



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

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## Committee against Torture Forty-seventh session

### Summary record of the 1037th meeting

Held at the Palais Wilson, Geneva, on Friday, 11 November 2011, at 3 p.m.

*Chairperson:* Mr. Wang Xuexian (Vice-Chairperson)

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Initial periodic report of Madagascar (continued) (CAT/C/MDG/1; HRI/CORE/1/Add.31 (Rev.1))*

1. *At the invitation of the Chairperson, the delegation of Madagascar took seats at the Committee table.*
2. **Mr. Razafinjatovo** (Madagascar) said that all criminal legislation came into force once it had been published in the Official Gazette, whether it had been integrated into the Criminal Code or not. The delegation agreed that incorporating laws into the Criminal Code had practical advantages and would be proposing a reform to that end. Regarding the punishment of acts of torture, the delegation recalled that the components of those acts were listed in article 2 of the Act against torture and other cruel, inhuman or degrading treatment or punishment, and that the sentences handed down could be as severe as hard labour for life.
3. With regard to the distinction drawn between various acts of torture, some of which were classed as crimes while others counted as ordinary offences, he stressed that the Convention permitted the grading of offences, as it provided that sentencing should take the seriousness of the offences into account.
4. As the delegation had indicated, acts of torture were not covered by a statute of limitations in the context of genocide, crimes against humanity or war crimes. Madagascar did not plan to amend its legislation to extend the current limitation periods. The delegation shared the Committee's view that the absence of punitive sentences for ill-treatment led to ambiguity; the problem in that particular case was that no definition of such acts existed. The Convention did not explicitly require the criminalization of ill-treatment. It was sufficient for such actions to be treated in the same way as acts of torture. A reform in that regard would be proposed.
5. As yet, Madagascar had no statistics on the application by the courts of the Act against torture and other cruel or degrading treatment. The United Nations Development Programme was currently carrying out a study, with a view to implementing a system for collecting data, especially on human rights violations.
6. With regard to investigative bodies, although the National Joint Commission of Inquiry had been dissolved by decree, the gendarmerie and national police forces had retained all their functions. The Special Intervention Force had no decision-making powers concerning inquiries, prosecutions or detentions. Its services were requested for high-risk arrest operations and its work ended once an arrest had taken place. The delegation confirmed that failure to respect the procedural rules could lead to unlawful acts being nullified. Also, the Istanbul Protocol was taken into account in the training of doctors in order to facilitate the investigation of cases of torture.
7. Article 4 of the Act against torture and other cruel, inhuman or degrading treatment set out fundamental guarantees for all persons deprived of their liberty. With regard to the cases of Fetison Andrianirina Rakotoson, Stanislas Zafilahy and Pastor Edouard Tsarahame, their successive transfers from one prison to another had been motivated by the desire to protect them from death threats. Those measures had been lifted once the threats had stopped, and they were able to exercise their rights under the aforementioned article, especially the right to communicate with their lawyers and to visits from family members. They had been released after standing trial. Moreover, the delegation stressed that no secret detentions occurred in Madagascar.

8. The legislative provisions stipulating that if an arrest was made by a judiciary police officer away from their habitual place of residence, the custody period could be extended by one day for every 25 kilometres of distance from the place of residence, up to a maximum of 12 days, were only applied in very rare cases and in remote areas. There was a need to introduce regular monitoring of pretrial detention to combat the practice of arresting a person's loved ones to force them to turn themselves in.

9. The law provided the possibility for a publicly appointed defence counsel to advise the defendant from the start of an inquiry, if the person concerned did not have the means to secure legal counsel. Furthermore, a judiciary police officer could not prevent a person receiving a medical examination if they or their counsel requested it.

10. Persons were placed in temporary custody in line with the requirements of an inquiry or the need to protect that person against possible reprisals. A request for bail could be filed at any stage of the procedure.

11. The prison population currently stood at 18,746 persons, which amounted to an occupancy rate of 181 per cent, compared with 22,000 inmates in 2004. That drop had been the result of more rapid processing of case files and the adoption of measures, including remission of sentences, pardons and conditional release, in particular. The country had 82 detention facilities, including 2 penitentiaries, 39 central prisons and 41 short-stay detention centres, namely smaller facilities located in district capitals. There were plans to build four new prisons and enlarge two others.

