



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3593/2019\*, \*\*

<i>Communication submitted by:</i>	Daher Ahmed Farah (represented by counsel, Alexis Deswaef and Zakaria Abdillahi)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Djibouti
<i>Date of communication:</i>	21 November 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 25 April 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	4 November 2020
<i>Subject matter:</i>	Dissolution of a political party
<i>Procedural issues:</i>	Victim status; exhaustion of domestic remedies; abuse of rights
<i>Substantive issues:</i>	Freedom of expression; freedom of association; political activities; voting and elections
<i>Articles of the Covenant:</i>	2, 3, 9, 14, 19, 22 and 25
<i>Articles of the Optional Protocol:</i>	1, 2, 3 and 5 (2)

1. The author of the communication is Daher Ahmed Farah, a national of Djibouti born in 1962. He claims that the State party has violated his rights under articles 2, 3, 19, 22 and 25 of the Covenant, read in conjunction with articles 9 and 14. Djibouti acceded to the Optional Protocol to the Covenant on 5 November 2002. The author is represented by counsel, Alexis Deswaef and Zakaria Abdillahi.

#### The facts as submitted by the author

2.1 The Parti du renouveau démocratique (Party for Democratic Renewal), founded in September 1992, the main opposition party in Djibouti, was declared illegal by the authorities after the sudden and mysterious death, on 26 November 1996, of its founding President. Its new President, the author of the communication, who was elected on 15 July 1997, has been

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



persecuted for his resistance to what he calls the arbitrary banning of his party. He was arrested and held in Gabode Central Prison in October 1997 for “illegal administration of a political party, organization of illegal demonstrations and dissemination of false news”. During a brief lull following the 12 May 2001 signature of the Reform and National Reconciliation Agreement by the Government and the armed movement Front pour la restauration de l’unité et de la démocratie, the Parti du renouveau démocratique was restored to legality, but at the cost of a name change: on 17 November 2002, the Parti du renouveau démocratique became the Mouvement pour le renouveau démocratique et le développement (Movement for Democratic Renewal and Development), with the author acting as President. Legality regained, however, did not put an end to the persecution of the Mouvement, which, as noted, is the country’s main opposition party, or of its President, as shown by the arrests and imprisonment of the author on numerous occasions in 2003, his resulting exile to Belgium in 2004 and, later, among other violations of his and his party’s civil and political rights, the arbitrary dissolution of the Mouvement.

2.2 By Decree No. 2008-0167/PR/MID of 9 July 2008, the President of Djibouti dissolved the Mouvement pour le renouveau démocratique et le développement on the grounds that it had invited the Eritrean Head of State to invade Djibouti and thus undermine the country’s independence, territorial integrity and national unity.

2.3 On 30 November 2008, the Mouvement filed a petition with the registry of the Administrative Litigation Council for the nullification of the decree, notice of which had not been given. The pretext for the dissolution by presidential decree was an alleged Mouvement press release of 6 July 2008 issued from “Bruxelle” [sic], entitled “Message to the President of Erytree” [sic]. The press release was a crude and blatant forgery featuring misspellings of “Eritrea” and “Brussels” and containing erroneous information, dated 6 July 2008, with regard to the fighting between Djibouti and Eritrea in June 2008. On 23 May 2009, the Mouvement sued. It contended that the press release, which had been submitted as evidence by the State’s attorney and had provided the pretext for the decree whereby the Mouvement had been dissolved, was a fabrication.

2.4 On 20 March 2010, after an exchange of pleadings between the State and the Mouvement, an exchange in which the Government Commissioner also participated, the Administrative Litigation Council ruled that the Mouvement’s petition for the nullification of the decree was inadmissible because it had been submitted out of time. The Council noted that the litigants had not denied that the decree of 9 July 2008 had been published immediately in the Official Gazette, thus enabling any injured party to appeal.

2.5 On 13 May 2010, the Mouvement, in a bid to have the Administrative Litigation Council’s ruling found null and void, lodged an appeal in cassation with the Supreme Court of Djibouti. In further pleadings submitted on 12 July 2010, the Mouvement underscored the failure to give notice of the dissolution decree and contested the Council’s assertion that the parties had not denied that the decree had been published immediately in the Official Gazette. The exact date of publication was unknown, and the State’s attorney had not produced any evidence that the Mouvement had been notified of the decision to dissolve it or of the date on which the decree was published in the Official Gazette or the issue of the Gazette in question was made available for sale. The Mouvement argued that it was common in Djibouti for the Official Gazette to be published irregularly and often several months late. In any event, the Administrative Litigation Council did not address the failure to give notice of the decree.

