



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

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Committee against Torture

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Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Djibouti

1. The Committee against Torture (hereinafter referred to as “the Committee”) considered the initial report of Djibouti (CERD/C/DJI/1) at its 1024th and 1027th meetings (CAT/C/SR.1024 and 1027), which were held on 2 and 3 November 2011, and adopted the following concluding observations at its 1045th and 1046th meetings (CAT/C/SR.1045 and 1046), on 17 and 18 November 2011.

A. Introduction

2. The Committee welcomes the submission of the initial report of Djibouti, which generally follows the Committee’s guidelines on initial reports. The Committee commends the frankness of the report, which acknowledges shortcomings in the State party’s implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”). The Committee regrets, however, that the report was submitted seven years late. The Committee welcomes the very frank dialogue it held with the delegation of the State party on numerous areas covered by the Convention.

B. Positive aspects

3. The Committee notes with satisfaction the State party’s ratification of the following international instruments:

- (a) The International Covenant on Economic, Social and Cultural Rights, in 2002;
- (b) The International Covenant on Civil and Political Rights, in 2002;
- (c) The two Optional Protocols to the International Covenant on Civil and Political Rights, in 2002;

(d) The International Convention on the Elimination of All Forms of Racial Discrimination, in 2011;

(e) The Rome Statute of the International Criminal Court, in 2002.

4. The Committee welcomes the fact that, under the provisions of article 37 of the Constitution, international treaties ratified by the State party, including the Convention, take precedence over the State party's domestic laws and may be applied directly in domestic judicial proceedings.

5. The Committee welcomes the establishment in August 2011 of the Legal and Judicial Reform Commission, which is responsible for updating legislation and bringing it into line with the obligations deriving from the international human rights treaties ratified by the State party, including the Convention.

6. The Committee notes with satisfaction that the State party abolished the death penalty in 1995.

7. The Committee notes with appreciation that the State party has been able to prepare and submit its reports to the United Nations treaty bodies thanks to the Inter-ministerial Coordinating Committee for the Preparation and Submission of Reports to the Treaty Bodies, with technical support from the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme. Nevertheless, the Committee regrets that these reports have been submitted with some delay.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

8. The Committee notes that article 16 of Djibouti's Constitution prohibits torture, physical abuse or inhuman, cruel, degrading or humiliating treatment. The Committee takes note of the State party's commitment to amend its domestic law in the light of its obligations deriving from the international human rights conventions it has ratified, introducing, inter alia, a definition of torture. Nevertheless, the Committee remains concerned about the absence of any clear definition of torture in the State party's current Criminal Code and of any provisions criminalizing acts of torture in accordance with articles 1 and 4 of the Convention (arts. 1 and 4).

The State party should include torture in its Criminal Code as an offence punishable by appropriate penalties that take into account the gravity of the acts committed, together with a definition of torture that includes all the elements mentioned in article 1 of the Convention. The Committee considers that by naming and defining the offence of torture in accordance with the Convention and distinguishing it from other crimes, States parties would directly advance the Convention's overarching aim of preventing and punishing torture.

Acts of torture

9. The Committee notes with concern the State party's acknowledgement that abuses, notably acts of torture, have been committed by police officers in Djibouti in the performance of their duties. The Committee is particularly concerned about the fact that there has been no serious investigation of these cases, which has contributed to a situation in which such offences go unpunished (arts. 2 and 12).

The Committee invites the State party to take immediate and specific measures to investigate and, when appropriate, to prosecute and punish acts of torture. Moreover, the Committee invites the State party to: ensure that law enforcement personnel do

not resort to torture under any circumstances; publicly and unambiguously reaffirm the absolute prohibition of torture; condemn the practice of torture, especially by the police and prison officers; and make it clear that anyone who commits, is complicit in or participates in such acts will be held personally responsible before the law, will be subject to criminal prosecution and will be punished accordingly.

Impunity for acts of torture and ill-treatment

10. The Committee takes note of the State party's recognition that acts of torture have taken place and have neither been investigated nor prosecuted. In particular, it notes the absence of specific information on prosecutions initiated, sentences pronounced or disciplinary sanctions imposed on police or prison officers found guilty of acts of torture or ill-treatment. The Committee also notes the State party's acknowledgement that the weakness of domestic legislation contributes to impunity (arts. 2, 4, 12, 13 and 16).

