



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Summary record of the 1027th meeting

Held at the Palais Wilson, Geneva, on Thursday, 3 November 2011, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Djibouti (continued) (CAT/C/DJI/1)

1. *At the invitation of the Chairperson, the delegation of Djibouti took places at the Committee table.*
2. **Mr. Hersi** (Djibouti) said that he was pleased to resume the dialogue that had been initiated with the Committee and would answer some of the more general questions put to the delegation. He recalled that the National Human Rights Commission had been established in 2008 following a workshop organized by the Government on the current and prospective human rights situation in the country. The Commission was composed of judges, lawyers of the Djibouti Bar Association, parliamentarians and a relatively large number of representatives of non-governmental organizations (NGOs), thereby ensuring a pluralist representation of the social forces of the country, in accordance with the Paris Principles. The Commission was administered by an executive board that was composed of a chairperson, a vice-chairperson and a general secretary. Details of its functions and powers would be given later in the meeting by the chairperson of the Commission, Mr. Abdou, who was a member of the delegation.
3. International instruments duly ratified by Djibouti took precedence over its domestic legislation, and their provisions could be invoked directly before the national courts without the need for implementing legislation to transpose them into domestic law. The Convention on the Rights of the Child, for example, had been applied directly by the Djibouti courts, which had relied on the principle of the best interests of the child to settle disputes relating to child custody and payments arising from a post-divorce settlement. To date, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had not been applied directly by the Djibouti courts.
4. As indicated in the report, the definition of torture set out in article 1 of the Convention had not yet been incorporated into domestic law. That question would be addressed by the Judicial Reform Commission, which had been given the task of bringing national legislation into conformity with the various international instruments ratified by Djibouti over the past 10 years, including the Convention against Torture. Although there was no specific provision that defined torture, the subject was nevertheless covered in articles 324 to 327 of the Criminal Code, which punished torture and “barbaric acts”. Moreover, article 16 of the Constitution stipulated that no one could be subjected to torture, or to abuse or inhuman, degrading or humiliating treatment, and that any individual, State official or public authority committing such acts, whether on their own initiative or on instructions, would be punished in accordance with the law. Thus, even if Djibouti legislation contained no definition of torture, parts of the definition set out in article 1 of the Convention were nonetheless reflected in domestic legislation.
5. With regard to victim compensation, any victim of an act of torture could initiate a criminal or civil indemnification action. From that standpoint, Djibouti legislation could be considered to meet the requirements for redress set out in the Convention. Furthermore, any person who was arrested had the right — under the Constitution, as well as under the Criminal Code and the Code of Criminal Procedure — to be assisted by a lawyer at any stage of the proceedings. The legal profession was organized and governed by the Act of 1987 establishing the Djibouti Bar Association, which was currently presided over by a woman.
6. The Djibouti police force was no different than other police forces around the world in that it was not exempt from misconduct. His delegation regretted that it was unable to

provide figures in that regard. The Committee should be aware, however, that heavy sanctions were imposed on any police officer found guilty of wrongdoing in the discharge of his functions. In the past few years, Djibouti had launched a large number of initiatives to provide training and awareness-raising to all those involved in the criminal procedure, but also to civil society representatives. Considerable efforts had also been made in the past five years to protect and promote the rights of prisoners. A corps of prison wardens, answering directly to the Ministry of Justice, had recently been established. It was no longer possible for any police officer who had arrested a suspect to be entrusted subsequently with guarding that person.

7. In response to the Committee's questions concerning conditions of detention and prison overcrowding, it should be noted that several sectors of the Gabode civil prison — particularly the women's quarters — had been refurbished and new buildings had been constructed. The quarters reserved for minors had also been refurbished, and specialized instructors had been recruited so that inmates could continue to pursue their general education. To the extent possible, juvenile offenders were imprisoned at the prison closest to their home, in order to facilitate visits from relatives. An infirmary with a 30-bed capacity had been set up at the Gabode prison, and two doctors and four nurses had been recruited. Measures had also been taken to refurbish old prison facilities located in the interior of the country, which had been abandoned owing to a lack of resources.

