



## International Covenant on Civil and Political Rights

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### Human Rights Committee 109th session

#### Summary record of the 3012th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 16 October 2013, at 3 p.m.

*Chairperson:* Sir Nigel Rodley

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(*continued*)

*Initial report of Djibouti (CCPR/C/DJI/1; CCPR/C/DJI/Q/1; CCPR/C/DJI/1/Add.1 and HRI/CORE/DJI/2010)*

1. *At the invitation of the Chairperson, the delegation of Djibouti took places at the Committee table.*

2. **Mr. Hersi** (Djibouti) said that the initial report of Djibouti was the result of a participatory and collaborative process coordinated by the Interministerial Committee responsible for preparing reports for the treaty bodies. The report had been presented on television and the Interministerial Committee had undertaken to televise information on the dialogue process and the recommendations to be adopted by the Committee following consideration of the report. Since gaining independence in 1977, Djibouti had undertaken to promote and protect human rights by joining various international, regional and subregional institutions. It had reaffirmed that commitment in 1992 through the adoption of its Constitution, which recognized the country's attachment to the fundamental principles contained in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. Those two founding texts were an integral part of the Constitution, with which all texts from the executive, legislative and judicial branches must comply. In addition to the Covenant and its Optional Protocols, which it had ratified in 2002, Djibouti was party to virtually all the international and regional human rights instruments, and the Interministerial Committee closely monitored their application. The ratification process for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on Enforced Disappearances would be initiated in the near future.

3. The main Covenant provisions had been incorporated into domestic law. The Constitution thus enshrined a series of rights protected by the Covenant, such as the right to life, the right to liberty and security of person, the right to be protected against all forms of discrimination, legal equality, the right to a fair trial, the right to freedom of thought, conscience and religion, and the right to freedom of opinion and expression. A number of measures had been taken to give full effect to those rights. The death penalty, for example, had been abolished in 2010. The guarantees of a fair trial — the right to legal counsel at all stages of the procedure and to appeal — had been put in place and the number of lawyers had been quadrupled between 2003 and 2013 with the aim of making justice more effective. All forms of torture or cruel, inhuman or degrading treatment were prohibited by the Constitution and were severely punished under the Criminal Code. The growth of the print and audiovisual media, which contributed to promoting human rights, attested to the free exercise of freedom of opinion and expression, guaranteed by the Constitution. Several institutions ensured respect for the human rights guaranteed by the Constitution: the Constitutional Council; the Office of the Ombudsman, which was responsible for settling disputes between the administration and the general public; the National Human Rights Commission; and specialized human rights units which had been set up within the police and gendarmerie. Since the preparation of the report, Djibouti had participated in the second cycle of the universal periodic review and on that occasion had been able to describe to the international community the progress made in promoting and protecting human rights, and the difficulties encountered in that regard. Djibouti had also passed an anti-corruption law and a law on universal health insurance. The delegation would be happy to reply to the Committee's questions and hoped to engage with it in a constructive dialogue.

4. **Mr. Hachi** (Djibouti), summarizing the written replies of Djibouti to the list of issues prepared by the Committee, said that all Acts emanating from the State's various branches should comply with the Constitution and the provisions of the instruments ratified by the country, including the Covenant. The National Human Rights Commission, established in 2008, was independent and its main task was to assist the public authorities in all areas relating to human rights. It carried out visits to places of detention and was authorized to institute inquiries into violations it uncovered or any other violation brought to its attention. The Constitution guaranteed equality between men and women before the law. Considerable efforts had been made over the previous 15 years to increase women's participation in the country's political and economic life and were currently bearing fruit. The Government continued to promote gender equality so that it would become a reality in all areas of society. Contrary to the implication in question No. 5 of the list of issues, homosexuality was not a criminal offence. The allegation that Somalis obtained asylum more easily than others was groundless. Djibouti had always been a host country; if there were more Somali than Eritrean and Ethiopian refugees, it was simply because more Somalis sought asylum. All members of the police force and the gendarmerie received training on human rights and on the prohibition of torture and cruel, inhuman and degrading treatment, which was provided on site by the specialized human rights units. The 2007 Human Trafficking Act represented a great step forward in the fight against the practice, providing as it did for very severe sanctions and for the recognition of victims, who had previously been viewed as accomplices. Several ministries were engaged in preventing and combating trafficking and there were plans to set up a body specifically tasked with coordinating their actions. The right to legal counsel from the outset of detention was strictly observed, as was the right to be examined by an independent doctor. A lumbering judicial system posed problems in many countries, and Djibouti was no exception. The number of judges had been quadrupled in 10 years in order to accelerate court proceedings. Alternative measures to deprivation of liberty, such as parole and community service, had been introduced to reduce the prison population. The Constitution provided that the President could on the occasion of religious or national festivals, pardon detainees, who had served 90 per cent of their sentences. As in all prisons throughout the world, living conditions were not perfect; but efforts were constantly being made to improve them. Juvenile courts had been established in compliance with the concluding observations adopted by the Committee on the Rights of the Child in 2008. In addition, the rights of the child were often at the centre of media awareness-raising campaigns. While a number of international human rights instruments had been translated into the local languages, the Covenant was not among them.

