their respective fields, for protecting and promoting human rights. Some of these ministerial departments have now changed their names, but this has had no effect on their representation on the Commission.

100. The representatives of the two main trade unions, namely the Union of Chadian Trade Unions (UST) and the Free Confederation of Workers of Chad (CLTT), have never been appointed to take their seats owing to a lack of consensus between the two organizations.

101. The function of the CNDH is to conduct surveys, studies and publications and to advise the Government on all matters relating to human rights and fundamental freedoms. This advice concerns:

(a) The existence and activities of a political police force;

(b) The practice of torture and inhuman and degrading treatment;

(c) The existence of places where secret detention is allegedly practised;

(d) Forced disappearances and secret transfers.

102. The CNDH enjoys autonomy in the issues it addresses, without selectivity in the matters it takes up on its own initiative. It is entirely free to render its advice to the Government and is responsible for communicating that advice to the general public.

103. Decree No. 163/PR/96 of 2 April 1996 lazing down the modalities of operation of the Commission broadened the latter's terms of reference, empowering it to receive and take up pleas from all persons considering themselves victims of violations of their rights.

104 Despite this institution's positive actions, its proper functioning is hindered by some deficiencies. These difficulties are linked to the Commission's failure to adhere to the Principles relating to the Status of Institutions for the Promotion and Protection of Human Rights ("Paris Principles").

Criticisms levelled at the National Commission on Human Rights in connection with its composition and with the guarantees of independence and pluralism

105. An instrument in the service of human rights, the CNDH unfortunately displays some weaknesses that the human rights defence associations are constantly pointing out.

106. First of all, regarding the current composition, the CNDH gives preference to the representatives of the public administration, in breach of the Paris Principles. Accordingly, the institution enjoys only observer status in the International Association of National Human Rights Institutions. Also, its composition does not take into account academics, qualified experts or religious persuasions, even though religious intolerance is well known to be one of the causes of interdenominational clashes that sometimes end in grave human rights violations. This state of affairs considerably diminishes the guarantees of the pluralism that this institution should display.

107. Moreover, the possibility offered to the representatives of the administration to participate in decision-making violates the guiding principles, which authorize participation only in an advisory capacity.

108. Another weakness worthy of note concerns the infrastructure, which is not suited to the proper functioning of an institution of such scope. Just one rented room serves as library, secretariat and meeting room. The condition of the building housing the CNDH, compared with the scale of its mission, deprives it of all authority and militates in favour of new premises equal to its lofty mission. It is extremely urgent for an appropriate budget line to be allocated to enable it to hire high-quality staff so that its autonomy may be guaranteed.

109. Lastly, regarding its members' terms of office, their reappointment has not followed the procedure established. The prolonged absence of certain members and the failure to hold sessions make the CNDH today an organization consisting solely of its secretary general.

110. What is certain, in any event, is that the CNDH had an impressive start and that the weaknesses mentioned above are partly linked to the shortage of financial resources, to the laxity of its members and to inadequate expertise in managing such institutions.

B. Regulatory or administrative measures

111. The administrative measures have been translated into the installation of the bodies described below:

1. The Commission of Inquiry of the Ministry of Justice into the crimes and abuses of power of former President Habré and his accomplices

112. The determination of the Chadian people to turn the final page on torture, and the foundation of the Government's actions to that end, are manifest in the report of the aforesaid Commission, in which the key phrase is: "Never again". Although the Commission was established prior to Chad's ratification of the Convention, its report is just as relevant today. It is, in fact, the principal basis for the trial of Habré and his accomplices and for the fight against torture. The acts attributed to Habré and his accomplices are precisely those referred to in article 4 of the Convention, which is the subject of the present report.

113. The Commission of Inquiry was created by Decree No. 014/P.CE/CJ/90 of 29 December 1990 at the end of Hissène Habré's dictatorship and entrusted with the task of assessing the reign of terror that had cost so many human lives.

114. Placed under the authority of the Ministry of Justice, the Commission of Inquiry's tasks were to:

(a) Investigate the abductions, detentions, murders, disappearances, acts of torture and barbarism, ill-treatment, other attacks on physical and moral integrity and all human rights violations, as well as illegal drug trafficking;

(b) Gather documentation and archived material and make use of them;

(c) Seize and secure movable and immovable property needed to establish the truth;

(d) Maintain in their original condition the premises and equipment employed for acts of torture;

(e) Interview all the victims and request them to produce evidence attesting to their physical and mental state following their detention;

(f) Hold hearings for the heirs and request them to furnish any necessary supporting documents;

(g) Hear any person whose statement may be useful in arriving at the truth;

(h) Determine the amount of the contribution to the war effort and its use as of 1986;

(i) Check the financial transactions and bank accounts of former President Habré and his accomplices; and

(j) Inventory all the immovable property, both inside and outside the country, belonging or apparently belonging to former President Habré and his accomplices.

115. That report, published by Harmattan in 1993, is one of the key documents in the prosecution of former President Habré and his accomplices. Mention should also be made of the Chadian Government's willingness to cooperate with foreign judicial bodies, especially that of Belgium and with human rights defence associations by allowing access to the premises and archives of the Documentation and Security Directorate (DDS) and to its premises.

2. The National Office of the Ombudsman

116. In accordance with the recommendations of the National Sovereign Conference (CNS) of 1993, the National Office of the Ombudsman, created by Decree No. 340/PR/PM/97 of 12 August 1997, comes under the authority of the Prime Minister and is responsible for restoring and maintaining civil and political order in general terms.

117. The imprecise nature of the Ombudsman's mission and his dependence on the Office of the Prime Minister constitute obstacles that became apparent through the latter's communication to the High Command of the Armed Forces.

118. The lack of cooperation between the public services and the National Ombudsman is also worthy of mention. The numerous communications from the institution concerning citizens' petitions for losses sustained owing to the malfunctioning of the public services have remained unanswered by the ministries responsible for the services implicated.

119. The absence of cooperation between the ministries in charge of defence and security is regrettable inasmuch as the reintegration of political-military combatants, signatories of peace accords, requires follow-up just as the maintenance of civil and political peace within the national community calls for ongoing dialogue between the Office of the National Ombudsman and the security services responsible for maintaining order.

120. A draft law is being adopted in order to reinvigorate the Office of the Ombudsman and strengthen the Ombudsman's powers. The innovations it contains concern:

(a) Progression of the Office of the Ombudsman from a subordinate status to one of autonomy;

(b) Definition of the profile of the Ombudsman and the incompatibilities inherent in the exercise of his functions;

(c) Redefinition of the Ombudsman's mission;

(d) The possibility of taking up matters on its own initiative; and

(e) The absence of charges for referral of matters to the Ombudsman.

121. The purpose of these innovations is to guarantee the institution's independence and to consolidate the powers of the Ombudsman; they partially overcome the difficulty of implementing the provisions relating to judicial assistance, since the Government has never adopted the decree that should determine the conditions for admission to the benefit of such assistance.

3. The Decree establishing the Code of Ethics of the National Police

122. Decree No. 269 of 4 April 1995 establishing the Code of Ethics of the National Police has not overlooked the excesses of which national police officers are capable, which is why guarantees have been established through certain provisions of this decree.

123. Thus, under article 9, when a police officer is authorized by law to use force, and especially to use his weapon, he must use only such force as is strictly necessary and in keeping with the purpose intended.

124. Furthermore, article 10 of the same decree stipulates that: "Any person apprehended and taken into police custody shall not be subjected by police officers or third persons to any violence or inhuman or degrading treatment".

125. An official who witnesses behaviour prohibited under this article shall be liable to disciplinary measures if he or she does nothing to stop it or fails to inform the competent authority.

126. "A police officer guarding a person whose condition requires special care must call on the medical staff and, should it be necessary, take measures to protect the person's life and health."

127. The Code of Ethics of the Gendarmerie, considered by this institution's authorities to be outdated and ill-adapted to present requirements, is currently being revised. A commission has been created for the purpose.

128. In order to conform to the motto of the Gendarmerie Academy, which is "Training for Justice, Law and the Fatherland", a new recruitment policy has been established. Henceforth gendarmes must attend the academy, where they will receive training appropriate to their future functions. In all missions they will be called upon to assume, they must always bear the following three rules in mind:

(a) Protection of persons and property;

(b) Assistance to persons in danger; and

(c) Professional secrecy.

129. Appointments made as favours over the years by successive heads of the institution are a thing of the past.

130. Still relating to administrative measures, it should also be pointed out that the Government has authorized the functioning of two associations directly concerned with torture (see paragraphs 131 to 136 below).

4. The Association of Victims of Crimes and Political Repression (AVCRP)

131. This association was created essentially by victims of crimes committed under former President Hissène Habré. It aims, in addition to securing reparations for acts of torture endured, for which it applies to the Government, to spare the people of Chad the repetition of such a gross misfortune by the proclamation of a regular Victims' Day and the construction of a monument in their memory.

5. The Association of Christians for the Abolition of Torture – Chad (ACAT)

132. The objectives of this association, created in 1994 and authorized to function as of 15 March 1995, include:

(a) Alerting the people of Chad to the intolerable nature of torture;

(b) Assisting any person, without distinction of race, religion or sex, who is a victim of torture or other inhuman treatment to seek reparation; and

(c) Cooperating with the Government in its attempts to settle conflicts.

133. The methods used by the association are advocacy, awareness-raising, training, radio broadcasts, urgent appeals, and so forth.

134. ACAT's participation in December 2006 in the first of three international seminars on "The Robben Island guidelines and the fight against torture", held in Bujumbura by the International Federation of Action by Christians for the Abolition of Torture (FIACAT), in cooperation with the Association for the Prevention of Torture (APT), was followed by preparation of a plan of action to place the seminar's recommendations in the national context.

135. The purpose of these guidelines is to help States fulfil their national, regional and international obligations for effective strengthening and enforcement of the prohibition and prevention of torture, that being universally recognized as a crime which constitutes a grave assault on human dignity and personality.