8. The prison administration regulations provided for the use of solitary confinement as a disciplinary measure. If such confinement did not exceed 10 days, it was ordered by the prison director. For longer periods, it had to be authorized by the investigating judge, if it concerned an untried prisoner, and by the sentence enforcement judge, if it concerned a convicted person. The delegation had taken note of Committee members' comments concerning the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Optional Protocol to the Convention against Torture, and the Judicial Reform Commission would take up the question in the near future. With regard to paragraph 75 of the report, its awkward formulation gave the impression that it was possible to derogate from the principle of the absolute prohibition of torture, which was not the case. Paragraph 75 merely recalled the grounds for a partial or total exoneration from criminal responsibility.

9. In the course of its activities to promote the rule of law, the Government had emphasized the training of public law enforcement officials by organizing — in some cases with assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Committee of the Red Cross (ICRC) — various awareness-raising activities concerning human rights, including the principle of the prohibition of torture. Moreover, human rights units had been set up within the national police force and the national gendarmerie in an effort to prevent on-duty abuses.

10. One member of the Committee had asked whether disputes relating to acts of torture could be resolved by means of friendly settlement. Once again, the wording of the report was confusing; in fact, acts of torture systematically gave rise to criminal prosecution, which could not, in any circumstances, be circumvented by an agreement between the parties. The amount of compensation to be granted to a victim, on the other hand, could be determined by compromise. Any detained person who considered himself to be the victim of an act of torture or ill-treatment had the right to be examined by a physician and to lodge a complaint. Following an administrative inquiry, the Ministry of Justice could, where appropriate, dismiss the prison official concerned, as had recently happened in one case.

11. There were no circumstances in which confessions obtained under torture were admissible as evidence, and judges were required to dismiss the proceedings if it was found that a confession had been extracted in such a manner. Persons suspected of having committed acts of torture could contest the accusation made against them, and an additional

investigation could be requested by the judge, who thus played an important supervisory role in the criminal procedure.

12. Owing to its political and economic stability, and in spite of its small size, Djibouti was host to a large number of immigrants. Even if most of them were only in transit, the country had nevertheless taken legislative measures, such as the adoption in 2007 of a law to combat human trafficking, and had implemented other measures with support from such specialized partners as the International Organization for Migration (IOM) through its Djibouti office, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Authority on Development (IGAD). The public authorities carried out awareness-raising activities, notably in the form of advertising spots on the dangers of clandestine immigration, which were regularly broadcast on radio and television. Many civil society associations contributed to those efforts.

13. Extradition proceedings were conducted in court, and only judges and appeal court judges could rule on such matters. Persons who risked being sentenced to death or subjected to acts of torture in the requesting country could not be extradited. In 2009, the member States of IGAD had adopted two conventions — one on mutual assistance in judicial matters and another on extradition — both of which had been signed by the Republic of Djibouti. Two bills on the ratification of those instruments had been submitted to the National Assembly.

14. With regard to the case of Mr. Al-Assad, who had reportedly submitted a complaint against the Republic of Djibouti to the African Commission on Human and Peoples' Rights, the Djibouti Government had been completely unaware of those allegations until being informed of the matter by the African Commission. Mr. Al-Assad, a Yemenite, claimed that he had been transferred from Tanzania to Djibouti in order to be interrogated there at the request of the Central Intelligence Agency (CIA). No Djibouti authority had arrested, transported or detained that person or transferred him to another country. At the conclusion of the investigation, the Djibouti authorities had confirmed that neither the civil aviation authorities of Djibouti nor those of Tanzania had any record of the boarding pass submitted as evidence of a flight to Djibouti. In any case, there was no regular flight connection between the two countries.

