



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

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Summary record of the first part (public)* of the 1034th meeting

Held at the Palais Wilson, Geneva, on Thursday, 10 November 2011, at 10 a.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1034/Add.1.

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In the absence of Mr. Grossman, Ms. Gaer (Vice-Chairperson) took the Chair.

The public part of the meeting was called to order at 10.05 a.m.

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

Initial report of Madagascar (CAT/C/MDG/1)

1. *At the invitation of the Chairperson, the delegation of Madagascar took places at the Committee table.*
2. **The Chairperson** welcomed the delegation and expressed appreciation for the efforts they had made to attend the Committee's session, in view of the complex governmental situation in the State party.
3. **Mr. Razafinjatovo** (Madagascar), emphasizing his country's will to engage in dialogue with the Committee so as to improve its application of the Convention, said that its initial report had been prepared in accordance with the Committee's guidance by an inter-ministerial committee, and that national and regional civil society organizations had participated in the process. Despite the political crisis that had begun in January 2009, Madagascar had fulfilled its reporting obligations under the human rights treaties that it had ratified, including the submission of several overdue reports. A range of reforms — political, constitutional, legislative, institutional — had been undertaken to prevent torture and ill-treatment, while the national plan to implement the recommendations of the Universal Periodic Review, which included a recommendation on torture, was being prepared.
4. The full implementation of the road map of 16 September 2011 would be a decisive step in resolving the crisis. Under the road map, Omer Beriziky had been appointed Prime Minister on 28 October 2011. His main tasks would be to apply the road map in order to overcome the crisis and to organize democratic elections. In November 2010, a new Constitution had been adopted, which, unlike its predecessor, specifically prohibited torture and inhuman or degrading treatment or punishment. It also stated that preventive detention should be exceptional. Both measures would help to prevent prison overcrowding and reduce the risk of ill-treatment in prisons. The adoption of Act No. 2008-008 on 25 June 2008 had made torture a specific criminal offence in the State party's legislation and enshrined the inadmissibility of confessions obtained by torture, the principle of non-refoulement, the protection of witnesses, victims and investigators, and the right of victims to compensation. Within the framework of the Universal Periodic Review, Madagascar had agreed to ratify the Optional Protocol to the Convention.
5. Application of the Convention had resulted in prosecutions being brought against alleged perpetrators of acts of torture; however, the existence of a requirement for prior authorization from the relevant ministry before a law enforcement official could be prosecuted hindered the effective application of the Convention. To rectify that situation, it had been stressed, including in training courses for those responsible for applying the law, that no provision of domestic law could be set against a Convention duly ratified in accordance with the Constitution, under which international treaties took precedence over domestic law. Prosecutions against alleged perpetrators of torture, including in some cases where the victim had died, had therefore been pursued without waiting for authorization. Initial investigations were intended to identify the alleged perpetrators and the acts committed; criminal prosecutions could then be brought and the families of victims could obtain compensation.
6. In order to ensure effective application of the Convention, training sessions had been organized for magistrates, police officers, lawyers and others responsible for enforcing the

relevant legislation. Those who took part were expected to pass on what they had learnt to their colleagues. Evaluation measures had been recommended in order to assess the impact of training on behaviour patterns, and activities were planned to raise awareness among civil society of the need to protect the rights of vulnerable groups. The initiative was supported by the United Nations Development Programme.

7. Further to the concluding observations of the Human Rights Committee's consideration of the third periodic report of Madagascar under the International Covenant on Civil and Political Rights in 2007, Act No. 2008-012 of 17 July 2008 had established the National Human Rights Council, based on the Paris Principles. Its nine members included representatives of parliament, the executive authorities, civil society, the Bar, journalists' associations and trade unions, but the recent political upheaval had precluded the appointment of parliamentary representatives. Nevertheless, in the event of a dispute with the Administration, the rights of citizens were protected by a State official. The Council was authorized to investigate allegations of torture or ill-treatment and report them to the competent authorities, and to visit any place of detention. Making the Council operational would be a priority in the draft national plan to implement the recommendations of the Universal Periodic Review.

