



**International Covenant on  
Civil and Political Rights**

Distr.: General  
13 July 2012  
English  
Original: French

---

**Human Rights Committee**

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

**Initial reports of States parties**

**Djibouti\***

[3 February 2012]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction.....	1–18	3
Article 1. Right to self-determination .....	19–31	4
Article 2. Equality and non-discrimination.....	32–44	5
Article 3. Equality between men and women in the recognition, exercise and enjoyment of the rights protected by the Covenant.....	45–67	7
Article 4. Derogation from the provisions of the Covenant .....	68–71	10
Article 5. Principles of interpretation.....	72–75	11
Article 6. Respect for the right to life .....	76–86	11
Article 7. Torture and other cruel, inhuman or degrading treatment.....	87–96	13
Article 8. Prohibition of slavery, servitude and forced labour .....	97–107	14
Article 9. Liberty and security of person.....	108–115	15
Article 10. Right of persons deprived of liberty to be treated with humanity .....	116–121	16
Article 11. Prohibition of imprisonment in civil cases.....	122–125	16
Articles 12 and 13. Freedom of movement and residence and rights of aliens .....	126–132	17
Article 14. Right to a fair and equitable trial.....	133–152	17
Article 15. Principle of non-retroactivity of the law .....	153–156	19
Article 16. Legal personality.....	157–160	20
Article 17. Protection of privacy and the family.....	161–167	20
Article 18. Freedom of thought, conscience and religion .....	168–173	21
Article 19. Freedom of opinion and expression .....	174–185	22
Article 20. The prohibition of propaganda for war and incitement to national, racial or religious hatred .....	186–191	23
Article 21. Right of peaceful assembly.....	192	24
Article 22. Right to freedom of association and right to form and join trade unions.....	193–201	24
Article 23. Family law .....	202–229	25
Article 24. Rights of the child.....	230–243	27
Article 25. The right to participate in public affairs and to vote .....	244–254	29
Article 26. Equality before the law .....	255–260	31
Article 27. Rights of minorities.....	261–268	31

## Introduction

1. The Republic of Djibouti, situated in the Horn of Africa, borders the Red Sea and has land boundaries with Ethiopia, Eritrea and Somalia.
2. This report was established under the international commitments entered into freely by Djibouti and, more specifically, in accordance with article 40 of the International Covenant on Civil and Political Rights. It outlines the legislative, administrative and judicial measures and mechanisms introduced by the State party to give effect to the rights set forth in the Covenant.
3. The information contained in this report, which combines the initial report and the first and second periodic reports, should be interpreted in the light of the reports already drafted by Djibouti, in particular those regarding the Convention on the Rights of the Child, together with the core document, which highlights the country's general geographical, economic, political and administrative characteristics.
4. Djibouti acceded to the International Covenant on Civil and Political Rights in 2002 in the context of national efforts to strengthen the rule of law, democratic principles and human rights. As a result, it made no reservation or specific declaration at the time of accession.
5. The effective implementation of the provisions of the Covenant remains severely hampered by the high illiteracy rate, the absence of human rights education from school curricula and the real impact of poverty on the population. The State, which is aware of the situation, is seeking to remedy it by establishing training and awareness-raising campaigns, education system reform and poverty reduction programmes through the framework for action of the National Social Development Initiative (INDS).
6. Djibouti, a former French colony, achieved independence on 27 June 1977 following a referendum on whether the colony should remain part of the French Republic.
7. Djibouti, like many other countries, observes the principle of the separation of powers.
8. Djibouti, guided by the principle of government of the people, by the people and for the people, has always paid particular attention to protecting human rights and achieved this goal in 1992 by incorporating into its corpus juris the inalienable rights of the person.
9. In this spirit, Djibouti initially endeavoured to affirm and guarantee the right to life by proclaiming the sanctity of the human person and by establishing the prohibition of the death penalty as a constitutional principle.
10. In keeping with these efforts to promote rights, mention should also be made of the adoption in 2002 of the Family Code establishing de facto gender equality, while the Labour Code provides for freedom of association and the conditions for its implementation.
11. These new rights are in addition to the guarantees already provided under the Criminal Code and the Code of Criminal Procedure with regard to the rights of the defence, the right to a fair trial and to legal assistance.
12. Furthermore, the latest constitutional amendment provided an opportunity to introduce the principle of representing regional aspirations at the national level through the establishment of a Senate and of regional parliaments.
13. In addition to these ongoing developments in national legislation, every citizen has the right to bring a constitutional challenge before the domestic courts if a law that will affect them is inconsistent with basic human rights principles.

14. Alongside this judicial remedy, there remains a non-judicial remedy in the form of complaints brought before the National Human Rights Commission, which promotes and protects human rights at the national level.

15. The preparation of reports for the human rights treaty bodies has now been institutionalized through the establishment in 2008 of an Inter-ministerial Coordinating Committee for the Preparation and Submission of Reports to the Treaty Bodies under the auspices of the Ministry of Justice, Penal Affairs and Human Rights.

16. This coordinated approach, which involves all human rights stakeholders (public institutions, civil society organizations and development partners), should also improve the follow-up of the ratification and implementation of international instruments.

17. Both these bodies have a broader area of competence and may be called upon regarding any human rights issue.

18. This report could not have been prepared and the mechanism could not have been made operational without technical support from the regional office of the United Nations High Commissioner for Human Rights and from United Nations agencies in the country.

## **Part I**

### **Article 1**

#### **Right to self-determination**

19. In the context of the implementation of article 1 of the Covenant, Djibouti, an independent and democratic country, recognizes the general principles of international law enshrined in the Charter of the United Nations. Aware that the power of the State is derived from the people of Djibouti as a whole, Djibouti is firmly committed to complying with the principles enshrined in paragraphs 1 and 2 of article 1 of the Covenant to the best of its ability.

20. The inalienable right of peoples to self-determination has always had a special significance in Djibouti. By virtue of this right and after a long struggle punctuated by three referendums, the country, under French colonial rule, achieved international sovereignty and independence in 1977.

21. In order to realize this right and to enable the people of Djibouti to freely determine their political status and economic, social and cultural development, the Government of Djibouti has duly consulted them on a regular basis. The people of Djibouti have thus been able, over the past 20 years, to participate in referendums and free multiparty elections. The information contained in the common core document and the various reports submitted by the State of Djibouti set out the details of those elections.

22. At the international level, national policy has always been consistent with the principle of the rights of peoples, abstaining from any initiative that may adversely affect its existence or that of other countries (preamble to the Constitution, paragraph 3).

23. Since it achieved national sovereignty, Djibouti has always supported national liberation movements and organizations fighting for the emancipation of their communities, such as the African National Congress (ANC) in South Africa and the Palestine Liberation Organization (PLO).

24. Against the background of border conflict and civil war in the Horn of Africa, Djibouti has played a decisive role in establishing a peace process. Through the implementation of foreign policy based on the principle of self-determination of peoples,

particularly through the various initiatives of the Intergovernmental Authority on Development (IGAD), Djibouti unquestionably contributes to building a culture of peace and regional stability.

25. In this context, various conferences have been held with a view to reconciling the Somalis and many initiatives have been undertaken by the Djibouti authorities to ensure the sustainability of the transitional Government in Mogadishu, in order to reach a political settlement to the Somali issue.

26. The northern part of Djibouti (Doumeira) was nevertheless invaded by Eritrea in June 2008. Despite the initial military clashes, the Djibouti Government's approach to peaceful resolution of the border dispute with the support of the international community appears to be gaining ground. Qatar continues to provide mediation through the establishment of a military intervention force.

27. The 1992 Constitution, revised in 2010, stipulates that government of the people, by the people and for the people, focused on the effective implementation of democratic values and establishment of the rule of law, is the founding principle of Djibouti (art. 1). It also establishes the separation of powers and tasks State institutions with ensuring compliance with the sovereign choices made by popular vote (art. 7).

28. The local authorities provided for under the Constitution were established and have been in operation since 2008, following the first regional elections. The State authorities are thus seeking to enhance regional development by involving the local populations, which are now shaping their own future through the activities implemented within new decentralized structures.

29. The rural communities follow a traditional space management model based on customary law. Their leaders are regularly consulted on all projects that concern them.

30. Djibouti has few known mineral resources other than geothermal resources, the exploitation of which requires significant financial resources. The exploitation of natural resources by the State and, accordingly, by business enterprises has never been detrimental to national communities.

31. Salt production at Lake Assal is a good example of compliance with this provision of the Covenant. In order to safeguard the rights of access of local populations to natural resources, the State, having entrusted semi-industrial exploitation to local companies, has also effectively preserved the traditional exploitation of this resource. This ensures that sufficient benefits are derived for local populations, who are given priority access to resulting employment opportunities and the possibility of forming partnerships in the salt business.

## **Part II**

### **Article 2 Equality and non-discrimination**

32. Djibouti has spared no effort to ensure the effective implementation of human rights to the benefit of everyone on its territory, without discrimination.

33. As mentioned in the common core document, the State of Djibouti has implemented a series of legislative, administrative and legal measures and regularly undertakes initiatives to ensure equality and to combat all forms of discrimination.