15. **Mr. Abdou** (Djibouti), summarizing the functions and powers of the National Human Rights Commission, as set out in Decree No. 2008-0103, said that the Commission issued opinions and recommendations and prepared reports on general aspects of the promotion and protection of human rights and on specific situations of human rights violations in the country, acting either at its own initiative or at the request of the public authorities. The Commission also participated in preparing reports by Djibouti to the United Nations treaty bodies and to the African Commission on Human and Peoples' Rights. Following the establishment of that Commission in 2008 and the interministerial committee for the drafting and submission of periodic reports, the substantial backlog of periodic reports had been cleared, and Djibouti had been able to take part in the universal periodic review process in February 2009.

16. Some members of the National Human Rights Commission had recently visited the Gabode prison in order to inspect the detention conditions of persons imprisoned after participating in demonstrations during which public and private buildings in Djibouti had been vandalized. The inmates complained of restrictions being imposed on them in relation to family visits and of being unable to obtain the medical care they required. The Commission had submitted a report to the Ministry of Justice, which had been effective in that the inmates in question had been released.

17. After visiting Mr. Mohamed Ahmed, aka Jabha, the Commission had confirmed that he had not been tortured, but that he was suffering from acute gastritis. As a result of the

Commission's intervention, the prison authorities had allowed him to receive the necessary hospital treatment. Mr. Ahmed was still in the Djibouti civil prison, and the Commission had asked judicial authorities to take the necessary measures to bring his case to trial without delay.

18. The President of the Republic could preside over the Supreme Council of Justice but, in practice, that function was most often assumed by the Vice-President of the Council, who was the Minister of Justice. When the Council ruled on disciplinary matters, it was presided over by the President of the Supreme Court or by the Prosecutor-General attached to the Supreme Court, given that judges were tried and punished only by their peers. Members of the judiciary, who had decision-making powers, were independent, whereas prosecutors were accountable to the Ministry of Justice.

19. There were no military tribunals in Djibouti, and members of the military who had committed offences came under the jurisdiction of the ordinary law courts. There were no courts of special jurisdiction, given that the State Security Court, which had formerly given judgement in political matters, and the Superior Court of Justice, which had formerly dealt with misappropriation of public funds, had been dissolved.

20. The complaints and advisory unit offered assistance to victims of human rights violations, particularly to the most vulnerable persons who had been subjected to violence or ill-treatment. Thanks to a free telephone helpline, the unit gave advice about who to contact and the procedure to follow in order to assert one's rights before the courts or the police or gendarmerie authorities.

21. **Mr. Hachi** (Djibouti) said that training courses dealing with all aspects of human trafficking had been organized in cooperation with IOM, UNHCR, IGAD and the African Union for persons in contact with migrants and the most vulnerable Djiboutians, as well as for law enforcement personnel, including members of the police force or gendarmerie, and judges and regional prefects. Training in providing assistance to trafficking victims, as well as specialized training in prosecuting and detecting cases of trafficking, had also been imparted. An information centre, which disseminated information on the dangers of illegal immigration and human trafficking, had been opened in Obock, in an area where persons wishing to emigrate to the Persian Gulf — in particular, to Yemen — often tended to gather.

22. A definition of rape was indeed provided in article 343 of the Criminal Code, which prescribed a penalty of 10 years' rigorous imprisonment for that offence. It was therefore not possible to compromise on the public right of action — only on the amount of compensation to be awarded. No pardon or remission of sentence could be granted in the case of rape, and a policy of prevention with regard to rape and sexual violence had been implemented. Information leaflets for victims had been prepared in order to advise them on the procedure to follow, especially with regard to the need to obtain a medical certificate without delay.

23. Until recently, there had been no specific juvenile justice system in Djibouti; however, Djibouti had given effect to the recommendations of the treaty bodies, and, beginning in 2010, had established special courts exclusively responsible for trying offences committed by minors.

24. With regard to the territorial jurisdiction of the national courts, Djibouti courts had jurisdiction only when the offence had been committed in the national territory, or when the authors or victims of an offence possessed Djibouti nationality at the time of the commission of the offence outside the country. Thus, the Djibouti courts did not exercise universal jurisdiction.