12. The number of deaths in detention had increased slightly between 2008 and 2010, rising to 131. The authorities continued to collaborate with NGOs such as Médecins du Monde and the International Red Cross, in order to combat malnutrition, a possible cause of some of the deaths. With regard to the percentage of persons in pretrial detention, in August 2011 that figure had stood at 46.65 per cent. The proportion of remand prisoners had risen as a consequence of the lack of financial and human resources at the Ministry of Justice, which meant that certain mobile court hearings had not taken place. New measures taken at court level, such as computerization of services, were expected to improve the situation.

13. Two cases of ill-treatment in detention centres were currently being investigated. With regard to allegations of blackmail involving the exchange of sexual favours for food, the relevant information would be sent to the competent authorities involved in the inquiry. Measures would also be taken to bring solitary confinement conditions into line with international standards. Representatives of the Bar and organizations assisting detainees were involved in the work of the Prison Oversight Commission.

14. A study was being carried out on the adoption of non-custodial measures to deal with minor offences. As to minors, law enforcement officials had been informed of the bail and conditional bail provisions. Furthermore, although national legislation provided that all crimes were punishable with forced labour, in practice that punishment was never applied and there were even plans to repeal it.

15. The length of remand detention, provided for in the law reducing temporary detention, was not excessive, as it could not exceed 18 months. The case of Rakotompanahy Andry Faly and three other employees of the Malagasy Broadcast System (MBS) radio station, the delegation wished to point out that they had been charged with jeopardizing State security by planting home-made bombs in various parts of Antananarivo and would stand trial on 23 November 2011.

16. The National Human Rights Council, like all institutions in the Republic, would be capable of effectively performing its functions once the process of emergence from the crisis was over. It should be pointed out that, despite the crisis experienced by the country, the authorities had never declared a state of emergency. All extradition decisions taken by

the Ministry of Justice were preceded by judicial review by the indictments chamber of the Court of Appeal. Madagascar had signed an extradition agreement with two countries, namely the Comoros and France. With regard to non-refoulement, since article 132 of the Constitution provided that international instruments took precedence over national legislation, Madagascar was obliged to comply with the provisions of article 3 of the Convention.

17. With regard to the *Dina*, he explained that it was a traditional village parajudicial system designed to maintain social cohesion. The decisions issued, also called *Dina*, were regulated by Act No. 2001-004. It was possible to appeal at local level to resolve civil litigation cases. However, there were sometimes irregularities in certain regions, such as the application of repressive penal measures which were incompatible with national legislation in force. In such circumstances, the Malagasy Government took various measures, such as speeding up procedures to harmonize the *Dina*, the adoption of criminal provisions to impose sanctions on *Dina* courts that failed to comply with harmonization measures, the creation of a national special brigade charged with implementing emergency measures to put an end to illegal recourse to the *Dina*, and the establishment of a review of the legality of decisions taken by the *Dina* before they were implemented.

18. With regard to the battle against human trafficking, sex tourism and the sexual exploitation of children, Madagascar had legislation in place (Act No. 2007-038) which punished those practices.

19. The Ombudsman of the Republic fostered and managed an ongoing dialogue between the Administration and the constituents, the public services and end users, in order to tackle rigidity or inertia within administrative structures and bodies, as well as the formalism of the judicial proceedings. He took on board the principle of equity in the particular situation in which a citizen, user or constituent had been seriously harmed as a result of the strict or blind application of a legal norm, without actually contesting its legitimacy. In order to remedy problems within the public services, the Ombudsman proposed improvements to the rules and procedures in force.

20. Discussions were still under way in Madagascar about whether or not the country would ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

21. By virtue of the principle that criminal proceedings took precedence over civil proceedings, it was not possible to bring an action in a civil court seeking compensation for damages inflicted through an act of torture if the alleged perpetrator had not yet been found guilty in a criminal court.

22. The State's accountability guaranteed that compensation would be obtained if a public servant who had committed acts of torture was insolvent. The State could take action against the offending official by filing a recourse action.

23. In order to combat the practice of early marriage, the Marriage and Matrimonial Property Act No. 2007-022 had set the legal age for marriage at 18 for both men and women. Below that age, the authorization of the President of the Tribunal was required. A study had been conducted to determine the root causes of *moletry*, a trial one-year marriage involving girls under the age of 18. Traditional leaders, Muslim and Christian religious leaders, doctors, teachers and local authorities were committed to combating that practice.

24. Madagascar would ratify the Convention on the Rights of Persons with Disabilities, as it had undertaken to do during the universal periodic review of the Human Rights Council in 2010, as soon as circumstances permitted. In that regard, Madagascar hoped to receive technical and financial support from United Nations bodies to help it implement the universal periodic review recommendations. Lastly, Act No. 2008-008 against torture

applied to military personnel if they had committed acts of torture in the circumstances referred to in article 2 of the Act.

