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December 10, 2009

Dear Dr. Maboreke,

Re: Mohammed al-Asad v. The Republic of Djibouti

Pursuant to Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the Charter) read with Rule 102 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission), the Applicant submits this complaint.

Applicant

Mr. Mohammed Abdullah Saleh al-Asad
Age: 49
Nationality: Yemeni
Occupation: Businessman
Address: [Please contact representatives]
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Filed against **The Republic of Djibouti**

A. Detailed Statement of Facts

1. The Applicant, a Yemeni national, born in 1960, is a 49-year-old male businessman and currently lives in Al-Mahra Governorate, Yemen. He resided in Tanzania from 1985 until his apprehension, detention, and transfer from Tanzania to Djibouti on December 27, 2003. In Djibouti, the Applicant was held in *incommunicado* and secret detention and subsequently rendered to United States (U.S.)-run secret detention centers in Afghanistan and a third country until his return to Yemen on May 5, 2005 and his eventual release from a Yemeni prison on March 14, 2006.
2. At approximately 9 p.m. on December 26, 2003, Tanzanian authorities detained the Applicant at his home in Dar es Salaam, Tanzania and questioned him.
3. On December 27, 2003, the Applicant was expelled from Tanzania and was transferred to Djibouti. The government of Tanzania states that he was deported as an illegal or “prohibited” immigrant pursuant to Article 10(h) of the Immigration Act of 1995. According to an affidavit (produced during a subsequent *habeas corpus* application) signed by Magnus Paul Ulungi, Assistant Director of the Tanzanian Immigration Services (Legal Section), the Applicant was deported on Tanzanair flight 5H-TZE to Djibouti. In addition to this affidavit, the Applicant’s recollection of the conditions of his detention is consistent with his having been held in Djibouti. One of his guards told him that he was in Djibouti; there was a photograph of the President of Djibouti on the wall of the detention facility; there was a person who looked like he was from Djibouti and who occasionally spoke with the Applicant in Arabic who was present at the Applicant’s interrogations; the weather was warm; and the guards spoke to the Applicant in Arabic.¹ The Applicant had no previous connection with Djibouti.

¹ Amnesty International has also independently concluded that the evidence suggests that the Applicant was held in Djibouti. See Amnesty International, *U.S.A.: Below the Radar - Secret Flights to Torture and ‘Disappearance’*, AMR 51/051/2006 (Apr. 5, 2006), available at http://www.amnestyusa.org/stoptorture/pdf/below_the_radar_full_report.pdf; see also Amnesty International, *U.S.A./Yemen: Secret Detention in CIA “Black Sites”*, available at <http://www.amnesty.org/en/library/asset/AMR51/177/2005/en/3bbac635-d493-11dd-8a23-d58a49c0d652/amr511772005en.html>.

4. The Applicant was bound and blindfolded on the aircraft from Tanzania and was unaware of his destination. After flying for a few hours, the Applicant, still blindfolded, was carried off and placed in a car. He was driven to a detention facility where he was placed in isolation. The Applicant's quarters were bare except for an old sponge mattress, a toilet, a tap, and a plastic water basin. He was not provided with a cover or pillow for a few days. The Applicant was exposed to constant mosquitoes at night and could not sleep. After about one week the Applicant was given a Qur'an. The Applicant was not permitted to exercise and was never allowed out of his cell except when taken for interrogations. He had no contact with any other prisoners and was at no point offered a medical examination or medical treatment.
5. The Applicant was detained in Djibouti for approximately two weeks. A woman who identified herself as American interrogated the Applicant through an Arabic interpreter, focusing on terrorism-related allegations. As mentioned in paragraph 3, a man, who the Applicant believed to be from Djibouti because of his appearance, was also present during the interrogations. While in Djibouti, the interpreter threatened the Applicant by stating that his children would be orphans.
6. The Applicant's detention in Djibouti was *incommunicado* and secret in an unknown location. The Applicant was never informed of any charges against him, was detained without formal charge, and was never presented before a court or tribunal to adjudge the legality of his detention or his subsequent transfer from Djibouti. He was denied access to legal representation and communication with his family and friends or any humanitarian organization.
7. After about two weeks of being held in *incommunicado* and secret detention, two plainclothes men who looked like they were Djiboutian came to the Applicant's cell and bound and blindfolded him. They put the Applicant in a car and drove him to an airport, where he was dragged out of the car by five or more black-clad individuals wearing balaclavas. While on the tarmac, these persons tore off the Applicant's blindfold and clothing, inserted a finger in his rectum, placed a diaper on him, and photographed him. They then dressed the Applicant, plugged his ears with cotton, put headphones on him, placed a hood over his head, and taped around the hood. They chained the Applicant's hands, waist, and feet before carrying him onto an aircraft that took him to a place he later learned was Afghanistan.
8. From early to mid-January 2004 until May 5, 2005, the Applicant was held *incommunicado* in three secret U.S.-run prisons around the world. His fate and whereabouts were unknown to anyone apart from his captors. He was denied all communication with the outside world and was not given access to the International Committee of the Red Cross (ICRC), his family, or legal representation. On May 5, 2005, the Applicant was transferred by plane to Yemen where he was imprisoned in Yemeni prisons in Sana'a and al-Ghaydhah. On February 13, 2006, the Applicant was tried in Yemen for forging travel documents—the only charge ever brought against him since his transfer from Tanzania. The Applicant pled guilty to this charge. On February 27, 2006 the Applicant was convicted and sentenced to time served, including time spent imprisoned outside Yemen. On March 14, 2006, the Applicant was released from detention.
9. During the Applicant's *incommunicado* and secret detention from December 27, 2003, his family struggled in vain to locate him. After persistent inquiries, on June 3, 2004, the Applicant's