34. In view of its fundamental nature, the principle of equality and non-discrimination has been established in several provisions of domestic law and supplemented by the provisions contained in international human rights instruments, most of which have been ratified by Djibouti except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

35. Djibouti recognizes the equal enjoyment of civil and political rights by all individuals within its territory. Article 1, paragraph 3, of the Constitution sets out the State's obligation to "guarantee the equality of all citizens before the law, without distinction as to origin, race, sex or religion". The Constitution (art. 10, para. 1) further states that the respect and protection of fundamental human rights may be guaranteed only if "all human beings are equal before the law".

36. In accordance with these constitutional provisions, everyone shall enjoy inalienable rights that may not be subject to any discrimination and whose underlying principles must be implemented by the State.

37. The Criminal Code strictly prohibits discriminatory acts, which are defined as "any distinction made between natural or legal persons on grounds of origin, sex, family situation, state of health, disability, customs, political opinions, trade union activities, or membership of a particular ethnic group, nation, race or religion" (art. 390).

38. Articles 391 and 393 go on to establish the penalties imposed on offenders. A 2-year prison sentence and a fine of 500,000 Djibouti francs (DF) are provided for acts such as refusal to provide a good or service, obstruction of the exercise of any economic activity, making recruitment subject to conditions, punishment or dismissal.

39. The desire to prevent and combat these practices is also reflected in the Labour Code and, in particular, in article 3 which states that "an employee's sex, age, race, colour, social origin, nationality or national extraction, membership or non-membership of a trade union, or opinions, particularly religious and political opinions, shall not be taken into account by any employer in making decisions relating to recruitment, conduct and distribution of work, professional training, advancement, promotion, remuneration and other conditions of work, award of social benefits, discipline or breach of contract". This highly detailed provision concerning employment is limited only by more favourable regulations protecting women, children and young persons.

40. Article 7 of the General Civil Service Regulations Act (Act No. 48/AN/83/1st L) states that "no distinction shall be made between the sexes in the implementation of the present Act other than in exceptional measures dictated by the nature of the duties and provided for in the Civil Service Regulations". Decree No. 89-062/PRE on the Civil Service Regulations adds that "access to civil service posts is subject to a competitive selection process". These legal and regulatory provisions were introduced to improve equal access to public services.

41. The gradual implementation of democratic principles and the strengthening of the rule of law have considerably enhanced the legislative framework guaranteeing the realization of the rights and fundamental freedoms of individuals with a view to ensuring their full and effective equality.

42. The family unit has been redefined under the Family Code to promote equal rights and responsibilities of parents by establishing shared parental authority between spouses. The fundamental issue of equality between spouses is addressed in detail in the initial report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, submitted by Djibouti for consideration in July 2011.

43. In order to ensure sufficient and adequate protection for children, the State authorities have undertaken various legal, administrative and socioeconomic initiatives to

protect all children without discrimination, as detailed in the common core document and in the comments on article 24 of the Covenant. Despite the progress achieved in education, health and legal assistance, difficulties remain, as children with disabilities, street children and child refugees do not have access to appropriate educational facilities.

44. More generally, while the initiatives undertaken under the national strategic framework for the care of orphans and vulnerable children and its implementation during the 2007–2011 period have significantly improved their effective enjoyment of rights under the Covenant and reduced their marginalization, this group remains in a very weak situation in terms of equality of opportunities.

### **Article 3**

#### **Equality between men and women in the recognition, exercise and enjoyment of the rights protected by the Covenant**

45. As explained under the previous article, the principle of equality and non-discrimination is a right guaranteed to both women and men.

46. In order to ensure the implementation of this general principle, Djibouti set up a ministerial department responsible for promoting women's rights in 1999.

47. In one decade, this department has developed and implemented programmes and policies focused on the inclusion of women in decision-making processes and development.

#### **Legal and institutional guarantees**

48. At the institutional level, in 1999, Djibouti set up a department in the Prime Minister's Office responsible for the advancement of women, which became a full-fledged ministry in 2008. The establishment of this structure led to the effective implementation of a multisectoral policy for women's development.

49. While this is not a comprehensive list, the following institutional achievements directly steered or coordinated by the Ministry for the Advancement of Women are noteworthy:

- The preparation of a national strategy for integration of women in development;
- The organization of a national conference on "Gender-based violence including female genital mutilation (FGM)";
- The creation of gender units in the sectoral departments;
- The creation of regional gender offices in the interior regions;
- The introduction of a joint programme to accelerate the total elimination of all forms of excision;
- The drafting of guidelines for the Ministry for the Advancement of Women;
- The development of a three-year plan of action;
- The establishment of a gender partnership group;
- Institutional and structural reform of the Ministry for the Advancement of Women, Family Welfare and Social Affairs;
- The establishment of an expanded gender programme (radio programme broadcast in the national languages).

50. In addition to these initiatives, the Government of Djibouti has strengthened the legal status of women, in particular through:

- The adoption of the Family Code in 2002;
- The adoption of an Act instituting a quota system (admission of seven women to Parliament accounting for 10.77 per cent of members);
- The ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa on 2 February 2005;
- The establishment of a support, counselling and information centre for women and girls who are victims of violence;
- The reform of the provisions of the Criminal Code on female genital mutilation in June 2009;
- The preparation and dissemination of a legal guide on gender-based violence.

### **Equality in education**

51. Since the implementation of the education system reform, girls and boys have equal access to education. There remains a gap in rural areas, however, where gender parity in new enrolments is 0.69, contrasting with 0.82 in urban areas. This gap stems mainly from sociocultural constraints, whereby emphasis is placed on boys' education. However, there is a growing awareness in Djibouti of the importance of educating girls.

	<i>Basic education</i>	<i>Intermediate education</i>	<i>Secondary education</i>	<i>Higher education</i>
Percentage of schoolgirls	46	44	41	40
Gross enrolment rate (GER)	73%	53.60%	ND	ND
Gender parity index (GPI)/GER	0.98	0.78	0.69	ND
2015 GER estimate	102%	83%	ND	ND
GPI estimate/GER	1	0.92	ND	ND
In 2015				

### **Girls in the formal education sector**

52. Furthermore, the National Union of Djiboutian Women (UNFD) and the Ministry for the Advancement of Women, with the support of the Ministry of Education, have implemented literacy programmes for women and girls with little or no education.

53. These programmes have provided literacy training to 34,000 women.

54. For its part, the Government is conducting large-scale campaigns and has adopted strategies to encourage enrolment and retention of girls in school. To this end, a gender unit has been established within the Ministry of Education in order to implement, assess and follow up developments in Government policy in this area.

### **Equality in health**

55. With regard to the promotion of maternal and child health, the Government has identified three main lines of action and is committed to fostering an integrated approach to community health by protecting the environment and strengthening the role of women and young people, as well as providing access for all to a health education programme and enhancing access to quality health services.



56. In addition, various programmes aimed at improving the reproductive health of women at the different stages of their life cycle have been introduced by the Ministry of Health with a view to reducing maternal and child morbidity and mortality.

57. Awareness-raising campaigns to institutionalize the fight against practices harmful to the health of women and the community accompanied the above programmes.

58. Specifically, as a result of the various policies:

- Antenatal check-ups have become standard practice and were provided for 80.15 per cent of new births in 2010;
- 87.4 per cent of deliveries take place in a health centre and about 92.9 per cent of births in 2005 were attended by trained health personnel.

59. Moreover, with a view to improving these results and achieving the Millennium Development Goals, a health-care fund, or mutual health plan, was established in six areas in 2008. The mechanism was extended to 14 additional sites in 2009 and to a further 33 sites in 2010.

### **Equality of access to public-sector employment**

60. In the area of employment, article 3 of the Labour Code provides that: "Subject to explicit provisions of the present Code or of any other legislation or regulation protecting women, children and young people, as well as provisions relating to the status of aliens, an employee's sex, age, race, colour, social origin, nationality or national extraction, membership or non-membership of a trade union, or opinions, particularly religious and political opinions, shall not be taken into account by any employer in making decisions relating in particular to recruitment, conduct and distribution of work, professional training, advancement, promotion, remuneration and other conditions of work, award of social benefits, discipline or breach of contract." In practice, however, it should be noted that women are still discriminated against with regard to appointment to certain senior posts and functions to which men are given priority access.

61. As a result, two enforcement decrees of the Act establishing the quota system have been adopted: the first decree establishes that, in the context of legislative elections, political parties shall submit lists containing a minimum of 10 per cent of candidates of each sex, i.e. women, in parties set up by men. This guarantees women some level of representation in the National Assembly.

62. The second decree provides that 20 per cent of senior civil service posts shall be occupied by women. It should be noted, however, that in 2010, there were:

- 3 women members of government;
- 9 women deputies out of 65 as against 7 in 2003, including 1 treasurer, 2 chairpersons of standing committees, 2 vice-chairpersons of special committees, 3 members of the secretariats of standing committees;
- 14 municipal councillors, 7 regional councillors, 1 chief municipal officer;
- 11 technical advisers;
- 25 directors in public administration and institutions;
- 31 judges;
- Moreover, in 2010, women accounted for 40 per cent of all civil servants.

**Economic equality**

63. Economically and socially, while the Family Code — based on the tenets of Islam — introduces inequality between men and women with regard to inheritance, it has led to positive developments in other areas of family life. Thus, the Code prohibits the practice of repudiation and introduces the principle of equality between spouses.