136. Thus, the ACAT plan of action accords priority to advocacy for speeding up the adoption of legislative measures for criminalizing torture. Moreover, the Government has not been neglecting the question of torture; it has placed the subject on the agendas of both the Estates General of Justice and the Army.

C. Judicial measures

137. In Chad justice is administered through a single jurisdiction comprising:

(a) The Supreme Court;

(b) Courts of appeal;

(c) Criminal courts;

(d) Courts of first instance;

(e) Labour and social security courts;

(f) Commercial courts; and

(g) Magistrates' courts.

138. The fields of competence of these courts are civil, commercial, social, administrative and criminal (art. 1 of Act No. 04/PR/98 of 28 May 1998 on the organization of the judiciary).

1. The Supreme Court

139. The Supreme Court is the highest court in Chad for judicial, administrative and audit matters. Its jurisdiction extends throughout the national territory. It rules on appeals on points of

law, in accordance with Basic Act No. 006/PR/98 of 7 July 1998 on its organization and functioning.

140. It is the only court that rules on appeals concerning abuse of power. It expresses its views on draft laws before they are examined by the Council of Ministers. The Supreme Court is also the only body to hear disputes regarding local elections.

141. It consists of three divisions:

(a) The judicial division;

(b) The administrative division; and

(c) The division of audit (art. 7 on the Act on the organization of the judiciary).

2. Courts of appeal

142. Each court of appeal comprises at least six divisions:

(a) Civil and customary court;

(b) Administrative and financial court;

(c) Commercial court;

(d) Social court;

(e) Correctional and police courts; and

(f) Indictment division.

143. The court of appeal hears appeals against rulings handed down in first instance by all the courts that come under its jurisdiction (art. 14 of the Act on the organization of the judiciary). Its rulings are delivered collegially, and the Public Prosecutor's Department is represented in court by the Public Prosecutor, assisted by his deputies (art. 16 of the same Act).

3. Criminal courts

144. For the functioning of this court, the State party refers the Committee to the section relating to the judicial authorities competent in the matters referred to in the Convention.

4. Courts of first instance

145. The court of first instance is the court of ordinary law, whatever the applicable law and the status of the conflicting parties (art. 28 of the Act on the organization of the judiciary). It comprises a civil and customary division, an administrative division, a correctional and police court division, a juvenile division and investigators' offices (art. 24 of the Act on the organization of the judiciary).

146. The court of first instance is composed of a president, judges, investigating judges and juvenile judges. The assignment of the judges at the headquarters of the different courts is determined by order of the president of the court.

147. The Public Prosecutor's Department is represented in the court of first instance by the district prosecutor assisted by alternates. The district prosecutor falls under the authority of the Public Prosecutor (art. 25 of the Act on the organization of the judiciary).

148. The court is constituted collegially except as a temporary measure if the bench that is allocated to it has fewer than three magistrates, not including the investigating judges (art. 26 of the Act on the organization of the judiciary).

5. The labour and social security court

149. The labour and social security court hears disputes between workers and their employers concerning work contracts; apprenticeship contracts; collective agreements; work, hygiene and safety conditions; and disputes relating to the election of staff delegates and the social protection regime (art. 35 of the Act on the organization of the judiciary).

150. It consists of a presiding judge, a worker assessor and an employer assessor and a clerk of the court (art. 36 of the Act on the organization of the judiciary).

151. The assessors are appointed by joint decree of the Minister of Labour and Social Security and the Minister for Justice, following consultation of the representative occupational organizations, and swear an oath before the president of the court (art. 38 of the Act on the organization of the judiciary).

6. The commercial court

152. The commercial court is competent to hear, in first instance, matters relating to acts of commerce, disputes concerning commercial firms and, in particular, incidents relating to cessation of payments (art. 40 of the Act on the organization of the judiciary).

7. Magistrates' courts

153. There is a magistrate's court in each district of the town of N'Djamena and in each sub-prefecture in which there is no court of first instance. These courts may also be established in administrative posts (art. 42 of the Act on the organization of the judiciary).

154. The magistrate sits alone and is assisted by a secretarial clerk. He fulfils the duties entrusted by law to the president of the court of first instance. The district prosecutor for the court of first instance may, in all matters, represent the Public Prosecutor's Department in the magistrates' courts.

155. The magistrate is competent to hear civil, correctional and police court cases within the conditions established by the law (arts. 47 and 49 of the Act on the organization of the judiciary).

156. The abolition of the court martial in Chad represents a major advance in protection from acts of torture.

157. However, after a 12-year moratorium (from 1991 to 2003), executions were resumed following a decision of the criminal court of 6 November 2003, since presidential pardon had been refused.

158. The National Assembly took the Government to task in the wake of complaints by associations working in the field of human rights. For the time being, the problem stands entire since the Criminal Code, which is the legal basis for the death penalty, has still not been amended to abolish it. Under article 5 of the Criminal Code, persons condemned to death are shot.

159. The Justice Reform Programme has not lost sight of the question of the death penalty, which is dealt with in the section entitled "Promotion and protection of human rights".

160. Given Chad's ratification of the Rome Statute of the International Criminal Court and the Protocol creating the African Court on Human and Peoples' Rights, there are plans to review the death penalty in the light of the provisions of the Constitution and the international conventions to which Chad is a party. The study should give an idea of Chadian public opinion on the subject.

8. Other exceptional measures

161. It is provided in article 87 of the Constitution that: "In the event of a serious and imminent threat to the institutions of the Republic, the independence of the nation, territorial integrity or the execution of international commitments and when the regular functioning of the public powers has been interrupted, the President of the Republic, after consulting the President of the National Assembly and the President of the Constitutional Council, shall determine, in the Council of Ministers for a duration of no more than 15 days, the exceptional measures required by the circumstances".

162. This period may be extended only with the approval of the National Assembly, the nation being so informed in a message by the President of the Republic. The National Assembly meets as of right if it is not in session.

163. These exceptional measures may not be used to justify any violation of the right to life, to physical and moral integrity and to the jurisdictional guarantees granted to individuals.

164. Article 88 adds that: "Measures taken under the preceding article must be inspired be the will to provide the constitutional public authorities, in the shortest possible time, with the means to accomplish their mission".

165. "The National Assembly may not be dissolved during the exercise of exceptional powers."

166. In principle, the various exceptional measures are exercised with respect for administrative legality and for human rights. Unfortunately, the reality is that many abuses are committed by certain administrative and military authorities and by some officers of the law through ignorance or misunderstanding of the rules.

167. The remedy offered to citizens allegedly ill-treated is recourse to the courts, for there is no legislative or regulatory text that authorizes a public authority to commit acts of torture against a citizen. Unfortunately, the same ignorance exists `among the victims.

ARTICLE 3 (Measures taken to prohibit the expulsion, return (*refoulement*) and extradition of a person to a State in which he is in danger of being subjected to torture

168. As stated in the first part of the report, Chad is a party to several international instruments on the protection of refugees; these include the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa.

169. Article 15 of the Constitution provides that: "Foreign nationals who have been legally admitted into the territory of the Republic of Chad enjoy the same rights and freedoms as nationals (political rights excepted) within the framework of the law. They are required to comply with the Constitution and the laws and regulations of the Republic."

170. On the specific subject of refugees, article 46 of the Constitution states that: "The right of asylum is granted to foreign nationals within the conditions determined by law. The extradition of political refugees is prohibited."

171. In Chad matters concerning refugees are handled by the National Refugee Reception Committee (CNAR), which was established by a decree dated 31 December 1996. A subcommittee of the Committee deals with eligibility matters; it is responsible for awarding refugee status in implementation of article 1 of the Geneva and OAU Conventions relating to the status of refugees.

172. The country is also bound by the African Charter on Human and Peoples' Rights, article 12, paragraph 5, of which states: "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at entire national, racial, ethnic or religious groups." In the end the Government did not carry out the threat to expel refugees from its territory following the repeated acts of aggression committed by the Government of Sudan in the eastern region of the country.

173. In compliance with Chad's international commitments, Act No. 14 of 14 November 1959 was promulgated to regulate expulsion, return and administrative internment.

A. Legislative measures

1. The Act regulating expulsion, return and administrative internment

174. Paragraph 4 of article 12 of the African Charter on Human and Peoples' Rights states that: "A non-national legally admitted into a territory of a State Party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law". In pursuance of that provision the Government is empowered, under Act No. 14 of 14 November 1959, to take administrative measures for removal, internment or expulsion only with regard to persons whose actions constitute a threat to public order and the internal security of the territory.

175. When the alleged facts are established an order of the Prime Minister is issued, without prejudice to legal proceedings, requiring the perpetrators to be removed from their places of residence, to reside in a district or place specially designated for the purpose or to be placed in administrative internment in a special facility, or, in cases of non-nationals, ordering their expulsion from the territory of the Republic, in the last-mentioned case without prejudice to the powers reserved to community authorities (art. 1 of Act No. 14).

176. Paragraph 2 of Act No. 14 states that the period of removal, compulsory residence or internment shall be set by order of the Prime Minister; it may be extended or reduced by the same authority.

2. The Act on drugs control

177. In addition, article 142 of Act No. 22/PR/95 of 28 September 1995 concerning drugs control states that, following a decision to exclude a non-national serving a prison sentence from the territory, the person concerned shall automatically be taken to the border at the end of his term of imprisonment.

178. This measure is a complementary penalty which the trial judge is required by law to inflict.

B. Administrative measures

1. Return

179. The regulations laying down the conditions governing the entry and residence of non-nationals in the territory of the Republic are contained in Decree No. 211/INT.-SUR of 4 December 1961 and its enabling instruments.

180. When the conditions stipulated in these texts are not met, measures will be taken for the repatriation or return of the offender.

181. Return is also regulated by the above-mentioned 1959 instrument. However, in view of ignorance of that Act and its lack of precision, the Directorate of Immigration and Emigration, which is responsible for supervising the residence of non-nationals, is having difficulty in establishing a legal foundation for return on the basis of the above-mentioned 1961 decree and of Order No. 3109/INT-SUR of 4 December 1961 establishing the forms of implementation of that decree.