The State party should ensure that all allegations of torture or ill-treatment are the subject of prompt, impartial, thorough and effective investigations and that the perpetrators are prosecuted and sentenced to penalties commensurate with the grave nature of the acts committed, as required by article 4 of the Convention, without prejudice to appropriate disciplinary sanctions. The State party should also take all appropriate legal measures to fully remedy this impunity.

Fundamental legal safeguards

11. The Committee is concerned about the discrepancy between the fundamental legal safeguards offered by the Constitution and the Code of Criminal Procedure on the one hand and the implementation of these guarantees for all detainees from the very outset of their detention on the other. The Committee also remains concerned about reports of lengthy pretrial detention and slow proceedings. The Committee also regrets the absence of information on the fundamental legal safeguards available to persons with mental, intellectual or physical disabilities. In addition, the Committee regrets the absence of a comprehensive juvenile justice system oriented to the education and social integration of children in conflict with the law (art. 2).

The State party should take prompt and effective measures to ensure that in practice all detainees are afforded all fundamental legal safeguards from the very outset of their detention. In accordance with international standards, these safeguards should include, in particular, the rights of detainees to: be informed of the reasons for their arrest, including of any charges against them; have prompt access to a lawyer and, when needed, legal aid; undergo an independent medical examination, if possible conducted by a doctor of their choice; notify a relative; be brought promptly before a judge; and have the lawfulness of their detention reviewed by a court. The State party should ensure that all fundamental legal safeguards are implemented for persons in psychiatric institutions.

The State party should also take measures to establish a juvenile justice system in compliance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

Monitoring and inspection of places of deprivation of liberty

12. The Committee notes the information provided by the State party on the establishment of a prison guard corps within the Legislation and Human Rights Directorate,

part of the Ministry of Justice Penal Affairs and Human Rights. It also notes the work of the National Human Rights Commission, the visits the Commission has organized to Gabode prison, police stations, gendarmerie units and other places of detention or prisons, as well as the use of information gathered during those visits in the reports the Commission has drafted on the human rights situation in Djibouti. However, the Committee remains concerned about the State party's insufficient efforts to ensure sustained monitoring and inspection of places of deprivation of liberty (arts. 2, 10, 12, 13 and 16).

The Committee recommends that the State party establish an effective and independent national system to monitor and inspect all places of deprivation of liberty and ensure that systematic follow-up is given to the outcome of such monitoring. It should also strengthen its cooperation with NGOs and increase support for them to enable them to independently monitor conditions in places of deprivation of liberty.

The State party is requested to include in its next periodic report detailed information on the places, dates and periodicity of visits, including unannounced visits, to places of deprivation of liberty, as well as on the findings and the follow-up given to the outcome of such visits.

National human rights institution

13. The Committee notes with satisfaction the establishment of the National Human Rights Commission, the duties of which include visiting places of deprivation of liberty and examining complaints of alleged human rights violations. The Committee regrets, however, that the Commission is not in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex). Among other things, its members, including its Chair and its Vice-Chair, are appointed by the President of the Republic, which thus compromises its independence (art. 2).

The State party should strengthen the role and terms of reference of the National Human Rights Commission, including its mandate to conduct regular and unannounced visits to places of deprivation of liberty in order to issue independent findings and recommendations. It should also give all due weight to the Commission's conclusions on the individual complaints it receives, and communicate those conclusions to the public prosecutor's office in cases where torture or ill-treatment is found to have occurred. The State party is requested to provide information, including statistical data, on the complaints examined by the Commission regarding alleged torture and other cruel, inhuman or degrading treatment or punishment, and to indicate whether these cases have been communicated to the competent authorities for prosecution.

The Committee encourages the State party to request accreditation of the National Human Rights Commission by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in order to ensure that it complies with the Principles relating to the status of national institutions for the promotion and protection of human rights, including with regard to its independence.

