



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

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## Committee against Torture

Forty-seventh session

31 October–25 November 2011

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

#### Concluding observations of the Committee against Torture

#### Madagascar

1. The Committee against Torture considered the initial report of Madagascar (CAT/C/MDG/1) at its 1034th and 1037th meetings (CAT/C/SR.1034 and 1037), held on 10 and 11 November 2011, and adopted the following concluding observations at its 1052nd and 1053rd meetings (CAT/C/SR.1052 and 1053) on 23 November 2011.

#### A. Introduction

2. The Committee welcomes the initial report of Madagascar. It appreciates the frank and constructive dialogue that it has had with the delegation of the State party and thanks it for providing detailed replies to the questions raised at that time, as well as the additional written replies supplied subsequently.

#### B. Positive aspects

3. The Committee welcomes the ratification by the State party of the following international instruments during the reporting period:

- (a) The Rome Statute of the International Criminal Court, in 2008; and
- (b) The International Labour Organization (ILO) Abolition of Forced Labour Convention, 1957 (No. 105), in 2007.

4. The Committee takes note of the commitment made by the State party to ratify the Optional Protocol to the Convention and to develop an action plan for putting into practice the recommendations of the universal periodic review, including those concerning appropriate measures to prevent torture and ill-treatment.

5. The Committee takes note that:

- (a) The State party's Constitution prohibits torture;

(b) The State party has stated that the signing in September 2011 of the road map to end the political crisis, which had led to the appointment of a consensus candidate for the post of prime minister, should also allow national institutions paralysed since 2009 by the crisis to begin functioning normally again. The return to normal operations of such institutions, and in particular of Parliament, would permit the passage or amendment of laws to bring domestic legislation into line with the standards set forth in international human rights instruments ratified by the State party;

(c) The State party has pledged to renew the standing invitation it has verbally made to the special procedures of the Human Rights Council as soon as possible; and

(d) A de facto moratorium on the death penalty is in place.

## C. Principal subjects of concern and recommendations

### **Criminalization of torture and ill-treatment**

6. While taking note of Act No. 2008-008 of 25 June 2008 which prohibits torture and other cruel, inhuman or degrading treatment or punishment in line with the Convention, the Committee is concerned about the failure to specify the range of penalties for acts of ill-treatment, which leaves the penalty completely at the discretion of the judge. In the Committee's view, the absence of a specified range of penalties violates the principle that both the offence and the penalty must be prescribed by law. In addition, the Committee regrets the failure to apply this law since its enactment in 2008, a fact borne out by reports that judges, lawyers and law enforcement officers are unaware of its existence (art. 4).

**The State party should amend its law against torture in order to incorporate a scale of penalties for acts of ill-treatment and amend its Criminal Code and Code of Criminal Procedure to include relevant provisions from the law against torture, thereby facilitating their enforcement. In the meantime, the State party should circulate this law to judges, lawyers, criminal investigation officers, the heads of local administrative units (*fokontany*) and prison staff with a view to its immediate application.**

### **Categorization of torture and the statute of limitations**

7. The Committee notes that the Act of 2008 draws a distinction between acts of torture categorized as offences, punishable by 2 to 5 years of imprisonment, and those defined as serious offences, punishable by terms of imprisonment of 5 to 10 years. The Committee regrets that the statute of limitations for torture cases is, at most, 10 years, and that it is only in cases of genocide or crimes against humanity that no statute of limitations applies (arts. 1 and 4).

**The State party should amend this Act in consideration of the fact that torture, because of its serious nature, should not be subject to a statute of limitations. The use of appropriate penalties and the absence of a statute of limitations increase the deterrent effect of the prohibition of torture. They also enable the public to monitor State action or inaction that violates the Convention and, if necessary, to challenge it.**

### **Non-justification of torture and thorough, impartial investigations**

8. The Committee is deeply concerned about the numerous reports of human rights violations since the onset of the 2009 political crisis — including torture, summary and extrajudicial executions and enforced disappearances — that have neither been investigated, nor prosecuted. The Committee is concerned about reports that the use of

torture is politically motivated and used against political opponents, journalists and lawyers (arts. 2, 12, 13, 14 and 16).

