

Report

International Mission of Investigation

Chad

Death Penalty: ending a moratorium, between security opportunism and settling of scores

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Foreword: Why mobilise against the death penalty...

The FIDH strongly opposes the death penalty.

The FIDH holds the death penalty to contradict the notion of human dignity and liberty in its essence; furthermore, it has by now proven its utter uselessness as a deterrent. Hence neither principles nor utilitarian considerations can justify upholding capital punishment.

1. The death penalty contradicts human dignity and liberty

Human rights and human dignity are now universally acknowledged as the supreme principles, and as absolute norms, in any politically organised society. The death penalty directly contradicts this very premise and is based on a misconception of justice.

Justice is based on freedom and dignity: a criminal can and should be punished because s/he freely committed an act disruptive of the legal order. It is the very reason why children, or insane persons cannot be held responsible for their actions in a criminal justice system. Death penalty is a contradiction in terms, since it means that at the very moment of conviction, when the criminal is held responsible, and is thus considered as having acted freely and consciously, s/he is being denied this very freedom because the death penalty is irreversible. Human freedom is indeed also defined as the possibility to change and improve the orientation of one's existence.

The irreversibility of the death penalty contradicts the idea that criminals can be rehabilitated and resocialised. The irreversibility of the death penalty thus simply contradicts the notion of freedom and dignity.

The irreversibility argument has another aspect. Even in the most sophisticated legal system, garnished with the strongest array of judicial safeguards and guarantees of due process, the possibility of miscarriages of justice always remains. Capital punishment *can* result in the execution of innocent people. This is the very reason why Governor Ryan decided to impose a moratorium in Illinois, after having discovered that thirteen detainees awaiting execution were innocent of the crimes they had been accused of, and decided in January 2003, to commute 167 death sentences into life imprisonment. The report of the Commission indeed stressed that: *"no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death."* In this case, "society as a whole - ie. all of us - in the name of whom the verdict was reached, thus becomes collectively guilty because its justice system has made the supreme injustice possible" said R. Badinter, French Minister of Justice, in 1981. For a society as a whole, accepting the possibility of bringing innocent people to death flies in the face of its core principles of inalienable human dignity, and of the mere concept of justice.

Justice is based on human rights guarantees: the distinctive character of a reliable judicial system is precisely the existence of human rights guarantees; these notably include the guarantees resulting from the right to a fair trial - including e.g. the rejection of proofs obtained through torture or other inhuman treatments. In that perspective, the FIDH is convinced that the full respect of those human rights guarantees and the rejection of a legally sanctioned violence are at the core of the credibility of any criminal justice system. Justice, especially when the gravest crimes are concerned and life is at stake, should not rely on chance and fortune; an individual's life should not depend on random elements such as the jury selection, media pressure, the competence of a defence attorney, etc... The rejection of inhuman sentences, and first and foremost the death penalty, clearly contributes to building a judicial system on principles acceptable universally, in which vengeance has no place and that the population as a whole can trust.

The notion of "**death row phenomenon**" indicates the conditions of detention of a person condemned to the capital punishment while awaiting the execution of the sentence. Those conditions of detention – due notably to the very long duration of detention, to the total isolation in individual cells, to the uncertainty of the moment of the execution, to deprivation of contacts with the outside world, including sometimes family members and legal counsel – often amount to an inhuman treatment.

Justice is fundamentally different from vengeance. The death penalty is nothing but a remnant of an old system based on vengeance: that s/he who has taken a life should suffer from the same fate. If understood consistently, this would mean stealing from the stealer, torturing the torturer, raping the rapist. Justice has risen above such a traditional notion of punishment by adopting a principle of a *symbolic, yet proportional* sanction to the harm done - fine, imprisonment, etc., which preserves the dignity of both victim and culprit.

Furthermore, **the FIDH does not believe in the supposed necessity of the death penalty out of regard for the victims and their relatives.** The FIDH reaffirms that the victims' right to justice and compensation is fundamental in a balanced and fair justice system, and that solemn and public confirmation by a jurisdiction of the responsibility of the criminal and the suffering of the victim plays a chief role in order to substitute the need for vengeance ("judicial truth"). But the FIDH nonetheless holds that answering this call for justice by the death penalty serves only to relieve the basest emotional cries for vengeance, and does not serve the cause of justice and dignity (even that of the victims) as a whole. Paradoxically, the victims' dignity is itself better served by rising above vengeance. The victim's status of civil party in the criminal procedure contributes to answer the imperious need of the victim to be recognised as such. Providing psychological support and financial compensation to the victims also contributes to their feeling that justice has been rendered and that private vengeance is unnecessary and would have no added value. In light of those elements, the need of victims to vengeance as an argument in favour of the death penalty appears irrelevant.

Eventually, the FIDH notes that the death penalty is used in a discriminatory way. E.g. In the USA, where it particularly affects ethnic minorities, or in Saudi Arabia where foreigners are its first victims.

2. The death penalty is useless

Among the most common arguments in favour of the death penalty, one hears that of its usefulness: the death penalty supposedly protects society from its most dangerous elements, and acts as a deterrent for future criminals. None of these arguments can be held to have any validity, as has been proven again and again.

- **Is the death penalty a protective element for society?** It does not appear so: not only are societies which enact capital punishment usually no less protected from crime than societies which do not, but other sanctions are available in order to protect society, notably imprisonment: protection of society does not imply the physical elimination of criminals. In addition, it can be argued that the precautions taken to avoid suicide by death row inmates demonstrate that the physical elimination of the criminal is not the main aim of death penalty: what seems to matter is that the sanction is executed against the consent of the criminal.

- With regard to the **exemplarity** of the death penalty or other cruel punishments, their efficiency as deterrents for criminality has repeatedly been proved wrong. All systematic studies show that death penalty never contributes to lowering the crime rate, anywhere. In Canada for example, the homicide rate per 100,000 population fell from a peak of **3.09** in 1975, the year before the abolition of the death penalty for murder, to **2.41** in 1980. In 2000, whereas police in the United States reported **5.5** homicides for every 100,000 population, the Canadian police reported a rate of **1.8**.

The most recent survey of research on this subject, conducted by Roger Hood for the United Nations in 1988 and updated in 2002, concluded that "The fact that the statistics... continue to point in the same direction is persuasive evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty"¹

This should obviously not come as a surprise: a criminal does not commit a crime by calculating the possible sanction, and by thinking that he will get a life sentence rather than the death penalty. Furthermore, as Beccaria noted in the 18th century, "it seems absurd that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder".

Finally, the FIDH notes that the death penalty is very often a barometer of the general human rights situation in the countries concerned: it proves to be a reliable indicator of the level of respect for human rights, as e.g. it is the case with regard to the situation of human rights defenders.

3. Arguments from international human rights law

The evolution of international law tends to go towards the abolition of the death penalty: the Rome Statute of the International Criminal Court and the UN Security Council resolutions establishing the International Criminal Tribunals for the Former Yugoslavia and for Rwanda do not provide for the death penalty in the range of sanctions although those jurisdictions have been established to try the most serious crimes.

Specific international and regional instruments have been adopted which aim at the abolition of the capital punishment: the UN second optional protocol to the ICCPR aiming at the abolition of the death penalty, the Protocol to the American Convention on Human Rights to abolish the death penalty (Organisation of American States), the Protocol 6 and the new Protocol 13 to the European Convention on Human Rights (Council of Europe). The Guidelines to EU Policy Towards Third Countries on the Death Penalty, adopted by the European Union on 29 June 1998 stress that one of the EU objective is "to work towards the universal abolition of the death penalty as a strongly held policy view agreed by all EU member states". Moreover, "The objectives of the European Union are, where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards (...). The EU will make these objectives known as an integral part of its human rights policy." The newly adopted EU Charter of fundamental rights also states that "No one shall be condemned to the death penalty, or executed".

At the universal level, even if the ICCPR expressly provides for the death penalty as an exception to the right to life and surrounds it by a series of specific safeguards, the General comment adopted by the Committee in charge of the interpretation of the Covenant states very clearly that article 6 on the right to life "refers generally to abolition in terms which strongly suggest that abolition is desirable... all measures of abolition should be considered as progress in the enjoyment of the right to life".

Moreover, in its resolution 1745 of 16 May 1973, the Economic and Social Council invited the Secretary General to submit to it, at five-year intervals, periodic updated and analytical reports on capital punishment. In its resolution 1995/57 of 28 July 1995, the Council recommended that the quinquennial reports of the Secretary-General should also cover the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty².

Every year since 1997, the UN Commission on Human Rights calls upon all states that still maintain the death penalty "to

¹ Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, third edition, 2002, p. 214

² ECOSOC resolution 1984/50 of 25 May 1984

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establish a moratorium on executions, with a view to completely abolishing the death penalty”³.

On 8 December 1977, the UN General Assembly adopted as well a resolution on capital punishment stating that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”⁴.

³ See notably resol. 2002/77, 2001/68, 2000/65 and 1999/61.

⁴ UNGA resol. 32/61, 8 Dec. 1977, para 1.

Introduction

On 6 and 9 November 2003, nine prisoners, convicted of murder or assassination and sentenced to death by the Criminal Court, were executed on order of the Chadian Authorities. First time the death penalty had been applied in over ten years.

Before November 2003, a *de facto* moratorium existed which suspended the execution of prisoners sentenced to death: since the suppression of the military Court in 1991, death penalty was no longer used.

During this ten year period, the law on capital punishment did not suffer any modification and the Chadian Courts continued to sentence offenders to the death penalty.

During the “National consultations on justice” held in N’Djamena from 17 to 21 June 2003, the question of abolishing capital punishment was discussed at length. Committee no. 4 on “*Justice and its actors*” considering the *de facto* moratorium, recommended that the Chadian Government abolish the death penalty⁵.

Observers and people in favour of abolishing this irreversible punishment were taken aback by a new spate of executions, just a few months after this far-reaching debate.

As a firm supporter of the abolition of capital punishment, the FIDH wanted to understand the reasons for this sudden change in policy and decided to carry out an international investigative mission in Chad, in cooperation with the *Ligue tchadienne des droits de l’Homme* (LTDH- Chadian League for Human Rights) and the *Association tchadienne pour la promotion et la défense des droits de l’Homme* (ATPDH- Chadian Association for the Promotion and Defence of Human Rights), which are both FIDH members.

The mission was carried out by Isabelle Gourmelon, journalist, Mahfoudh Ould Bettah, lawyer and President of the Mauritanian Bar Association, and Olivier Foks, lawyer and member of the Paris Bar, from 10 to 20 May 2004. The mission was mandated to compile full information on the administration of justice, especially concerning death penalty, right to a fair trial and conditions of detention.

Although the main objective was to understand what had convinced the Chadian Authorities to resume application of the death penalty, the mission also had to examine the conditions in which trials that lead to such convictions are carried out and to evaluate living conditions in Chadian jails.

The delegation focused especially on the latest trial which ended with four defendants being sentenced to death by the Criminal Court of N’Djamena on 25 October 2003.

The trial, often called the “Adouma Affair” (the name of the leading defendant) has been severely criticised, with many observers⁶ querying whether the right to a fair trial had been respected throughout the procedure. Some observers have suggested that the Chadian judiciary has been instrumentalised in this case.

Judicial authorities have been very cooperative with the FIDH mission, unlike the political authorities since it was not possible to meet with the Prime Minister, the Minister of Justice or the Minister of Public Security and Immigration. Mr. Nassour Guelengdouksia Oiaïdou, President of the National Assembly, was the only political authority to receive the delegation.

On the other hand, the delegation, was able to have several long discussions with the representatives of the public prosecutor’s office and the prison authorities. Special mention should be made of the active cooperation of Mr. Ousman Souleyman, public prosecutor, and Mrs. Assia Mahamat Ahmed Abbo, Director of the Prison Administration.

The delegation met over forty people⁷, including Mr. Jean-Pierre Bercot, French Ambassador, representatives of the European Commission Delegation, lawyers, journalists, members of the Chadian civil society (human rights associations) and family members of a person sentenced to death and executed in November 2003.

The mission was supposed to visit the Bongor and Laï prisons, and meet with the only person at the time sentenced to death and still in jail (see below) but the attempted *coup d’état* of May 16th made the trip too dangerous. Since rebels had gathered outside N’Djamena and negotiations were underway with the government, the trip had to be cancelled.

⁵ Synthesis of “Travaux des États généraux de la justice”, N’Djamena, 17 to 21 June 2003, pages 37 to 38.

⁶ Weekly *Notre temps*, No. 146, 11-17 November 2003 ;

⁷ The delegation met with the persons listed in annex 1.

I. Historical and political background : The Déby regime gets tougher

On November 6th, 2003, eight prisoners were executed⁸. On November 9th, a ninth prisoner was executed. On August 3rd, 2004, 19 people were sentenced to death⁹. And yet the *de facto* moratorium on capital punishment that had lasted for over ten years, had given the human rights defenders reason to hope that it would be abolished. This feeling was shared by the President of the National Assembly Nassour Guelengdouksia Ouaïdou, who said: *"in the 1960s we inherited a penal code that was almost a carbon copy of the French code (...). This suggested that we would be adopting the principle that, considering the tendency around the world, we would sooner or later abolish the death penalty in our country"*. He felt that the government could not be expected to propose any law and that the parliamentarians *"were not well enough equipped to discuss such aspects of the law"*. He is now turning to the civil society, and more specifically to the human rights organisations to draw up *"a bill we could adopt"*. He added that, *"adopting a law would not be enough. We need to carry out an awareness campaign for the public at large and explain why we voted for the law"*.

1. Chronic insecurity and porous prisons used as justification for death penalty

The man in the street in Chad does not feel upset over the recent executions. The government's argument on rising insecurity seems to be convincing public opinion. In the capital, where public lighting works less than two hours a day and where many years of civil war have left a trail of weapons everywhere, Abdarhim Breime, President of the Supreme Court assured the FIDH delegation that *"the Chadian are satisfied with the way justice is being rendered."* Paul Wanada, President of the Court of Appeal, who presided the session of the Criminal Court that settled the *"Adouma"* case, said, *"at that time, living in N'Djamena was not safe and we heard about assassinations every day. Thus it was decided that we should go 'all the way' in the Adouma case"*.

This insecurity was corroborated and denounced by civil society¹⁰. The Chadian authorities used insecurity as an argument to justify the hasty investigation and trial of Messrs. Issa, Abdraman, Haroun and Adouma. Such celerity is most unusual, as the Presidency has not responded to any requests for pardons for the last ten years. Idriss Déby apparently was especially exasperated when a Sudanese businessman, named ASheik Ibn Oumar Assaid Idriss, was assassinated in N'Djamena, while he, Idriss Deby, was in France trying to convince foreign companies to invest in Chad. Frustrated he rejected the demand for a presidential pardon submitted by Adouma's lawyers.

The Chadian authorities also argued that capital punishment was the best cure to the problem of porous prisons. Besides chronic overpopulation, the lack of a professional body of prison guards,—the guards have been replaced by gendarmes who do not belong to the prison services hierarchy,—(see below) explains the incapacity of the State to guard its prisoners properly. A magistrate explained that, *"The people are fed up with having the criminals, fresh out of prison, flout them. The prisons are so full of holes that anyone can skip out of jail."* The head of the Chadian public security services and the head of the Chadian intelligence services added that *"at the time of the trial there were rumours that commandos were getting ready to free Adouma so we had to move quickly"*.

Besides the real problem of insecurity, the public did not react to resumption of capital punishment mainly because the *"Adouma Case"* was seen as a matter of clans that were settling scores. One often hears the phrase *"when snakes kill each other, it is good for the people!"* The Courts are powerless, and are rife with corruption. Adding to a lack of means and independence sets the right stage for the death penalty. A well-informed observer pointed out that *"eight out of ten crimes are never reported to the authorities. They are settled within the clans... For a million CFA francs¹¹, a murderer can 'buy' the victim's family, and everyone seems satisfied with this parody of justice."*

2. The Darfour crisis at the heart of the Adouma trial in N'Djamena

Ali Adouma was a close adviser to Idriss Déby from 1990 to 2000. He then formed a partnership with Déby's brother, Daoussa Deby, and created the Chad Petroleum Company (CPC) and became its General Manager. On 25 October 2003, Ali Adouma was sentenced to death for having ordered the assassination of ASheik Ibn Oumar Assaid Idriss, CPC's President. Both men were from Darfour. According to witnesses questioned at the trial (see below), the two men were financing the rebellion of the Sudanese Zaghawa. The authorities in Khartoum had even called for Ali Adouma to be extradited, but this was forgotten when the peace talks got underway.

Since February 2003 in West Sudan, the rebels have been demanding a more equitable distribution of the country's wealth but are stifled by the regime of the Sudanese President El Béchir. The Movement for Justice and Equality (MJE) and the Army for the Liberation of Sudan (ALS) are fighting the Sudanese army and the Janjawids, the Arab horse-riding militia funded and armed by the Khartoum regime.

The conflict between the sedentary black Zaghawa, Four and Massalit ethnic groups and the nomadic "arab" herdsman is nothing new. Tension grew during the great drought that struck in the beginning of the 1970s. But the height of the atrocities committed during the last year and a half has aroused the international community. According to the United

⁸ FIDH press release of 6 November 2003 "The FIDH filled with consternation by the execution of six people in Chad"

⁹ Joint FIDH, LTDH, ATPDH press release dated 2 August 2004 « Trial of the alleged perpetrators of the Maibogo massacre: 19 persons sentenced to death ».

¹⁰ FIDH Press Release dated 8 October 2003 « Five NGOs denounce the upsurge of insecurity in Chad »

¹¹ Approx. 1,256 euros.

Nations, this civil war has already cost between 30,000 and 50,000 lives. In the huge desert region, which is as big as France, 1.2 million have already been displaced. This figure includes some 180,000 who have fled to Chad, somewhere across the 800 km Chad-Sudan border.

a. Idriss Déby wants to prove his neutrality to Khartoum...

But Chad, which is the least developed of the Sahelian countries, is in “the eye of the storm”. Darfour is a major destabiliser. *Le Monde* newspaper, on 22 May 2004, entitled an article: “The Darfour rebellion and control of oil reserves are destabilising the Chadian regime”, while the weekly, *Le Point* on 8 July 2004 spoke of the “the ripples of the Sudanese crisis”.

The President of Chad is from the Zaghawa ethnic group and knows the region well. His partisans left from there at the end of the 1980s to march on N’Djamena and overthrow his predecessor, Hissène Habre by force. Two dubious elections later, won by Gen. Déby, saw the Zaghawa minority in Chad (under 5% in a country with over 200 ethnic groups) gradually control the main cogs of government. People close to the President are urging him to help his Darfour “cousins”.