father, Abdullah Saleh Mohsen al-Asad, was first informed by the Director of Immigration, Tanzania, Mr. Kinemo Kihomani, that the Applicant had been sent to Djibouti. On June 12, 2004, the Applicant's father filed a writ of *habeas corpus* in the High Court of Tanzania at Dar es Salaam. On June 30, 2004, Tanzanian authorities informed the High Court that they had deported the Applicant to Djibouti. On September 9, 2004, Judge J.I. Mlay dismissed the writ for lack of evidence that the Applicant was in Tanzanian custody. The Applicant's wife also searched for the Applicant, including through contacting the Tanzania Commission for Human Rights and Good Governance and the ICRC, to no avail. At no time did Djibouti inform the Applicant's family that the Applicant was detained in Djibouti. Nor did Djibouti inform the Applicant's family that the Applicant was subsequently forcibly transferred from Djibouti to the custody of the United States.

10. The Applicant has suffered immensely as a result of the torture and cruel, inhuman, and degrading treatment that he was subjected to during his *incommunicado* and secret detention in Djibouti and during his subsequent transfer from Djibouti to the custody of the United States, where he was subject to further torture and cruel, inhuman, and degrading treatment. The Applicant's wife was pregnant at the time of his apprehension on December 26, 2003 and had the couple's fifth child while the Applicant was in *incommunicado* and secret detention. The Applicant lost approximately 17 kilograms during the course of his detention between 2003 and 2006. He has ongoing health problems as a result of his treatment. The emotional strain of his detention and ill treatment—including sixteen months of solitary confinement—has taken a significant psychological and emotional toll. Due to the damage that his detention caused to his business and the impact of his detention on his reputation, the Applicant has been unable to fully recover his business or stature as a businessman or community leader and is burdened by debt.

B. Violations of the Charter and the Relevant Arguments

The Applicant submits that Djibouti violated his rights under articles 1, 2, 3, 4, 5, 6, 7 (1), 12 (4), 14, and 18 of the Charter.

1. Recognizing and Adopting Measures to Give Effect to Charter Rights under Article 1

Djibouti ratified the Charter on November 11, 1991. As a State Party to the Charter, Djibouti has primary responsibility for the protection of human rights in Djibouti. Djibouti failed to adopt measures to ensure respect for the Applicant's rights, to guarantee enjoyment of the protected rights, and to provide redress to the Applicant. Djibouti's failure breaches the Charter even in respect of those violations that were not perpetrated by Djibouti or its agents. The facts in this complaint identify some acts of foreign (U.S.) officials on Djibouti's territory with Djibouti's consent and acquiescence in violation of Djibouti's obligation under Article 1 to ensure Charter protections to the Applicant—an individual in its territory.

2. Enjoyment of Charter Rights without Distinction under Article 2 and Equal Protection of the Laws under Article 3

Throughout his *incommunicado* and secret detention in Djibouti and his forcible transfer out of the country, the Applicant, a non-national, did not receive equal treatment before the law because he

was denied the legal rights and remedies available to Djibouti nationals. In addition, the secret and *incommunicado* nature of his detention deprived him of any opportunity to seek the protection of the law. The Applicant's standing before the law, and his ability to seek its protection, were completely negated in Djibouti, in violation of Article 3. The Applicant's status as a non-national rendered him vulnerable to this treatment in violation of Article 2's prohibition on discrimination on the basis of national origin.