64. The Government also endeavours to promote the role of women in the development process, particularly through the integration of a gender dimension into the National Social Development Initiative.

65. More specifically, the establishment of microcredits through the savings and loan cooperatives resulted in the granting of DF 600 million in loans to 6,500 women in 2009.

66. In addition, since its creation, the women's training centre in Balbala has provided training for about 2,000 women and girls in sectors that are recruiting, with a view to their direct integration into the workplace.

67. Lastly, in view of the fact that laws and regulations are not widely known, or are poorly applied, Djibouti recognizes the right of women to have recourse to the courts to seek punishment for any act of discrimination to which they may be subjected, in accordance with article 390 of the Criminal Code, which provides that: "Any distinction among individuals on grounds of origin, sex (...) shall constitute discrimination".

**Article 4****Derogation from the provisions of the Covenant**

68. Despite the serious events that have threatened the nation, such as the civil war during the 1990s and the recent conflict with Eritrea, successive Governments have never declared a state of emergency within the meaning of article 4 of the Covenant and have always striven to honour the principles of republican law and uphold democracy throughout the territory and at all times.

69. Article 40 of the 1992 Constitution nevertheless provides that "when the institutions of the Republic, the independence of the nation, the integrity of its territory or the fulfilment of its international commitments are under serious and imminent threat and the regular exercise of Government is interrupted, the President of the Republic, after consulting the President of the National Assembly and the President of the Constitutional Council and so informing the nation in a message, may take any measure, except for a constitutional amendment, designed to restore the regular exercise of Government and safeguard the nation". The National Assembly shall automatically convene and shall be presented, within 15 days of their promulgation, with the legislative measures put into effect by the President, for ratification. These measures expire if the ratification bill is not tabled in the National Assembly within that period.

70. If ratification is refused by the National Assembly, it has no retroactive effect. Under article 10 of the Constitution, the human person is sacred; the State shall have the obligation to respect and protect the human person; all human beings are equal before the law.

71. Furthermore, in the face of the threat posed by terrorism, Djibouti, by a decision of 2003, set up a terrorism unit to handle terrorist crises with due respect for fundamental human rights.

## **Article 5**

### **Principles of interpretation**

72. Since it ratified the Covenant, Djibouti has endeavoured to implement the provisions of the Covenant on the basis of the principles of interpretation of article 5.

73. Accordingly, several legislative reforms have been initiated with a view to ensuring the transposition of the provisions of the Covenant into Djiboutian law.

74. Examples include:

- The Family Code, which establishes shared parental authority, institutes contentious proceedings for the separation of spouses and regulates the marriage of minors;
- The Nationality Code, which makes it easier to exercise the right to nationality where one parent has Djiboutian nationality;
- The Labour Code, which regulates child labour and provides better protection for pregnant women;
- The Journalists' Statute, which improves the social situation for journalists and similar occupations, thus increasing their independence;
- Legislation establishing the quota system, to promote women's participation in the civil service and political life;
- The Criminal Code, which prohibits harmful practices such as excision.

75. The revision of the Constitution has brought it up to date and into line with the basic principles underlying the provisions of the Covenant and its optional protocols, notably by the introduction of a provision prohibiting the death penalty.

## **Part III**

### **Article 6**

#### **Respect for the right to life**

76. Article 10 of the Constitution establishes the right of the human person to respect and protection. This article provides that the State has the obligation to ensure that all individuals within its jurisdiction enjoy the right to life, freedom, security and integrity of the person (para. 2).

77. In order to give effect to the constitutional guarantees of the right to life, Djibouti has taken various measures to ensure the enjoyment of this right by all groups permanently or temporarily residing in its territory.

78. Given that the region has been particularly affected by clashes between States and civil wars, resulting in the displacement and migratory flows of people fleeing armed conflict or victims of subsequent disasters, the State very quickly realized that it could fully meet its duty to prevent arbitrary deprivation of life only by focusing on measures to strengthen international peace and security.

79. As the ideals of peace and respect for the right to life are held up as basic principles underlying the national motto, "Unity, Equality, Peace" (Constitution, art. 1, para. 4) and consequently must guide any Government policy, they constitute a priority and a prerequisite for any development of the nation.

80. For successive Governments, the motto has been no mere statement of principle. Deeply convinced that the right to life may be safeguarded only within this framework, they have made tireless efforts at the national and regional level to ward off the danger of war and promote mutual cooperation to advance the social, economic and cultural development of peoples.

81. In accordance with the Charter of the United Nations, which prohibits a State from using force against another State, Djibouti has managed to carry out an active regional policy based on closer relations between peoples and regional integration, as is shown by its membership of regional institutions such as the African Union, the League of Arab States, IGAD and the Common Market for Eastern and Southern Africa (COMESA). While Djibouti, a haven of peace, has always offered assistance to people from neighbouring countries affected by political crises or natural disasters, it is increasingly engaged in conflict prevention and resolution to address the root causes of conflict situations. Djibouti has greatly contributed to regional and international efforts to promote peace in Somalia with a view to protecting human lives. It has also been involved in a campaign for peace in collaboration with the United Nations Educational, Scientific and Cultural Organization (UNESCO) at the Greater Horn Horizon Forum and at scholarly conferences on a culture of peace.

82. Developments in its criminal law, particularly on the issue of the death penalty, demonstrate even more clearly its commitment to respect for the right to life.

83. Between 1977 and 1995 the imposition of the death penalty was limited to the most serious crimes in accordance with the law in force, including primary sources of national law (constitutional acts, the Constitution) and other laws passed down from the colonial period (Criminal Code). Judicial authorities made sure that executions were in fact exceptional in nature, as they realized that the decision to carry them out could be made only once. In order to make further progress in the enjoyment of the right to life, any death sentence handed down was commuted to life imprisonment.

84. Since 1996, amendments of domestic legislation to adapt to realities at home and international human rights commitments have expedited the abolition process. The new criminal legislation adopted represents a major breakthrough for the prohibition of the death penalty within the meaning of article 6, paragraphs 2 and 6, and article 40, as the ultimate punishment for the most serious crimes is now life imprisonment. The Government has amended article 10, paragraph 3, of the Constitution (2010) to prohibit capital punishment in order to reaffirm the de facto abolition of the death penalty and remove any inconsistency with the letter and the spirit of the Covenant and the Second Optional Protocol.

85. The progress achieved in abolishing the death penalty may result in the full enjoyment of the right to life only if procedural guarantees in the administration of justice are recognized and observed. The provisions of the Covenant concerning the right to a fair trial by a competent court, the presumption of innocence and the right to defend oneself and appeal to a higher court are set out in paragraphs 4, 5 and 6 of article 10 of the Constitution. Administrative and judicial reforms have had to be carried out and the human and financial resources of justice institutions increased to uphold these procedural guarantees.

86. Lastly, the desire to protect and respect life is reflected in the ban on abortion, with the exception of therapeutic abortion.

## **Article 7**

### **Torture and other cruel, inhuman or degrading treatment**

#### **Legislative and administrative measures**

87. Article 16 of the Constitution prohibits torture and cruel, inhuman, degrading or humiliating treatment and protects every person against such acts in accordance with article 7 of the Covenant, which states that no distinction must be made between offenders acting in their official capacity and those acting in a private capacity.

88. The Constitution also prohibits the arbitrary detention of individuals who have not violated the criminal law in force. Among the constitutional protections afforded to detainees is the right of every individual to a medical examination.

89. The State makes every effort to prevent and punish acts of torture and cruel, inhuman or degrading treatment in practice and in accordance with criminal legislation. Title III, chapter 1, of the Criminal Code sets out the penalties for the most serious and lesser offences against persons. Anyone who has been arrested has the right to telephone their lawyer or a family member as soon as they are taken into police custody. If a person has been remanded in custody, they have the right to family visits in accordance with the Prison Code.

90. Article 325 of the Code punishes abuse of authority against private individuals, stipulating that “when an official or public employee, in the exercise of, or by virtue of, their functions, uses or orders the use of violence or torture or commits an act of barbarity against persons, they shall be punished in accordance with the nature and seriousness of that violence and the penalty increased accordingly”.

91. Regulatory and administrative measures have led to the establishment of bodies such as human rights units within the police force and Gendarmerie and of commissions of inquiry to establish the facts in cases of mass violence. Other administrative provisions authorize NGOs to intervene in human rights matters.

#### **Information and training**

92. There are regular efforts to promote and teach values concerning the prohibition of torture and inhuman treatment among the public in general and the security forces in particular. The security forces are now a major partner in efforts to promote and protect human rights.

93. There has been a steady increase in information available to the public in recent years on the need to respect the dignity of the person, thanks to the deeper involvement of civil society and the media. While not referring specifically to the prohibition against torture and other cruel treatment, pertinent information to promote the rights of women and children has been distributed to the entire population during awareness campaigns mounted by ministerial departments and NGOs.

94. The Criminal Code punishes acts of torture and barbarity and violence leading to mutilation, amputation or any other impairment resulting in partial or permanent disability.

95. Criminal legislation, which also prohibits slavery and slavery-like practices, is complemented by the Labour Code, which bans forced labour.