5. **The Chairperson** invited those Committee members to put questions to the delegation.

6. **Ms. Waterval** asked whether the provisions of the Covenant had ever been invoked in the courts and whether judgements had been rendered on those grounds. The fact that no communication from a national of the State party had been presented to the Committee suggested scant awareness of the Covenant and the Optional Protocol. She would like to know whether the State party envisaged translating those instruments into the national languages and taking other measures to increase awareness of them among the general public. She would also like to know what procedure was envisaged to implement the Committee's concluding observations. Details would be appreciated on the status of the revision of the texts governing the working arrangements of the National Human Rights Commission and the budget it was allocated, on provisions envisaged for guaranteeing its independence and on its membership. The delegation might also elaborate on the Commission's conclusions drawn from its various visits to places of detention and on the Government's follow-up to its recommendations. She wondered how many of the human rights workshops for journalists, judges, lawyers and members of civil society had been

organized by the Commission, how many people had participated and with what results. She would also appreciate details on the procedure for filing complaints with the Office of the Ombudsman, the type of complaints filed, how they were dealt with and the extent to which the Government took its recommendations into account.

7. **Mr. Fathalla** said that the conflicts that persisted between sharia law and the Covenant provisions on inheritance, polygamy and adoption issues were not irremediable; he hoped that the committee set up in 2013 to resolve them would succeed. With regard to adoption, the *kafala* system provided for under Islamic law was recognized by the Convention on the Rights of the Child as a form of alternative care on the same footing as adoption. Nothing therefore impeded the State party from including it in its national legislation and applying it. Would the delegation indicate if that was the case? Would it also clarify how the committee planned to reconcile the respective provisions on inheritance in sharia law and the Covenant? Lastly, with regard to polygamy, he would like to know whether public information campaigns were carried out to communicate to the population that the conditions imposed by sharia law were such as to render the practice of polygamy almost impossible, which would encourage its disappearance.

8. He would also like further information on activities to raise public awareness of the Covenant and the Optional Protocol and on conditions of detention, the number of prisons renovated, the number of new prisons and their capacity, construction projects for new establishments, the exact number of detainees in the country's main prison, medical staff strength in the country's prisons, measures taken to improve sanitation in places of detention, and on complaints and monitoring mechanisms relating to conditions of detention. Since the awareness campaigns concerning the prohibition of female genital mutilation, conducted since the 1980s, appeared not to have borne fruit, he would like to know how the State party planned to make that prohibition effective. He would be grateful for statistical data on related prosecutions and convictions under article 333 of the Criminal Code. Did the State party envisage criminalizing marital rape and applying the exceptions to the prohibition of abortion to cover pregnancy resulting from rape?

