



MADAGASCAR

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

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FOLLOW-UP TO THE PREVIOUS REVIEW

In its previous UPR in 2014, Madagascar fully accepted 139, and took a further 21 recommendations under consideration.¹ Of these, and following consultations with all stakeholders, Madagascar accepted 14, partly accepted two, noted four, and rejected one.²

International and regional human rights instruments

Following recommendations made in 2014, Madagascar ratified the Convention on the Rights of Persons with Disabilities,³ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁴ the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵ and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.⁶ However, Madagascar is yet to ratify other treaties it agreed to, including the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,⁷ the International Convention for the Protection of All Persons from Enforced Disappearance,⁸ the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,⁹ and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.¹⁰

Treatment of prisoners

During the previous review, the conditions in prisons had been identified as a major human rights concern in Madagascar. Despite accepting four recommendations to improve prison conditions so that they comply with the

¹ A/HRC/28/13, paragraphs 108 and 109.

² A/HRC/28/13/Add.1, page 3.

³ A/HRC/28/13 recommendations 108.1 (Ghana), 108.2 (Japan), 108.26 (Uruguay), 108.30 (Brazil), 108.36 (Gabon).

⁴ A/HRC/28/13 recommendation 108.1 (Ghana).

⁵ A/HRC/28/13 recommendations 108.1 (Ghana), 108.3 (Mali), 108.11 (Portugal), 108.17 (Switzerland), 108.19 (Togo), 108.20 (Tunisia), 108.23 (Uruguay), 108.38 (Germany).

⁶ A/HRC/28/13 recommendations 108.4 (Montenegro), 108.6 (Norway), 108.9 (Portugal), 108.13 (Rwanda), 108.21 (Turkey), 108.22 (Uruguay), 108.32 (Costa Rica), 108.34 (France), 108.35 (Gabon), 108.98 (Australia).

⁷ A/HRC/28/13 recommendations 108.1 (Ghana), 108.5 (Netherlands), 108.7 (Norway), 108.10 (Portugal), 108.14 (Sierra Leone), 108.18 (Switzerland), 108.28 (Argentina), 108.31 (Central African Republic), 108.37 (Germany).

⁸ A/HRC/28/13 recommendations 108.2 (Japan), 108.11 (Portugal), 108.14 (Sierra Leone), 108.20 (Tunisia), 108.25 (Uruguay), 108.27 (Argentina).

⁹ A/HRC/28/13 recommendation 108.11 (Portugal).

¹⁰ A/HRC/28/13 recommendations 108.15 (South Africa) and 108.26 (Uruguay).

Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules),¹¹ to reform the judicial and penitentiary systems,¹² to guarantee all detainees access to a fair and equitable trial within a reasonable time frame,¹³ and to urgently overcome prison overcrowding,¹⁴ very little progress has been made to implement these recommendations. During visits to places of detention, Amnesty International was able to ascertain that prison conditions in Madagascar continue to constitute cruel, inhuman or degrading treatment or punishment. In 2017 alone, the government reported 129 deaths in custody, 52 of them during pre-trial detention. The government granted Amnesty International free access to places of detention (see also below).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

National justice system

While the legal framework provides for the protection of human rights, including fair trial guarantees, in practice, these are not observed. The national justice system is weak, particularly for the poorest and most marginalized people. The lack of investment in the penitentiary and judiciary systems has translated into an extreme lack of human, material and financial resources, which has severely impacts on the human rights of detainees, including their rights to food and healthcare. The prison system is extremely outdated and the crumbling prison infrastructure poses a threat to the lives of detainees. The judiciary also suffers from a severe lack of resources, with only one or two sessions taking place in each district per year. The critical shortage of legal aid lawyers and the fact that trials often take place years after the time of arrest, combine to violate the right of detainees to fair trial and legal representation.

