



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the initial report of Djibouti\*

1. The Committee considered the initial report of Djibouti (CCPR/C/DJI/1) at its 3012th and 3013th meetings (CCPR/C/SR.3012 and 3013), held on 16 and 17 October 2013. At its 3030th meeting (CCPR/C/SR.3030), held on 29 October 2013, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of Djibouti, which was eight years overdue, and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's delegation on the measures that the State party has taken since the entry into force of the Covenant to implement its provisions. The Committee is grateful to the State party for its written replies (CCPR/C/DJI/Q/1/Add.1) to the Committee's list of issues (CCPR/C/DJI/Q/1), which were supplemented by oral responses provided by the delegation during the dialogue and additional information provided in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party since the entry into force of the Covenant in 2003:

- (a) The amendment to the Constitution in 2010 prohibiting the death penalty;
- (b) The enactment of Act No. 210/AN/07/5 L in 2007 combating trafficking in human beings;
- (c) The adoption in 2007 of Act No. 174/An/07/5 on the protection of persons living with HIV/AIDS;
- (d) The enactment in 2006 of the Labour Code;
- (e) The adoption of the National Strategy for the Integration of Women in Development 2003–2010; and
- (f) The adoption of the National Strategic Plan for Children for 2011–2015.

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\* Adopted by the Committee at its 109th session (14 October–1 November 2013).

4. The Committee notes with satisfaction that the State party acceded to the Covenant and the two Optional Protocols thereto on the same day. The Committee also welcomes the ratification of or accession to most of the core international human rights treaties by the State party, including the following instruments since the entry into force of the Covenant in 2003:

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

(b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto in 2012;

(c) The Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography in 2011; and

(d) The United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing it, in 2005.

### **C. Principal matters of concern and recommendations**

#### **Applicability of the Covenant in domestic courts**

5. The Committee takes note of article 37 of the Constitution regarding the precedence of international instruments ratified and promulgated by the State party over domestic laws, and some training sessions organized for judges and lawyers, including one on the Covenant. However, the Committee is concerned that none of the provisions of the Covenant has thus far been invoked (art. 2).

**In the light of the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the State party should ensure that all rights protected under the Covenant are given full effect in its domestic legal order. The State party should take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before and by domestic courts. The State party should include in its next periodic report examples of application of the Covenant by domestic courts. In this regard, it should take effective measures to widely disseminate the Covenant and the two Protocols thereto in Somali and Afar.**

#### **The National Human Rights Commission**

6. While taking note of steps taken by the State party to ensure that the National Human Rights Commission complies with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), including a draft law to be adopted by the Parliament, the Committee expresses its concern regarding the information that the Commission has limited financial and human capacities and has to date been perceived as a governmental body rather than an independent institution (art. 2).

**The State party should take steps to strengthen the de facto independence of the National Human Rights Commission. At the same time, it should expedite the adoption of the current legislative proposals to establish a national human rights institution in line with the Paris Principles, guaranteeing a broad human rights mandate, ensuring its full independence and providing the Commission with adequate financial and human resources. The Committee encourages the State party to**

**continue seeking the support and advice of the Office of the United Nations High Commissioner for Human Rights in this endeavour.**

#### **Non-discrimination and equality between men and women**

7. The Committee is concerned that, despite the adoption of the Family Code in 2002, a number of its provisions still discriminate against women. In addition, while welcoming the information provided by the State party that a committee was established to discuss and possibly harmonize interpretations of Sharia law with the Covenant, the Committee is concerned by the continuing inequality between men and women with regard to inheritance, marriage, divorce and other family matters. The Committee further reaffirms that polygamy violates the dignity of women and expresses its concern that it is still lawful in the State party (arts. 2, 3, 23 and 26).

**The State party should expedite the revision of the Family Code in order to repeal or amend provisions that are inconsistent with the Covenant, including those on polygamy. The State party should take appropriate measures to enhance and promote equality in view of the Committee's general comment No. 28 (2000) on the equality of rights between men and women. The State party should organize awareness-raising programmes and campaigns to change traditional attitudes detrimental to the enjoyment by women of their human rights, and to show the negative effects of polygamy on women. The Committee encourages the State party's current work on harmonizing interpretations of Sharia law with the Covenant.**

#### **Harmful traditional practices**

8. The Committee notes with regret the continuing reports of gender-based violence against women and harmful traditional practices, especially the practice of female genital mutilation. It is alarmed that the State party has confirmed that, despite numerous policy measures taken to enforce legislation that prohibits such mutilation, 93 per cent of women of childbearing age have undergone it. The Committee regrets that impunity for perpetrators of this unlawful and harmful practice still prevails (arts. 2, 3, 7 and 26).

**The State party should increase its efforts to end and eradicate such harmful practices as female genital mutilation through targeted awareness-raising and education programmes, as well as through the application of the criminal law.**

#### **Abortion**

9. The Committee expresses its concern about the general criminalization of abortion, except for therapeutic purposes. The Committee is concerned that no other exception is admitted even for cases of pregnancy resulting from rape or incest and that women who undergo abortion are criminalized and liable to imprisonment. The Committee is concerned that this may oblige pregnant women to seek clandestine and unsafe abortion services that endanger their life (arts. 6 and 17).

