



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

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Summary record (partial)* of the 1024th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 2 November 2011, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.10 a.m.

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

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

1. *At the invitation of the Chairperson, the delegation of Djibouti took places at the Committee table.*
2. **Mr. Hersi** (Djibouti) said that the State party's initial report had been compiled and drafted by a team composed of the National Human Rights Commission and an inter-ministerial committee established specifically for the purpose of drafting reports to treaty bodies. Input had been contributed by the authorities, civil society and the community at large. The State party regretted that the report had been submitted eight years after the due date of 2003, but thanks to the establishment of the inter-ministerial committee, delays in the submission of reports to various treaty bodies were now being rapidly reduced.
3. The promotion and protection of human rights in Djibouti had become a national priority since the adoption of the new Constitution in 1992 and the reorganization of the Ministry of Justice. The justice system had undergone thorough reforms and, since 2002, a series of international instruments had been ratified: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights and its two optional protocols; the International Covenant on Economic, Social and Cultural Rights; and the Rome Statute of the International Criminal Court. At the same time, work was being done to incorporate the provisions of the international instruments to which Djibouti was a party into domestic legislation. Under the Family Code, the practices of repudiation and early marriage were prohibited. The notions of the best interests of the child and freedom of opinion were taken into account by judges and the Labour Code prohibited children under the age of 16 from entering the workforce.
4. In addition to article 16 of the Constitution, which stated that "no one shall be subjected to torture or to inhuman, cruel, degrading or humiliating treatment or punishment", articles 314 et seq. of the Criminal Code provided for 15 years' imprisonment for the perpetrators of acts of torture, and up to 20 years when the victims were minors or other vulnerable persons. The State party acknowledged that it had yet to incorporate the definition of torture as provided for under article 1 of the Convention into its domestic legislation. The Government, however, planned to revise the 1995 Criminal Code with a view to bringing its provisions into line with international human rights treaties and incorporating the relevant definitions contained in those treaties.
5. The police, military police and judicial police all received training on combating torture. Similarly, prison staff received human rights training focusing on prison and criminal law. All police and prison personnel, as well as judicial staff, regularly attended human rights workshops organized by the Ministry of Justice, the National Human Rights Commission and the Office of the United Nations High Commissioner for Human Rights (OHCHR).
6. Corporal punishment was strictly prohibited in schools and teachers guilty of inflicting such punishment were systematically suspended from duty and prosecuted. The importance of human rights and the evils of torture were addressed in civic education courses for children. The Government had drafted a legal guide for victims of domestic violence, whether women or children. Female genital mutilation had been banned in 1995 but it continued to be a widespread practice. Nevertheless, awareness-raising campaigns such as one held in July 2011, in which 33 associations had declared an end to all forms of female genital mutilation, were beginning to bear fruit and the practice was diminishing, especially in the cities.

7. An institutional framework, the centrepiece of which was the justice system, had been put in place to prevent and combat torture. The Ombudsman, National Human Rights Commission and the advice and guidance unit were among the key institutions working to combat torture. The presumption of innocence, right to a second hearing, principle of adversarial proceedings and public nature of hearings formed the basis of the justice system in Djibouti.
8. Criminal proceedings against a person had to be dropped if he or she was held in remand for longer than 48 hours. Otherwise, after that period, the person held could be released or, by court order only, placed in pretrial detention, at which point the detainee was entitled to request a medical examination. All detainees were entitled to legal representation, access to medical care and visits by family members throughout proceedings. Recently enacted legislation guaranteed the right to legal aid of those persons who could otherwise not afford legal representation. Persons in pretrial detention were kept apart from convicts. Women and minors were also kept apart from other categories of prisoners. All the rights of detainees except the freedom of movement were guaranteed. Complaint mechanisms were available to detainees and regular prison inspections were carried out by local and international organizations.
9. Extradition was possible only by court order and requests for extradition by States where the fundamental rights of the person to be extradited were not guaranteed had to be refused. Finally, the decision to abolish the death penalty in 1995 had been confirmed by the State party's ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and by amendments to the Constitution made in 2010.
10. **Mr. Bruni** (Country Rapporteur) welcomed the State party's initial report, which had been drafted on the basis of consultations with a broad range of stakeholders, including civil society, but noted that it had been submitted extremely late. The State party had cited the establishment in 2008 of the National Human Rights Commission as evidence of its commitment to implementing the provisions of the Convention, but it would be useful to know more about the membership of the Commission, how its members were appointed, what funding was made available to it and the guarantees in place to ensure its independence.
11. He urged the State party to incorporate a definition of torture in line with article 1 of the Convention into its legislation as soon as possible. It was to be hoped that plans for the revision of the Criminal Code would include the incorporation of such a definition. Would the delegation be prepared to make a commitment in that regard? He would also like to know more about the process of reform of the Criminal Code envisaged by the State party, when it might begin and how long it might take.
12. Referring to paragraph 18 of the State party's report (CAT/C/DJI/1), he asked whether the Convention could be invoked before the courts and serve as a legal basis for decisions by judges, given the absence of a specific definition of torture or appropriate criminal provisions in Djibouti's legislation. This was important because, although the State party claimed that victims of torture were entitled to redress and fair compensation, it was difficult to see how that right could be applied in practice without a legal definition of torture. He also wished to know why Djibouti courts had only rarely awarded compensation to torture victims and asked the delegation to furnish examples of such cases.
13. Turning to article 2 of the Convention, he welcomed the fact that lawyers were involved at all stages of judicial proceedings, but would like to know exactly when the right to legal representation began. With regard to paragraph 75 of the State party's initial report, he asked under what legislation an authority could order homicide or assault and battery. Perhaps the paragraph was poorly drafted. Would the authority in question really be exempt