Investigations

14. Notwithstanding the explanations that the State party provided during the dialogue, the Committee continues to be concerned about:

(a) The lack of any thorough investigations into the arrests during the demonstrations that took place on 18 February 2011 of more than 300 persons, several of whom are alleged to have been subjected to torture and ill-treatment in gendarmerie custody (arts. 12, 13, and 14);

(b) The case of two Ethiopian nationals, Captain Behailu Gebre and Abiyot Mangudai, who, on 11 July 2005, were sent back to Ethiopia, where they were kept in detention and tortured. The Committee notes with concern that, according to information received, these persons did not have access to the remedy allowing them to lodge an appeal against their expulsion. It also expresses concern about the fact that the State party did not conduct any thorough and effective investigation into this case. Furthermore, it notes with concern that Djibouti did not respond to the urgent appeals on this matter sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Committee would thus welcome information from the State party on this subject (arts. 12, 13 and 14);

(c) The case of Yemeni national Mohammed al-Asad. According to information before the Committee, the latter was allegedly detained incommunicado in Djibouti for two weeks before being transferred to Afghanistan. In detention he was allegedly tortured, placed in extreme isolation without human contact, subjected to constant extremely loud music, and exposed to artificial light for 24 hours a day, to cold and to dietary manipulation. The Committee notes that this case is currently being examined by the African human rights system, specifically the African Commission on Human and Peoples' Rights.

The State party should immediately conduct independent, impartial and thorough investigations into the above-mentioned incidents with a view to bringing the possible perpetrators of violations of the Convention to justice. The Committee recommends that such investigations be undertaken by independent experts responsible for examining all information thoroughly, reaching conclusions as to the facts and the measures taken, and providing adequate compensation to the victims and their families, including the means for them to achieve as full rehabilitation as possible. The State party is requested to provide the Committee with detailed information on the outcome of all those investigations in its next periodic report.

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in order to fulfil its obligation under article 3 of the Convention. The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each case and should be subject to appeal with suspensive effect. The terms of judicial cooperation agreements signed with neighbouring countries should be revised so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

Complaints mechanism

15. Notwithstanding the information provided in the State party's report on the possibility for prisoners and detainees to submit complaints to the Prosecutor-General, the public prosecutor, the investigating judge or the president of the indictment division, as appropriate, or to the Prison Administration Directorate of the Ministry of Justice, the Committee regrets the lack of a dedicated, independent and effective complaints mechanism competent to receive complaints, conduct prompt and impartial investigations into allegations of torture, in particular of prisoners and detainees, and ensure that those found guilty are punished. The Committee also notes the absence of information, including statistics, on the number of complaints of torture and ill-treatment, on investigations carried out, and on prosecutions initiated and sanctions imposed against perpetrators of torture and ill-treatment, at both the penal and disciplinary levels (arts. 2, 12, 13 and 16).

The State party should take effective measures to establish an independent and effective complaints mechanism specifically devoted to allegations of torture and ill-

treatment committed by law enforcement, security, military and prison officials, with a mandate to conduct prompt and impartial investigations into such allegations and to prosecute the perpetrators. The State party should ensure that complainants are protected in practice against any ill-treatment or intimidation they might suffer as a consequence of their complaints or any evidence given.

The Committee requests the State party to clarify whether acts of torture and ill-treatment are subject to ex officio investigation and prosecution and to provide information, including statistics, on the number of complaints filed against public officials for torture and ill-treatment, as well as information about the results of the proceedings, at both the penal and disciplinary levels. This information should be disaggregated according to the sex and age of the complainant and should indicate which authority undertook the investigation.

Refugees and asylum-seekers

16. The Committee is concerned about the fact that the National Asylum Eligibility Commission is not properly functional and that applicants for asylum or refugee status remain in an undefined legal situation for much too long, with a risk of expulsion. The Committee also notes with concern that the State party has not acceded to the Convention relating to the Status of Stateless Persons (1954) or to the Convention on the Reduction of Statelessness (1961) (arts. 3 and 16).

The State party should ensure that the National Asylum Eligibility Commission functions properly and that persons subject to an expulsion order are able to appeal to the courts against the decision.

The Committee recommends that the State party consider acceding to the Convention relating to the Status of Stateless Persons and to the Convention on the Reduction of Statelessness.

