



# Universal Periodic Review

## Djibouti

### Third Cycle

## Submission to the Stakeholders' Summary

**Alkarama Foundation – 5 October 2017**

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1. This contribution is made in the context of the third cycle of the Universal Periodic Review (UPR) on the general situation of human rights in Djibouti in light of the recommendations made in May 2013.

## **1. Background and Framework**

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2. With its strategic location in the Horn of Africa, Djibouti has become a key State in the region and the undisputed ally of western powers in the fight against terrorism. As such, Djibouti has benefited from the silence of its allies with regards to the neglect of its international obligations in the field of human rights.

3. In 2010, the 1992 Constitution was reviewed at the initiative of President Ismail Omar Guelleh to allow him to run for a third term. Such an exclusion of any possibility of peaceful political change is contrary to the right to participate in public and political affairs under the International Covenant on Civil and Political Rights (ICCPR).

4. The situation in the country has been marked, over the past four years, by a strong repression of the opposition as well as recurrent violations of civil and political rights. Both the "exceptional security measures" taken by the authorities in November 2015 and the state of emergency declared in December 2015 have led to a general tightening of the security situation.

5. The reconciliation process – initiated with the opposition in 2014 to start a peaceful political transition – has failed, emphasising the increasing division of society. In April 2016, President Guelleh was re-elected for a fourth consecutive mandate following elections which were widely criticised by the opposition; the electoral process being accompanied by serious violations of human rights.

6. The main victims of the repression were members of the opposition – the Union for National Salvation (UNS) – as well as all dissenting voices of civil society, including journalists and human rights defenders. The crackdown resulted in arbitrary arrests and detentions, torture and unfair trials, as well as the closure of newspapers, persecution of cyber-activists and issuance of travel bans against human rights defenders.

7. In addition, the conditions of detention in Djiboutian prisons remain a matter of concern, particularly those of the Gabode prison in Djibouti city, where detainees suffer from overcrowding, poor hygiene conditions, severe food shortages and a lack of appropriate health care. This type of ill-treatment in detention generally aims at spreading fear among detainees to deter them from continuing their activism.

8. Finally, the rights to freedom of expression, opinion, association and peaceful assembly are strictly limited and any declaration or public stance against the government, particularly on social media, is systematically repressed.

### **1.1 Scope of international obligations**

9. Djibouti is a party to international human rights instruments, including the International Covenant on Civil and Political Rights, its two Optional Protocols, and the Convention against Torture (CAT).

10. Djibouti, however, has not ratified the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)<sup>1</sup> and the CAT Additional Protocol (OPCAT).<sup>2</sup>

#### **11. Recommendation:**

- a) Ratify the ICPPED and the OPCAT.

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<sup>1</sup> Despite its commitments during the last UPR following the acceptance of recommendations No.143.10 (Montenegro), No.143.11 (Afghanistan), No.143.12 (France, Spain, Ecuador), No.143.13 (Mexico), No.143.14 (Chile) and No. 143.16 (Argentina). According to the Djibouti authorities, the consultation process for the ratification of the ICPPED is currently under way.

<sup>2</sup> Despite its commitments during the last UPR following the acceptance of recommendations No.143.9 (Costa Rica), No.143.10 (Montenegro), No.143.15 (Spain, France) and No. 143.16 (Argentina).

## 1.2 Constitutional and legislative framework

12. During the last UPR, Djibouti accepted the recommendation to amend its legislation to bring it into line with the requirements of the Convention against Torture.<sup>3</sup> Alkarama notes that the Criminal Code still lacks a definition consistent with Article 1 of the CAT.<sup>4</sup>

13. On 21 April 2010, the Constitution was amended to put an end to the limitation of presidential mandates, allowing President Guelleh, who has been in power since 1999, to run for a fourth term in April 2016. The abolition of the death penalty in 1995 and the prohibition of torture have also been incorporated into articles 10 and 16 of the basic text.

14. Although the separation of powers and the independence of the judiciary are enshrined in Articles 71, 72 and 73<sup>5</sup> of the 2010 Constitution, they are still not fully respected by the Executive in both legislative and judicial affairs. Alkarama notes that, in practice, judges still lack real independence.