2.6 The Supreme Court rejected the appeal on 19 May 2013. The author, however, was never served with the Court’s judgment. The oral reply he or his counsel received to each request for the judgment papers was invariably the same: “The judgment must be typed up, and when it is you will be served with it.” After approaching the registry of the Supreme Court again, the author’s counsel was served with the judgment of 19 May 2013 on 18 April 2018.

2.7 In its judgment of 19 May 2013, the Supreme Court held that the decree of 9 July 2008 had been published in the Official Gazette<sup>1</sup> and in the 10 July 2008 edition of the newspaper *La Nation* and that publication in the press – i.e., in the two periodicals – was a

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<sup>1</sup> The Court did not indicate a publication date.

valid form of notification, as the decree concerned not a particular individual but a group of people: namely, the leaders and members of the party in question. Consequently, the Supreme Court relied on article 11 of the decree of 5 August 1881, according to which an appeal of any relevant decision will be admissible for no more than three months after the notification of the decision.

2.8 The author is unable to provide the exact date on which the decree of 9 July 2008 was reportedly published in the Official Gazette, as the Official Gazette does not appear regularly in Djibouti. The edition containing the decree dissolving the Mouvement was delayed for so long that the author had no choice but to look for the decree elsewhere. It was much later, in 2010, when the action he had brought was already under way, that he found the online version of the decree of 9 July 2008, according to which the decree was published in the Official Gazette (No. 13) of 15 July 2008.

2.9 The decree was not published in its entirety in the 10 July 2008 edition of *La Nation*. Neither the official letterhead nor the appropriate stamps, references to the report of the Ministry of the Interior or the message allegedly sent by the Mouvement to the President of Eritrea or the date of the decree appeared. Moreover, article 3 of the decree appeared not as a third article but as a paragraph of article 2. In any event, *La Nation* is not the periodical legally responsible for the publication of laws and regulations in Djibouti. As article 3 of the decree of 9 July 2008 itself states, it is in the Official Gazette that the decree should have been published, a statement that emphasizes that the validity of the decree depends on its publication in the Official Gazette.

2.10 As he could not find the Official Gazette either in print or online – and in the face of the repression that followed the dissolution of his party – the author sought another way to obtain a copy of the decree. Ultimately, a source in the Ministry of the Interior informally provided him with a copy of the decree on 12 November 2008, three days before the drafting of his appeal for abuse of authority. This was the copy he included in the suit he filed. The author argues that an examination of the copy of the presidential decree makes it clear that the decree was transmitted to the Ministry of the Interior, which was thus notified of it, on 10 July 2008; the Mouvement, on the other hand, was never notified of it. The decree was transmitted to the Ministry of the Interior, a public institution, to enable it to ensure that the Mouvement was dissolved, but was not transmitted to the Mouvement itself, the very political organization whose dissolution had been decreed.

2.11 The author considers himself the most persecuted opposition figure in the country. Between January 2013 and December 2014 alone, he was arrested or placed under house arrest more than 23 times, 6 of which involved being held in Gabode Central Prison, known for its harsh conditions of detention. Since March 2017, there has been a warrant for his arrest issued by the judicial authorities of Djibouti.

2.12 In March 2017, several members of the Mouvement were arrested for “reconstitution of a dissolved group”. On that pretext, clearly based on the dissolution of the Mouvement, the party’s general secretary, its treasurer, two organizers and two activists were sentenced to two months in prison by the Criminal Division of the Djibouti Court of First Instance on 28 March 2017. On 11 October 2017, the Djibouti Court of Appeal upheld the conviction but reduced the sentence by half. The author was able to avoid being arrested and imprisoned only because he was living in Belgium, where he lives to this day.

### **The complaint**

3.1 The dissolution of the Mouvement pour le renouveau démocratique et le développement and the dismissals of the appeals lodged in the country’s courts, which were not based on an examination of the merits of the case, amount to denials of justice, prevent the author from engaging in any political activity and are a violation of the civil and political rights guaranteed in the Covenant, including the right to freedom of expression (art. 19), the right to freedom of association (art. 22) and the right to take part in the conduct of public

affairs and to be elected (art. 25). This dissolution was denounced in a European Parliament resolution of 15 January 2009.<sup>2</sup>

3.2 As a result of the dismissals of his appeals, the author can no longer exercise his rights to freedom of expression and association or his right to take part in the conduct of public affairs without being prosecuted: he would be charged with reconstituting a dissolved political party and other offences. In this respect, the author mentions the March 2017 arrests of members of the Mouvement on exactly those charges to bolster his conclusion that there is a significant risk that he, as the party leader, will suffer the same fate as his fellow dissenters if he returns to Djibouti.