Conditions of detention

17. The Committee takes note of the commitments the State party made in the course of the dialogue with the Committee to improve conditions in places of detention, specifically by renovating or even constructing some buildings in Gabode central prison, and by reopening and renovating prisons in the regions. It also takes note of the State party's efforts to improve access to health services. However, the Committee remains deeply concerned about reports, confirmed by the State party, of prison overcrowding, inadequate hygiene and cleanliness, as well as a lack of water and adequate food. Moreover, the State party does not distinguish between minors and adults in detention (arts. 11 and 16).

The State party should take urgent measures to bring the conditions of detention in police stations, prisons and other places of detention into line with the Standard Minimum Rules for the Treatment of Prisoners, as well as with other relevant standards, in particular by:

- (a) Reducing prison overcrowding, especially by considering non-custodial forms of punishment, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**
- (b) Improving the quality and quantity of food and water provided to prisoners in pretrial detention, those on trial and convicts;**
- (c) Strengthening judicial supervision of conditions of detention;**
- (d) Ensuring that minors, whether in pretrial detention or convicted, are effectively separated from adults, in accordance with the United Nations Standard**

Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990.

Redress, including compensation and rehabilitation

18. The Committee takes note of the State party's written assertion that "Djibouti's laws and regulations provide the right to redress and fair compensation for any victim of torture" (CAT/C/DJI/1, para. 181). It remains concerned, however, about the fact that without a legal definition of torture it remains difficult to provide any redress or fair compensation. The Committee is also concerned about the scarcity of court decisions awarding compensation to victims of torture and ill-treatment or their families. It is also concerned about the absence in Djibouti of rehabilitation programmes for torture victims (art. 14).

The State party should strengthen its efforts to ensure redress for victims of torture and ill-treatment in the form of fair and adequate compensation and as full rehabilitation as possible, based on a clear definition of torture in line with article 1 of the Convention. The State party should also provide details of redress and compensation ordered by the courts for victims of torture or their families. In addition, the State party should provide information on any rehabilitation programmes under way for victims of torture or ill-treatment, and should allocate sufficient resources to ensure the proper implementation of such programmes.

Training

19. The Committee takes note of the information included in the State party's report and provided during the dialogue with regard to training, seminars and courses on human rights provided for judges, prosecutors, police and prison officers and members of the military. At the same time, it notes with concern the information in paragraphs 126 and 130 of the report concerning the absence of an express prohibition of torture in the training given to officers of the national police and to civil servants and public and administrative officials (art. 10).

The State party should further develop and strengthen training programmes to ensure that all officials, in particular judges and law enforcement, security, army, intelligence and prison officers, are aware of the provisions of the Convention, and specifically that they are fully aware of the absolute prohibition of torture and of the fact that violations of the Convention will not be tolerated, that they will be promptly and impartially investigated and that the offenders will be prosecuted.

Furthermore, all relevant personnel, including those referred to in article 10 of the Convention, should receive specific training on how to identify signs of torture and ill-treatment. This should specifically include an introduction to the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), published by the United Nations in 2004. In addition, the State party should assess the effectiveness and impact of such training and educational programmes.

Confessions obtained under torture

20. The Committee notes that statements made as a result of torture may not be invoked in any proceedings, and that they are recognized by the State party as "null and void" or as contracts "concluded under duress". However, the Committee remains concerned to note that the law does not explicitly prohibit the act of obtaining confessions under duress; thus,

the provisions currently in force remain inadequate to ensure proper implementation of the Convention (art. 15).

The State party should ensure that the law governing evidence adduced in judicial proceedings is brought into line with article 15 of the Convention so as to explicitly exclude any confessions obtained under torture.

Violence against women and harmful traditional practices

21. The Committee welcomes the criminalization since 1995 of the practice of female genital mutilation through the inclusion of article 333 in the State party's Criminal Code. The State party has recognized that the provisions of this article have not been applied owing to the lack of complaints filed against this practice. The Committee remains concerned about the fact that female genital mutilation is still very widespread, and in particular that there are many cases of infibulation — an extreme form of female genital mutilation — especially in rural areas. The Committee also remains very concerned about the fact that cases of mutilation are generally not reported and are therefore neither prosecuted nor punished (arts. 2, 10 and 16).