But after Khartoum suspected him of fomenting a regime change in Sudan,—as he is reputed to have done in Central African Republic by financing Gen. Bozizé’s *coup d’état* that overthrew President Ange-Félix Patassé,—and because he is under the eagle’s eye of the international financial institutions, Idriss Déby prefers mustering international support to develop his reputation as a “peacemaker”. Although the latest negotiations between the rebels and the Sudanese authorities are being led by the President of Nigeria, the Chadian Head of State has presided over several attempts to settle the conflict through mediation. This attitude was roundly encouraged by France that advocated an African solution to the Darfour conflict.

B. ...and is incurring the wrath of his clan

The vague attempts at conciliation by the Chadian President do not please his entourage which almost sees it as treason. Last May, 80 soldiers tried to overthrow Déby and would have assassinated him, if only the attempted coup had not been thwarted¹².

As the months go by, it is increasingly difficult to stay neutral. Janjawids militia incursions into Chad have terrorised the local populations and the refugees along the way, and have already led to the death of over 300 Chadians. According to the New York Times, the Chadian army, on 18 June, killed 69 Janjawid fighters. President Déby said, last July, “*I do not wish for an armed conflict with Sudan (...) but if the raids get out of control, I fear that we will have to take certain measures*”¹³.

The Chadian population in Ouaddaï, just on the other side of the border from Darfour, are especially annoyed. “*The refugee camps are creating grave risks of groundwater pollution and plant destruction*” asserted a diplomat. According to a European specialist, by installing a chain of camps on the Chadian side of the border, international humanitarian institutions are upsetting the fragile equilibrium of the grazing lands in the region. He further explained that “*the refugees who fled with their herds [30,000 to 40,000 animals for some 60,000 refugees, according to diplomatic sources] have access to deep wells that were hastily dug. Water is provided free of charge, thus compromising rural hydraulic programmes that intended to charge the residents a modest sum for access to the wells, a sum that would be used to maintain and protect the wells.*”

Furthermore, the price of staples has risen alarmingly (from 300 to 375 CFA francs for a litre of oil, and from 10,000 to 15,000 CFA francs for a bag of rice).

Last, the influx of international aide for the “cousins” of Darfour¹⁴ [In June 2004, the High Commission for Refugees applied to the United Nations for an additional 55.8 million dollars in aid] stokes more tension in a country among the ten poorest in the world, and whose poverty reduction policies are among the least effective on the continent¹⁵.

3. Political instability and constitutional reform

Disputed within his own ranks and lambasted by a society that has lost hope of ever enjoying the fruits of the recently discovered oil, a godsend that is to flow for some 25 years (two billion dollars in additional revenue thanks to the Doba oilfield in the south of the country), President Idriss Déby, according to observers with knowledge of Chadian politics, would be in a “precarious” situation. The Chad regime, undermined by corruption and ever on the brink of a chronic socio-economic crisis (the university had three successive years of mock exams¹⁶), may become even “tougher”. In N’Djamena, the hasty conviction and execution of Ali Adouma are seen as a sign from the President to his inner circle, even the ones in charge of the national economy, that he is ready to use coercion, even against his own clan.

¹²International Crisis Group, Darfour Deadline: a New International Action Plan, 23 August 2004, ICG Africa Report n°83, pp8-12

¹³*Le Point*, 8 July 2004

¹⁴United Nations High Commissioner for Refugees (HCR) demanded 55.8 million dollars supplementary help to the United Nations in June 2004

¹⁵Economic Report on Africa 2003.

¹⁶Years lost for the students, as they were no real exams

On 26 May 2004, Idriss Déby convinced the National Assembly to lift the constitutional restriction limiting the President of the Republic to two terms. However in 2001, he had declared to *Le Monde*: “*I will not run for president in 2006. I will not amend the Constitution even if I had a 100% majority! Let me say clearly that what I have to do during my last term is to prepare Chad for a change in power, a democratic, peaceful, seamless change in power.*” One year later he had told a correspondent of *Le Figaro*, “*This is my last mandate. When I leave, in four years, I want to leave the Chadians with reliable institutions that guarantee transparency (in oil revenue management)*”. The 1996 and 2001 elections that kept Deby in power were already controversial¹⁷, but Idriss Déby is 52, and could theoretically stay in power until he reaches 70, since that, now, is the only constitutional restriction.

¹⁷ FIDH press release of 28 May 2001, « Chad: A de facto State of emergency » (only available in French)

II. The legal context

1. The United Nations

Chad ratified the 1966 **International Covenant on Civil and Political Rights, (ICCPR)** , and its optional protocol recognising the authority of the Human Rights Committee to receive individual complaints on 9 June 1995.

The original report to the Human Rights Committee on Chad's implementation of its Covenant obligations was due in September 1996 and the periodical report, in September 2001. But Chad, did not submit a report to the Committee, thus showing total lack of cooperation and violating Article 40 of the Covenant.

As concerns the death penalty, one should remember that Article 6 of the ICCPR recognises that "Every human being has the inherent right to life". It stipulates that "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". The General Comment on the implementation of Article 6¹⁸ of the ICCPR clearly indicates that Member states should work towards abolishing the death penalty: "the provisions contained in that article refer to abolition of the death penalty in terms which strongly suggest that abolition is desirable", and affirms that "all measures of abolition should be considered as progress in the enjoyment of the right to life". The General Comment also stresses the fact the "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure".

As concerns the **United Nations Convention Against Torture**, which Chad ratified in 1995, the initial report was supposed to have been presented in July 1996 and the first periodical report in July 2000. Neither of these reports has been transmitted to the United Nations.

Yet when the FIDH mission to Chad in May 2002, expressed concern about the total lack of cooperation between the Chadian authorities and the United Nations treaty bodies¹⁹, the Minister of Justice promised to do everything possible to improve the situation. But nothing seems to have been done.

2. The regional legal framework

The **African Charter on Human and Peoples' Rights**, which Chad ratified in 1986, stipulates that "..., torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." (Art. 5) . It also deals with the right to a fair trial (Art. 7) and guarantees the right to life (Art. 4), but there is no specific provision on the death penalty.

In 1999, the African Commission on Human and Peoples' Rights (ACHPR) adopted a **resolution** urging the state to consider a moratorium on capital punishment, to limit the application of capital punishment to the most serious crimes and to consider abolishing it.

In October 2002, the African Commission adopted Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa. This instrument provides important guarantees for prisoners.

In March 2003, the African Commission adopted the **Directives and principles on the right to a fair trial and legal aid in Africa**. These guidelines provide a detailed description of the inherent guarantees to a fair trial. They also state that: "States that apply death penalty are requested to decree a moratorium on its application and to consider abolishing it" (para. F 9d).

3. Domestic legislation

a. The Chadian Constitution

The Constitution of Chad was adopted by referendum on 31 March 1996. It makes no reference to the death penalty. Yet it seeks to protect human life since Article 17 states that:

"The human being shall be sacred and inviolable. All persons shall have the right to life, physical integrity, safety, freedom, and the protection of his/her private life and properties."

In Chadian law, the right to life stands side by side with the death penalty, which is a criminal penalty provided for under Article 4 of the Penal Code. Herein we find grounds for submitting a case before the Constitutional Court (Conseil constitutionnel) on the compatibility of the death penalty provisions with Article 17 of the Constitution.

It would be possible to file a petition along these lines. Article 171 of the Chadian Constitution authorises any and all citizens to appeal to the Court. In this case, there is an *a posteriori* control, based on the premise of unconstitutionality. But the law stipulates that only one party to a trial can plead the unconstitutionality of a legal provision. When a Court

¹⁸ Human Rights Committee, General Comment on Article 6, 16th session, 1982.

¹⁹ See FIDH Report entitled "Tchad : une justice au point mort ?", July 2002, no. 340, p 20.

receives a plea of 'unconstitutionality', it has to postpone its judgement and send the question to the Constitutional Court²⁰.

Moreover, in his discussions with the FIDH delegation, the President of the Supreme Court, Mr. Abdarhim Breime, brought up the possibility for Chadians to appeal to the Constitutional Court. It has never yet had the opportunity to render an opinion on the constitutionality of the provisions on the death penalty.

This is another channel for opposing a Criminal Court's conviction to the death penalty, a recourse that has never been used by any of the death row prisoners in Chad.

It is worth noting that Chadian constitutional history on the verification of the constitutionality of laws is relatively new; the Constitutional Court was created by a law dated 2 November 1998.

Further, since there had not been any execution of death row prisoners in some ten years, it seemed useless to look for other ways to avoid capital punishment.

b. Crimes punishable by death

The Chadian legislator established the death penalty and forced labour as the main criminal penalties²¹.

The Chadian Penal Code allows capital punishment for certain crimes that affect the integrity of the State and certain wilful attacks on a person's life. This applies to persons recognised to be "*guilty of treason and/or spying*" who are sentenced to death²². The same sentence can be applied with regard to Article 93 of the Penal Code to persons who have led or organised a rebel movement²³.

The death penalty is also the penalty incurred by persons guilty of "assassination, parricide and poisoning"²⁴.

On the other hand, murder can only be punished by death "*if it has preceded, accompanied or followed another crime*" and "*if the purpose was either to prepare, facilitate or execute an offence or favour the escape or ensure the impunity of authors or accomplices of such offence*"²⁵.

The nine prisoners who were executed in November 2003 were condemned to death for murder or assassination.

c. Jurisdiction empowered to sentence to death and existing remedies

- The Criminal Court

The Criminal Court is a part of the appellate Court. Its members are professional magistrates of the appellate Court and citizens, i.e. non-professional magistrates, called in Chad criminal assessors.

This jurisdiction, which is responsible for trying persons accused of having committed criminal acts, sits temporarily. The criminal code of procedure provides for two sessions a year. Additional sessions can be held when 'required by the large number of cases'²⁶. A sitting of the Court must be decided by a ruling of the appellate Court's president, on recommendation of the public prosecutor.²⁷

In the Adouma case, tried in October 2003, where the defendants were found guilty and sentenced to death, the Criminal Court held an extraordinary session for there were to be no ordinary sessions in October 2003. However, the number of cases to be tried at the end of the year 2003 did not require an extraordinary session as laid down in the code of criminal procedure.

Since no one else was to be tried at that time²⁸, it is obvious that the criminal session was held because of the political decision to try the suspects of this murder as quickly as possible.

The president of the Criminal Court during that session, Mr. Paul Wanada, admitted this though not in so many words.

²⁰ Article 171: « *Tout citoyen peut soulever l'exception d'inconstitutionnalité devant une juridiction dans une affaire qui le concerne. Dans ce cas, la juridiction sursoit à statuer et saisit le Conseil Constitutionnel qui doit prendre une décision dans un délai maximum de quarante cinq (45) jours.* »

²¹ Article 4 of the Penal Code.

²² Article 62 of the Penal Code.

²³ Article 93 of the Penal Code: « *Seront punis de mort ceux qui auront dirigé ou organisé un mouvement insurrectionnel ou qui lui auront, sciemment et volontairement, fourni ou procuré des armes, munitions et instruments de crimes ou des subsistances ou qui auront, d'une manière quelconque, pratiqué des intelligences avec les directeurs ou commandants de ce mouvement.* »

²⁴ Article 246 of the Penal Code.

²⁵ Article 248 of the Penal Code.

²⁶ Article 318 of the code of criminal procedure

²⁷ Article 319 of the code of criminal procedure

²⁸ In May 2004, no criminal session had taken place since November 2003. The next session was to take place in July 2004

He explained to the members of the mission that he had 'understood that things had to be done quickly'²⁹.

- Possible remedies against the death sentences

Cassation plea to the Supreme Court

Since the Criminal Court is part of the appellate Court and since its awards are rendered by a people's jury, the sentences cannot be appealed against. The theory, which was also that of France until the appellate Courts of assises were set up by a law of 15 June 2000, is that a decision of a people's jury cannot be appealed against for the people are infallible.

The only remedy against a decision of the Criminal Court is therefore an appeal to the Supreme Court.

The Supreme Court is the highest jurisdiction of the State. It includes a judiciary chamber, an administrative chamber and a chamber of audits³⁰. It has 16 members.

Among other things, it takes decisions concerning appeals to the Court against decisions of the appellate Court. In criminal matters, the appeal must be lodged within 10 days of the day after the decision, when the accused attended the trial³¹.

The conditions of such an appeal being very restricted due to its extraordinary character, the remedy may not be deemed to respect the right to have his/her conviction and sentence being reviewed by a higher tribunal, as laid down in article 14 para. 5 of ICCPR.

This is a violation of the 'Directives and principles on the right to fair trial and to legal aid in Africa' adopted in March 2003 by the African Commission on human and peoples' rights. This text provides that 'any person sentenced to death has the right to appeal the sentence to a higher jurisdiction and States must ensure that such appeals are compulsory' (para. N 10 b).

Furthermore, appeal is not compulsory, while in cases of death sentences, international law recommends that such appeal to a higher jurisdiction be compulsory.³²

In addition, Chad law does not state whether, in criminal cases, an appeal should lead to postponing the sentence. However, this gap in Chad's criminal procedure should be largely filled by the use of the relevant parts of the code of civil procedure in criminal cases. Article 217 of the code of civil procedure includes the principle of the non-suspensive nature of a cassation plea to the Supreme Court also provides for exceptions, and states that 'the Court, when seized of an appeal, may decide without procedure, at the request of the party concerned, that the enforcement of the sentence be suspended before the decision is made on substance, if such enforcement were to lead to irreparable harm.'³³

Pardon

If no cassation plea is made to the Supreme Court, or if the plea to the Supreme Court is denied, any person sentenced to death may appeal for pardon to the President of the Republic.

The law on pardon is embodied in decree no. 230/PR-MJ dated October 19, 1970.³⁴ It provides that in case of a death sentence, enforcement be suspended until the Head of State has taken a decision.³⁵ Article 476 of the code of criminal procedure also provides that a death sentence pronounced by the Criminal Court may only be enforced after the plea for pardon has been rejected by the Head of State.

It is because these provisions were strictly applied that no capital punishment was carried out during a decade. During this period, the President of the Republic took no decision on the pleas for pardon that might have been submitted to him. Thus, enforcement was impossible.

Article 3 of the October 19, 1970 decree provides that 'in the case of a death penalty, the appeal is considered without consultation by the public prosecutor's office. The Public prosecutor explained to the FIDH representatives that this provision means that even in cases where the prosecution had called for the death penalty during the trial, the prosecutor must prepare a plea for pardon so as to send it to the Ministry of Justice, even if the person concerned has not made the request himself.

In other words, in cases of death penalties, the plea for pardon is, in a way, automatic.

²⁹ Interview dated May 12, 2004

³⁰ Article 157 of the constitution.

³¹ Article 39 of the Fundamental law/ No. 006/PR/98 on the organization and operation of the Supreme Court: "Le pourvoi est formé dans un délai de dix (10) jours francs en matière pénale et de trente (30) jours en toutes autres matières. En matière pénale, le délai de dix (10) jours et en toutes autres matières, le délai de trente (30) jours, commence à courir le lendemain du jour de l'arrêt s'il est contradictoire, le lendemain du jour de la signification s'il est réputé contradictoire, et le lendemain du jour où le jugement est devenu définitif lorsqu'il s'agit de décisions rendues en dernier ressort par les tribunaux."

³² Safeguards guaranteeing protection of the rights of those facing the death penalty, para. 6; Directives and Principles on the right to a fair trial and to legal aid in Africa, para. N 10 b.

³³ Article 217 also provides that the appeal is not suspensive 'in cases involving the State' and in 'cases of land registration'.

³⁴ See annex n°11

³⁵ Article 5 of the decree

d. Conditions of execution

The conditions in which a person sentenced to death is to be executed are laid down in articles 5 to 9 of the criminal code.

Article 5 provides that a person sentenced to death be shot. According to article 9, a report on the execution must be drafted at the time of such execution and signed by the President of the jurisdiction that delivered the sentence, the representative of the Public prosecutor's office and the clerk.

Only the persons listed in article 8 of the criminal code may attend the execution. The lawyer of the person convicted may have access to the place of execution, but not his or her family. The family may have the body of the dead person as long as they claim it. Adouma's wife told the members of the mission that she was unable to get her husband's body even though she claimed it to the Chadian authorities.

We wish to point out that article 14 of the criminal code states that no execution may take place on a Sunday. Yet Léon Tatoloum was shot on Sunday, November 9, 2003. The authorities intended to execute him along with the other persons sentenced to death, on November 6. The escort that was to take the person concerned to the place of execution was unable to do so because of the action of his co-detainees who were against this measure.

III. The Adouma case and others: a parody of justice

1. A general presentation of the case

From the murder to the judicial executions, a month and 12 days elapsed. The procedure that led to the execution of the four people was carried out with a speed which could not meet with all procedural guarantees.

The mission was particularly intent on studying the last decision rendered by the Criminal Court of N'Djamena on October 25, 2003, whereby Mahamat Adam Issa, Moubarak Bakhit Adbraman, Abderaman Hamit Haroun and Adouma Ali were sentenced to death for the murder of a Sudanese businessman, ASheik Ibn Oumar Assaid Idriss, president of the board of the oil company '*Chad Petroleum Company*'.³⁶

This Sudanese businessman was murdered on September 25, 2003. The defendants were sentenced to death only one month later, on October 25, and executed on November 6. The examination of the case took a few days. The cassation plea to the Supreme Court was made on the same day as the plea for pardon, but was not considered by the Court.

The members of the mission were able to obtain the essential documents pertaining to the case as well as the decision of the Criminal Court. They also heard a number of witnesses who were directly implied in the case, two magistrates of the session of the Criminal Court that took the decision³⁷, some of the lawyers of the defendants and members of Mr. Adouma Ali's family.

However, the members of the mission were unable to meet Mr. Yenon Timothée, the investigating judge, who refused to see them. Moreover, some of the lawyers did not come to the different appointments that had been organized.

a. The facts

On 25 September 2003, the victim was found dead in his car in the streets of N'Djamena.

The on-site report states that: "*the victim's body had one wound, on the head, on the right side. The wound was probably caused by a handgun.*"

The report also indicates that the search for the cartridge of the bullet was unsuccessful.

According to the first declarations of the deceased person's driver, Abderaman Hamit Haroun, two men on a motorcycle approached the car, and one of them fired the fatal shot. When the policemen in charge of the investigation interrogated him a second time, he admitted that he was involved in the assassination.