25. **Mr. Douale** (Djibouti) said that, since independence and despite its limited resources, Djibouti had traditionally been a country of asylum. However, the situation of refugees had worsened since the beginning of the year, owing to a massive influx of new arrivals fleeing the sharp deterioration of the security and humanitarian situation in southern Somalia. In response to that emergency, the Government had decided to reopen the Holhol camp, since the reception capacity of the Ali-Adde camp had been greatly exceeded.

26. In cooperation with UNHCR, the Government was striving to improve the protection and living conditions of refugees and had begun to develop policies aimed at reducing migratory flows towards Yemen and beyond. The authorities responsible for questions of asylum were currently working to revitalize the National Commission on Eligibility for Refugee Status with a view to setting up swift and equitable refugee determination procedures. Measures had also been taken to reinforce the national administrative framework in order to guarantee and improve refugees' and asylum seekers' access to registration and documentation, and to enable them to exercise their economic rights.

27. **Mr. Bruni** (Country Rapporteur) said that, in its concluding observations, the Committee would take note of the State party's pledge to give the Judicial Reform Commission the task of bringing its domestic legislation into line with the provisions of the international instruments to which Djibouti was a party, and to ensure that, in future, the commissioners were elected and not appointed by the President. The Committee would also take note of the fact that the information provided in paragraph 75 of the initial report was erroneous, and consequently, that a homicide or assault and battery could not be ordered by a legitimate authority.

28. It was disquieting to note the information provided in paragraph 84 of the report to the effect that, in practice, many abuses were committed as a result of ignorance or misunderstanding of the rules on the part of some administrative or military authorities or some law enforcement officials. That lacuna was all the more disturbing in that the report referred openly to the impunity enjoyed by those who committed such acts. In that connection, he would like to know whether there were any cases in which a penalty of 15 years' imprisonment had been handed down against the perpetrator of an act of torture, as was prescribed in the Criminal Code.

29. The delegation should indicate whether former prisons that had been restored to operation in an effort to address prison overcrowding in the capital offered decent conditions of detention, in view of the fact that they had been closed for many years. He was reassured by the information provided by the chairperson of the National Human Rights Commission concerning Mohamed Ahmed, aka Jabha, who had been described by NGOs as being very ill and who had apparently been given the necessary medical treatment in prison. The NGOs in question would, no doubt, continue to monitor his situation.

30. According to the information provided by the Observatoire pour le Respect des Droits Humains à Djibouti (Djibouti Human Rights Monitoring Centre), a number of persons who had taken part in the demonstrations of 18 February 2011 had been tortured in gendarmerie stations. He asked whether the delegation could confirm or deny those statements. He also asked if it could provide additional information on the case of the two Ethiopian pilots who had landed in Djibouti in 2005 in order to seek asylum, and who had subsequently been returned to Ethiopia, where they had allegedly been subjected to torture. In that connection, the delegation should indicate whether the two pilots had, in fact, returned to their country of their own volition, as was maintained by the Djibouti authorities, although that had always been denied by the victims' families.

31. Referring to paragraph 197 of the report, he wished to know why decisions awarding compensation to victims of torture were qualified as “rare”, and requested information on cases in which compensation had, in fact, been granted.

32. **The Chairperson**, speaking as Alternate Country Rapporteur, asked whether the provisions of article 65 of the Code of Criminal Procedure, which were cited in paragraph 149 of the initial report, were effectively implemented, and whether the State party had set up a nationwide police custody register. If so, were admissions and releases of persons in custody systematically recorded? He also wished to know what the State party’s practice was with regard to solitary confinement, which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had likened to a form of torture in some circumstances, particularly when such confinement exceeded a certain time limit. He asked for clarification on the rules that applied in those circumstances.

33. Noting the broad discretionary powers of Djibouti judges in deciding on the admissibility of evidence, he asked whether the State party had a law that prohibited judges from basing their decisions on confessions obtained under torture. Given that international instruments took precedence over domestic law, anyone who had made a confession in those conditions could invoke the Convention directly before the courts.