3.3 Given these circumstances, the author is in constant fear for his liberty and security, as he is at risk of arbitrary arrest or detention at any time (in violation of article 9 of the Covenant); in the determination of any charge against him, he will not be given a fair hearing by a competent, independent and impartial tribunal (in violation of article 14 of the Covenant).

3.4 The facts and the law show that the State party's authorities, President Ismaël Omar Guelleh in particular, intend thus to deprive the author and the other members of the Mouvement of the opportunity to participate in the upcoming elections<sup>3</sup> and prohibit them from engaging in any political activity. Civil society organizations and opposition political parties are systematically prevented either from forming or from carrying out their statutory activities, as evidenced by alerts, press releases and other reports from human rights and press freedom organizations,<sup>4</sup> the annual report of the Department of State of the United States of America on the human rights situation in Djibouti<sup>5</sup> and the European Parliament's urgent resolutions of 4 July 2013 and 12 May 2016. For an international overview of the situation in the State party, the author points to some international rankings, including a 2017 index in which Djibouti is ranked 171st out of 190 countries on the ease of doing business.<sup>6</sup>

#### **State party's observations on admissibility and the merits**

4.1 On 20 October 2019, the State party submitted observations on admissibility and the merits, beginning with a review of the facts. In June 2008, Eritrea launched an armed attack on the State party and occupied part of its territory. From Belgium, the author, who, in this attack, saw an opportunity to seize power, called on behalf of the Mouvement for Mr. Isaias Afwerki, President of Eritrea, to overthrow the President of Djibouti and his Government.<sup>7</sup> In response to this act of high treason, the President of Djibouti, by a decree of 9 July 2008, dissolved the Mouvement pour le renouveau démocratique et le développement for having undermined the country's independence, territorial integrity and national unity, in accordance with article 13 of the Political Parties Act (No. 1/AN/92/2e L of 15 September 1992). The Mouvement's petition for the decree to be declared null and void was found inadmissible, as it was not submitted in time.

<sup>2</sup> European Parliament, resolution of 15 January 2009 on the situation in the Horn of Africa [document P6\_TA(2009)0026]: "whereas the majority voting system, highly unfavourable to the opposition parties, which was applied during the 2008 legislative elections, is a matter of concern in Djibouti, where the opposition Movement for Democratic Renewal (MRD) party was banned in July 2008 on the totally unsubstantiated grounds of supporting an Eritrean attack on Djibouti, [the European Parliament] calls on the Djibouti authorities to ... allow the MRD opposition party to resume activity" (available at [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0026+0+DOC+XML+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0026+0+DOC+XML+V0//EN)).

<sup>3</sup> The presidential elections of April 2021 followed by the general elections of February 2023.

<sup>4</sup> International Federation for Human Rights, "Djibouti: Defending economic and social rights comes at too high a price", 9 August 2006, available at <https://www.fidh.org/en/region/Africa/djibouti/Djibouti-Defending-economic-and>. See also the annual world press freedom indices compiled by Reporters Without Borders.

<sup>5</sup> Department of State of the United States of America, "2013 Annual Report of the Government of the United States of America for the Voluntary Principles on Security and Human Rights Initiative", 10 April 2014, available at <https://2009-2017.state.gov/j/drl/rls/vprpt/2013/224673.htm>.

<sup>6</sup> World Bank, *Doing Business 2017: Equal Opportunity for All*, 2017, p. 8, available at <https://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB17-Chapters/DB17-Mini-Book.pdf>.

<sup>7</sup> The State party is referring to the press release of 6 July 2008.

4.2 In its observations on the admissibility of the communication, the State party submits that the author has failed not only to exhaust domestic remedies but also even to bring a relevant action before the country's courts. In the State party's view, the author does not appear to distinguish between himself as the natural person who is the author of the communication and the Mouvement, the party he has led since its creation in 2002, which has exhausted all domestic remedies and is a legal person under domestic law. Moreover, in his submission, the author expressly recognizes that the party is a legal person when he states that the Mouvement is a party that, as a legal person, is endowed with rights and responsibilities.

