



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

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Committee against Torture

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

Initial reports of States parties due in 2003

Djibouti*

[21 July 2010]

* The annexes to the present report may be consulted in the files of the Secretariat.

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List of abbreviations

National Employment, Training and Job Placement Agency	ANEFIP
Amnesty International	AI
Association for the Defence of Human Rights and Freedoms	ADDHL
Intergovernmental Authority on Development	IGAD
National Social Security Fund	CNSS
African Charter on Human and Peoples' Rights	ACHPR
Code of Criminal Procedure	CPP
Criminal Code	CP
Independent National Election Commission	CENI
National Human Rights Commission	CNDH
Common core document	CCD
Universal Periodic Review	UPR
International Federation for Human Rights	FIDH
International Monetary Fund	IMF
Front pour la restauration de l'unité et de la démocratie	FRUD
High Commissioner for Human Rights	HCHR
National Social Development Initiative	INDS
Ministry of Justice with responsibility for human rights	MJDH
Officiers de police judiciaire (criminal investigation police officers)	OPJ
Gross domestic product	GDP
National Union of Djiboutian Women	UNFD

I. General introduction

A. Territory and population

1. The Republic of Djibouti is located in the eastern part of the Horn of Africa, overlooking the Bab al-Mandab strait, which links the Red Sea to the Gulf of Aden and the Indian Ocean. It has an area of 23,200 sq. km and is bordered by Eritrea to the north (109 km border), Ethiopia to the west and south (349 km border), Somalia to the south-east (58 km border) and the Red Sea to the east, forming a long maritime border.

Relief and climate

2. Djibouti's relief consists mainly of plains and plateaux. From the country's northern regions downwards, it comprises the Mabla mountain range, whose highest peak is 1,700 m, and the Goda mountain range, whose highest peak is 1,850 m. Mount Moussa Ali, at 2,010 m, is the country's highest mountain. The climate is harsh, characterized by very low, irregular rainfall and high temperatures, resulting in recurrent droughts and high humidity.

Population

3. The Republic of Djibouti currently has an estimated population of over 632,000 inhabitants, of whom more than 53 per cent are under 20 years of age. More than two thirds of the population live in the capital and the surrounding urban area. More than half the population are women. The country is divided into five administrative regions: Tadjoura, Obock, Ali Sabieh, Dikhil and Arta. The capital, Djibouti City, has special status and is divided into three municipal districts (Ras-Dika, Boulaos and Balbala). The country's population comprises two main ethnic groups (the Afars and the Somalis) and an ethnic Arab minority. Afar and Somali are the languages spoken in Djibouti, while the official languages are French and Arabic. There are also many foreigners from neighbouring countries, who often form communities integrated with the local population.

B. Political and socio-economic context

Political context

4. The Republic of Djibouti gained its independence on 27 June 1977 and re-established parliamentary democracy based on the principle of the separation of powers (executive, legislative and judicial) and with a presidential regime headed since 1999 by His Excellency Mr. Ismael Omar Guelleh.

5. After more than 15 years under a single-party system, Djibouti's current democratic system attests to the smooth functioning of the institutions put in place following the adoption by referendum of the new Constitution of 4 September 1992. This Constitution triggered far-reaching changes in the country's socio-political and legal landscape, the effects of which were felt immediately with the repeal or amendment of most of the laws that breached fundamental human rights and freedoms.

6. As part of the process of political liberalization, pluralistic elections —legislative elections in late 1992 and presidential elections in 1993— were held pursuant to the 1992 Organization Act on political parties. The Act instituted a multi-party system, limited to four political parties for a 10-year transitional period and unlimited since 2002. A further

Organization Act on elections and conditions for the election of members of parliament and the President of the Republic was also adopted in 1992.

7. This process of change culminated in 1999, when the Republic of Djibouti embarked on a far-ranging policy of institutionalization of human rights. The Ministry of Justice and Penitentiary Affairs became the Ministry of Justice with responsibility for human rights, with new departments and a plan of action instituting an ambitious programme for the promotion and protection of human rights. Its aims include promoting human rights and public freedoms so that the country's citizens endorse them and ensuring that the public administration respects them.

8. A Ministry for the Advancement of Women was also established, followed immediately by a law introducing a 10-per-cent quota for women candidates in legislative elections and the simultaneous appointment of women to head two ministries: the Ministry for the Advancement of Women and the Ministry of Youth, Sport and Tourism.

Socio-economic context

9. After the adoption of the 1992 Constitution, Djibouti embraced economic liberalism. The structural adjustment programme to which it agreed in 1996 following a painful civil war triggered a social crisis and an unprecedented rise in poverty in the country. The programme's impact was especially disastrous for the most vulnerable groups, substantially increasing the number of people living in extreme poverty and widening the equality gap between those living in and around urban areas and those living in rural areas, who were very hard hit. Faced with this worrying development, the authorities sought to reverse the trend by embarking resolutely on a poverty-reduction policy designed to ensure the implementation of the fundamental human rights guaranteed by the Constitution.

10. Action to combat extreme poverty and exclusion has thus become the cornerstone of government policy. It is implemented through the National Social Development Initiative (INDS), launched by a new Ministry of Solidarity that has been allocated a special budget for its policy needs. Two priority strategic guidelines have been put into effect, aimed at human resources development and universalized access to basic social services, but also at the promotion of harmonious, balanced local development. The action taken should permit the effective enjoyment of such socio-economic rights as the right to education, health, employment and access to water and energy, as well as the building of suitable infrastructure (roads, drilled wells, dams or barrages).

11. The economic growth recorded in recent years —over 57 per cent of gross domestic product (GDP)— seems conclusive. Agriculture and the policy of ensuring food security by locating arable land abroad should offset the low rate of domestic agricultural production caused by very poor climatic conditions. According to the International Monetary Fund (IMF), per capita GDP was US\$ 1,216 in 2008. According to a report by the Central Bank of Djibouti, the primary sector contributes 3.6 per cent to GDP formation, while the secondary sector contributes 16.8 per cent and the tertiary sector 79.6 per cent.

C. Provisions of the Constitution and consequences

12. Djibouti's 1992 Constitution clearly and unambiguously proclaims fundamental human rights and freedoms. Since 1992, the promotion and protection of human rights has been pursued in a context of pluralist democracy, the rule of law and decentralization. The 15 September 1992 Constitution in force in Djibouti actually gives a prominent place to human rights and freedoms. In the preamble, Djibouti endorses the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights (Banjul Charter)

and undertakes to ensure the full development of individual and collective rights and freedoms, as well as the harmonious development of the national community.

13. In endorsing the Universal Declaration and the Banjul Charter, the preamble to the Constitution gives these two instruments constitutional rank.

National

14. Title II of the 15 September 1992 Constitution is devoted entirely to the rights and duties of the person. The rights and freedoms recognized therein include the following:

- Equality before the law without distinction on grounds of language, race, sex or religion;
- The right to life, liberty, security and integrity of person, legality of prosecution and the presumption of innocence;
- The right to legal counsel and a doctor in the event of arrest;
- Prohibition of detention without an order from a judge (art. 10);
- The right to freedom of thought, conscience, religion, worship and opinion (art. 11);
- The right to own property and the inviolability of the home;
- Confidentiality of correspondence; freedom of movement;
- Freedom of expression, freedom of association and trade union rights, the right to strike (art. 15);
- The prohibition of torture and cruel, inhuman, degrading or humiliating treatment (art. 16).

15. To implement these human rights and fundamental freedoms, the Constitution of Djibouti empowered the legislature to establish the conditions for their enjoyment and the procedures for their implementation. To this end, the following key legal texts were adopted:

- (a) Right to life and to security and integrity of person
 - Act No. 59/AN/94 of 5 January 1995 promulgating the Criminal Code, which defines and punishes violations of freedom, crimes and offences against persons, in particular, homicide, assault and battery and duress, and illegal arrest or confinement;
 - Act No. 60/AN/94 of 5 January 1995 promulgating the Code of Criminal Procedure.
- (b) Right to personal status
 - Act No. 79/AN/04/5 promulgating the Nationality Code;
 - Act No. 152/AN/02/4 of 31 January 2002 promulgating the Family Code.
- (c) Prohibition of slavery, servitude and torture
 - The Criminal Code and the Labour Code, which prohibit slavery and all similar practices;
 - The Criminal Code, which punishes acts of torture, barbarity and violence leading to mutilation, amputation or any other impairment resulting in permanent disability, in particular mutilation;
 - Act No. 210/AN/07/5 on combating human trafficking;

- Act regulating the national police, which prohibits officers from perpetrating torture or cruel, inhuman, degrading or humiliating treatment.
- (d) Freedom of thought, conscience, religion, opinion and expression
 - Organization Act No. 2/AN/92 of 15 September 1992 on freedom of communication.
- (e) Freedom of assembly, association, procession and demonstration
 - The Associations Act of 1 July 1901;
 - Organization Act No. 01/AN/92 of 23 September 1992 on political parties.
- (f) Right to take part in the conduct of public affairs and to elect leaders
 - Organization Act No. 1/AN/92 of 21 October 1992 promulgating the Elections Act, which sets out the conditions for elections, eligibility and ineligibility, the rules for the organization of elections and various remedies.
- (g) Right to work, rest and social security, and trade union rights
 - Act of January 2006 promulgating the Labour Code, which recognizes the right of every citizen to work, to rest and to training and categorically prohibits forced or compulsory labour. It also recognizes the right of every worker to belong to a trade union of his choosing and the right to strike;
 - Act No. 203/AN/07/5 establishing the National Employment, Training and Job Placement Agency (ANEFIP);
 - Act No. 3/AN/92/2 governing civil service pensions;
 - Act No. 137/AN/90/2 of 22 January 1991 governing the retirement of members of parliament;
 - Act No. 137/AN/90/2 of 22 January 1991 governing military pensions;
 - Act No. 137/AN/90/2 of 22 January 1991 governing disability pensions;
 - Act No. 212/AN/07/5 establishing the National Social Security Fund (CNSS);
 - Act No. 151/AN/02 creating the National Social Security Council;
 - Act No. 154/AN/02, Act No. 155/AN/02 revising contribution methods and the acquisition of pension rights.
- (h) Right to education and health
 - 1999 Act on the Djibouti education system;
 - First Plan of Action for Education (1999-2005);
 - Second Plan of Action for Education (2006-2008);
 - Third Plan of Action for Education (2009-2010);
 - Framework Act on health policy of July 1999;
 - Strategic Plan for Health Development (2001-2011);
 - Plan of Action (2008-2012).

16. Furthermore, the Republic of Djibouti has adopted general policies for the advancement and protection of women and children, the development of education, health and justice, and poverty eradication.

17. Djibouti's tradition of proclaiming rights and freedoms in the Constitution has, from the outset, been underpinned by its ratification of the main international and regional human rights instruments.

18. As with other treaties ratified by Djibouti, these instruments prevail over domestic law as soon as they are published. In this connection, the Republic of Djibouti has ratified the core international legal instruments.