The State party should strengthen its efforts to prevent, combat and punish violence against women and children and harmful traditional practices, in particular in rural areas. The Committee endorses the recommendations addressed to the State party during the universal periodic review of Djibouti (A/HRC/11/16, para. 67, subparas. 18 and 25; para. 68, subparas. 3 and 8), as well as the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/DJI/CO/1-3, paras. 18 and 19) and of the Committee on the Rights of the Child (CRC/C/DJI/CO/2, para. 56). Furthermore, the State party should provide victims with rehabilitative as well as legal, medical and psychological services, along with compensation. It should also create adequate conditions allowing victims to report incidents of harmful traditional practices and domestic and sexual violence without fear of reprisal or stigmatization. The State party should provide training to judges, prosecutors, police officers and community leaders on the strict application of the Criminal Code and the criminal nature of harmful traditional practices and other forms of violence against women.

In general, the State party should ensure that its customary law and customary practices are compatible with its human rights obligations, particularly those deriving from the Convention. The State party should also explain the hierarchy between customary law and domestic law, particularly with regard to the various forms of discrimination against women.

The Committee also asks that the State party include in its next report detailed information and updated statistics on complaints, investigations, prosecutions, convictions and penalties handed down to individuals found guilty of criminal behaviour involving harmful traditional practices, including murder, and on the aid and compensation provided to the victims.

Human trafficking

22. The Committee notes the measures taken by the State party, such as the criminalization of human trafficking, training initiatives and the establishment of a Migration Response Centre in Obock, as well as the establishment of a coordinated national mechanism to combat human trafficking. However, the Committee remains concerned about the scale of the problem in the State party (arts. 2 and 16).

The State party should strengthen its efforts to prevent and combat human trafficking, provide protection and compensation to victims and ensure that they have

access to rehabilitative as well as legal, medical, and psychological services. Accordingly, the Committee recommends that the State party should adopt a comprehensive strategy to combat human trafficking and its causes. The State party should also investigate all allegations of trafficking and ensure that perpetrators are prosecuted and sentenced to appropriate penalties that take into account the serious nature of their crimes. The State party is requested to provide information on measures taken to assist victims of trafficking, as well as statistical data on the number of complaints, investigations, prosecutions and convictions involving trafficking.

Corporal punishment of children

23. The Committee notes with concern that the use of corporal punishment as a disciplinary measure in the home is not prohibited, according to the interpretation of the provisions of the Criminal Code (1995), the Family Code (2002) and the Constitution (art. 16).

The State party should consider amending its Criminal Code and revised Family Code to prohibit the use of corporal punishment in all settings, including the home, and to raise public awareness of positive, participatory and non-violent forms of discipline.

Data collection

24. The Committee is concerned about the lack of full and detailed data on complaints, investigations, prosecutions, convictions and redress in cases of torture and ill-treatment involving law enforcement, security, military and prison personnel (arts. 2, 12, 13 and 16).

The State party should collect relevant statistical data on the monitoring of the implementation of the Convention at the national level, including on complaints, investigations, prosecutions, convictions and redress (compensation and rehabilitation for victims) in cases of torture and ill-treatment. The State party should include this data in its next periodic report.

25. The Committee recommends that the State party should strengthen its cooperation with United Nations human rights mechanisms, including by permitting visits from, inter alia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders.

26. Noting the commitment the State party made during the dialogue, the Committee recommends that the State party ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

27. The Committee further recommends that the State party should make the declarations envisaged under articles 21 and 22 of the Convention to recognize the competence of the Committee to receive and consider complaints of violations of the Convention.

28. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

29. The Committee encourages the State party to widely disseminate the report it submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

30. The Committee requests the State party to provide, before 25 November 2012, information on its follow-up to the recommendations on: (1) ensuring or strengthening legal safeguards for detainees; (2) conducting prompt, impartial and effective investigations; (3) prosecuting suspects and punishing perpetrators of acts of torture or ill-treatment; and (4) improving conditions of detention, as contained in paragraphs 11, 14, 15 and 17 of this document.

31. The Committee invites the State party to submit its next periodic report, which will be its second periodic report, by 25 November 2015 at the latest. To this end, the Committee invites the State party to agree, before 25 November 2012, to submit its report according to the optional procedure, under which the Committee sends the State party a list of issues prior to the periodic report. The State party's replies to this list of issues prior to reporting will constitute the State party's next periodic report, in accordance with article 19 of the Convention.
