

Alternative report by FIACAT, ACAT Chad and the WCADP on the occasion of the examination of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th reports by Chad on the implementation of the African Charter on Human and Peoples' Rights

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Authors of the report

FIACAT

The International Federation of ACATs (Action by Christians for the Abolition of Torture), FIACAT, is an international non-governmental human rights organisation set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

FIACAT – representing its members in international and regional organisations

FIACAT enjoys consultative status with the United Nations (UNO), participative status with the Council of Europe and observer status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of La Francophonie.

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

FIACAT – building up the capacities of the ACAT network in thirty countries

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

FIACAT – an independent network of Christians united in fighting torture and the death penalty

FIACAT's mission is to awaken Churches and Christian organisations to the scandal of torture and the death penalty and convince them to act to bring about their abolition.

ACAT Chad

ACAT Chad is a human rights organisation founded in 1995 and affiliated to FIAN since 2008. Its purpose is to campaign against torture and the death penalty. ACAT Chad seeks to prevent and to monitor human rights abuses and to provide training and education in human rights in Chad.

It intervenes in support of the abolition of capital punishment and enforced disappearances. It helps victims of torture, drafts alternative reports to international and regional human rights organisations and monitors the implementation of the commitments entered into by Chad. To achieve these objectives, ACAT Chad works together with the local authorities, the diplomatic corps present in Chad and international and regional organisations.

World Coalition Against the Death Penalty

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. It was founded as a result of the commitment made by the signatories to the Final Declaration of the First World Congress Against the Death Penalty, organised by the French NGO Together Against the Death Penalty (ECPM) in Strasbourg in June 2001.

The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, it advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The World Coalition strives to achieve these aims in the following ways:

- by supporting its member organisations, local, national and regional abolitionist forces;
- by coordinating international advocacy towards the world-wide abolition of the death penalty.

The World Coalition gives a global dimension to the sometimes-isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. In conformity with the commitment made by its founders, the Coalition has also made 10 October the World Day Against the Death Penalty. The first occurrence of this annual event took place in 2003. It is also a partner of the World Congress Against the Death Penalty, which is held every three years.

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List of acronyms

ACAT Chad	Chad branch of Action by Christians for the Abolition of Torture
NSA	National Security Agency
ACHPR	African Commission on Human and Peoples' Rights
UNUDHR	United Nations Universal Declaration of Human Rights
NJTS	National Judicial Training School
FIACAT	International Federation of ACATs
HAMA	High Authority for the Media and Audiovisual
IOF	International Organisation of La Francophonie
NGO	Non-governmental Organisation
UNO	United Nations Organisation
OJP	Officer of the Judicial Police
ICCPR	International Covenant on Civil and Political Rights
WCADP	World Coalition Against the Death Penalty

Introduction

1. The purpose of this document, which was drawn up jointly by ACAT Chad and FIACAT, is to evaluate the implementation by Chad of the African Charter on Human and Peoples' Rights. Its ultimate goal is to contribute to improving and ensuring respect for human rights in Chad.
2. The report has two main parts. The first part considers the institutional and legislative framework in Chad, while the second examines the implementation of the Charter article by article.

Part I – Institutional and legislative framework

3. In order to implement the provisions of the African Charter on Human and Peoples' Rights, Chad has created institutions and signed or ratified a number of instruments in the field of human rights.

A. Institutional framework

4. The Constitution of 31 mars 1996, revised by Constitutional Law No. 008/PR/2005 of 15 July 2005 and subsequently of 4 May 2018, institutes a separation between the executive, legislative and judicial powers. Article 147 of the Constitution of 4 May 2018 establishes a single judiciary, whose Supreme Court is the highest body in judicial, administrative, constitutional and auditing matters and rules on disputes concerning national and local elections. The Constitutional Court, which plays an important role in the rule of law, is reduced to a simple chamber of the Supreme Court, thereby limiting its mission of monitoring the constitutionality of laws and electoral processes.
5. The new supreme law establishes the High Authority for the Media and Audiovisual (HAMA). This is an independent administrative authority responsible for ensuring compliance with the rules of ethics in the field of information and communication. It guarantees the freedom of the press and the pluralistic expression of opinions, regulates communication between the public authorities, information bodies and the public, and guarantees and ensures equal access to public media for political parties and for associations.

B. Legislative and regulatory framework

6. Chad has signed or ratified a number of international and regional instruments in the field of human rights. For example, at international level:
 - the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified on 18 October 1977;
 - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified on 18 July 1984;
 - the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 20 July 1990;
 - the Convention on the Rights of the Child (CRC), ratified on 2 October 1990;
 - the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 18 July 1994;
 - the International Covenant on Civil and Political Rights (ICCPR), ratified on 9 June 1995;
 - the Optional Protocol to the International Covenant on Civil and Political Rights ratified on 9 June 1995;

- Convention No. 182 on the Worst Forms of Child Labour, ratified on 18 August 2000;
- Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified on 18 August 2000;
- the International Convention for the Protection of All Persons from Enforced Disappearance, signed on 6 February 2007 (but still not ratified);
- the UN Convention against Transnational Organised Crime, ratified on 27 July 2009;
- the Additional Protocol to the Convention against Transnational Organised Crime, to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ratified on 27 July 2009;
- the Additional UN Protocol on Trafficking in Persons, ratified on 10 August 2009;
- the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, ratified on 28 August 2012;
- the Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, ratified on 28 August 2012;
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed on 26 September 2012 (but still not ratified);
- the Convention on the Rights of Persons with Disabilities, which entered into force on 3 May 2008, signed on 26 September 2012 (but still not ratified);
- the Optional Protocol to the Convention on the Rights of Persons with Disabilities, signed on 26 September 2012 (but still not ratified);
- The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, in the course of ratification by the National Assembly.