D. Institutional human rights framework

19. Each of the institutions provided for by the Constitution plays a direct or indirect role, depending on the extent of its involvement, in the promotion and protection of human rights. These institutions are: the Presidency of the Republic, the Government, the National Assembly, the Supreme Court, the Constitutional Council and the High Court.

20. Of these institutions, those that play a direct role in the promotion and protection of human rights are the Government, the National Assembly, the Supreme Court and the Constitutional Council.

Judicial institutions

Supreme Court and other courts and tribunals

21. Under article 71 of the Constitution, the judiciary is independent of the executive and legislative branches. Judicial authority is exercised by the Supreme Court and the other courts and tribunals, which ensure respect for the rights and freedoms defined in the Constitution.

22. As judicial authority is vested in judges and magistrates, it is they who are primarily responsible for the effective protection of those rights. Rights are subject to judicial protection throughout the national territory, principally through ordinary and administrative courts. The right of any person to bring a claim before these courts is formally recognized and subject only to limitations concerning legal capacity, time limits for entering appeals and interest in legal action.

23. The courts and tribunals are organized and operate in conformity with the highest international standards of justice, namely, equality before the law without discrimination, the independence and impartiality of the judiciary, the presumption of innocence, the legality of criminal offences and penalties, and the right to defence counsel and legal assistance and aid.

Constitutional Council

24. The Constitutional Council is the principal guarantor of fundamental human rights and public freedoms. It plays this role by monitoring the constitutionality of laws and the legality of elections and by regulating the functioning of institutions and the work of governmental authorities (art. 75 of the Constitution).

25. Its decisions are not subject to appeal and are binding on government authorities, all administrative and judicial authorities and all natural and legal persons. The provisions of a law on fundamental human rights recognized by the Constitution can be referred to the Constitutional Council on an exceptional basis through a judicial body. Unconstitutionality can be put forward as a plea by any party before any court. A provision found to be unconstitutional ceases to apply and can no longer be invoked at trial.

Other constitutional institutions

26. The Government plays an essential role in the promotion and protection of human rights through its various ministries, in particular, the Ministries of Foreign Affairs and International Cooperation, the Interior and Decentralization, Justice and Human Rights, Advancement of Women, Family Welfare and Social Affairs, Health, Education, Agriculture, Solidarity, and Housing, Town and Country Planning and the Environment. The first of these Ministries are responsible, respectively, for the negotiation of treaties, the security of people and property, human rights in general and women's rights, while the others are concerned with economic and socio-cultural rights.

27. The National Assembly contributes to the promotion and protection of human rights by enacting legislation and monitoring public policy. It is responsible for translating the rights enshrined in the Constitution into reality and following up on Djibouti's international and regional commitments by passing legislation. It can question the Government directly or through commissions of enquiry on any breach of human rights and ask it to take appropriate measures to bring the situation to an end.

Other institutions and mechanisms

28. Alongside these constitutional institutions, there are other independent administrative authorities and mechanisms that make a more direct contribution to the promotion and protection of human rights, namely, the Ombudsman, responsible for handling disputes between the Government and the governed, the National Human Rights Commission, responsible for the promotion and protection of human rights, and the Independent National Election Commission, responsible for ensuring the legality of elections.

Civil society organizations

29. A number of civil society organizations work in the field of human rights, including: the National Union of Djiboutian Women (UNFFD), the Association for the Defence of Human Rights and Freedoms (ADDHL), the Open Doors Women's Solidarity Association, IMBIDA, the Atouyoofan Association and the Association of Persons with Disabilities (Vivre Plus Fort, Action Handicap). These organizations also contribute to the promotion and protection of human rights, in particular through:

- Prevention, advocacy, participation in the decision-making process, mediation and the observation of trials and elections;
- Reporting (press releases, news bulletins, public demonstrations);
- Provision of information on rights and freedoms to the general public and target groups (women, children, persons with disabilities);
- Recommendations to the Government on improving the protection and promotion of rights and freedoms.

E. Domestic case law

30. Domestic case law in Djibouti is made up of the authoritative decisions handed down by the Supreme Court on many issues, such as the presence of legal counsel at all stages of a judicial proceeding, the invalidity of any proceeding in which torture has been used, police custody, the rights of minors and the principle of requiring a hearing. Those decisions are currently being compiled for inclusion in a compendium, which is to be made universally accessible.

31. With regard to human rights, the Supreme Court has handed down a number of decisions on the appointment of a lawyer at all stages of judicial proceedings, including police custody.

32. The Constitutional Council has handed down decisions on electoral disputes, reaffirming candidates' right to equal media coverage and invalidating the results from particular polling stations during the 1999 presidential elections and the 2003 legislative elections because of irregularities: the results from a polling station in Tour Ousbo (Balbala) were invalidated during the 1999 presidential elections, while those from the Kalaf polling station in Tadjoura (northern Djibouti) were invalidated during the 2003 legislative elections.

II. Methodology and consultation process

33. This report was prepared pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, ratified by Djibouti in November 2002, and in accordance with the general reporting guidelines for States parties to the international human rights instruments.

34. It was prepared under the supervision of the inter-ministerial committee for the drafting and submission of periodic reports, created by presidential decree. The committee's members represent different constituencies, namely, ministerial departments responsible for resources (justice, advancement of women, education, health, finance, foreign affairs, interior, environment, habitat and housing, defence, the Presidency), the National Human Rights Commission and civil society.

35. In order to gather the information necessary for the preparation of the report, a broad-based national consultation process was held with the main stakeholders involved in human rights issues. The process began with the establishment of an inter-ministerial committee responsible for drafting and submitting periodic reports and the Universal Periodic Review (UPR). Composed of representatives of the relevant ministerial departments, the committee was enlarged to include the National Human Rights Commission and the main civil society organizations working in the human rights field.

36. A small technical group was set up within the committee to draft the national report. The technical group comprises representatives of the Ministry of Justice with responsibility for human rights, the Ministry of Foreign Affairs and International Cooperation, the Ministry for the Advancement of Women, Family Welfare and Social Affairs and civil society organizations.

37. Every member of the committee submitted contributions to the drafting of this report. The technical group prepared a preliminary draft report on the basis of these contributions, in close cooperation with the persons responsible for collecting data from the departments concerned by the report.

38. The following is the complete list of committee members and data collectors:

- Mr. Abdi Ismael Hersi, coordinator, representing the Ministry of Justice and Penitentiary Affairs with responsibility for human rights;
- Mr. Ali Mohamed, National Human Rights Commission;
- Mr. Idriss Abdi Bogoreh, Ministry of the Economy and Finance;
- Mr. Ali Youssouf Doualeh, Ministry of Muslim Affairs;
- Mr. Doualeh Mahamoud Robleh, Office of the Secretary of State;

- Ms. Halo Aboubaker Houmed, Ministry for the Advancement of Women;
- Ms. Marie Natalis, Ministry of Foreign Affairs;
- Mr. Abdi Ibrahim Haiban, Ministry of Education;
- Mr. Aboubaler Doualeh Waiss, Ministry of Housing;
- Ms. Souad Houssein, Office of the President;
- Mr. Yonis Hache, Ministry of Defence;
- Mr. Ahmed Mohamed Madar, Ministry of the Interior.

39. The following collected data for the drafting of this report: Mr. Ahmed Osman (judiciary), Ms. Choukri Houssein Djibah and military police captain Mahamoud Youssouf.

40. The draft report was submitted for comment and amendment to the general assembly of the inter-ministerial committee for the UPR, which adopted it, and then to the Government for consideration.

A. General information

41. The Republic of Djibouti has ratified the main international legal instruments on human rights and international humanitarian law.

42. Under article 37 of the Constitution, “duly ratified treaties or agreements shall, from the moment of publication, take precedence over domestic law, provided that each agreement or treaty is applied by the other party and conforms to the relevant provision of treaty law”.

43. In addition to this constitutional guarantee of application, Djibouti has, over time, incorporated the provisions of some international instruments into its domestic law. To ensure the fulfilment of its international human rights obligations, the Republic of Djibouti has implemented a number of programmes, policies and measures for the promotion and protection of human rights.

44. One of these is the National Social Development Initiative, a poverty-reduction strategy. The measures adopted include the establishment of the National Human Rights Commission (CNDH) and the inter-ministerial committee for the drafting of periodic reports, and the introduction of a quota for women candidates to policy-making bodies such as the National Assembly.

45. A review of the implementation of international obligations shows that considerable progress has been made on some rights but that challenges remain for others.

B. General legal framework within which torture is prohibited and eliminated in Djibouti

46. Following independence in 1977, Djibouti experienced a difficult period of internal tension, which led to a visible, steady rise in violations of human rights and individual freedoms. This state of affairs reached its height during the civil war between government forces and the armed opposition of the Front pour la restauration de l’unité et de la démocratie (FRUD).

47. With the signing of peace agreements between the warring parties in 1994 and again in 2001, the human rights situation improved dramatically. The abolition of the death penalty in 1995 and the dissolution of special courts such as the State Security Court and

the Superior Court of Justice are a perfect illustration of this development, in which persistent, flagrant violations of human rights and individual liberties became a distant memory. This trend was reinforced by the adoption of Djibouti's pluralist Constitution of 15 September 1992, which, through the rules it enunciated, ushered in positive changes that helped to strengthen the rights and freedoms of citizens of Djibouti.

48. There is still some slippage, however, in the form of arbitrary arrests and detentions, police custody beyond the statutory time limits and repeated cases of violence reported by citizens to *droit commun* courts.

49. In order to implement its new human rights policy, reflected in the creation of a ministerial department with responsibility for human rights, the Republic of Djibouti has also adopted a number of laws that attest to and confirm its willingness to do so and provide statutory and legal support for efforts to combat all human rights violations, including torture. These include the law declaring an amnesty for acts other than *droit commun* offences committed between 1994 and the date of the law's promulgation and the decree establishing a joint special commission to implement the amnesty law and the peace agreements. Many political prisoners and demobilized FRUD combatants have benefited from this legislation. The special commission was also entrusted with compiling a list of victims of torture and other acts of war and setting compensation or determining the circumstances in which some of them disappeared.

50. Other actions have been taken to abolish torture and other cruel, inhuman or degrading treatment. These include:

- The dismantling of Villa Christophe, the infamous detention centre where, in the past, anyone suspected of engaging in subversive political activity or holding anti-government views was systematically tortured;
- Efforts to eliminate arbitrary arrests and ill-treatment in police stations, military police barracks and army or other camps, through a policy of staff training and awareness raising on human rights;
- A marked improvement in prison living conditions;
- Press liberalization (1992 Communication Act);
- Efforts by judicial and police authorities to ensure that custody time limits are observed;
- Liberalization of religious practices;
- Authorization of the activities of all non-governmental organizations.