### 15. Recommendations:

- a) Amend national legislation, particularly that restricting fundamental freedoms, in order to bring it into line with international standards;
- b) Unconditionally respect the principles of separation of powers and independence of the judiciary, in particular by ensuring respect for the principle of irremovability of judges.

## 1.3 Institutional and human rights framework

16. In April 2008, a decree<sup>6</sup> was issued for the establishment of the National Commission on Human Rights (NCHR) and the provisions governing it were amended by a law adopted on 20 July 2014. Composed mainly of public officials, the NCHR remains under the supervision and control of the authorities. Furthermore, it lacks transparency and efficiency,<sup>7</sup> its annual reports are not made public, and the violations reported to the Commission never lead to genuine investigations. To date, the NCHR has refrained from applying for accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, thus preventing an objective, transparent and independent evaluation of its work.

17. In 1999, the institution of the Ombudsman<sup>8</sup> was established at the Ministry of Justice to ensure fairness in the law and to "promote human rights". Alkarama notes the lack of independence of this institution, which is still not in a position to fully exercise its mandate and to respect the objectives of impartiality and transparency in accordance with international standards in this field.

### 18. Recommendation:

- a) Ensure the independence of the NCHR, in accordance with the Paris Principles and other mechanisms for the protection and promotion of human rights.

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<sup>3</sup> In particular, to reform its Penal Code in order to introduce a definition of torture in conformity with the Convention and an explicit prohibition of the practice under accepted recommendation No.143.21 (Maldives).

<sup>4</sup> Despite its commitments during the last UPR following the acceptance of recommendation No. 143.21 (Maldives)

<sup>5</sup> Article 71 of the Constitution: "The judicial power is independent of the legislative power and the executive power. It is exercised by the Supreme Court and the other Courts and Tribunals. The judicial power sees to respect for the rights and freedoms defined by this Constitution."

Article 72: "The judge is only obedient to the law. Within the framework of his mission, he is protected against any form of pressure of such nature as to be prejudicial to his free arbitration. The presiding magistrates are not removable."

Article 73: "The President of the Republic is the guarantor of the independence of the magistrates. He is assisted by the Superior Council of the Magistrates, which he presides over. The Superior Council of the Magistrates sees to the management of the career of the magistrates and gives its opinion on any question concerning the independence of the magistrates. It decides as a council of discipline concerning the magistrates. An organic law establishes the composition, the functioning and the attributions of the Superior Council of the Magistrates as well as the status of the magistrates, with respect for the principles contained in this Constitution."

<sup>6</sup>Decree No. 2008-0103 /PR/ MJAP establishing the National Commission of Human Rights: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_126993.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126993.pdf)

<sup>7</sup> The NCHR is incapable of monitoring the promotion and protection of human rights despite its relatively broad mandate. The particularly limited role of the NCHR echoes the general mutilation of civil society.

<sup>8</sup> Appointed by a decree issued by the President of the Republic for a five year single term.

## **2. Cooperation with human rights mechanisms**

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### **2.1 Cooperation with the treaty bodies**

19. Djibouti has not yet submitted its second periodic report to the Committee against Torture, due since 25 November 2015. Similarly, Djibouti has not submitted its follow-up report as part of its initial review, due since 25 November 2012, despite a reminder letter sent by the Committee.

20. Djibouti was invited to submit its periodic report to the Human Rights Committee on 1 November 2017.

21. Alkarama notes the lack of continued cooperation by the authorities with the treaty bodies, including the lack of implementation of the priority recommendations of the Human Rights Committee formulated during Djibouti's review.<sup>9</sup>

#### **22. Recommendations:**

- a) Submit the periodic report to the Committee against Torture without delay and respect the calendar of the Human Rights Committee for the submission of the national report;
- b) Implement the recommendations of the Human Rights Committee.

### **2.2 Cooperation with the special procedures**

23. Despite many recommendations<sup>10</sup> made during the second UPR encouraging Djibouti to invite the UN special procedures to visit the country, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and the Working Group on Arbitrary Detention, the authorities have still not responded positively.

24. Alkarama notes that the request for a visit by the Special Rapporteur on the rights to freedom of peaceful assembly and association of 23 September 2011 is still pending. The request was last renewed on 30 October 2013.