8. As a further measure to enhance the promotion and protection of human rights, Madagascar planned to create a follow-up and evaluation mechanism for its human rights obligations, based on specific criteria and deadlines. The draft national plan would include inviting all those responsible for special procedures to visit the country, ratifying the Optional Protocol to the Convention, and implementing recommendations made on a range of human rights issues, including the need to prevent violence against women and children, to improve the justice system and prison conditions, to strengthen human rights institutions, and to safeguard the rights of disabled persons and those living with HIV/AIDS.

9. **Ms. Belmir** (Country Rapporteur), echoing the Chairperson's expression of appreciation, underlined the delicate situation of the State party's institutional and legal framework for applying the Convention as it prepared to return to normal operations following a period of unrest. The means of incorporating the Convention and other international instruments ratified by the State party into domestic law gave rise to various questions.

10. Although torture was expressly forbidden by the State party's new Constitution and a specific Act had been adopted criminalizing torture and other cruel, inhuman or degrading treatment or punishment and defining penalties for such acts, the offence of torture had not been incorporated into the Criminal Code, under which it could only be considered as an aggravating circumstance. The same was true of the other acts proscribed by the Convention. Judges were left with considerable leeway in deciding how to classify and punish torture and ill-treatment. It would be preferable for the provisions of the Convention to be incorporated directly into the Criminal Code, and she asked whether the State party planned to amend the Criminal Code and Code of Criminal Procedure accordingly. Doing so would serve to raise awareness of the prohibition of torture and ill-treatment and ensure equal treatment of such cases by the judiciary. In addition, civil society groups had claimed that, unless the provisions of the Convention were incorporated in the Criminal Code, the Act criminalizing torture could be challenged.

11. Turning to article 2 of the Convention concerning legislative, administrative, judicial or other measures to prevent acts of torture, she noted that, according to the State party, arrested persons had the right to be informed of the reasons for their detention, were entitled to a medical examination and were given access to a lawyer. Moreover, their detention was officially recorded. However, the Committee had received information from various sources regarding politically motivated acts of torture by police and prison officers. It had also been informed that activists who opposed the Government considered that there

had been an increase in the number of acts of torture since the assumption in power in 2009 of the Transitional President, Mr. Andry Nirina Rajoelina. Some demonstrators had allegedly been murdered by the police. There had also been reports of enforced disappearances, unlawful arrests and cases of inhuman treatment of demonstrators, including lawyers and journalists. She mentioned in particular Fetison Rakoto Andrianirina, Zafilahy Stanislas and Pastor Edouard Tsarahame, who had been arrested in March 2011. Their lawyers and families had not been authorized to visit them and their places of detention were unknown. Moreover, orders to arrest political opponents were allegedly issued in many cases by the transitional authorities rather than by the police or gendarmerie. She invited the State party to comment on those allegations. Had the unlawful acts allegedly perpetrated by law enforcement personnel against demonstrators been investigated and prosecuted?

12. The National Human Rights Council was authorized by law to investigate cases of torture or ill-treatment. However, it had apparently been unable to exercise its prerogatives since 2002. She enquired about the current situation. Had the Council's investigative powers been restored?

13. The Committee had been informed that prison conditions in Madagascar left a great deal to be desired. Many inmates died while serving their sentences; the nutrition was poor and access to health care was inadequate. She would welcome any statistical data on prison conditions and occupancy rates that the State party could provide. There had been allegations of humiliating treatment of prisoners, including rape, and prison staff had allegedly exchanged food for sex. It had also been reported that detainees found it difficult to obtain access to their lawyers and families, and that lawyers representing persons who had been involved in demonstrations were subjected to ill-treatment. She invited the delegation to comment on those allegations.