51. A number of structures and associations also exist or have been created that work with the Ministry of Justice or the Ministry for the Advancement of Women to combat human rights violations, suggesting that the changes that have occurred have benefited the lives of all the country's population groups and social strata. These structures include the following:

- Association for the Defence of Human Rights and Freedoms (ADDHL);
- National Human Rights Commission (CNDH);
- National Union of Djiboutian Women (UNFD);
- Al Birri Association (charity);
- Bender Djedid Association (in consultative status with the Economic and Social Council);
- Association to Combat Genital Mutilation and Harmful Traditional Practices;

- Caritas Djibouti;
- Djibouti Red Crescent;
- Balbala Women's Association (orphanage).

52. The media, as well as the various non-governmental structures that emerged following, or rather with the advent of, the restoration of democracy are very vigilant and, where necessary, denounce any act that infringes the provisions of the Constitution concerning human rights and civil liberties.

53. Moreover, for some time now certain legal texts, such as the Criminal Code and the Code of Criminal Procedure, have been undergoing amendment and updating. A Family Code and personal status courts have been introduced. A law against human trafficking has been adopted, as have organic acts on political parties, the judiciary and elections. Agreements on mutual judicial assistance and extradition have also been concluded with some countries of the region (Ethiopia, Yemen) and with France. These agreements concern civil, criminal, commercial and family matters and extradition.

C. Possible remedies for victims of torture

54. Anyone who has been a victim of torture has several available remedies:

- Remedy before the Constitutional Council, which monitors the constitutionality of laws and makes rulings on violations of fundamental human rights in cases brought before it;
- Judicial remedy, with all procedural guarantees, before courts of first instance, appeal courts and the Supreme Court;
- Administrative remedy, with the lodging of a complaint before the superior authority or the administrative judge;
- Remedy before the various human rights structures or institutions, such as the National Human Rights Commission.

D. Rehabilitation programme

55. The 1994 law declaring an amnesty for acts other than *droit commun* offences was promulgated at the end of the civil war, following the signing of the peace agreement between the Government and the FRUD armed opposition. The law permitted the release of many detainees from both sides who had been victims of torture or ill treatment. Regulations were issued that established the law's implementing procedures and listed its beneficiaries. While there was no rehabilitation programme as such, efforts were made to reintegrate victims into society. For instance, civil servants were reinstated in the civil service with all their rights and soldiers were reincorporated into the national army. Financial compensation or compensation in kind was awarded to those who applied for it through the courts or free of charge to those who were entitled to it.

E. Application of the Convention in Djibouti

56. Djibouti has been a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 5 November 2002 and its initial report has been due since October 2003. Since then, there has been a marked change in the situation with regard to respect for human rights. While gross violations took place during

and before the civil war, the different non-governmental organizations and national institutions involved in this area now monitor respect for the international human rights commitments entered into by the country, including those concerning efforts to combat torture and other cruel, inhuman or degrading treatment or punishment.

57. The Djiboutian State has demonstrated its political will and its concern to guarantee fundamental rights and individual liberties more effectively by reorganizing the Ministry of Justice, Penitentiary Affairs and Muslim Affairs and adding the promotion and protection of human rights to its traditional activities. The decree on the powers, organization and functioning of the Ministry of Justice with responsibility for human rights actually provides for a department of legislation and human rights.

58. This department is entrusted with the promotion and protection of human rights and is responsible for:

- Ensuring greater consistency between domestic law and the provisions of international instruments;
- Visiting places of detention to assess prisoners' living conditions and conditions of detention and prevent cases of abusive or arbitrary detention;
- Verifying cases of human rights violations and processing all complaints denouncing such violations;
- Promoting and guaranteeing all the fundamental rights of women and children recognized by the various international human rights instruments;
- Working for the protection and defence of the rights and freedoms of the citizen, persons deprived of their liberty, foreigners and refugees.

59. It should also be mentioned that this clear political will of the Djiboutian State was reflected in the establishment of the National Human Rights Commission and of the inter-ministerial committee for the drafting and submission of periodic reports to the international treaty bodies and the Human Rights Council with a view to the implementation of international instruments. The members of those national institutions have attended a number of training sessions organized by the National Human Rights Commission and the Ministry of Justice in cooperation with the East Africa Regional Office of the Office of the High Commissioner for Human Rights.

III. Comments on individual articles of the Convention (articles 1 to 16)

Article 1

Definition of torture

60. With regard to the obligation of all States parties to the Convention to incorporate the provisions of the Convention into domestic law, it should be noted that, up until now, seven years after its ratification, no specific domestic legislation has been adopted that defines or punishes torture. Victims, therefore, can bring an action before the courts only in relation to the acts that underlie torture both materially and in criminal law.

61. There is no definition of torture anywhere in Djibouti's domestic law. However, it has been observed on more than one occasion that torture is often equated with ill-treatment and inhumane treatment and, at the same time, is recognized as being more than just a violation of physical integrity. Account is taken of the fact that torture techniques have evolved considerably over time and vary from one civilization to another. As a result, in

Djibouti, the different institutions dealing with torture have simply adopted the definition of torture given in the Declaration on the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by General Assembly resolution 3452(XXX) of 9 December 1975.

62. According to that resolution, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. In substance, this definition corresponds to the definition contained in the Convention, although the latter appears more comprehensive and more precise in defining the authors of acts of torture and also the victims, among whom it includes third parties.

Article 2

Legislative, administrative, judicial and statutory measures against torture

Penalties and preventive legislative measures

63. Apart from the Constitution, which established the principle that torture is prohibited, very few measures have been taken to implement article 2 of the Convention. Nevertheless, the Criminal Code, while predating the Convention, contains a number of relevant provisions.

64. Article 10 of the 1992 Constitution of the Republic of Djibouti states that “the person is sacred” and that “the State shall have the obligation to respect and protect it”. It further states that “every individual shall have the right to life, liberty, security and integrity of person”, while article 16 states that “no one shall be subjected to torture or to inhuman, cruel, degrading or humiliating treatment or punishment”.

65. Article 16 also provides that “any individual, agent of the State or public authority guilty of such acts, whether independently or on instructions, shall be punished in accordance with the law”. Moreover, no one may be detained —other than arbitrarily— in a prison establishment except under applicable criminal law.

66. Article 10 also stipulates that “anyone who is deprived of his liberty shall have the right to be examined by a doctor of his own choosing”. Detention may not exceed 48 hours unless the judge in charge of the case so decides, and this time limit may, in any case, be extended only in the cases provided by law.

67. An examination, however brief, of these different legislative provisions shows the determination of the Djiboutian State to prevent and punish torture and all cruel, inhuman or degrading treatment. Thus, title III, chapter 1, of the Criminal Code currently in force in Djibouti contains provisions on the punishment of crimes and offences against persons. From time to time, the Constitutional Council, in its capacity as guarantor of fundamental human rights and public freedoms, receives complaints of violations of fundamental human rights, such as beatings, duress, arbitrary and abusive detention and physical torture during detention.

68. Anyone who has been arrested has the right to telephone his lawyer or a family member as soon as he is taken into police custody.

69. The current Criminal Code contains a number of provisions for punishing various offences that have effects comparable to torture. For instance, article 325 punishes abuses of authority against private individuals, stipulating that when an official or public

employee, in the exercise of or by virtue of his functions, uses or orders the use of violence or torture or commits an act of barbarity against persons, he shall be punished in accordance with the nature and seriousness of such violence and the penalty increased accordingly.

70. These penalties vary according to the type of offence and are increased according to the status of the perpetrator. For a correctional policing offence, perpetrators incur the maximum penalty stipulated for this type of offence.

71. Punishment of crimes is organized as follows:

- Imprisonment, when the penalty for anyone else guilty of the crime is detention. In cases other than those just cited, the penalty is the same for all perpetrators, with no aggravating element;
- In the case of crimes committed against private individuals, murder is punishable under articles 313 and 319 of the Criminal Code, which define it as intentional homicide punishable by life imprisonment.

72. When, in order to commit their crime, perpetrators use torture or commit acts of barbarity, they are punished for the crime of murder and therefore also punishable by the maximum penalty of life imprisonment, the death penalty having been abolished in Djibouti in 1995.

73. Intentional assault and battery (violence) is punishable under articles 328 to 338 of the Criminal Code. Penalties vary, depending on whether the crime involved premeditation, loss of limb, amputation or other permanent disability, whether or not there was intent to kill the victim or whether the latter is a child under the age of 15.

74. The penalties imposed are many and diverse. They include terms of imprisonment accompanied by fines and vary according to the case, ranging from six days to two years accompanied by fines, or one or other of these penalties when the assault and battery did not result in any illness or incapacity for work. If there was premeditation, penalties range from two to five years' imprisonment plus fines of 1 million Djibouti francs. In other cases, the penalty is imprisonment.

75. It should be emphasized that a person guilty of a crime or offence may not be prosecuted or convicted (or have his sentence reduced) if the homicide or assault and battery was ordered by law or by a legitimate authority or was carried out in self-defence (arts. 27 to 32 of the Criminal Code).

76. The Government's political will to respect and protect its citizens in this area was reflected in the ratification on 5 November 2002 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the establishment, some years later, of a National Human Rights Commission.

Administrative measures

77. Statutory or administrative measures have involved putting in place such structures as human rights units within the police and the *Gendarmerie* (military police).

78. The Government has been forced to act in this regard and to set up commissions of enquiry when police or army misconduct has been reported, as it did following the massacres at Arhiba on 18 December 1992.

79. The statutes of the national police and the military police include a code of conduct stipulating that, when authorized by law to use force and, in particular, weapons, national police or military police officers may do so only as strictly necessary and in proportion to the goal to be achieved. The code also stipulates that anyone arrested and placed under the

responsibility of the police may not be subjected to any violence or inhuman or degrading treatment by police officers or third parties.

80. Among other administrative measures, the Government has authorized the functioning of associations directly concerned with issues of torture and human rights.

Judicial measures

81. Justice in Djibouti is administered by a single judicial system, comprising the Supreme Court, appeal courts, criminal courts and courts of first instance. The areas of jurisdiction of these courts are civil, commercial, administrative, social and criminal. Since the death penalty was abolished in 1995, the maximum penalty provided by the Criminal Code is life imprisonment.

Statutory measures

82. Article 40 of the 1992 Constitution 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 threatened and the regular functioning of the governmental authorities is interrupted, the President of the Republic may, after consulting the President of the National Assembly and the President of the Constitutional Council and after informing the nation in a message, take any measure, except for a constitutional amendment, designed to restore the regular functioning of the governmental authorities and ensure the safeguarding of the nation”. Within 15 days of their promulgation, the National Assembly, convening as of right, is seized of the legislative measures put into effect by the President, with a view to their ratification.

83. These exceptional measures cannot justify violations of the right to life and to physical and psychological integrity or of the judicial safeguards accorded to individuals. In theory, their application must be in keeping with administrative legality and human rights.