#### **25. Recommendations:**

- a) Accept and set without delay a date for the visit of the Special Rapporteur on the right to freedom of peaceful assembly and association;
- b) Send an open invitation to the Special Procedures.

## **3. Implementation of international human rights obligations**

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### **3.1 Right to life, liberty and security of the person**

#### **3.1.1. Torture: a common practice**

26. Since the last UPR, the practice of torture has continued unabated, even though it is prohibited by article 16 of the Constitution. Alkarama has documented numerous cases of torture and ill-treatment

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<sup>9</sup> Alkarama, *Djibouti: the United Nations Human Rights Committee Deplores Lack of Measures Taken to Promote Human Rights*, <https://www.alkarama.org/en/articles/djibouti-united-nations-human-rights-committee-deplores-lack-measures-taken-promote-human>

<sup>10</sup> Accepted recommendations No. 144.7 (Chile), No.144.8 (Guatemala, Hungary, Iraq, Montenegro, Sierra Leone, Slovenia, Tunisia, France), No.144.9 (Belgium) and No.144.10 (Costa Rica).

during violent arrests,<sup>11</sup> custody<sup>12</sup> and detention,<sup>13</sup> as well as cases of abuses committed by police forces against political opponents, journalists and common law prisoners, including minors.<sup>14</sup>

27. In its report to the Human Rights Committee,<sup>15</sup> Alkarama recalled that torture is still being practiced as a form of reprisals or punishment, and in order to obtain confessions which will later be used as sole evidence in unfair trials to convict the accused.

28. Despite its commitments,<sup>16</sup> Djibouti has still not incorporated a clear and explicit definition of torture into its legislative framework.

29. Following the previous UPR, many recommendations<sup>17</sup> were made encouraging Djibouti to ratify the OPCAT and to create a mechanism to prevent torture. To date, and despite its commitments, Djibouti has not yet taken any measures to implement these recommendations.

30. Alkarama notes with concern the lack of prompt, impartial and effective investigations following allegations of torture, in spite of the commitments made during the last UPR.<sup>18</sup> While Djibouti has pledged to create an independent complaint mechanism dedicated to receiving complaints of torture and ill-treatment by law enforcement officials,<sup>19</sup> no action has been taken to date.

31. Finally, Alkarama underlines that the particularly difficult conditions of detention in Djiboutian prisons are by their very nature forms of cruel, inhuman and degrading treatment.<sup>20</sup> These conditions

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<sup>11</sup> Mr. Mohamed Ibrahim Waïss, a journalist arrested on 8 August 2014 by the police while covering a peaceful demonstration, was a victim of violence; injured in his left eye, however, he was refused medical care during his detention. He testified that he had been subjected to ill-treatment during his detention during which he had been denied access to his lawyer or to a doctor. In January 2016 Alkarama referred his case to the Special Rapporteur on torture after having collected information about his torture during his detention, which had considerably aggravated his health conditions. See: Alkarama, *Djibouti: Journalist Mohamed Ibrahim Waïss Tortured in Detention*, <https://www.alkarama.org/en/articles/djibouti-journalist-mohamed-ibrahim-waïss-tortured-detention>. The president and spokesperson of the Opposition Youth Movement (MJO), arrested on 8 December 2014, also testified that they had been subjected to violence during their arrest, including being severely beaten over the entire body. Despite their bad condition, they had been denied access to a doctor during their detention. Alkarama has also documented many other cases. See: Alkarama, *Djibouti: Harassment, Arrests and Ill-Treatment in Obock Region*, <https://www.alkarama.org/en/articles/djibouti-harassment-arrests-and-ill-treatment-obock-region>

<sup>12</sup> In March 2017, 19 opposition members had been arbitrarily arrested in a violent manner and subjected to ill-treatment and torture during their custody. See: Alkarama, *Djibouti: Vague d'Arrestations et de Détentions Arbitraires de Membres de l'Opposition*, 31 mars 2017, <https://www.alkarama.org/fr/articles/djibouti-vague-darrestations-et-de-detentions-arbitraires-de-membres-de-lopposition>. Several other persons testified that they were ill-treated during their custody, including minors, See : <https://www.youtube.com/watch?v=cs2F1fkRe5k> and <https://www.youtube.com/watch?v=pbTX2CqDxKY>