34. The Committee had received information to the effect that female genital mutilation was a common practice in the State party, in particular in rural areas. He therefore wished to know what budgetary resources were allocated to preventing that phenomenon, which constituted a violation of the Convention, and would appreciate having an overview of the specific activities carried out by the State party in that area, including those conducted in cooperation with civil society organizations.

35. **Ms. Sveaass** said that she welcomed the role now granted to forensic medicine in training programmes for doctors, who played a vital part in detecting possible signs of ill-treatment, torture or rape. In order to be effective, however, specialized services in that area, as well as in the registration of complaints and the provision of care to victims, had to be free of charge and easily accessible. They could, for instance, be set up inside hospitals.

36. Referring to the statement made in paragraph 147 of the report that the Criminal Code severely punished the practice of female genital mutilation, she asked who, in such cases, was liable to prosecution. She stressed the need to place the emphasis on prevention and to enforce the law prohibiting that practice. She enquired whether safeguards had been established to ensure that detained persons were not deprived of psychiatric care or forced to follow a treatment against their will.

37. **Ms. Belmir** asked which authority was responsible for investigating misconduct on the part of law enforcement or army personnel and why the State party had not accepted the recommendation of the Working Group on the Universal Periodic Review concerning trade union rights in Djibouti. When setting up its juvenile justice system, she hoped that the State party would not omit any of the essential components of such a system, including the establishment of a minimum age of criminal responsibility, the use of detention as a last resort, the need to separate child from adult prisoners and the need not to place minors in pretrial detention.

38. **Mr. Mariño Menéndez** said that it was essential for the State party to establish rules concerning foreigners’ entry and stay in its territory, as well as to accede to the two international treaties on statelessness, namely the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The State party should also strengthen the personal status courts, which, according to some sources, had difficulty functioning in the interior of the country.

39. **Mr. Wang Xuexian** said he wished to know whether the State party had enacted a national law on refugees and asylum seekers and whether, statistically speaking, women who submitted an application for asylum had the same chances as men of being granted refugee status.

40. **Mr. Hersi** (Djibouti) said that women and men had the same rights with regard to asylum, and that the law enshrined the principle of equality of citizens, which also applied to foreigners present in the territory of Djibouti. He could not confirm whether Djibouti had a law on asylum, but would see to it that additional written information on that subject was transmitted to the Committee. The conditions for the entry and stay of foreigners in Djibouti territory were governed by specific regulations.

41. Given that the courts were based in the capital, where approximately 65 per cent of the population was concentrated, persons living in the interior of the country were at a comparative disadvantage with city-dwellers when it came to access to justice. In order to rectify those inequalities, a programme providing for sittings of circuit courts in the interior had been launched in 2009. The first judges to be sent to such areas had been those of the personal status courts, the authorities being of the view that priority should be given to the settlement of family disputes. Moreover, legal services ("*guichets du droit*") had been set up in each of the main towns in the interior, and an on-site representative of the Ministry of Justice was responsible for receiving petitions, assembling case files and organizing hearings in each town.

42. With regard to juvenile justice, he recalled that the age of criminal responsibility in Djibouti was 13, and that juvenile offenders sentenced to imprisonment were placed in a single supervised education centre in the country, which was located in the capital. No minors were currently being detained at the centre.

43. With regard to the "misconduct" referred to in paragraph 78 of the report — which he would have preferred to qualify as "abuse of authority" — the only decision relating to such acts had been handed down by the court of appeal at the beginning of the previous decade. In the case in question, a law enforcement official had been sentenced to 3 years' rigorous imprisonment and had been relieved of his duties for ill-treating a suspect being held in police custody. The delegation did not have information as to whether the victim in question had been compensated.