96. Act No. 210/AN/07/5 L on combating trafficking in human beings was promulgated in an effort to adapt domestic legislation to regional realities. The Act is intended primarily to protect the most vulnerable groups (women, children and persons with disabilities).

## **Article 8**

### **Prohibition of slavery, servitude and forced labour**

97. Article 10 of the Constitution establishes the principle that the human person may not be violated on any grounds. Therefore, in accordance with this article, the State party has the obligation to do everything possible to “respect and protect” the human person.

#### **Forced labour**

98. In Djibouti, forced labour is defined as any work or service exacted from an individual under physical and/or mental duress and for which they have not offered themselves voluntarily. It is thus prohibited to use forced labour under article 2 of Labour Code Act No. 133/AN/05/5 L.

99. Although the Code makes limited exceptions to this rule, they are strictly circumscribed by law. Thus the following may not be considered to be forced or compulsory labour:

- Any work or service exacted by virtue of compulsory military service laws for work of a purely military character;
- Any work or service in the public interest as defined by the laws on civic obligations;
- Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
- Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

100. It is thus prohibited for any person to exact a service from another person under duress or for the State to establish services of a compulsory character other than those expressly covered by this law.

101. In reality, however, there are often cases of abuse on the part of some persons towards persons of foreign origin.

102. A characteristic feature of such abuse is the obligation imposed on foreign persons to perform tasks for which they were not recruited or outside normal working hours.

#### **Slavery**

103. By endorsing the Universal Declaration of Human Rights, Djibouti has accepted that the measures contained therein should be incorporated into the Constitution and implemented in Djibouti.

104. Thus, article 4 of the Declaration states: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” This is an absolute prohibition without exception.

105. The prohibition is also set out in domestic law, including the Criminal Code and the aforementioned Act No. 210/AN/07/5 L on combating trafficking in human beings.

106. Djibouti has taken measures to complement this Act, with considerable support from technical and financial partners (International Organization for Migration, Office of the United Nations High Commissioner for Human Rights, IGAD, African Union, etc.), which have focused on awareness-raising and training in particular. There are regular television announcements on the dangers of trafficking. Moreover, there are national and regional training workshops and seminars for the relevant players (police, Gendarmerie, judiciary, prefects of regions, etc.) in the campaign against illegal immigration and human trafficking. Thus, in 2010 the Government and its partners ran the following relevant events:

- A training workshop on the management of mixed migratory flows (7–8 August 2010);
- A regional seminar on the topic of “Mobility, Migration and Vulnerability to HIV/AIDS” (26 and 29 October 2010);
- A workshop to validate the report of the baseline survey on trafficking in Djibouti (13–14 November 2010);
- A regional seminar (nine member countries of IGAD and the East African Community) on the implementation of the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (6–8 December 2010);
- A seminar on direct assistance to victims of trafficking (19–20 December 2010);
- A seminar on investigation and prosecution techniques in trafficking cases and a training session led by United States judges and police officers (February 2011).

107. Lastly, it is worth noting the establishment of the Migration Response Centre in Obock, a city where potential emigrants bound for the Arabian Gulf countries via Yemen are concentrated, and of a national body responsible for coordinating work on a plan of action against trafficking in human beings.

## **Article 9**

### **Liberty and security of person**

108. Since its establishment, the Republic of Djibouti has guaranteed all persons present in its territory respect for the integrity of the person, regardless of whether they are citizens or foreign nationals, in accordance with article 9 of the Covenant.

109. In particular, article 10 of the Constitution states that arbitrary arrest or detention is unlawful and persons may be arrested or detained only in accordance with the law.

110. In order to ensure strict compliance with criminal law and thus prevent abuse, the public prosecutor’s office supervises police work and, in cases of arbitrary detention, releases the persons concerned in accordance with article 64-2 of the Code of Criminal Procedure and calls for inquiries to be opened through the chief public prosecutor’s office to establish liabilities.

111. However, in most cases, the majority of arrests take place following a criminal complaint filed by a person, after which police investigators call the person in for

questioning and decide after hearing the person whether they should be held in custody, for a maximum period of 48 hours. If investigators are unable to prepare a case for trial, the officers may request the State prosecutor or a deputy prosecutor to extend the 48-hour period in strict compliance with articles 64 ff. of the Code of Criminal Procedure. Other measures of deprivation of liberty are governed and provided for by articles 117 ff. of the Code of Criminal Procedure.

112. In addition, persons charged with serious and lesser offences are generally held in detention pending their trial, in accordance with article 133 of the Code of Criminal Procedure, which states: "Pretrial detention is applicable only to persons being prosecuted for acts designated as serious offences or acts designated as lesser offences punishable by a prison sentence of 1 year or more." However, under articles 139 ff., the investigating judge may order the release of persons held in custody as long as they provide the necessary guarantees that they will appear at all stages of the proceedings.

113. Furthermore, leaving aside criminal detentions, there is a single psychiatric centre for the confinement of persons with severe mental disorders in Djibouti.

114. However, families very seldom commit relatives with such disorders to the centre because of the existence of very strong family structures.

115. Thus, only persons who pose some threat to society because they are prone to violence are subject to confinement. Fortunately, the confinement of such persons takes place in strict compliance with medical regulations and it is rare for any of them to be subjected to total deprivation of liberty.

## **Article 10**

### **Right of persons deprived of liberty to be treated with humanity**

116. While Djibouti has had legislation in keeping with the provisions of article 10 of the Covenant since the entry into force of the Code of Criminal Procedure in 1992, the need to mobilize considerable material and financial resources still poses many obstacles to its implementation.

117. Article 65-1 of the Code of Criminal Procedure states: "Conditions for remand in custody must observe the moral and personal dignity of the person."

118. However, this article has not always been fully respected. In order to redress the situation, the Government has introduced many reforms, including the adoption of a law in 2009 that created a corps of prison officers to replace the national police in prison supervision. This is a major breakthrough, as the police were not always properly trained to carry out this mission.

119. At the same time, Djibouti has begun reorganizing prisons to keep prisoners in separate parts of the institutions according to their status, sex and age.

120. In addition, in cases of abuse and ill-treatment of detainees by prison guards, a complaints procedure before the State prosecutor is guaranteed for victims of such abuse.

121. Nevertheless, further efforts must be made to improve detention conditions in police and Gendarmerie stations.

## **Article 11**

### **Prohibition of imprisonment in civil cases**

122. Like most countries, Djibouti makes a distinction between civil and criminal law.



123. Therefore, as meeting or failing to meet a contractual obligation falls under the jurisdiction of civil or commercial courts, to date the courts have been using the Napoleonic Code to try disputes that are brought before them.

124. Specifically, in respect of failure to meet contractual obligations, under article 2092 of the Civil Code, anyone under a personal obligation must secure that undertaking with all their existing and future personal and real property.

125. Accordingly, book V of the Code of Civil Procedure, which comprises laws dated before and after 27 June 1977, puts in place a set of specific measures to facilitate civil action guaranteeing creditors fair compensation in the event of default by a debtor. There are thus procedures for attachment of a debt, attachment for conservation, attachment of goods and attachment of real property.

## **Articles 12 and 13**

### **Freedom of movement and residence and rights of aliens**

126. The Constitution lays down the principle of freedom of movement and residence for all citizens and aliens lawfully present in the national territory. This right may be restricted only by law.

127. According to article 18 of the Constitution, “aliens lawfully present in the national territory shall enjoy the protection of the law in respect of their person and their property”.

128. Act No. 201/AN/07/5 L sets the conditions for entering and staying in Djibouti subject to international conventions.

129. Deportation applies to aliens unlawfully present and, not to refugees or stateless persons.

130. However, aliens who are subject to expulsion orders have under the Act one month to leave the country before being compelled to do so by law-enforcement authorities.

131. There is in fact no one who is currently being detained for violating the law on immigration; the Government prefers to escort them back to the border.

132. Aliens are permitted under the law to take up paid employment in Djibouti provided that they first obtain a work permit (Labour Code, art. 24).

## **Article 14**

### **Right to a fair and equitable trial**

133. From the outset, the legal system of Djibouti was designed to serve as a lever for any aggrieved person to operate in the event of wrongful acts or omissions by State institutions, natural persons or legal entities.

134. The primary guarantor of justice and public and social order, the Constitution ensures, in the preamble, equality before the country’s courts and tribunals by incorporating the Universal Declaration of Human Rights. In addition to the Declaration, there is article 10 of the Constitution, which sets out in far more specific detail the principle of equality for all persons before the law, as follows:

“Every individual has the right to life, liberty, security and integrity of the person. A person may be prosecuted, arrested, accused or convicted only under a law promulgated before the acts of which the person is accused took place. Everyone charged with an offence shall be presumed innocent until proved guilty by the competent court.

“The right to defence, including the right to be assisted by counsel of one’s own choosing, is guaranteed at all stages of the proceedings. Anyone subjected to a custodial penalty shall be entitled to be examined by a doctor of their choice.

“No one may be detained in a penal institution without a warrant issued by a judicial officer.”

135. These statements and principles were first applied in practice through Act No. 52/AN/94/3 L of 10 October 1994 on the establishment of a court of appeal and court of first instance, and were subsequently included in various provisions of the Criminal Code and the Code of Criminal Procedure, which entered into force in 1995.