84. The remedy available to citizens who have been victims of brutality or abuse is a judicial one, for no law or regulation authorizes a governmental authority to perpetrate acts of torture against a citizen. In practice, unfortunately, many abuses are committed as a result of ignorance or misunderstanding of the rules on the part of some administrative or military authorities or some law enforcement officers. Victims, too, may be ignorant of these rules.

Article 3

Exclusion, refoulement and extradition

85. As indicated in the first part of this report, Djibouti is a party to several international instruments, including those for the protection of refugees, and to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. According to article 18 of the Constitution, “an alien lawfully in the national territory shall enjoy the protection of the law in respect of his person and his property”. In Djibouti, refugee matters are handled by the National Office for Assistance to Refugees and Disaster Victims (ONARS). The Republic of Djibouti is also bound by the African Charter on Human and Peoples’ Rights, article 12(5) of which stipulates that “the mass expulsion of non-nationals shall be prohibited”. Since mass expulsion is that aimed at national, racial, ethnic or religious groups, the Government did not, in the end, act on its threat of ordering the mass expulsion of Ethiopian and Somali refugees a few years ago.

86. The prohibition on extraditing a person to another State where he is in danger of being tortured can be deduced, by interpretation, from all the judicial cooperation agreements concluded by Djibouti with other States. Extradition treaties nevertheless provide for exceptional cases in which, for obvious reasons, States parties, following Djibouti's example, do not extradite their respective nationals. While several articles of existing agreements define the extradition procedure, however, none addresses the question of the authority that decides to carry it out, or the question of when or how a decision to extradite can be contested. At best, some judicial cooperation agreements stipulate that the request for extradition must be sent through the diplomatic channel. Sometimes, the agreement will indicate which authority must receive the extradition request: "the request for extradition shall be sent directly to the Attorney General of the requested State".

87. Unfortunately, poor record keeping means that the public prosecutor's department does not have any statistics on the issue. As a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Djibouti may not extradite a person without taking all relevant facts into consideration, including, where appropriate, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights. This is a safety issue and a moral obligation.

88. Thus, the legislation regrettably fails to identify clearly not only the official who takes the extradition decision but also whether the decision can be contested and the procedure that must be followed in order to do so. Moreover, there are no statistics on extradition cases. Lastly, in the absence of precise information on the above issues, it is difficult to determine what kind of specific training the official taking the extradition decision needs in order to be competent in extradition matters and anticipate the risks of torture faced by the individuals to be extradited. When foreign nationals fail to comply with the conditions imposed by the regulations governing the admission and temporary stay of aliens in the territory of the Republic of Djibouti, they are subject to repatriation or refoulement. At the same time, Djiboutian law prohibits the extradition of any individual to a State where he is in danger of being tortured. In the absence of examples of extradition, it is impossible to say whether this provision has been applied and put into effect.

Article 4

Criminalization of acts of torture

89. Although article 4 of the Convention requires Djibouti, as a State party, to ensure that acts of torture are offences under its domestic criminal law, such acts have yet to be the subject of specific applicable measures.

90. This weak spot in Djibouti's domestic legislation contributes to impunity. As the law currently stands, acts of torture are subsumed under the broader heading of physical assault and attacks on the life and physical or mental integrity of a person. Torture is simply an aggravating circumstance to be weighed by the sentencing judge. The Criminal Code contains a number of provisions punishing specific physical attacks on persons.

Unlawful arrest and confinement

91. Unlawful arrest and confinement are punishable by 20 years' imprisonment. This penalty applies both to perpetrators and to their accomplices, for instance, to anyone who lent premises for the victim's detention or confinement (art. 381 of the Criminal Code). The second paragraph of article 381 stipulates that when the victim is released before the end of the seventh day following his arrest, the penalty is reduced to five years' imprisonment and a fine of 2 million Djibouti francs, unless the victim has been mutilated or permanently impaired, either intentionally or as a result of his conditions of detention, lack of food or

lack of medical care, in which case the perpetrator is liable to life imprisonment. The perpetrators are also liable to life imprisonment if the victim was confined, arrested, abducted or detained as a hostage, either to facilitate the commission of a crime or to assist the escape or ensure the impunity of the perpetrator, the instigator or the accessory to a crime or else to secure the fulfilment of an order or a condition, such as the payment of a ransom.

Other acts referred to in paragraph 1 of article 4

92. As regards attempted torture, articles 23 and 24 of the Criminal Code stipulate that any attempt to commit a crime incurs the same penalty as the crime itself if the perpetrator began to commit the crime or the attempt failed only because of circumstances beyond his control. Conversely, any attempt to commit an offence is equated with the offence itself only in the cases expressly provided by law.

93. Under Djiboutian criminal law, complicity means acting as an accessory and must therefore be treated as attaching to a principal act that is punishable by law. As a result, accessories to a crime or offence are liable to the same penalty as the main perpetrator, except where the law provides otherwise. The attempt to commit a crime is thus characterized by the simple fact that the perpetrator acted with the aim and the intent to commit it, and it becomes punishable at the point when the perpetrator begins to carry it out and the victim is not immediately released.

94. All judicial decisions in criminal matters must have a basis in law. In the absence of such a basis, there can be no decision to punish torture as a separate offence. Since Djibouti's Criminal Code predates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the latter can be applied and protection increased only by harmonizing the Code with the Convention. The three-year plan of action for the justice system, put in place by the Ministry of Justice to implement the recommendations of representatives of the judiciary, included the following priorities and main strategic lines:

- (a) Amendment or adoption of laws;
- (b) Promotion and protection of human rights;
- (c) Information, education and communication.

Article 5 **Territorial jurisdiction**

95. The territorial jurisdiction of Djibouti's criminal courts is determined, in principle, by the place where the crime was committed, the place of residence of one of the suspects accused of or charged with participation in the crime or the place where the suspects were arrested or are being detained.

96. Djibouti's 1995 Code of Criminal Procedure, which is still in force, provides that the court of first instance has jurisdiction to try offences and breaches of the law as defined by criminal law. Article 335 of the Code establishes that jurisdiction to try offences rests with the court of the place where the offence was committed or the place where the accused lives or was arrested, even if he was arrested for other reasons. The court's jurisdiction extends to offences and breaches that are inseparable from the crime that the court is to try. It may also extend to related offences and breaches. Subject to these provisions, articles 335 and 365 of the Code of Criminal Procedure stipulate that only the court of the place where the offence or breach was committed has jurisdiction to try the case.

97. Criminal courts have sole jurisdiction in criminal cases. They have full jurisdiction to try any individual sent to them by the prosecuting court (art. 308 of the Code of Criminal Procedure). It can be seen from these provisions that Djibouti's criminal law makes no distinction as to the nationality of the accused with regard to acts committed in its territory.

98. Title VI of the Code of Criminal Procedure deals with crimes and offences committed outside the country, either by Djiboutian citizens or by foreigners. Under the Code, when any element of an offence is committed in Djibouti, the offence itself is considered to have been committed in the territory of the Republic. Likewise, under article 537 of the Code, any foreign national can be prosecuted and tried by the Djiboutian courts for offences committed outside the national territory if he is arrested in Djibouti or the Government has obtained his extradition. No examples can be cited, as there have been no cases of extradition in Djibouti.

99. A torture victim may invoke the general provisions of articles 10 and 16 of the Constitution. Article 16 provides for the punishment, in accordance with the law, of any act of torture or cruel, inhuman or degrading treatment, while article 10 reaffirms the right of every individual to life and to security and integrity of person.

100. If the alleged perpetrator of acts of torture is in Djibouti, the same rules of jurisdiction apply, without distinction as to his origin or nationality and regardless of the nationality of a perpetrator who has not been extradited. The court trying the case reaches a verdict not only on the guilt or otherwise of the accused and the appropriate penalty, but also on the question of civil liability, if it is in a position to rule on the application for damages. If not, it may award an interim payment.

101. Any victim also retains the option of applying to the civil courts under articles 1382 et seq. of the Civil Code. Article 1382 states that any act that results in injury to another person imposes an obligation of reparation on the person who caused the injury. The conditions for bringing an action in such cases are laid down in articles 6 to 11 of the Code of Criminal Procedure.

102. These provisions show that it is admissible to bring a civil action at the same time before the same court for the material damage and physical or moral injury caused by the perpetrator of the prosecuted offence. If the two proceedings are brought separately, judgement on the civil action is suspended. If the complainant brings the perpetrator before the civil courts, he may not subsequently take the same case to the criminal courts. The Code of Criminal Procedure nevertheless allows the public prosecutor's office to bring criminal proceedings as long as a decision has not been taken on the substance. Under article 299 of the Code, however, if the complainant's action is unsuccessful, he is liable for the costs, unless the court takes a special decision to waive all or part of his liability, regardless of his nationality.

Article 6

Arrest and detention of persons accused of acts of torture

103. The concerns of article 6 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are partly taken into account in Djibouti's current legislation by the decree on the organization of prisons, under which prison establishments serve to detain persons sentenced to deprivation of liberty and persons subject to an ongoing judicial inquiry or awaiting a final verdict. This principle applies to all detainees, regardless of nationality.

104. Article 18 of the 15 September 1992 Constitution also provides that "an alien lawfully in the national territory shall enjoy the protection of the law in respect of his

person and his property”. Foreigners are thus required to abide by the Constitution, laws and regulations of the Republic.

105. Any individual suspected of having committed an act of torture or inflicted other cruel, inhuman or degrading treatment or punishment is subject to a preliminary investigation in accordance with the provisions of articles 61 et seq. of the Code of Criminal Procedure.

106. Moreover, under the provisions of the general judicial cooperation agreements concluded with several countries, the contracting parties have easy and unrestricted access to both the judicial and the administrative courts and are entitled to judicial assistance in the same way as nationals themselves, in accordance with the law of the country.

107. Such agreements, like the extradition treaty between the Republic of Djibouti and Ethiopia, provide that the extradition procedure cannot be set in motion without a request from the requesting State. This request must be sent through the diplomatic channel and specify the acts imputed to the alleged perpetrator, the time or place at which they were committed, their legal characterization and the legislation invoked, and the text of the legal provisions applicable to him in the requested State and any indication as to his identity and nationality. It must be stressed that the extradition procedure can be set in motion only against a person prosecuted or sentenced in the requesting State. A request for pre-trial detention may be made, pending the formal request for extradition, but it must be confirmed through the diplomatic channel. It is the Ministry of Justice that is responsible for handling extradition cases.

108. The Code of Criminal Procedure devotes specific chapters to pre-trial detention and the enforcement of criminal sentences and prison terms. Pre-trial detention takes place in a prison. The detainee is not required to work either inside or outside the prison, unless he so requests. He must be guaranteed all communications or facilities compatible, for the exercise of his defence, with the requirements of prison discipline and security (arts. 569 et seq. of the Code of Criminal Procedure). Under these provisions, any person detained in these conditions may enjoy these safeguards by applying to the superior competent authorities.