44. Female genital mutilation was proscribed both by the Constitution, which prohibited violations of the physical and mental integrity of the person, and by article 333 of the Criminal Code, which imposed heavy penalties for that practice. Those provisions had never actually been applied, as no complaint had yet been lodged. However, in pursuance of the recommendations formulated at the conclusion of the universal periodic review process (A/HRC/11/16) and the concluding observations of the Committee on the Rights of the Child with regard to the second periodic report of Djibouti (CRC/C/DJI/CO/2), measures had been taken to enable civil society organizations to make a complaint against persons practising female genital mutilation. The courts had been sent a circular instructing them to enforce the law strictly when adjudicating on such cases. The Government of Djibouti was firmly committed to eradicating the practice of female genital mutilation and, to that end, it conducted numerous awareness-raising activities. It had organized regional and subregional conferences, in which religious dignitaries had agreed to participate, in order to help people understand that female genital mutilation was totally unrelated to religion and was not an obligation under sharia law. Lastly, it should be noted that Djibouti was a party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

45. Placement in solitary confinement was strictly governed by legislation; it was intended exclusively as a punishment and was not used for any other purpose. The judge

responsible for the execution of sentences or the investigating judge regularly inspected prison inmates' conditions of detention, and their placement in solitary confinement and its duration. His delegation understood the importance that the Committee attached to statistics on the redress provided to victims of violations of the Convention, and regretted that it was unable to furnish it with such figures. He nevertheless wished to point out that, since the submission of the initial report, an important innovation had been introduced in the prison administration: on arrival at the prison, an electronic prison register recorded the name and photograph of prisoners, as well as the date and time of their admission, thus making it possible to know the precise situation of each prison inmate.

46. **Mr. Hachi** (Djibouti), referring to allegations that the Djibouti authorities had returned two Ethiopian pilots to their country without examining their request for asylum, said that, since its independence, Djibouti had been host to thousands of refugees from Ethiopia and afforded protection to persons seeking refuge on its soil. Responding to a concern expressed by the Country Rapporteur, he stressed that regional prisons that had been empty since the nineteenth century would be entirely refurbished and brought into conformity with international standards before prison inmates were admitted. Lastly, he assured the Committee that none of the persons arrested following the demonstrations of 18 February 2011 had been tortured.

47. **Mr. Douale** (Djibouti) said that the Government was considering the question of the accession of Djibouti to the Convention on the Reduction of Statelessness. With regard to the conclusions of the universal periodic review, he pointed to the politicized nature of the recommendations, which were based on allegations that acts of intimidation and repression had been perpetrated against trade union members. Those recommendations took no account of the fact that, in 2008, a delegation from the International Labour Organization had visited Djibouti and had been able to confer freely with all social partners, and that all the recommendations made following that visit had been implemented.

48. **Mr. Bruni** (Country Rapporteur), noting the frequent appearance in the report of the two key words "ignorance" and "impunity", said that the Government should not be content to recognize the existence of problems but rather should take measures to rectify them, thereby narrowing the gap between the law and its implementation. He hoped that the State party's next report would describe initiatives taken by the authorities to do so, in particular in the area of victim rehabilitation.

49. With regard to the case of the two Ethiopian pilots, the information he had received had been taken from a report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/2006/6/Add.1). According to that report, two members of the Ethiopian Army, Behailu Gebre and Abiyot Mangudai, had landed a military helicopter in Djibouti on 9 June 2005. They had been detained incommunicado in the capital, without being charged with a criminal offence or allowed access to a lawyer. The UNHCR office in Djibouti had been denied access to both men, who had been returned to Ethiopia on 11 June 2005. The Interior Ministry had told a British reporter that the two pilots had been returned to their country with their consent, which was refuted by the family members of the two pilots. To date, the Djibouti authorities had not provided any information in response to those allegations.

50. **Mr. Douale** (Djibouti) thanked the Country Rapporteur for those clarifications, which would help the Djibouti authorities to conduct the necessary research into the matter. Information on that subject would be transmitted to the Committee at a later date.

51. **The Chairperson**, speaking as Alternate Country Rapporteur, said he hoped that Djibouti would give consideration to the question of its accession to the Optional Protocol to the Convention and would invite the Special Rapporteur to carry out a visit to the country.

The meeting rose at 5.55 p.m.