136. Article 1 of Act No. 52/AN/94/3 L lays down the principle that the court of appeal and court of first instance alone may try any civil, commercial, criminal or social case and that their decisions are made on behalf of the people of Djibouti.

#### **Equal access to the courts and equality before the law**

137. Subject to certain procedural rules that are essential for the sound administration of justice, the Code of Civil Procedure, Code of Criminal Procedure and Labour Code offer the right of legal action to any party with an interest in a dispute.

138. In addition, Djibouti is in the process of establishing courts of first instance in the interior to give individuals more direct access to justice. Meanwhile, the Ministry of Justice organizes circuit courts for the same purposes.

139. Furthermore, article 4 of Act No. 52/AN/94/3 L provides for the right to legal assistance in any case. Legal assistance by a court-appointed lawyer must be offered to any person accused of a criminal offence who cannot afford to engage a lawyer of their choosing under article 65-4.

140. Djibouti has reorganized legal aid services to help to cover the costs of those most in need, particularly costs associated with courts, proceedings or official documents, preparation of the defence and lawyers’ fees. The recent adoption of an implementing decree will help to ensure better administration of justice for citizens of Djibouti in a manner that observes the equal rights of every person, and to replace the notion of charity with that of social justice.

141. However, the decree is limited in scope, as it mainly applies in criminal cases.

#### **Right to a fair hearing and presumption of innocence**

142. Observance of the right to a fair hearing, including the right to be tried in one’s presence, to be assisted by a lawyer, to have reasonable preparation time and to be presumed innocent, is guaranteed at all stages of the procedure. Pursuant to the general provisions of the Constitution and articles 4 and 5 of Act No. 52/AN/94/3 L concerning the right to a fair hearing as a whole, the adversarial principle is strictly applied in all cases, very clear procedural rules covering the discussions in hearings are laid down in articles 241 ff. of the Code of Criminal Procedure, and pretrial detention in criminal matters is limited only to cases in which release is liable to compromise the establishment of the facts or would be against public policy, in accordance with articles 133 ff. of the Code of Criminal Procedure.

#### **Conduct of hearings and proceedings**

143. Article 3 of Act No. 52/AN/94/3 L guarantees the public nature of all hearings. However, some cases may be heard in camera at the request of the parties.

144. Moreover, given the high illiteracy rates among the Djibouti population and the large number of foreign nationals in Djibouti who do not know how to read or write, an interpreter is always present during hearings.

#### **Right to a second hearing**

145. Like many countries, Djibouti gives any person who has been convicted by a court of first instance the right to appeal or challenge that decision before a court of appeal.

146. Nevertheless, the person concerned must abide by certain rules governing the right, forms and time limits for entering notice of appeal, as set out under the Code of Civil Procedure and Code of Criminal Procedure.

147. Moreover, in civil and commercial cases, disputes involving principal sums of less than DF 200,000 are not subject to appeal.

148. By contrast, court of first instance judgements against which no appeal lies are subject to the jurisdiction of the Supreme Court.

#### **Review**

149. In accordance with the Covenant, the judicial system in Djibouti provides for the right to a review of the trial, although it is rare in practice. Article 472 of the Code of Criminal Procedure sets out the conditions and methods for such a review.

150. Subject to the rules set out under articles 473 ff. of the Code of Criminal Procedure, review may be sought from the General Assembly of the Supreme Court, which shall rule on the procedure and the merits.

151. A successful review of a trial entitles the appellant to seek payment of damages from the State in accordance with articles 478 and 480 of the Code of Criminal Procedure.

#### **Scope of penalties**

152. Article 18 of the Criminal Code states that “no prosecution may take place against anyone who can provide evidence that they have been tried abroad for the same offence and, where convicted, that the sentence has been served or has lapsed”, which means it is impossible to try a person twice for the same offence.

### **Article 15**

#### **Principle of non-retroactivity of the law**

153. In keeping with the constitutional principle set forth in article 10 of the Constitution, the principle of non-retroactivity of laws and regulations lies at the heart of the judicial system of Djibouti.

154. Moreover, in criminal matters this principle is covered by article 5 of the Criminal Code, which states that “only acts that constituted an offence at the time they were committed are punishable”.

155. Only those penalties legally applicable on that date may be imposed.

156. However, new provisions are applicable to offences committed before they entered into force and that have not resulted in a final judgement, when they are less severe than the previous provisions. The new law may thus be applied to offenders if the penalties provided for by the new law are lighter than those provided for by the previous law.

## **Article 16**

### **Legal personality**

157. Regarded as a corollary of the right to life and the quality of being human, legal personality is absolute in Djibouti.

158. Despite the lack of provisions expressly establishing this right in Djibouti law, legal personality is not restricted in any way, as the right is acquired at birth and lasts throughout one's lifetime.

159. Thus, it is recognized that everywhere, regardless of a person's situation, everyone has the right to realize the various aspects of their personality.

160. At the same time, realization of these various aspects is limited for persons deprived of their liberty as a result of a lawful decision of the courts and tribunals.

## **Article 17**

### **Protection of privacy and the family**

161. The Constitution guarantees the protection of the rights of the person and the family. Article 10 proclaims the sanctity of human beings, which is inviolable, and states that everyone has the right to life, freedom, security and integrity of the person. The legal provisions to promote the realization of the right to privacy are based on the principles set up as a defence against violations of the rights of the person.

162. Criminal law suppresses unlawful attacks on a person's honour (chap. V, sect. III) and intrusion on another person's privacy by punishing natural or legal persons who possess, keep or exploit information (speech, images or documents) relating to the private life of individuals without the consent of the person concerned (arts. 415, 416, 418 and 420).

163. Section V of the Criminal Code (arts. 441–445) deals with offences relating to the collection, keeping and disclosure of information on the private life of individuals by public or private organizations and individuals. The articles punish automatic processing of personal data without completing the formalities required by law prior to such processing (art. 441), the retention of such data in violation of the rules governing data collection provided by law (art. 442) and abuse of data for unlawful purposes (art. 443) such as disclosure with the effect of attacking the reputation of the person concerned or interfering with their privacy (art. 444). Natural or legal persons found guilty of such offences may incur penalties, including being forbidden to practise a profession.

164. Article 12 of the Constitution lays down the inviolability of the home, which may only be entered or searched in the manner and under the conditions established by law. The article further provides that this right may be restricted only for the purpose of warding off a collective danger or protecting persons in mortal peril.

165. Articles 50 and 51 of the Code of Criminal Procedure set out the basic principles governing lawful intrusions in the home of the accused, accomplices or other persons implicated in an offence by criminal investigation officers or the investigating judge. With the exception of cases in which consent is given by the owner of the property or cases involving habitual meeting places of persons engaged in prostitution, house searches required for gathering evidence may only be conducted between 6 a.m. and 9 p.m. (art. 53) and always under the responsibility of the State prosecutor.

166. This prosecutorial supervision of the action of police detectives and criminal investigation officers, and the procedural instruction they receive, particularly concerning

preliminary investigations, are a major factor in safeguarding citizens' dignity as they reduce the likelihood of harassment during house searches, for example. Article 91 of the Code of Criminal Procedure requires the investigating judge to take "appropriate measures to maintain confidentiality and due process" so that lawful intrusions do not become unreasonable. In practice, the actions of some over-zealous officers may undermine the de facto guarantees of respect for the human person and give individuals a feeling of powerlessness during house searches. The recent human rights training sessions for these officials, run by the National Human Rights Commission, are an added means of heightening awareness to increase respect for the person.

167. Article 13 of the Constitution sets forth legal guarantees of the inviolability and confidentiality of correspondence. Domestic law applies this principle in the Criminal Code (arts. 439 and 440), which punishes offenders, and the penalty is increased when the offences in question are committed by officials in the performance of their duties. Violations of these articles also render the proceedings invalid.

## **Article 18**

### **Freedom of thought, conscience and religion**

168. Djibouti is a State based on the rule of law and multiparty democracy determined to guarantee the full enjoyment of individual and collective freedoms and the harmonious development of the national community in accordance with the principles of the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights (Constitution, second and third preambular paragraphs).

169. Article 11 of the Constitution guarantees everyone the right to freedom of thought, conscience, religion, worship and opinion in accordance with the law and regulations. This right is further backed up by article 1 of the Constitution, which prohibits all forms of discrimination and guarantees the equality of all citizens before the law, without distinction as to language, origin, race, sex or religion.

170. These guarantees greatly help persons residing in Djibouti to enjoy the freedom to have or adopt a religion of their choosing and to profess their religion individually or collectively, in public or in private, under the conditions provided for by law. There are also many places of worship to practise one's faith (Catholic, Protestant, Coptic, Greek Orthodox and other churches), which is a clear reflection of the tolerant nature of Djiboutian society.

171. The legal exercise of the freedom of religion thus recognized is borne out by the facts, namely the absence of any specific exclusion of religious minorities, whether they are citizens or foreign residents, as they enjoy the same State benefits and services as the rest of the population. Furthermore, non-Muslim citizens do not experience discrimination in employment, including in the civil service, or in participation in affairs of State.