- He had been offered money, and told the assassins the route that the Sheik would be taking and then slowed down long enough in a given place to facilitate the crime.

- He soon gave the names of his accomplices, Mahamat Adam Issa et Moubarak Bakhit Adbraman, who were called in for questioning two days later. While in police detention, they recognised the fact and blamed their boss, Adouma Ali who was housing them and who ordered the murder.

Adouma Ali was questioned the day after he was suspected. Some of the testimony that the investigating judge received showed that there was an important financial conflict between the Sheik and Adouma Ali, thus the motive for the crime became evident.

Throughout the whole procedure, Adouma Ali claimed he was innocent.

b. The two main actors in the case

Sheik Ibn Oumar was a Sudanese member of parliament from the Darfour region. He was also an extremely rich businessman. In August 2003, according to Adouma Ali's family, urged by Adouma, he came to Chad to invest in an oil refinery. The two men created the CPC petroleum company, and the Sheik became the Chairman of the Board of Directors.

Connections between the Sheik and the Darfour rebels were less clearly established than those between the rebels and Adouma. Yet on the eve of the Sheik's assassination, two representatives of the rebellion are known to have met with him in his hotel room; Adouma was the intermediary.

For ten years, (1990-2000), Adouma Ali was an adviser to the President of Chad. After he resigned, he created CPC, a petroleum company, and became the Managing Director. According to the information collected during the investigation, Adouma was associated with the Azoum company, composed of Daoussa Deby and Nassour Idris Deby, respectively

³⁶ The company that manages the oil in Sedigui

³⁷ Paul WADANA, former member of the Criminal Court, today member of the Supreme Court. MAI INGALOU Baouh Kagh, former public prosecutor of N'Djamena, today, member of the Supreme Court.

brother and son of the Chadian President.

Adouma Ali, who also came from the Darfour border region, probably participated handsomely in financing the rebellion in this region.

Some time in 2003, the Chadian Government responded to pressure from the Sudanese authorities by initiating the procedure to expel Adouma, since his name was on a list of Sudanese nationals who lived in Chad and who the Sudanese Government wanted expelled to Khartoum. The regime of El Bechir, the President of Sudan, suspected him of being in cahoots with the Darfour rebels.

Youssef Ahmat Amir, one of the witnesses, speaking about the expulsion procedure to the investigating judge, said:

“This expulsion is justified by the fact that Adouma was helping the Darfour rebels, which the Sudanese government did not appreciate and thus, in order to maintain good relations between the Sudanese and the Chadians, the Chadian authorities saw Adouma as a disturbing force and took this decision against him”³⁸.

As the expulsion procedure was underway, Adouma should have been obliged to resign as CPC General Manager. But after the Abéché cease-fire agreement of 3 September 2003, in which the Chadian Government served as a mediator between the Sudanese rebels and the Darfour rebels, he was authorised to stay in Chad.

There are two hypotheses on the relations between the Sheik and Adouma, one is an accusation in which Adouma is said to nurture “*profound hatred*”³⁹ for the victim, and the other is based on defence and Adouma’s family which said, on the contrary, that the two men had a longstanding friendship and were both financing the Darfour rebellion.

2. Autopsy of the procedure: systematic violation of the right to defence

a. Confession under torture

Except for Adouma Ali, the other suspects recognised the charges while remanded in custody. They were not detained by the police that, in principle, was empowered to handle assassination cases, but were heard and detained in the office of the intelligence services. They were imprisoned in the premises of the Chadian intelligence services throughout the procedure until the time of their execution.

During the examination, Mahamat Adam Issa confessed to firing the fatal shot. He explained that he and his accomplices, Moubarak Bakhit Abdraman and Abderaman Hamit Haroun, the victim’s driver, were acting on behalf of Adouma Ali who had promised to pay him 30,000,000⁴⁰ CFA francs.

He readily recognised that the weapon which the police showed him was the one used to commit the crime.⁴¹

During the interrogation by the intelligence service, Moubarak Bakhit Abdraman also recognised that he participated by driving the motorcycle that was used to approach the victim’s car. He confirmed what Mahamat Adam Issa had said, i.e. that he, Mahamat, had fired the fatal shot. He also said that he recognised the handgun that had been shown to him as the one used by his accomplice.

Adouma Ali, on the other hand, did not recognise that he ordered the assassination of the Sheik. He only admitted that the weapon presented by the police was indeed his own.

During their interrogation by the examining magistrate, Bakhit Abdraman and Mahamat Adam Issa completely reversed the statements they made while in detention; both explained that they admitted their participation in the alleged crime to end enduring torture. Mahamat Adam Issa explained that:

“I was told that I was the one who had killed Assaid Idriss Youssouf Abdallah. Despite my explanations, I was tortured and was forced to admit that I had killed the Chairman of the Board of Directors, together with Moubarak. To avoid being tortured, I told them that we had killed the Chairman of the Board with Moubarak’s weapon. It is under torture that I declared that Mr. Adouma told me to kill the Board Chairman and that I would receive 30,000,000 CFA francs.”

During the confrontation, Moubarak Bakhit Abdraman indicated that:

“If Mahamat Adam declared that I got him the weapon, it’s because he also suffered from violent treatment, and to save his hide he reported me. To save my hide I said that I was the one to give him the weapon.”

The driver, Abderaman Hamit Haroun, was the only one who did not complain about being badly treated during detention and did not say that he had been tortured.

³⁸Minutes of a witness testimony, 3 October 2003.

³⁹Term used many times during the procedure, especially by the public prosecutor in his closing speech for referral to the Criminal Court.

⁴⁰Which represents approximately 45,735 euros

⁴¹Minutes of a testimony unquoted, 28 September 2003 at 3.10pm

The accused and their lawyer again spoke of torture during the hearing, and this was confirmed by their lawyers and the Adouma family, who the FIDH delegation met. At the trial, the accused had marks of torture, especially Adouma Ali whose right arm was paralysed, probably broken.⁴²

The fact that no investigation was made concerning the allegations of torture is a flagrant violation of the United Nations Convention on Torture, especially Article 12.

Article 12 states that: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

Further, at the regional level, the fact that the allegations of torture were not investigated violates the Guidelines and measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment or punishment, adopted by the African Commission on Human and Peoples' Rights in October 2002. These guidelines and measures stipulate that: "States should ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities, an investigation shall be initiated" (para. 18). "Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" (para. 19).

Furthermore, the Court should have rejected confessions obtained under torture (see below).

b. An investigation hurried over

The defendants were not provided with legal counsel

During the investigation and despite the request to the investigating judge, the defendants were not assigned a lawyer. The investigating magistrate, on 3 October 2003, wrote a note that was included in their file saying that the accused had asked for the help of a lawyer and that he had transmitted their complaint to the intelligence services⁴³.

On 9 October 2003 the judge wrote another note that he sent on to the director of the intelligence services, in which he wrote:

"I should like to point out by this note that the right to defence is a sacred right and that in criminal matters the presence of a lawyer is obligatory. Hence I would like to request that you facilitate contact between the latter (the accused) and potential lawyers".

The lawyers were assigned after the indictment of 15 October 2003. Only one of the defendants saw his lawyer before the trial; the others, whose lawyers had been appointed by the Court, only met during the trial.

The Chadian Code of Criminal Procedure, however, grants defendants the right to a lawyer⁴⁴ with whom he should be able to communicate freely and who is to provide assistance during the police interrogations.

Article 150 of this Code says that a sentence shall be declared null if the clauses on "assistance from legal counsel during examination"⁴⁵ have not been respected, and this was the case. Because of this violation of due process of law, the Court of Criminal Appeal (Chambre d'accusation), which has authority over such investigations, should have declared the invalidity of the interrogations that were held in the absence of legal counsel.

The defendants were not able to have the benefit of legal assistance which is recognised as being decisive in criminal cases. Lawyers could, in particular, have requested the investigating magistrate to carry out essential acts connected with the demonstration of the truth, e.g. hearing witnesses.

The judge's order indicating refusal to carry out such measures during the examination could be appealed before the Court of Criminal Appeal (Chambre d'accusation)⁴⁶. If a lawyer had informed them of their rights, the defendant would no doubt have exercised these channels of law so that the investigation would have also heard witnesses for the defence.

But this would have made the investigation take far more time, which, apparently, was not the political line.

The lawyers were assigned shortly before the hearing during which the verdict was pronounced. They were not able to speak freely with their clients, as required by Article 43 of the Chadian Penal Code.

Actually, according to one of the lawyers, they were only able to communicate with the defendants once before the Criminal Court's hearing and that was at the intelligence service's headquarters, surrounded by heavily armed guards.

⁴²See article in N'Djamena's weekly, 27-29 October 2003, n°714, p3; "The Criminal Court judges Acheik's accomplice and murderers", see annex n°2

⁴³See annex n°3

⁴⁴Article 43 of the Code of penal procedure

⁴⁵Articles 43 to 46 of the Code of penal procedure

⁴⁶Article 269 of the Code of penal procedure

The absence of legal counsel during the examination is not only a violation of national law, but also a violation of international and regional instruments on the protection of human rights, which bind Chad.

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;” (Art. 14, para 3b of the ICCPR). The General comment on this article stipulates that, “the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel” (para. 9)

Furthermore, paragraph 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty stipulates that “the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings”. (emphasis added)

At the regional level, Article 7 of the African Charter on Human and Peoples' Rights, enshrines the right to a fair trial and, in particular “the right to defence, including the right to be defended by counsel of his choice” (para 1c). The Directives and Principles on the Right to a Fair Trial and Legal Aid in Africa, adopted by the African Commission on Human and Peoples' Rights in March 2003 stipulate that “any person who is arrested or detained has the right to consult, in the briefest delay, a counsel, except if the person has renounced to this right in writing, he shall not be constraint to answer to any questions nor participate to any interrogations in the absence of his counsel” (M 2f).

This instrument stipulates that the right to legal aid “should be available at all times throughout the criminal procedure, especially during investigative measures, periods of administrative detentions and decisions of the first degree and appellate Courts” (para N 2c). “The accused has the right to choose the counsel of his choice. This right should apply as soon as the accused is detained or charged” (para N 2d).

It must also be stressed that the members of Adouma's family were only able to maintain contact with the convict through his lawyers. They received a letter - after paying the policeman who transmitted it - in which Adouma says several times that he is innocent of the crime. He asks his family to send a doctor, especially mentioning that his arm is broken in three places. He also speaks of being tortured.⁴⁷

Yet, unless the investigation exceptionally so requires, “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”⁴⁸.

At the regional level, the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa stipulates that the State shall: “Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.” (para 31). The directives and principles on the right to a fair trial and legal aid in Africa have similar provisions.

An investigation from the prosecution side alone

The investigating magistrate only used evidence for the prosecution and made no effort to verify evidence presented by the accused for his defence. Furthermore, a certain number of efforts to discover the truth were not carried out.

Motives for the crime

The investigating magistrate did his best to ensure that serious disagreement did exist between the Sheik and Adouma, that could have led Adouma to have serious reasons to want his death. The judge, therefore, used the short time he had to lead the investigation, to interrogate the people who knew the victim's relationship with Adouma.

Statements made by witnesses indicated that the Sheik and Adouma had a financial run-in about the sale of a piece of land. A certain Mr. Mahadi had hired Adouma to sell a piece of land for US \$600,000. Adouma is said to have sold the land to the Sheik for a much higher price, i.e. US \$1,250,000 without telling the seller, thus pocketing \$650,000 plus the agreed \$100,000 commission. The seller met the Sheik and discovered what had happened and told Adouma to reimburse the difference.⁴⁹

Furthermore, the witnesses spoke of serious tensions between the two men and that Adouma threatened the Sheik several times.⁵⁰

Adouma explained the disagreement to the judge, but his version was very different. He said that the people who believed the story mentioned above were mistaken and added that if Mahadi disagreed with his explanations, he would like to confront him.

The investigating judge did not interrogate Mr. Mahadi.

Furthermore, a few of the witnesses spoke of a professional clash between the two men. After the Abéché cease-fire

⁴⁷ See annex n°4

⁴⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 15)

⁴⁹ Statement of Kamal ELDINE BRAHIM, October 3rd 2003, quote D.13.

⁵⁰ Statement of Youssouf AHMAT AMIR, October 3rd 2003

agreements, the expulsion procedure was dropped and Adouma, who had resigned, wanted to get back his position as CPC Managing Director. The Sheik felt that Adouma had not been a good manager and was strongly against the idea.

On this matter, CPC's Managing Director, Omer Alfaroug Ahmed Bani Abubakar told the investigating judge the following:

“Mr. Adouma was declared persona non grata by the Chadian authorities. He was supposed to be expelled. He had resigned from his position as Managing Director. After certain interventions, he was excused and allowed to remain in Chad. When he wanted to recover his position, the CPC partners were unanimously and categorically against. The person who took the most extreme position was the deceased who did not want him back because of his poor performance as a manager during the previous period.”⁵¹

The witnesses for the defence were not heard

When they were standing before the investigating magistrate, Bakhit Abdraman and Mahamat Adam Issa went fully back over the statements reportedly obtained under police duress, and they provided the magistrate with information about the places and the people with whom they were at the time the crime had been committed.

So, Bakhit Abdraman, who was supposed to have driven the car to the place of the crime, explained that at that time he was at a wedding organised by one of Doussa Deby's sons, named Yaya :

« At the time of the incident I was at a wedding at Yaya's house in the Beguinage neighbourhood⁵² ».

This wedding was filmed and, if he was telling the truth, a good number of guests could have confirmed this.

The investigating magistrate, however, did not see any sense in obtaining the video tape of the ceremony or hearing the evidence of the people who could have attested to his presence at the event.

As far as Mahamat Adam Issa was concerned, he said that at the time the crime was committed, he was unwell and was at home with Doctor Sidick and one of his brothers:

« I thought I had malaria and I asked Sidick to go to the pharmacy for some medicine. When we arrived home one of Sidick's pals called him... When I was sleeping, the telephone rang and one of my brothers answered it, the caller... said – an officer of the CPC has been murdered ».

The investigating magistrate never attempted to check this alibi by interrogating Doctor Sidick or one of Mahamat Adam Issa's brothers.

According to one of the lawyers interviewed by the mission, Doctor Sidick went to the police to give his version of the evening which he had spent with Mahamat Adam Issa. His evidence does not appear in the proceedings.

Lack of ballistic expertise and autopsy

The proceedings did not mention any expertise of Adouma's weapon, which was taken from his house on his own instructions and exhibited as the weapon which had been used for the crime.

This however would have been fundamental to establishing the truth: Adouma explained that his weapon had not worked for several months, and a single expert opinion could have established if this weapon had been used recently.

It is also worth noting the unlikelihood of a silent partner in a murder who denies the facts, not only keeping the crime weapon at his house but also describing to the police where they can find it.

Similarly, no ballistic expertise has been obtained. Such expertise would have made it easily known whether the bullet found in the victim's body came from the handgun of Adouma.

Nor was an autopsy carried out on the body of the deceased, which is very surprising in a case of this importance. Had there been an autopsy, many of the questions as to the exact circumstances of the Sheik's death could have been avoided.

In fact, some of the people interviewed by the members of the mission, believe that the Adouma case is a set up job and that the Sheik was not killed at the spot where he was found. These people base their belief mainly on a contradiction in the file as to the exact spot where the fatal bullet hit. Whereas the police officers noticed a wound on the right side of the head⁵³, the doctor who certified the death reported that the wound was situated in the back of the victim's neck .

Lack of social inquiry

The procedures for conducting an inquest into the character of accused persons, necessary in criminal cases in order to

⁵¹ Statement of OMER ALFAROUG AHMED BANI ABUBAKAR, CPC's Managing Director, September 25th 2003 and of Youssouf AHMAT AMIR, October 3rd 2003

⁵² Minutes of a confrontation, 4th October 2003

⁵³ Minutes of visit to the premises and of certification: « the body of the victim has a single wound to the head and on the right side. This wound was probably caused by a hand gun »

better understand the personality of those who are to be judged by a Criminal Court, were not followed.

The instructing magistrate, moreover, justifies this omission because of « *material difficulties*» and because of the need « *to close the investigation as a man's freedom depends on it*»⁵⁴.

In his summing-up for the referral before the Criminal Court the public prosecutor was not concerned at all about the omission. In fact he considered that although no character inquiry could have been expedited and that report n°3 (the criminal record) of the defendants did not contain a single sentencing, « *the actions of the accused were sufficient evidence that they were people of dubious character*».

Decision on the referral before the Criminal Court

The Court of criminal appeal has, by virtue of article 274 of the Code of Criminal Procedure, « *power of control over investigation proceedings*» and is responsible for ordering « *the referral before the Criminal Courts of defendants against whom charges are sufficient to constitute a crime* ».

This Court which verifies « *the state and regularity of the proceedings*»⁵⁵ may order supplementary certificates of information⁵⁶ and quash any action which is null and void and, if necessary, all or any part of the proceedings prior to this action⁵⁷.

Despite undeniable infringements of the law of procedure of Chad and of international and regional instruments binding on Chad, in particular provisions on the right to legal aid, violations which cannot be challenged, the Criminal Court did not quash any of the null and void actions and indicted the four accused⁵⁸.

c. The trial

Public nature of hearings

The law of Chad provides for hearings in public. However, the tribunal or the Court may, following its own judgment or reasoned decision, decide to hold the hearing *in camera*, on the grounds that a public hearing is dangerous for order and morals⁵⁹.

In the Adouma case, there was no decision taken by the Court to hold the hearing *in camera*. However, everyone interviewed by the FIDH mission recalled that it was impossible to allow public access to the Court room due to the huge numbers of anti-riot officers brought in for the occasion.

Some lawyers, not involved in the case, told the members of the mission how they could not go back to the Court house during this hearing. A judge, questioned about the public nature of the hearing, explained ironically that the trial was public as « *the windows were open*».

It can be concluded, therefore, that the trial was not completely public, even though it should be noted that some people (press, family) were nevertheless allowed into the courtroom.

As the General Observation relating to article 14 of the ICCPR states, "The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that Courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public."

The fact that the trial was not really public is therefore a clear infringement of article 14 of the ICCPR. At regional level, the Directives and principles on the right to a fair trial and legal aid in Africa, adopted in March 2003 by the African Commission on Human and Peoples's Rights, also clearly provide for the right of everyone to have his case « heard fairly and publicly» and state that « the necessary facilities are equipped to allow the public to attend hearings» and that « representatives of the media may attend a public hearing and report on it, even if the judge can limit the use of cameras».