25. **Mr. Gaye** (Country Rapporteur) said he regretted that the definition of torture contained in Act No. 2008-008 had not been incorporated in the Criminal Code and that the State party had not yet provided statistics on the application of the Act by the courts. Noting that, according to the replies provided by the delegation of Madagascar, the Special Intervention Force participated in arrest operations, particularly when there were serious grounds for believing that the persons to be arrested were armed, he wished to know who assessed the situation in such cases and who led those operations. He also wondered if the members of Parliament who had been arrested enjoyed parliamentary immunity and if that immunity had been lifted before their arrest. He was concerned about the high risk of torture associated with the possibility of extending police custody up to 12 days. He took note of the statistics provided on prison overcrowding, which indicated a high proportion of unconvicted compared with convicted prisoners, and asked the delegation if the slow pace of judicial proceedings might not be largely explained by that situation.

26. With regard to extradition and non-refoulement, he noted that the decision taken by the Minister of Justice was preceded by a judicial review conducted by the Court of Appeal. He wished to know if the Minister of Justice was bound by the opinion of the Court of Appeal, including when the latter found the extradition illegal on the basis of a point of law. Regarding the *Dina* system, he would like an explanation of the irregularities that Mr. Razafinjatoivo had mentioned in his oral replies, and emphasized that the State party must first and foremost put an end to mob justice, including lynching.

27. It would be interesting to know if the State party had adopted a policy to combat violence against women and children, why marital rape had not been criminalized, whether Madagascar intended to ratify the various conventions on asylum and refugees, and whether there was a remedy of habeas corpus allowing persons deprived of their liberty to challenge their detention. Detailed information would be welcome on the mechanisms in place to ensure protection for plaintiffs and witnesses, including their family members. The delegation might also provide specific examples of court decisions in which confessions obtained by torture had been disregarded. Lastly, he would be grateful for further information on labour exploitation of children, and particularly on street children reduced to slavery.

28. **Mr. Mariño Menéndez** asked whether Madagascar planned to accede to the 1951 Convention relating to the Status of Refugees, whether it requested diplomatic assurances from the countries to which it expelled or extradited foreigners, and whether a detainee subjected to psychological torture could obtain compensation. He asked which rights could be suspended if the country declared a state of emergency, bearing in mind that certain rights were not subject to derogation. Lastly, he wished to know when the National Human Rights Council would be operational and what had become of the opposition leaders who had been arrested in March 2011. Where were they being held? Why had they been refused visits from their loved ones?

29. **Mr. Bruni** said that he welcomed the adoption of Act No. 2008-008 of 25 June 2008 against torture and other cruel, inhuman or degrading treatment or punishment, as well as the steps taken to raise awareness of the Act. He regretted that the delegation could not provide any data on the implementation of the Act and wondered if it might be able to provide some examples of cases heard by the national courts. Paragraph 77 of the report stated that the public right of action was time-barred after 3 years for acts of torture categorized as ordinary offences (*délits*) and after 10 years for those categorized as crimes (*crimes*). Those periods of limitations were much shorter than in most other countries. It would seem that Madagascar did not intend to adopt longer periods of limitations; could the delegation explain why? It was encouraging that training on the Istanbul Protocol was an

integral part of the training provided for medical staff, but that by itself was not enough. All staff who dealt with persons deprived of their liberty should be trained to use the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report indicated that, pursuant to article 136 of the Code of Criminal Procedure, an officer of the criminal investigation service could not hold an individual in custody for more than 48 hours, but that under article 137, if the arrest took place outside the officer's usual place of residence, the 48-hour limit was extended by 1 day for every 25 kilometres, up to a maximum of 12 days. One might wonder if the extension of one day for every 25 kilometres was not excessive; it would be interesting to hear the delegation's viewpoint on that matter. Lastly, he welcomed the measures established to improve the conditions of detention in Malagasy prisons and urged Madagascar to implement those measures immediately so as to ensure respect for the Standard Minimum Rules for the Treatment of Prisoners.

30. **Ms. Sveaass** asked the delegation to provide examples of the implementation of the Act of 14 January 2008 prohibiting trafficking in human beings and sexual tourism. She also wished to know what penalties would replace forced labour in Malagasy legislation and, lastly, whether Madagascar had adopted a law on violence against women.