At regional level:

- the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, ratified by Chad on 12 August 1981;
- the African Charter on Human and Peoples' Rights, signed on 25 May 1986 and ratified on 9 October 1986;
- the African Charter on the Rights and Welfare of the Child, signed on 30 March 2000 and ratified on 16 December 2004;
- the Protocol to the African Charter on Human and Peoples' Rights, creating the African Court on Human and Peoples' Rights, signed on 16 December 2004 et ratified on 27 January 2010;
- the Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women, signed on 16 December 2004 (but still not ratified);
- the Multilateral Regional Cooperation Agreement to combat Trafficking in Persons, especially Women and Children (ECOWAS/ECCAS), ratified on 7 July 2006;
- the African Charter on Democracy, Elections and Governance, ratified on 11 July 2011;
- the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, ratified on 11 July 2011;

- the African Union Convention on Preventing and Combating Corruption, signed on 24 December 2012.

At national level, a number of texts have been adopted and published:

- Law No. 07/PR/1999 and Decree No. 007/PR.PM/1999 of 6 April 1999 laying down procedures for the trial and sentencing of minors aged from 13 to 17 years;
- Decree No. 634/PR/2000 of 30 December 2000 on the institutionalisation of the Children's Parliament;
- Law No. 07/PR/2007 of 9 May 2007 on the protection of persons with disabilities;
- Law No. 19/PR/2009 of 4 August 2009 laying down a Charter for Political Parties;
- Law No. 09/PR/2010 of 2 June 2010 on audiovisual communication;
- Law No. 17/PR/2010 of 18 August 2010 on the press in Chad;
- Order No. 31/PR/2011 laying down the staff regulations of officials in the prison and social reintegration service;
- Decree No. 3912/PR/PM/MDHLF/2011 of 12 December 2011 on the setting up of a committee to monitor international instruments in the field of human rights;
- Law No. 011/PR/2012 dealing with repression, corruption and related offences;
- Law No. 008/PR/2013 of 10 May 2013 on the organisation of the civil state in Chad;
- Law No. /2013 of 17 June 2013 laying down the Judicial Code;
- Law No. 012/PR/2013 on the organisation and operation of jurisdictions in the field of administrative disputes;
- Law No. 036/PR/2015 of 25 August 2015 laying down the Electoral Code;
- Law No. 012/PR/2017 of 14 July 2017 laying down the Code of Criminal Procedure;
- Law No. 01/PR/2017 of 8 May 2017 laying down the Criminal Code.

7. Despite all these provisions and of the will to incorporate the African Charter on Human and Peoples' Rights into its internal legal system, the legislative and regulatory framework remains incomplete. There is no implementing decree for most of these laws, some of which have become obsolete and should be harmonized to take account of Chad's more recent commitments.

8. Moreover, several draft laws are awaiting adoption by the National Assembly, notably the draft Code on the protection of children, the Family Code, etc.

FIACAT and ACAT Chad call on the party State to:

- ***ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights concerning the abolition of the death penalty;***
- ***ratify the International Convention for the Protection of All Persons from Enforced Disappearance;***
- ***support the draft African Protocol on the abolition of the death penalty.***

Part II – Article-by-article review

I. Right to life and abolition of the death penalty

Article 4 - *The human person is inviolable. Every human being has the right to respect for his life and to the physical and moral integrity of his person: no one may be arbitrarily deprived of this right.*

9. The sanctity of human life is enshrined in article 17 of the Constitution of the Fourth Republic (promulgated on 4 May 2018) in the following terms: "*The human person is sacred and inviolable. Everyone has the right to life, personal integrity, security, freedom, privacy and property.* ». The death penalty was provided for in Chad in article 4 of the former Criminal Code for the following crimes:

- the crimes of treason and espionage (Article 62);
- attacks and other attacks on the constitutional order and the integrity and security of the national territory (articles 81, 83, 85, 85, 87, 88 and 89);
- participation in an insurrectional movement (Articles 92 and 93);
- outrages and violence against high authorities, magistrates and custodians of public authority leading to death (Article 124);
- attacks on life, including intentional homicide, infanticide (article 239 et seq.);
- murder, patricide and poisoning (article 246);
- murder with aggravating circumstances (section 248);
- theft with violence resulting in death (article 302);
- the kidnapping of persons who have caused death (Article 316);
- arson resulting in death (article 335).