from prosecution after ordering a crime to be committed? He asked how a subordinate ordered to commit acts violating the Convention could succeed in refusing to obey those orders. In view of the statement in paragraph 84 of the State party's report that many abuses were committed as a result of ignorance or misunderstanding of rules, he asked how many such cases had been identified in the last three years and requested specific examples, including any action taken against the perpetrators. In a State governed by the rule of law, ignorance of the law could be no defence.

14. He sought further information on visits by the National Human Rights Commission to places of detention, including its latest reports and recommendations, and any changes that had occurred as a result. Under the Convention, the Government was obliged to ensure that all allegations of torture were investigated, and he asked whether the delegation could provide specific examples of investigations that had resulted from reports submitted by the National Human Rights Commission. The Government had declared its intention to improve the appalling conditions in Gabode prison, and he enquired about the current situation in that regard. He also requested figures for the capacity and current occupancy of Gabode and other prisons and places of detention, including police custody facilities.

15. He asked whether the prosecuting authorities had recently received any complaints of torture. Certain worrying allegations had been brought to the Committee's attention, including the cases of Mohamed Ahmed, known as Jabha, and Mohamed al-Asad, a Yemeni national. He asked whether they had been investigated and what the current situation might be. Further allegations concerned the arrest of some 300 people following anti-government protests in February 2011; some of those arrested were alleged to have been tortured by police. He asked the delegation to respond to those allegations.

16. On article 3 of the Convention, he asked which authority had responsibility for deciding to deport a person, once it had been ascertained that there would be no risk of torture in the destination country. He requested information on the exact legal provisions giving effect to paragraph 1 of article 3, along with specific examples of their application in practice, particularly in view of a communication sent to the State party by the Human Rights Council's Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning two Ethiopian military pilots, who had sought protection in Djibouti but had been refused and returned to their country, where they had allegedly been tortured. According to the Special Rapporteur's communication, the authorities in Djibouti had maintained that the pilots had returned voluntarily, which had been denied by their families. No reply had been received by the Special Rapporteur, and he requested the delegation to explain the case.

17. The fact that torture was not defined as a specific criminal offence in the State party's legislation, despite being effectively prohibited by various provisions of the Constitution and the Criminal Code, contradicted article 4 of the Convention. He enquired about the specific penalties that apparently existed for acts of torture and whether they had been applied nevertheless; he also requested recent examples of the impunity referred to in paragraph 90 of the State party's report and information on any measures taken to combat it. What other factors contributed to impunity, and could examples be given? He asked whether the Government planned to take measures to address the fact that the training on human rights given to national police personnel did not expressly include the provision of information on the prohibition of torture. Those authorized to use legitimate force in the course of their duties must be aware of the acceptable limits that applied.

18. He sought clarification as to how, in the absence of a definition of torture and specific related offence in its criminal legislation, the State party intended to identify and prosecute the perpetrators of acts of torture. Could the Convention be applied directly? Furthermore, could it serve as a legal basis in extradition cases under article 8 where no bilateral extradition treaty existed?