Objections raised as to the validity of the proceedings

Before any in depth debate, the lawyers for the defendants raised objections as to the validity of the proceedings. They maintained before the Criminal Court that the admissions obtained from the defendants by the security branch officers had been obtained under duress.

⁵⁴ Minutes of « lack of social inquiry»

⁵⁵ Article 277 of the Code of Criminal Procedure

⁵⁶ Article 278 of the Code of Criminal Procedure

⁵⁷ Article 280 of the Code of Criminal Procedure

⁵⁸ Verdict of 14 October 2003

⁵⁹ Article 302 of the Code of Criminal Procedure

They also reported the infringement of articles 42 and 43 of the Code of Criminal Procedure which provide that a lawyer must be present at the investigation stage.

As a result, the panel of lawyers asked the Court to declare null and void the entire proceedings, even if that meant starting the investigation all over again.

The Court gave an immediate ruling on this request and decided to reject it on the grounds that:

« objections as to the validity of the proceedings cannot be raised during the trial as the whole procedural stage is governed ultimately by the Court of Criminal Appeal; That in the case in point the Court of Criminal Appeal in terms of decision n°053/03 of 14 October 2003 referred the defendants before the Criminal Court; That, as objections to validity had not been raised at this stage, it was not appropriate for the defendants to raise them before the Criminal Court⁶⁰ ».

There is a certain audacity about this decision given that the defendants, who were not legally represented when the Court of Criminal Appeal gave it, were probably not told about the possibility of challenging the proceedings. Adouma, who made it known to every interrogator that he would only sign statements in the presence of a lawyer, would certainly not have missed a chance to challenge the proceedings.

In addition and in particular, this reasoning is completely contrary to article 156 of the Code of Criminal Procedure which does not state anywhere that the validity of proceedings is ultimately governed by the Court of Criminal Appeal but rather that *« the reasons for invalidity must be put forward at the latest before any defence pleas in the trial Courts »*, as happened in this case.

The legislature of Chad did not make provision for any exception relating to the Criminal Court, which is borne out implicitly by reading article 157 which provides: *« The Criminal Court of Appeal, the magistrates' Court, the Appeal Court or the Criminal Court decide whether to invalidate all or any part of the earlier proceedings. The invalidated proceedings must be struck from the debates »*.

This article does make provision for the possibility for the Criminal Court to invalidate proceedings; the Criminal Court even has, by virtue of article 158 of the Code of Criminal Procedure, the power to invalidate the process by which a case is referred to it, that is to say the decision to refer and to indict taken by the Court of Criminal Appeal. In such a case, the Court sends the Prosecution off to appeal, or in other words the Prosecution is able to restart the proceedings in order to regularize it.

Simply by reading the observations of the examining magistrate which showed that the defendants had asked for legal assistance without obtaining it, and on the basis of the cited provisions of the Code of Criminal Procedure and of the aforementioned international and regional instruments, the Criminal Court in the Adouma case should therefore have agreed to the lawyers' request and invalidated all the cross-examinations as well as the decision of the Court of Criminal Appeal which validated the vitiated proceedings.

The hearing investigation did not put right the gaps in the investigation insofar as not one of the pieces of evidence which could have brought doubt to bear upon or even exonerated the defendants was examined.

So, the people who could have testified in favour of Bakhit Abdraman and Mahamat Adam Issa were not heard despite requests from the defence counsel. Likewise, the Court made no effort to obtain the video tape of the wedding ceremony which took place at the same time as the crime and in which Bakhit Abdraman said he appeared.

At the hearing, the driver of the deceased continued to make accusations against Mahamat Adam Issa whom he said he recognised as being the person who fired the fatal shot. On the other hand, he did not admit having participated in committing the crime as he had done in the presence of the security branch officers.

It should be made clear that Adouma implicated in Court the Minister for Security, Abderramane Moussa as the instigator of this put up job so as to protect the true perpetrators of the crime.

Adouma and the two other defendants have protested their innocence throughout the hearing and have stood by the statements made before the examining magistrate. They have repeated at the bar of the law Court the allegations of torture which they underwent to force confessions from them.

However the decision of the Criminal Court scarcely instanced the denials and explanations by Mahamat Adam Issa and Bakhit Abdraman, given both before the examining magistrate and before the trial Court. The Court only mentions them to show that *« the denials made before the examining magistrate cannot constitute proof of his innocence⁶¹ »*. In fact, the decision only repeats in detail what the defendants confessed in the presence of police officers.

As to the assertions that the confessions were extorted under duress, the Court considers *« that they are groundless⁶² »* in spite of the scars which were seen by everyone who was in the courtroom.

⁶⁰ Decision by the Criminal Court n°01/AADD/03 dated 23/10/03

⁶¹ page 7 of the Decision of the Criminal Court

⁶² idem

This constitutes not only an infringement of the United Nations Convention against torture, of which article 12 obliges member States to conduct inquiries into any allegations of torture, and article 15 obliges these same States to make sure that « any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings ».

General Observation n° 13 on article 14 of the ICCPR states that the law should provide that « evidence provided by means of such methods or any other form of compulsion is wholly unacceptable» (para 14). General Observation n° 20 relating to article 7 of the Treaty also provides that it is important that « the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment» (para 12).

Moreover, at regional level, the same principles are provided by the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted by the African Commission on Human and Peoples' Rights in October 2002 : the States should in fact « Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody» (para 16). Finally, the States should « Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings » (para 29).

The Directives and Principles on the right to a fair trial and to legal aid in Africa adopted by the Commission in March 2003 provide that “Evidence obtained by illegal means which constitute a serious violation of internationally recognised human rights cannot be used as prosecution evidence against the defendant or against any other person implicated in a proceedings, except for pursuing those who carried out the violations” (para F 6g).

d. The executions

Execution despite a cassation plea to the Supreme Court

In the Adouma case, the four condemned men lodged concomitantly through their lawyer a petition for clemency and a cassation plea to the Supreme Court.

The petition for clemency was quickly rejected by the Head of State⁶³ and the plea was never heard by the Supreme Court.

The President of the Supreme Court, when asked, explained to the delegation that the appeal had not been heard because as the lawyers had simultaneously lodged a petition for clemency and that this petition had been rejected by the President of the Republic, the Supreme Court had nothing more to add. Without reference to any legal precedent, the President of the Supreme Court pointed out that in a similar case the Court was in some way bound by the political decision. It is thus an open infringement to the principle of separation of power.

He also rejected the mistake on the part of the condemned counsels stating that it would have been otherwise if they had waited for the decision of the Supreme Court to prepare their petition for clemency. Paul Wadana, president at the session of the Criminal Court in October 2003, had the same view: they justified carrying out the sentence by the error of the lawyers who should not have lodged a presidential petition for clemency at the same time as an appeal. They also stated « *that it is necessary first to lodge the appeal, which then suspends execution of the decision until the Supreme Court gives its verdict, then introduce the petition for clemency if the appeal is dismissed*⁶⁴ ».

As early as the day following the executions, the government of Chad had justified the executions in a press release explaining that the defence lawyers had « *preferred to proceed by way of a petition for clemency, which meant dropping their appeals*⁶⁵ ». That statement is very surprising since no legal provision provides that a petition for clemency results in dropping the appeal (pourvoi en cassation). In addition, since the condemned men had lodged themselves the appeal, it appears inconceivable to consider that they might have implicitly renounced to it.

There can be no doubt in this case that the haste with which the Chadian authorities carried out the death penalties, without waiting for a decision from the Supreme Court, had no legal basis whatsoever, but was a purely political decision linked to the peculiar nature of the case (see infra § III).

The lawyers criticised by the Chadian government had reacted in a press release of 8 November 2003 in which they challenged the government's arguments set out in the statement of 7 November which in their opinion is « *nothing other than a diversion tactic by the government which has deliberately chosen the path of savage repression to the detriment of that of law and justice* ». The group of lawyers also stated « *that the government must take full responsibility for its actions rather than subjecting to public obloquy the lawyers who have carried out their task with dignity*⁶⁶ ».

For the five other persons executed in November 2003, the mission has not been able to obtain any information on the procedure for clemency other than what has been printed in the press. It has not been possible in most of the cases to find out if the condemned men had themselves formulated the plea, or if it had originated from the public prosecutor's department.

⁶³ See annex n°5, Decree n° 463/PR/MJ/2003, recording the rejection of the pleas for clemency.

⁶⁴ Press dispatch of 6 November 2003 - AFP

⁶⁵ Le Progrès, Monday 10 November 2003 n°1359, pages 1 and 7, see annex 7

⁶⁶ See annex n°6: Press release by the group of lawyers of 8 November 2003

The public prosecutor, who had been appointed a few months earlier, admitted he did not know whether the files on the other executed persons had been sent in due course to the Ministry of Justice. Moreover, the Public Prosecutor's Office has not been able to give the mission the presidential decrees rejecting the petition for clemency, as it had done in the Adouma case.

Under these circumstances, one can legitimately ask on behalf of the five executed persons, whether the procedure for the right of clemency was respected and whether the presidential decrees rejecting the petitions for clemency were actually taken.

This doubt is increased by the statements made by the State prosecutor at the execution of Léon Tatoloum on 9 November 2003. The State prosecutor, Mr Djanéibe Doumnelingar said at the time :

« Today we are going to execute... the condemned before us...who, since being sentenced in July 1998, has not presented a petition to the President of the Republic to ask for clemency. His counsel has not lodged any such plea. Under these circumstances, his sentence is enforceable. The law is hard but it is the law.⁶⁷ »

He therefore made it clear that the sentence had become enforceable only because no petition for presidential clemency had been lodged and never produced evidence of a decree rejecting clemency, despite this being obligatory for any capital punishment execution.

It also appears that for these five men, for whom the judicial authorities were unable to provide the members of the mission with any evidence from the proceedings leading to their execution, the Chadian government was taken off guard, deciding at the last minute the execution alongside the last persons condemned.

There is no doubt this decision was made to allay the, already considerable, suspicions as to the exploitation of justice in the Adouma case.

In fact, it would have been difficult for the Chadian government to justify resuming capital punishment by simply putting to death the four condemned in the Adouma case, following the most expeditious proceedings and trial (see infra §3).

The fact that the criminal appeal had not been heard and decided before the condemned were executed constitutes a violation of international law: « Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence. »⁶⁸.

The stray bullet

The persons condemned were therefore executed on 6 November 2003 along with three others, after the President of Chad had rejected their plea for and even though the cassation plea lodged the day after the decision had not been heard by the Supreme Court.

At their execution, a gendarme, who was part of the firing squad, was hit by a bullet and died in hospital some time later. According to the pro-government daily newspaper « *Le progrès* », the only paper to cover « the event », the gendarme was « *wounded in the side by a stray bullet* ».

The paper explained the accident by saying that « *the bullets were shot in bursts and in a disorganised manner* » which indicates « *a lack of moral preparation* » and « *a lack of skill in handling weapons* » on the part of the firing squad. The paper even quotes a witness who believes that the gendarme's death « *is simply due to a member of the squad losing his balance* » and a photo in support of this also shows that the gendarmes were not standing in line⁶⁹.

However the first photo which happened to be published in a special edition of the same paper shows a perfectly aligned squad⁷⁰.

It seems to be extremely difficult to believe the theory of a simple accident due to lack of training of the gendarmes or to an alleged stray bullet. Adouma's family did not believe this for a minute and think that the gendarme was killed because he had just heard Adouma's last confidence.

In this connection, the family members interviewed by the team representatives stated that Adouma, up till the end did not believe, because of the privileged relationship which he had long held with the President of Chad, that he was going to be executed.

He would therefore have withheld essential information in the hope that the Head of State would grant him clemency. The gendarme wounded by the « stray bullet » would thus have heard this information from Adouma which had not to be passed on at any cost.

⁶⁷ Statement transcribed in the daily « *Le Progrès* », on 10 November 2003 n°1359, p7; annex n° 7

⁶⁸ Safeguards guaranteeing protection of the rights of those facing the death penalty (para 8).

⁶⁹ See article and photo from the paper « *Le Progrès* », on 10 November 2003 n°1359, pages 1 and 8; annex n°7

⁷⁰ See annex n°8

3. Conclusion : a parody of justice

The Adouma case is surprising for more reasons than one. It ended in executions carried out in a country where the de facto moratorium seemed long-lasting. The theory of a settling of scores by exploiting justice seems at first glance to be quite complicated when one knows how easy it is, in this part of the world, to get rid of someone more simply.

Manipulating justice to hide the truth of a crime and the identity of those who committed it, and at the same time having people deemed undesirable executed also seems to be a complex hypothesis.

But the numerous interests which have driven this iniquitous trial can validate such a hypothesis.

The protagonists in the case were in fact closely related to oil money and to the burning issue of Darfur. Moreover, it is worth remembering that President Deby, from the Zagawa tribe, comes from this region which borders Sudan and that this trial in some respects is a demonstration of the presidential might which could have appeared weakened in the eyes of some of the region's politico-economic players.

The elimination of the victim and this trial thundering to its fatal outcome show the Khartoum regime in a way that could not be any clearer: N'Djamena no longer intends to be a withdrawal base for the rebels or for the financiers of Darfur.

From a legal point of view, this case shows the persistent link that binds judges to the political power. The fundamental rights of the defence have been flagrantly violated and the various reasons given by the judges as basis for the executions are barely convincing both in law and in fact.

The unseemly haste of this trial seems to confirm that instructions had been given to hurry up and go all the way. The conscientiousness of the judges has been rewarded as those who signed the decree ordering the capital punishment have been appointed by presidential decree to the Supreme Court.

IV. The conditions of detention : inhuman and degrading treatment

1. Detention in police custody

a. Inhumane conditions of detention

During an interview with Ramadame Souleymane, chief of the national police force, in the offices of the central police station of N'Djamena, the mission was allowed to enter two of the huts where people were kept in police custody. In N'Djamena, accused remanded in custody are either detained in the Judicial police, which is located in the central police station, or in the gendarme brigades. However, once referred to the Court and charged, the offenders are placed under committal order and sent to N'Djamena's jail.

One of the two huts in the middle of the courtyard is reserved for alleged perpetrators of « petty crimes». On the day of the visit by the FIDH delegation, a dozen accused persons were being held there, lying on the bare ground of a small courtyard measuring about thirty square metres. Amongst these men, visibly under-nourished and some of whom seemed very young, were several foreigners. When questioned by the representatives of the FIDH mission, they all hesitated, looking at their guards who gestured to them not to start complaining about their conditions of detention. There was no water, nor toilet facilities, and the yard was strewn with refuse.

The other hut was even worse: 11 people were crammed in a cell measuring 4 by 3 metres. Nicknamed « the violin», it held those suspected of more serious offences or of crimes. They included, highway robbers, these highwaymen who demand a ransom from travellers.

It was like the first hut but inside, excrement and detritus covered the prisoners' space. Here the guards could do nothing, the sight of a visitor is too rare an occurrence for silence. All were helpless, no-one knowing when or under what circumstances he would leave the «violin».

A guard told us that for alleged murderers or assassins, these premises are not secure enough. Between the corrugated roof and the wall, many prisoners have found defects and tried their luck by climbing the wall of their cell.

The biggest «violin» in Chad is therefore elsewhere, in the prison of N'Djamena, where most accused people are held in police custody. It holds 508 accused (including 23 women and 26 minors) for 265 having been sentenced (*see below*).

b. Illegal temporary detention

After several interviews with magistrates and representatives of the forces of order, it became evident that the legal time-limit of custody of 48 hours was hardly ever respected. « *Without a judge or an official empowered to make arrests, investigations are long...temporary detentions also*», explained a magistrate, he adds that «*experts in an investigation file are a luxury we are not allowed*».

In an interview with the members of the mission, the public prosecutor acknowledged that the custody time-limit was regularly exceeded; that the Republic's prosecutors (5 in N'Djamena) did not visit the prisons enough and did not see enough detainees within the time-limit for allowing extensions. He acknowledged that it was unacceptable but that this was due to a lack of means of the judiciary, the Prosecutors being overwhelmed with work.

Chad has about 250 magistrates today and about forty lawyers who are only appointed in N'Djamena. « *The lawyers appointed by Court believe that once the judgment has been passed their work is over. After completing two years in custody, many detainees have no idea that they only have a fortnight in which to appeal against the judgment*», says Assia Mahamat Ahmed Abbo, chief of prison administration. She adds: « *when parents don't pursue the case, the accused are simply forgotten*». In addition, despite the recommendations taken by the FIDH in its July 2002 report, there is still no free legal aid in Chad.

Upon return to the central police station, a man arrested 23 days ago called out the FIDH delegates: he has seen no-one, neither an official empowered to make arrests nor a magistrate. If they want to drink, the detainees must pay the guards. That day, not one guard bothered to move to bring the 11 detainees a bottle of dirty water. « *They extort money from us to bring us water and sometimes they don't even come back with it*». The guards just shrug their shoulders and tell us that times are hard for everyone. Even for the police : 500 million francs CFA must be found for the State's coffers for 2004 by way of fines, so the chief of police acknowledges he is obliged to urge his officers « *to make money*».

One detainee was interviewed by the members of the mission, persuaded by his fellow detainees. This person did not seem to have all his wits about him. The members of the mission were told that he had been in prison for 13 years and had never been tried. When she was told about this, the Chief of Prison Administration said she was going to check his situation.

The next day when the members of the mission arrived at the Public Prosecutor's office, he told them that he was busy as he had been given the case of a person who appeared to have been detained for 13 years. The former prison chief was present and was criticised for the situation.

The detainee in question arrived shortly afterwards and was questioned in the presence of the members of the mission. He was freed in front of them and escorted to his house. He returned a little later to the prosecutor's office, accompanied by a member of his family.

The next day the public prosecutor said he had found the file again. The detainee had actually been in custody for more than 4 years for inflicting injury leading to unintentional death. The examining judge presiding over the case was transferred to the provinces. Mr Padaré, barrister and Vice-president of the Chad League of Human Rights, was appointed by the Court to deal with the complaint against this examining judge.

c. Torture

A person in the « violin » clearly bore marks of torture on his back and on his arms.

Moreover, during its meeting with the representatives of the Association for the Promotion of Fundamental Liberties in Chad ("APLFT"), the mission learned of the case of a man, « chef de carré » of his district and cook, who with the help of the association APLFT had filed a claim with the public prosecutor for having been tortured at the police headquarters of N'Djamena.

L.M.B, a cook for over 4 years in the same company, was suspected by his employer of having on February 13, 2004 stolen 3200 euros, money that had been stored in a cupboard in his employer's bedroom.