10. In early 1980, the Court Martial had tried, convicted and executed several people for blood crimes. The executions took place publicly. Under the reign of Hissène Habré, a Special Court of Justice was established. However, no legal execution has been carried out. In 1990, the current regime did not dissolve the Court Martial and the Special Court of Justice. Thus, fourteen (14) persons sentenced to death had been executed in the public square in 1991. In 1993, on the recommendation of the Sovereign National Conference, the Court Martial and the Special Court of Justice were dissolved. However, the death penalty was still maintained in the Criminal Code. On 23 October 2003, four (04) persons accused of murdering a Sudanese businessman were tried, sentenced to death by the criminal session of the N'Djamena Court of Appeal, during an expeditious trial and executed in haste. On 6 and 9 November 2003, nine (9) people were sentenced to death, officially for murder and executed. In 2004, 19 people were sentenced to death for murder or complicity in murder.

11. Since then, a de facto moratorium has been put in place by the Government and Chad has voted in favor of the Resolutions calling for a universal moratorium at the United Nations in 2012 and 2014.

12. However, on 15, 29 June and 11 July 2015, following the terrorist attacks in N'Djamena, several alleged militants of the Islamic sect Boko Haram were arrested. On 28 August 2015, ten (10)

supporters of the Boko Haram sect were sentenced to death during an expeditious trial in which the rights of the defence were not respected. On 29 August 2015, these ten persons were executed, without any possibility of appeal, including cassation and presidential pardon.

13. Following these attacks, Chadian MPs passed a highly controversial bill on 30 July that severely punishes perpetrators of or accomplices to terrorist acts. Act No. 034/PR/2015 "Law on the suppression of acts of terrorism", passed after about ten hours of debate, punishes with the death penalty any person who commits a terrorist act, finances it or recruits and/or trains persons to participate in terrorist acts, regardless of where they are committed. Promulgated on August 5, 2015, this liberticidal law did not clearly define the notion of terrorism, thus opening the way to possibilities of reprisals by opponents and/or human rights activists.

14. Ten alleged members of Boko Haram were sentenced to death on 28 August 2015 for their responsibility in the June 2015 attacks and executed on 29 August 2015. Three lawyers were appointed ex officio to defend them, but only on the eve of the opening of the trial. As a result, the lawyers were unable to meet with the accused to prepare their defences. The defence was also made difficult because the trial was relocated several times to avoid the vigilance of Boko Haram's militants. The speed of the executions left no possibility of appeal to the Supreme Court or pardon for the convicted. These convictions were finally pronounced on the basis of the 1967 Criminal Code, which provides for the death penalty for aggravated murder and not on the basis of the new Act 034, in order not to contravene the principles of legality and non-retroactivity of the criminal law.

15. On 8 May 2017, a new Criminal Code was promulgated. The latter abolishes the death penalty for ordinary crimes, but maintains in its final provisions Act No. 034/PR/2015 of 5 August 2015 on the suppression of acts of terrorism.

16. Although in 2016 and 2017 no death sentences were handed down, several alleged militants of the Boko Haram sect were charged and transferred to Korotoro prison, awaiting trial. On 27 August 2018, the N'Djamena Court of Appeal sentenced four (4) Chadians involved in the murder of a Chinese businesswoman to death on 14 June 2018. These four people are on death row, waiting for their executions. In this case, the judges misread Act No. 34/2015 on the suppression of terrorist acts. Indeed, this law does not clearly define terrorism and constitutes a real threat to opinion leaders and human rights activists.

17. From February 4 to 8, 2019, a workshop to review Act No. 034/PR/2015 of August 5, 2015 on the suppression of acts of terrorism was organized in N'Djamena (Bakara) by the Ministry of Justice, in charge of Human Rights. It had been proposed that the death penalty should be abolished. The draft law had been forwarded to the government for consideration before being forwarded to the National Assembly for adoption. ACAT Chad and FIACAT had played an important role in advocating for the repeal of this law, particularly among parliamentarians and the Prime Minister during a joint mission in October 2017. This is a significant step forward and must be recognized. As did Chad's vote on the United Nations General Assembly resolutions calling for a moratorium on the use of the death penalty in 2016 and 2018.

18. From 20 to 23 August 2019, some 100 suspected terrorists were tried on the basis of Act No. 034/PR/2015 of 5 August 2015 on the suppression of acts of terrorism, but fortunately no death sentences were handed down.

FIACAT, ACAT Chad and WCADP invite the State Party to:

- abolish the death penalty for all crimes, including acts of terrorism;

- commute death sentences to prison sentences;

- *ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;*
- *harmonise national legislation with international commitments to abolish the death penalty for all crimes;*
- *support the draft Protocol on the Abolition of the Death Penalty in Africa.*

II. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Article 5 – *Everyone has the right to respect for the inherent dignity of the human person and to recognition as a person before the law. All forms of exploitation and degradation of man, including slavery, trafficking in persons, physical or moral torture, and cruel, inhuman or degrading treatment or punishment, are prohibited.*

19. The principles of the prohibition of torture, inhuman and degrading treatment are set out in article 18 of the Constitution of Chad of 4 May 2018, which stipulates that "no one may be subjected to degrading and humiliating abuse or treatment or to torture".

20. Chad ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9 June 1995. To affirm its commitment to the fight against torture, a Ministry of Human Rights and the Promotion of Fundamental Freedoms has been established.