<sup>13</sup> Mohamed Ahmed Edou known as Mohamed Djabha, a political opponent and member of the Front for the Restoration of Unity and Democracy (FRUD), was arrested and held *incommunicado* for 58 days. He was then brutally tortured during his detention and forced to sign a document incriminating him. These confessions were later used to charge him with the crimes of "organising an armed group with the aim of committing attacks in the country in collusion with a foreign power". See : Alkarama, *Djibouti: Mohamed Djabha sentenced to 15 years of imprisonment following unfair trial*, 29 June 2017, <https://www.alkarama.org/en/articles/djibouti-mohamed-djabha-sentenced-15-years-imprisonment-following-unfair-trial>

<sup>14</sup> On 21 December 2015, the police and the Djibouti army had scattered a religious ceremony in Balbala near Djibouti-city, where the State forces used lethal force in a disproportionate manner. See: Alkarama, *Djibouti: Excessive Use of Force by the Police and the Army and Assaults of Members of the Opposition*, 24 December 2015, <https://www.alkarama.org/en/articles/djibouti-excessive-use-force-police-and-army-and-assaults-members-opposition>

<sup>15</sup> Report of Alkarama submitted to the Human Rights Committee ahead of the review of Djibouti follow-up report, 30 January 2015, <https://www.alkarama.org/en/node/22168>

<sup>16</sup> Accepted recommendation No. 143.21 (Maldives, Kenya). Alkarama stressed that Djibouti had also failed to fulfill its commitments made before the Committee against Torture during the review of its initial report on 2 and 3 November 2011: "The Committee takes note of the State party's commitment to amend its domestic law in the light of the obligations arising from the international conventions it ratified in the field of human rights and to introduce, inter alia, a definition of torture. Nevertheless, the Committee remains concerned about the lack of any explicit definition of torture in the State party's Criminal Code and provisions criminalizing acts of torture in accordance with articles 1 and 4 of the Convention." See: Concluding Observations of the Committee against Torture, 22 December 2011, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fdJI%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fdJI%2fCO%2f1&Lang=en)

<sup>17</sup> Accepted recommendations No. 143.9 (Costa Rica), No. 143.10 (Montenegro), No. 143.15 (Spain, France), and No. 143.16 (Argentina).

<sup>18</sup> Recommendation accepted No. 143.100 (Romania).

<sup>19</sup> Accepted recommendation No. 143.101 (Hungary). Alkarama notes that to date no independent and impartial investigation has been carried out by the authorities which, even if they recognize that acts of torture have been committed by the security forces, do not take the necessary measures to put an end to the impunity by condemning any person responsible for such practices, in particular the security forces and prison staff.

<sup>20</sup> See the testimony of a former guard at Gabode prison: <https://www.youtube.com/watch?v=RH5cD6OTqIo> (accessed on 17 August 2017). Gabode Prison is the country's main detention centre; located to the south of Djibouti-city, the prison is overcrowded according to the authorities. While the prison has a capacity of 350 people, the censuses carried out by the civil society gave more than 600 prisoners in 2014. The construction of new detention centres did not alleviate this problem, the vast majority of the prisoners still detained in Gabode. The conditions of detention are deplorable and detainees do not receive

of detention are also a means of psychological pressure on detainees, especially some political opponents, to put an end to their activism.

32. Despite the commitments<sup>21</sup> made to improve the conditions of detention and to solve the problem of prison overcrowding, the situation on the ground has not improved. In addition, the authorities have still not established a mechanism for monitoring detention facilities.<sup>22</sup>

### 33. Recommendations :

- a) Take concrete steps to bring the practice of torture to an end and amend national legislation to bring it into line with the CAT;
- b) Take measures to combat impunity by investigating, prosecuting and punishing perpetrators of torture with penalties appropriate to the gravity of their crime;
- c) Ensure that the conditions of detention are in conformity with international standards.