L.M.B, without having first been questioned by his employer, was taken by some of his employer's associates that same evening to the police headquarters of the 2nd district of N'Djamena where for 3 days he claims to have been tortured and humiliated.

He was never placed under official police custody, nor were the judicial authorities informed of his detention.

Denying all liability regarding this theft during the first interrogations that he described as « very tough », L.M.B. was subjected to stage two of the treatment. On the second day, he was suspended from a ceiling under a moving fan and was consequently whipped in this suspended position, the objective thereof being to obtain his confession.

To the member of the APLFT who obtained his testimony, he explained:

« I stuck to my position, they decided to make me undergo atrocities in order to obtain my confession. At 5.30 they made me climb on a table. Handcuffed, I was tied to a fan installed on the ceiling, and then they withdrew the table. I remained suspended for 10 minutes. I was hurting everywhere. I cried. The only thing left for me to do was to call on God to deliver me from this nightmare. »

On the third day, a guard of the company L.M.B. worked for was suspected of having committed the theft and was taken in for questioning. L.M.B. was consequently freed. He left the police headquarters with a declaration of incapacity to work for 21 days.

He filed a complaint with the public prosecutor on February 25, 2004 for abduction, illegal confinement, false accusation, attempted murder, voluntary assault and battery, invasion of domicile and acts of violence.

The potential outcome of his claim is to date unknown.

2. The conditions of detention at N'Djamena's prison

There was, at the time of the mission, only one person condemned to death in the Chad prisons: a woman at the Lai prison. She had not been executed with the others as she was pregnant. Article 7 of the Criminal Code sets forth that in such a case, the person « shall receive punishment following delivery ». In May she was pregnant again. The FIDH questioned the general prosecutor and the director of the penitentiary with regards to this woman. A doubt existed in relation to the commutation of her death penalty to a penalty of forced labour for life. They were unable to verify the reality of this commutation.

Assia Mahamet Ahmed Abbo, director of the penitentiary, visits the prison of N'Djamena every two weeks. All prisoners can during these visits provide her with a note stating their complaints, their requests for information etc. According to her, this is the only way to maintain contact; a system that the mission participants were able to witness: at the end of her visit, over a hundred pieces of paper had been placed into her hands.

It should be underlined that the 20 gendarmes seconded by rotation of 48 hours to officiate in the prison are exempt from the hierarchical pressure of the penitentiary administration, that calls for the constitution of a group of prison guards. There is also one manager and an assistant manager. Numerous prisoners escape.

The lack of such a corpus of guards is even more unfortunate, that it had been recommended by the FIDH in its last report of July 2002 and by the Commission "Justice and Society" of June 2003's National Consultations⁷¹.

⁷¹Etats Généraux de la justice, N'Djamena 17-21 June 2003, synthesis of the work accomplished, p. 29.

Typical of the 42 prisons active in Chad (against 47 in theory⁷²), as pointed out by the director, the central prison has a capacity of housing 350 persons and yet houses 773... 42 large cells give onto the great courtyard for men, there is only a narrow passage that permits one to slide along through the huts built in any old manner. In between the sellers of cigarettes, soap or old clothes, the prisoners attempt to carry out their daily occupations, having to climb over the foul smelling sewers. « *There has been in the past over a 1000 prisoners* » remembers the director, « *but now that the Criminal Courts are once again active, the numbers are decreasing.* »

Without electricity and despite the « moodswings » of the only two water outlets, the « city » is organised according to the visiting hours (07.00 – 09.00am and at meal times for the family and between 03.30 and 5.30pm for the lawyers). The ghetto provides teachers (7 in Arabic and 14 in French) who work without any means and a « mayor », who disposes of a 20 member counsel and who nominates the individual responsible for the cooking, hygiene,... It is his responsibility to distribute the only daily meal offered by the authorities (meat or fish and rice amounting to approx. 300 – 400 francs CFA per prisoner, i.e. 13 800 000 francs CFA per month⁷³).

The mission participants met with the outgoing « mayor », a young man from a « good family » who was liberated the following day after two years detention for having provoked a car accident, his parents having reached a financial settlement with the family of the victim. He took us to the bedside of a dying prisoner. Having been transported the night before from the hospital (that has no means to care for the poor), he had been abandoned. The nurse who, according to the authorities, is supposed to provide essential care is suspiciously unknown to the prisoners and happened to be on holiday that day. « *The prisons have today become places for people to die* » exclaims the president of National Assembly, Nassour Guelengdouksia Ouaidou.

The director of the penitentiary told the mission members that she would take the necessary measures to have this person transported to the hospital. The mission participants immediately informed the general prosecutor thereof, who in their presence telephoned the director and manager of the penitentiary ordering them to take immediate action. The following day he assured the mission participants that the person had been transferred to the hospital. However, three days later, the mission participants presented themselves to the prison clerk's office to meet the clerk, who informed them that the individual was still present. The mission participants immediately informed the general prosecutor thereof who seemed most surprised and annoyed. The mission participants left Chad that evening and were unable to find out what had happened to the sick person.

⁷² See the statistics on prisoners in Chad in annex n°9. (Management of the penitentiary administration)

⁷³ Approx 50 cents of a euro per prisoner and approx. 21 000 euros per month.

V. Conclusions and Recommendations

The conclusions of the FIDH mission on the death penalty in Chad are overwhelming. Insofar as the executions that occurred in November 2003 are concerned, the fundamental guarantees in relation to ensuring a fair trial were largely ignored.

Furthermore, the conditions of imprisonment in custody in the Central police station, as well as in the N'Djamena prison are in clear violation of international standards on this matter⁷⁴. These conditions can be qualified of being cruel, inhuman and degrading.

This investigation unfortunately confirms the prior conclusions reached by the FIDH with regards to the administration of justice in Chad : the authorities are totally inert and take no concrete measures to try and improve the functioning of the judicial system.

The *National consultations on Justice*, to which Chadian human rights associations contributed and for which the FIDH had hopes have produced no change. The recommendations of the FIDH presented in its 2002 Report "Une justice au point mort ?" are unfortunately still valid today.

One has to realize, that lifting the de facto moratorium on death penalty, which resulted in 9 executions in November 2003, was based on two main reasons: the security opportunism and the settling of scores.

Idriss Déby could have been exasperated to learn of the murder of a sudanese businessman while he was in France to convince foreign companies to invest in Chad. It is in this particular context that the authorities justified to resume executions by putting forth the renewal of insecurity.

Furthermore the various interests that underlined this iniquitous trial can confirm the hypothesis of a manipulation of justice to hide the reality of a crime and the identity of its authors, at the same time as getting undesirable people executed.

These executions, combined with new executions in August 2004, represent a counter-example for the region. Today twenty people, including a woman, are on the death row in Chad.

The FIDH makes the following recommendations :

To the Chad authorities :

Recommendations specific to the death penalty:

1. To immediately interrupt all executions by adopting a moratorium followed by, in the briefest delay, a law abolishing the death penalty.
2. To ratify the optional Protocol to the ICCPR abolishing the death penalty.

Recommendations relative to conditions of imprisonment:

1. To fully comply with the obligations of Chad in relation with the Convention against Torture of the United Nations. The FIDH draws the attention of the Chadian authorities in particular to their obligation to investigate any allegation of torture and to pursue in justice the authors, as well as to the prohibition to accept in judicial proceedings elements obtained through torture or other inhuman or degrading treatments.
2. To undertake the necessary reforms in order to improve the living conditions of prisoners in conformity with the international standards in this matter.
3. To create and train a team of guardians working under the responsibility of the jail administration.
4. To immediately free all persons arbitrarily arrested or held and, in conformity with article 9.5 of the ICCPR to allow victims of such acts to obtain compensation.

⁷⁴-Article 7 of the ICCPR which prohibits torture, as well as cruel, inhuman or degrading treatments or punishments; General Comments relative to this issue n°20

-Article 10.1 of the ICCPR: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

- Basic Principles for the Treatment of Prisoners (resolution GANU 45/111, 14 December 1990)

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (resolution GANU 43/173, 9 December 1988)

- Standard Minimum Rules for the Treatment of Prisoners (resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 approved by United Nations Economic and Social Council)

- UN Convention against Torture, 1987.

General Recommendations:

1. To co-operate with the of the United Nations Treaty Bodies, as required by the international conventions ratified by Chad.
2. To take the necessary measures to ensure fair trial procedures, as required by international and regional instruments to which Chad is bound, in criminal proceedings. The FIDH draws the attention of the Chadian authorities in particular to the necessity of an independent judicial system, the principle of public trial proceedings in criminal matters and the right of every person in criminal proceedings to have access to a lawyer from the beginning of the procedure and during all phases thereof.
3. To introduce, prior to a moratorium, an appeal against the decision of the Criminal Court sentencing to death and make it compulsory.
4. To establish a free legal assistance mechanism.

To Chad civil society

To raise awareness amongst the population regarding the issue of the abolition of the death penalty.

To raise awareness amongst the Chad parliamentarians regarding the necessity to abolish the death penalty.

To the European Union and its member states

During every political dialogue with Chad at all levels, to raise the issue of the death penalty as a fixed agenda item, in conformity with the 1998 Guidelines of the European Union on the death penalty.

The EU should in particular call on Chad to:

- Fully comply with the minimal guarantees regarding the application of the death penalty set forth in the international and regional instruments in this respect.
- Not carry out any execution in the future.
- Abolish the death penalty in the briefest time frame.
- Ratify the second optional protocol to the ICCPR.

Annex 1: List of persons met by the FIDH delegation

National Assembly

Mr. Nassour Guelengdouksia Ouadou, President of the National Assembly
 Mr. Gnomon FANGA, Cabinet Director of the National assembly's President
 Mr. ABREGENE DJIBRINE, President of the Commission for the communication, fundamental rights and freedoms of the National Assembly
 Mr. Hissene OUSMAN, Legal adviser of the National Assembly's President

Magistrates

Mr. Abdarhim Breime, President of the Supreme Court
 Mr. Djimadoubaye Kantangar Aime, President of the Court of Appeal
 Mr. Danbaibe Pareing, President of the N'Djamena's Court of first instance

Mr. Ousman SOULEYMAN, Prosecutor General

Mr. Paul WADANA, Member of the Supreme Court, former President of the Criminal Court

Mr. MAI INGALOU Baouh Kagh, Member of the Supreme Court, former Prosecutor General in N'Djamena

Mrs. DORKAGOUM Marthe, Judge in the Court of first instance in N'Djamena

Ministry of Public Security and Immigration

Mr. RAMADANE SOULEYMANE, Director of the state police department

Ministry of Justice

Mr. DOMAYE NODJIGOTO Daniel, Secretary General of the Ministry of Justice

Mrs. Assia Mahamat Ahmed Abbo, Judge, Director of the prison administration

Lawyers of the N'Djamena Bar Association

Mr. BETEL NIGANADJI Marcel, President of the Bar Association
 Mr. MIALENGAR Pierre
 Mr. Allassem K DJAIBE
 Mr. PADARE Jean-Bernard
 Mr. RADET

Foreign delegations

The Ambassador of France, Mr. Jean-Pierre BERCOT

Mr. Bernard FRANCOIS, Counsellor, EU delegation in Chad

Mr. Michel BALIMA, Resident Representative, UNDP

Mr. Allassoum BEDOUM, Resident Representative's Assistant of the Governance Unit, UNDP

Civil society

Association for the Promotion of Fundamental Freedoms in Chad (APLFT), Mr. DJERAKOUBOU NAZAIRE, Delegate General Administrator, Mrs. Gomba LARLEM Marie
 Association des femmes juristes, Mrs. DORKAGOUM Marthe, Judge- Secretary General of the association, Mrs. Delphine DOMAYA, Mrs. DINAN BAI Lucie

Training and Study Centre for Development (CEFOD), Mr. RONELNGUE Troiara, Secretary General, Mrs. Gomba LARLEM Marie, Executive Assistant and Conference manager

Press

Le Progrès, Mr. ABDERAMANE BARKA, Publishing Director

N'Djamena hebdo, Mr. Yaldet Bégoto OULATAR, Publishing Director

Annex 2: Article from the "N'Djamena Bi-Hebdo", from October 27th to 29th, 2003, n°714, p.3; "The criminal Court judges Acheik's accomplice and murderers".

JUSTICE

La cour criminelle juge le complice et les assassins de Acheik

La session spéciale de la cour criminelle, qui s'est ouverte le 23 octobre dernier, a inscrit un seul dossier à son ordre du jour, notamment l'affaire ministère public contre quatre prévenus inculpés d'assassinat et de complicité d'assassinat sur la personne de Acheik Ibni Oumar, président du conseil d'administration de la société Chad petroleum company.

Palais de justice de N'Djaména. Un impressionnant déploiement des forces de sécurité filtrent les entrées depuis l'entrée principale du palais jusqu'au portail de la salle d'audience. Les éléments de la police nationale et ceux de l'escadron d'intervention de la gendarmerie nationale ont reçu des consignes fermes: fouiller systématiquement tout individu; confisquer les enregistreurs et les appareils photos des journalistes. Dans la salle d'audience, les agents de sécurité en civil et en tenue occupent la majorité des places assises.

Par Ralongar N'Diékhlor Daniel

Il est 9H35 lorsque le président de la cour d'appel, Wadana Paul, qui préside la session, ouvre l'audience de la cour criminelle, après l'appel des assesseurs et la prestation de leur serment.

Dans le box des prévenus, sont assis quatre hommes, menottes aux poings. Mahamat Adam Issa, chauffeur, âgé de 33 ans et né à Bao au Tchad, Abdéraman Hamit Haroun, chauffeur, âgé de 43 ans, né à N'Djaména, Moubarak Bakhit Abdéraman, réceptionniste âgé de 28 ans et né à Amdourman au Soudan et Adouma Ali Ahmat, âgé de 43 ans, né à Fada. Les quatre prévenus, qui sont poursuivis par le ministère public, sont inculpés d'assassinat et de complicité d'assassinat et placés sous mandat de dépôt depuis le 1^{er} octobre dernier.

L'arrêt de renvoi de la chambre d'accusation précise que dans la nuit du 25 septembre 2003 à 19H30, Acheik Ibni Oumar Youssouf Abdallah, le président du conseil d'administration de Cpc (la société qui finance la construction de la mini-raffinerie de Farcha) et son chauffeur, Abdéraman Hamit Haroun, se rendaient chez le Cheik Albachir au quartier Centre en empruntant le Boulevard du 11 août non loin de la bibliothèque municipale, quand ils furent rattrapés par deux hommes à bord d'une moto de marque Honda CG-125 qui ont fait usage d'une arme à feu sur la personne de Acheik Ibni Oumar en l'atteignant mortellement (sic).

Avant la lecture de l'arrêt, le président de la cour donne la parole au procureur général.

«Messieurs le président, conseillers et jurés, vous avez tous suivi l'indignation que cet assassinat a suscité aussi bien sur le plan national qu'international. Je vous demande d'examiner cette affaire comme il se doit, avec la sérénité qu'il faut...», déclare le procureur général. S'en suivent donc l'appel des prévenus, des avocats, des té-

moins, de deux membres de la famille du défunt constitués partie civile et la lecture de l'arrêt de la chambre d'accusation par le greffier qui finit par prononcer la mise en accusation des quatre prévenus pour assassinat et complicité d'assassinat.

La défense demande ensuite la parole. Maître Amady Nathé fait une observation. «Ce n'est pas un tribunal militaire. En moins d'un mois, le juge d'instruction a clos son instruction! Si la justice pouvait continuer sur cette lancée ce sera une bonne chose. Les prévenus peuvent vous dire ce qu'ils ont subi à la police. Vous ne pouvez pas prendre pour comptant ce que la police a fait, il n'y a pas de photos dans vos dossiers», observe l'avocat de Adouma.

C'est sur ces entrefaites que les avocats des prévenus se relaient devant la cour pour soulever la nullité de la procédure. «La procédure est nulle, nous allons le soulever, parce que les aveux de nos clients ont été arrachés sous la violence. Adouma n'est pas entré à la police avec un bras fracturé (le bras droit de Adouma est soutenu par un bandeau porté en bandoulière). Où est-ce qu'il est dit que la police doit user de la violence pour extorquer des aveux? Sur cette base, la procédure est nulle et nous demandons l'annulation de l'acte d'accusation. Donc libérez-nous», plaide un des avocats de Adouma. La cour se concerte et le président prend la parole pour suspendre l'audience. «Nous allons d'abord statuer sur cette demande», conclut le président de la cour.

A la reprise, la cour rejette la demande en nullité de procédure soulevée par les avocats de la défense. Le procès se poursuit donc avec l'appel des prévenus. Après les traditionnelles questions d'usage posées par le président de la cour aux prévenus, on entre dans le vif du sujet. A la question «reconnaissez-vous les faits qui vous sont reprochés?», les quatre prévenus répondent par la négation. Mahamat Adam Issa, le présumé tueur et Moubarak Bakhit, le conducteur de la moto nient en bloc les accusations portées contre eux. Le premier déclare être à la maison au moment du crime, le second indique, lui, qu'il se trouvait à une cérémonie de mariage. Abdéraman Hamit Haroun, le chauffeur de la victime, est par contre constant dans sa déclaration. «J'ai reconnu Mahamat Adam Issa, le détenteur de l'arme derrière la moto», indique-t-il.

Le président de la cour brandit les Pv d'audition des prévenus et déclare: «Et pourant vous avez re-

connu les faits dans ces procès verbaux. Comment expliquez-vous cela?», contrecarre Wadana Paul. Adouma. Les prévenus répliquent en affirmant tour à tour que c'est sous l'effet de la torture qu'ils ont été amenés à avouer ces faits. Le présumé commanditaire de l'assassinat, Adouma, demande l'indulgence de la cour afin que celle-ci lui accorde suffisamment de temps pour parler. Chose accordée.

Dans un long discours, Adouma retrace ses relations avec Acheik Ibni Oumar ainsi que son analyse de l'assassinat. «Je suis la première personne à accueillir Acheik à son arrivée à l'aéroport de N'Djaména lorsqu'il est arrivé au Tchad... Je n'ai pas été commanditaire. J'accuse plutôt le ministre de la Sécurité qui a fait ce montage. Abdéraman Moussa n'est pas honnête. Il doit trouver les responsables de cet assassinat. Il les a laissés parce qu'ils sont des intouchables ou bien il a fait un échec dans ses investigations», déclare-t-il. Cette révélation du présumé commanditaire va dé-

clencher des vagues de questions tant du côté de la cour que du côté des parents de la victime constitués partie civile. C'est ainsi que la cour s'est appesantie sur plusieurs questions, notamment les rapports entre Adouma et Acheik, sa démission de la direction générale de la Cpc, son implication dans la rébellion soudanaise, ses affaires au Tchad, ses accusations contre le ministre de la Sécurité, etc. Malgré les témoignages qui convergent presque tous vers sa culpabilité avérée, celui-ci est resté de marbre. Serein, parfois souriant, le regard perçant derrière ses verres correcteurs, jouant souvent le rôle de traducteur pour les deux plaigants, Adouma semble connaître l'issue de son procès. «Je n'ai aucune inquiétude pour l'issue du procès, car je sais que je suis déjà jugé», s'est-il précipité de conclure.