3. Respect for Life and Integrity of Person under Article 4

The Applicant suffered a constant state of fear and threat during his detention in Djibouti, in violation of his right to respect for life and integrity of person under Article 4. While detained in Djibouti, the Applicant faced the explicit threat of death: the interpreter at the detention facility told him his children would be orphans. He reasonably feared for his life, having been held *incommunicado* and in secret in a country with which he had no connection, all without being told about the basis for his detention. Although the Applicant is still alive, he continues to suffer psychological and emotional damage due to his detention in, and transfer from, Djibouti—both of which were marked by a constant threat of death or serious harm.

4. Prohibition on Torture and Cruel, Inhuman or Degrading Treatment or Punishment under Article 5

Conditions of Detention

The Applicant was held *incommunicado* in secret detention in Djibouti and was denied any contact with the outside world, including his family. The Applicant was not informed of the reason for, the length of, or even the exact location of his detention, causing him to experience severe mental trauma. The Applicant was denied the right to contact a lawyer and was never presented before a judicial authority or provided with a medical examination. The Applicant's fate and whereabouts were unknown to anyone, including his family. Djibouti failed to provide the safeguards required to prevent torture and enabled a situation of *incommunicado* and secret detention in violation of Article 5. The Applicant also suffered from other aspects of his detention—he was held in solitary confinement and denied all contact with other prisoners, had difficulty sleeping, and was unable to leave his bare cell, including for exercise.

The Applicant was threatened with death (when the interpreter told him his children would be orphans) in violation of Article 5.

Treatment Prior to Transfer

Prior to his transfer out of Djibouti and on the tarmac of an airport in the territory of Djibouti, the Applicant was forcibly stripped naked, photographed, had a finger inserted in his rectum and was diapered by a team of individuals clad head-to-toe in black. He was also shackled and hooded before being forced on to a waiting plane. This treatment was deliberately designed to humiliate, terrify, and cause pain to the Applicant and was in clear violation of Article 5.

Non-Refoulement

Prior to the Applicant's transfer out of Djibouti, the Applicant was not provided with any of the procedural safeguards—access to a lawyer, opportunity to challenge the transfer in advance or have the decision to transfer him reviewed by a competent authority—that the Commission has recognized as essential for ensuring that non-nationals are not transferred to countries where they are likely to be subject to torture or cruel, inhuman or degrading treatment. Consistent with Article 60, Article 5 of the Charter prohibits the *refoulement*, or transfer, of an individual to another State where that individual faces the risk of torture or cruel, inhuman or degrading treatment. The circumstances of both the Applicant's detention in Djibouti and his transfer from Djibouti (including his treatment at the airport), combined with information that Djibouti knew or ought to have known about the risk of harm in such counter-terrorism measures, indicate that this risk was manifest. Djibouti handed him over despite this manifest risk.

5. Prohibition on Arbitrary Arrest and Detention under Article 6

The Applicant was afforded no explanation of the reason for his being in Djibouti or the basis and duration of his detention. To his knowledge, he was detained without charge and he was not informed of any charges against him. He was at no time shown any documentation relating to the basis of his detention and to his knowledge he was not detained in accordance with reasons or conditions previously laid down by law. The Applicant was also held in *incommunicado* and secret detention under circumstances where his whereabouts were unknown. He was denied access to a lawyer and judicial review of his detention. These circumstances amount to the arbitrary deprivation of the Applicant's liberty in clear violation of Article 6.

6. Fair Trial Rights under Article 7 (1)

The Applicant was held without charge and *incommunicado* in an unknown place of detention in Djibouti. During this detention, he was not permitted to speak with an attorney. He was not at any point presented before a court or able to challenge the basis or circumstances of his detention before a competent jurisdiction. His subsequent transfer out of Djibouti was abrupt, clandestine, and highly irregular. It was completely devoid of any opportunity for the Applicant to engage a lawyer or to seize a court or other competent jurisdiction to challenge the legality of his transfer. The Applicant was deprived of his right to have his cause heard in respect of both his detention in, and transfer from, Djibouti in violation of Article 7(1).

7. Rights and Freedoms under Article 12 (4)

Once the Applicant had been accepted into Djibouti, Djibouti had an obligation under Article 12 (4) to ensure that he was not removed from its territory except in accordance with the law. Nevertheless, the Applicant was unlawfully handed over to agents of the United States who forcibly and summarily removed him from the jurisdiction of Djibouti, including in violation of Djibouti's *non-refoulement* obligations. Prior to his transfer out of Djibouti, the Applicant was not informed of the impending transfer or its basis, nor was he afforded the opportunity to engage a lawyer or to challenge the decision concerning his transfer before a competent authority. The Applicant's forcible transfer out of Djibouti was therefore fundamentally inconsistent with due process of law, in violation of Article 12(4).