4.3 Moreover, it would appear that the author is unaware of article 3 of the Optional Protocol, which states that a communication must not be an abuse of the right of submission or incompatible with the provisions of the Covenant. The State party argues that the author, who has lived in Belgium since 2003, is a Belgian national and has never run for either local or national office in Djibouti. He has instead made a name for himself more as a political agitator, in which capacity he has committed ordinary offences and been prosecuted. The State party is of the view that the author's long absence and his reprehensible attitude show that he is trying to damage the image of the country and its leaders, as he uses abusive language in his submissions, while making utterly baseless claims that the country's economy is, as he puts it, "controlled by the Head of State and his family". The erroneous information and statistics he chose to provide are further proof, were more needed, that the author is bent on causing harm. For example, Djibouti is in ninety-ninth place on the Ease of Doing Business index, not, as the author claims, 171st.<sup>8</sup>

4.4 The State party consequently requests the Committee not to consider the communication, which is contrary to the spirit of the Covenant and thus constitutes a manifest abuse of rights, within the meaning of article 3 of the Optional Protocol.

4.5 In its comments on the merits, the State party first of all sets out its institutional, legislative and regulatory framework for complying with the provisions of the Covenant invoked by the author and ensuring to its citizens, without distinction of any kind, the rights recognized in those provisions.

4.6 The State party is of the view that this case involves no discrimination, since the Mouvement and its President – the author – have been accused of violating provisions of the law on political parties. In the national political landscape, the author has never been a victim of discrimination. With the establishment of a full multiparty system in 2002, he, like many other compatriots of his who met the conditions required by law, formed his political party and for years was able to exercise his civil and political rights without hindrance or prohibition of any sort. In addition, the author does not provide any evidence that he was treated differently from anyone else who was in a comparable situation.

4.7 Second, with regard to article 14 of the Covenant, the Mouvement had access to tribunals of all levels in its 2008 dispute with the State party. As for the alleged violation of article 19 of the Covenant, the State party notes that the author and his party have never been prohibited or otherwise stopped from exercising their rights to freedom of expression and opinion to the full and invites them to provide evidence of their allegations to the contrary.

4.8 In its observations on the author's claim that he is a victim of a violation of his rights under article 22, the State party contends that the author has always enjoyed the right to freedom of association with others: in 1992, he was a founding member of the Parti pour le renouveau démocratique, a party that competed in the country's multiparty general and presidential elections in 1993; in 2002, he associated freely with others to create the Mouvement; in 2003, together with the main opposition political parties, he created the coalition known as the Union pour l'alternance démocratique, which took part in the general elections of that year; lastly, in 2013, he freely formed, again with other parties, the main

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<sup>8</sup> World Bank, "Doing Business 2019: Djibouti Jumps 55 Ranks", press release, 31 October 2018, available at <https://www.worldbank.org/en/news/press-release/2018/10/31/doing-business-2019-djibouti-jumps-55-ranks>.

opposition coalition Union pour le salut national, which participated in the general elections of 2013 and won 10 seats in the National Assembly.

4.9 In response to the claim of a violation of article 25 of the Covenant, the State party submits that the author, who has supported opposition candidates in numerous elections, also saw to it that in the 2013 general elections, 10 candidates of his choosing were elected to represent the Union pour le salut national. The author has himself never sought national elective office (as President or as a member of the National Assembly, for example). His departure only three years after the country's first change of power in 1999 was a deliberate and resolute renunciation of all his rights, including the right to take part in the public affairs of his country. The author, by keeping his Belgian nationality, knowingly forsook the opportunity to run for national office.

4.10 The State party concludes that the author does not at any time demonstrate how he has been directly and personally penalized by any domestic law, regulation, policy or directive that violates his rights under the Covenant. It therefore reiterates its view that the communication is an abuse of the right of submission, as it is the work of a citizen who, out of ignorance or bad faith, contends that he is a victim of violations (which are no such thing) of his civil and political rights.

#### **Author's comments on the State party's observations**

5.1 In his comments of 27 December 2019, the author stresses that the State party provides no evidence of any justification for the dissolution of the Mouvement by presidential decree on 9 July 2008. For want of evidence, it simply refers to domestic laws that, in practice, are not enforced and makes erroneous assertions about the author. With its observations, the State party shows that it arbitrarily dissolved the Mouvement and that it is preventing its President – the author – from taking part in the conduct of the country's public affairs and in the elections, in which he wishes to run as a candidate of the Mouvement.