L'affaire est mise en délibéré pendant que nous mettons sous presse. Une certitude semble se dégager cependant: les prévenus risquent de lourdes peines. RND.

ECONOMIE

Des investisseurs sud-africains au Tchad?

Thokoane Tsolo est un homme d'affaires sud-africain. De passage à N'Djaména, il a pris de contacts avec quelques hommes d'affaires tchadiens pour leur expliquer ce qu'il entend venir faire chez nous dans le cadre des activités de Idc (Industrial development corporation), une institution financière basée



Tsolo (à gauche) et le représentant de Idc au Tchad

en Afrique du Sud, dont il est le responsable. Il a laissé entendre que son institution peut financer des projets dans les secteurs des mines, du tourisme, du développement rural, de la santé, du textile, de l'éducation, des médias, etc.

«L'Idc peut ainsi participer à hauteur de 25% au capital d'une société et peut également prêter des fonds», a-t-il expliqué à ses interlocuteurs. Selon cet investisseur étranger, l'Idc, qui aménage toujours une porte de sortie après sa présence dans une entreprise, peut à la longue vendre ses actions.

Une autre forme d'aide, que l'organisme sud-africain propose aux opérateurs économiques tchadiens, consiste à prendre en charge 85% de leurs importations si elles proviennent d'Afrique du Sud.

Pour permettre aux éventuels demandeurs d'aides de mieux connaî-

tre son institution, Thokoane Tsolo a fourni quelques indices, notamment ceux qui concernent sa création en 1940 dans le cadre du développement de l'industrie sud-africaine. Depuis 1997, celle-ci est présente dans environ 19 pays du continent en dehors de l'Afrique du Sud. Et quelque 800 millions de dollars ont été investis dans l'ensemble de ces Etats depuis.

Et si l'Idc est aujourd'hui au Tchad, c'est suite à la négociation, quelques mois auparavant, d'un partenariat économique entre le Tchad et l'Afrique du Sud. Les autorités des deux pays sont d'accord pour que des hommes d'affaires sud-africains opèrent au Tchad. C'est ainsi que l'Idc a saisi la perche. Actuellement, l'Idc a un représentant à N'Djaména en la personne de Nassir Arzamkhan, consul honoraire de l'Inde et directeur général de l'hôtel du Sahel. HB

**Annex 3: Note of the judge in charge of the investigation on
October 3rd, 2003****MENTION SPECIALE**

Attendu que le droit de le défense est un droit sacré, nous avons informé les inculpés qu'ils pouvaient se faire assister par un avocat.

Qu'ils avaient tous exprimé ce besoin sans nous donner le nom d'un seul avocat.

Attendu que tant en première comparution que dans les autres phases de l'instruction, les inculpés n'ont pas manqué de porter des réserves en ce qui concerne la désignation d'un avocat.

Que nous avons en son temps légitimement transmis ces doléances aux responsables des Renseignements Généraux pour leur faciliter de contact avec les avocat, compte tenu de leur position aux RG et de part la complexité du problème.

Fait en notre Cabinet
N'djaména le 03/10/03
Le juge d'instruction

Le Greffier



YENANI TIMOTHEE

Annex 4: Letter of Adouma to his family in Arabic and English

In the name of God the merciful

My very dear brother...(illegible)

In the name of Allah, I promise you my brother that I am innocent of all the charges which make me the murderer.

In the name of Allah, I am not a murderer my brother, I am innocent and now my brother, I am very tired.

My hand was broken at three points needlessly and I am always tortured during the night... (two illegible words).

Now I am extremely tired, at the top of the weariness.

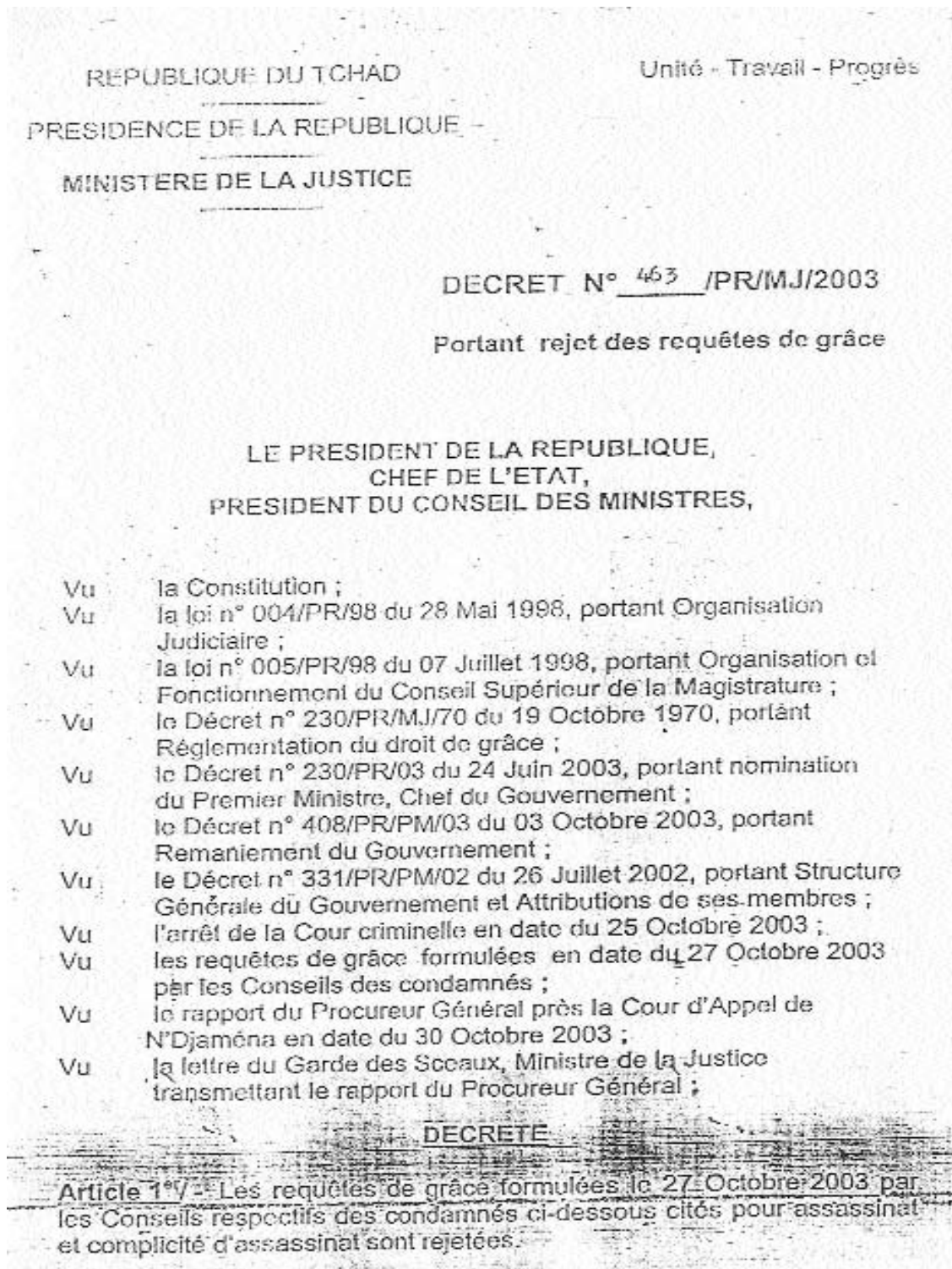
Please, my brother send me a doctor to examine me and don't forget that even my virility has been affected.

Now I am tired and very exhausted. Please send a doctor to examine me.

My brother, give the soldiers sent the envelop of Franc CFA 30,000 because we have agreed on this.

With the help of God.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
 حضرة اخي العزيز ارجو اني انا احوك ادومة على
 اعدك والله يا اخي يا نقي بريئي بكل ما التفتت
 به من اذى وانها ما آتت كون اتنى قتائل
 والله يا اخي انما لست فاعل انما يري والآن
 يا اخي انما نعيان جد كثر في دى يدون زين
 ثلاثا ما كن ود انما اعدب بالليل
 وسئل حنا عن انما نعيان الان جدا
 فانيه التعب اريد يا اخي ان
 ترسل طبيبيا ليكسول حالتي سرقتك
 ولا تنسى حنا من جاني اصببت
 انما نعيان مرقتك جدا ونعيان
 من ذنبي ارجو لي طبيبيا يري حالتي
 يا اخي انظر الجندي المبعوث بالرملة
 ثلاثين الف لان هذا ما اتفقنا به
 والله الموفق

Annex 5: Decree n°463/PR/MJ/2003, rejection of the petitions for pardon

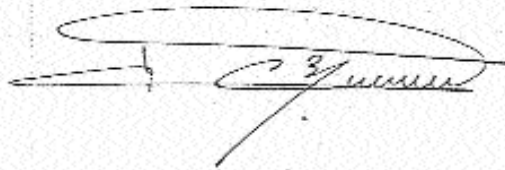
Il s'agit de :

- 1°/ - MOUBARACK BAKHIT ABDERAMANE
- 2°/ - ABDERAMANE HAMIT HAROUN
- 3°/ - ADOUMA ALI AHMAT et
- 4°/ - MAHAMAT ADAM ISSA

Article 2/ - Les peines prononcées seront exécutées conformément aux dispositions de l'article 5 du Code Pénal.

Article 3/ - Le Garde des Sceaux, Ministre de la Justice est chargé de l'exécution du présent Décret qui prend effet pour compter de la date de sa signature.

Fait à N'Djaména, le 03 Novembre 03

A handwritten signature in black ink, appearing to be 'IDRISS DEBY', written over a horizontal line. The signature is stylized and somewhat cursive.

IDRISS DEBY

Annex 6: Press release of the group of lawyers of November 8th, 2003

**COMMUNIQUE DU COLLECTIF DES AVOCATS DE LA DEFENSE
CONSTITUES ET COMMIS D'OFFICE POUR LA SESSION EXTRAORDINAIRE
DE LA COUR CRIMINELLE AYANT SIEGE DANS L'AFFAIRE DE
L'ASSASSINAT DE CHEICK IBN OUMAR YOUSOUF ABDALLAH**

Le gouvernement de la république du TCHAD dans un communiqué diffusé sur les ondes de la radio nationale tchadienne le vendredi 07 novembre 2003, relativement à l'exécution de personnes ayant fait l'objet d'une condamnation à la peine capitale a soutenu en substance s'agissant de MAHAMAT ADAM ISSA et trois autres, qu'après leur condamnation à mort, leurs conseils ont exercé le recours en grâce et que ce n'est qu'après qu'ils ont exercé le pourvoi en cassation, ce qui induit une renonciation implicite des conseils à l'exercice de cette voie de recours.

Le collectif des avocats de la défense relève à l'attention de l'opinion publique tant nationale qu'internationale que cette déclaration n'est rien d'autre qu'une manœuvre de diversion du gouvernement qui a délibérément choisi la voie de la répression sauvage au détriment de celle du droit et de la justice.

En effet s'agissant des quatre condamnés à mort suite à l'arrêt de la session extraordinaire de la Cour criminelle ayant siégé à N'Djaména du 23 au 25 octobre 2003, contrairement à ce qui a été dit dans le communiqué du gouvernement les demandes de grâce et les pourvois en cassation ont été introduits concomitamment et les derniers ont été bel et bien reçus aux greffes de la Cour d'appel pour les uns et de la Cour suprême pour les autres.

La demande de grâce et le pourvoi en cassation ayant été exercé le même jour, il appartient dès lors à la chambre judiciaire de la Cour Suprême de statuer sur la recevabilité des pourvois ainsi que sur leur bien fondé, surtout qu'en matière pénale il est de jurisprudence constante que le pourvoi est suspensif.

Aucune urgence ne commandait en conséquence la prise hâtive d'un décret rejetant la demande de grâce, et l'exécution des condamnés les privant ainsi d'une voie de recours prévue par les articles 7 de la Loi portant organisation judiciaire et 36 de la Loi portant organisation et fonctionnement de la Cour suprême.

En conséquence de ce qui précède, le collectif des avocats de la défense estime qu'il appartient au gouvernement d'assumer l'entière responsabilité de ses actes plutôt que de vouer aux gémonies les Avocats qui ont assumé avec dignité leurs tâches.

Fait à N'Djaména, le 08 ~~novembre~~ novembre 2003

Le Bâtonnier RIBARD KLADOUM

Me Allaissem K. DJAÏBE

Me NADINGAR EKOUE Thérèse

Le Bâtonnier Amady NATHE Gabriel

Me BEKOUTOU Adolphe

Me SANNA Dieudonné

Annex 7: "Le progrès" November 10th, 2003 n°1359 p.1, 7 and 8

Le Progrès

Quotidien

100 Fcfa N° 1359
Lundi 10 novembre 2003

La Commercial Bank Tchad vous donne rendez-vous à la Foire Internationale de N'Djaména avec le Gold Chèque, un moyen de paiement sûr, rapide et efficace.

Encore une exécution :

Léon Tatoloum est passé par les armes

L'assassin de la religieuse de Kabalaye a été fusillé hier

Le condamné à mort ayant échappé au peloton d'exécution du jeudi 6 novembre 2003, du fait de l'opposition des prisonniers de la maison d'arrêt de N'Djaména, semble-t-il, est fusillé 72 heures après. Léon Tatoloum, assassin de la sœur Christine d'Hérouville en 1998 à la paroisse de Kabalaye à N'Djaména, condamné la même année à la peine capitale par la Cour criminelle, est passé par les armes hier dimanche 9 novembre 2003, au champ des tirs, situé au nord-ouest de la capitale, derrière le Camp du 27 et les bâtiments des Brasseries du Logone (BDL), à Farcha.

Il est un peu moins de 10 heures, une colonne de véhicules débouche de la Voie de Contournement sur l'antenne médicale de l'opération Epervier de la mission militaire française et les BDL. Elle se dirige vers le champ des tirs où se dresse un poteau. La colonne de véhicules transporte les responsables de la sécurité, dont le directeur général de la Gendarmerie nationale, le deuxième substitut du procureur général et son staff, un médecin et son équipe, ainsi que le condamné, tout de blanc vêtu, transporté dans un fourgon bleu. La camionnette s'arrête en face du poteau d'exécution. A travers la grille du fourgon, on aperçoit Léon, le regard figé.



Après l'exécution, le coup de grâce (R.S./PRGI)

Descendu du véhicule, menottes aux poignets, les pieds enchaînés, le condamné est solidement attaché au poteau d'exécution par les gendarmes. La détresse se lit maintenant plus clairement dans ses yeux. Il demande de parler. Il faut attendre la

sentence du procureur, répond le directeur général de la Gendarmerie nationale.

9h 45 min. Le peloton d'exécution, composé de six éléments, son chef à sa tête, apparaît de derrière le mur de terre et avance pour s'arrêter en face du condamné. Trois ou quatre minutes après la sentence lue par le procureur, le commandant du peloton d'exécution donne l'ordre d'ouvrir le feu. Des rafales crépitent des six kalachnikovs. Quelques instants après, du sang coule sur la robe blanche du condamné. Le commandant du peloton s'approche pour donner le coup de grâce. Comme pendant la première exécution du jeudi 6 novembre dernier, le percuteur du pistolet se bloque et la balle refuse de sortir du canon. On tend un second pistolet au commandant du peloton, qui réussit à donner le coup de grâce cette fois-ci. Mais l'on sent qu'il n'est pas à l'aise pour accomplir cette mission. Le deuxième substitut du procureur général prononce, avec quelques hésitations, la sentence. Ce serait la charge de l'émotion que l'on ressent pendant une exécution ordonnée.

Suite P. 7

Sans secours :

Un membre du peloton d'exécution est mort

Blessé au flanc par une balle folle, puis évacué quelques minutes après au Pavillon des Urgences de l'Hôpital Général de Référence Nationale (HGRN) de N'Djaména pour y recevoir les premiers soins, Djimasdé Neldé, l'un des gendarmes qui ont exécuté les sept condamnés à mort au champ des tirs à la sortie nord-ouest de la capitale, le jeudi 6 novembre 2003, a rendu l'âme le même jour dans son lit d'hôpital aux environs de 19 heures. Son corps a été d'abord déposé à la morgue du même hôpital pour être ensuite inhumé le lendemain du décès au cimetière de N'Gon-bah. D'après les témoins, feu Djimasdé Neldé est mort par anémie. Il n'avait pas eu la chance d'être secouru par des donneurs du même groupe sanguin.

Suite P. 8

Accident de la circulation à Farcha :

Une Toyota écrase deux hommes

Dans la journée du samedi 8 novembre 2003, vers 15 heures, Facki Hissein et M. Zakaria Béchir, son compagnon de route, revenant d'un prêche dans une mosquée de Farcha, ont été brutalement percutés par un véhicule militaire, de marque Toyota, immatriculé GR 10 38 82. Facki Hissein a eu sa jambe gauche complètement broyée et le poignet gauche grièvement blessé. Son compagnon de route a eu une fracture à la jambe droite et un choc au niveau du crâne (traumatisme crânien). Ils sont évacués au Pavillon des Urgences de l'Hôpital Général de Référence Nationale où ils rendent l'âme à 17h 20 min pour l'un et 18h 40 min pour l'autre, des suites de leurs blessures.

Suite P. 3

Exécution de sept condamnés à mort :

Il n'y a pas eu de pourvois en cassation, précise le gouvernement

Suite aux protestations soulevées par l'exécution de huit condamnés à mort le jeudi 6 novembre 2003 (LE PROGRES n° 1358 du vendredi 7 novembre 2003), le gouvernement, par la voix de son porte-parole, réagit dans un communiqué de presse signé le 7 novembre 2003. Il relève qu'après les condamnations du 25 octobre 2003, les conseils des condamnés devaient logiquement introduire des pourvois en cassation pour voir examiner les causes de leurs clients par la Cour suprême avant l'introduction des recours en grâce.