8. Right to Property under Article 14

Immediately prior to his transfer from Djibouti, the Applicant's personal clothing items were forcibly removed and taken from him in violation of Article 14. By virtue of his transfer, the Applicant was prevented from making arrangements regarding his confiscated property. His personal effects have never been returned to him, nor has he been compensated in respect thereof.

9. Right to Family under Article 18

The Applicant's *incommunicado* and secret detention in Djibouti prevented him from communicating with his family and deprived the Applicant of his family and his family's support. This failure to protect and assist the family violated Article 18. Moreover, the Applicant's forcible transfer from Djibouti in violation of *non-refoulement* facilitated the Applicant's separation from his family for an additional fifteen months, breaking up the family unit and further violating Article 18.

C. Admissibility

The requirements for admissibility established under Article 56 of the Charter have been met: the identity of the authors has been indicated; the complaint is compatible with the Charter and the Constitutive Act of the African Union; is not written in disparaging and insulting language; is based on the testimony of the victim and not exclusively on news disseminated through the mass media; is sent within a reasonable period of time, taking into consideration the facts of the case; and does not deal with a case which has been submitted to, or settled by, any other procedure of international investigation or settlement. Regarding the requirement of exhaustion of domestic remedies the Applicant's argument is as follows:

Exhaustion of Remedies

The Applicant cannot exhaust domestic remedies under the law of Djibouti because such remedies do not meet the Commission's requirements of availability, effectiveness, and sufficiency. For example, the Applicant was held in continuous *incommunicado* and secret detention from December 27, 2003 until May 5, 2005, and was detained in Yemen until March 14, 2006. While in Djibouti from December 27, 2003 to early to mid-January 2004, the Applicant's ability to access potential remedies was fully obstructed—he was denied the opportunity to communicate with any person other than his guards and captors; he was denied access to an attorney or his family; and he was at no point brought before a tribunal to adjudge the legality of his detention or transfer out of Djibouti.

The Applicant's family was unaware that he was in Djibouti while he was detained there; Djibouti did not inform them of the Applicant's detention or that it had handed him over to the custody of the United States. By the time the Applicant's family learned from Tanzanian authorities that the Applicant had been in Djibouti, the Applicant had long since been forcibly disappeared into the U.S. Central Intelligence Agency's (CIA) network of secret, "black site" prisons. It was impossible for the Applicant to exhaust domestic remedies while he was in *incommunicado* and secret detention in Djibouti and it would be impossible for him to return to the country now to exhaust any other domestic remedies. Aside from his secret and *incommunicado* detention in Djibouti, the Applicant has no connection with or contacts in Djibouti. His entire relationship with Djibouti is one characterized by fear and involuntariness—not only is Djibouti a place where his rights were

negated, it was his gateway into the CIA's secret prisons and the significant rights' violations that entailed.

D. Relief Sought

1. The Applicant hereby requests that the Commission declare a violation of the Applicant's rights under articles 1, 2, 3, 4, 5, 6, 7 (1), 12 (4), 14, and 18 of the Charter.
2. The Applicant requests that the Commission recommend that Djibouti award him due compensation on account of the above violations.
3. The Applicant requests that the Commission recommend that Djibouti conduct a public inquiry into illegal apprehensions, renditions, and detentions in the context of counter-terrorism measures, such as those suffered by the Applicant. In order to ensure non-repetition of the violations, this should include consideration of the measures that Djibouti has in place to ensure that it exercises appropriate oversight of foreign military and intelligence services operating on its territory. Djibouti should report on steps taken in this regard within six months of this recommendation and state particularly what steps have been taken to provide for the investigation and prosecution of any persons responsible for violations.

E. Conclusion

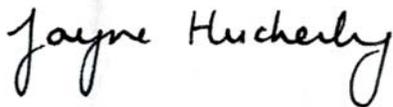
In light of the points of law and facts mentioned above, and without prejudice to any facts, points of law, and evidence which may be introduced at later stages, the Applicant respectfully requests the Commission to be seized of this complaint. The Applicant will make submissions on admissibility and the merits when invited to do so.

ON BEHALF OF MOHAMMED ABDULLAH SALEH AL-ASAD

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2.

A handwritten signature in black ink, appearing to read 'S. Sacco'.

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A handwritten signature in black ink, appearing to read 'Helen Duffy'.

Helen Duffy, Litigation Director

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