



## **United Nations Committee against Torture**

### **ACAT Madagascar, FIACAT and OMCT's Alternative Report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

#### **Madagascar**

### **Executive summary**

The Madagascar group of Action by Christians for the Abolition of Torture (ACAT Madagascar), the International Federation of ACAT (FIACAT) and the World Organisation against Torture (OMCT) submit for the attention of the experts of the Committee against Torture the following information and recommendations concerning implementation by the State Party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The bulk of this information was collected during a preparatory mission to Antananarivo from 4 to 8 July 2011 organised by FIACAT and the OMCT in collaboration with ACAT Madagascar. The delegation met officials of the High Transitional Authority, representatives of diplomatic missions and national and international non-governmental organisations. The members of the FIACAT and OMCT mission were also able to visit the Antanimora central prison in Antananarivo and the Tsiafahy high-security prison.

The provisions of the United Nations Convention against Torture were transposed into law by Act No 2008-008 of 25 June 2008 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **Article 2: Measures to prevent torture and ill-treatment and the absolute prohibition of torture:**

Although Article 4 of the Act of 25 June 2008 lays down basic guarantees for those deprived of liberty, instances of the torture and ill-treatment during arrest and, more especially, in custody, are said to occur with regularity.

### ***The OMCT, FIACAT and ACAT Madagascar urge the Committee against torture to recommend that the State Party:***

- Take all necessary steps to provide a free medical examination to any person detained or imprisoned as soon as possible after his admission to the place of detention or imprisonment;
- Separate minors from adults in preventive detention and custody;

## **Article 4: Criminalization of torture in criminal law:**

The provisions of the Act of 25 June 2008 have not been harmonised in the Malagasy Penal Code or Code of Criminal Procedure. No criminal proceedings have yet been instituted on this basis and no information could be obtained on the number of inquiries and complaints received based on the provisions of this law. Moreover, the law of 25 June 2008 does not set up a scale of punishments for inhumane and degrading treatment.

### ***The OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Revise the Act of 25 June 2008 to specify a scale of punishments for inhuman and degrading treatment;
- Revise the Penal Code and Code of Criminal Procedure to incorporate the revised Act of 25 June 2008 in order to penalise effectively acts of torture and cruel, inhuman or degrading treatment and to ensure that such breaches of the law incur penalties reflecting the seriousness of the acts concerned;
- Include in the Penal Code the non-applicability of Statutory Limitations for crimes of torture, crimes against humanity, war crimes and genocide.

## **Article 10: Training programmes**

Training on the Act of 25 June 2008 has been introduced by the Malagasy authorities, to instruct those in charge of applying and enforcing legislation, but at present this training appears to be inadequate.

### ***The OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Extend training on the 25 June 2008 Act;
- Make the Fokontany chiefs more aware of the 25 June 2008 Act, in particular via information campaigns;
- Provide complete training modules when staff in direct contact with persons in detention or prison receive their initial or further training.

## **Article 11: Systematic monitoring of the rules during the various phases of detention of a person:**

The rules applying to detention form an integral part of criminal law. However, they are not systematically followed by criminal investigation officers and magistrates and failure to observe them

is rarely penalised. Furthermore, numerous detentions of prisoners having no legal grounds for detention were reported in recent years in several prisons. Most of these cases constitute arbitrary detention since they are in breach of the right to be tried without undue delay.

***The OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Fight against all forms of illegal detention or detention out of time;
- Provide better legal and ethical training for criminal investigation officers and, in particular, raise awareness of the legality principle;
- Increase checks by the public prosecutor's office on the procedural guarantees applying to custody;
- Release immediately all those still being held even though their term of custody or preventive detention has expired.

### **Articles 12 and 13: Investigation on torture or cruel, inhuman or degrading treatment and remedies available to victims:**

Public enquiries and investigations into the torture or ill-treatment of those held in detention in Madagascar are few and far between. ACAT has investigated, in partnership with the MEDICAP, on several cases of serious ill-treatment in the central prison of Manakara, in southern Madagascar, which can be considered as torture.

***The OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Take immediate and effective measures to investigate, prosecute and punish any instance of torture and ensure that police or justice officials do not practise torture by, in particular :
  - Invariably opening enquiries into any instance of torture or ill-treatment;
  - Taking appropriate disciplinary measures and forwarding the files to the public prosecutor's office to enable criminal procedures to be opened.
- Monitor Dina to ensure that the practice is consistent with the law of 25 October 2001.

### **Article 16: Prohibition of cruel, inhuman or degrading treatments:**

Detention conditions in Madagascar are atrocious, and could in themselves be considered as cruel, inhuman or degrading treatment. Endemic overcrowding, failure to separate detainees according to status, very limited access to healthcare and food and, in some cases, ill-treatment, are typical. Furthermore, during the mission in July 2011, the members of the mission were able to interview two women who were detained for a crime committed by their husbands. According to testimonies collected, it is common to arrest the wife of an offender when the police do not find the husband to force him to surrender.

***The OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Adopt practices in line with standard Minimum Rules for the Treatment of Prisoners;
- Take urgent steps to combat prison overcrowding, preferring measures other than detention, in particular where the offences concerned are minor;
- Take the necessary steps to ensure that detainees have access to basic medical care and are properly nourished;
- Ensure effective separation of adults and minors and of remand and convicted prisoners;
- Put an end to the practice of imprisoning a woman instead of her husband in order to put him under pressure;
- Commute death penalties to fair sentences proportionate to the breach of the law being punished.

***In general terms, the OMCT, FIACAT and ACAT Madagascar urge the Committee against Torture to recommend that the State Party:***

- Ratify the Optional Protocol to the Convention against Torture;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Abolish the death penalty and incorporate that ban into the Malagasy Constitution;
- Promote the employment of women in prisons and detention centres, as criminal investigation officers and in legal authorities ;
- Ratify the Agreement on the Privileges and Immunities of the International Criminal Court.