

Executive Summary

Report by FIACAT and ACAT Madagascar for the 3rd UPR of Madagascar

I. Abolition of the death penalty

Madagascar officially abolished the death penalty on 9 January 2015 with the promulgation of Law No. 2014-035. Madagascar had already taken several steps towards the abolition by signing the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2) on 24 September 2012. The new Criminal Code and Code of Criminal Procedure updated in 2017 have replaced the death penalty with the sentence of penal servitude. Finally, Madagascar ratified OP2 on 21 September 2017.

Recommendations:

- Continue efforts to raise public awareness on the abolition of the death penalty so as not to create a sense of injustice.

II. Fight against torture

Torture is criminalized in Malagasy legislation by Act No. 2008-008. However, the definition adopted is not in line with the Convention against Torture. Indeed, the penalties provided for are low (2 to 5 years' imprisonment), there is no criminalisation of other cruel, inhuman or degrading treatment or punishment and the crime of torture is not imprescriptible. A revision of the law has been underway since 2018 but has not yet been completed. It should be noted that several training courses have been set up on human rights in general and on the fight against torture in particular. Among other things, mention should be made of the symposium organised by the Ministry of Justice, the Office of the United Nations High Commissioner for Human Rights, the Independent National Commission on Human Rights and ACAT Madagascar on the prohibition of torture and the death penalty in December 2018.

Recommendations:

- Accelerate the process of revising the Anti-Torture Act 2008-008 to bring it into line with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by ensuring that penalties are proportionate to the seriousness of acts of torture and other ill-treatment are included and that acts of torture are not subject to a statute of limitations.

III. Conditions of detention

The Code of Criminal Procedure provides for several maximum periods of police custody, depending in particular on the presence of a public prosecutor or the residence of the judicial police officer conducting the investigation. Under these provisions, police custody can last up to 12 days. With regard to the rights of the person held in custody, despite a strengthening of the role of the lawyer by Act No. 2017-013, not all of them are included in the Code of Criminal Procedure and

they are not always respected in practice. Several criticisms can also be addressed regarding the excessive or even abusive use of pre-trial detention. Indeed, detainees awaiting trial represented 59% of the detainees in Antanimora prison (Antanarivo)¹, some of whom were detained beyond the legal time limits. This almost systematic and abusive use of pre-trial detention contributes significantly to prison overcrowding. Thus, in September 2018, prison establishments in Madagascar housed 22,878 inmates with a capacity of 10,615 places. This overcrowding also exacerbates problems relating to material conditions of detention, including food and access to health care for detainees. Despite the rehabilitation of several prisons (3 in 2016 and 2 in 2017) and the construction of the new prison in Vangaindrano, these problems persist. Finally, ACAT Madagascar and FIACAT also noted that only 30 of the 42 prisons have a building for minors. Thus, in several establishments minors are kept with adults during the day, or even share dormitories with adults in a few rare cases. The situation is even more worrying for girls who are still detained with adult women.

Recommendations:

- Improve conditions of detention by combating excessive and abusive use of pre-trial detention to prevent overcrowding and focusing on alternatives to detention, ensure the separation of detainees by sex, age and status and continue and intensify efforts to improve food and access to care for detainees.

IV. National Human Rights Institution and National Preventive Mechanism

The Independent National Commission on Human Rights was established by Law 2014-007 and established in 2017. It has A status and its regional offices are in the process of being set up. In addition, on 21 September 2017, Madagascar ratified the OPCAT and the national preventive mechanism was incorporated into the CNIDH in 2018 by Act No. 02/2018/PL

Recommendations:

- Ensure that the Independent National Commission on Human Rights is provided with the necessary budget to carry out its functions and that its regional offices are established.
- Ensure that the members of the national preventive mechanism possess the professional skills and knowledge required for the monitoring of places of deprivation of liberty and that the mechanism is independent and provided with the necessary resources for its proper functioning.

¹ Data collected by ACAT Madagascar from the prison clerk on 31 July 2018.