**The State party should amend its legislation on abortion and make provision for additional exceptions, including access to abortion services in cases of pregnancy resulting from rape or incest. The State party should also strengthen its awareness-raising and education programmes on contraceptive methods, family planning and reproductive health in order to help women and girls avoid unwanted pregnancies and not resort to illegal abortions that could put their lives at risk.**

**Domestic violence, including marital rape**

10. While taking note of measures taken by the State party to combat rape in general, the Committee regrets the lack of specific legislation prohibiting domestic violence and marital rape, and of reporting of cases of violence (arts. 3, 7 and 26).

**The State party should strengthen the legal framework for the protection of women against domestic violence by specifically criminalizing domestic violence, including marital rape. It should guarantee that cases of domestic violence and marital rape are thoroughly investigated and prosecuted. The State party should also ensure that law enforcement officials are provided with appropriate training to deal with domestic violence and sufficient, adequately resourced shelters are available. The State party should further organize awareness-raising campaigns for men and women on the adverse effects of violence against women on the enjoyment of their human rights.**

**Prohibition of torture and ill-treatment**

11. While noting the existence of human rights units to monitor any abuse by police officers, the Committee is concerned about continued reports of ill-treatment of detainees by law enforcement personnel. The Committee deeply regrets the lack of concrete measures taken by the State party to thoroughly investigate and prosecute alleged cases of torture and cruel, inhuman or degrading treatment and ill-treatment by law enforcement officials; it further regrets the lack of any subsequent rehabilitation and compensation offered to victims (arts. 7 and 10).

**The State party should ensure that allegations of torture and ill-treatment are thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated. The State party should establish an independent mechanism to carry out investigations of alleged misconduct by law enforcement officials. In this connection, the State party should also ensure that law enforcement officials continue to receive training on investigating torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) into all training programmes for them. The State party should indicate in its next periodic report the number of law enforcement officials trained and the impact of such training.**

**Freedoms of expression and of assembly and association**

12. The Committee expresses its concern about reports of widespread threats, harassment and intimidation by the police, security and military authorities of human rights defenders and journalists. The Committee regrets that this environment may have a negative impact on the number of human rights non-governmental organizations in the State party. The Committee also expresses concerns about the provisions of the 1999 Freedom of Communication Act, in particular restrictive registration requirements for newspapers, strict age and nationality requirements for press ownership and severe penalties for defamation, including imprisonment. The Committee is further concerned by the State party's failure to create a favourable environment for diverse media outlets and by information on the limited access to foreign radio broadcasts or websites (arts. 19, 21 and 22).

**The State party should:**

(a) Take appropriate measures to guarantee in law and in practice, and to create an environment conducive to, the exercise of the rights to freedom of expression, peaceful association and assembly;

(b) Revise its legislation to ensure that any restriction on press and media activities is in strict compliance with article 19, paragraph 3, of the Covenant. In particular, it should review the registration requirements for newspapers and abolish prison terms for defamation and similar media offences. It should expedite the functioning of the National Communication Commission and take all above-mentioned measures in line with article 19, paragraph 3, as further explained in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression;

(c) Release, rehabilitate and provide adequate judicial redress and compensation for journalists imprisoned in contravention of article 19 of the Covenant; and

(d) Give space to civil society organizations to promote their activities, and prosecute those who threaten, harass or intimidate such organizations and human rights defenders and journalists.

**Conditions of detention**

13. The Committee is concerned by the ongoing poor conditions of detention, in particular in Gabode prison, despite some measures taken by the State party to improve them. The Committee also regrets the lack of a confidential mechanism to receive complaints from detainees and monitor conditions of detention (arts. 9 and 10).

**The State party should strengthen its efforts to improve the living conditions and treatment of detainees and address overcrowding in line with the Standard Minimum Rules for the Treatment of Prisoners. The State party should establish a confidential mechanism for receiving and processing complaints lodged by detainees and include information thereon in its next periodic report, in addition to data on the prison population.**

**Corporal punishment**

14. The Committee expresses concern that corporal punishment is not explicitly prohibited in the State party. It expresses concern that it is tolerated in the home, where it is traditionally practised although unreported (arts. 7 and 24).

**The State party should take practical steps to put an end to corporal punishment of children in all settings, including in the home. It should encourage non-violent forms of discipline and conduct public information campaigns to raise awareness of the harmful effects of any form of violence against children.**

**Post-electoral violence**

15. The Committee is concerned about allegations of a number of human rights violations committed by the State security forces before and after the presidential elections in 2011 and legislative elections in 2013, in particular excessive use of force against, arbitrary arrest of and torture and ill-treatment of demonstrators. The Committee is further concerned by the lack of comprehensive information on investigations and prosecutions of those responsible (arts. 7 and 9).