172. Religious minorities do not face any restrictions on their right to demonstrate their beliefs freely other than the restrictions prescribed by law regarding the performance of ritual and ceremonial acts in the various places of worship in the capital, where the majority of the country's population is concentrated. They may organize seminars, found religious schools and distribute or sell publications of a religious nature for the purpose of practising and teaching religion.

173. In this framework, the teaching of religious values, which used to be the province of private educational institutions of the various faiths, is now also carried out in public schools through Islamic education programmes. In accordance with the right to educate children according to one's beliefs, parents may have their children wholly or partially

exempted from religious instruction on request to the head of the educational institution (circular of the Ministry of National and Higher Education).

## **Article 19**

### **Freedom of opinion and expression**

174. Article 15 of the Constitution guarantees everyone the right to express and disseminate their opinions freely either in speech, writing or images. Any legal restrictions on the exercise of the right to freedom of opinion and expression are justified by the need to respect the rights and dignity of others or uphold morality and law and order. Such restrictions are in no way contrary to those set out in the Covenant (art. 19, para. 3).

175. Under the Criminal Code any concerted attempt to impede the exercise of the right of opinion by battery, violence, assault, threats or destruction or defacement is punishable by 3 years' imprisonment and a fine of DF 1 million (art. 388). Accordingly, persons cannot be prosecuted for their opinions under Djiboutian law.

176. National legislation recognizes freedom of the press, particularly through the Freedom of Communication Act of 1992. This law sets the conditions for the exercise of freedom of the press, which is guaranteed by the Constitution. Article 3 of the Act defines freedom of communication as the "right of everyone to create and use freely the medium of their choosing in order to express their thoughts by imparting them to others and to gain access to the expression of others' thoughts".

177. Articles 8, 41 and 45 of the Act establish freedom of publication and distribution for the press, radio and television under conditions laid down by law.

178. The Act has also led to the establishment of the National Communications Commission, which is entrusted with monitoring the conditions and modes of assignment and use of operating licences for radio, television and film, organs of the press and publishing companies (art. 45).

179. The Constitution establishes preliminary restrictions by stating that "these rights are limited by law and by respect for the honour of others". In this light, article 4 of the Freedom of Communication Act sets out the limitations to the principle of freedom of expression, as follows: "Freedom of communication must not disturb the peace, threaten the dignity of the human person or disrupt law and order; it must not contain any information or assertion contrary to Islamic morality or liable to justify racism, tribalism, treason or fanaticism."

180. A law on the status of members of the press and broadcast media was adopted in 2007 to meet the need to regulate the profession of journalism, referred to in the 1992 legislation on the press (art. 65). The law reflects the progressive development of domestic legislation that aims to improve the effective enjoyment of freedom of expression and opinion by setting more favourable conditions for practising journalism in Djibouti.

181. The law makes it possible for permanent staff of the public-sector press, who are now "grouped" with other journalists (art. 3), to enjoy greater job security, for wage inequalities to be reduced and thus to increase solidarity within the profession. The new statute was also an opportunity for a salary increase with the establishment of a new wage scale. The law recognizes the professional rights of media personnel, particularly trade union rights, and provides the guarantees that are essential for the exercise of those rights (arts. 6 and 7).

182. In practical terms, the result has been the creation of two journalist associations, and it is through these unions that discussions are now organized about current challenges (such

as the ageing of the profession, training and information on rights and duties, and career development) and the challenges ahead (such as the involvement of magazine and newspaper editors in discussions concerning the interests of the media sector).

183. The implementation of these laws has helped to diversify and gradually transform the media landscape in Djibouti.

184. Despite the lack of a private national broadcasting company, Djiboutians may receive or share international news broadcasts from foreign television stations or domestic news, in a range of areas such as politics, culture, and societal and economic issues, via radio broadcasts (Radio Télévision de Djibouti (RTD), British Broadcasting Corporation and Voice of America in Somalia), television broadcasts (RTD and satellite stations) and, increasingly, the Internet.

185. Aside from the publications issued by the public-sector press, Djibouti has always had a number of papers or magazines that focus on cultural news and entertainment or highlight issues that affect a specific group of people, such as women's rights.

## **Article 20**

### **The prohibition of propaganda for war and incitement to national, racial or religious hatred**

186. In keeping with its motto "Unity, Equality, Peace", Djibouti, since acquiring independence, has unrelentingly worked towards peace, notably by means of its continuing efforts to achieve national reconciliation in Somalia.

187. Already in the preamble to its Constitution, the State of Djibouti illustrates the importance it attaches to basing its policies on criteria that will ensure sustainable peace and development. At the international level, it pledges to cooperate in achieving peace and friendship with all peoples who share its ideals of peace and, at the national level, "to establish a pluralist democracy governed by the rule of law that will guarantee the full enjoyment of individual and collective rights and freedoms, as well as the harmonious development of the national community".

188. In this spirit of nation building, the Constitution (art. 3) specifies that any distinction made among citizens on the grounds of language, race, sex or religion is contrary to national unity and to the strengthening of social relations on the basis of tolerance.

189. In addition, the Constitution carefully regulates the exercise of political activity (art. 6, para. 3) by preventing situations that could be conducive to incitement to discrimination, hostility or violence. Consequently, it makes it unlawful for political parties to identify with any particular race, ethnic group, sex, religion, language or region.

190. In order to better control the activities of political parties, the Organic Act No. 1 prohibits any party leader or member from inciting the Armed Forces or security forces to take over State power by means of writings, public statements or actions, on pain of 10 to 20 years' imprisonment and a fine of DF 10 million, and the possible dissolution of the party concerned. More generally, the criminal law provisions contained in book II stipulate that the most serious offences relate to acts involving the following:

- Provoking a war against the State;
- Plotting with a foreign Power;
- Causing the risk of war (by any act of hostility);
- Inciting citizens to take up arms;

- Inciting the army to revolt;
- Provoking a civil war.

191. Lastly, the limitations imposed on the freedom of communication in the domestic legislation (art. 4) stipulate that the exercise of that freedom must not disturb the peace, threaten human dignity or contain information that might be construed as justifying racism, tribalism, treason or fanaticism.

## **Article 21**

### **Right of peaceful assembly**

192. The freedoms corresponding to the exercise of the rights recognized under article 21 are guaranteed by the Constitution (art. 15). Article 58 of Organic Act No. 1/AN/92 on elections sets forth this freedom. It reads as follows: “The head of the administrative district must be notified of electoral meetings at least 24 hours in advance. The notification shall specify the name, occupation, address and function of the organizers in charge of the electoral meeting, the location and starting and ending time of the meeting, and whether the meeting venue is open or closed to the public.” This provision therefore grants all political groups the freedom to organize public events.

## **Article 22**

### **Right to freedom of association and right to form and join trade unions**

193. Although the freedom of association and the freedom to form and join trade unions are recognized in article 15 of the Constitution, which lays down the principle that “all persons have the right to freely form associations and trade unions, provided that they satisfy the requirements of the laws and regulations”, the Government has not paid the same attention to their implementation.

194. In Djibouti, everyone has the right to freedom of association in order to assert their interests through the establishment of an official framework. This freedom is guaranteed by the Act of 1901.

195. Article 2 of this Act recognizes that “associations of persons may be freely established without prior authorization or notification, but they shall be entitled to the enjoyment of legal capacity only if they satisfy the requirements of article 5”.

196. The Ministry of the Interior has been officially notified of the establishment of more than 750 associations of the kind described in the Act of 1901, but they are not very visible in the civil society sphere or elsewhere, owing to Djiboutians’ lack of interest in them.

197. Moreover, the right to freedom of association, as defined in article 22 of the Covenant, has only been explicitly and unambiguously recognized with the adoption of the Labour Code.

198. Article 212 of the Labour Code provides that “all employees or employers, without any distinction whatsoever, shall have the right to form their own trade unions in the occupational and geographic sectors they so determine. They shall have the right to join and leave trade unions freely, as shall former workers and former employers who had at least one year of service in their occupation. Trade unions may also be established freely by self-employed workers who do not employ any staff.”

199. Nevertheless, the same law clearly defines trade unions as existing for “the sole purpose of reviewing and protecting the rights and material and moral interests, both



collective and individual, of the persons and occupations covered by their articles of association”.

200. Aside from this restriction, trade unions must also obey the rules relating to notification and establishment. These rules are enumerated in articles 213 ff. of the Labour Code.

201. Thus, many occupations and economic sectors have in fact established trade unions, many of them affiliated with the two main trade union federations, the Djiboutian Workers Union and the General Union of Djiboutian Workers.

## **Article 23**

### **Family law**

202. The Constitution (art. 10) emphasizes the sacred and inviolable nature of the human person and the absolute obligation of the State to ensure respect and protection so that everyone can enjoy the full development of their material, temporal, intellectual and spiritual potential. It also stipulates that “all individuals have the right to life, liberty, security and integrity of the person”.

203. Article 2 of Act No. 152/AN/02/4 L on the Family Code, contains valuable provisions indicating that the family “constitutes the basic unit of society” and must, as a result, be entitled to the “promotion of its religious and cultural diversity” and to the protection of its members, to the extent permitted by the country’s resources.

204. Families in Djibouti fall into two categories: nuclear families and extended families. The vast majority of Djibouti households comprise nuclear families; however, there are a greater number of extended families in urban than rural areas owing to the concentration of economic activity in the capital and the resulting rural exodus.