182. Decisions on return are taken in the light of the non-national's residential status (privileged or ordinary).

183. This measure is not applicable to refugees. If it appears that the presence of a refugee may have negative consequences for Chad, the Government refers the case to the National Refugee Reception Committee (CNAR), which will find the refugee, in coordination with the Office of the United Nations High Commissioner for Refugees, another receiving country of the refugee's choice.

184. The penalties stipulated in article 8 of the 1961 decree, which are those contained in article 463 of the Criminal Code, are those of the provisions of French law which were in force in the French colonies. The Criminal Code now in force, which was promulgated in 1967 and abrogated the French code, does not provide for any penalties in this area.

185. This legal lacuna is to be remedied in the course of the revision of the code. Likewise, revision of the Act of 14 November 1959 is needed. Decree No. 72/PRPCSM/SGG of 20 July 1976, issued in implementation of Act No. 14 of 14 November 1959, deals only with the effect on remuneration of the measures taken.

2. Extradition

186. There are several instruments governing extradition in Chad, namely the Code of Criminal Procedure, the General Agreement of 12 September 1961 on Cooperation in Judicial Matters and the Franco-Chadian agreement (No. 138/CSM of 6 March 1976) on mutual legal assistance.

187. These instruments govern the conditions and effects of extradition and the procedures to be followed and, more generally speaking, cases in which extradition is not permitted.

188. Under article 447 of the Criminal Code, no extradition is permitted:

(a) When the person who is the subject of the request is of Chadian nationality;

(b) When the crime or offence is of a political nature, or when it is apparent from the circumstances that extradition is being requested for political ends;

(c) When the crime or offence has been committed on Chadian territory;

(d) When the crime or offence, although not committed on Chadian territory, has been prosecuted and formed the subject of a final judgement in Chad;

(e) When under the laws of the requesting or the requested State legal action has become statute-barred before the request for extradition is made;

(f) If there has been an amnesty in the requesting or the requested State.

189. Similarly, article 44 of the 1961 General Convention does not permit extradition if the requested State considers that the offence in respect of which extradition is requested is of a political nature or related to an offence of that nature.

190. In the Franco-Chadian agreement the grounds given for rejection (*fin de non-recevoir*) of a request for extradition include the political nature of the offence concerned or a connection with such an offence.

191. By clearly stipulating, both in its legislation and through these two agreements (multilateral and bilateral), that political refugees may not be extradited, Chad protects such persons from trials which would be unfair and expose them to the risk of torture where political repression is particularly severe.

192. This protection even extends to extradited persons whose journey takes them through Chadian territory. Article 467 of the Code of Criminal Procedure provides that: “Extradition involving transit of a person of any nationality, handed over by another government, through Chadian territory, or by vessels of the Chadian maritime services, shall be authorized on request received through diplomatic channels accompanied by documentation necessary to establish that the crime is not of a political nature.”

193. Except where there are specifically designated grounds for refusal of extradition, that measure may be taken under article 445 of the Criminal Code, which states that: “The Government may at the request of any foreign Government hand over to that Government any non-Chadian person found in the territory of the Republic and who is the subject of prosecution in the name of the requesting State, or of a sentence pronounced by the courts of that State.”

194. Unfortunately, owing to deficient record-keeping, the public prosecutor's department has no statistics. However, according to the sources of the directorate of the prison service, under the Habré regime the Government acted on a request for the extradition of a French couple who had been prosecuted and sentenced for fraud by the Chadian courts.

195. This extradition, authorized by decree of the President of the Republic, thus constituted a violation of the provisions of article 450 of the Criminal Code, which authorizes the extradition of a non-national who has been prosecuted and sentenced only after the sentence has been served.

196. The report of the National Commission of Inquiry of the Ministry of Justice shows that the rights of Chadian political refugees in exile in other countries were routinely violated under the Habré regime. Refugees of this kind were kidnapped for "final disposal" by members of his feared political police, who formed the notorious unit (known as the Terrorist Mission) attached to the cultural advisers of the Chadian embassies in the countries concerned.

197. Chad is now a party to the Convention against Torture. It cannot undertake an extradition without taking into account all relevant considerations, including, where present, the existence in the requesting State of a pattern of systematic, grave, flagrant or mass violations of human rights. This is a moral duty and a necessary safety precaution.

3. The Decree establishing the conditions for the admission and residence of non-nationals in the territory of the Republic of Chad

198. Decree No. 211/PR/61 of 4 December 1961 establishes the conditions governing the admission and residence of non-nationals in the territory of the Republic of Chad according to whether the non-national enjoys privileged status or not. There are formalities common to both regimes and others specific to each.

199. In all cases access to the territory of the Republic of Chad is subject to proof of sufficient means of subsistence or a legal contract of employment in the service of an individual or a corporate body established in the country (art. 3).

200. In addition, every traveller entering the territory of the Republic of Chad is required to produce proof of deposit of the statutory repatriation bond in his country of origin or the country from which he has arrived. The rates and modalities of payment are laid down in Order No. 3109 of 4 December 1961 (art. 4).

201. A carrier may only accept as passengers travelling to the Republic of Chad persons who have complied with the formalities laid down in article 1 concerning the documents to be provided under the regime to which the passenger is subject.

202. In cases of failure to comply with the provisions of articles 1 and 4 persons who are not permitted to disembark must therefore be detained under the responsibility of the carrier for automatic re-embarkation for transportation to the place whence they came.

203. With the agreement of the carrier concerned, such persons may be permitted to remain at the arrival point pending repatriation. The cost of their stay and repatriation must be borne by the carrier (art. 5).

204. Fraudulent entry, or entry by any other means, following refusal of permission to enter the territory of the Republic of Chad, and involving non-compliance with the provisions of articles 1

and 4, shall render the person concerned liable to a fine of 18,000 – 360,000 CFAF and imprisonment for one month to one year, or to one or other of those penalties. Accomplices shall be liable to the same penalties (art. 7).

205. This instrument was adopted shortly after independence; it is fairly flexible and makes entry into Chad easy. However, and without prejudice to the right to move freely enjoyed by every human being, it requires revision with a view to strengthening border controls and to protect the population, not only from the undesirable consequences of conflicts, but also on account of the drug traffic, the increasing availability of small arms at the borders and the traffic in human beings (particularly children), which is reaching disquieting levels.

206. With the aim of protecting women and child victims of trafficking in human beings Chad recently signed the regional multilateral cooperation agreement. It has also adopted the regional Action Plan to Combat Trafficking in Human Beings, especially women and children, signed in Abuja (Nigeria) on 7 July 2006.

207. The multilateral agreement deals with the prevention of trafficking, prosecution of those perpetrating it, assistance and protection for victims and their rehabilitation and social integration and the coordination of investigation, arrest and sentencing of traffickers and their accomplices.

208. A number of measures are provided for in the Action Plan. These include refusal of admission to Chad, or the cancellation of visas, for persons wanted for crimes relating to trafficking in human beings and mutual judicial assistance of a nature to lead to the extradition of perpetrators.

4. Decree stipulating the conditions for the application of banning orders (*interdiction de séjour*)

209. Decree No. 46/PR/INT of 18 February 1971 stipulating the conditions for the application of banning orders is applicable to every convicted person. Non-nationals are not excluded from its scope.

210. Article 1, paragraph 2, of the decree states that: “All cases of commutation or remission of a principal penalty accompanied by a banning order, and all cases of conditional release of a person subjected to a banning order, shall be reported to the Ministry of the Interior by the office of the prosecutor responsible for the implementation of measures of this kind.”

211. Article 3, paragraph 3, of the same decree states that: “The Minister of the Interior may amend the list of prohibited places at any time during the period of the banning order”.

212. Article 5 provides that: “When a banning order constitutes the principal penalty, notification of the order and delivery of the booklet shall be the responsibility of the administrative authorities.”

C. Judicial measures

213. Under article 71 of Basic Act No. 006/PR/98 of 7 August 1998 regulating the organization and functioning of the Supreme Court, the contentious matters section of the court is competent to hear in first and final instance:

(a) Appeals concerning *ultra vires* measures relating to regulatory instruments of a general or individual nature;

(b) Disputes relating to monetary or statutory privileges enjoyed by public officials;

(c) Appeals relating to interpretation, or to assessments of the legality of acts the contentious nature of which brings them within the competence of the section.

214. The urgent proceedings heard by the contentious matters section of the administrative division relate to interim administrative measures and stays of execution (arts. 90 ff. of the Basic Act regulating the organization and functioning of the Supreme Court).

215. For this reason cases of stays of execution of an order issued by the Minister of Public Safety and Immigration are heard by the contentious matters section of the administrative division of the Supreme Court of Chad.

The case of Tchanguiz Vatankhah v. Ministry of Public Safety and Immigration **(Ruling No. 026/CS/CA/SC/05 of 15 December 2005)**

216. In 1976 Mr. Tchanguiz Vatankhah, a refugee of Iranian nationality, received permission to take up residence in Chad. An order of expulsion from the territory, dated 14 November 2005, was issued against him by the Minister of Public Safety and Immigration. On the advice of Human Rights Without Borders (*Droits de l'homme sans frontières*) and his legal counsel, he appealed to the contentious matters section of the administrative division of the Supreme Court of Chad to obtain a stay of execution of the order.

217. In support of his plea counsel invoked the provisions of article 32 of the Convention relating to the Status of Refugees (ratified by Chad), which reads: "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order."

218. He went on to argue that the concept of public order presumes that, if expulsion is to be legal, there has been a breach of individual liberties or that the tranquillity of every citizen has been disturbed. However, no citizen had complained about the presence of Tchanguiz Vatankhah in the town of Moissala, where he lived, or anywhere else.