19. He welcomed and endorsed the conclusions drawn in the State party's report, which gave the Committee scope for a range of recommendations. He hoped that the Committee's conclusions would be taken into account in forthcoming reforms.

20. **Mr. Grossman** (Alternate Country Rapporteur) expressed appreciation for the State party's frank initial report and welcomed the various reforms undertaken so far, particularly the abolition of the death penalty. On a general note, he asked whether the Government was considering ratification of the Optional Protocol to the Convention, and whether the constitutional prohibition of torture implied a non-derogable right.

21. Referring to the section of the State party's report on article 10 of the Convention, he requested further information on how training on human rights for officials was structured, particularly in view of the lack of a specific definition of torture in the country's legislation. Basing training on case studies often proved effective. He asked whether training involved civil society, given the vast expertise available there on which to draw; how widespread training programmes were; whether successful completion of training was required for promotion, for instance within the civil service; and whether tools existed to evaluate and improve training. With regard to training medical personnel to recognize injuries caused by torture or ill-treatment, he asked whether the Istanbul Protocol was incorporated into education programmes. Welcoming the apparent decrease in torture in the State party, he invited the delegation to share their views on how it had been achieved, as such information was of potential benefit to other States parties, and he observed that even more progress might be made with new methods and tools. He asked whether the Government planned to extend human rights training to military officers, given that already vulnerable groups became more exposed to the risk of torture or ill-treatment in conflict situations, for example through the use of rape as a weapon of war. The standards laid down in the Convention and other instruments of humanitarian law could be incorporated into such training.

22. With regard to article 11 of the Convention, he enquired about the wording of the provisions of the Code of Criminal Procedure that regulated police custody. According to paragraph 149 of the report, article 65 of the Code stipulated that criminal investigation officers must always indicate on the statement given by persons held in police custody the date and time when they were placed in custody and the date and time when they were released or brought before the competent judge. He asked whether investigators and prosecutors complied with that requirement in practice. The report also stated that the Attorney General and the public prosecutor directly monitored and supervised the actions of the national police and the military police, particularly with regard to police custody. Had any police officers been disciplined as a result of such monitoring?

23. As the State party had admitted that prison conditions in Djibouti were generally substandard, he asked whether there were any plans to remedy the situation, since such an environment was conducive to inhuman treatment. Was there a task force, for instance, to assess the need for reforms and had any budgetary funds been earmarked for building new prisons?

24. In a recent report to the General Assembly, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had severely criticized the practice of solitary confinement. He enquired about the rules governing solitary confinement in Djibouti.

25. With regard to article 12 of the Convention concerning investigations of alleged acts of torture, the report stated that when the relevant authorities received a complaint of torture, they invited the parties to appear before them with a view to reaching an amicable settlement of the case. Yet amicable settlements were unacceptable under such

circumstances and allegations of torture needed to be investigated and prosecuted. Any settlement between the parties that precluded prosecution would breach the Convention.

26. According to the State party, anyone, regardless of nationality, had the right to complain to the competent authorities. He asked which provision of Djiboutian law enshrined that right and whether prosecutors were required to apply special criteria when considering allegations. Had any complaints alleging excessive use of force by the authorities been filed and, if so, had the offenders been prosecuted and the victims awarded compensation?

27. The Committee was drafting a general comment on article 14 of the Convention concerning victims' right to redress and would hold a public hearing during the third week of the session, at which all stakeholders could express their views. The Committee would be interested to hear about the legal basis for obtaining redress for acts of ill-treatment under Djiboutian law, especially since there was no specific provision criminalizing torture.

28. With regard to article 15 of the Convention, he noted that, according to paragraph 199 of the report, judges had considerable discretion in determining whether a statement had been obtained as a result of torture and was admissible as evidence. The Convention stipulated that no statement obtained through the use of torture was admissible. The exercise of discretion in such matters by national authorities was therefore prohibited. Any provisions of Djiboutian law that permitted judges to exercise discretion should therefore be amended. He asked whether there had been any cases in which evidence extracted under torture had been accepted.

29. According to paragraph 201 of the report, Djibouti's courts had on several occasions ruled as invalid procedures and evidence obtained under torture that had left a visible or recognizable mark. The existence of such marks should not be a prerequisite for ruling that evidence obtained under torture was invalid.