109. In practice, criminal investigation officers and prison directors are the authorities responsible for applying these provisions. Criminal investigation police officers are:

- Military police officers and sergeants, as well as constables with three years’ service on the force who have qualified as such individually by decree, following a technical examination and approval by a commission chaired by the Attorney General;
- National police officers and sergeants, as well as police constables with at least three years’ service on the force who have qualified as such individually by decree, following a technical examination and approval by a commission chaired by the Attorney General.

Article 7

Trial or extradition of persons suspected of having committed acts of torture

110. Under articles 18 and 19 of the Constitution, an alien lawfully in the national territory enjoys the protection of the law in respect of his person and his property and the State protects the lawful rights and interests of Djiboutian citizens abroad.

111. On this basis, an alien suspect who has not been extradited must be tried as a Djiboutian citizen; at least, under Djibouti’s current Code of Criminal Procedure, that is

what ought to happen. Article 1 of the Code stipulates that criminal proceedings with a view to the imposition of penalties are set in motion and conducted by the judges or officials to whom they have been entrusted by law or by the injured party himself.

112. The authorities responsible for criminal proceedings and investigations are:

- The criminal investigation police.
 - Criminal investigation police officers;
 - Criminal investigation police constables;
 - Officials and police constables to whom the law assigns certain criminal investigation functions.
- The public prosecutor's office.
 - The public prosecutor and his alternates on the court of first instance;
 - The Attorney General and his alternates on the appeal court and the Supreme Court.
- The investigating judge.

113. The party concerned may lodge a complaint directly with the senior investigating judge and register himself as a plaintiff. No legal provision in Djibouti authorizes this judge to treat the alleged perpetrator of an offence differently on grounds of his nationality. Accordingly, his decision must be handed down in the same way as for any crime or offence defined by the law. The law cannot be applied differently for a foreigner than for a Djiboutian.

114. The rules for the treatment of evidence, which are universally applicable, are set down in articles 264 to 283 of the Code of Criminal Procedure. Any type of evidence, such as confessions, statements, witness hearings and exhibits, is admissible under these provisions. However, regardless of the type of evidence used, the judge rules according to his own deeply held conviction and on the basis of the evidence put before him in the course of the trial proceedings. In Djibouti, everyone is presumed innocent until proved guilty and has the right to be assisted by a lawyer at all stages of the proceedings, in accordance with the provisions of the Constitution, the Criminal Code and the Code of Criminal Procedure.

115. Turning to practical examples of the implementation of article 7 of the Convention, the Djiboutian courts have not tried any cases involving foreigners accused of torture. As a result, no example of a judgement in such a case can be attached to this report.

Article 8

Criminalization of acts of torture in extradition treaties

116. Djibouti has signed a number of extradition agreements with other States parties with a view to facilitating regular exchanges of judicial information on offenders liable to criminal penalties and nationals of a State party to these agreements.

117. The following judicial instruments can be cited, in chronological order:

- Agreement on mutual judicial assistance in criminal and civil matters between the Republic of Djibouti and the French Republic, signed on 27 September 1986;
- Agreement on judicial cooperation in civil matters, including personal, commercial, social and administrative status, between the transitional Government of Ethiopia and the Republic of Djibouti;

- Extradition agreement between the Government of the Republic of Djibouti and the Government of the French Republic.

118. All the above instruments contain clear general provisions on the punishment of crimes and offences committed by offenders in the signatory States, but they do not explicitly mention efforts to combat all forms of torture. On the other hand, they do include a formal prohibition on extraditing a person for political or related offences, or for expressing certain views, on grounds of race, religion or nationality.

119. Thus, article 4 of the extradition agreement between Djibouti and France stipulates that extradition shall not be granted when the offence in respect of which it is requested is considered by the requested State to be a political offence or an act connected with such an offence. Article 4 states that extradition may be refused if the requested State has serious reasons to believe that the extradition request was made in order to prosecute or punish a person on grounds of race, religion, nationality or political beliefs or that the person's situation may be aggravated for one or other of these reasons.

120. In practice, apart from some rare cases of refoulement at the country's borders, there have been few extraditions—in fact none—in Djibouti. There is no case law on this subject.

121. Article 74 of the Constitution of the Republic of Djibouti states that: "No one may be arbitrarily detained. The judicial power, guardian of individual liberty, shall ensure respect for this principle under the conditions stipulated by law". In order to guarantee judicial and legal safety, the country has a court of first instance, which includes a personal status court, and also an appeal court, both of which have nationwide jurisdiction. The Supreme Court is the highest court in the country.

Article 9

Mutual judicial assistance among States parties in any proceedings relating to acts of torture

122. The principle of mutual judicial assistance is enshrined in all the extradition instruments entered into by Djibouti.

123. For instance, article 1 of the Agreement on judicial cooperation between France and Djibouti stipulates that the two States undertake to extend to each other the broadest possible judicial assistance in all proceedings. Similar provisions are to be found in the Agreement on judicial cooperation between the Republic of Djibouti and Ethiopia, article 1 of which institutes regular cooperation and collaboration in the form of exchanges of information and judicial assistance.

124. By contrast, the 27 September 1986 extradition treaty with France does not contain a specific article on the subject, although the willingness to exchange information is easily deduced from the content of the preamble, which reads as follows: "The Contracting Parties (...) wishing to ensure more effective cooperation between their States in combating crime, to regulate by mutual consent their relations with regard to extradition...". All these instruments can be seen to share a common concern, namely, to include in their preliminary general provisions a reference to legal cooperation based on a broad exchange of information. Very often, there are letters rogatory between the States parties concerning all manner of crimes and offences. In practice, however, there are virtually no cases specifically connected, either directly or indirectly, with torture.

Article 10

Education and information on the prohibition of torture

125. Generally speaking, people belonging to the occupational groups referred to in this article are required, like all Djiboutian citizens, to abide by the constitutional principles on human rights, particularly the articles in title II (rights and duties of the person) of the 1992 Constitution.

Civilian personnel

National police

126. The training given to national police personnel does not expressly include the provision of information on the prohibition of torture. In practice, however, every police officer is taught, and has instilled in him, the importance of not engaging in such procedures. The education imparted in classes on criminal procedure, especially preliminary investigations, emphasizes the need to respect the dignity of the citizen and the obligation not to use any form of violence or physical abuse on a person who is being questioned. Thus, it is clear that this education prohibits all forms of ill treatment and torture.

Officials and employees of governmental authorities and departments

127. Article 26 of the Code of Criminal Procedure stipulates that officials and employees of governmental authorities, whom special laws empower to report and prosecute crimes, must exercise these powers within the conditions and limits set by those laws. For instance, heads of districts or neighbourhoods can immediately notify the military police or the national police of any crimes and offences that are reported to them. They can secure any clues, prints, weapons and instruments that might otherwise disappear, until the criminal investigation police authorities arrive at the scene. If the perpetrator is caught in the act of committing a crime or offence, they must arrest him and take him to the nearest judicial authority.

Military personnel

Gendarmerie (military police)

128. The *Gendarmerie* or military police force is governed by decree No. 98-0080/PR/DEF of 13 July 1998 and decree No. 2007-0194 of 30 December 2007 on the powers, organization and functioning of the *Gendarmerie Nationale*. It forms part of the national armed forces and is incorporated in the country's administrative, judicial and military structures. Under the articles of the decree, the *Gendarmerie Nationale* is a human force in the service of the State and the public. It is also responsible for ensuring public security and law and order and enforcing laws and regulations. It plays an information role, takes part in the operational defence of Djiboutian territory and performs constant surveillance, for the purpose of both preventing and combating crime, for various ministerial departments, particularly the Ministry of National Defence, the Ministry of the Interior and the Ministry of Justice.

129. The general staff of the military police is responsible for recruiting and training military police personnel in accordance with the Government's directives. It is based on a number of groups or companies bringing together, under their command, military police units and specialized structures.

130. It must be acknowledged that the disciplines taught to Djibouti's military police do not include the prohibition of torture. Recently, however, some programmes have begun to be set up. In the training programme for military police, the latter are taught how to question suspects and how to handle detainees or victims. Thanks to the programme, military police officers learn not to bully detainees or victims or to subject them to torture. The enthusiasm of trainees and the manifest desire of instructors to see such courses and programmes repeated or even included in the official curriculum for military police training give grounds to hope that their conduct towards members of the public will change.

131. Moreover, the military police's mission is, generally speaking, to serve a State governed by the rule of law, in which human dignity and respect for the individual is upheld. This is also reflected in the very courteous attitude of members of the force. The recent creation of a human rights cell within the military police shows that members are determined to ensure respect for human rights on their premises. The basic principles of the military police code of conduct emphasize relations with the public and can be seen in operation in the force's units. Thus, in carrying out its mission, the force has a duty to assist anyone who is in danger and also to ensure individual safety. It should also be noted that in the courses preparing military police officers for the examinations to qualify as a criminal investigation officers, trainees are alerted to the prohibition on using torture.

Army

132. Save in exceptional cases, soldiers have no authority to conduct investigations or to punish anyone for an act that he is suspected of having committed. Since they are not trained to intervene in such matters, this means that, as article 1 of the Convention stipulates, they should not intentionally inflict severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession.

133. In the early years following independence, however, soldiers (military security) were given political functions—investigating crimes of opinion or alleged crimes against State security—and used force and violence in doing so.

134. The army was reorganized following the promulgation of the 1992 Constitution and subsequent organic laws. The national armed forces of Djibouti, having previously performed the functions of national police, military police and army, were reorganized so that these functions became separate again. The military personnel currently under the authority of the Ministry of National Defence are now governed by the decree promulgating the military statute. The Ministry of National Defence is a guarantor of efforts to establish the rule of law in Djibouti. It is responsible for conducting discussions on Djibouti's strategic doctrine and for coordinating the necessary measures for the protection of defence-related information, objects, documents or procedures within the armed forces and within bodies under the Ministry's authority.

135. Even though, formally, the military training programme does not include education and information on the prohibition of torture, courses on such topics as "human rights and international humanitarian law", "public freedoms", "theory of criminal law" and "practice of criminal law" are taught to criminal investigation police trainees. Moreover, for some years now these courses have been reinforced by training seminars on human rights in general and international humanitarian law in particular, as part of the dissemination and application of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto.

136. The aim of this teaching is to train non-commissioned army officers for the effective performance of criminal investigation functions as defined by law and to make them better prepared to serve in a police squad. The teaching programme in force for the training, retraining and advanced training of military police personnel simply backs up the

Djiboutian State's real determination to comply with the provisions of the international instruments that it has ratified.

Medical personnel

137. Djibouti's recently established medical school trains students in the health sciences. It is under the authority of the Ministry of Health, rather than the Ministry of National Education. As in other countries, medical training prior to specialization last seven years and is organized as follows: first to fifth years – lectures and practical training, sixth year – house officer, final year – viva for the State thesis in medicine. Before they can practise, all Djiboutian doctors must swear the Hippocratic Oath, which requires them to value the human person and sets forth the general principles of medical ethics with regard to the right to health. The spirit of the imparted teaching aims to protect the physical and mental integrity of the human person and to enable him to recover his physical and mental health by the most appropriate means. Teaching programmes are designed by the dean of the medical school, in cooperation with his peers on the teaching staff.