**The State party should ensure that all allegations of serious human rights violations, including those regarding the 2011 and 2013 election-related demonstrations, are**

**adequately and impartially investigated, that the perpetrators are brought to justice and the victims adequately compensated. The State party should organize training sessions for its law enforcement officials to ensure they carry out their activities in accordance with human rights standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Pretrial detention**

16. While acknowledging progress made, the Committee expresses its concern regarding lengthy pretrial detention and the lack of specific information thereon. The Committee is concerned about the high number of persons held in pretrial detention and by the fact that pretrial detainees are not separated from convicted prisoners (arts. 9, 10, 14).

**The State party should enhance its efforts to ensure effective compliance with the rights protected under articles 9 and 14, paragraph 3 (c), of the Covenant. The State party should also encourage the implementation of alternatives to detention by courts taking into account the United Nations Standard Minimum Rules for Non-Custodial Measures and should take urgent measures regarding the situation of inmates who have been in pretrial detention for many years. It should further take appropriate action to ensure that convicted persons are not detained together with pretrial detainees.**

#### **Fair trial**

17. The Committee takes note of a number of measures taken to improve access to justice, including further recruitment of judges and the enactment of legislation on legal assistance. However, it expresses its concern about allegations of politically motivated prosecutions and about the harassment of defence lawyers (art. 14).

**The State party should take all necessary measures to ensure, in law and in practice, that all legal safeguards are afforded to all, including the right to be assisted by a lawyer. It should guarantee the independence of the judiciary.**

#### **Participation in public affairs**

18. The Committee expresses its concern about allegations that the State party has arrested, harassed and threatened opposition leaders, many of whom have been accused of “participation in illegal demonstration or in an insurrectionary movement” and imprisoned (arts. 9, 19, 21, 22 and 25).

**The State party should promote the right for all Djiboutian citizens to participate in public life and exercise their political rights without any intimidation or harassment.**

#### **Juvenile justice**

19. While taking note of a number of steps taken by the State party regarding its juvenile justice system, the Committee is nevertheless concerned by allegations of sexual violence against juvenile offenders in prisons, which have not been investigated or prosecuted. It also regrets the lack of information on measures taken by the State party to increase alternative sanctions for young people (arts. 7, 9, 10 and 24).

**The State party should strengthen the juvenile justice system with adequate financial and human resources. It should also ensure that juvenile offenders are separated from adults and promote alternative sanctions to imprisonment so that juvenile offenders are detained for as short a period of time as possible and only as a last resort. The State party should investigate and prosecute those responsible for sexual violence against juvenile detainees.**

## Refugees

20. The Committee, while welcoming the State party's generous admission of refugees and conscious of the enormous challenges the State party has been facing in terms of mixed migration flows, is concerned that the existing legislative framework insufficiently addresses the rights of refugees and that the excessive length of asylum procedures may put asylum seekers at risk of refoulement. While noting efforts undertaken by the State party, such as issuing birth certificates for children of refugees, the Committee is concerned about reported cases of sexual violence in refugee camps (arts. 2, 7, 24 and 26).

### **The State party should increase its ongoing efforts and:**

(a) **Enact comprehensive legislation guaranteeing efficient protection of refugees and asylum seekers;**

(b) **Strengthen the National Asylum Eligibility Commission and establish a fair and efficient refugee status determination process, including at the appeal level, to ensure that the principle of non-refoulement is strictly respected;**

(c) **Continue to issue a birth certificate to every newborn refugee child to protect refugee children and prevent statelessness; and**

(d) **Continue to strengthen mechanisms to prevent and prosecute sexual and gender-based violence, including by ensuring access to a confidential reporting mechanism and mobile courts.**

## Violence against children

21. The Committee expresses its concern that violence against children and sexual abuse are still prevalent in the State party (art. 24).

### **The State party should increase its efforts to combat violence and sexual abuse against children by:**

(a) **Strengthening its public awareness-raising campaign on these issues and providing detailed information on the work of the National Child Council in its next periodic report; and**

(b) **Prosecuting and sanctioning those responsible for violence and sexual abuse against children.**

## Trafficking

22. While appreciating the State party's efforts to enforce the Human Trafficking Act, the Committee is concerned that human trafficking is still being practised and regrets the lack of specific information on prosecutions and convictions of traffickers (art. 8).

**The State party should continue its ongoing efforts to provide training to law enforcement officials and border and other relevant personnel to apply the Human Trafficking Act. It should increase efforts aimed at ensuring that all perpetrators of human trafficking are brought to justice and the victims adequately compensated.**

23. The State party should widely disseminate the Covenant, the two Optional Protocols thereto, the text of the initial report, the written replies to the list of issues drawn up by the Committee, and the present concluding observations with a view to increasing awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests that the State party,

when preparing its second periodic report, broadly consult with civil society and non-governmental organizations.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 10, 11 and 12 above.

25. The Committee requests the State party, in its next periodic report, due by 1 November 2017, to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole.

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