5.2 In response to the State party's assertion that he is a dual national of Djibouti and Belgium who has lived permanently in Belgium since 2003, the author states that after having been hounded constantly by the State party's authorities, he applied for asylum in Belgium in 2004, not, as the State party claims, in 2003. He then returned to Djibouti, where he lived from 13 January 2013 to 4 March 2017, during which time he was arrested and/or placed under house arrest more than 23 times. On six separate occasions in 2013 and 2014, he was held in Gabode Central Prison. The author has also been a victim of attempted assassination, and a complaint he filed in that respect<sup>9</sup> is pending – no action has been taken – with the State prosecutor at the Djibouti Court of First Instance. His political activism is the reason for everything he has been through. Since March 2017, the author has been living in Belgium again, as a warrant for his arrest has been issued by the judicial authorities of Djibouti for his alleged violation of article 152 of the Criminal Code. If he returns to Djibouti, he is likely to be arrested and taken into custody.

5.3 The author argues that the only evidence that the State party has produced to justify its decision to dissolve the Mouvement is a copy of a crude forgery that the Djibouti authorities turned out as a pretext for the politically motivated dissolution of the Mouvement. The State party's authorities seem to have concocted this fake press release to overshadow the Mouvement's real press release, in which the two States were called on to resolve their dispute through dialogue.

5.4 With regard to the failure to exhaust domestic remedies and the difference between the author's person and the legal personhood accorded the Mouvement, the author states that he is being persecuted for his political activities. He is being targeted by the authorities as the President of the Mouvement. He is accused, falsely, of having called on behalf of the Mouvement for Mr. Isaias Afwerki, President of Eritrea, to overthrow the President of Djibouti and his Government. And it was on the basis of these false accusations that the Mouvement was dissolved, a dissolution that the party leadership challenged before the lower

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<sup>9</sup> The complaint is dated 15 June 2013 and refers to acts that took place on 25 May 2013.

and higher courts in Djibouti. As President of the Mouvement, the author has therefore exhausted all domestic remedies in Djibouti.

5.5 The ordinary offences that the State party mentions are in fact the instances of political repression to which the authorities have subjected the author. They go by the following names: unlawful leadership and administration of a political party, unlawful demonstration, disturbance of the peace, damage to the morale of the army, dissemination of false news, libel and so on.

5.6 It is also untrue that the author has never run for office in Djibouti. He ran in the general elections of 10 January 2003 under the banner of the Union pour l'alternance démocratique. He was the second candidate on the list for the main electoral district<sup>10</sup> – that of the capital of Djibouti – where 37 seats were up for election. The Union contested the results of these elections, which were marred by serious fraud that allowed the Government to ensure that every seat in the National Assembly was again held by a supporter of the President. In this respect, and in addition to the electoral fraud, it is odd that the Government's decision to prohibit dual nationals from running for parliament came into effect only a few weeks after the author obtained Belgian citizenship in December 2007. As expected, the author and other opponents of the Government who acquired dual nationality in exile have been prevented from running in general elections in Djibouti since 7 January 2008.

5.7 As for the other attacks on his person by the State party, the author points out that in 2017 Djibouti was indeed 171st in the Ease of Doing Business rankings, not ninety-ninth. On the other point, if President Guelleh claims that he does not exert direct or indirect control over the country's economy, he should, in the author's view, agree to a simple independent investigation of that claim. It is therefore not the author who has produced "erroneous information and statistics" or is "bent on causing harm".

5.8 In response to the State party's comments on the merits of his case, the author claims that he and the Mouvement did not break the law; they were targeted by the State party on the pretext of a crude forgery that the authorities dared produce only in the form of a copy of what, as is evident at a glance, was a clumsily fabricated original. It is because of this clumsy fabrication, according to the author, that the original press release that served as the pretext for the dissolution of the Mouvement has never been included in the case files and continues to be hidden from the Committee.

5.9 The author, notwithstanding the State party's claim to the contrary, has been a victim of all kinds of discrimination since he entered politics in 1992. With regard to his working life, he was stripped of his job as a journalist in September 1992, and the private school he founded in 1994 was closed unlawfully in 1996. In connection with his family life, his wife was dismissed from her job as a civil servant in 2001, and in the same year his brother lost his position at the Ministry of Finance. In respect of his political life, he has stopped counting the number of times he has been arrested, placed in detention or under house arrest, had property seized or been the target of assassination attempts.