138. Torture is studied as part of the curriculum for medical students and figures essentially in the forensic medicine classes taught in fifth year. Specialists are often brought in to teach these classes. Medical personnel are not taught the legal aspects of torture, however; they study neither the constituent elements of torture that make it an offence punishable under criminal law nor the corresponding penalties. The curriculum focuses on anything that affects the human person: rape, torture, intentional assault and battery, female genital mutilation, murder and all other forms of violence. It helps medical personnel easily to recognize injuries caused by such acts.

139. It should be emphasized that a clinical psychology course that includes some basic information about torture is taught over a two-year period, starting in the first year of training. The course teaches students to determine, from the injuries found on victims' bodies, how the injuries were caused and the means used by those who inflicted them. By studying injuries, students are able to confirm or determine the sex of the victim, the age and whether the victim is a child or an adult. It should also be noted that, since the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this programme does not seem to have been substantially altered or adapted.

Participation of non-governmental organizations in education and information on the prohibition of torture

140. Non-governmental organizations cannot be said to provide education specifically about the prohibition of torture or cruel, inhuman or degrading treatment. Rather, they mostly provide general information about human rights and individual freedoms. They are active in combating all kinds of human rights violations and use news programmes, conferences, seminars and publications to denounce flagrant violations, and they have carried out some activities on the issue of torture. Some of these organizations are described below.

National Human Rights Commission (CNDH Djibouti)

141. The Commission was established by decree of 23 April 2008 and is involved in all actions for the promotion or protection of human rights. As part of the promotion of human rights, it has organized many workshops and seminars in Djibouti, dealing with a variety of topics. It has contributed to the drafting of periodic reports and their submission to the human rights treaty bodies and the Human Rights Council. It has published a series of brochures on the international instruments to which Djibouti has acceded, including the 1948 Universal Declaration of Human Rights, which has been translated into the

national languages. It is also actively involved in the annual celebration of International Human Rights Day on 10 December.

142. With regard to human rights protection, the Commission works to combat different violations of human rights. It organizes visits —unannounced or otherwise— to the prison in Djibouti City, police stations and military police units and other places of detention or prisons. As means of action, it makes recommendations to the governmental authorities, writes press releases, publicly denounces violations (on radio and television and in the newspapers) and organizes workshops, seminars and conferences. It produces a progress report on the situation of human rights in Djibouti and has also launched a training programme on the rights of the individual for the public security forces, prison warders, judges, lawyers and other civil society institutions concerned with human rights. Torture is one of the Commission's major concerns. It helps combat it by organizing conferences and education campaigns on human rights and asking the Government to ensure that all torture allegations are investigated properly. Its information and education activities with regard to the prohibition of torture include the reporting of human rights violations and the production of publications. The incidence of torture in Djibouti is clearly decreasing.

National Union of Djiboutian Women (UNFD)

143. The National Union of Djiboutian Women works for the promotion and protection of human rights. In the context of its awareness-raising sessions on the Family Code, it has opened counselling units to handle problems related to the rights of women in distress, with a view to guiding, supporting and advising them on their specific problems (violence, genital mutilation, maintenance payments, child care, etc.). It is chaired by the First Lady of Djibouti and has won particular acclaim for its active campaign against female genital mutilation, which its huge awareness-raising efforts have helped to reduce. It is also concerned with the physical and mental abuse of women and children and, in cooperation with the Mother and Child Centre and the United Nations Children's Fund (UNICEF), has launched a campaign to combat ill treatment and violence against children.

Red Crescent

144. The Djibouti Red Crescent operates on the basis of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto. Its mission is to prevent and alleviate suffering, with complete impartiality and without discrimination as to, inter alia, gender, class, religious beliefs or political opinions.

145. To this end, its aims include the following:

- Acting in the event of armed conflict and training to serve in peacetime as public health service auxiliaries in all areas envisaged by the Geneva Conventions and for the benefit of all victims, civilian or military;
- Helping to improve health, prevent disease and alleviate suffering, based on national and local needs;
- Organizing, as part of the current national plan, emergency relief for victims of all kinds of disasters;
- Recruiting, training and assigning the necessary staff to perform the tasks entrusted to it;
- Disseminating the Red Crescent's humanitarian principles with a view to instilling in the population, particularly children, the ideals of peace, respect and mutual understanding among all individuals and all peoples.

146. In the area of dissemination and information, the Djibouti Red Crescent, supported by the staff of the Djibouti office of the International Committee of the Red Cross, seeks to promote and disseminate international humanitarian law in schools, high schools, colleges, the university, army garrisons and the national police and military police academies.

147. The Ministry for the Advancement of Women and the National Union of Djiboutian Women also work to combat harmful traditional practices and regularly conduct awareness-raising campaigns about them, particularly about genital mutilation of young girls. Article 333 of the Criminal Code punishes female genital mutilation severely. The practical effectiveness of this article would be increased, however, if its scope and procedures were expanded by promulgating a more detailed law, covering all the aspects and difficulties encountered in this regard. Article 7 of the Code of Criminal Procedure, allowing associations to exercise the rights accorded to plaintiffs in civil proceedings, is a step in the right direction that needs to be built upon. Lastly, the current training module on the general prohibition of the use of torture does not have any specific content on religious and religious groups or on minors and women.

Article 11

Measures for the monitoring of interrogations, detention and imprisonment with a view to preventing acts of torture

Mechanisms for the monitoring of detention

148. Police custody is strictly regulated by the Code of Criminal Procedure and, generally, may not last more than 48 hours. This deadline may be extended by 24 hours on the authorization of the public prosecutor, if he deems this essential for the success of the investigation. The 48-hour deadline may be increased by 24 hours if the arrest did not take place before a judge.

149. The decision to place a person in police custody may be taken by officials and soldiers legally appointed to serve as criminal investigation officers. For the needs of the investigation, anyone present at the scene of a crime and in a position to provide information about what happened may be held in police custody for 24 hours if the investigation is being conducted in the place where he lives, and for 48 hours in all other cases. Anyone against whom the investigation gathers clues or evidence indicative of his guilt may also be held in police custody. Article 65 of the Code of Criminal Procedure stipulates that the criminal investigation officer must always indicate on the statement given by any person held in police custody the date and time when he was placed in custody and the date and time when he was released or brought before the competent judge.

150. The Republic of Djibouti has acceded to virtually all the human rights conventions, as well as the African Charter on Human and Peoples' Rights, and adheres to the resulting safeguards, such as the right to a fair trial, the right to defence counsel and the right to decent treatment in keeping with international human rights norms.

151. These rights are upheld by the Constitutional Council, to which any citizen can appeal and which must hand down its decision on fundamental human rights within a very short deadline. Apart from this institution, whose decisions are final, the Attorney General and the public prosecutor, in keeping with the Code of Criminal Procedure, directly monitor and supervise the actions of the national police and the military police, particularly with regard to police custody. Neither force, in conducting its investigations, may hold a person for more than 48 hours without the approval of a judge, while the judge must put an immediate end to any arbitrary arrest or detention.

152. Moreover, when the person detained by the police in the course of their investigation appears to be guilty of the crime in question, he may not be subjected to torture or ill treatment, no matter how serious his actions. If he is tortured or ill treated, he has the possibility of lodging a complaint against his torturers, who will be subject to the full force of the law. This has actually occurred with some national police or military police officers, but despite the fact that the cases were genuine it has been impossible to establish either the identity of the officers in question or the date and place of the events.

153. In any event, the person awaiting prosecution may be detained only if there are serious charges against him and a warrant has been issued by a competent judicial authority, who may be either an investigating judge or, if he was caught *in flagrante*, a public prosecutor. He must be detained in humanly acceptable conditions and the State has a duty to ensure his safety by protecting his health and guaranteeing his subsistence.

154. The information gathered and the observations made indicate that detainees and all observers characterize prison living conditions as a form of torture and degradation of the human person. Most detainees complain of insufficient or poor quality food or inadequate rations. When they fall ill, they are treated at health centres or hospitals, but it is virtually impossible for them to obtain the prescribed medicines. They must often rely on non-governmental organizations, the Red Cross, the Red Crescent or the goodwill of prison staff to obtain pharmaceutical products.

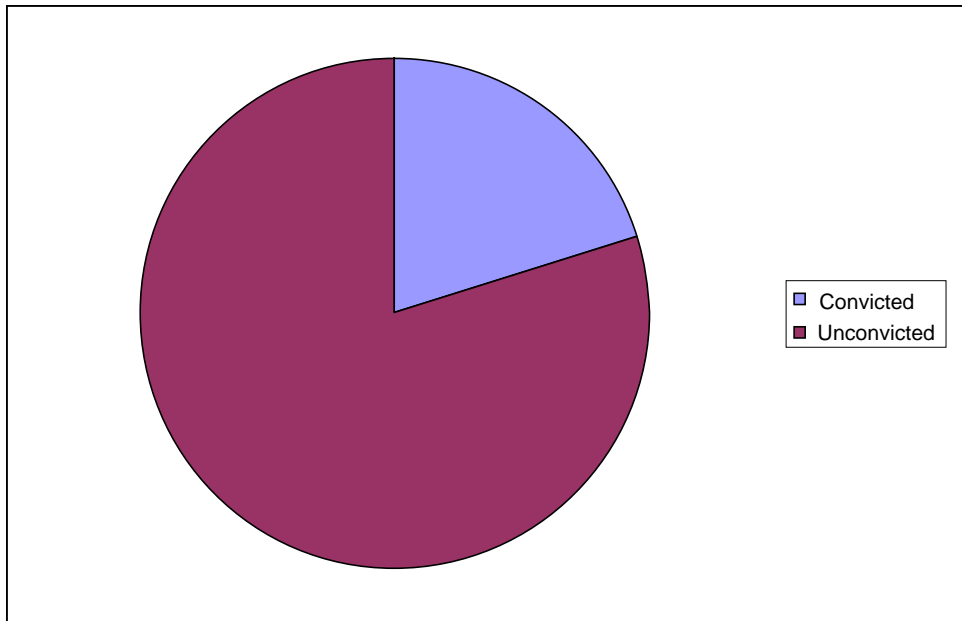
155. It should also be noted that Gabode prison is overcrowded, as shown by the following table:

Table 1

<i>Main crimes committed</i>	<i>Number</i>
Manslaughter	9
Abuse of trust	27
Robbery	221
Threats	95
Intentional violence	166
Possession of narcotic drugs	18
Human trafficking	35
R E J	27
Sale of alcohol	10
Khat smuggling	51
Illegal possession of a weapon	1
Driving without a licence	6
Extortion	36
Defilement	37
Intentional homicide	1
Sexual assault	8
Rape	24
Violation of State security	10
Fraud	8
Possession of forged banknotes	2
Receiving stolen goods	24
D A S	14

Table
(2009)

	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>Total</i>
Convicted	2	5	0	5	10	1	23
Unconvicted	7	24	21	4	33	1	90
Total	9	29	21	9	43	2	113



156. As of 1 July 2009, the prison population of Gabode (Djibouti City) was almost 600, of whom 54 per cent were awaiting trial and 46 per cent had been convicted. Women accounted for 4.6 per cent of inmates of Gabode civil prison and minors in the supervised education centre accounted for 2.9 per cent. In fact, the prison population increased steadily during the second half of 2009, from 450 to 690 inmates. In 2010, it began to decline as a result of a presidential pardon enacted by the 6 October 2009 decree pardoning 131 inmates, essentially young people jailed for public order disturbances.