Prolonged pre-trial detention

Under the Criminal Code and the Code of Criminal Procedure (CPP), pre-trial detention is too lengthy and violates fair trial rights.¹⁵ At the stage of arrest, the initial period of police custody is 48 hours,¹⁶ however, the law allows for police custody to be extended for up to 12 days before the detainee is brought before a judge. This depends on the distance between where the arrest happened and where the police officer in charge of the investigation lives,¹⁷ and applies to minors too.¹⁸ International law and standards require that anyone arrested is brought promptly before a judge, which in most cases should not exceed a period of more than 48 hours following arrest.¹⁹ Following arrest, the CPP allows excessive periods of pre-trial detention and contravene the right to be tried promptly, as required by human rights law and standards.²⁰ Those held in pre-trial detention can wait for more than five years for their trial if they are accused of serious crimes. Malagasy law also permits lengthy periods of detention pending trial for children from the age of 13, violating international standards that require the deprivation of a child's liberty to be a measure of last resort and for the shortest possible time.²¹

¹¹A/HRC/28/13 recommendations 108.38 (Germany), 108.118 (Botswana), 108.91 (Switzerland) and 109.4 (Central African Republic).

¹² A/HRC/28/13 recommendations 108.115 (United States of America), 108.117 (Algeria).

¹³ A/HRC/28/13 recommendation 108.118 (Botswana).

¹⁴ A/HRC/28/13 recommendation 109.04 (Central African Republic).

¹⁵ The African Commission found that a delay of two years without a hearing or projected trial date constituted a violation of Article 7(1) of the African Charter.

¹⁶ CPP, Article 136.

¹⁷ Article 137, CPP, states that "when the arrest takes place outside from the habitual residence of the police officer in charge of the investigation, the 48-hour period is prolonged by one day per 25 km without ever going beyond a maximum period of 12 days between the moment the person is arrested and the moment he or she is presented to the competent magistrate."

¹⁸ Law 2016-018, Article 38.

¹⁹ ICCPR, Article 9(3).

²⁰ ICCPR, Article 9(3).

²¹ Convention of the Rights of the Child, Article 37(b).

Children can be legally held for up to 33 months pending trial for the most serious criminal offences, and for up to six months for correctional offences.²²

While the Constitution²³ provides the right to legal counsel as required in international law, the CCP states that the presence of a lawyer is compulsory only for some categories of pre-trial detainees, including those on criminal charges and those whose penalty is longer than five years' imprisonment.²⁴

Right to freedom of expression and peaceful assembly

The Constitution guarantees the rights to freedom of opinion, expression, association, peaceful assembly, conscience and religion to all, but provides that these rights can be limited to safeguard the freedoms and rights of others, public order, national dignity and the safety of the state.²⁵ In practice, the authorities regularly use these limitations to ban assemblies and peaceful protests, including Ordinance n.60-082 which provides that public meetings are subject to authorization from the municipalities and police prefectures several days in advance, and that the authorization may be refused if the meeting is likely to disturb public order. Ordinance 60-082 contains vague and broad provisions which allow the authorities to ban peaceful assemblies for public disorder and security reasons. It also provides prison sentences and fines for submitting incomplete or incorrect information when requesting the authorization. As recommended by several international human rights mechanisms, states may require prior notification – not authorization – for large peaceful assemblies or for assemblies where a certain degree of disruption is anticipated.²⁶

Criminalization of abortion

The Penal Code criminalizes abortion in all circumstances. Article 317 provides that anyone who has conducted an abortion or attempted to, whether or not the woman consent, will be punished by a prison term from one to five years and a heavy fine. Undergoing an abortion is also punishable with a prison sentence. In December 2017, an attempt to decriminalize abortion was opposed by Parliament, despite support from civil society. A new law, Law 2017-043, setting the general rules governing the reproductive health and family planning, was adopted, providing in Article 28 that “any physical person who will have practiced a termination of pregnancy for medical reasons with contempt of the conditions provided by the law will be punished according to the Penal Code Article 317”.