9. **Mr. Flinterman** recalled that the Committee on the Elimination of Discrimination against Women had noted in 2011 that a number of provisions in the Family Code were discriminatory and had recommended that the State party should emulate other countries in the region in their progressive interpretation of the Koran in order to revise the Code and bring it into line with human rights instruments, and asked what obstacles prevented the State party from following that recommendation. He would also like to know what happened if a woman wished to marry a man she had chosen against the will of her guardian, and who was authorized to allow derogations to the minimum marriageable age for women, which was set at 18 years of age and whether the State party planned to adopt legislation expressly prohibiting corporal punishment in all contexts, as recommended by the Committee against Torture in 2011. Lastly, he would appreciate further information on how child rights awareness campaigns, including the issue of corporal punishment, were conducted in schools, their impact and the non-governmental organizations involved.

10. **Mr. Kälin** said that, while the State party generously hosted many refugees, most of its asylum legislation dated back to 1977 and left many gaps. Given the large number of applications pending and the attendant risk of refoulement, what was being done to align those texts with international norms, to strengthen the capacities of the National Commission on Eligibility for Refugee Status and to accelerate the review process for asylum applications? Could the delegation also specify what measures were taken to combat sexual violence committed in refugee camps? Lastly, how many persons had been placed in pretrial detention in 2009, 2010, 2011 and 2012, and how many current pretrial detainees had been held for 1, 2 and 3 years respectively?

11. **Mr. Matadeen** said that the written replies of the State party concerning the right to life and the prohibition of torture and cruel, inhuman or degrading treatment, liberty and security of person, and the treatment of persons deprived of liberty were very brief and that it denied all the Committee's allegations. It had, however, acknowledged in November 2011 before the Committee against Torture that acts of violence and torture were committed by police officers in the course of their duties. It would be useful to know whether an independent and impartial inquiry had been conducted into the treatment of Dirir Ibrahim Bouraleh, who had died as a result of torture inflicted while on remand at a gendarmerie; what its findings had been; whether the victim's family had been heard and whether they had been granted compensation. Equally brief were the replies relating to the treatment meted out to over 300 persons arrested in February 2011 during protests over the presidential elections and to many others, including journalists, human rights defenders and political opponents. One of them, Mr. Mahamoud Elmi Rayaleh, arrested in Balbala on 7 August 2013, had died as a result of torture during the night of 28 August 2013. The autopsy requested by his relatives had been refused and the prison authorities had buried the body without his family's approval or presence. He underscored that all those events had been very well documented in numerous NGO reports, including those of Reporters Without Borders and Amnesty International. According to information available to the Committee, cases of arbitrary detention and torture had been on the rise since the legislative elections on 22 February 2013 and such violations went unpunished. He wished to know what the State party was doing to investigate those cases, prosecute and punish perpetrators of acts of torture and to prevent such acts. He would also like to know what measures the State party had taken to implement the recommendations made by the National Human Rights Commission following visits to Gabode prison, and police and gendarmerie stations and to ensure constant monitoring of those places of detention. Would the delegation comment on reports that no criteria had been established for investigating allegations of torture by the mechanisms authorized to receive complaints, that none of those mechanisms functioned effectively and that the issue of medical and psychological support for victims of torture was not addressed. Statistics would also be appreciated on complaints of torture and ill-treatment filed with the National Human Rights Commission or with any other independent complaints mechanism, on the investigations and prosecutions conducted into those cases and on the ensuing sanctions imposed. Lastly, it would be useful to know whether the police, prison and judicial services received training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and whether the establishment of human rights units within the national gendarmerie and the police had reduced the number of torture complaints.

12. **Mr. Shany** asked whether there were judicial oversight mechanisms that decided whether certain persons with mental disorders needed to be deprived of liberty and whether such decisions taken were periodically reviewed. He also wondered whether the delegation could confirm that persons with mental disorders were confined to prison. In the light of the provisions of article 324 of the Criminal Code, which prohibited torture and barbarous acts, and of article 325, which considered the commission of such acts by the victim's spouse or partner as an aggravating circumstance, he wondered about the basis of the State party's reasoning that domestic rape was not a criminal offence and whether it might reconsider that.

13. **Ms. Majodina** asked whether it was true, as certain NGOs had reported, that members of the National Human Rights Commission were appointed directly by the President which undermined their independence, a central yardstick for measuring the compliance of national human rights institutions with the Paris Principles. She would also like to know what proportion of the population was in a position to address the Commission, particularly outside of urban areas, and whether the most vulnerable groups

such as women, children and persons with disabilities could easily submit complaints to it and whether they were taken into consideration. Lastly, she would like to know what legitimacy the public accorded the Commission.

