



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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1 December 2012

Your Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the initial report of Madagascar (CAT/C/MDG/1) by this Committee, at its 47th session, held from 31 October to 25 November 2011. At the end of that session, the Committee's Concluding Observations (CAT/C/MDG/CO/1) were transmitted to your Permanent Mission. In paragraph 26 of those Concluding Observations, the Committee requested, pursuant to its rules of procedure, that the State party provide, within one year (by 25 November 2012) further information regarding areas of particular concern identified by the Committee in paragraphs 8, 10, 14 and 15 (see extracts annexed).

The Committee has adopted a follow-up procedure to pursue issues that are serious, that can be accomplished by the State party in a one year period, and that are protective.

The information sought by the Committee has not been provided yet, although more than one year has elapsed from the transmittal of the Committee's Concluding Observations. Accordingly, I would be grateful for clarification as to the current status of your Government's responses on the matters, and as to when the information requested will be forthcoming. A Word electronic version of the reply should be sent to the Secretariat of the Committee against Torture (cat@ohchr.org). Upon receipt of this information, the Committee will be able to assess whether further action is needed.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Madagascar on the implementation of the Convention. In this context, the Committee seeks to receive your response to this enquiry.

Accept, Your Excellency, the assurances of my highest consideration.

Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/MDG/CO/1)**

MADAGASCAR

(...)

C. Principal subjects of concern and recommendations

(...)

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.

(...)

Living conditions 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.

(...)

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.

(...)

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.

(...)