Suite P. 7

Encore une exécution :**Léon Tatoloum est passé par les armes***Suite de la P. 1*

«Nous allons aujourd'hui exécuter, conformément à la loi du pays, le condamné ici présent. Il s'agit de Léon Tatoloum, qui a, en fait, été condamné par la loi de la République depuis 1998. L'intéressé, depuis sa condamnation en juillet 1998, n'a pas introduit une supplique au président de la République pour demander sa grâce. Son conseil n'a présenté aucune requête dans ce sens», constate le procureur.

«Dans ces conditions, sa condamnation est exécutoire. La loi est dure, mais c'est la loi. Le peuple tchadien l'a voulu ainsi pour que la



Après l'exécution, la vérification des balles dans les chargeurs (R.S./PRG)

quiétude puisse régner sur l'ensemble du territoire. Nous ne pouvons que nous soumettre à la volonté de ce peuple, avec l'espoir que cette exécution pourra produire les effets intimidants escomptés, pour faire reculer, à l'avenir, les candidats potentiels à de pareils actes», souhaite le procureur Djanéïbé Doumnelgar. Aux termes des articles 5,6,7,8 et 9 du Code pénal et au nom du peuple tchadien, que le nommé Léon Tatoloum, qui a sciemment commis son acte criminel, puisse être exécuté immédiatement ce jour, conformément à la loi, ordonne le deuxième substitut du procureur général.

Exécution de sept condamnés à mort: Le gouvernement précise**Il n'y a pas eu de pourvois en cassation***Suite de la P. 1*

Or, malheureusement, constate le gouvernement, les conseils ont préféré la voie du recours en grâce, ce qui emporte renonciation à leurs pourvois en cassation. Ayant préféré le recours en grâce, ils ne peuvent plus se prévaloir d'un quelconque pourvoi en cassation, qui est postérieur au recours en grâce, indique le communiqué.

Le procureur précise aussi que le décret portant rejet des requêtes en grâce a été notifié au procureur général par le ministre de la Justice le 3 novembre 2003, conformément à l'article 7 du décret du 19 octobre 1970, portant réglemen-

tation du droit de grâce. Le procureur général a, à son tour, informé le procureur de la République du rejet des requêtes en grâce et ce dernier en a donné avis aux condamnés. La procédure et les diligences édictées par le décret du 19 octobre 1970, portant réglementation du droit de grâce ayant été régulièrement respectées, il ne restait plus qu'à faire application de l'article 5 du code pénal qui dispose que: «les condamnés à mort seront fusillés». C'est donc à la lumière de cette prescription du Code pénal tchadien que les condamnés ont été exécutés le 6 novembre 2003, conclut le gouvernement.

La fusillade de Léon Tatoloum intervient après l'exécution de sept hommes condamnés à la peine capitale à cause de l'assassinat du PCA de CPC le 25 septembre 2003 à N'Djaména et d'un autre ayant exterminé sa famille à Abéché (LE PROGRES n° 1358.)

Ramadan Sidjim

Décès sans secours :

Un membre du peloton d'exécution, blessé aux tirs, est mort par anémie



Dès les premiers tirs, un membre du peloton d'exécution est blessé. Il tombe. Ses responsables le croient, dans un premier temps, paniqué.

Suite de la P. 1

«Nous avons contacté ses parents pour avoir un donneur parmi les membres de sa famille, mais nous n'avons pas eu une réponse favorable. Or, il était déjà épuisé et ne pouvait plus résister longtemps. C'est ainsi que le pauvre gendarme est mort», affirme un homme en blouse blanche au Pavillon des Urgences de l'Hôpital Général de Référence Nationale. Pour un autre témoin, quelles que soient les conditions, M. Djimasdé Neldé

ne pouvait être sauvé. De source médicale, on indique que la balle qui l'a atteint au niveau du rein, a provoqué une hématurie terminale, c'est-à-dire une hémorragie provenant de hautes voies urinaires. Même s'il y avait possibilité de le secourir avec du sang approprié et, donc probablement le sauver, cela aurait pu être fait aux premières heures de l'accident. «Maintenant, ce n'est plus le temps de regret-

Les membres du peloton d'exécution ne sont pas placés sur la même ligne. Pour la première fois, le jeudi dernier donc, les tirs ont été faits en rafales et en ordre dispersé. Cela dénote, non seulement une impréparation morale, mais surtout un problème de maîtrise du maniement des armes.

ter sa mort. La grande question reste la formation des pelotons de la gendarmerie dans le domaine d'exécution des condamnés. Il faut peut-être des personnes mûres et bien formées pour ce genre d'actes et non de jeunes gendarmes. Je crois que sa mort est tout simplement due à une perte d'équilibre d'un membre du peloton», estime le second témoin.

Ahmat Zéidane

Avec sourire!

L'Etat sous pressions

Jusqu'aujourd'hui, les Tchadiens ne cessent de décrier l'insécurité. En plus de la pression de vaincre ce fléau pour attirer les investisseurs, l'Etat est soumis aux cris de détresse des citoyens, qui aspirent à la quiétude. En voulant passer par la manière forte pour mettre un terme à ce problème, il rencontre d'autres pressions. En première ligne, ce sont certains hommes de droit qui rejettent la position de l'opinion publique. Pourtant, ce n'est pas une cour d'exception qui est instaurée. Tout est prévu par la Constitution et le Code pénal. La justice a tranché, suivant la volonté du peuple. Que peuvent l'Etat et les juges? Dans le Code pénal, la fusillade ne fait qu'accompagner la peine capitale. Le juge applique la loi. Le Code pénal est au repos, c'est l'Etat qui subit les pressions.

AVIS AU PUBLIC

Le gouvernement de la République du Bénin communique ce qui suit: M. Adam Arouna Mama n'exerce plus en qualité de Consul honoraire du Bénin au Tchad depuis le 25 juillet 2003.

En conséquence, M. Adam Arouna Mama ne représente plus les intérêts du Bénin au Tchad et tout acte posé par lui l'engage à titre personnel.

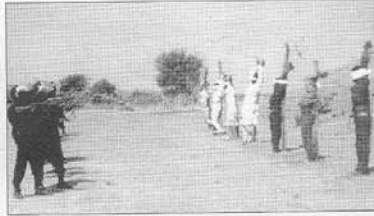
Les locaux abritant le Consulat honoraire sont fermés à compter du lundi 3 novembre 2003.

Signé Monsieur Benoît Adekambi
Ambassadeur du Bénin au Tchad
avec résidence à Abuja (Nigeria)

Annex 8: Special issue of the daily newspaper "Le progrès", special assessment of the year 2003, p.11

Lutte contre la criminalité :

* Les malfrats ciblent leurs victimes



Neuf condamnés à la peine capitale exécutés en deux jours à N'Djaména et à Abéché

L'année 2003 a été particulièrement folle de criminalité. Pendant un moment, la capitale N'Djaména était totalement en proie à des malfrats et des criminels. Les agressions à main armée, les assassinats, brigandages et braquages allaient entrer dans les habitudes des Tchadiens. Bref, le phénomène de l'insécurité a pris une ampleur si inquiétante qu'aucun citoyen ne se sentait en sécurité. Cette recrudescence de l'insécurité, à partir du deuxième semestre de l'année 2003, a conduit de jeunes, dans certains quartiers, à se constituer en comités d'autodéfense. Elle a amené aussi le gouvernement à passer par les armes des auteurs de crimes d'assassinat, condamnés à la peine de mort, pour dissuader les potentiels criminels.

Assoiffés d'argent

Les individus à l'origine d'actes de banditisme sont assoiffés d'argent. Ils visent les quartiers où vivent des hommes d'affaires (Rue de 40 m, quartier Digué dit Colombie, etc.) et le quartier rési-

dentiel où vit une population aisée. Les quartiers populaires comme Chagoua (autour de l'auberge « Mékab Sur Man », non loin de l'école publique connue sous l'appellation de « l'Ecole Chii » et la zone du bar « Hors bord 5 sur 5 », Dembé (du rond-point en allant vers le Palais du 15 Janvier), Ridina et l'axe de Linia, à partir du rond-point de Chagoua jusqu'à Abéna, sont aussi réputés dangereux. Le président de la Ligue Tchadienne des Droits de l'Homme (LTDH), M. Dobian Assingar, pense que les causes de l'insécurité sont à rechercher dans la situation de misère des militaires et dans les faiblesses de l'appareil judiciaire.

Phénomène contraire

« Dès l'instant où on ne donne pas aux hommes en treillis un traitement qui leur permet de vivre décemment, d'entretenir leur famille, on retrouve le phénomène contraire. Les éléments de sécurité créent l'insécurité pour trouver les moyens de subsister », explique le président de la LTDH. En effet, lors des manifestations populaires de la Journée de la Liberté et de la Démocratie à Moussoro, le président de la République a déclaré que les états généraux de l'Armée auront lieu en 2005 et la solde des militaires connaîtra une hausse de

30 %, conformément à la réforme de leurs structures. Les faiblesses de la justice découlent de la corruption, de l'impunité et de l'imixtion du pouvoir exécutif dans les cours des procès, etc., d'après M. Dobian Assingar. Certains citoyens font de n'importe quoi sans être inquiétés, dit-il. « On fait le lit à l'insécurité et au désordre », soutient M. Dobian Assingar. D'après les résultats d'enquête de la commission de sécurité, il ressort que les forfaits sont commis « pratiquement par les mêmes personnes ». Selon les déclarations des individus sous les verrous, « ils sont à l'origine de tous les actes criminels », confie le premier substitut sortant du procureur de la République, Hinsou Hara. De janvier à octobre 2003, le Parquet d'Instance de N'Djaména a enregistré plus de 1855 procès-verbaux émanant de la Police nationale et de la Gendarmerie nationale. Pendant la même période, quelque 1190 décisions ont été rendues par les chambres correctionnelles du Tribunal de Première Instance de N'Djaména. Pour M. Hinsou Hara, les forces de l'ordre consentent d'énormes sacrifices avec des moyens limités pour assurer la sécurité des citoyens.

L'effectif des agents pour la ville de N'Djaména ne répond pas. « Ils se consacrent avec beau-

coup de dévouement à leur tâche et parfois au prix de leurs vies », déclare le premier substitut sortant du procureur de la République. Toutefois, les éléments de sécurité doivent revoir leur stratégie de patrouille: sortir au moment où les citoyens regagnent leurs lits, ne pas se contenter de rester dans les ronds-

points de grands axes, mais aller en profondeur dans les quartiers réputés dangereux et les lieux sombres, conseille-t-il. M. Hinsou Hara ne s'oppose pas à l'initiative des jeunes d'assurer l'autodéfense, eu égard aux moyens dérisoires des forces de l'ordre.

Autodéfense sous supervision

A son avis, ces comités doivent évoluer sous la supervision du chef de carré, de quartier, d'arrondissement, voire de la police municipale, pour éviter des dérapages éventuels. « Que les jeunes, qui assurent l'autodéfense, ne s'en prennent pas gratuitement aux paisibles passants », indique le représentant de la société. Le président de la LTDH, lui, n'est pas favorable à la constitution des comités d'autodéfense, par crainte qu'une telle organisation puisse engendrer le désordre. « Si nous avons un Etat qui applique rigoureusement les lois, des forces de sécurité qui font leur travail et une justice capable de sanctionner les coupables et de blanchir les innocents, la question de l'insécurité sera résolue », estime M. Dobian Assingar.

Alain Golbassia Kerlo

* Après les exécutions, un peu d'accalmie

La recrudescence généralisée de l'insécurité en 2003 a obligé le gouvernement, à la suite de l'assassinat, le 25 septembre 2003, à N'Djaména, d'Acheikh Ibn Oumar Idriss Youssouf, homme d'affaire soudanais et président du Conseil d'Administration de Chad Petroleum Company (CPC), à décider de l'exécution publique des condamnés à mort « pour juguler le phénomène ». On avait atteint le niveau supérieur des retombées négatives du pétrole. C'est juste un mois après la prise en main de l'exécution du projet pétrolier de Sédigui, lequel piétinait entre les mains de CONCORP, que le PCA CPC a été tué.

Pour le gouvernement, le passage par les armes des condamnés à

la peine de mort est un signal fort dans la lutte contre l'insécurité. Ces exécutions ont eu un certain impact sur le phénomène de l'insécurité. Car, aussitôt après ces exécutions, la ville a connu une relative tranquillité. « D'habitude, lors de grandes fêtes comme celle de l'Aid Al-fitr et autres, les statistiques, en matière de blessures par armes (blanche ou à feu), étaient très élevées. Nous avons connu cette année une fête de fin de Ramadan particulièrement paisible », explique Hinsou Hara, premier substitut sortant du procureur de la République.

Les associations de défense des droits de l'Homme et le collectif des avocats, des accusés d'assassinat et de complicité, condamnés à mort, se sont soule-

vés contre ces exécutions qu'elles ont qualifiées d'arbitraires. Les ADH ont estimé que le gouvernement a directement agi sur le procès des présumés assassins d'Acheikh Ibn Oumar Idriss Youssouf, en précipitant le bouclage de l'instruction. « Notre organisation exige la sécurité, mais pas au prix de l'arbitraire. Les exécutions n'ont jamais eu d'effets dissuasifs. Elles sont des spectacles désolants et horribles, sans bénéfice réel pour les citoyens survivants », écrit le président de Droit de l'Homme Sans Frontière. La personne humaine est sacrée et inviolable. « Tout individu a droit à la vie et à l'intégrité de sa personne », dispose l'article 17 de la Constitution de mars 1996, cite-t-il. De l'avis des défenseurs des

droits de l'Homme, cette disposition doit protéger aussi bien les bons citoyens que les mauvais d'entre eux. « Nous ne revendiquons pas une justice de Talion, ni une vengeance, mais le droit à la vie pour tous », rappelle M. Dobian Assingar. L'Etat ne doit pas, selon lui, utiliser la loi et les textes pour tuer. Le président de la LTDH distingue les lois légitimes de celles qui sont illégitimes. « La peine de mort est une loi illégitime, contraire aux valeurs humaines universelles qui demandent que la vie d'un être soit préservée », dit-il.

A.G.K.

Le Progrès Spécial bilan 2003 P. 11

Annex 9: Statistical data on the detainees in Chad. Management of the Penitentiary Administration

REPUBLIQUE DU TCHAD

MINISTERE DE LA JUSTICE

SECRETARIAT DE LA JUSTICE

Direction de l'Administration Pénitentiaire

UNITE –TRAVAIL-PROGRES

N° _____/MJ/SG/DAP/2004

	Adultes		Mineurs		Décés	Evasions
	Hommes	Femmes	Garçons	Filles		
Maison d'arrêt Massenya	12 dont 1 transférés à N°Djamena				0	0
Maison d'arrêt de Mao	21	1			0	0
Maison d'arrêt de Bol	48		2		0	0
Maison d'arrêt de Koumra	24	3			0	1
Maison d'arrêt de Goz-Beida	10				0	0
Maison d'arrêt de Benoye	15	3			0	0
Maison d'arrêt de Gounou Gaya	64	3			0	0
Maison d'arrêt d'Amfiman	22	4			0	0
Maison d'arrêt de Mangalmé	2				0	0
Maison d'arrêt de Bitkine	8				0	0

Maison d'arrêt de Moussoro	4		1			0	0
Maison d'arrêt de Massakory	27 dont 10 transférés à N'Djamena					0	2
Maison d'arrêt d'Ati	15		2			0	
Maison d'arrêt de LAï	57		1			0	
Maison d'arrêt de Bébidja	50 dont 8 transférés à Doba		1			0	2
Maison d'arrêt de Sarh	110		4		6	0	1
Maison d'arrêt de Doba	84		4		1	0	
Maison d'arrêt de Fianza	3					0	
Maison d'arrêt de Bongor	38		1			0	1
Maison d'arrêt de Mbaïbokoun	20						1
Maison d'arrêt de Kyabé	6 dont 1 transféré à Sarh						
Maison d'arrêt de Béré	23					0	0
Maison d'arrêt de Moundou	139					0	0
Maison d'arrêt de Bokoro	7 dont 2 transférés à N'Djamena					0	0

NB : Abéché 115

N'djamena 735; 28 Mineurs ; 38 Femmes

Annex 10: FIDH Press releases of 30 October 2003, 6 November 2003, 16 July 2004 and 2 August 2004

Sudanese Businessman's Killers Sentenced to Death.

Paris, 30th October 2003 – The FIDH resolutely denounces the sentencing to the capital punishment of the murderers of a Sudanese businessman, pronounced by N'Djamena's Criminal Court on October 25th, 2003.

The victim, Acheik Ibni Oumar Idriss Youssou, was a member of Parliament and president of the Chad Petroleum Administrative Council, whose partners are high-ranking Chadian personalities. He was murdered in N'Djamena on 25th September 2003.

After a trial lasting just two days, the Criminal Court sentenced to the death penalty Adouma Ali Ahmat for being the silent partner in the killing, Mahamet Issa for carrying it out and Abdramane Hamid Haroun and Moubarack Bakhit for complicity.

The FIDH points out that the trial was extremely short – taking only two days to sentence four people to death. The Court also refused to hear evidence from the Minister for Public Security, whom the defence had summoned.

The FIDH believes the death penalty fundamentally contravenes to the dignity of the human being enshrined in the Universal Declaration of Human Rights. Several international instruments aim at its abolition, particularly the Optional Protocol to the International Covenant on Civil and Political Rights. Moreover, the terms of article 6 of the International Covenant on civil and political rights, which Chad ratified '*suggests unequivocally that abolition is desirable (para. 2 and 6)*' (General comment no.6 of the Human Rights Committee regarding article 6 of the International Covenant on Civil and Political Rights).

Whilst the number of countries who have abolished the death penalty has steadily risen over the last twenty years, the Chadian authorities have still not suspended executions and the Chadian Court continues to sentence people to death.

The FIDH urges the Chadian government to:

1. Not proceed with the execution of the four people;
2. Adopt a moratorium on the executions, with the ultimate aim of abolishing the death penalty;
3. Ratify the second Optional Protocol of the International Covenant on Civil and Political Rights abolishing the death penalty.

The FIDH dismayed by the execution of eight persons in Chad

Paris- Banjul, 6th November 2003 – The International Federation for Human Rights (FIDH) expresses its extreme dismay and indignation at the execution on Thursday 6th November of 8 people who were sentenced to death in Chad. Executions had not been carried out in this country since 1991.