**The State party should take appropriate measures to carry out independent, thorough and impartial investigations into human rights violations, including cases of torture, ill-treatment, summary executions and enforced disappearances, and ensure that the perpetrators are prosecuted and punished. No circumstance, including domestic political instability, may serve to justify torture, and no political or any other type of agreement should permit an amnesty for the perpetrators of the most heinous offences committed during the political crisis. The State party should strengthen the complaints mechanisms available to victims and ensure that they obtain redress and are provided with the means of achieving social reintegration and psychological rehabilitation. The State party should ensure that persons lodging such complaints, witnesses and members of their families are protected from any act of intimidation in connection with their complaint or testimony.**

**The Committee invites the State party to include statistics in its next periodic report on the number of complaints of torture or ill-treatment made and on the number of criminal convictions handed down or disciplinary measures taken in such cases, including those that occurred during the de facto state of emergency in 2009. The information should include the identity of the investigating authorities and should be broken down by the sex, age and ethnic origin of the persons filing the complaints.**

#### **Basic legal safeguards**

9. The Committee notes that, when suspects are arrested, they are rarely informed of their right to be examined by a physician, that they do not receive proper medical examinations and that persons held in custody sometimes encounter problems in gaining access to their lawyers or family members. The Committee considers that the extension of the duration of pretrial detention to 12 days is excessive. The Committee is seriously concerned about the fact that in several cases pretrial detention has extended beyond acceptable periods (arts. 2, 12, 13, 15 and 16).

**In the light of the Committee's general comment No. 2 on the implementation of article 2, the State party should redouble its efforts to ensure that from the outset detainees benefit in practice from all the basic legal guarantees. These guarantees include in particular the obligation to inform such persons of their rights and of the charges against them and the rights of detainees to prompt legal assistance and, where necessary, legal aid; to an independent medical examination by, if possible, a physician of their choice; to notify a relative; and to be brought before a judge without delay.**

**The State party should ensure the implementation of Decree No. 2009-970 of 14 July 2009 regulating legal assistance, strengthen its system for providing persons taken into custody with free legal assistance and facilitate access by detainees to their lawyers and family members. The State party should also consider amending its Code of Criminal Procedure in order to reduce the duration of pretrial detention and to put rigorous safeguards in place to prevent it from being abused. The Committee invites the State party to strengthen its locally based justice system to the extent possible in order to preclude logistical problems posed by the need for persons standing trial and criminal investigation officers to travel considerable distances.**

#### **Living conditions in and systematic monitoring of places of detention**

10. While taking note of the information provided by the State party on the construction of four new prisons, the Committee remains concerned about the poor living conditions in

prisons and, in particular, the failure to separate different categories of inmates, malnutrition, the lack of medical care which has led to the death of some inmates, and the inhuman conditions in punishment cells. The Committee also remains concerned about prison overcrowding; although the Constitution states that pretrial detention is an exceptional measure, more than half of the people held in prison have not yet been brought to trial. The Committee is particularly concerned about reports of the humiliating treatment of prisoners, of rape and of instances in which food is provided in exchange for the performance of sexual acts (arts. 2, 11, 12, 13, 14 and 16).

**The State party should:**

(a) **Ensure that prison conditions are in line with the Standard Minimum Rules for the Treatment of Prisoners, including in the cramped punishment cells, so that the conditions of solitary confinement in such cells are in compliance with international standards;**

(b) **Separate the categories of detainees, ensuring that remand prisoners are separated from convicts and that minors are separated from adults;**

(c) **Take into consideration the particular problems faced by women prisoners and the need to address those problems in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted by the General Assembly on 21 December 2010;**

(d) **Ensure that detainees have access to decent food and medical care;**

(e) **Expedite the cases of persons held in pretrial detention, if necessary by calling the responsible officials to account;**

(f) **Use non-custodial penalties to reduce overcrowding in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), adopted by the General Assembly on 14 December 1990;**

(g) **Investigate allegations of the humiliating treatment of prisoners, rape and other sexually motivated acts of violence and take steps, as a matter of urgency, to punish the perpetrators of such acts. The Committee reminds the State party that it is under an obligation to conduct an investigation ex officio, without a victim's prior complaint, whenever there are reasonable grounds for believing that an act of torture has been committed;**