21. To strengthen the existing texts, article 376 of the new Criminal Code has taken over the definition of torture contained in the Convention as "an act by which severe pain or suffering, whether physical, mental or moral, is intentionally inflicted on a person, by a public official or traditional authority or any other person acting in an official capacity or at his instigation or with his consent or acquiescence, for purposes such as obtaining information or a confession from him or a third person, punishing him for an act he or a third person has committed, or is suspected of having committed, intimidating or coercing him or a third person, or intimidating or coercing a third person, or for any other reason based on discrimination of any kind. The penalty for torture ranges from five to twenty years' imprisonment.

22. Unfortunately, the practice of torture continues in police stations and other places of detention, including the National Security Agency (NSA). We can cite the following cases as examples.

- On 26 February 2017, Daniel Ngadjadoum, a contributor to the newspaper Tribune info, was kidnapped in broad daylight by ANS agents for publishing an article entitled "Idriss Deby: a lying poker president". Detained in a secret place, he was tortured and released on March 01, 2017. He filed a complaint for kidnapping, confinement and torture against the Director of the ANS, but no action was taken.
- On 06, 11 and 15 April 2017, activists Nadjo Kaina, Dingamnyel Nelly Versinis and Solo Ngandjei Bertrand were respectively abducted by the ANS and held incommunicado before being presented to the judicial police for preliminary investigations. They were tortured. On 27 April 2017, Nelly Versinis was released by the public prosecutor. On May 4, the two activists were sentenced to 6 months' suspended sentence for disturbing public order and inciting revolt.
- On May 05, 2017, Maoundowé Decladore was kidnapped in Moundou by the ANS and held incommunicado until May 30, 2017 before being presented to the prosecutor who charged him with disturbing public order. He was tortured during his detention and released on bail on the same day for health reasons.

- On 29 May 2017, Boulga David was arrested by the ANS antenna chief of the fourth arrondissement, handcuffed, put in the trunk of a car and driven to the ANS direction. This is for interviewing striking municipal officials. He was subjected to inhuman treatment.
- On February 8, 2018, Djimet Wiché, an ALWDA Info journalist, was brutalized and threatened by ANS agents while covering a peaceful demonstration by civil society organizations.
- On 19 June 2019, the N'Djamena Criminal Court sentenced to five (5) years' imprisonment, with a Police Commissioner and two of his accomplices having tortured to death two people in police custody in a police station.

FIACAT and ACAT Chad invite the State Party to:

- ***ensure the awareness and popularization of the new Penal Code, by involving specialized civil society and ensuring the effective implementation of this law in practice;***
- ***punish the perpetrators of acts of torture, cruel, inhuman and/or degrading treatment by bringing them before the competent courts;***
- ***create a mechanism to compensate victims of torture;***
- ***ensure that allegations of torture by ANS agents are effectively and efficiently investigated and those responsible for such acts are effectively prosecuted and punished;***
- ***ensure that persons detained on ANS premises have access to a lawyer from the very first moment of detention.***

III. Arbitrary arrest or detention

Article 6 – *Everyone shall have the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by the law; in particular, no one shall be subjected to arbitrary arrest or detention.*

23. According to a 2011 report prepared by the Prison Authorities¹, the rate of incarceration was 39 for every 100,000 inhabitants. The report also indicated that at the time there were 4,831 individuals in prison and that the prison occupancy rate stood at 232% in the country's 51 prisons²; 63.5% of the individuals were being held on remand.

A. Custody

24. In the new Code of Criminal Procedure passed on 14 July 2017, the custody time limit was set at forty-eight (48) hours. The Code guarantees that the individual held in custody has the right to be assisted by a lawyer and that this right must be explained during preliminary questioning, failing which the proceedings will be considered null and void (Article 50). While this provision is respected in N'Djaména, the *police judiciaire* [investigative police] officers do not follow it in provincial areas, sometimes due to being unaware of its existence.

25. A *police judiciaire* officer (OPJ), when working on a preliminary investigation, cannot hold a

¹ However, the prison authorities have not published any further numerical data since 2011.

² Source: Prison Insider website (<https://www.prison-insider.com/countryprofile/prisons-chad>)

person for the purposes of an investigation for more than 48 hours. Once this deadline has passed, the individual is released or brought before a magistrate with jurisdiction. Magistrates are immediately informed by the OPJ of anyone being placed in police custody. In cases where there is substantial proof of individuals having committed a serious offence, the Magistrate can authorise custody to be extended for a further 48 hours. Authorisation must be made in writing once the Magistrate is satisfied that the person being held has not been subjected to any ill treatment.

26. By way of derogation of the rules governing common law proceedings, Law N° 34/PR/2015 of 5 August 2015 against acts of terrorism sets out that "*the custody time limit is thirty (30) days that can be renewed once or twice on the authorisation of the country's Public Prosecutor*". Under this law, Mr Mathias Tarsis, the manager of an airline along with four others accused of financing terrorism, were all taken into custody on 29 September 2017 and held for over 67 days without any formality regarding renewal of their custody. They were only brought before the Public Prosecutor on 14 December 2017 and then indicted with financing terrorism and remanded in custody.

27. The provisions of this law do not comply with international and regional legal instruments, in particular Article 6 of the African Charter on Human and Peoples' Rights or with commitments undertaken by Chad.