## 3.2 Right to a fair trial

### 3.2.1. Arbitrary detention and violation of fair trial guarantees

34. Arbitrary detention remains a major concern. This practice continues to be used by the government to silence real or supposed political opponents,<sup>23</sup> peaceful protesters,<sup>24</sup> journalists,<sup>25</sup> or anyone, including minors,<sup>26</sup> who would denounce human rights violations.<sup>27</sup>

35. Abusive and violent arrests are carried out by members of the police or the army without warrants.<sup>28</sup> Systematic violations of procedural safeguards are the result of a political will to impede the good administration of justice and to crack down on the opposition.<sup>29</sup>

36. Several individuals remain in detention following unfair trials. The cases documented<sup>30</sup> by Alkarama show that the practice of secret detention is common, particularly during the period of

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appropriate medical supervision on the pretext of lack of material means. Mr. Abdourahman Bachir, a well-known religious figure in the country, imprisoned for over a year, whose health required adequate medical care had been regularly denied his treatment. The difficult conditions of detention are also used as a means of psychological pressure on detainees and especially political opponents. There are reports of suicides of prisoners due to psychological harassment. The systems of complaints to the prison administration are not effective and the demands of the detainees go unheeded.

<sup>21</sup> Accepted recommendations No. 143.103 (Cape Verde), No. 143.104, No. 143.105 (Spain), No. 143.106 (Thailand).

<sup>22</sup> Recommendation accepted No. 143.9 (Costa Rica).

<sup>23</sup> Between 13 and 22 March 2017, 19 members of the opposition party "Movement for Democratic Renewal" (MRD) were arrested by the Research and Documentation Section (SRD) of the Gendarmerie of Djibouti-city. All these arrests were made without warrants and the victims were not officially informed of the reasons for their arrest. On 23 March 2017, after several days of police custody, nine of the 19 MRD activists arrested had been brought before the public prosecutor of the Republic of Djibouti-city without the assistance of their lawyers and four of them had been placed under warrants and transferred to Gabode's central prison. On 28 March 2017, the later ones were sentenced to two-month prison terms for "illegal political activities". See: Alkarama, *Djibouti: Vague d'Arrestations et de Détentions Arbitraires de Membres de l'Opposition*, 31 March 2017, <https://www.alkarama.org/fr/articles/djibouti-vague-darrestations-et-de-detentions-arbitraires-de-membres-de-lopposition>

<sup>24</sup>See: Alkarama, *Djibouti: Arrest and Detention of Peaceful Protesters in Dikhil since 18 September 2015*, <https://www.alkarama.org/en/articles/djibouti-arrest-and-detention-peaceful-protesters-dikhil-18-september>

<sup>25</sup> Alkarama documented the case of the journalist and co-editor of the newspaper "L'Aurore" Kadar Abdi Ibrahim, who had been arbitrarily arrested and detained for covering the ban on leaving the country by the Djibouti authorities of the former minister Hamoud Abdi Soulman. Released on 11 August 2016, Kadar was a victim of harassment by the authorities in January 2016 as a result of his activities as a journalist in a context of increasing repression against anyone who criticizes the government. See : Alkarama, *Djibouti : Arrestation et détention arbitraire du journaliste Kadar Abdi Ibrahim – La répression de la liberté d'opinion et d'expression se poursuit dans le pays*, 24 August 2016, <https://www.alkarama.org/fr/articles/djibouti-arrestation-et-detention-arbitraire-du-journaliste-kadar-abdi-ibrahim-la>

<sup>26</sup>See: Alkarama, *Djibouti: Waves of Arrests of Young Students and Opposition Members*, 13 November 2015, <https://www.alkarama.org/en/articles/djibouti-waves-arrests-young-students-and-opposition-members>

<sup>27</sup> Alkarama documented the case of Mr Omar Mohamed Nour, a young Djiboutian blogger, arrested at his home on 6 June 2017 and held *incommunicado* for several days. On 31 May 2017, in a letter addressed to the Public Prosecutor, Mr. Nour had filed a complaint for torture against a senior official of the Research and Documentation Service of the Gendarmerie of Djibouti. Mr. Nour was arrested on 15 July 2017 for 24 hours. A week later, on 21 July 2017, he was also arrested without a warrant and without being informed of the reasons for his arrest. To date, he is still arbitrarily detained.

<sup>28</sup> Members of the opposition or human rights defenders have in many cases been arrested at their homes by security agents in plain clothes who went searching and seizing personal belongings. Often victims have no access to their families or lawyers during the first few weeks of detention.