(h) **Set up a system for monitoring places of detention on a regular basis with a view to improving conditions in those facilities. The State party should provide funding for the Prison Oversight Commission and cooperate more closely with NGOs by providing them with free access to places of detention so that such facilities can be independently monitored.**

**Traditional justice (*Dina*)**

11. The Committee is particularly concerned about the population's systematic recourse to the traditional justice system (*Dina*),<sup>1</sup> which is apparently attributable to a lack of confidence in the formal system of justice. In addition to decisions in civil cases, the use of

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<sup>1</sup> A traditional parajudicial system designed to maintain social cohesion by settling civil disputes at the community level.

such courts has reportedly resulted in criminal verdicts as well, and also in torture and summary and extrajudicial executions (arts. 2 and 16).

**In the light of its general comment on the implementation of article 2 of the Convention, the Committee does not accept references to respect for tradition as a justification to derogate from the absolute prohibition on torture. The State party should set up an effective system for monitoring decisions by *Dina* courts and investigate any violation of the law or provisions of the Convention. The State party should ensure that the *Dina* system is compatible with its human rights obligations, in particular those under the Convention. It should also explain the hierarchical relationship between customary law and domestic law.**

**The State party should take urgent measures to closely monitor the decisions of *Dina* courts in line with Act No. 2001-004 of 25 October 2001, which inter alia requires the approval of *Dina* court decisions by ordinary courts. It should also ensure that all decisions by *Dina* courts are appealed before the ordinary courts. The State party should work to increase the public's confidence in the system of justice. It should undertake judicial reforms to resolve the main problems in the administration of justice that are undermining the credibility of the justice system and find appropriate solutions to make it work effectively and to the people's benefit.**

#### **Trafficking in persons**

12. The Committee regrets that there is no information in the State party's report on trafficking in persons despite a persistent problem of sex tourism and exploitation of street children (arts. 2, 12, 13 and 14).

**The State party should investigate all allegations of trafficking in persons, in accordance with Act No. 2007-038 of 14 January 2008 concerning trafficking and sex tourism and with the relevant international standards. It should carry out awareness-raising campaigns and organize training sessions for law enforcement officers as a means of preventing and combating trafficking in persons. It should offer protection to victims and provide them with access to medical, social and legal services, including rehabilitation services. The Committee invites the State party to include detailed information in its next report on the number of investigations carried out, complaints filed and convictions handed down for trafficking in persons.**

#### **Violence against women and children**

13. The Committee is concerned about information indicating that there is a large number of cases of early and forced marriages and of ill-treatment and domestic violence. It is also concerned about the fact that complaints are not lodged due to social and family pressure, despite the existence of Act No. 2000-21, which criminalizes domestic violence and sexual abuse (arts. 2, 12, 13 and 16).

**The State party should hold discussions at the community level, in particular with the heads of the *fokontany*, and take other steps to reduce the incidence of and ultimately eliminate forced marriages and *moletry* (probationary one-year marriages involving underage girls). It should enforce the obligation to register all marriages in order to monitor their compliance with domestic law and the conventions it has duly ratified. The State party should also prohibit early marriages, and prosecute offenders.**

**The Committee encourages the State party to pass a law to prevent and punish marital rape and prohibit corporal punishment of children. It invites the State party to ensure that methods for detecting violence against women and children are included in the training of law enforcement officers.**

### **National human rights institution**

14. The Committee regrets that the political crisis of 2009 prevented the appointment of members of the National Human Rights Council, and that the Council has been unable to function since its establishment in 2008 (arts. 2, 12, 13 and 16).

**The State party should ensure the effective and independent operation of this institution by allocating the human resources and funding it needs to fulfil its mandate, which in particular involves the investigation of allegations of torture and ill-treatment. The Committee encourages the State party to request technical assistance from the Office of the United Nations High Commissioner for Human Rights to ensure that the institution complies with the principles relating to the status of national institutions for the promotion and protection of human rights set forth in the annex to General Assembly resolution 48/134 (the Paris Principles).**

### **Hostage-taking of relatives**

15. The Committee deplores the fact that women have allegedly been arrested and detained in order to force their husbands to turn themselves over to the police (arts. 12 and 16).