FIACAT and ACAT Chad invite the party state to:

- set the custody time limit at forty eight (48) hours, renewable once, for all offences, including those involving terrorism;***
- ensure the safety and fundamental rights of all individuals held in custody are respected;***
- inform those living in provincial areas of the new Code of Criminal Procedure.***

B. Preventive detention

28. Preventive detention is an exceptional measure that seeks to ensure that a person accused of an offence is represented before the law at the same time as preventing activity that could interfere with determining the truth by putting a stop to the offence or preventing it from being committed again. In the previous Code of Criminal Procedure preventive detention was not time limited.

29. In the new Code of Criminal Procedure that came into force on 1 October 2017, "*preventive detention cannot not exceed six (6) months for ordinary offences and one (1) year for serious offences*" (Article 313 paragraph 2). Beyond this time limit, if detention is still deemed necessary, the Investigating Magistrate can extend it by means of a specially reasoned order made following a reasoned request on the part of the Public Prosecutor. "*This extension cannot exceed one period of six (6) months for ordinary offences and two periods of six (6) months for serious offences*" (Article 313 paragraph 3)".

30. However, in practise, old habits persist. Hundreds of detainees languish for months in prisons. Between 2015 and 2016, over 200 fighters believed to belong to Boko Haram were indicted and held in the "high security Korotoro" prison while the Investigating Magistrates who were dealing with their cases were working in N'Djaména, over 100 km away from the prison. Apart from their first appearance, these individuals were not questioned by the Investigating Magistrates which delayed the proceedings from moving ahead.

31. In 2016, Chadian prisons held 2,105 detainees on remand, 987 in N'Djaména, 269 in Moundou and 171 in Abéché.

32. In order to help fight against prison overcrowding, ACAT Chad has obtained from the Chad government European Union funding to fight against illegal preventive detention in the country's three main prisons (Moundou, Abéché et N'Djaména). This program allows ACAT Chad and FIACAT to work to ensure individuals who have been held beyond the legal time limits have their cases heard. On 30 September 2019 more than 295 individuals who had been held for months without being dealt with by the courts had their cases listed for hearings, 148 of them detained in N'Djaména, 83 in Moundou and 64 in Abéché. Among these cases, 60 individuals were released on grounds of exceeding the preventive detention time limits, 17 of them from N'Djaména prison and 42 from Moundou. However, this pilot project could not resolve all the problems concerning illegal preventive detention.

FIACAT and ACAT Chad invite the party state to:

- ensure that the provisions of the new Code of Criminal Procedure are rigorously applied;*
- ensure the safety and fundamental rights of those held in preventive detention are respected;*
- systematically release all those detainees held beyond the legal time limits;*
- recruit a sufficient number of lawyer Magistrates and train them before deploying them;*
- ensure the Magistrates' Training School is operational;*
- guarantee that the provisions pertaining to illegal preventive detention are respected and ensure that this measure is only implemented in exceptional circumstances;*
- renovate places of detention so that they meet international standards;*
- fight against prison overcrowding, especially by opting instead for non-custodial forms of detention;*
- adopt a prisons policy that defines a special status for prison staff and ensures they are valued for their professionalism.*

C. Detention conditions

33. In Chad prisoners' living conditions, in particular those concerning food, hygiene and sanitation, remain a serious concern in all prisons. Not one prison building meets international standards. Overcrowding and detention conditions are the main problems.

34. In 2012, N'Djaména prison was pulled down in order to make way for a business centre. The prisoners were thus transferred to a different area of N'Djaména, called Amsinene, that did not have sufficient capacity to house them. As a result, most of the prisoners (those convicted and those on remand) were then transferred to Moussoro and Korotoro prisons in the north of the country or to Kélo and Koumra prisons in the south.

35. It is clear that Chad's prisons are often over-crowded and detainees awaiting trial make up a large part of the prison population (almost 53% of the prison population throughout the country as of August/September 2016³). Some prisoners spend more than one year in places of detention without knowing what will happen to them. Indeed, more than 7,719 detainees are being held in Chadian

³ Source : annual statistics from the Ministry of Justice.

prisons that have a total capacity of 7,190 places. In N'Djaména there are 1,837 individuals being held in a prison built for 350 which means overcrowding of 524.85%. Moundou prison holds 467 detainees with a capacity of 420. There are 296 detainees in Abéché prison which should house a maximum of 150 individuals.

36. Chad has still not ratified the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment and has not set up the National Mechanism for the Prevention of Torture.

FIACAT and ACAT Chad invite the party state to:

- *build and equip its prisons to international standards;*
- *end illegal detention;*
- *improve detention conditions;*
- *incorporate into its laws and government policies the "Nelson Mandela Rules" (a body of United National minimum rules on the treatment of detainees) as well as the "Bangkok Rules" (United Nations rules on the treatment of women prisoners and non-custodial punishments for women offenders);*
- *ratify the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment and set up a national mechanism for the Prevention of Torture.*

D. Inspections of places of detention

37. In Chad places of detention do not meet international standards. The prisons are places where people are left to die without any proper inspection. In certain places of detention, such as in police stations or the offices of the *gendarmérie*, there are no inspections by the Public Prosecutor. In general, individuals are taken there during the weekend where they are subjected to physical punishments are torture to make them confess or pay whatever they owe those who oppose them. By way of proof of this, Abakar Mahamat Hassane was held in custody in the central police headquarters in N'Djaména for 27 days and tortured for payment of an invoice in connection with the purchase of a vehicle. He passed away on 8 October 2016 as a result of the torture sustained. A complaint was made to the Police authorities, but the Judge ruled there was no case to answer against them. The case has been taken up by ACAT Chad and is in the appeal stage and under investigation in the courts.