219. In addition, he argued that paragraph 2 of article 32 of the same convention, which stipulates that a refugee who is the subject of an expulsion order "shall be allowed to submit evidence to clear himself ... before competent authority or a person or persons specially designated by the competent authority", had not been complied with. Regrettably, since the arrest no measure had been taken to that end, even though article 15 of the Constitution of Chad guaranteed to foreign nationals legally admitted into the territory of the Republic of Chad the same rights and freedoms as nationals (political rights excepted).

220. The reply of the Judicial Follow-up and Contentious Administrative Affairs Service of the Office of the Secretary-General of the Government defended the incriminated measure, invoking the provisions of article 91 of Basic Act No. 006/PR/98 of 7 August 1998 regulating the organization and functioning of the Supreme Court, which states that "save in exceptional circumstances, an appeal to the Administrative Division does not have suspensive effect".

221. "However, the Administrative Division may order a stay of execution of a decision when the latter does not relate to public order, safety or public peace and if an express request for a stay is submitted to it". This clause escaped the attention of the administrative judge, who considered that, in view of the status of the appellant and the rights accorded to him by both the Convention relating to the Status of Refugees and the Constitution, the grounds for expulsion had not been established sufficiently to justify the decision of the Minister.

222. In the light of the foregoing, the Administrative Division considered that the decision to expel Tchanguiz Vatankhah would give rise to serious prejudice for him. It therefore ruled that the matter was an urgent one and ordered that he be allowed to remain in Chad pending completion of the proceedings on the merits of the case, which had still not been opened.

ARTICLE 4 (Repression of acts of torture in domestic law)

A. Legislative measures

223. Contrary to the provisions of article 4 of the Convention, which requires Chad as a State Party to ensure that acts of torture constitute offences in its criminal law, such acts do not form the subject of any specific applicable measure.

224. This weakness in domestic legislation is a factor partially explaining impunity. Under existing legislation torture is a broad concept diffused over subjects such as physical assault on individuals and acts threatening life and physical or mental integrity; torture is merely an aggravating circumstance left to the assessment of the trial judge. The Criminal Code contains some provisions rendering certain acts against the physical integrity of persons punishable.

1. The Criminal Code

Acts infringing liberty designated and punishable under the Criminal Code

225. Article 143 states that: "Where a public official, agent or employee has ordered or committed an arbitrary act or an act infringing either individual liberty or the Constitution, he shall be sentenced to six months' to five years' imprisonment and a fine of from CFAF 5,000 to 5 million.

226. "If, however, it is established that he acted on the orders of his superiors in matters within their competence and to whom he owed hierarchical obedience, he shall be exempted from the penalty, which in such cases shall be applied only to the superiors who gave the order."

227. Article 144 reads: "If ministers charged with having ordered or authorized an act contrary to the Constitution allege that the signature attributed to them has been obtained by deceit, they shall be obliged, when rescinding the act, to denounce the persons they allege to be responsible for the deceit, otherwise they shall themselves be prosecuted."

228. Where members of the security services are concerned, article 145 stipulates that: "Public officials responsible for carrying out administrative police or criminal investigation functions who refuse or neglect to respond to a lawful request to report illegal or arbitrary detentions, either at detention facilities or elsewhere, and who fail to prove that they have reported it to a higher authority, shall be liable to imprisonment for one month to one year and required to pay damages."

229. Improper acts committed by members of the prison service are also covered; article 146 provides that: "Guards in correctional facilities who take charge of a prisoner without a warrant or a sentence or, in the cases of an expulsion or extradition, without a provisional government order, who withhold the prisoner or refuse to present him to a police officer or the bearer of the order without showing a prohibition issued by the district prosecutor or by a court, or who refuse to show their registers to a police officer, shall be guilty of the equivalent of arbitrary detention, which is punishable by six months' to two years' imprisonment and a fine of CFAF 5,000 to 100,000."

230. The Public Prosecutor, a district prosecutor, a deputy prosecutor, a judge or a public officer who detains a person, or causes a person to be detained, in a place other than a place designated by the Government or the public administration shall be subject to the penalties stipulated in article 146 (art. 148).

Illegal arrest and abduction of persons

231. Any person who, without an order from the constituted authorities, and in cases other than those where the law requires the accused person to be apprehended, arrests, detains or abducts any other person is punishable by a term of imprisonment with hard labour. The same penalty applies to any person who makes available premises for the performance of the detention or abduction (art. 149).

232. Any agreement affecting the freedom of persons, such as transfer, enslavement or bonding of labour, shall be punished by the penalties laid down for arbitrary abduction, namely a term of imprisonment with hard labour (art. 152, para. 1).

Attacks on life

233. Under article 245, "Any attack on the life of a person by means of substances liable to cause death more or less speedily, irrespective of the manner in which those substances have been employed or administered and of their effects, shall be designated as poisoning."

234. Any offender who, irrespective of designation, resorts to torture for the performance of his crime or commits barbarous acts shall be punished as if guilty of premeditated murder *(assassinat)* (art. 247).

Attacks on physical or mental integrity

235. Attacks on physical or mental integrity form the subject of articles 252 and 253 and are dealt with in the section on article 2 (the Committee is requested to refer to paragraphs 80-110 above).

236. In cases of offences within the scope of articles 252 and 253 the vulnerability of the child is an aggravating circumstance. For this reason, "When the subject of the blows struck and the injuries inflicted is a child under the age of 13 years the penalty shall be doubled. Deprival of food or of care to such an extent as to compromise the health of the child shall be punishable by the same penalties" (art. 254).

Castration

237. Under the terms of article 257, "Any person guilty of the crime of castration shall be punished by a term of imprisonment with hard labour. If death ensues, the guilty person shall suffer the penalty of life imprisonment with hard labour."

Administration of harmful substances

238. Article 258 provides that "Any person who inflicts on another person a sickness or incapacity for work by deliberately administering to him in any manner whatsoever substances which, although not liable to cause death, are harmful to health shall be punished by imprisonment for five to ten years and a fine of CFAF 10,000 to CFAF 500,000."

2. The Code of Military Justice

239. Article 206 of the Code of Military Justice provides that: "Any member of the armed forces who strikes a subordinate other than in cases of defence of self or others, or of rallying fugitives in face of the enemy, shall be punished by imprisonment for six months to three years."

240. "Where acts of violence have given rise to sickness or incapacity for work for a period exceeding six days, serious disability or death, the penalties laid down in the Criminal Code shall be applicable to the perpetrators." However, there are no military courts in Chad.

241. In Chadian criminal law an attempt to commit a crime is always punishable and is sanctioned in the same manner as the crime itself. However, attempts to commit offences (*délits*) are punishable only in the cases established by law.

242. Referring to events occurring in the course of rebellions, the Amnesty International report published on 4 October 2006 describes the practice of detention in secret places without contact with the outside world and refusal to state where those places are and forced disappearances as acts of torture and other cruel, inhuman or degrading punishments or treatment and thus constituting violations of international human rights law.[2]

243. Since the Chadian Criminal Code predates the Convention against Torture, only harmonization of the Code with the Convention will help to bring about the possible implementation of the Convention and the provision of greater protection.

244. As stated in the first part of this report (paragraphs 72 ff), revision of the Criminal Code where it covers this aspect of torture will offer a solution if the draft is promulgated.

245. Following the definition given in article 18 of the draft, article 19 states that: "Any person guilty of torture shall be punished by imprisonment for five to ten years and a fine of CFAF 600,000 to CFAF 2,000,000."

246. Article 21 goes on to provide that: "Where the perpetrator of acts of torture is a public official, or any other person acting in an official capacity, or at the instigation, or with the express or tacit consent, of such a person the penalty shall be 10 to 20 years' imprisonment with hard labour."

[2] « Chad : soldiers held incommunicado for over five months » (AI index : AFR 20/010/2006).

247. Finally, article 22 places cruel, inhuman or degrading treatment on the same footing as torture and renders it punishable as such.

B. Administrative measures

248. The Reform of Justice programme (PROREJ), approved by Decree No. 065/P/PM/MJ/2005 of 18 February 2005 as part of the implementation of the recommendations of the Estates-General of Justice, included:

(a) the revision or adoption of texts;

(b) the promotion and protection of human rights; and

(c) information, education and communication

among the principal strategic orientations of the reform.

249. Under the heading "Revision or adoption of texts" PROREJ included the need for revision of the Criminal Code and the Code of Criminal Procedure to bring them into line with the numerous conventions ratified by Chad. Not only are these texts, which were adopted during the early years of independence, no longer suited to present-day circumstances, but in addition there is as yet no coherent policy on criminal matters.

250. Under the heading "Promotion and protection of human rights" lessons are drawn from the long years of civil war, which had highly negative repercussions in the area of human rights. As a means of improving the human rights situation there are plans to disseminate knowledge of the laws and conventions on the subject among the population to enable it to take the matter into its own hands. This popularization and publicization of legal instruments as recommended to States parties to conventions should be undertaken in partnership with civil society.

251. It is also planned to strengthen the capabilities of human rights defence associations to facilitate the operation of legal advice offices by creating an institutional environment favourable to the promotion of the rights of the individual.

252. The heading "Information, education and communication" of PROREJ covers recommendations to overcome the difficulties facing persons having dealings with the machinery of justice in selecting the proper course of action, on account of a lack of knowledge of the institutions of justice and the absence of an official reception structure and of qualified staff trained for the purpose, by providing the population with better information on their rights and duties.

253. To that end the skills of journalists need to be strengthened to familiarize them with legal language, which is often criticized as abstruse.

254. An evaluation made by the Committee on Follow-up to the Recommendations and Resolutions of the Estates-General of Justice, which is responsible for the implementation of PROREJ, has revealed that, judging by the achievements hitherto, the process of reform is still extremely cautious.

C. Judicial measures

255. In criminal matters every decision of a court must rest on a legal basis. In the absence of such a basis no judgements can be handed down punishing torture as an offence *per se*.

ARTICLE 5 (Principles of territoriality and extraterritoriality)

256. In criminal matters the territorial competence of the Chadian courts is in principle determined by the place where the offence was committed, by the place of residence of one of the persons suspected of having participated in the offence or charged or accused thereof or by the place of arrest or detention of those persons, even for another offence.