**The State party should put an end to the practice of taking relatives of suspected criminals hostage and should expedite investigations with a view to punishing those responsible. This practice is a grievous violation of domestic law and the fundamental principles of human rights.**

### **Prisoners on death row and capital punishment**

16. While noting that the State party has applied a de facto moratorium on the death penalty by systematically commuting death sentences to prison terms, the Committee regrets that the moratorium has not been given formal expression under the law (arts. 2, 11 and 16).

**The State party should maintain the de facto moratorium on the use of capital punishment and consider passing a law systematically commuting death sentences to prison terms. The Committee would like more information addressing reports that death sentences continue to be handed down and concerning prison conditions on death row, the amount of time it generally takes to commute death sentences to prison terms, the treatment of convicts sentenced to death and the right of such convicts to receive visits from family members and their lawyers. The Committee also encourages the State party to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

### **Training**

17. While noting that human rights training sessions have been organized, the Committee regrets the failure to assess the impact of that training in terms of the improvement of the human rights situation, as well as the lack of specific training in methods for detecting the physical and psychological sequelae of torture (art. 10).

**The Committee recommends that the contents of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) be incorporated into forthcoming training sessions for law enforcement and medical personnel and be circulated among prison and medical personnel. The State party should also assess the impact and effectiveness of these training programmes.**

### Data collection

18. The Committee regrets the absence of complete and detailed data on complaints, investigations, prosecutions and convictions in cases of torture or ill-treatment inflicted by law enforcement officers, security personnel, members of the armed forces or prison staff and the lack of such information on extrajudicial executions, enforced disappearances, human trafficking, domestic violence, conditions of detention and redress (arts. 12, 13, 14 and 16).

**The State party should gather statistics that are useful for monitoring the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture, ill-treatment and other types of human rights violations as mentioned above, and on the types of redress, compensation and rehabilitation offered to victims. The Committee invites the State party to include such data in its next periodic report. The information may be collected as part of the joint project being run with United Nations specialized agencies to set up a mechanism to monitor and assess the fulfilment of the State party's human rights commitments.**

### Refugees

19. The Committee notes that article 19 of the national law against torture prohibits extradition to a State where a person runs the risk of being tortured but says nothing about deportation or refoulement cases. The Committee also notes the lack of information on the situation of refugees in the country and the absence of a law on asylum (art. 3).

**The State party should amend article 19 of the law against torture of 25 June 2008 so that it also covers cases of deportation and refoulement, in accordance with article 3 of the Convention. The Committee encourages the State party to accede to the 1967 Protocol relating to the Status of Refugees and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. It invites the State party to include information on the situation of refugees in Madagascar in its next periodic report.**

### Cooperation with human rights mechanisms

20. The Committee recommends that the State party intensify its cooperation with United Nations human rights mechanisms, in particular by authorizing visits inter alia by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders.

21. Noting the commitment shown by the State party in the course of its universal periodic review and its dialogue with the Committee, the Committee recommends that the State party ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

22. The Committee also recommends that the State party make the declarations provided for in articles 21 and 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider individual complaints of violations of the Convention.

23. The Committee invites the State party to ratify the main human rights instruments of the United Nations to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

24. The State party is urged to ensure the broad circulation of the report that it has submitted to the Committee and the Committee's concluding observations through official websites, the media and NGOs.

25. The Committee also urges the State party to update its common core document of 18 May 2004 (HRI/CORE/1/Add.31/Rev.1), and in so doing follow the harmonized guidelines on reporting under the international human rights treaties approved in June 2009 by the monitoring bodies of international instruments for human rights (HRI/GEN/2/Rev.6).

26. The Committee requests that the State party provide information, within one year, on its follow-up to the recommendations made in paragraphs 8, 10, 14 and 15 of these concluding observations.

27. The State party is invited to submit its next periodic report, which will be its second, by 25 November 2015. In this connection, the Committee requests that the State party accept instead to submit its report by 25 November 2012, under the optional procedure, which consists in the Committee sending a list of issues to the State party prior to presentation of the report, with the replies of the State party constituting, in accordance with article 19 of the Convention, the next periodic report.

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