FIACAT and ACAT Chad invite the party state to:

- *ensure regular inspections of places of detention are carried out by the Public Prosecutor or Judges with competence;*
- *ratify the Convention on the rights of the Disabled and the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment;*
- *ratify the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment.*

IV. Right to a fair trial

- Article 7 – 1.** *Everyone has the right to have their case brought before a court. This right includes:*
- a. *the right to bring before a national court with jurisdiction any instance of breach of their fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;*
 - b. *the right to the presumption of innocence unless proven guilty by a court with jurisdiction;*

- c. *the right to a defence, including being assisted by a defence lawyer of their choice;*
- d. *the right to be judged within a reasonable time and by an impartial court.*

2. *No-one shall be found guilty for an offence or for failing to act if this action at the moment when it is believed to have been committed did not constitute an offence that can be punished by law. No sentence can be handed down if was not in force at the time the offence was committed. Any sentence is individual and can only be handed down to the offender.*

A. Common law

38. In respect of a fair trial, Articles 25 and 26 of the Constitution set out that: "each defendant is considered innocent until proven guilty following a proper trial during which he is guaranteed a proper defence" (Article 24) and "sentences are individual. No-one can be held responsible and prosecuted for an offence that he has not committed" (Article 25).

39. Chad is made up of over one hundred ethnicities defined, on the one hand, by ingrained customs and practices and, on the other, by deeply-held religious practices. Common law and positive law coexist although common law is predominant which creates an environment that does not lend itself to the implementation of laws and policies promoting full rights for everyone. Therefore the practice of "dya" or "blood money" creates inequality among Chadians in law. In turning to "dya" to find a peaceful resolution to conflicts Chadians have different "prices" depending on their sex. This practice is virtually institutionalised in Chad. The price varies between 1,500,000 and 15,000,000 CFA francs depending on the communities involved which is the equivalent of between 2,287 and 22,867 Euros that is paid to the victim's family. For the communities, this form of reparation quashes the proceedings. "Dya" advocates collective criminal responsibility since the family of the offender must contribute to compensating the victim's family to prevent any reprisals that are often meted out by the administrative or military authorities. However, Article 27 of the Constitution sets out that: "*common law and traditional rules concerning collective criminal responsibility are banned*".

40. The caste system also still persists. Those belonging to a caste watch helplessly at their rights being violated. They cannot report some of the violations to the courts for fear of exposing themselves to reprisals.

B. Independent justice

41. In practise, corruption on the part of Magistrates in general and of the legal system in particular on the one hand, and the interference of politics in legal affairs on the other hand both act as a brake on the independence and impartiality of the courts. Corruption in the legal world means that those belonging to a certain class believe their case is lost in advance when they face individuals who have far greater financial resources and thus resign themselves to the fact that the rights of others take precedence even when they themselves have been wronged.

42. The physical distance of courts does not assist certain classes of society obtaining access to legal services.

43. The lack of training of individuals working in the justice sector is also a factor that has a bearing on the principle of the presumption of innocence. Defendants are beaten up and sometimes tortured in police stations and *gendarmerie* stations without their cases being brought to court. In addition, individuals, as a result of their family ties to the perpetrator of an offence, are sometimes arrested and locked up when they have not committed any offences themselves. A person can be arrested on the basis of being a member of the same family, provided he is of age, until the offender himself is found.

44. The rules that constitute the cornerstone of the right to a fair trial, for example, the right to be prosecuted within a reasonable length of time, the principle of equality of arms, the right to an independent court that is impartial and competent, the right to the presumption of innocence, the "ne bis in idem" principle, the right to be assisted by a defence lawyer of one's choice, the right to enough time and the proper means to prepare one's defence, the right of the offender to appear in person, etc., are not respected.

45. Chad is continuing to reform its legal system through the Justice Support programme for Chad which is in phase 2 (PRAJUST 2). Unfortunately, changes are invisible despite efforts being made by the European Union to further this reform. The Chadian court system is rotten to the core and suffers from a number of problems: dependence of the executive on the judiciary; a lack of proper training for Magistrates and clerks; cronyism, excessive corruption⁴, insecurity for Judges, etc.

46. In the provinces, the administrative and military authorities act as Magistrates to the detriment of professional Judges. Recruitment on the basis of a competitive examination to study at the National School for Judicial Training (EFFJ) depends on cronyism with no attention paid to the candidates' CVs. Some individuals have diplomas in subjects that are in no way connected to the legal profession whereas the main criterion in order to become a Magistrate is a basic training in law. The country must ensure that all judicial staff are given appropriate training as well as resolving the problem of a shortage of Magistrates and ensuring that professional Magistrates are deployed in all legal jurisdictions.

47. It falls to the State to ensure that all Magistrates are totally independent in line with international standards in this area. The country needs to ensure that all court staff are appropriately trained, and remedy the shortage of Magistrates (there is only one Magistrate for 37,000 litigants instead of for 10,000 as per international standards), ensure the independence of judges and ensure that professional Magistrates are deployed in all legal jurisdictions.

