

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/DJI/CO/1)

DJIBOUTI

(...)

C. Principal subjects of concern and recommendations

(...)

Fundamental legal safeguards

11. The Committee is concerned about the discrepancy between the fundamental legal safeguards offered by the Constitution and the Code of Criminal Procedure on the one hand and the implementation of these guarantees for all detainees from the very outset of their detention on the other. The Committee also remains concerned about reports of lengthy pretrial detention and slow proceedings. The Committee also regrets the absence of information on the fundamental legal safeguards available to persons with mental, intellectual or physical disabilities. In addition, the Committee regrets the absence of a comprehensive juvenile justice system oriented to the education and social integration of children in conflict with the law (art. 2).

The State party should take prompt and effective measures to ensure that in practice all detainees are afforded all fundamental legal safeguards from the very outset of their detention. In accordance with international standards, these safeguards should include, in particular, the rights of detainees to: be informed of the reasons for their arrest, including of any charges against them; have prompt access to a lawyer and, when needed, legal aid; undergo an independent medical examination, if possible conducted by a doctor of their choice; notify a relative; be brought promptly before a judge; and have the lawfulness of their detention reviewed by a court. The State party should ensure that all fundamental legal safeguards are implemented for persons in psychiatric institutions.

The State party should also take measures to establish a juvenile justice system in compliance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

(...)

Investigations

14. Notwithstanding the explanations that the State party provided during the dialogue, the Committee continues to be concerned about:

- (a) The lack of any thorough investigations into the arrests during the demonstrations that took place on 18 February 2011 of more than 300 persons, several of whom are alleged to have been subjected to torture and ill-treatment in gendarmerie custody (arts. 12, 13, and 14);
- (b) The case of two Ethiopian nationals, Captain Behailu Gebre and Abiyot Mangudai, who, on 11 July 2005, were sent back to Ethiopia, where they were kept in detention and tortured. The Committee notes with concern that, according to information received, these persons did not have access to the remedy allowing them to lodge an appeal against their expulsion. It also expresses concern about the fact that the State party did not conduct any thorough and effective investigation into this case. Furthermore, it notes with concern that Djibouti did not respond to the urgent appeals on this matter sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Committee would thus welcome information from the State party on this subject (arts. 12, 13 and 14);
- (c) The case of Yemeni national Mohammed al-Asad. According to information before the Committee, the latter was allegedly detained incommunicado in Djibouti for two weeks before being transferred to Afghanistan. In detention he was allegedly tortured, placed in extreme isolation without human contact, subjected to constant extremely loud music, and exposed to artificial light for 24 hours a day, to cold and to dietary manipulation. The Committee notes that this case is currently being examined by the African human rights system, specifically the African Commission on Human and Peoples' Rights.

The State party should immediately conduct independent, impartial and thorough investigations into the above-mentioned incidents with a view to bringing the possible perpetrators of violations of the Convention to justice. The Committee recommends that such investigations be undertaken by independent experts responsible for examining all information thoroughly, reaching conclusions as to the facts and the measures taken, and providing adequate compensation to the victims and their families, including the means for them to achieve as full rehabilitation as possible. The State party is requested to provide the Committee with detailed information on the outcome of all those investigations in its next periodic report.

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in order to fulfil its obligation under article 3 of the Convention. The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each

case and should be subject to appeal with suspensive effect. The terms of judicial cooperation agreements signed with neighbouring countries should be revised so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

Complaints mechanism

15. Notwithstanding the information provided in the State party's report on the possibility for prisoners and detainees to submit complaints to the Prosecutor-General, the public prosecutor, the investigating judge or the president of the indictment division, as appropriate, or to the Prison Administration Directorate of the Ministry of Justice, the Committee regrets the lack of a dedicated, independent and effective complaints mechanism competent to receive complaints, conduct prompt and impartial investigations into allegations of torture, in particular of prisoners and detainees, and ensure that those found guilty are punished. The Committee also notes the absence of information, including statistics, on the number of complaints of torture and ill-treatment, on investigations carried out, and on prosecutions initiated and sanctions imposed against perpetrators of torture and ill-treatment, at both the penal and disciplinary levels (arts. 2, 12, 13 and 16)

The State party should take effective measures to establish an independent and effective complaints mechanism specifically devoted to allegations of torture and ill-treatment committed by law enforcement, security, military and prison officials, with a mandate to conduct prompt and impartial investigations into such allegations and to prosecute the perpetrators. The State party should ensure that complainants are protected in practice against any ill-treatment or intimidation they might suffer as a consequence of their complaints or any evidence given.

The Committee requests the State party to clarify whether acts of torture and ill-treatment are subject to ex officio investigation and prosecution and to provide information, including statistics, on the number of complaints filed against public officials for torture and ill-treatment, as well as information about the results of the proceedings, at both the penal and disciplinary levels. This information should be disaggregated according to the sex and age of the complainant and should indicate which authority undertook the investigation.

(...)

Conditions of detention

17. The Committee takes note of the commitments the State party made in the course of the dialogue with the Committee to improve conditions in places of detention, specifically by renovating or even constructing some buildings in Gabode central prison, and by reopening and renovating prisons in the regions. It also takes note of the State party's efforts to improve access to health services. However, the Committee remains deeply concerned about reports, confirmed by the State party, of prison overcrowding, inadequate hygiene and cleanliness, as well as a lack of water

and adequate food. Moreover, the State party does not distinguish between minors and adults in detention (arts. 11 and 16).

The State party should take urgent measures to bring the conditions of detention in police stations, prisons and other places of detention into line with the Standard Minimum Rules for the Treatment of Prisoners, as well as with other relevant standards, in particular by:

- (a) Reducing prison overcrowding, especially by considering non-custodial forms of punishment, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**
- (b) Improving the quality and quantity of food and water provided to prisoners in pretrial detention, those on trial and convicts;**
- (c) Strengthening judicial supervision of conditions of detention;**
- (d) Ensuring that minors, whether in pretrial detention or convicted, are effectively separated from adults, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990.**

(...)

30. The Committee requests the State party to provide, before 25 November 2012, information on its follow-up to the recommendations on: (1) ensuring or strengthening legal safeguards for detainees; (2) conducting prompt, impartial and effective investigations; (3) prosecuting suspects and punishing perpetrators of acts of torture or ill-treatment; and (4) improving conditions of detention, as contained in paragraphs 11, 14, 15 and 17 of this document.

(...)