<sup>29</sup> In the previous UPR, Djibouti merely "noted" recommendation No. 145.6 (United States), which called on the authorities to release the detainees whose arrest was related to their support of the opposition.

<sup>30</sup> Alkarama documented the case of Mr. Mohamed Ahmed Edou, a political opponent and member of the Front for the Restoration

custody. The impossibility for detainees to communicate with their lawyers constitutes an infringement of the right to defence.

37. The procedural delays extend the length of pre-trial detention excessively, while it is also common for confessions obtained under torture to be used as sole evidence at trials.

### 38. **Recommendations :**

- a) Release and/or review trials of all individuals detained as a result of unfair trials and limit measures of preventive detention;
- b) Respect the fundamental guarantees of fair trials and ensure that the minimum standards for the treatment of detainees are applied to all individuals deprived of their liberty.

### 3.3 **Freedom of expression, association and peaceful assembly, and the right to participate to public and political affairs.**

39. Despite its commitments,<sup>31</sup> Djibouti has not taken appropriate measures to guarantee freedom of expression, association and assembly. These freedoms are severely limited, in particular by strong media censorship,<sup>32</sup> in violation of article 15 of the Constitution<sup>33</sup>.

40. Since the formalisation of President Guelleh's decision to run for a fourth term, many dissenting voices have raised concerns, particularly on social media. In many cases, the authorities reacted strongly through large-scale campaigns of intimidation, arrests<sup>34</sup> accompanied by the disproportionate use of force<sup>35</sup> followed by arbitrary detentions, judicial harassment and sometimes torture. The

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of Unity and Democracy (FRUD), who was arrested on 1 May 2010 by members of the army forces of Djibouti, held *incommunicado*, brutally tortured and forced to sign a document incriminating him. These confessions were later used to charge him of having organised an armed group with the aim of committing attacks in the country with the "complicity of a foreign power". The serious violations of a fair trial reported by Mr. Mohamed Djabha's lawyers included: his *incommunicado* detention without judicial proceedings for a period of 58 days following his arrest in various military premises; the denial of the right of access to a lawyer and an interpreter during his first appearance before the public prosecutor on 30 June 2010. On 23 September 2012, Mr Mohamed Djabha was assisted for the first time by a lawyer and an interpreter and denied all the charges against him. After three years of detention on 5 November 2015, the Indictments Chamber affirmed the charges against him and maintained his detention. However, the Supreme Court of Djibouti overturned and quashed the judgment on 26 January 2015, in particular on the grounds of irregularities committed during police custody; the resulting acts, as well as the violations of the rights of the defence. On 9 March 2017 the Indictments Chamber of the Court of Appeal upheld the charges and the Criminal Court sentenced him to 15 years in prison on 18 June 2017, despite all violations of his most fundamental rights to a fair trial. As a symbol of the arbitrary detention practice in Djibouti, being the country's oldest political detainee, Mohamed Djabha died in detention on 2 August 2017. See: Alkarama, *Djibouti: Mohamed Djabha sentenced to 15 years of imprisonment following unfair trial*, 29 June 2017, <https://www.alkarama.org/en/articles/djibouti-mohamed-djabha-sentenced-15-years-imprisonment-following-unfair-trial>

<sup>31</sup> Accepted recommendations No. 143.110 (Australia) and No. 143.112 (Belgium).

<sup>32</sup> A number of journalists continue to be harassed by the authorities, who regularly close down, even temporarily, television channels and newspapers.

<sup>33</sup> Article 15 of the Djibouti's Constitution on Freedom of Expression and Opinion: "Each has the right to express and disseminate freely their opinions by word, pen and image. These rights may be limited by prescriptions in the laws and in respect for the honour of others. All citizens have the right to constitute associations and trade unions freely, under reserve of conforming to the formalities ordered in the laws and regulations. The right to strike is recognized. It is exercised within the framework of the laws which govern it. It may in no case infringe the freedom to work".