257. This competence may be extended in cases established by law. Article 438 of the Code of Criminal Procedure states that: "Any Chadian who is guilty of an act committed outside the country which is designated as a crime punishable under Chadian law may be prosecuted and tried by Chadian jurisdictions.

258. "Any Chadian who is guilty of an act committed outside the country which is designated as an offence *(délit)* in Chadian law may be prosecuted and tried by Chadian jurisdictions if that act is punishable under the legislation of the country in which it was committed ..."

259. The courts of Chad are recognized as having extraterritorial competence in cases of crimes or offences prejudicial to the security of the State, and of forgery of the seal of State or of national currency of legal tender in Chad, committed by a non-national outside Chadian territory. The non-national may be prosecuted and tried in accordance with Chadian law if he is arrested in Chad or if the Government obtains his extradition.

260. The provisions of this article are applicable to offenders who had not acquired Chadian nationality until after the act with which they are charged.

261. But article 439 adds that: "Any person who, in the territory of the Republic, becomes an accomplice of a crime or offence committed in another country may be prosecuted and tried by the Chadian jurisdictions if the act is punishable under both Chadian and the foreign law, provided that the principal act has been confirmed by a final decision of the foreign jurisdiction."

262. On the subject of offences committed by foreign nationals outside Chadian territory, article 440 of the Code of Criminal Procedure states that: "Any non-national who, outside Chadian territory, becomes guilty, either as the perpetrator or as an accomplice, of a crime or offence prejudicial to the security of the State, or of forgery of the seal of State, of national currency of legal tender in Chad, of national paper or of Chadian banknotes, may be prosecuted and tried in accordance with Chadian law if he is arrested in Chad or if the Government obtains his extradition."

263. The principle of territoriality of criminal legislation is subject to certain exceptions accepted under international conventions regarding foreign sovereigns and members of diplomatic missions and consular posts. Officials of international organizations enjoy diplomatic immunity under the 1961 Vienna Convention on Diplomatic Relations.

264. Under the Chadian Code of Criminal Procedure any person committing an offence outside Chadian territory which is punishable under Chadian law may be prosecuted and tried under an extradition agreement.

265. However, under article 441 of the same code, proceedings will not be instituted if the person charged proves that he has been definitively tried abroad and, if convicted, that he has served his sentence or been pardoned, or that his sentence has become time-barred. Article 497 of

the Code of Criminal Procedure reads: “Penalties handed down in a decision in a criminal case shall become time-barred 20 full years after the date on which that decision becomes executor ...”

266. Article 500 of the same code states that: “In no case may a person sentenced by default and whose sentence has become time-barred be allowed to present himself in order to discharge the default”.

267. Article 95 of the Code of Military Justice states that: “The periods of limitation of penalties handed down under articles 87 and 90 above and concerning acts resulting from insubordination or desertion do not begin to run until the day on which the insubordinate person or the deserter reaches the age of 50 years”.

ARTICLE 6 (Preventive detention; police custody)

268. In the absence of any harmonization of national legislation in pursuance of the Convention, the obligations arising from articles 1 and 4 of this Convention cannot be met. However, there is legislation governing preventive detention and police custody, since these are measures affecting the liberty of the individual and as such are governed exclusively by the law.

A. Preventive detention

1. The Constitution

269. Article 22 of the Constitution states that: “No person may be detained in a correctional facility unless he or she falls under the effects of a criminal law in force.”

270. Article 23 adds that: “No person may be arrested or charged except under a law promulgated prior to the acts with which the person is charged”.

271. Similarly, article 24 stipulates that: “A defendant is presumed innocent until the establishment of his guilt following a regular trial offering the guarantees essential for his defence.”

272. The principle underlying every arrest, and the detention of every person, must rest on a legal basis. This is the foundation on which the Code of Criminal Procedure defines the conditions governing both.

2. The Code of Criminal Procedure

273. The provisions concerning preventive detention are to be found in articles 241, 243, 246, 228 and 247 of the Code of Criminal Procedure.

274. Article 241 defines preventive detention and indicates the categories of persons who may be so detained in the following terms: “Preventive detention is a measure designed to ensure appearance of an accused person before the courts or to prevent any activity of a nature to interfere with the establishment of the truth”.

275. “It is applicable only to persons being prosecuted for acts designated as crimes or as offences carrying a penalty of imprisonment.

276. "In correctional cases, when the anticipated maximum penalty is less than two years' imprisonment, an accused person domiciled in Chad may not be held for more than two weeks following his first appearance before an investigating judge unless he has been sentenced for an offence under ordinary law."

277. Article 242 also stipulates that an investigating judge may not issue a detention order against an accused person who is liable to a term of correctional imprisonment or a more severe penalty save at the end of the interrogation at the first appearance.

278. Article 243 of the same code stipulates that: "Preventive detention must take place in a prison and in accommodation separate from that in which sentenced persons are held."

279. Notwithstanding the provisions of article 246, which reads: "Any person with knowledge of irregular or abusive preventive detention may apply to the Public Prosecutor or the President of the indictment division with a view to its discontinuance. The indictment division may in all cases *ex officio* order the release of an accused person in preventive detention", Cases of abusive preventive detention are legion in all the correctional facilities for lack of complaints or on account of ignorance of the texts permitting referral to the competent authorities to end it. However, the Code of Criminal Procedure does not specify a time-limit for preventive detention; this may leave the field wide open for arbitrary measures.

3. Administrative measures

280. Abusive preventive detentions are one of the reasons why in September 2006 the Minister for Justice ordered a mission to the detention facility in N'Djamena given the size of its prison population.

281. The detention facility in N'Djamena contains not only prisoners committed to it by the N'Djamena district prosecutor's office but also prisoners transferred from the provinces to N'Djamena following the submission of appeals. Prisoners sent from the provinces are not systematically recorded on arrival in the different registers; this makes supervision difficult. One person can easily answer in place of another or others without the responsible officials realizing what is happening.

282. In this context the mission, led by a team consisting of a deputy Public Prosecutor, a deputy district prosecutor, a representative of the prison service directorate and two clerks from the district prosecutor's office was sent with the following mandate:

(a) To ascertain the situation of persons charged and accused and, if appropriate, sentenced persons;

(b) To regularize cases of prolonged preventive detention; and

(c) To bring the different registers up to date.

B. Police custody

1. Legislative measures

283. Police custody is basically regulated by the Code of Criminal Procedure, article 221 of which states: "A police officer may not retain a person at his disposal for purposes of preliminary inquiries for more than 48 hours. On expiry of this period the person must be released or presented to the prosecutor's department."

284. The magistrate of the prosecutor's department may authorize an extension of police custody for a further period of 48 hours if he considers this essential for the satisfactory conclusion of the investigation. The authorization must be given in writing after the magistrate has satisfied himself (if necessary by direct contact with the detainee) that that person has not been subjected to any ill-treatment.

285. The time-limit of 48 hours is increased by the period necessary for transport when the arrest is not effected at the offices of the magistrate. The increase varies according to the nature of transportation. The officer of the criminal investigation service must establish that he has made every effort compatible with the requirements of the service and the state of communications.

286. Article 222 of the Code of Criminal Procedure requires officers of the criminal investigation service to prepare reports on their operations and forward them to the prosecutor's department. Article 223 adds that: "If an arrest takes place more than 100 kilometres away from the public prosecutor's head office, and also when the detainee cannot be brought before the competent magistrate on account of the state of communications, the police officer is required to notify the magistrate by telegram within the time-limit laid down in paragraph 1 of article 221. Reports must be transmitted to the prosecutor's department immediately on completion.

287. Provided that these notifications and transmissions have been effected, police custody may be extended pending receipt of a warrant in due form together with any instructions regarding either detention locally or transfer –or possibly an instruction to release the person charged..."

288. Article 20 of the Code of Military Justice states that, subject to special provisions laid down in the Code itself , and in particular rules relating to the fact that in the exercise of their functions they act under the authority of the Commander-in-Chief of the Armed Forces, officers of the military criminal investigation service shall conduct investigations, searches and confiscations and draw up reports in accordance with the relevant provisions of the Code of Criminal Procedure for officers of the ordinary criminal investigation service.

289. They are required immediately to report any offence coming to their knowledge and falling within the competence of the military courts to the Commander-in-Chief of the Armed Forces.

290. They must bring before that authority within 24 hours any person not a member of the armed forces whom they deem it necessary to detain for the purposes of their inquiries or the execution of a rogatory commission. The Commander-in-Chief of the Armed Forces may authorize detention of the person concerned for a further period of 24 hours.

291. Officers of the criminal investigation service are automatically taken off the case as soon as a judicial investigation has been ordered.

292. In practice the time-limit on police custody is not respected. Citizens are often detained in police and gendarmerie premises beyond the statutory period. To justify these irregularities police officers refer to the obsolescence and inadequacy of the equipment with which they are provided.

2. Judicial measures

The case of Tchanguiz Vatankhah v. Ministry of Public Safety and Immigration **(Ruling No. 026/CS/CA/SC/05 of 15 December 2005)**

293. The administrative division of the Supreme Court was called upon to deliver judgement on an appeal submitted by Mr. Tchanguiz Vatankhah, a refugee of Iranian nationality, regularly admitted into the country as a refugee in 1976 following authorization by the Government of Chad, who was arrested on 25 September 2005 and detained in police headquarters in N'Djamena and threatened with expulsion.

294. In a petition dated 21 October 2005 Human Rights Without Borders, representing Tchanguiz Vatankhah, who was assisted by counsel, applied to the contentious matters section of the administrative division of the Supreme Court for interim relief, requesting the latter to instruct the Ministry of Public Safety and Immigration to suspend the expulsion measure and to order the release of Tchanguiz Vatankhah.

295. In its ruling the Court observed that the Ministry of Public Safety and Immigration had not taken any measure of expulsion and ordered the discontinuance of the serious and manifestly illegal breach of the fundamental freedom of Tchanguiz Vatankhah.