14. **Mr. Bouzid** said that he would appreciate details on the respective functions and mandates of the National Human Rights Commission and the Office of the Ombudsman, as both appeared to be responsible for protecting human rights and receiving complaints, whereas they should each have a clearly defined and distinct mandate to avoid duplication.

15. **Mr. Hersi** (Djibouti) said that, in accordance with the Constitution, treaties and conventions duly ratified by the Republic of Djibouti prevailed over national legislation and were directly applicable. Djibouti was a fledging State which had gained independence in 1977 and had enacted its Constitution only in 1992. Its positive law was therefore not altogether finalized, which explained what the Committee saw as shortcomings in the report. The lack of participation of national NGOs in the preparation of the periodic report was regrettable, but could not be attributed to the State, given its efforts to encourage women's and youth organizations, trade unions and social and socioprofessional associations to draw up their own reports on the human rights situation in the country. Furthermore, the NGOs concerned with the situation in Djibouti were, for the most part, foreign and did not have accurate or objective information; and more credit was sometimes given to groundless allegations from those sources than to information provided by states themselves. In Djibouti, compliance with recommendations from treaty monitoring bodies was ensured by the Interministerial Committee, which was also responsible for compiling the reports to be submitted to those bodies.

16. **Mr. Abdou** (Djibouti) said that the National Human Rights Commission, of which he was president, was the fruit of recommendations following a workshop held in 2008 with the participation of all main protagonists in the nation, comprising trade unions, judges, civil society and ministerial departments dealing with human rights. It had been established by presidential decree, but its members had not been chosen by the public authorities. It was made up of both non-voting members from ministerial departments that dealt with human rights and voting members from civil society, the judiciary, the media, medical associations, etc. Its State-allocated budget was intended to ensure its independence and autonomy. With regard to its functions and efficiency, the Commission paid regular visits to places of detention to check that prisoners enjoyed their rights under the Standard Minimum Rules for the Treatment of Prisoners and had recently visited Gabode prison, where some of the persons mentioned by Mr. Matadeen were detained. With regard to Mr. Mahamoud Elmi Rayaleh, who had died in detention in Gabode, contrary to statements made by non-governmental organizations, an autopsy had in fact been performed — by a doctor chosen by the family — and a detailed report had been drawn up following the questioning of doctors, fellow detainees, the prison administration, lawyers and the family. With regard to Mr. Mohamed Ahmed (Jabha), the courts had indeed been slow to hear the case, but it would be judged shortly. In Gabode prison, the Commission had noted that some persons were held in pretrial detention for an excessive period of time. It had publicly denounced that situation and had stipulated that cases should be heard within a reasonable time limit. Several members of the opposition, whose names Mr. Matadeen had mentioned, had been released on parole the following month. In the aggravated political climate which had prevailed in Djibouti since the 2013 elections, it was true that oversights might occur, which, in the event, were reported by the Commission; but to state that torture was systematically employed demonstrated an ignorance of the situation. Individuals could file complaints with the National Human Rights Commission, which could also launch investigations on its own initiative. It organized training workshops for judges and lawyers, and as well as broadcasting radio and television programmes on civil and political rights in French as well as Afar and Somali. There was a clear division of roles between the Commission and the Office of the Ombudsman: the

former was responsible for promoting and protecting human rights, while the latter dealt exclusively with relations between the administration and the general public.

17. **Ms. Houmed** (Djibouti) said that, regarding inheritance, sharia law provided for women to receive less than half of what men received because it was the man who was responsible for the upkeep of the family. The Family Code authorized, and also regularized, polygamy. It provided, in particular, that at the time of marriage the celebrant was required to inform the woman of any other spouses, which had not previously been an obligation. Female genital mutilation was still practised in Djibouti but, thanks to awareness-raising campaigns the issue was no longer taboo and was discussed in couples and families, and a decline of the practice had been observed.

18. **The Chairperson** thanked the delegation for its replies and invited it to continue them at the next meeting.

*The meeting rose at 6 p.m.*