157. The Government has made efforts to improve detainees' living conditions. Several buildings at Gabode prison have been upgraded and new ones built to improve prison conditions, but persistent crime is keeping the prison population at roughly the same level. Moreover, since most prisoners are repeat offenders, the steady intake of new prisoners keeps numbers more or less constant from day to day, making it impossible to gauge the impact of the Government's efforts. Similarly, a constant effort is being made to clean up Gabode civil prison in terms of individual and collective health, hygiene and safety.

158. For instance, the Ministry of Justice has put in place a new prison guard corps made up of staff recruited by competitive examination and trained both in weapons handling and in the concepts and values of human rights and criminal procedure. The corps, which is under the exclusive responsibility of the judicial authorities rather than the national police, is subdivided into two sections: operations (security and guard duties) and administration. The police remain responsible for the initial investigation, but they no longer guard prisoners, thereby dispelling any justified suspicion harboured by detainees towards police who are more likely to obey their superiors than the judicial authorities.

159. Responding to detainees' complaints about their food, the Ministry of Justice has started to regulate the management of foodstuffs by monitoring their distribution. Rations have also increased. A similar procedure has been introduced for the distribution of toilet soap and laundry soap, in cooperation with non-governmental organizations that distribute a range of donations, such as food and pharmaceuticals, in prisons. These include the International Committee of the Red Cross and UNICEF, as well as individuals and legal entities engaged in non-profit activities.

160. If a prisoner breaches prison administration rules, he may be punished by over a month's deprivation of visiting rights, correspondence or outside supplies of foodstuffs. He may also be confined to his cell, which automatically triggers the other penalties. The authorities empowered to impose penalties on prisoners are the prison governor or director.

161. When a detainee wishes to make a complaint, he addresses it to the Attorney General, the public prosecutor, the investigating judge or the president of the prosecuting court, as appropriate, or to the Ministry of Justice prison administration department. Act No. 100 on the organization, powers and functioning of the Ministry of Justice defines the role of the prison administration as follows: the prison administration shall be responsible for regulating, organizing and monitoring the application of penalties and for managing the staff and facilities assigned to these tasks.

162. In this connection and with regard to the management of prisoners, it is responsible for:

- Ensuring that anyone who is in prison has good living conditions;
- Supervising prisoners while they serve their sentences;
- Solving problems related to prisoners' applications for a pardon, release on parole, rehabilitation or amnesty, in cooperation with the services concerned;
- Monitoring the prison population;
- Applying and improving prison legislation;
- Centralizing and analysing the reports periodically submitted by prison watchdog commissions;
- Participating in the implementation and oversight of alternatives to imprisonment;
- Preparing detainees for their release and helping them reintegrate in society and the workplace.

163. To this end, the authorities visit detainees to talk to them and assess their situation in order to find an appropriate solution, or else summon them to their offices. Where appropriate, the case is referred to the competent court for consideration, assignment and action.

164. In the same order of ideas, the decree on the powers, organization and functioning of the Ministry of the Interior with responsibility for decentralization assigns the Ministry the following tasks, among others: ensuring public order, including the internal and external security of the State, and taking all necessary measures for the prevention, investigation and punishment of all acts likely to disturb public order. Thus, it may take any civil action aimed at regulating citizens' lives, the movement of people and property in accordance with the laws and regulations governing the national territory, and the protection of people and property.

165. To enable it to do so, the Ministry has the following specialized departments:

- The department of internal affairs, which is responsible for internal affairs affecting people's lives, receives complaints submitted to the Ministry, summons the authors, listens to them and tries to reach an amicable settlement;
- The security forces inspectorate, which comes under the direct authority of the Ministry, is responsible for overseeing and monitoring the activities of the security forces and supervising individual members of the security forces in the performance of the police functions assigned to them by the Ministry and for redistributing information in order to increase the effectiveness of actions taken to combat crime and preserve public order and the security of people and property;
- The department of national police, which is responsible for ensuring through the police services respect for public order, the protection of State institutions, respect for public freedoms and the protection of people and property.

166. When a foreigner is imprisoned, the rule is that his country's consular authority is notified. Generally speaking, prison rules conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners, including the principles of medical ethics applicable to the role of health personnel in protecting prisoners and detainees from torture, and the Code of Conduct for Law Enforcement Officials.

Article 12

Investigation of the commission of an act of torture

167. In Djibouti, the competent authorities to which victims often complain pursuant to article 12 of the Convention are:

- The Ministry of the Interior and Decentralization, comprising, inter alia, a department of internal affairs responsible for problems related to people's lives and a department of national police;
- The Ministry of National Defence, responsible for overseeing the military police;
- The Ministry of Justice, responsible for human rights, as well as the courts.

168. Once they have received a complaint, these institutions conduct investigations to determine the identity of those responsible for torture and other cruel, inhuman or degrading treatment or punishment.

169. The administrative authority invites the parties to appear before it with a view to reaching an amicable settlement of the case or in order to consider the facts of the case more closely with a view to referring it to the competent ministry to obtain a final court settlement. To this end, the case file may be transmitted directly for preliminary investigation to either the local police station or the local military police unit, which must determine the competent authority and assign the case to it.

170. The other possibility open to the victim is to apply to the Attorney General or the investigating judge. Upon receiving such an application, the Attorney General must immediately notify the competent public prosecutor, who is responsible for organizing the investigation according to the nature of the competent authority. The latter may be a soldier, a national police officer or a military police officer, but does not necessarily have to be a criminal investigation officer.

171. As soon as a complaint is received from a victim, the prosecutor's department orders an investigation and takes the necessary measures by referring the case to an investigating judge, who will examine the substance of the complaint against the perpetrator, if he is identified, or against X. The prosecutor's department may also institute proceedings against

the author of the offence and refer the case to a court for judgement. The Code of Criminal Procedure gives the injured party the right to lodge a complaint, as well as to bring a civil action for redress directly either before the investigating judge or before the court. This is an additional guarantee that the legislature offers to all victims by allowing them to bring a civil action without having to wait for the prosecuting authorities to take a decision. The alleged perpetrator is relieved of his functions while the investigation is going on and/or is barred from all contact with the alleged victim. Medical examinations and forensic expertise are routinely ordered, wherever necessary, to assist the court's deliberations.

172. The courts have handled many cases against State employees accused of committing acts of violence against persons or arbitrary arrests. The employees concerned were either convicted in criminal court and ordered to pay damages to the victims or disciplined and suspended from their functions by decision of their superior authorities, in which case the Attorney General systematically barred their prosecution.

173. With regard to the allegations contained in reports produced following investigations or in those drafted by international organizations, Djibouti's courts and the public prosecutor's department always publicize the investigating judge's findings or the judgement in order to clarify the facts that prompted the complaints.

174. Articles 65-1 to 65-4 of the Code of Criminal Procedure guarantee the right of anyone placed in police custody to be examined, at his request, by a doctor (art. 65-2) and to benefit from the presence of defence counsel of his choosing or appointed officially by the president of the Bar. As indicated earlier, anyone who is arrested is given access to a telephone so that he can contact his family to tell them what has happened.

Article 13

Right of the victim to complain to the competent authorities

175. No provision of Djiboutian law allows discrimination in criminal proceedings among victims of a criminal offence. Anyone, regardless of nationality, has the right to complain to the competent authorities, which in turn have a duty to launch an immediate investigation.

176. The authorities guarantee all victims that interrogation rules, methods and practices are respected as stipulated in article 11 of the Convention, and that the victim benefits from a prompt and impartial investigation conducted in accordance with article 12 of the Convention. The authorities mentioned in the comments on article 11 provide the same oversight in order to prevent any ill-treatment or intimidation of the complainant after he has lodged his complaint.

177. There is no special provision establishing criteria for the public prosecutor's review of torture allegations. The procedure is the same as in any other criminal case. The public prosecutor has the right under article 30 of the Code of Criminal Procedure to directly challenge the forces of law and order in the exercise of their functions. This enables him to ensure, where necessary, that complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

178. Article 37 of the Code of Criminal Procedure provides that the public prosecutor receives complaints and accusations and decides what action is to be taken on them. Under article 38 of the Code, the prosecutor takes, or orders to be taken, all necessary steps for the prosecution and identification of violations and, to this end, directs the activities of the Public Prosecutor's Office and all criminal investigation officers. He may conduct interviews or technical or scientific examinations (arts. 63 and 114 of the Code of Criminal Procedure).

179. The public prosecutor notifies all complainants of the hearing date. Anyone who claims to have been harmed by a crime or offence may, in lodging a complaint, file a civil action before the investigating judge (art. 78 of the Code of Criminal Procedure). The complaint is transmitted to the public prosecutor for him to take measures against the unidentified or named perpetrator. Witnesses are entitled to the same procedural guarantees as the complainant.

180. In accordance with the preamble to the Constitution, any competent authority that has been seized of a complaint must respect the rights and duties set forth in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, which form an integral part of the 1992 Constitution. Article 7(1) of the Banjul Charter states that every individual shall have the right to have his cause heard. This includes the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force, the right to be presumed innocent and the right to be tried within a reasonable time by an impartial court or tribunal. Nevertheless, to avoid his authority being challenged, any judge may decline to hear a case if there is any personal impediment to his doing so: kinship ties, illness, official leave, etc. The head of the court then immediately appoints another judge to replace him. In any other case, the judge is deemed guilty of a denial of justice that is punishable under the Criminal Code. It should also be mentioned that Djibouti has no formal mechanism for the protection of plaintiffs and witnesses: protection may only be extended *a posteriori*, at the request of the parties concerned and following a review of the situation. If the competent authorities refuse to investigate the case reported by a complainant, the latter may then bring a civil action before the investigating judge. In this case, the complaint is dealt with as a matter of law.

Article 14

Right of the victim to redress

181. Djibouti's laws and regulations provide the right to redress and fair compensation for any victim of torture. As indicated in the comments on the preceding articles, any victim of torture may bring an action on the basis of articles 6 to 11 of the Code of Criminal Procedure, which set forth the conditions for bringing a civil action and stipulate that such an action may be brought at the same time as the criminal prosecution, either before the same court or separately.