296. In the grounds for its decision the Court observed that the detention of Tchanguiz Vatankhah, which dated from 25 September 2005 (i.e., more than one month before the date of the ruling), greatly exceeded the legal period of police custody and had thus become arbitrary detention, and that consequently that detention was contrary to the provisions of the Constitution of the Republic.

ARTICLE 7 (Conditions governing extradition)

297. The criminal legislation of Chad does not envisage or punish torture as a criminal act. Consequently the discovery within the country of a suspected perpetrator of an act of torture committed outside the country cannot give rise either to extradition or to prosecution by the Chad authorities, even where there is a cooperation or mutual judicial assistance agreement between Chad and the requesting State.

298. Under article 445 of the Code of Criminal Procedure the Government of Chad may hand over to foreign governments at their request any person not of Chadian nationality in the territory of the Republic who is the subject of prosecution introduced in the name of the requesting State or of a sentence handed down by the courts of that State. However, extradition is granted only if the offence which has given rise to the request was committed outside the country by a person who is a non-national of that State and when the offence is one which, under Chadian law, may be prosecuted in Chad even if the offence was committed outside the country.

299. The last paragraph of article 445 goes still further. It stipulates that: "In no case shall extradition be granted if the act is not punishable under Chadian law with a penalty of criminal or *délit* rank." Since torture is neither a crime nor a *délit* under Chadian law, not only can no request for extradition be met but in addition it will no longer be possible to undertake proceedings of

any kind. Thus the introduction of the provisions of the Convention against Torture into the domestic legal order is necessary for purposes of trial or extradition of perpetrators of acts of torture.

300. However, if a specific act of torture in respect of which extradition is requested is deemed to be an act giving rise to a penalty of criminal or *délit* rank under the provisions of domestic instruments (such as the administration of a harmful substance during interrogation by a public official), extradition will be granted, since such acts are punishable under article 245 of the Chadian Criminal Code.

301. The request for extradition would then only have to meet the conditions laid down in the Criminal Code and the requirements of reciprocity. The Chadian Code of Criminal Procedure authorizes courts to rule themselves competent when such cases come before them, or to permit extradition to another country, for the trial of the perpetrator of the act in question.

302. Articles 451-460 of the Code of Criminal Procedure specify the procedure (the diplomatic channel) and the documents to be supplied with the request for extradition. These are: a judgement or a sentencing order (even by default or contumacy); an act of criminal procedure formally ordering, or automatically giving rise to, referral of the person accused or charged to the criminal jurisdiction; or an arrest warrant or any other instrument having the same force, issued by a judicial authority, provided that these last-mentioned instruments contain a precise definition of the act in respect of which they were issued and the date of issue.

303. In urgent cases notification of the district prosecutor by the judicial authorities of the requesting State will suffice.

304. With regard to the conduct of hearings, the classical guarantees of a fair trial, namely the presumption of innocence, the principle of adversarial proceedings, assistance by legal counsel of choice or appointed by the court and the dual level of jurisdiction, are enshrined in articles 42-48 of the Chadian Code of Criminal Procedure.

ARTICLE 8 (Obligation to cooperate)

305. In the light of the conditions for extradition described above, it may be said that extradition involves several States and is based on the principle of reciprocity.

306. Since Chad acceded to international sovereignty, treaties and agreements containing provisions on extradition have been signed with other States. These include the general agreement of 12 September 1961 on cooperation in judicial matters concluded between 12 African States (including Madagascar) and the Franco-Chadian agreement of 6 March 1976 (No. 138/CSM) concerning mutual judicial assistance. The signing of these agreements is evidence of a common determination of the States parties to cooperate in legal matters requiring extradition.

307. However, as these two instruments predate the Convention, their content was not prepared with the spirit of article 8 of the Convention in mind. A measure of this kind is also linked to the commitment entered into by each of the States parties to these agreements in the light of the obligations arising from the Convention. Thus the Government of Chad finds itself under an obligation, not only to harmonize its domestic legislation, but also to review these agreements or to conclude new ones.

ARTICLE 9 (Mutual judicial assistance)

308. In application of the principle of territorial competence, which restricts the competence of national jurisdictions to within the borders of their respective States, cooperation between the judicial authorities of different States is necessary in order to facilitate any procedural act. For this reason the mutual judicial assistance called for in article 9 of the Convention formed the subject of the aforementioned treaties and conventions on cooperation. The Chadian Code of Criminal Procedure also contains some provisions establishing the conditions for extradition, laying down the procedure and stipulating its effects. The same applies to international rogatory commissions.

309. Article 50 of the general agreement of 12 September 1961 on cooperation in judicial matters, to which Chad is a party, reads: "The requested State, when it needs additional information in order to satisfy itself that the conditions required by the present agreement are met, and where the omission appears to it to be reparable, shall advise the requesting State before rejecting the request. A time-limit may be fixed by the requested State for the provision of such information."

310. Article 51 of the same agreement provides that in urgent cases, if the requesting State so requests, a provisional arrest may be made pending the completion of the request for extradition and the evidence.

311. A request for provisional arrest shall be transmitted directly to the competent authorities of the requested State by mail or telegram; the Public Prosecutor shall be notified immediately. The requesting authority shall be informed as soon as possible of the effect given to its request.

312. Article 52 also provides that the accused person may be provisionally released 20 days after his arrest, where a neighbouring country is concerned, and after 30 days for other countries, if one of the evidentiary documents has not been sent to the requested authority.

313. If a conflict of requests occurs, where an accused person is sought by two States for the same acts, Chad will choose freely the State to which the person concerned will be handed over, bearing in mind the possibility of subsequent extradition between the requesting States, the dates of the requests, the seriousness of the offence and the place where it was committed.

314. With regard to acts of torture committed under the regime of Hissène Habré, several rogatory commissions have been executed in Chad to enable the Belgian judge in charge of the case to collect evidence. However, this desire to provide judicial assistance, seen from the perspective of the Convention which is the subject of this report, has its limitations inasmuch as the offences mentioned in article 4 do not fall within the scope of these agreements on mutual judicial assistance.

ARTICLE 10 (Programme of training to combat torture)

315. In the field of promotion and defence of human rights, associations for the defence of human rights were the first to organize training workshops on the subject.

316. These training workshops have a variety of target audiences (officials from ministerial departments directly concerned with the question of rights, magistrates, police officers, members of associations for the defence of human rights, etc.); they are usually chaired by persons with

high-level political responsibilities (ministers, secretary-generals of ministries). These meetings always end with the formulation of recommendations which are submitted to the Government.

317. The human rights defence associations also organize awareness development campaigns on a variety of subjects for the populations of different towns.

318. At the request of the Chadian Human Rights League (LTDH), classroom periods have been set aside by the persons in charge of the police and gendarmerie training schools so that training on human rights can be imparted in addition to the conventional subjects such as general and special criminal law and judicial procedure.

319. This partnership with the LTDH, and subsequently the need to harmonize programmes within the framework of international cooperation, have led to substantial progress in the training of members of the armed forces and the police.

320. In order to adapt human rights and international humanitarian law to the context of national defence missions and operations for the maintenance of public order and security which have to be undertaken by the armed forces, an Order (No. 059/MNDR/EMP/02) establishing a reference centre on international humanitarian law (CRDIH) was signed by the Minister of National Defence in March 2002.

321. The tasks of this centre are:

(a) preparation of a national programme of training in international humanitarian law;

(b) design and publication of teaching materials.

322. Another regulatory instrument of the Minister of Defence (Order No. 24/MDNACVG/ENP/25 of 26 January 2005) permitted the establishment of a commission to prepare texts on international humanitarian law. It is fortunate in counting among its membership the International Committee of the Red Cross (ICRC) and a magistrate who is an independent expert. This commission is also responsible for the revision of the Code of Ethics of the Gendarmerie with a view to incorporating the human rights and international humanitarian law dimension into it.

323. The next step was the integration of international humanitarian law into the training programmes of the armed forces and the security services (Order No. 85/MDN/ENP/05 of 19 May 2005). This order makes the teaching of international humanitarian law in the training establishments of the armed forces and the security services compulsory.

324. The reform process led to the publication of a document entitled “Instructor’s manual for use with the armed forces and the security services”. The manual was prepared with the participation of the national army, the group of inter-service military training colleges, the air force, the national gendarmerie, the National and Nomadic Guard and the national police. This manual is in fact a remodelled version of two volumes of the booklets published in cooperation with the LTDH. It contains new material and has been adapted for current training needs; it is printed in loose-leaf form and covers all the problems which the Chadian armed forces frequently encounter during hostilities. It consists of two parts.

325. The first part is devoted to humanitarian law. It is arranged in three levels. The content of the training is specific to each target group and corresponds to a particular level.

(a) Level 1: common basic training imparted to all private soldiers and gendarmes (private soldiers and trainees in the gendarmerie, the Guard and the national police);

(b) Level 2: training of first/year officer cadets, including non-commissioned officers;

(c) Level 3: training of second/year officer, including subaltern officers.

326. The second part, which deals with human rights, is common to all levels. This is the part in which the subject of torture is treated.

327. The module on torture is based on the definition in article 1 of the relevant Convention and specifies that it is a fundamental violation of human rights. It also lays emphasis on the provisions of the basic legislation prohibiting torture and cruel, inhuman or degrading treatment.

328. In this module the different forms of torture are listed together with the measures which can be taken in the light of other international human rights instruments. The 12 points of Amnesty International's Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State[3] are also reproduced in the manual for general use in the training colleges for members of the armed forces and security services. For example, they are taught how to conduct independent investigations into allegations of torture and the invalidity of statements extracted under torture.

329. Twenty-five trainers have already received training in the use of the manual, 500 copies of which are to be printed to make it available in all training establishments for members of the armed forces and security services in Chad. The content of the teaching on humanitarian law and human rights will henceforth be the same in all schools, since the programme is now of national scope.