Adouma Ali Ahmat, Mahamet Issa, Abdramane Hamid Haroun and Moubarack Bakhit were sentenced to death on October 25th for the murder of a Sudanese businessman – their trial lasted just two days. On 5th November, N'Djamena's Court of Appeal confirmed the validity of these sentences. Furthermore the executions were carried out even though the Supreme Court had not considered their plea. The FIDH regrets that the Chadian authorities never heard their appeal for a stay of execution, which was lodged on 30th October. On November 5th, the NGOs present at the NGO Participation Forum of the 34th session of the African Human Rights Commission in Banjul, Gambia, took over the African Human Rights Commission to ask Chad to postpone carrying out these executions.

The 4 other people who have been executed were sentenced to death for previous criminal activity; one of them was executed in Abéché in the east of the country.

The FIDH also laments the Chadian Territorial Administration Ministry's declaration that these condemnations are "the best example that Chad has ever given".

The FIDH believes that the death penalty goes against both the principle of human dignity, set out in the Universal Declaration of Human Rights; and the right to life, guaranteed by article 4 of the African Human Rights Charter and article 6 of the International Covenant on Civil and Political Rights, which Chad ratified.

The resolution adopted by the African Commission on Human and Peoples' Rights on November 15th 1999 asks member states to adopt a moratorium on executions and encourages them to abolish the death penalty. In light of this, the FIDH asks the African Commission, currently holding its 34th session, to condemn these executions and to urge Chad to adopt a moratorium on executions, with the ultimate aim of abolishing the death penalty.

Trial of suspects in the Maïbogo massacre: a trial under scrutiny

Paris, 16th July 2004 – Several days before the start of the trial of suspects in the Maïbogo massacre, the International Federation for Human Rights and its member associations in Chad, the Chadian Human Rights League (LTDH) and the

Death Penalty: ending a moratorium, between security opportunism and settling of scores

Chadian Association for Promotion and Defence of Human Rights (ATPDH), urge the judiciary to respect the right to fair trial and to reject the death penalty.

There are currently 24 people in detention in N'Djamena's prison awaiting to be tried on July 19th. They are accused of carrying out the massacre on 21st March 2004 at Maibogo, in the Yomi district, south of Chad. 21 peasants were killed, 10 others were wounded and 147 cows and 135 sheep were stolen. These 24 people face the death penalty for 'murder' and for 'armed robbery'.

The FIDH, the LTDH and the ATPDH strongly condemn this criminal act, which has cost lives, and insist that the Court uncover all the facts by conducting a fair trial.

The FIDH and its member organisations are concerned that the death penalty may be handed to the suspects in this trial, especially since 9 people were executed in November 2003, the first executions to take place since 1991. The FIDH heavily criticised those executions (see press releases – 30th October and 6th November 2003).

The FIDH, the LTDH and the ATPDH believe that the death penalty fundamentally contravenes the dignity of the human being enshrined in the Universal Declaration of Human Rights. There are several international instruments providing for its abolition, particularly the optional protocol of the International Covenant on Civil and Political Rights. Moreover, the terms of article 6 of the International Covenant on civil and political rights, which Chad ratified '*suggest unequivocally that abolition is desirable*'⁷⁵. The FIDH and member organisations also point out that the African Commission on Human and Peoples' Rights, at its 34th session, condemned the execution of the 9 people in Chad.

The FIDH urges the Chadian government to:

- 1) Respect the right to a fair trial, guaranteed by the international human rights instruments and by which Chad is bound;
- 2) Not proceed with the execution of 24 people; an extreme measure which contravenes the right to life;
- 3) Re-establish the right to truth and justice for the victims and their families;
- 4) Avoid using inter-community conflicts to solve internal political problems, and ensure that the Darfur syndrome does not occur in Chad;
- 5) Adopt a moratorium on the executions with the ultimate aim of abolishing the death penalty;
- 6) Ratify the second optional protocol to the International Covenant on Civil and Political Rights which includes abolishing the death penalty

Trial of the alleged perpetrators of the Maibogo massacre : 19 persons sentenced to death

Paris, 2nd August 2004 - The International federation for Human rights (FIDH), the Chadian League for Human Rights (LTDH) and the Chadian Association for Promotion and Defense of Human Rights (ATPDH), member organisations of the FIDH in Chad, vigorously denounce the death sentence pronounced for 19 persons, on July 30th, 2004, by the Criminal Court of N'Djamena.

24 persons were accused of being the perpetrators of the massacre which occurred in Maibogo, in the south of Chad, on March 21st, 2004, during which 21 farmers were killed, 10 others injured and several hundred heads of cattle stolen. Their trial, which the FIDH has observed through a gathering of lawyers constituted for the defence of the victims, was supposed to open on July 19th and was postponed to July 28th. Three days later, 5 persons were acquitted and 19 sentenced to death for « premeditated murders » and « armed robberies ».

The FIDH, the LTDH and the ATPDH vigorously condemn the resort to death sentence by the Chadian jurisdiction and emphasize the speed of the trial which only last three days for 24 accused.

The FIDH, the LTDH and the ATPDH are all the more concerned that this sentence occurs after the execution of 9 persons in November 2003, first executions in Chad since 1991. Moreover, the FIDH, the LTDH and the ATPDH recall that they had already expressed their deepest concern about the possible implementation of death penalty to the accused of this trial (see press release dated July 16th, 2004).

The FIDH, the LTDH and the ATPDH recall that death penalty is fundamentally contrary to the dignity of human being provided by the Universal Declaration of Human rights and that its abolition is provided for in various international instruments notably by the Optional Protocol to the International Covenant on Civil and Political Rights.

The FIDH, the LTDH and the ATPDH urge the Chadian government to:

- 1) Not execute the 19 persons sentenced to death;
- 2) Adopt a moratorium on executions, aiming at the abolition of death penalty;
- 3) Ratify the second Optional Protocol to the International Covenant on Civil and Political Rights which provides for the abolition of death penalty.

⁷⁵General comment no.6 of the Human Rights Committee regarding article 6 of the International Covenant on Civil and Political Rights

Annex 11: Decree N° 230/PR-MJ of 19 October 1970

**DECRET N° 230/PR-MJ. du 19 octobre 1970,
portant réglementation du droit de grâce.**

Art. 1. — La grâce est la remise totale ou partielle d'une peine prononcée par jugement définitif ou la commutation de cette peine en une peine d'un degré inférieur.

Le droit de grâce appartient au Chef de l'Etat.

Art. 2. — Tout condamné qui veut obtenir une remise ou une commutation de peine doit adresser une supplique au Président de la République ou au ministre de la Justice. La requête peut être également présentée par son Conseil.

Art. 3. — La grâce peut être prononcée d'office dans l'intérêt de la Justice ou pour des raisons d'humanité, en l'absence de tout recours du condamné.

En cas de condamnation à la peine de mort, le recours est instruit d'office par le parquet général. Il en est de même lorsque des raisons graves s'opposent à l'exécution de la peine, notamment si l'état de santé du condamné est incompatible avec la détention.

Les magistrats du parquet avisent le ministre de la Justice des mesures de commutation ou de réduction qu'ils estiment devoir être prises. Ils ne peuvent toutefois recevoir ni instruire des recours formés par les condamnés sans y avoir été invités par le ministre de la Justice.

Les chefs d'établissements pénitentiaires peuvent également, en dehors du cadre des grâces générales annuelles, adresser, par l'intermédiaire du parquet, au ministre de la Justice, des propositions de grâce en faveur des détenus particulièrement méritants en vue de contribuer au maintien de la discipline dans les prisons.

Art. 4. — Dès réception de la supplique, le ministre de la Justice fait procéder par le représentant du ministère public près la juridiction qui a statué à la mise en état du dossier, lequel est transmis par la voie hiérarchique assorti d'une enquête complète sur le requérant et sur son comportement en détention.

Le recours en grâce peut être renouvelé une fois. La décision de rejet qui intervient à la suite du deuxième recours est définitive. Le deuxième recours ne peut être introduit avant l'expiration d'un délai d'un an à compter de la date de notification de la décision de rejet.

Art. 5. — Si une peine d'emprisonnement inférieure à un mois a été prononcée contre des délinquants non détenus, il est sursis à l'incarcération jusqu'à instructions du ministre de la Justice ; si elle est d'un mois et au-dessus, le parquet reste maître de faire procéder à l'écrou.

A l'égard des condamnés à mort, le sursis est de droit jusqu'à la décision du Chef de l'Etat.

Dans le cas de nouvelle requête après première décision, le recours en grâce ne produit aucun effet suspensif.

Art. 6. — Les mesures de grâce font l'objet d'un décret du président de la République après avis du ministre de la Justice et consultation de la Cour Suprême.

Art. 7. — Toutes les décisions, qu'il y ait admission ou rejet, sont notifiées au procureur général qui en avise le procureur de la République compétent. Celui-ci en donne avis au condamné et fait procéder aux mentions nécessaires en marge du jugement et sur le bulletin n° 1 du casier judiciaire.

Art. 8. — La grâce peut être conditionnelle. Le Chef de l'Etat a le droit de subordonner la remise ou la réduction de peine à l'exécution d'une obligation notamment au paiement des dommages-intérêts et des frais de justice.

Art. 9. — La grâce est en principe limitée à la peine principale. Elle peut toutefois s'appliquer aux peines accessoires et complémentaires limitativement énumérées par le décret présidentiel.

Art. 10. — La grâce laisse subsister la condamnation qui continue à figurer au casier judiciaire, compte pour la récidive ou la relégation et fait obstacle à l'octroi du sursis.

Les déchéances ou incapacités consécutives à la condamnation subsistent également.

Art. 11. — La grâce ne peut pas préjudicier aux droits des tiers. Elle ne porte pas atteinte aux droits du Trésor en ce qui concerne le recouvrement des frais de justice qui pourra être poursuivi par les moyens de droit.

En toutes circonstances, les droits des parties civiles demeurent réservés et les voies de recours ainsi que les voies d'exécution leur restent ouvertes en ce qui concerne les intérêts civils.

Art. 12. — Le présent décret sera enregistré, publié au Journal Officiel et communiqué partout où besoin sera.

FIDH represents 141 Human Rights organisations

141 organisations

Afrique du Sud-Human Rights Committee of South Africa
 Albanie-Albanian Human Rights Group
 Algérie-Ligue Algérienne de Défense des Droits de L'Homme
 Algérie-Ligue Algérienne des Droits de L'Homme
 Allemagne-Internationale Liga fur Menschenrechte
 Argentine-Centro de Estudios Legales y Sociales
 Argentine-Comite de Accion Juridica
 Argentine-Liga Argentina por los Derechos del Hombre
 Autriche-Osterreichische Liga fur Menschenrechte
 Azerbaïdjan-Human Rights Center of Azerbaïdjan
 Bahreïn-Bahrain Human Rights Society
 Bangladesh-Odhikar
 Bélarus-Human Rights Center Viasna
 Belgique-Liga Voor Menschenrechten
 Belgique-Ligue des Droits de L'Homme
 Bénin -Ligue pour la Defense des Droits de L'Homme Au Bénin
 Bhoutan-People's Forum for Human Rights in Bhoutan (Nepal)
 Bolivie-Asamblea Permanente de los Derechos Humanos de Bolivia
 Brésil-Centro de Justicia Global
 Brésil-Movimento Nacional de Direitos Humanos
 Burkina Faso-Mouvement Burkinabe des Droits de L'Homme & des Peuples
 Burundi-Ligue Burundaise des Droits de L'Homme
 Cambodge-Cambodian Human Rights and Development Association
 Cambodge-Ligue Cambodgienne de Défense des Droits de L'Homme
 Laos (France)-Mouvement Lao pour Les Droits de L'Homme
 Cameroun-Maison des Droits de L'Homme
 Cameroun (France)-Ligue
 Camerounaise des Droits de L'Homme
 Canada-Ligue des Droits et des Libertés du Quebec
 Centrafrique-Ligue Centrafricaine des Droits de L'Homme
 Chili-Comite de Defensa de los Derechos del Pueblo
 Chine-Human Rights in China
 Colombie-Comite Permanente por la Defensa de los Derechos Humanos
 Colombie-Corporacion Colectiva de Abogados Jose Alvear Restrepo
 Colombie-Instituto Latinoamericano de Servicios Legales Alternativos
 Congo Brazzaville-Observatoire
 Congolais des Droits de L'Homme
 Côte d'Ivoire-Ligue Ivoirienne des Droits de L'Homme
 Côte d'Ivoire-Mouvement Ivoirien des Droits de L'Homme
 Croatie -Civic Committee for Human Rights
 Cuba-Comision Cubana de Derechos Humanos y Reconciliacion National
 Ecosse-Scottish Human Rights Centre
 Egypte-Egyptian Organization for Human Rights
 Egypte-Human Rights Association for the Assistance of Prisoners
 El Salvador-Comision de Derechos Humanos de El Salvador
 Equateur-Centro de Derechos Economicos y Sociales
 Equateur-Comision Ecumenica de Derechos Humanos
 Equateur-Fundacion Regional de Asesorias en Derechos Humanos
 Espagne-Asociacion Pro Derechos Humanos
 Espagne-Federacion de Asociaciones de Defensa y Promocion de los Derechos Humanos
 Etats Unis-Center for Constitutional Rights
 Ethiopie -Ethiopian Human Rights Council
 Finlande-Finnish League for Human Rights
 France-Ligue des Droits de L'Homme et du Citoyen
 Georgie-Human Rights Information and Documentation Center
 Grèce-Ligue Hellenique des Droits de L'Homme
 Guatemala-Centro Para la Accion Legal en Derechos Humanos
 Guatemala-Comision de Derechos Humanos de Guatemala
 Guinée-Organisation Guinéenne pour la
 Defense des Droits de L'Homme
 Guinée Bissau-Liga Guinéense dos Direitos do Homen
 Irak (Royaume Uni)-Iraqi Network for Human Rights Culture and Development
 Iran-Centre des Défenseurs des Droits de L'Homme en Iran
 Iran (France)-Ligue de Defense des Droits de L'Homme en Iran
 Irlande-Irish Council for Civil Liberties
 Irlande du Nord-Committee On the Administration of Justice
 Israel-Adalah
 Israel-Association for Civil Rights in Israel
 Israel-B'tselem
 Israel-Public Committee Against Torture in Israel
 Italie-Liga Italiana Dei Diritti Dell'uomo
 Italie-Unione Forense Per la Tutela Dei Diritti Dell'uomo
 Jordanie-Amman Center for Human Rights Studies
 Jordanie-Jordan Society for Human Rights
 Kenya-Kenya Human Rights Commission
 Kosovo-Conseil pour la Defense des Droits de L'Homme et des Libertés
 Kyrgistan-Kyrgyz Committee for Human Rights
 Lettonie-Latvian Human Rights Committee
 Liban-Association Libanaise des Droits de L'Homme
 Liban-Foundation for Human and Humanitarian Rights in Lebanon
 Liban-Palestinian Human Rights Organization
 Libéria-Liberia Watch for Human Rights
 Libye (Suisse)-Libyan League for Human Rights
 Lituanie-Lithuanian Human Rights Association
 Malaisie-Suaram
 Mali-Association Malienne des Droits de L'Homme
 Malte-Malta Association of Human Rights
 Maroc-Association Marocaine des Droits Humains
 Maroc-Organisation Marocaine des
 Droits Humains
 Mauritanie-Association Mauritanienne des Droits de L'Homme
 Mexique-Comision Mexicana de Defensa y Promocion de los Derechos Humanos
 Mexique-Liga Mexicana por la Defensa de los Derechos Humanos
 Moldova-League for the Defence of Human Rights
 Mozambique-Liga Mocancicana Dos Direitos Humanos
 Nicaragua-Centro Nicaraguense de Derechos Humanos
 Niger-Association Nigérienne des Droits de L'Homme
 Nigeria-Civil Liberties Organisation
 Nouvelle Calédonie-Ligue des Droits de L'Homme de Nouvelle Calédonie
 Ouganda-Foundation for Human Rights Initiative
 Pakistan-Human Rights Commission of Pakistan
 Palestine-Al Haq
 Palestine-Palestinian Centre for Human Rights
 Panama-Centro de Capacitacion Social
 Pays Bas-Liga Voor de Rechten Van de Mens
 Pérou-Asociacion Pro Derechos Humanos
 Pérou-Centro de Asesorias Laborales
 Philippines-Philippine Alliance of Human Rights Advocates
 Polynésie Française-Ligue Polynésienne des Droits Humains
 Portugal-Civitas
 RDC-Ligue des Electeurs
 RDC-Association Africaine des Droits de L'Homme
 RDC-Groupe Lotus
 République de Djibouti-Ligue
 Djiboutienne des Droits Humains
 République Tchèque-Human Rights League
 Roumanie-Ligue pour la Defense des Droits de L'Homme
 Royaume-Uni-Liberty
 Russie-Citizen's Watch
 Russie-Moscow Research Center for Human Rights
 Rwanda-Association pour la Defense des Droits des Personnes et Libertés Publiques
 Rwanda-Collectif des Ligues pour la Defense des Droits de L'Homme Au Rwanda
 Rwanda-Ligue Rwandaise pour la Promotion et la Defense des Droits de L'Homme
 Sénégal-Organisation Nationale des Droits de L'Homme
 Sénégal-Rencontre Africaine pour la Defense des Droits de L'Homme
 Soudan (Royaume-Uni)-Sudan Organisation Against Torture
 Soudan (Royaume-Uni)-Sudan Human Rights Organization
 Suisse-Ligue Suisse des Droits de L'Homme
 Syrie-Comite pour la Defense des Droits de L'Homme en Syrie
 Tanzanie-The Legal & Human Rights Centre
 Tchad-Association Tchadienne pour la Promotion et la Defense des Droits de L'Homme
 Tchad-Ligue Tchadienne des Droits de L'Homme
 Thaïlande-Union for Civil Liberty
 Togo-Ligue Togolaise des Droits de L'Homme
 Tunisie-Conseil National pour Les Libertés en Tunisie
 Tunisie-Ligue Tunisienne des Droits de L'Homme
 Turquie-Human Rights Foundation of Turkey
 Turquie-Insan Haklari Dernegi / Ankara
 Turquie-Insan Haklari Dernegi / Diyarbakir
 Union européenne-FIDH AE
 Ouzbékistan-Legal Aid Society
 Vietnam (France)-Comite Vietnam pour la Defense des Droits de L'Homme
 Yémen-Human Rights Information and Training Center
 Yémen-Sisters' Arabic Forum for Human Rights
 Zimbabwe-Zimbabwe Human Rights Association
 Zimbabwe-Zimbabwe Human Rights Association Zimrights

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