<sup>34</sup> Most often after peaceful meetings and peaceful assemblies organised by the respective parties of opponents, victims of repression. The Government has, in particular, relied on Decree No. 2015/3016 of 25 November 2015 instituting "exceptional security measures", under the pretext of combating terrorism, and prohibiting any public assembly for an initial two-month period. The State of Emergency Act adopted on 31 December 2015 contained similar measures. Around 100 people, including oppositionist cadres but also children and women, were arrested across the country by the police and gendarmerie forces between September and December 2015. Held in custody under difficult conditions, most of the victims, charged under the pretext of having participated in an "illegal demonstration", were released even before being brought before a judge, or as a result of their trial. Many of them, however, have been sentenced to suspended prison terms - sanctions solely aiming at preventing them from continuing their activities in the opposition, in total violation of international human rights standards freedom of expression, opinion and peaceful assembly, rights already restricted in the country.

<sup>35</sup> In particular, Alkarama documented the case of Mr. Djama Amareh Meidal, a member of the Union of National Salvation (UNS): on 21 December 2015, the police broke into the home of Djama Amareh Meidal, where there was a meeting of members of the opposition. Police forces used firearms and tear gas against those present, including Said Houssein Robleh, a deputy who had already been harassed by the authorities, Ahmed Youssef Houmed, president of the UNS and Hamoud Abdi Souldan, former Minister of Religious Affairs. The three men were injured and hospitalized in the intensive care unit. See: Alkarama, *Djibouti: Excessive Use of Force by the Police and the Army and Assaults of Members of the Opposition*, 24 December 2015, <https://www.alkarama.org/en/articles/djibouti-excessive-use-force-police-and-army-and-assaults-members-opposition>

authorities thus continue to detain prisoners of conscience<sup>36</sup> convicted following unfair trials.<sup>37</sup> A growing number of travel bans are now being issued against journalists, human rights defenders and political opponents.

41. The Djiboutian civil society is still suffering from a lack of visibility and recognition, mainly due to legal and administrative obstacles to the creation of associations. The few existing associations are often accused of being close to the opposition and marginalised when their members are not merely repressed by the authorities.<sup>38</sup>

42. The Djiboutian political opposition,<sup>39</sup> deprived of sufficient space for expression, continues to be kept out of the country's political affairs and strongly repressed, in violation of article 25 of the ICCPR. Some political parties have been banned on several occasions<sup>40</sup> and the agreement to normalise<sup>41</sup> relations with the authorities – signed in late December 2014 to initiate a peaceful political transition in Djibouti – failed due to the authorities' refusal to guarantee a legal status for the opposition. Therefore, the April 2016 electoral process led to serious human rights violations.

43. Despite its commitments at the previous UPR,<sup>42</sup> Djibouti has still not reviewed its legislation to bring it into line with the ICCPR and strengthen civil and political rights.

44. **Recommendations :**

- a) Repeal the provisions of the Penal Code restricting the fundamental freedoms guaranteed by the ICCPR;
- b) Guarantee the freedoms of expression, association and peaceful assembly and ensure that these rights can be exercised freely;
- c) Guarantee to the opposition the right to participate in public and political affairs in accordance with article 25 of the ICCPR.

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<sup>36</sup> Alkarama documented the case of Kadar Abdi Ibrahim, co-director of the opposition newspaper "l'Aurore" in Djibouti. On 19 January 2016 Mr. Ibrahim was sentenced to two-month suspended prison terms in addition to the suspension of the publication of his newspaper for a similar period. Mr. Ibrahim was the victim of harassment by the authorities following the publication of a photo of a seven-year-old girl who died during the violent repression of a religious ceremony by the police and the Djibouti army on 21 December 2015, which resulted in the deaths of dozens of people and the wounds of many others. In August 2016, Mr. Ibrahim was arbitrarily arrested for the second time and his newspaper suspended for documenting and making public the travel ban imposed by the authorities on a former Djiboutian minister. See: Alkarama, *Djibouti: Suspension of the Newspaper "L'Aurore" and Suspended Prison Sentence for Publication Co- Director*, 22 January 2016, <https://www.alkarama.org/en/articles/djibouti-suspension-newspaper-laurere-and-suspended-prison-sentence-publication-co>. Similarly, Alkarama submitted the case of Abdi Aden Cheik Ali, a peaceful opposition activist, to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Mr. Cheik Ali was arbitrarily arrested in August 2016 and detained for three months in retaliation for a video in which he denounced the shortage of water in the Ali-Sabieh region and blamed the authorities for inaction. See: Alkarama, *Djibouti: Arrest of a Citizen Following the Dissemination of a Video Condemning Water Shortcomings in the Country*, 10 August 2016, <https://www.alkarama.org/en/articles/djibouti-arrest-citizen-following-dissemination-video-condemning-water-shortcomings>