30. Turning to article 16 of the Convention, he referred to a report by the NGO Global Initiative to End All Corporal Punishment of Children, according to which 72 per cent of children aged between 2 and 14 years had experienced violent forms of discipline in Djibouti during the period 2005–2006 and more than one child in five had experienced severe physical punishment. He asked what measures were being adopted to increase training aimed at preventing corporal punishment of children, including in the home.

31. The delegation had stressed the importance attached to resolute action against human trafficking. The Committee had received reports to the effect that Djibouti was a transit, source and destination country for men, women and child victims of forced labour and sex trafficking, and that the refugee population was particularly vulnerable. In light of that situation, he asked whether the State party was contemplating extraordinary measures to fight what was, in effect, a form of slavery.

32. The Committee had been informed that over 90 per cent of Djiboutian females had been subjected to female genital mutilation. He therefore welcomed the delegation's comments on the State party's action to end the practice and requested further information on existing and planned educational measures.

33. He asked whether Djibouti intended to ratify the Convention on the Rights of Persons with Disabilities. Noting that the crime of rape was punishable with up to 20 years' imprisonment, he asked whether the law was effectively enforced and how many offenders had been imprisoned for rape. As there was no legal provision concerning marital rape, he wished to know how such cases were dealt with. It was also important to adopt educational measures concerning domestic violence.

34. **Mr. Mariño Menéndez**, referring to article 3 of the Convention concerning non-refoulement, noted that the State party had not yet enacted legislation concerning refugees

and asylum-seekers but that it was working on a legal text. He asked what stage had been reached in the drafting process. Djibouti had ratified the Convention relating to the Status of Refugees. Had it also ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa? While Djibouti was quite willing to admit refugees from Somalia, it was apparently reluctant to grant refugee status to Eritrean and Ethiopian nationals. The Committee had been informed that the National Commission on Eligibility for Refugee Status was not functioning properly, so that refugees, especially from Eritrea and Ethiopia, frequently remained for long periods in an irregular legal situation and were at risk of being expelled owing to the lack of legislation. He recommended that the legislation that was being drafted should cover not only refugees and asylum-seekers but also the admission and residence of foreigners in general. He further recommended that the State party should ratify the Convention relating to the Status of Stateless Persons.

35. Turning to the question of the independence of the judiciary, he asked how judges were appointed, especially to the appeal courts and the Supreme Court. Did they have a specific term of office and were they removable? Pretrial detention in Djibouti could apparently last for more than a year, which seemed like an excessively long period. He asked whether any measures were being taken to remedy the situation. Noting that all persons were entitled to legal assistance, he asked how the legal profession was regulated and whether membership of a bar association was required.

36. **Mr. Gaye**, referring to paragraph 30 of the report, noted that domestic case law in Djibouti was based on authoritative decisions handed down by the Supreme Court on issues such as the presence of legal counsel at all stages of a judicial proceeding, the invalidity of any proceeding in which torture had been used and police custody. The Court's decisions were currently being compiled for inclusion in a compendium that would be universally accessible. He was somewhat puzzled by the State party's adoption of a case-law approach, since the issues in question were normally regulated by legislation in civil-law jurisdictions.

37. He joined other Committee members in lamenting the fact that Djiboutian legislation contained no definition of torture. Paragraph 54 of the report listed possible remedies for victims of torture, i.e. remedies before the Constitutional Council and the courts, administrative remedies and remedies before human rights bodies. He enquired about the ultimate aim of such procedures.

38. According to paragraph 98 of the report, any foreign national could be prosecuted and tried by the Djiboutian courts under article 537 of the Code of Criminal Procedure for offences committed outside the national territory, if he was arrested in Djibouti or the Government had obtained his extradition. The State party thus seemed to have opted for a system of universal jurisdiction applicable to all categories of offences. He asked whether that was the case.

39. With regard to the requirement under article 65 of the Code of Criminal Procedure that criminal investigation officers should indicate dates and times on the statement given by persons held in police custody, he asked whether a formal register of such persons was also maintained.

40. **Ms. Gaer** said that the State party's report was extremely thorough, detailed and frank. She requested clarification on paragraph 80 of the core document regarding the independence of judges, as the document stated that the President was the guarantor of that independence and that the Supreme Council of Justice, of which the President was the head, provided assistance in that regard, thus making it unclear how that independence was ensured.