5.10 Although the Mouvement was able to put forward candidates for the general elections of 22 February 2013, after a 10-year electoral boycott by the opposition to denounce the lack of free and democratic elections in Djibouti, it was able to do so not under its name, as the Mouvement was banned, but under the name of an opposition coalition – the Union pour le salut national – formed by three opposition parties still legal at the time.

5.11 With regard to article 19 of the Covenant, the author argues that the Mouvement newspaper was regularly targeted by the Djibouti authorities and that he himself was imprisoned for his work as a journalist. The Mouvement website, on which the electronic version of the newspaper appeared, has been blocked to this day.

5.12 As for article 22 of the Covenant, the author emphasizes that it is because he is politically engaged, determined and active that he is a prime target of the discriminatory and repressive actions of the Djibouti authorities. The politically motivated arrests to which he

<sup>10</sup> The author produces a copy of Decree No. 2002-0261/PR/MID, in which the lists of candidates for the general elections of Friday, 10 January 2003, were published and which appeared in the Official Gazette on 25 December 2002. The author's name is indeed mentioned.

has been subjected began when he became an active member of the Parti du renouveau démocratique and continued as he worked with the Mouvement and successive coalitions.

5.13 Lastly, the author finds that the State party's reasoning with regard to article 25 of the Covenant is tantamount to making the rights enshrined in the article conditional on a person's wish, engagement or even determination to enjoy those rights. In addition, although article 24 of the Constitution states that to be elected in presidential elections, a candidate must be a national of Djibouti alone, that provision cannot justify banning a candidate beforehand, as the candidate in question could in due course renounce his or her other citizenship to comply with the constitutional requirement.

5.14 The author therefore calls for the Mouvement, the party he leads, to be able to exercise its rights to peaceful assembly and association and to participate fully and legally in the political life of the country and in the upcoming elections, including the presidential election scheduled for 2021.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the argument made by the State party, which appears to call into question the author's status as a victim on the grounds that he does not distinguish between his status as a natural person and that of the Mouvement as a legal person. The dissolution of the Mouvement as a legal person does not, in the State party's view, interfere with the author's exercise of his Covenant rights. In this respect, the Committee recalls that the fact that its competence to receive and consider communications is restricted to those submitted by or on behalf of individuals does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.<sup>11</sup> The Committee notes that the author is acting in his personal capacity and that he claims he is a victim of violations of his individual rights under the Covenant as a direct consequence of his role in the Mouvement. In addition, the Committee notes that the author was apparently affected personally, including by being accused of reconstituting the dissolved political party he had led and placed under an arrest warrant by the judicial authorities of Djibouti. The Committee is therefore of the view that article 1 of the Optional Protocol is not an obstacle to the admissibility of the communication.

6.4 As for the exhaustion of domestic remedies, the Committee observes that on 30 November 2008, the author's party submitted a petition for the nullification of the dissolution decree to the Administrative Litigation Council and that this petition was dismissed for having been submitted out of time. In 2013, the party's appeal to the Supreme Court was also rejected. In view of the impact of these proceedings on the rights that, according to the author, have been violated, the Committee is of the view that this issue is bound up with the substance of the claims made in the communication and decides to consider it on the merits, as it finds that it is not precluded from doing so under article 5 (2) (b) of the Optional Protocol.

6.5 The Committee notes that the State party has also contended that the author has committed an abuse of rights, as he has never run for elective office, he used abusive language in his communication when he made the baseless assertion that the State party's economy was "controlled by the Head of State and his family" and he submitted erroneous statistics. The Committee notes that the State party merely contends that the author's language is offensive, without providing any details or explanation in that regard. It therefore considers that the State party has not sufficiently substantiated its claims.

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<sup>11</sup> Human Rights Committee, general comment No. 31 (2004), para. 9.



6.6 In connection with the alleged misinformation submitted by the author, the Committee notes that a presidential decree published in the Official Gazette refers explicitly to the author as a candidate in the general elections of 10 January 2003 and that the author clearly mentions the 2017 Ease of Doing Business rankings, having provided the Internet address of the report which confirms his assertions (see footnote 6), whereas the State party, referring to the 2019 rankings, accuses him of being “bent on causing harm”. The Committee is therefore of the view that the State party has failed to demonstrate what misinformation was submitted by the author and finds that the communication does not constitute an abuse of the right of submission of a communication within the meaning of article 3 of the Optional Protocol.