<sup>37</sup> The cases documented by Alkarama have noted the same *modus operandi*: victims are generally arbitrarily arrested without warrants and held in custody in various police stations across the country. They are deprived of their right to contact their families or lawyers, accused of "spreading false information" or "insulting state officials", and are subjected to unfair trials before being sentenced to several months of imprisonment and/or heavy fines. Unfair trials, often expeditious are symptomatic of the Djiboutian judiciary, which lacks independence and impartiality, and operates on the orders of the government to harass and silence any dissenting voice. Moreover, the rights of the defence are not respected and the testimonies of ill-treatment or even torture reported by the victims have never been taken into account. By not initiating any investigation to determine the validity of these allegations, the magistrates perpetuate impunity for perpetrators of violations.

<sup>38</sup> A similar finding can be made about human rights defenders, who continue to face constant pressures and lack adequate protection.

<sup>39</sup> Mainly organised around the coalition of the Union for National Salvation (UNS).

<sup>40</sup> Like the Movement for Democratic Renewal (MRD) and the Front for the Restoration of Unity and Democracy (FRUD).

<sup>41</sup> The roadmap of the framework agreement provided for the return to the National Assembly of the 10 opposition MPs elected in the 2013 legislative elections. Contesting the results of the elections and believing that in reality the opposition had obtained the majority of the seats, the latter had until then refused to sit. The implementation process of the framework agreement was endorsed at the beginning of 2015. The rest of the agreement is mainly organised around the establishment of an Independent National Electoral Commission (INEC) and of a joint parliamentary committee with a view to holding the presidential election. However, despite several attempts to negotiate, this measure has still not been implemented, threatening a free and transparent election. This is especially true given that the establishment of a legal status for the opposition, also provided for in the agreement, has not been successful.

<sup>42</sup> Accepted recommendation No. 143.111 (Belgium).



## 5.4 Human rights and the fight against terrorism

45. During the previous UPR, Djibouti committed to ensuring that legal and administrative measures taken to combat terrorism respect human rights and fundamental freedoms.<sup>43</sup>

46. However, Alkarama emphasises that the Decree of 24 November 2015, introducing a number of "exceptional security measures",<sup>44</sup> and the law of 31 December 2015, establishing a state of emergency<sup>45</sup> under the pretext of combating terrorism, have unreasonably restricted fundamental freedoms, particularly the freedom of association and peaceful assembly.

47. Moreover, these "exceptional security measures", taken in the aftermath of the Union for National Salvation demonstration of 20 November 2015, which aimed at denouncing President Guelleh's new undue mandate, have led to numerous human rights violations in the form of arbitrary arrests and detention with the disproportionate use of force.<sup>46</sup> Therefore, Alkarama argues that the real objective of the government was not the fight against terrorism, but a renewed attempt by the authorities to silence the opposition during the electoral period under the pretext of counterterrorism.

### 48. **Recommendation:**

- a) Put an end to all violations of fundamental freedoms committed under the pretext of the fight against terrorism.

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<sup>43</sup> Accepted recommendation No. 143.147 (Mexico).

<sup>44</sup> The decree prohibited any public gathering for an initial period of two months, subsequently extended. According to the statement issued by the authorities, "this decision is intended to ensure the protection of property and persons in a situation of terrorist risks affecting the entire international community".

<sup>45</sup> Law on the state of emergency dated on 31 December 2015: <http://ard-djibouti.org/wp-content/uploads/2016/01/Loi-Relative-%C3%A0-lEtat-dUrgence-du-31-12-2015.pdf>

<sup>46</sup> See : *Djibouti - Intensification de la répression et des harcèlements à l'encontre de membres de l'opposition* <https://www.alkarama.org/fr/articles/djibouti-intensification-de-la-repression-et-des-harcelements-lencontre-de-membres-de>