31. **Ms. Gaer** thanked the delegation for its very specific replies and urged the State party to create as early as possible a centralized database for all complaints of acts of torture and ill-treatment and, where appropriate, the resulting convictions. She also wished to draw the delegation's attention to the Committee's general comment No. 2 on the implementation of article 2 of the Convention, pointing out that the principle of the prohibition of torture was absolute and that torture offences were imprescriptible. The delegation had indicated that the alleged victim of an act of torture or ill-treatment must file a complaint in order for a prosecution to be initiated. Pursuant to article 12 of the Convention, however, each State party should ensure that its authorities conduct a prompt and impartial investigation wherever there was reasonable ground for believing that an act of torture had been committed in any territory under its jurisdiction. Any act of torture or ill-treatment must therefore automatically result in an investigation.

32. **Ms. Kleopas**, expressing concern about information from Amnesty International regarding the prison in Antananarivo, emphasized the need to take immediate measures to improve the conditions of detention in that establishment, which currently held 2,800 detainees even though its capacity was 800. Moreover, it should be remembered that the fight against impunity was key, and that the perpetrators of acts of torture and ill-treatment could not be amnestied. Investigations must be systematically conducted into any alleged act of torture or ill-treatment. Some NGOs reported cases of arbitrary arrest and illegal detention and indicated that police officers continued to commit serious human rights violations. What comments did the delegation wish to make about that matter? Were there any measures planned to put an end to such actions?

33. **The Chairperson**, speaking as a Committee member, asked whether there had been any cases of female genital mutilation in Madagascar and, if so, whether Malagasy law prohibited the practice.

34. **Mr. Razafinjatovo** (Madagascar) said that he agreed about the need to create a database and collect statistics on the implementation of the 2008 Act against torture and other cruel, inhuman or degrading treatment or punishment. The Special Intervention Force had been established to deal with dangerous situations at the height of the crisis in Madagascar, when many small arms either belonging to the military or of unknown origin were circulating in the country, and terrorist attacks were being committed using improvised explosive devices, which had never happened before. It must not be forgotten that all persons arrested by the Special Intervention Force had been in possession of a weapon. As for the slow pace of the proceedings, the Committee should know that the

Ministry of Justice spared no effort to expedite the processing of cases. With regard to conditions of detention, the Government had taken measures to improve infrastructure and had set a target of reducing the number of inmates suffering from malnutrition in Malagasy prisons to less than 4 per cent in 2011. That goal had been achieved, given that in the latest quarterly assessment of the situation the figure had stood at less than 3 per cent. The system of criminal mediation established at the local level to reduce the backlog of cases in courts of first instance encouraged the application of non-custodial sentences. It was true that the National Human Rights Commission was not yet operational; the Government would take the necessary measures to remedy that situation once the country had emerged from the crisis. Regarding extradition and the principle of non-refoulement, Madagascar implemented the bilateral agreements concluded with France and the Comoros, but there was no specific law governing the issue. The Malagasy authorities did ensure, however, that no one was returned to another State where there were substantial grounds for believing that they were likely to be subjected to torture.

35. **Mr. Rakotoniaina** (Madagascar) said that an interministerial circular expressly stated that the law enforcement authorities must intervene to prevent an unlawful *Dina* from being implemented. The police had recently made such an intervention in order to stop a lynching and had made several arrests. Numerous similar cases had resulted in prosecutions and convictions. Circuit courts were organized in communities where there was no criminal court. They were composed of a president, a prosecutor and a clerk, and trials were conducted in the same way as in permanent courts. That system facilitated access to justice for persons who lived far from urban centres; it also made it possible to hear more cases, thereby reducing the number of persons detained while awaiting trial.

36. Madagascar had accepted the recommendation made during the universal periodic review (A/HRC/14/13) asking it to criminalize marital rape, and it would take the necessary legislative measures as soon as possible, taking into account the current political and institutional transition. There was no data available to measure the actual impact of the training for judges on the Convention, but the mechanism to collect judicial data, which was currently under consideration and should be operational in 2012, would make it possible to fill that gap. Thus far, no special protection measures had been necessary for victims, witnesses or investigators in cases of torture. If necessary, such measures would be taken depending on the nature and probability of the risk, but also depending on available resources, which were, unfortunately, limited.

37. There were no provisions for specific structures or programmes to help victims of torture readjust, but an examination of the measures taken by other countries might provide useful food for thought on the matter. He was not in a position to say whether any courts had disregarded a confession on the ground that it had been obtained through torture, but once the aforementioned mechanism for collecting judicial data was established, that type of information would then be available in the future.