Madagascar has a high maternal mortality rate, low contraception prevalence, and high teenage pregnancy. Unsafe abortion is the second major cause of maternal mortality, especially among young women. In its fourth periodic report to the Human Rights Committee, Madagascar reported it had held workshops for all stakeholders which led to a proposal to make abortion a minor offence.²⁷ However, this proposal has yet to be implemented.

²² If a child is accused of a criminal charge, he or she can be handed down a six-month detention warrant, renewable once for a three-month period (art. 92 of Law 2016-018). If the crime the child is accused of is punishable with a life sentence, then the child can be handed down a 12-month OTPCA (Art.53. of Law 2016-018). In criminal cases, children can also be handed down a 12-month OPC (Art. 93 of Law 2016-018).

²³ Constitution of Madagascar, Article 13.

²⁴ CPP, Articles 65 and 68.

²⁵ Constitution of Madagascar, Article 10.

²⁶ Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, April 2013, (A/HRC/23/39), available at http://freeassembly.net/wp-content/uploads/2013/04/A.HRC_.23.39_EN-funding-report-April-2013.pdf

²⁷ CCPR/C/MDG/4, para 142.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Detention conditions

Amnesty International considers detention conditions in Madagascar to constitute cruel, inhuman or degrading treatment or punishment.²⁸ Throughout the country, prisons are overcrowded and generally hold twice their capacity; some prisons hold eight times the number of detainees they were built for. In Manakara Central Prison which Amnesty International visited, one room built for 10 people held 80. Detainees are held in big, dark and unhygienic cells with very little ventilation and light. Severe overcrowding, coupled with lack of access to appropriate food and health care, pose a threat to detainees' lives. Amnesty International witnessed conditions in which detainees slept on concrete floors without mats, hundreds in the same room, with so little space they had to lie on their side.

In July 2017, an internal wall in the Antsohihy prison in the northern Sofia region collapsed, killing four detainees and injuring several more.

The medical facilities in the prisons Amnesty International visited by were inadequate, and the detainees had to rely on their families and civil society organisations for food and medicine.

Despite being provided for in national law, the separation of pre-trial detainees and convicted prisoners is not respected, including in the only functioning maximum-security prison.²⁹ This poses serious risks to the safety of those in pre-trial detention. Of 42 central prisons, only 24 have a section for boys separate from the men. Girls are not held separately from women, and even in new prisons being built, separation of girls from women is not being planned.

Excessive use of pre-trial detention

More than half of all detainees in Madagascar are held in pre-trial detention, which is in violation of Madagascar's Constitution which stipulates that pre-trial detention should be used only as an exceptional measure. Pre-trial detention rates for women are 70% and for children 80%. In several prisons visited by Amnesty International, all of the children detained were in pre-trial detention. The majority of women and children are held for non-violent, minor offences, such as petty theft and forgery. Despite a range of alternatives to detention provided for by law, including for children, in practice these alternatives are rarely used and pre-trial detention is the norm. The Constitution also provides for the right to legal counsel, however, the overwhelming majority of detainees, including those in pre-trial detention, do not have access to legal aid.

Amnesty International's research has revealed a pattern of women being sent to pre-trial detention for crimes for which their male relatives were accused. Generally, police investigations appear to be extremely weak and corruption throughout the criminal justice chain contributes further to the excessive rate of pre-trial detention.

Freedom of peaceful assembly and excessive use of force

The security forces regularly use unnecessary and excessive force to disperse peaceful protests that were not previously authorized.³⁰

²⁸ Amnesty International, *Punished for being poor: Unjustified, excessive and prolonged pre-trial detention in Madagascar*, October 2018, <https://www.amnesty.org/en/documents/afr35/8998/2018/en/>.

²⁹ Amnesty International, *Madagascar: Detainees and prisoners in Tsiafahy prison are living in an overcrowded 'hell'* <https://www.amnesty.org/en/documents/afr35/7879/2018/en/>.