6.7 The Committee notes that the author has also claimed that his rights under articles 9 and 14 have been violated, as he is at constant risk of being detained arbitrarily, without being given a fair hearing by a tribunal. The Committee observes the hypothetical and forward-looking nature of this claim and stresses that under article 2 of the Optional Protocol, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a communication. As the two conditions have not been met in this case, the Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol.

6.8 The Committee also takes note of the author’s allegations that his rights under articles 2 and 3 of the Covenant have been violated by the State party. The author merely cites those articles of the Covenant without explaining why he believes the rights set forth therein were violated. The Committee is thus of the view that the author has not substantiated these claims sufficiently for the purposes of admissibility and finds them inadmissible under article 2 of the Optional Protocol.

6.9 The Committee nonetheless considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims concerning articles 19, on freedom of expression, 22, on freedom of association, and 25, on the right to take part in the conduct of public affairs and to be elected. It declares these claims admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The main issue before the Committee is whether the dissolution of the party of which the author is member and President constitutes interference with his right to freedom of association under article 22 of the Covenant. The Committee notes that, according to information provided by the author, which was not contested by the State party, the Mouvement was registered with the Ministry of the Interior on 17 November 2002 and dissolved by presidential decree on 9 July 2008. In this regard, the Committee observes that the right to freedom of association not only relates to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association, and dissolution of an association must satisfy the requirements of article 22 (2).<sup>12</sup> Given that political parties are a form of association essential to the proper functioning of democracy, and in the light of the serious consequences that arise for the author in this case, the Committee concludes that the dissolution of the Mouvement amounts to interference with his right to freedom of association.

7.3 The Committee must therefore decide whether this interference was warranted. It observes that, in accordance with article 22 (2) of the Covenant, in order for the interference with the right to freedom of association to be justified, any restriction on this right must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in article 22 (2); and (c) it must be necessary in a democratic society for achieving one of these purposes. The reference to the notion of a “democratic society” indicates, in the Committee’s opinion, that the existence and operation of associations, including those that peacefully promote ideas not necessarily favourably

<sup>12</sup> *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para. 7.2.

received by the Government or the majority of the population, is a cornerstone of a democratic society.<sup>13</sup> The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient, particularly with respect to the activity of political parties. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical threat to national security or democratic order, that less intrusive measures would be insufficient to achieve the same purpose and that the restriction is proportionate to the interest to be protected.<sup>14</sup>

7.4 In this case, the Committee notes that it is not disputed that the Mouvement was dissolved, in accordance with article 13 of the Political Parties Act (No. 1/AN/92/2e L), for having allegedly undermined the country's independence, territorial integrity and national unity. The interference was thus provided for by law. It is therefore incumbent upon the Committee to assess whether this restriction was imposed for a legitimate purpose, whether it is necessary in order to achieve that purpose and whether it is proportionate and non-discriminatory.

7.5 The Committee notes that, according to the State party, the interference at issue was prompted by a call by the author, on behalf of the Mouvement, for the President of a country that had attacked and occupied part of the State party to overthrow the President of Djibouti and his Government. The author, for his part, denies having called for such an action and claims that this is a false allegation fabricated by the authorities to prohibit the Mouvement, the country's main opposition party, from engaging in any political activity. In view of the severity of the measure – the dissolution of a political party – the Committee is called upon to determine whether the State party has shown that there was a real threat.

7.6 The Committee notes, first, that the party founded by the author contested the authenticity of the document that was the ostensible reason for the presidential decree dissolving the party by petitioning both to have the decree declared null and void and to initiate proceedings to prove that the document was a forgery. The petition for the nullification of the decree submitted by the party was found inadmissible because it was not submitted in time and the authenticity of the document in question was never examined by the country's courts. However, the Committee cannot help but note that, although the petition containing the party's claims about a crude forgery and a failure to provide notification was found to have been submitted out of time, neither of the two domestic courts that examined the case (the Administrative Litigation Council and the Supreme Court) indicated clearly the exact date on which the decree was published in the Official Gazette or why the authorities, but not the party concerned, had been notified of the dissolution. In this respect, the Committee notes that the decree specifies that it will be published in the Official Gazette and that it was not published in full in the newspaper *La Nation*. This failure to communicate hampered the party's ability to defend itself from this extremely harsh measure.