38. The period of police custody provided for by law appeared excessive to some members of the Committee, but it took account of certain realities in the country. Indeed, in some regions there was no means of transport, which meant that the police sometimes had to travel several dozen kilometres on foot to apprehend a suspect and bring him or her to the police station. It would not be practical in that situation to require that the person must be released within 48 hours. It was in order to cover such scenarios that the period of custody had been set at 12 days, but it went without saying that when circumstances allowed the period of custody could be shorter.

39. Parliament had been dissolved following the events of January 2009. Therefore, the members of Parliament no longer exercised their duties and no longer enjoyed parliamentary immunity. The Government was well aware of the limitations imposed by article 4 of the International Covenant on Civil and Political Rights on the restrictions that

could be applied during a state of emergency, and it would ensure that they were fully respected if a state of emergency was declared, though for the moment there were no plans to do so.

40. Any act of torture was an abhorrent violation of human dignity; however, not all acts of torture were equally serious in nature. Some practices could undoubtedly be gruelling for the victim, such as a certain degree of verbal abuse, but did not result in long-term bodily harm that could be confirmed by a medical examination. That was why the law made a distinction between acts categorized as ordinary offences (*délits*) and those categorized as crimes (*crimes*). Sentences of forced labour were a legacy of the French Criminal Code inherited from the colonial era. They had not been applied for some time, however, and there were plans to repeal the provisions concerned. Community sentences were being considered as an alternative to detention, as they would not only reduce prison overcrowding but also encourage reintegration through work. Such penalties could not be imposed, however, on persons who had committed serious offences. There was no mechanism in place to systematically monitor the legality of detention and receive complaints from detainees in that regard. One form of indirect monitoring was nevertheless practised by the judge of the pretrial detention chamber, who, upon receipt of a request for release on bail, was required to verify that the charges brought against the person in question did in fact constitute an offence and justify detention.

41. Female genital mutilation did not exist in Madagascar. The law protected women against all forms of violence, but there was no specific law to protect women against domestic violence. Madagascar was currently considering establishing provisions to grant special protection to women with disabilities, who were particularly vulnerable to violence and to rape in particular. Under current legislation, violence against a pregnant woman was subject to harsher penalties than other cases. Trafficking in women for purposes of sexual exploitation was punishable by law.

42. The Act on protection of children against the worst forms of child labour punished the exploitation of street children. Thanks to the campaign carried out to combat that phenomenon, a number of children had been given the chance to escape poverty, be placed in reception centres and attend school. Sterling efforts had also been made in that area as part of a national plan to combat child labour, the sexual exploitation of children and any activities that might put them in danger. Unfortunately, the delegation had no statistics on that subject. It would inform the Committee in due course of the measures taken to implement the road map to combat *molety* as agreed by religious leaders, traditional leaders, and other local stakeholders, and of the results achieved.

43. **Mr. Razafinjatovo** (Madagascar) said that under all circumstances the security forces were required to respect the principles of necessity and proportionality as well as international standards on the use of firearms by law enforcement officials. Any violation of those provisions would result in prosecution, which could take the form of disciplinary or criminal action depending on the severity of the offence committed.

44. **Mr. Bruni** said that it would be very useful to have examples of specific cases in which Act No. 2008-008 on combating torture and other cruel, inhuman or degrading treatment or punishment had been applied; he hoped that the delegation could provide that data in writing within the time limit set for the submission of additional information. He took note of the delegation's explanations regarding the length of police custody, but he remained puzzled about the implications for prolonged cohabitation of police officers and suspects in cases where it took several days to cover the required distance on foot. The delegation had stated that the Government had no intention of amending the provisions on the period of limitations for acts of torture. However, since Madagascar seemed to recognize differences in the severity of different acts of torture, he wondered how a period



of limitations of 10 years could be deemed sufficient for all acts of torture, including those resulting in the death of the victim.

45. **Mr. Razafinjatovo** (Madagascar) said that the delegation would reply in writing, within the established time limit, to the questions it had not been able to answer orally. He thanked the Committee members for their objectivity and their desire to gain a better understanding of the reality in Madagascar, as they had shown throughout the dialogue, which boded well for future collaboration. Despite the progress achieved, much still remained to be done to ensure that the rights guaranteed under the Convention were fully implemented. The Government of Madagascar would spare no effort to achieve that goal, but in order to do so it would need support from its international partners.

*The meeting rose at 5.50 p.m.*