³⁰ The authorities often restricted the right to freedom of peaceful assembly, using Ordinance 60-082 to refuse to grant authorization to opposition parties to hold public demonstrations. In 2015, for instance, President Hery Rajaonarimampianina prohibited a citizens' march which aimed at alerting the authorities to poverty, insecurity and corruption threatening social peace and stability. In 2017, the government prohibited all public political protests for the month of June, claiming that Madagascar's Independence Day on 26 June could pose high risks of public disorder. More protests were banned in 2016 and 2019.

On 21 April 2018, amid escalating tensions between the government and the opposition sparked by changes to the electoral laws, opposition parliamentarians planned to meet voters to report on the adoption of the electoral laws at the City Hall. The authorities declared that the protest had not been authorized and fired tear gas and rubber bullets followed by live ammunition to disperse the protesters, causing the death of two persons and injuries to many more.³¹ On 27 April, the government announced a permanent ban on all political protests outside the capital to “protect the public order and the security of people and goods”.³² However, the ban was later revoked by the State Council, following a complaint from opposition parliamentarians.

Freedom of expression

The Cybercriminality Code and the Communication Code threaten the right to freedom of expression, including press freedoms. Journalists have been forced to self-censor due to fear of reprisals.

Human rights defenders

Whistle-blowers who reveal information about human rights abuses continue to face charges, including “defamation”, “public disorder”, and “rebellion against the state”, for exercising their rights to freedom of expression and information. Environmental activists who raise concerns about illegal exploitation and trafficking of natural resources, including questionable business practices and their environmental impacts, are increasingly at risk of being targeted by the criminal justice system. Clovis Razafimalala,³³ Raleva³⁴ and Christopher Manenjika³⁵ are three environmental activists who were accused on fabricated charges, held in pre-trial detention and then sentenced between 2016 and 2018.

Impunity for extrajudicial executions

More than 4,000 people have been extrajudicially executed in Southern Madagascar. Amnesty International is concerned about extrajudicial executions by law enforcement officials, including in the context of banditry linked to cattle theft, and that government forces are hardly ever held accountable for excessive use of force and extrajudicial executions. Amnesty International has received and verified footage showing the bullet-riddled bodies of eight men suspected of stealing cattle who were gruesomely killed by the police on 25 January 2019³⁶ while allegedly trying to steal from a shop. Three police officers were injured during the incident.

³¹ Amnesty International, *Madagascar: Investigate the killing of two protesters*; 24 April 2018, <https://www.amnesty.org/en/documents/afr35/8267/2018/en/>.

³² Conseil du Gouvernement, <http://www.primature.gov.mg/2018/05/08/conseil-du-gouvernement-du-08-mai-2018/>.

³³ The Lampogno coalition is a group which campaigns against the illegal trafficking of Madagascar’s natural resources.

³⁴ Amnesty International, *Madagascar must squash sentence against environmental activist Raleva*, 26 March 2018, <https://www.amnesty.org/en/latest/news/2018/03/madagascar-must-quash-sentence-against-environmental-activist-raleva/>.

³⁵ Amnesty International, *Madagascar: Absurd fine for environmental activist as crackdown continues*, 8 June 2018, <https://www.amnesty.org/en/latest/news/2018/06/madagascar-absurd-fine-for-environmental-activist-as-crackdown-continues/>.

³⁶ Amnesty International, *Madagascar: Gruesome killing of suspected cattle thieves must be investigated*, 1 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/madagascar-gruesome-killing-of-suspected-cattle-thieves-must-be-investigated/>.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Madagascar to:

Condition of detention

- Urgently adopt a National Action Plan with concrete and time-bound goals to improve conditions of detention in line with international standards, in particular the Nelson Mandela Rules, as Madagascar had agreed to do during its 2014 UPR,³⁷ and the Bangkok Rules;
- Urgently restructure prisons to ensure sufficient space to separate different categories of prisoners, especially children, in accordance with international law and standards;
- Issue an invitation to the UN Working Group on Arbitrary Detention and the Special Rapporteur on torture to carry out visits to Madagascar and grant them full and unfettered access to places of detention.