182. As a result, where ill-treatment has been established, the torture victim, or his legal beneficiaries if he has died, is entitled to reparation proportional to the injury suffered. The public prosecutor, or any other judge or official to whom the criminal prosecution is entrusted, is responsible for setting such reparation in motion. This applies, *inter alia*, to the investigating judge before whom anyone claiming to have been harmed by a crime or offence may bring a complaint in the form of a civil action (art. 78 of the Code of Criminal Procedure). In this case, if the author of the civil action setting in motion the criminal prosecution has not obtained legal aid, he must deposit with the office of the clerk of the court the sum necessary to cover costs, otherwise his complaint will be ruled inadmissible. The sum in question is fixed by order of the investigating judge and, as a matter of principle, is very small, so that the person to be tried is able to pay it.

183. The complainant has the option of directly seizing the civil judge. In this case, the compensation payable by the person responsible for the torture or other cruel, inhuman or degrading treatment or punishment must make reparation not only for the violation of the victim's physical integrity but also, where necessary, for any moral injury. This is stipulated by article 1382 of the Civil Code, which is formulated in general terms and therefore applicable to both moral and material injury (see the comment on article 5).

184. The fact that anyone who has suffered injury as a direct result of an offence may bring a civil action guarantees the victim's right to fair and adequate compensation and redress. These legislative and judicial measures are equally applicable to Djiboutian citizens and to aliens. Under article 18 of the Constitution, aliens in the territory of the Republic enjoy the same rights and freedoms as Djiboutian citizens, provided that they abide by the Constitution, laws and regulations in force in the Republic.

185. In criminal cases, the payment of damages may be enforced by means of imprisonment, the duration of which is set by the sentencing court. In civil cases, decisions may be enforced through seizure of assets.

Procedure to be followed for rehabilitation and compensation

186. To evaluate the victim's rights, the judge may call on medical and psychiatric experts to carry out a general examination of the victim's health and of his mental or physical state. The expert in question must draw up a report within the time limits set in the judge's decision (art. 165 of the Code of Criminal Procedure). He may also appear at the hearing to give a supplementary oral report designed to assist the court's decision.

187. As indicated earlier, a torture victim can demand reparation by lodging a complaint with the administrative authorities: the President of the Republic, the Minister of the Interior, the Minister of Justice, prefects, sub-prefects, mayor's offices, district delegates or heads, and others. These authorities may arrange an amicable settlement or transmit the complaint, as appropriate, to the competent judicial authorities.

Redress available to victims of torture

188. By studying the various reports prepared in the past by a number of international human rights organizations (Amnesty International, FIDH), in the absence of any national report on the subject that might give an idea of the number of victims of torture and physical abuse, it has been possible to classify the damage or injury sustained, the grounds for arrest and the acts of torture and other cruel, inhuman or degrading treatment or punishment committed and to itemize the different consequences. An analysis of victims' statements shows that they were detained in conditions that were very difficult, if not intolerable, for a human being. Each place of detention was different, but all of them had tiny, filthy cells that were hot, damp and dark.

189. According to the statements, conditions in these centres were extremely harsh. Visits were not allowed and the heat and cold were extreme, depending on the season. For the slightest reason, detainees would be confined to their cells for 24 hours straight.

190. Everywhere, prisoners were held in cells measuring barely 10 sq m, sometimes several of them to a cell. Overall, prisoners were subject to various forms of torture and ill treatment, such as the "swing", electric shocks to the body, beatings, lengthy interrogations (several hours without a break) at inappropriate times, etc.

191. From studying these reports and observing victims, it can be seen that, to this day, many victims are still suffering the consequences of the torture inflicted on them during the periods of heightened political tension and civil war between 1977 and 1993, in other words, before the signing of the 1994 peace agreement and Djibouti's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,

192. Some victims still suffer from physical disability, deafness, impaired vision, impotence as a result of trauma to the genitals, psychological and sleep disorders, traces of injuries on the body, ulcers, nervous problems, memory loss, permanent back and shoulder pain, etc.

193. No trace of or statement about any compensation or reparation of the injury sustained by victims has been found for any of the alleged consequences of torture reported by victims. Despite the range of complaints lodged by victims from that period, calling for the restitution of wages confiscated from public employees, the assumption by the State of the cost of caring for victims who are still suffering from the after-effects of torture or the compensation of victims for physical, material and moral injury, not to mention the proposal for an appropriate law on torture, in line with the Convention against Torture, that defines torture as a crime against humanity and therefore not time-bound, to this day no solution or even the beginning of a response has been proposed.

194. Despite these demands, to our knowledge no programme of compensation, medical or psychological rehabilitation or prosecution of alleged torturers has thus far been put in place formally for victims of torture in Djibouti.

195. Some State employees have been reinstated in the civil service, enabling them to resume their careers and enjoy the rights they would have acquired had they remained in their posts. This is without prejudice to any judicial proceedings brought for acts of torture, however.

196. It should be noted that non-governmental organizations have fought for all these measures to be adopted. The Djiboutian Association for the Defence of Human Rights and Freedoms (ADDHL) was particularly notable for its vigilance in this struggle.

197. The Association's actions included a platform of demands for torture victims, demanding fair compensation of victims by the State and the trial of torturers and their accomplices. Djibouti courts handed down a few rare decisions awarding compensation to victims following criminal proceedings against torturers. One such case involved a policeman who had sprayed tear gas in a detainee's eyes, causing him to lose his sight. The policeman was sentenced in criminal court to serve five years in prison and pay the victim compensation totalling 3 million Djibouti francs. There is no programme in Djibouti for the rehabilitation of torture victims, still less any formal measure aimed at preventing the recurrence of acts of torture, other than training for national police and military police officers and prison guards on human rights and the provisions of the Criminal Code and the Code of Criminal Procedure.

Article 15

Value of statements obtained under torture

198. In Djibouti, any victim of torture is protected before the court that is to try him for an alleged offence. In fact, by law, the value of any statement or report that a crime has been committed is purely informational.

199. Under article 264 and 265 of the Code of Criminal Procedure, the judge decides on the basis of his own personal conviction and can base his decision only on evidence put forward during the oral proceedings and brought before him. The criminal court trying the case may order the nullification of documents which it deems to be invalid and decide whether all or part of the subsequent proceedings must also be declared null and void (art. 181 of the Code of Criminal Procedure). The general rules governing the invalidity of information also protect the victim against the use in judicial proceedings of a statement obtained under torture (articles 179 and 180 of the Code stipulate that no information against the parties to the proceedings may be drawn from documents that have been declared null and void).

200. Moreover, it can be seen from the conditions that are essential for ensuring the validity of a contract that there is no valid consent if the consent was given purely in error

or was extracted by means of torture or fraudulently (art. 1109 of the Civil Code). Articles 1111 to 1113 of the Civil Code deal with the issue of violence and stipulate the following:

(1) Violence used against a person who assumes a contractual obligation shall be a ground for invalidation, even if the violence was committed by someone other than the person who benefits from the contract;

(2) Violence exists when it is such as to make an impression on a reasonable person and may inspire reasonable fear in him, and when it may make him afraid of exposing his person or his wealth to present and substantial harm, or when other circumstances such as age, gender or status come into play;

(3) Violence is a ground for invalidation of a contract not only when it has been used against the party to the contract but also when it has been used indirectly against his or her spouse, children or parents.

201. Under the laws in force, the judicial authorities responsible for investigating torture and similar acts may not retain as evidence a statement obtained under duress or torture. Under Djiboutian law, such statements are inadmissible evidence. Djibouti's courts have on several occasions ruled as invalid procedures and evidence obtained under torture that has left a visible or recognizable mark.

Article 16

Prohibition of other acts of cruel, inhuman or degrading treatment or punishment

202. Articles 10 and 16 of Djibouti's Constitution cover all the aspects evoked in article 16 of the Convention. Article 16 of the Constitution stipulates that no one shall be subjected to torture or to inhuman, cruel, degrading or humiliating treatment or punishment and any agent of the State guilty of such acts in the exercise of his functions, whether independently or on instructions, shall be punished in accordance with the law, while article 10 guarantees the right to life, liberty and security and integrity of person.

203. Furthermore, the laws and regulations in force in Djibouti protect all citizens against any act that constitutes cruel, inhuman or degrading treatment or punishment, especially when such acts are committed by or at the instigation of a public official or other person acting in an official capacity, with his consent or acquiescence. Article 381 of the Criminal Code imposes 20 years' imprisonment on anyone who, without an order from the authorities and outside the cases provided by law, arrests, detains or confines a person.

204. Article 5 of the African Charter on Human and Peoples' Rights, which is an integral part of the Constitution, stipulates that: "Every individual shall have the right to the respect of the dignity inherent in a human being (...) All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited". The protection due and assured to all victims of torture thus extends to victims of cruel, inhuman or degrading treatment or punishment and the rules cited in the comments on article 11 to 15 apply fully to them, without discrimination.

IV. Conclusion

205. The drafting of this report has enabled us to identify the gaps in Djiboutian law with regard to the punishment of torture.

206. In fact, not only is torture not even defined in Djiboutian law, but it has yet to be classified as a criminal offence under Djibouti's criminal law. It is simply an aggravating

circumstance in the crimes of homicide and intentional physical injury. A national law defining torture as a crime and implementing the Convention ratified by Djibouti is needed for this purpose.

207. Thus, the main challenges that the implementation of articles 1 to 16 of the Convention pose for Djibouti are linked to the absence of a specific law criminalizing torture and other cruel, inhuman and degrading treatment and punishment.

208. In addition to amending and updating the Criminal Code and the Code of Criminal Procedure, such a law will also have to be extended to the law on the prison system, the law punishing the crime of genocide and the related regulations.

209. The same applies to the other provisions of articles 1 to 16 of the Convention, namely, the remedies available to victims, which in Djibouti are incomplete in terms of the legal foundations for punishing the crime of torture and providing reparation for the harm caused. For the purposes of illustration, the following gaps in Djiboutian law can be mentioned:

- (a) There are no legal measures for protecting the complainant and witnesses;
- (b) The procedures for obtaining rehabilitation and compensation are neither clear nor precise, and the rehabilitation programmes (physical, psychological, financial, etc.) for torture victims are even less so.

210. With regard to extradition law, the extradition agreements that Djibouti has signed with other countries are clearly inadequate. In the meantime, Djibouti can seek assistance from Interpol.

211. In conclusion, even though the Republic of Djibouti, through its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recognizes de facto the Convention's provisions on the punishment of torture, it will have to incorporate them in its domestic law, essentially by doing the following:

- (1) Defining and criminalizing torture;
- (2) Amending and updating the Criminal Code, the Code of Criminal Procedure and the related regulations;
- (3) Ensuring adequate reparation of injury and compensation for victims of torture.

212. Lastly, victims of torture must be able to file complaints despite the gaps in the law, and the public prosecutor's office must be more vigilant in punishing the crime of torture and other cruel, inhuman or degrading treatment or punishment.