205. In addition, statistics show that there is a small proportion of single-parent families, given that 12 per cent of women divorced after their first marriage, and that, of these, 38.5 per cent remarried (PAPFAM/2002 Study). This marital stability shows that family cohesion in Djibouti is relatively strong.

206. Under Djibouti law, marriage is regulated by one of the regimes in force that governs the celebration of marriages in Djibouti, such as:

- The Act on the Family Code;
- The Act regulating the functions of the *Madhun al-Shari`*;
- The Civil Code.

207. This set of laws governs marriage and ensures order and stability. It also defines marital offences and the penalties incurred by committing them. The penalty of divorce is a last resort.

208. Act No. 169/AN/02/4 L regulating the functions of the *madhun al-shari`* designates the *madhun* as the sole authority competent to perform marriage, decree divorce by mutual consent and issue the corresponding certificates. Apart from the marriages he is authorized to perform under the Family Code, he is also empowered to mediate between the spouses in the case of marital disputes in fact and in law (art. 5). Lastly, he is responsible for entering a record of the various acts for which he is responsible, holding the registers and forwarding the records to the institutions concerned, such as the civil registrar and the personal status court (arts. 13 and 14).

**Right to marriage**

209. The State laid down the foundation for strengthening the family by means of the adoption of the Family Code in 2002. The law regulates the exercise of the right to marriage, setting out the necessary restrictions and establishing the age of marriage.

210. The Family Code sets the age of marriage at 18 years or older (art. 13, para. 2), thus attaching importance to the genuine capacity of the future spouses to give their free and full personal consent for contracting marriage.

211. The Code strictly regulates the marriage of minors who have not reached the age of legal majority by requiring the consent of their parents or guardians. In the event their parents or guardians withhold their consent and the future spouses persist in their request, the marriage may be authorized by a judge (art. 14). The Code also emphasizes the non-discriminatory nature of the consent required of the father, the grandfather or their representative for the marriage of a minor, whether male or female (art. 16).

212. Although the Family Code and the law concerning the *madhun* regulate religious marriage, lawmakers have nevertheless ensured that their provisions are compatible with the full exercise of the other rights guaranteed by the Covenant, notably the right to the freedom of thought, conscience and religion, by also allowing for the possibility of a civil marriage.

213. With regard to legal disabilities likely to be viewed as impediments to the right to marry, article 15 of the Act on the Family Code stipulates that “the marriage of a spendthrift son is only valid after consent has been granted by their curator, and the curator may request its annulment by the court before it is consummated”.

214. The provisions of the Family Code (art. 23) also set forth the special factors limiting the right to marry, distinguishing between permanent impediments resulting from kinship, marriage or breastfeeding (arts. 24 and 25), and temporary impediments arising from marriages that have not been dissolved, the non-expiration of the waiting period for widowhood, threefold divorce, marriage with two sisters at the same time and marriage between a Muslim woman and a non-Muslim man (arts. 26, 27 and 28).

215. Under article 29, a union is null and void if it contains clauses that run counter to the above-mentioned essential conditions and those governing marriages that take place before a *madhun* in the presence of two honourable witnesses (art. 7, para. 1). They also provide for “imprisonment for spouses whose marriage is declared null and void and who continue or resume their life together”.

**Equality of marriage rights**

216. The Act on the Family Code consolidates women’s rights by setting out more clearly the rights of mothers and children. It is also the instrument used by the Personal Status Court, which is responsible for implementing the Code’s provisions.

217. The Family Code recognizes the right of women, like men, to freely contract marriage and choose their spouse. The mandatory presence of the woman’s guardian during the marriage is intended to better guarantee her rights.

218. A woman must be informed of any new marriage plans in order to assert her right to compensation for any harm caused or choose divorce.

219. With regard to the rights and duties of spouses, family law states that they are duty bound to mutual respect and fidelity, and to bring relief and assistance to one another (art. 31). The husband bears the household expenses and provides for the needs of his wife and children to the extent his means permit. The wife may voluntarily contribute to the household expenses if she has assets.

220. Polygamy, although still retained in the Family Code, is highly regulated and the wife has the right to express her views on her husband's subsequent marriages. To that end, she may refer the matter to the courts, which issue a marriage certificate only after an assessment is made of the man's socioeconomic situation and the wife's views have been recorded (art. 22).

221. This new requirement of the husband to inform his wife before entering into another marriage constitutes a revolution contributing to a strengthening of women's role in the matrimonial home.

222. In contemporary Djibouti, the education of women, who are acquiring increased moral and financial autonomy, and the high cost of living have combined to result in a significant decline in polygamy.

223. In more general terms, the Family Code has established the principle of spouses' joint responsibility in all areas of the management of family affairs. That is the case, for example, with regard to parental authority, which is now exercised by both spouses.

224. With regard to the dissolution of marriage, the Family Code also introduces principles contributing to the achievement of equality between men and women, for example by putting an end to the practice of repudiation.

225. Divorce, which can only be obtained from the *madhun* or court (art. 38), may be granted at the request of either husband or wife (art. 39). Despite its apparent equality, the provision favours men, who may obtain a divorce more easily than women, for they are not required to provide justification, while women must demonstrate harm in order to obtain a divorce.

226. Moreover, the option available to a woman to request divorce without justification obliges her to relinquish all her rights as a divorced woman and she may even be sentenced to pay damages to her spouse.

227. Under the first Nationality Act of 1981, citizenship was granted automatically and without the need for further formalities to any citizen of the Territory who held French nationality on 27 June 1977, when independence was declared. Those provisions made no distinction between women and men in their equal right to a nationality. Women had as much right to transmit nationality as men. They also had the same rights as men concerning the nationality of their children, whether or not they were legitimate (art. 8). Article 9 also provided for the transmission of nationality from mother to child where the identity of the father was unknown.

228. The 2004 Nationality Code reinforces the transmission of nationality between spouses on the basis of the principle of equality following marriage, and also to children (arts. 4 and 5).

229. Djibouti guarantees women and men equal rights with regard to the acquisition, change or retention of nationality and its transmission to their children.

## **Article 24**

### **Rights of the child**

230. Djibouti has made considerable efforts to improve the lot of children residing on its territory, by progressively implementing a sustained multisectoral policy to promote and protect their rights. That the Government of Djibouti attaches particular importance to the matter is borne out by the submission of its first periodic report to the Committee on the Rights of the Child.

231. That report and information contained in the common core document highlight that the legal, socioeconomic and cultural measures taken in order to boost child development and the protection of children have led, in particular, to a reduction in infant mortality.

232. The Family Code now clearly sets the age of civil majority at 18 years. It also puts an end to harmful traditional practices and ensures that girls are properly shielded from early marriage.

233. Respect and consideration for the “best interests of the child”, a key notion in the architecture of the fundamental principles underlying the Convention on the Rights of the Child, have now been enshrined in family law. This basic criterion makes it possible to go beyond the interests of the child, which could already be invoked by the courts in the past, and ensure that court rulings favour the most vulnerable in cases of family breakdown.

234. The 2002 Act focuses firmly on improved support and successful reintegration of children into society, promoting children’s rights when couples separate by making a priority of resolving the issues of custody, maintenance and the preservation of family ties.

235. The minimum age for access to work has been raised and set at 16 years of age (art. 5) in line with the International Labour Organization Minimum Age Convention, 1973 (No. 138). The ILO Worst Forms of Child Labour Convention, 1999 (No. 182) is a recent instrument that focuses on children facing the juvenile justice system. Ratified in 2004, these norms have now been incorporated into labour legislation. The law focuses more closely on youth (16–18-year-olds) labour, whereby working conditions, hours and danger levels must be in conformity with the demands of human dignity and the Convention on the Rights of the Child. Alongside wage discrimination, the employment of young people in domestic service, hostelry, bars and alcohol sales outlets (art. 115) is prohibited. Similarly, article 96 prohibits employers from making minors work at night.

236. Article 32 of the Criminal Code sets the age of majority at 18 and so provisions relating to minors therefore apply only to children or young people below the age of 18. Due to their age and immaturity, these young people are thus treated differently from adults in criminal proceedings. This provision also sets the minimum age for criminal responsibility at 13, an age limit that is high enough to take account of children’s maturity and development and that corresponds to the one applied in developed countries such as France.

237. While parents have the right and the duty to nurture the development of their children’s abilities, the State provides legal support and ensures that families and minors are fully protected by penalizing harmful practices including the abandonment, neglect and endangerment of children by their legal guardians (arts. 451–457).

238. The law also ensures that the physical integrity of children is protected by prohibiting violence, abuse and murder (arts. 325, 326, 330 and 332). Female genital mutilation is addressed by criminal legislation, under which individuals found guilty of such practices are severely punished (art. 333).

239. Lastly, efforts are made to protect the morality of adolescents by punishing activities leading to their corruption (arts. 458–462) or involvement in sexual acts (arts. 463–466), and procuring (art. 396).

240. Desirous of ensuring that greater attention is focused on protecting children, Djibouti has ratified the optional protocols to the Convention on the Rights of the Child and is therefore committed to using all available means to prevent their involvement in armed conflicts and activities connected with the sale of children, child prostitution and child pornography.