Excessive use of pre-trial detention

- Ensure that pre-trial detention is used only as an exceptional measure and that release pending trial is the general rule, including for children;
- Amend the Code of Criminal Procedure to ensure that all arrested persons are brought promptly before a judge to determine the lawfulness of their detention within a period not exceeding 48 hours;
- Ensure that all accused persons have legal representation at all stages of the proceedings and for all types of criminal charges, and that this is free of charge for those who cannot afford to pay;
- Provide in law and ensure in practice that the government regularly publishes and makes accessible official statistics on pre-trial detention policies, practices and population, disaggregated by categories;
- Increase the use of alternatives to imprisonment, including bail and conditional release for pre-trial detainees, while considering the capacity of the accused to pay fees;
- Provide adequate reparations to victims of arbitrary arrest or detention and those who were subjected to torture or other ill-treatment;
- Immediately and unconditionally release any individuals who have not committed a crime and are held merely for offences attributed to their relatives.

National justice system

- Increase the number of prison staff, provide them with proper training, including in relevant human rights law and standards, and ensure that they work in favourable conditions and are adequately paid;
- Increase the budget allocated to the functioning of criminal court sessions to ensure sessions take place regularly, and that everyone charged with a criminal offence is tried without undue delay;
- Take urgent steps to set up a computerized database and tracking system for detainees in all prisons, and ensure that statistics are updated at all levels of the government.

Freedom of peaceful assembly

- Amend the legal framework (Ordinance 60-082) on peaceful protests and assembly to ensure the right to peaceful assembly is not subject to prior authorization, but at most prior notification, and only for large assemblies or assemblies where some disruption may be anticipated.

Freedom of expression

- Amend legislation which unduly restricts freedom of expression in line with international and regional human rights law, as Madagascar has accepted to do in the 2014 UPR,³⁸ including by decriminalizing

³⁷ A/HRC/28/13, para. 108.

³⁸ A/HRC/28/13/Add.1/Rev.1

defamation and abolishing insult laws;

- Refrain from misusing the criminal justice system to target and harass people simply for exercising their rights to freedom of expression, association and peaceful assembly, including human rights defenders, political opposition members and journalists.

Human rights defenders

- Immediately and unconditionally release all people held solely for exercising their rights to freedom of expression, association or peaceful assembly;
- Address threats, attacks, harassment and intimidation of human rights defenders, including by thoroughly, promptly and independent investigating human rights violations and abuses against them and bringing the suspected perpetrators to justice in fair trials, and providing effective remedies and adequate reparations to the victims.

Impunity for human rights violations

- Carry out prompt, thorough, independent and impartial investigations into all allegations of extrajudicial executions to determine the circumstances in which they were committed, make the outcome of the investigations public and bring those suspected of criminal responsibility to justice in fair trials that meet international standards, and ensure that victims are provided with adequate reparations;
- Conduct adequate training on international human rights law and relevant standards on the use of force and firearms among all law enforcement officials.

Criminalization of abortion

- Decriminalize the provision of abortion-related information and services by medical providers in all circumstances and pregnant people seeking or having an abortion;
- Remove legal, administrative and practical barriers to accessing safe and legal abortion services;
- Repeal Article 317 of the Penal Code, which provides sentences ranging up to 5 years of imprisonment and large fines;
- Ensure all women and girls can access sexual and reproductive health information, services and commodities, including emergency contraception and other modern methods of contraception, as well as comprehensive sexuality education both in and out of school;
- Comply with the recommendations made by the Committee on the Elimination of Discrimination against Women to “mandate, support and finance research and data collection on the scope, causes and consequences of unsafe, illegal abortion and its impact on the health and life of girls and women”.³⁹

³⁹ Concluding observations on the combined sixth and seventh periodic reports of Madagascar
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MDG/CO/6-7&Lang=En