330. Humanitarian law is also taught in the faculty of law and legal techniques. The National School for Administration and the Magistracy, with the technical support of the United Nations Development Programme (UNDP), recently drew up a manual entitled "Module of legal training on international human rights standards for the use of the National School for Administration and the Magistracy", which is currently being tested.

331. Within the framework of the Decade for Human Rights Education the Government of Chad has begun the process of adoption of a National Plan of Action on Human Rights Education. The implementation of this plan of action will involve the preparation of pluridisciplinary programmes and school manuals and the organization of awareness-raising promotion campaigns among young people in a school environment.

332. One of the stages in this process consists of training of trainers in techniques of human rights education in the three cities in Chad, namely N'Djamena, Bongor and Bol.

333. The aim of these pilot training workshops is to develop among trainers the skills which will enable them to promote human rights education in the education sector. The next stage will consist of the organization of a workshop to define priorities.

[3] AI index : 40/001/2005.

334. Although still at a very early stage of development, human rights education is becoming an inescapable necessity at all stages of life in Chadian society. The vocational schools such as ISSED and the primary-level teachers' training schools have also adopted a programme for the teaching of human rights.

335. Unlike the training schools for members of the armed forces and the security services, which have a uniform training programme, the other vocational establishments have programmes which vary from one to another. The project of the Ministry of Education will permit harmonization of he content of teaching on the subject of human rights.

336. Mention should also be made of the efforts made by the associations for the defence of human rights, which, with the support of their partners, arrange for the training of their members in the major international human rights institutions.

337. Under the international cooperation arrangements among human rights defence associations, members of ACAT receive trainer training in human rights. Other members of human rights associations receive the same training.

ARTICLE 11 (Mechanisms for the surveillance of detainees)

A. Legislative measures

338. Article 22 of the Constitution states that: "No person may be detained in a correctional facility unless he or she falls under the effects of a criminal law in force." It thus prohibits by implication detention in secrecy, by unauthorized persons and in places not designated for the purpose, circumstances which often give rise to acts of torture; these are also prohibited as a matter of principle in article 18. Thus in cases of illegal arrest and abduction of persons the perpetrators are punishable by life imprisonment with hard labour if the arrest has been performed with a false uniform, under a false name or under a forged warrant from a public authority and if:

(a) The person arrested, detained or abducted has been threatened with death;

(b) The persons arrested, detained or abducted have suffered physical torture.

339. These principles, laid down in the Constitution, offer protection to persons deprived of liberty in particular on account of the risk of torture or ill-treatment to which they are subject in a prison environment. The application of these principles implies the setting up of a surveillance mechanism at every stage in the prison system. Provision for such a mechanism is made in both laws and regulations.

340. Article 202 of the Code of Criminal Procedure states that the district prosecutor shall direct the work of all the members of the prosecutor's department and all the officers and agents of the criminal investigation service under his authority.

341. The district prosecutor also has responsibility under the law for identifying and prosecuting any person committing an offence. The law also extends that responsibility to surveillance of police custodial quarters as well as correctional facilities.

342. This obligation, which is binding on the district prosecutor and the other members of the prosecutor's department, first arises at the police custody stage. This is the implication of

paragraph 2 of article 221, which provides that: “The magistrate of the prosecutor’s department may authorize an extension of police custody for a further period of 48 hours if he considers this essential for the satisfactory conclusion of the investigation. The authorization must be given in writing after the magistrate has satisfied himself (if necessary by direct contact with the detainee) that that person is not being subjected to any ill-treatment.”

343. On the subject of preventive detention article 247 of the Code of Criminal Procedure requires that places of detention be inspected by the judicial authorities as follows: “Investigating magistrates and district prosecutors are required to visit persons held in preventive detention at least once a month. The same is required of the presiding judge of the Criminal Court during each session.”

344. This list of judicial authorities required to visit persons in preventive detention is extended by article 483, which requires the Public Prosecutor, the resident judges and the local magistrates to inspect correctional facilities in connection with the execution of preventive detention and prison sentences.

345. In addition, all correctional facilities are required to keep registers of admissions, signed and initialled on every page by a magistrate from the prosecutor’s department. For every release the register must record the release order, the inmate’s date of departure and the court decision or the legal provision on which the release is based. This is in essence the content of article 480 of the Code of Criminal Procedure.

346. When a person has to be placed in pretrial detention, or receives an instruction to report to a prison, without the matter being recorded in the register of admissions, the rules governing criminal procedure laid down in article 481 prohibit any agent of the prison service, on pain of prosecution and punishment for arbitrary detention, from admitting or detaining a person except in pursuance of:

(a) A sentencing order or judgement;

(b) A warrant of committal;

(c) An order of arrest or detention.

347. To the foregoing article 482 adds the following: “Every magistrate of the prosecutor’s department who receives a complaint of irregular detention of a person in a correctional facility is required to undertake the necessary verifications immediately.

348. “Every agent of the prison service who is required to do so by a magistrate or officer of the prosecutor’s department, or by an investigating judge or a criminal investigation officer delegated by any of these, must present his register to the person making the demand, allow him take a copy of any part thereof which he deems necessary and physically to present the detainee or the order prohibiting him from doing so.”

349. The article ends with a statement that refusal to comply with these provisions renders the agent concerned liable to prosecution for carrying out or abetting arbitrary detention.

B. Administrative measures

350. Article 479 of the Code of Criminal Procedure contained provision for a decree to establish the organization and the internal rules of correctional facilities and the conditions of allocation of inmates, the modalities for execution of prison sentences and the regime by which inmates must be governed. In pursuance of that article Decree No. 371/77/SM/MJ of 9 November 1977 regulating correctional facilities was adopted.

351. Under the terms of this decree the staff of these facilities, namely the governor, the chief warden, the accounts clerk and the guards are forbidden to perform any acts of violence against the inmates or physically to assault them. Article 2 of the same decree also provides for inspections of correctional facilities by the director of the prison service, who "shall inspect each prison at least once each year".

352. Articles 24, 25 and 26 deal with inspections (both announced and unannounced) of correctional facilities by the Public Prosecutor, investigating judges, district prosecutors, resident judges, local magistrates, the Minister of Justice or his representative, the director of the prison service, doctors, welfare workers and nurses.

353. The same decree establishes a supervisory and management control committee whose task is one of internal monitoring in matters such as cleanliness, diet, discipline, the health service and regular keeping of registers of letters written and work done by inmates.

354. , Within the framework of their work in prison environments human rights associations can obtain on request open-ended visiting permits issued by the director of the prison service.

355. In practice the magistrates in the prosecutor's department frequently resort to a measure known as an "order to hold available" *(ordre de mise à disposition)* which has no basis in law. This practice of "holding available" is one of the many difficulties impeding the effective application of these supervisory mechanisms. These difficulties include:

(a) The modest size and irregularity of the budget allocation made to the director for the discharge of his tasks;

(b) The absence of a regular corps of prison guards;

(c) The absence of the supervisory commission for which provision is made in legislation, and the irregularity of inspections;

(d) The existence of an anarchic band of inmates in the local prison in N'Djamena;

(e) The insubordinate attitude of criminal investigation officers towards magistrates in certain localities.

356. To reduce the impact of these difficulties the Estates-General of Justice which met in June 2003 drew up some recommendations designed to improve the conditions of detention in correctional facilities. These related to:

(a) The construction of more adequate infrastructures;

(b) The formation of a special corps of prison guards;

(c) The appointment of a visiting magistrate; and

(d) Nation-wide inspection of local prisons in cooperation with civil society.

357. The justice reform programme approved in February 2005 took these proposals into account by making provision for:

(a) Revision of Decree No. 371/77/SM/MJ of 9 November 1977 to regulate correctional facilities;

(b) Refurbishment, building, construction and equipment of new correctional facilities to comply with standards designed to humanize the conditions of detention;

(c) Continuing training of judicial personnel and of 200 prison guards with special equipment for their work, construction of a new building for the Ministry of Justice and refurbishment of detention facilities.

358. This figure falls well short of actual needs. It should also be mentioned that the National Commission on Human Rights had to train all prison governors in Chad in 2001.

359. As regards the establishment of a corps of prison warders, a draft decree to organize such a corps within the National Guard has been drawn up by the Minister of Justice and Keeper of the Seals and transmitted to the Head of State for signature.

360. The memorandum submitting the draft decree is based on the provisions of article 199 of the Constitution, which assigns the custodial functions and supervision of detention facilities, inter alia, to the National and Nomadic Guard. In addition, it deplores the present situation, under which that supervision is assigned to elements of the gendarmerie, whose insubordinate attitude towards the authorities to which they are seconded impedes the establishment of the authority of their hierarchical superiors, namely the district prosecutor and the Public Prosecutor, and that of the Director of the Territorial Administration.

361. The elements mentioned will be trained to comply with international instruments on human rights, the Beijing Rules, the Riyadh Guidelines and all the minimum rules for the treatment of prisoners before being introduced under the exclusive control of the Ministry of Justice.

ARTICLE 12 (The obligation to proceed to a prompt investigation in cases of torture)

A. Legislative measures

362. The competent authorities for prosecution of offences are those designated in articles 179 and 180 of the Code of Criminal Procedure and mentioned earlier.

363. Article 176 of that code states that: “The criminal investigation service has the responsibility for taking cognizance of offences against criminal law, collecting evidence and seeking out the perpetrators pending the opening of a judicial investigation. Once such an investigation has been opened it will act as an agent of the investigating jurisdictions and comply with their instructions”.

364. It should be noted that the direction and coordination of the activities of all the officers and agents of the criminal investigation service is in the hands of the district prosecutor (art. 177 of the Criminal Code).

365. The Criminal Code also confers on the administrative authorities the power to prosecute in urgent cases of crimes and offences against the external or internal security of the State. Thus the prefects in the provinces and the representative of the Government in N'Djamena can order the competent criminal investigation officers in writing to take all necessary measures to take cognizance of such offences and to bring the offenders before the courts provided that they notify the district prosecutor or the resident judge within 24 hours (art. 189 of the Code of Criminal Procedure).