241. The right to civil status and to the registration of births has been the subject of a study aimed at identifying obstacles to the fulfilment of those rights. Community capacity-building programmes have been launched in order to promote the enjoyment of such rights, especially in rural areas. Non-formal classes on human rights are offered to local communities, which in turn conduct activities to raise the awareness of community members of the importance of the right to education, health, the registration of births and a nationality.

242. Legislation on the acquisition of nationality has been reviewed and reinforces the rights of children, who can obtain it if one of their parents is a national of Djibouti.

243. More generally, the State of Djibouti is committed to putting into practice the recommendations made by the Committee on the Rights of the Child after it submitted its periodic report. In this context, the recently approved National Strategic Plan for the Children of Djibouti for the period 2011–2015 is the benchmark for initiatives undertaken by all stakeholders working to build an environment that is protective and fosters the enjoyment of fundamental rights by children and equal access for them to basic social services. The new framework should also ensure that children benefit from the effective implementation of the provisions of international, regional and national instruments on the rights of the child regarding survival, development, protection and participation.

## **Article 25**

### **The right to participate in public affairs and to vote**

244. Several laws in Djibouti contribute to the exercise of political rights that all citizens enjoy without distinction. Under the Constitution, public affairs are the responsibility of the citizens, who conduct them directly or through their representatives without distinction on the basis of language, race, sex or religion (art. 3).

#### **Eligibility to vote**

245. Constitutional guarantees regulating the right to vote and the right to be elected are supplemented by electoral laws, which grant these rights to all adult nationals of Djibouti in full possession of their civil and political rights (art. 3). These legal provisions (arts. 5–6) also set forth reasonable limitations on the right to vote with a view to rendering it effective (ensuring registration on electoral roll, objective reasons for depriving individuals of the right to vote and effective exercise of the right for unconvicted detainees).

#### **The right to be elected**

246. The right to be elected is subject to varying conditions (such as age, submission of nominations, and payment of fees) that depend on the type of election (presidential, parliamentary, local) and which are set forth in the Constitution and domestic laws.

247. The successive reforms of the 1992 Electoral Act (in 2002 and 2010) have made it possible to remove certain restrictions on the right to be elected, such as membership of a political party (arts. 22–23). As a result of this process, there has been a broadening of the national political landscape, along with an increased diversity in candidacies with the appearance of independent candidates in presidential and parliamentary elections. Acts passed in 2005 on local elections (article 16 of the Act on the Statute of the City of Djibouti and article 22 of the Act on Decentralization and Regional Statutes) consolidated that progress, confirmed by the results of regional and municipal polls of 2006, in which numerous civil society candidates were elected councillors.

248. The 10-day period made available to submit nominations for candidates in presidential (art. 21) and parliamentary elections (art. 33) is reasonable and non-discriminatory. The Electoral Act also provides for the payment of a fee of DF 5 million by candidates for presidential elections (art. 23), which is, however, refunded to those who obtain more than 10 per cent of votes cast (art. 28), and a fee of DF 500,000 for candidates in parliamentary elections. Under the much simplified procedures for local elections, the nomination of candidates is confirmed simply by submitting an electoral list (article 16 of the Act on the Statute of the City of Djibouti and article 19 of the Act on Decentralization and Regional Statutes).

249. Articles 43 and 46 of the Constitution specify conflicts of interest between elected office and certain posts with regard to the exercise of presidential and parliamentary functions. The fact that it is no longer possible to combine offices in the executive branch (minister) with those in the legislature (member of Parliament) is a major innovation introduced under the recent constitutional review. Legislation ensures that measures designed to prevent conflicts of interest do not unduly restrict the right to be elected, by stipulating that civil servants who are elected to Parliament are temporarily relieved of their positions within 30 days of taking office (article 15 of the Electoral Act). The grounds and procedures for dismissal are established by law, based on reasonable criteria, and often arise from situations of incompatibility or unsuitability for election.

#### **Electoral monitoring, follow-up and possible remedies**

250. Government measures in this area have fostered the holding of periodic and fair elections, universal and equal suffrage, and the secret ballot. In that spirit, Djibouti allows the presence of national and international observers to monitor the regularity and fairness of elections.

251. In order to enhance the free expression of the will of the electorate, the 1992 Electoral Act has been gradually improved in the course of several elections. In 2002, amendments to articles 40 and 41 led to the establishment of the Independent National Electoral Commission, which supervises electoral activities at all national elections. Detailed information on the composition and specific mandate of this body, whose task is to ensure the transparency and regularity of elections, is contained in the common core document.

252. With regard to electoral disputes, the Act introduced an important innovation concerning the division between the constitutional and administrative jurisdictions. The Constitutional Council examines in sole instance complaints related to referendums and to presidential and parliamentary elections. The Supreme Court rules in cassation on breaches of the Act and the Administrative Court tries in sole instance all complaints connected with municipal and regional elections.

253. Djibouti has thus progressively established the basic principles required to fully guarantee citizens their right to participate in public affairs in the course of the various elections held since it signed the Covenant (presidential elections of 2005 and 2011, parliamentary elections of 2003 and 2008, and regional elections of 2006).

#### **Access to the civil service**

254. The General Civil Service Regulations Act specifies the conditions that must be met for employment in the civil service. In addition to Djiboutian nationality, the required qualifications and age limits, it stipulates that a competitive recruitment process must be organized for entry-level positions in order to ensure equal opportunity of access to civil service employment. The Administrative Court deals with breaches by the Administration that undermine the principle of equality.

## **Article 26**

### **Equality before the law**

255. In Djibouti, equality and its corollary, non-discrimination, is a principle that, broadly speaking, admits no derogation.

#### **Punishment of discrimination**

256. Non-discrimination is in fact enshrined in the Constitution, article 10 of which states that all human beings are equal before the law.

257. Under the law — specifically, article 390 of the Criminal Code — the scope of the term discrimination is defined as “any distinction between natural persons on grounds of origin, sex, family status, health, disability, customs, political opinions, trade union activities, or real or supposed membership or non-membership of a particular ethnic group, nation, race or religion.

258. “Any distinction between legal persons on grounds of the origin, sex, family status, health, disability, customs, political opinions, trade union activities, and the real or supposed membership or non-membership of a particular ethnic group, nation, race or religion of some or all members of these legal persons also constitutes discrimination.”

259. Following on from that definition, articles 391 and 392 of the Code set forth the penalties incurred by individuals convicted of such offences.

#### **Assurance of the enjoyment of these rights**

260. In addition to the penalties envisaged for non-compliance with the principles set forth in the Constitution and Criminal Code, Djibouti has put in place a special mechanism, as part of the recently reorganized legal aid system, for people whose ability to exercise their rights would otherwise be compromised by their economic situation.

## **Article 27**

### **Rights of minorities**

261. Since achieving national sovereignty, Djibouti has initiated various legal measures and practices to protect the rights set forth in article 27 of the Covenant.

262. Under article 3 of the Constitution, State institutions are responsible for ensuring that the people as a whole, and not any one sector of the population, exercise national sovereignty. They must also ensure that individual and collective rights, such as freedom of association and religion, which are guaranteed under the Constitution, may effectively be exercised by citizens and those persons directly concerned.

263. The recognition of national languages, which has been a Government priority since independence, has been gradually strengthened through additional positive measures aimed at stabilizing their status. Djibouti’s public radio and television corporation has always assigned daily airtime to information programmes in the national languages and to the popularization of the cultural and artistic heritage of the country’s various communities. Radio broadcasts in local languages are today available on the FM band throughout the day.

264. Language policy is regarded by the State not only as essential for the individual and collective development of Djibouti’s national communities, but also as a prerequisite for Djibouti’s development as a nation and hence as a country. In this context, the State-backed Somali-Speaking Pen and Afar-Speaking Pen associations support all activities to promote knowledge of these languages, as well as their respective cultures and writings (including

literary and historical programmes in the media, and the publication and exhibition of books).

265. The Djibouti Languages Institute, which is part of the Djibouti Study and Research Centre, is also involved in implementing the language policy by organizing discussions on, and standardizing and modernizing, the national languages and thereby promoting Djiboutian culture in all its diversity through:

- The collection of existing documents;
- The publication of scientific literature (including oral literature, dictionaries and journals);
- The organization of symposiums to standardize expressions most commonly used by the media in the Somali and Afar languages;
- Participation in research on the teaching of national languages in Djibouti.

266. In the framework of educational reforms launched in 2000, efforts to modernize the school system and make it more responsive to its sociolinguistic environment have been reflected in the development of curricula and the publication of textbooks on the national languages in basic education. Literacy in local languages has become more widespread in communities and been accompanied by increased awareness and social mobility, as demonstrated by many projects.

267. The establishment of the Djibouti Arts Institute in 2003 is part of this commitment to ensure the lasting promotion and development of culture through specific public policies. This initiative should foster a greater appreciation of the national cultural heritage and growing professional competence in the area of culture through technical training and practice in arts-related careers (music, drama and the visual arts). Through its various activities, this institute has also fostered the social integration of young people, creativity and national artistic productivity, and undoubtedly strengthened the cultural identity of the peoples of Djibouti and the Horn of Africa.

268. Members of foreign minorities are free to use their national language in education, religion, and artistic and cultural activities. They can access public or private services in their own languages with the assistance of interpreters.

---