FIACAT and ACAT Chad invite the party state to:

- fight against the Dya custom throughout the country;***
- respect the basic guarantees of detainees ensuring they are properly prosecuted, in particular the right to be informed of the reasons for their detention, to have access to legal advice, to have members of their family contacted, to receive medical care and to be judged by an independent court that fully respects international standards concerning fair trials;***
- reform the National School for Judicial Training by giving priority to those holding a diploma in law;***
- set up an independent, impartial and efficient justice administration;***
- persevere with efforts underway to reform the justice system.***

V. Freedom of expression and freedom of the press

⁴ According to the most recent report from Transparency international in 2018, Chad is in 165th place out of 180 in terms of the corruption awareness index: <https://transparency-france.org/actu/indice-de-perception-de-la-corruption-2018/#.XYt5t0YzaUk>.

Article 9 – 1. *Everyone has the right to information.* 2. *Everyone has the right to express and disseminate their opinions within the confines of laws and regulations.*

48. Freedom of expression is guaranteed under Article 28 of the Constitution. Law N°. 17/P/2010 on the press in Chad means that press offences have been decriminalized. The increase seen in printed media illustrates that there is a place where freedom of expression can be exercised. The existence of a Media Centre offers professionals in the world of communication a forum to exchange ideas on the challenges faced by their profession.

49. Despite that, Chad is a low-ranking country in respect of freedom of the press. Ranked in 122nd place out of 180 by the NGO, Reporters without Borders, in terms of press freedom⁵ in 2019, all exercise of this freedom is seen as a permanent challenge to the Government. Threats and harassment of journalists followed by arbitrary and unlawful arrests have become commonplace.

50. A number of examples of cases of crackdowns on journalists can be given:

- The prosecution of the General Secretary of the Union of Magistrates in Chad, Djonga Arafî, who was called before a disciplinary council for having said that "the rule of law is on vacation in Chad" is one example. Similarly, for having announced "enough is enough", Théodore REOUNODJI, an unemployed graduate, was arrested, convicted and deported to Moussoro.
- During the month of July 2017, the artist and painter, Guelkor Bruno, was kidnapped in Moundou by the ANS [National Security Agency] and his business premises ransacked because of a logo he had printed on some t-shirts bearing the image of Laokein Médard, a former mayor of Moundou.
- On 15 June 2015, Djeralar Miankeol, head of the Ngaoubourandji association, was arrested in Moundou after criticising land grabs on the FM radio Liberté station in N'Djamena. He was found guilty of contempt of court and held in Moundou until 28 July 2015.
- On 27 November 2017, Me Ramadane Souleymane, a court bailiff in Moundou, was arrested after making comments on Facebook about the management of funds granted to the security services in the Western region of Logone. Found guilty of libel, following a complaint against him by the governor of the region in question, he was released on 12 December 2017 due to a procedural flaw.
- On 5 February 2018, the artist and actor Reguembassy Vicky was kidnapped in Moundou by the ANS and held in secret after he expressed criticism about the social crisis. He was released on 19 February 2018.

51. Community and charity radio stations have been shut down by some authorities:

- Radio Nada in Moundou was sent a formal communication of closure for one week on 11 April 2016 by the Higher Council on Communication (HCC). The reason was the partial publication of results by the representative of the Chadian Convention for Peace and Democracy (CTPD) party.
- On 14 November 2016, on the orders of the *préfet* of West Tandjilé, Radio Barkadjé in Kelo was shut down following the broadcast of information on the conflict between breeders and farmers in Bologo. Its director, Kandi Weidigué Edmond, was incarcerated at the same time and released on 24 November following an intervention by the Higher Council on Communication.
- In 2017, Djijedjimte Djimassal, a journalist with Chad's Radiodiffusion Nationale station (RNT) was suspended for having mentioned the name of Hissein Habré instead of Idriiss Deby Itno (*lapsus linguae*).
- On 20 June 2017, Beindé Bessané Silvère, the Director of Radio NADA in Moundou was arrested, tried and sentenced to two years' imprisonment for his part in contempt of court and infringement of judicial authority. He was released on 19 July 2017.

⁵ Source: internet site of Reporters without borders (<https://rsf.org/fr/tchad>)

- On 4 September 2017, Alnodji Mbairaba Jean-Paul, a journalist with Radio La Voix du Paysan in Doba, was arrested on the orders of the *préfet* of the town for having sent a dispatch to N'Djamena on the breeder - farmer conflict.
- On 17 October 2017, Juda Allahondoum, Editor of the paper « le Visionnaire », was held in custody by the *police judiciaire* then remanded to prison on 23 October 2017 for usurping the function of journalist. He was released on 16 November 2017 as the offences had not been substantiated.
- On 9 February 2018, Radio BARGADJE in Kélo was shut down a second time by the *Préfet* in West Tandjilé for having synchronised its programmes with Radio France Internationale (RFI) regarding the resignation of the Minister of Culture, Mr Mahamat Saleh Haroun. It reopened on 12 February 2018.
- On 22 February 2018, Inoua Doulgue, Editor of the paper « Salam info » was held in custody accused of forgery and use of forged documents. He was freed four days later by the Public Prosecutor on the grounds of improper prosecution.
- On 24 February 2018, radio Oxygène was overrun by police officers hunting a journalist who has filmed part of a peaceful demonstration by students at the University N'Djaména.
- During August 2019, two journalists were placed in preventive detention for having reported in their newspaper on comments considered libellous made by a lawyer despite the fact that press offences have been decriminalised in Chad.