366. However, it should be made clear that where the crime or offence is not a flagrant one the officers and agents of the criminal police do not have the power, during their preliminary investigations directed to identifying the perpetrators or collecting evidence of an offence, to issue a warrant, undertake a search or hear a witness under oath (art. 220 of the Code of Criminal Procedure).

367. When difficulties of a technical nature arise during these investigations the Code of Criminal Procedure permits recourse to expert assistance to establish the truth in the following terms: "The investigating judge and the courts at all levels may call on the services of specialists with the ability to enlighten them on matters of a technical nature.

368. "One or more experts may be appointed according to the nature or the importance of the facts to be investigated" (art. 123 of the Code of Criminal Procedure). Article 124 goes on to state that "When provision to that effect is made in special legislation or it is considered desirable that the expertise should be of an adversarial character, two experts shall be nominated, one of them to be proposed by the person charged or accused."

369. Ordinance No. 02/PR/86 of 1 March 1986 establishing a Code of Military Justice states (art. 17) that: "The Commander-in-Chief of the armed forces shall be responsible for investigating all offences within the competence of the military courts and for bringing the offenders before the courts responsible for trying them. To that end he shall receive complaints or reports from corps commanders or heads of services of officials or public officers, persons who witnessed the offences committed or victims of those offences. He may also be seized of offences by the Minister of National Defence ..."

370. It is clear that all these provisions empower the different judicial authorities to undertake investigations within the general framework of the commission of observed offences. There is no provision mentioning the specific case of torture which should give cause for an immediate investigation.

371. There are cases of persons being brought before the district prosecutor or an investigating judge who allege that they have been victims of torture. Even at that level no investigation can be opened.

B. Administrative measures

372. In regulatory terms, the Government issued in 1995 a decree establishing the Code of Ethics of the National Police. Article 10 of this decree explicitly declares that: "Any person apprehended and taken into police custody shall not be subjected by police officers or third persons to any violence or inhuman or degrading treatment."

373. "A police officer who witnesses behaviour prohibited under this article shall be liable to disciplinary measures if he or she does nothing to stop it or fails to inform the competent authority".

374. Owing to the absence of provisions for the punishment of torture, and thus entailing a procedure for the immediate launching of an inquiry in the case of torture, it is evident that the Code of Ethics does not cover the situation of a police official found guilty of an act of torture and that of his victim. The disciplinary penalty targets only the negligent witness.

ARTICLE 13 (The right of victims to file complaints)

375. Even in the absence of a penal provision expressly repressing torture, a victim of torture is still able to bring proceedings against the perpetrator. Pursuant to article 226 of the Code of Criminal Procedure: "The plaintiff retains the power, notwithstanding a decision not to proceed, either to take the author of the crime or contravention directly to court or to open a criminal indemnity suit before the investigating magistrate."

376. Thus public action for the imposition of penalties is set in motion either by the magistrates or officials to whom it is entrusted by law or by the injured party (art. 1 of the Code of Criminal Procedure).

377. However, in practice victims of torture are afraid to lodge a complaint when the author of the offence holds a particular official position or belongs to a particular social category.

378. Their apprehension is justified, since there is no provision for the protection measures which victims and their witnesses should enjoy when they lodge a complaint.

379. For instance, at the time of the inquiry into to crimes committed by former President Hissène Habré and his accomplices, one escapee was threatened by individuals in N'Djamena for testifying to the Commission of Inquiry.[4] For all these reasons, victims usually prefer to remain silent.

380. However, the publication of the report of the Commission of Inquiry into the crimes committed by former President Hissène Habré and his accomplices has made quite an impact internationally; this provoked massive support for the victims on the part of non-governmental organizations and the international community.

381. This support inspired some 100 people to bring criminal indemnification proceedings individually and collectively so that their torturers, the former DDS agents, should be brought to justice, tried and punished.

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[4] See Report of the Commission of Inquiry … (note 1, *supra*), p. 12.

382. These criminal indemnification proceedings led to interviews of 35 persons and the indictment of 20 former DDS agents; 19 of them were subjected to detailed interrogation. Hitherto the investigating judges in charge of the case have only succeeded in making one confrontation.

383. It should be noted that the Habré case is still pending before the courts. It should also be pointed out that the human rights defence associations' intervention in a case helps discourage the authors of offences from any thought of reprisals against the victims who have filed complaints.

ARTICLE 14 (The guarantee of redress and fair and adequate compensation)

384. In Chad these is no legal text categorizing torture as a distinct crime. As pointed out many times, it constitutes only an aggravating circumstance.

385. Thus a torture victim may file a criminal indemnity action by invoking the provisions of article 7 of the Chadian Code of Criminal Procedure.

386. Following the abuses committed under the regime of former President Habré, the victims brought criminal indemnity actions before the Doyen of the investigating judges appointed in what could be called the "case of Habré and his accomplices". This procedure led to the opening of a judicial investigation.

387. This Chadian judge in charge of the file on the DDS agents has still not been given adequate resources for fulfilling his mission and also comes up against the absence of provisions on torture in criminal law.

388. Another way of enabling a victim to obtain reparation is the exercise of the remedies provided in article 1384 of the French Civil Code, which is in force in Chad.

389. On the basis of solutions found for victims of torture in other countries and assisted by the presence of deputies who were victims, the victims had the National Assembly prepare a proposed law that aims to grant them a sum of money for reparation of the injury sustained. The proposed law estimates this reparation at CFAF 40 million per person per year. The rate is the same for both direct and indirect victims.

390. The victims propose that these amounts could come from the Treasury, from assets belonging to President Habré and his accomplices, which must be confiscated, and from external funds.

391. The endemic and recurrent state of war in the country often gives the forces of law and order the opportunity to commit innumerable acts of torture during their investigations for the identification of a perpetrator or accomplice.

ARTICLE 15 (Invalidity of confessions obtained under duress)

392. Offences may be established by all manner of evidence: police reports, expert reports, witness statements, and confessions.

393. However, according to article 71 of the Code of Criminal Procedure, "Courts may base their rulings only on evidence produced during adversarial proceedings that take place before them."

394. Moreover, article 72 of the same Code provides that: "The courts may form their own opinion of confessions, as of any other item of evidence".

395. In any event, records are deemed to be authoritative as long as their veracity is not challenged or they are presented solely for purposes of information (art. 74).

396. Confessions, for the most part extracted from the accused in police stations or gendarmerie posts, may, for that reason, be deemed to be not genuine in the eyes of the court. "Interrogations are carried out in such a way that detainees have no possibility of denying the acts of which they are accused. They are constrained, usually through torture and ill-treatment, to acknowledge facts and allegations of acts they never committed, which they do in order to put an end to the torture they have undergone."[5]

397. The persistence of these practices is explained by the impunity guaranteed to the guilty parties and, above all, the enormous pressures brought to bear on magistrates.

398. The Instructors' Manual distributed in all training colleges for the armed and security forces has not disregarded the excesses that may occur during interrogations. It therefore contains modules on "the conduct of investigations" and "the fight against impunity".

ARTICLE 16 (Prohibition of acts similar to torture)

399. It should be remembered that the Constitution endorses the principle of the inviolability of the human person and not only provides that every individual has the right to life and physical integrity, but also prohibits acts of torture, physical assault or degrading and humiliating treatment.

400. Many articles of the Chadian Criminal Code punish other acts that constitute cruel, inhuman or degrading treatment or punishment but which are not acts of torture as defined in article 1 of the Convention. These are:

(a) Attacks on liberty (arts. 143, 144, 145, 146 and 148);

(b) Unlawful arrests and abductions of persons (arts. 149-152);

(c) Attacks on life (arts. 239-248);

(d) Attacks on physical or mental integrity (arts. 252, 253, 254 and 256);

(e) Administration of harmful substances (art. 258).

401. Regulatory measures corroborate the Government's determination to punish inhuman and degrading acts. Article 2 of Decree No. 269 of 4 April 1955 creating the Police Code of Ethics states that "the National Police shall carry out its duties with respect for the Declaration of the Rights of Man and of the Citizen, the Constitution, international conventions and the law".

[5] Report of the Commission of Inquiry … (note 1, *supra*), p. 37.

402. Article 7, paragraph 2, of the same decree provides that a member of the national police "must show absolute respect for persons, whatever their nationality or origin, their social status or their political, religious or philosophical beliefs".

403. The decree goes further, declaring in article 8 that "A member of the National Police is required, even when he is not on duty, to act on his own initiative to assist any person in danger, to prevent or stop any act likely to disturb public order and to protect the individual or community from attacks against persons or property".

404. In 2002 the legislature adopted Act No. 06/PR/02 of 15 April 2002 on promotion of reproductive health, punishing, inter alia, female genital mutilation (FGM). Unfortunately, certain customary practices that are degrading and cruel to human beings still exist in Chad. They include the existence of *sororat* and *lévirat* in certain regions of Chad, as well as forced marriages. These marriages sometimes end tragically for the spouse who feels humiliated. However, these practices are disappearing.

405. One minor, forced into marriage by her parents, eventually killed her husband and is currently in the jail in N'Djamena.

406. Other phenomena no less demeaning and reprehensible, such as sexual harassment and sex tourism, paedophilia and trafficking in children, are also becoming widespread and are assuming alarming proportions.

407. Women are generally the prime victims of conjugal violence. It should be said that the Government has never tolerated such practices, which are punished whenever the police or gendarmerie apprehends the perpetrators.

408. Another equally important concern is the exploitation of children. Teachers in Koranic schools who are responsible for children's religious education (commonly referred to as *muhajirin*) subject them to corporal punishment and exploit them like beasts of burden or milch cows.

409. Child cowherds are often subjected to corporal punishment and exposed to inclement weather and have no right to formal education. This is sometimes condoned by the parents. In this area, attention should be drawn to the efforts of national and international organizations regarding assistance to these children and raising of their awareness.

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