7.7 The Committee also notes the State party's failure to respond to the author's central claims before the Committee: the date of publication of the presidential decree and the date of notification of the author's party, as well as the reasons for the authorities' decision to attribute authorship of the incriminating document, which was not authenticated by signature or stamp, to the author's party. In accordance with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to transmit to the Committee the information in its possession. In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided that they have been sufficiently substantiated.

7.8 The Committee finds that the national courts' consideration of whether the dissolution decree was effectively notified in full and the brevity with which those courts ruled on the claims made by the party do not, in view of the issue, which is particularly important for a democratic society, meet the requirements for a careful examination of the rights in question. In addition, the five years it took the Supreme Court to notify the author's lawyer of the final

<sup>13</sup> *Ibid.*, para. 7.3.

<sup>14</sup> *Jeong-eun Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.2, and *Mikhailovskaya and Volchek v. Belarus* (CCPR/C/111/D/1993/2010), para. 7.3.

judgment of 19 May 2013 is manifestly unreasonable.<sup>15</sup> As a result, the Committee is persuaded that the State party has failed to prove that the Mouvement, the party founded by the author, was dissolved to address a real threat to national security, public safety or public order or to protect public health or morals or the rights and freedoms of others. In the circumstances, the Committee concludes that the author, as President of the dissolved party, was a victim of a violation of article 22 of the Covenant.

7.9 As for the alleged violation of article 19 of the Covenant, the Committee, in paragraph 4 of its general comment No. 34 (2011), stresses that freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association. This requirement is particularly necessary to ensure the functioning of political parties in a democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for respect of the rights or reputations of others, and (b) for the protection of national security or of public order, or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>16</sup> The Committee recalls that it is for the State party to show that restrictions on the rights under article 19 of the Covenant are necessary and proportionate.<sup>17</sup> Finally, the Committee recalls that any restriction on the freedom of expression must not be overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest whose protection is sought.<sup>18</sup> In the present case, having found a violation of article 22 of the Covenant in view of the fact that the State party has failed to demonstrate the existence of a real threat to national security, public safety or public order or a need to protect public health or morals or the rights and freedoms of others, the Committee concludes that the author is also a victim of a violation of the right, enshrined in article 19, to freedom of expression.

7.10 Lastly, the Committee notes that the author claims that his rights to take part in the conduct of public affairs and to be elected, rights set forth in article 25 of the Covenant, have been violated. Article 25 recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the exercise of these rights by citizens may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable.<sup>19</sup> The Committee also notes that the exercise of these rights requires the full enjoyment of and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations and freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>20</sup> In addition, as the Committee has also stated, the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25 of the Covenant.<sup>21</sup>

7.11 In this regard, the Committee notes the author's allegations that he and his family were persecuted because of his political activism, as a result of which he was arrested and imprisoned multiple times in connection with his activities as a member of the political opposition. The author claims that, in addition to having been arrested and imprisoned in

<sup>15</sup> In paragraph 18 of its concluding observations on the initial report of Djibouti (CCPR/C/DJI/CO/1), the Committee expressed concern about allegations that the State party had arrested, harassed and threatened opposition leaders, many of whom had been accused of "participation in illegal demonstration or in an insurrectionary movement" and imprisoned.

<sup>16</sup> Human Rights Committee, general comment No. 34 (2011), para. 22.

<sup>17</sup> *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

<sup>18</sup> Human Rights Committee, general comment No. 34 (2011), para. 34.

<sup>19</sup> Human Rights Committee, general comment No. 25 (1996), paras. 3–4.

<sup>20</sup> *Ibid.*, para. 25.

<sup>21</sup> *Ibid.*, para. 26.

October 1997 and several times in 2003, between January 2013 and December 2014 he was arrested or placed under house arrest more than 23 times, 6 of which involved being held in Gabode Central Prison. The Committee notes that the State party has neither denied these allegations nor offered any explanation as to why the author was repeatedly arrested and detained. In the circumstances, the Committee considers that due weight must be given to the author's allegations. Having found a violation of article 22 of the Covenant, and in view of the facts supporting the author's allegation that he was persecuted because of his activities as a member of an opposition party, the Committee concludes that the author was also deprived of the opportunity to participate in the conduct of public affairs, in violation of his rights under article 25.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 19, 22 and 25 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is required, *inter alia*, to take appropriate measures to: (a) declare the presidential decree of 9 July 2008 null and void, (b) allow the author to pursue his political activities freely and to consider reregistering the Mouvement pour le renouveau démocratique et le développement, (c) allow the author to participate in the elections and (d) provide the author with adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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