52. These examples along with the permanent censoring of public press publications serve as perfect illustrations of the ongoing threats and harassment suffered by journalists in the course of exercising their profession.

FIACAT and ACAT Chad invite the party state:

- *to ensure proper decriminalisation of press offences;*
- *adopt measures to fight against the oppression of journalists.*

VI. Freedom of association

Article 10 – *Everyone has the right to form associations freely with others, providing they respect the rules set down in law. 2. No-one can be forced to be part of an association subject to the obligation to show solidarity set out in Article 29.*

53. The Constitution of the Republic of Chad in Article 28 sets out that: « The freedom of opinion, of expression, communication, belief, religion, of the press, of association and assembly, of movement, of demonstration and of procession are guaranteed to all people".

54. On 27 June 2018, order N° 023/PR/2018 on rules governing associations was published. The authorities missed the opportunity to incorporate the recommendations prepared by civil society organisations into this text and to ensure it complies with the Constitution of Chad and with regional and international laws and standards on human rights. It should be noted that national and international organisations that defend human rights were not consulted when the text was reformed which resulted in a hardening of the provisions which were already draconian and that illegally restrict the right to freedom of association.

55. This order flouts the right to freedom of association by totally banning associations that "have a regional or community-based character" and in forbidding any organisations with differing aims or activities from grouping together and creating national and international federations or to be affiliated to them. It also bans associations that defend human rights from commenting on political matters.

Moreover, it allows the authorities to withdraw an association's authorisation to exist based on illegal reasons, such as violating the territorial integrity of the country or national unity.

56. In addition, the Chadian authorities have kept in place the regime of prior authorisation that is responsible for associations obtaining legal capacity despite the fact that several sources, among them the United Nations special rapporteur on the right to peaceful assembly and to freedom of association, had clearly indicated that a procedure of simply notification offered a higher level of protection. Pursuant to the amended order, associations must receive approval from the Ministry of Territorial Administration in order to be considered as a legal entity. The text sets out that the Ministry is bound to reply within three months and prevents associations from beginning their activities until they have received authorisation. It sets out the offence of belonging to an unregistered association.

FIACAT and ACAT Chad invite the party state:

- to reform order 23/2018 on the rules governing associations so that the country complies with international standards.

VII. Freedom of assembly and demonstration

Article 11 – *Everyone has the right to assemble freely with others. This right can be exercised subject to any restrictions deemed necessary and laid down in laws and regulations, especially in the interest of national security, the security of others, and of the health, ethics or rights and freedoms of individuals.*

57. The Minister of the Interior recently systematically banned peaceful demonstrations that are nonetheless guaranteed in the Constitution of the Republic of Chad. The freedom of assembly and of demonstration is guaranteed under Article 28 of the Constitution: "*The freedoms of opinion and of belief, of communication, conscience, religion, press, of association, assembly, movement and demonstration are guaranteed for everyone. They can only be curtailed where the freedoms of the rights of others are concerned or by the need to maintain national unity, public order and common decency. The law sets out conditions for their exercise*".

58. In practice, it is order N°45/INT/SUR of 27 October 1962 that regulates public meetings and demonstrations. The terms of this order contradict the provisions of Article 28 of the Constitution. This text that is obsolete curtails the freedoms of assembly and demonstration. To that end it is worth noting that no effort has been made to respect the commitments made by Chad in line with international treaties and conventions on human rights to which it is a party.

59. In this way, all peaceful demonstrations that criticise poor governance are systematically banned. A number of requests to hold peaceful demonstrations properly sent to the Ministry of Public Security with clear aims and itineraries have been systematically banned in recent years and some of them have been suppressed with violence and a disproportionate use of force leading to injuries and deaths.

60. The government applies double standards by authorising demonstrations held by associations and political parties that are close to power. Activists from civil society groups organising peaceful demonstrations are hunted down, arrested and sometimes prosecuted wrongly. A number of events serve as examples of this.

- On 6 February 2016, 40 activists from a group of associations of young people's movements in Chad (CAMOJET) were arrested for having taken part in two peaceful demonstrations in N'Djamena. They were released on 8 February 2016 by the Prosecutor.
- On 17 November 2016, law enforcement officers arrested 11 opposition activists during a march organised by the New Opposition Front for Political Changeover (FONAC). They were charged with having taken part in an unauthorised assembly.
- On 25 January 2018, following a peaceful demonstration, more than forty school and university students were arrested, tried in a summary trial and sent to Moussoro from where they appealed their convictions.
- On 6 February 2018, the Minister of the Interior enforced his threat and with ruling N°0014/2018 suspended any assembly by ten political parties that had called for a peaceful march.

FIACAT and ACAT Chad invite the state:

- to amend order N° 45/62 on public meetings and decree N° 193/62 on demonstrations on the public highway in order to comply with international law and international standards on freedom of expression, association and peaceful assembly