41. With regard to the jurisdiction of the traditional courts, she enquired whether those courts handled cases of violence against women and early marriage, or whether those matters were dealt with by the regular courts. Noting that the Committee on the Rights of

the Child had expressed concern that no cases of female genital mutilation had been prosecuted since the practice had been made illegal, she asked whether that was still the case and, if there had been cases of prosecution for female genital mutilation, whether the cases were handled by traditional or regular courts, and whether sentences had been handed down.

42. She expressed concern that, in cases of rape, it appeared that there was more focus reconciling victims and perpetrators than on punishing the perpetrators for their crime and providing assistance to victims. More information on that issue was required. Noting that a high proportion of persons held in Gabode prison had yet to be convicted for their alleged offences, she asked for more information on the proportion of inmates charged with sexual assault and rape that were awaiting trial as opposed to those already convicted.

43. She welcomed the inclusion in the report of references to reports from NGOs that prison conditions were extremely poor and that prisoners were often subjected to torture, and asked whether any investigations had been launched into those alleged acts of torture, and, if so, whether the perpetrators had been punished. She would also be interested in discussing possible mechanisms with the State party to ensure that those accused of performing acts of torture were prosecuted accordingly.

44. **Ms. Belmir**, referring to the constitutional provision regarding international agreements and domestic law, said that she understood that international human rights instruments had a unilateral aspect, meaning that it was not possible to link one State party's adherence to such instruments to adherence by another State party. She therefore requested clarification on that provision.

45. While welcoming the progress made in the area of the judicial system, she stressed the importance of strengthening the system further and requested information on the nominations process for judges to high office. Noting that the report stated that members of the military could not be tried by the regular courts except in certain circumstances, she enquired whether there was a military justice system in place and whether civilians could be tried by any such military courts.

46. On the issue of migration, she drew attention to article 18 of the Constitution, which afforded the full protection of the law for regular migrants, and asked whether irregular migrants enjoyed the same protection. With regard to extradition, she requested information on the lack of legislation governing the decision-making procedure for extradition, and on the steps the State party planned to take in order to rectify that issue.

47. She expressed concern that paragraph 149 of the State party report appeared to suggest that any person present at the scene of a crime, whether they were suspected of being the perpetrator or not, could be held in custody for up to 24 hours if they were in a position to provide information about what had happened, and asked for clarification of that issue.

48. Lastly, she stressed that there should be a separate justice system for minors, and expressed concern that since no such system existed, minors could be incarcerated in adult prisons from the age of 13.

49. **Mr. Wang Xuexian** asked whether the sentence of 20 years of imprisonment for torture of a minor was implemented. Recognizing that Djibouti hosted a large number of refugees and migrants, he echoed the comment made by Mr. Mariño Menéndez regarding the need for an aliens act, which should have separate provisions for asylum-seekers. Concerning the high prevalence of female refugees under the age of 17, he asked whether, when seeking asylum, those refugees were given equal opportunities to present their request regardless of whether they were travelling alone or as a part of a family unit.

50. **Ms. Sveaass** said that the report contained very little specific information on persons suffering from mental disabilities and mental health institutions and that more information on the legal safeguards that applied to persons with mental disabilities, particularly those who were kept in mental institutions involuntarily, would be useful. In addition, she requested information on any forms of traditional practices used on persons with mental disabilities that could constitute ill-treatment. With regard to the intention to increase the number of qualified psychiatrists in the country, she asked whether there was a school of medicine specifically for training psychiatrists or whether they came under the Faculty of Medicine as a whole. In addition, she wished to know more about the procedure followed by doctors and other health professionals when they detected possible cases of torture in patients, and, in particular, where their reports were sent.

51. **Ms. Kleopas**, echoing the sentiments expressed by other Committee members, welcomed the comprehensiveness of the State party's report and said that the acknowledgement by Djibouti of the outstanding issues with regard to torture was an important step towards improving the human rights of its citizens.

52. **Mr. Hersi** (Djibouti), expressing sincere appreciation for the comments of Committee members, said his delegation would endeavour to answer the questions they had asked as fully as possible so as to continue the process of constructive dialogue. Noting the recommendations of the Committee, he said that the opportunity to draw on the experience of members to hear external opinions on the human rights situation in Djibouti had been extremely useful and that the recommendations and comments would be passed on to decision makers.

The discussion covered in the summary record ended at 12.10 p.m.