14. According to the State party, the National Law against Torture characterized some acts of torture as crimes (*crimes*) and others as ordinary offences (*délits*). The penalty for offences ranged from 2 to 5 years' imprisonment and for crimes from 5 to 10 years' imprisonment. According to the Committee's jurisprudence, such distinctions were not applicable to acts of torture. Torture was invariably a serious crime and should entail a corresponding penalty. She therefore urged the State party to review the provisions in question so that torture was absolutely prohibited under all circumstances.

15. The transitional authorities had declared a state of emergency in March 2009. Such a declaration was acceptable pursuant to article 4 of the International Covenant on Civil and Political Rights provided that it was not inconsistent with other obligations under international law and that certain safeguards were put in place. Derogations from core human rights principles, such as the right to life, the prohibition of torture and discrimination, and the non-retroactivity of criminal law, were not permitted. She enquired about the reasons for the declaration of the state of emergency and about the administrative, judicial and legislative decisions to which it had given rise. Had provision been made for the safeguarding of basic rights and the prevention of acts of torture? She also wished to know how long the state of emergency had lasted and whether it had shed any light on the need for legislative amendments.

16. Article 19 of the National Law against Torture stipulated that no person could be extradited by the Malagasy authorities to a State where he or she ran the risk of being subjected to torture. The Ministry of Justice was the authority empowered to grant extradition requests on the basis of a bilateral extradition agreement. The lack of a court decision could undermine the validity of the decision to extradite. The State party had ratified the 1951 Convention relating to the Status of Refugees but it was not a party to the 1967 Protocol to the Convention or to the Convention Governing the Specific Aspects of Refugee Problems in Africa. She asked whether it planned to ratify those instruments. The

extent to which asylum-seekers were protected against refoulement also needed to be clarified, since article 19 of the National Law against Torture failed to mention refoulement. The decision was taken by the Minister of the Interior and could be appealed to a special commission and, if that failed, to the Council of State. She recommended that article 19 should be amended in the light of article 3 of the Convention, which stressed the absolute nature of the prohibition of refoulement where a risk of torture existed.

17. Turning to article 4 of the Convention, she said that the penalties applicable to acts of torture should be incorporated in the Criminal Code. According to article 11 of the National Law against Torture, offenders imprisoned for acts of torture could also be sentenced to forced labour. She wondered how such a penalty was compatible with the Standard Minimum Rules for the Treatment of Prisoners. She welcomed the delegation's confirmation that prior ministerial authorization was no longer required to prosecute law enforcement personnel.

18. The Committee wished to have additional statistics concerning prisons and detention centres, since it had been informed that the families and lawyers of detainees were frequently unaware of their whereabouts. She trusted that the police and gendarmerie had been informed of the provisions of Decree No. 2006-015 concerning the prevention of secret detention and that it would be consistently enforced in detention facilities. She asked to what extent Dina tribal law was applicable in Madagascar. The Committee had been informed that the population sometimes resorted to tribal law because they had no confidence in the formal legal system. Was it necessary in practice to fill a legal void?

19. The Committee had also been informed that when law enforcement personnel were unable to arrest an offender or suspect, they sometimes arrested one of the suspect's relatives instead. She asked who was ultimately responsible for such conduct and whether any remedial action had been taken. Police custody and pretrial detention tended to last for unduly long periods. The initial 48-hour period of police custody could be extended for as long as 12 days, and the initial 8-month period of pretrial detention for serious crimes could be extended by 6 months and renewed for a further 4 months. The overcrowding of the country's prisons was doubtless partly due to such decisions.

20. Turning to the issue of universal jurisdiction, she said that in order to bring its legislation into line with article 5 of the Convention, Madagascar needed to amend article 18 of the National Law against Torture. In that connection, she asked the State party to provide the Committee with further information on its accords with other States on the extradition of persons. Furthermore, although the State party report had cited cases in which persons had been extradited, it had made no reference to extraditions in cases involving torture; the Committee wished to know whether persons who had perpetrated acts of torture could, in fact, be extradited.

21. The State party was requested to provide details of any bilateral and multilateral accords that it had concluded with regard to the provision of mutual judicial assistance. Madagascar was to be commended on the measures it had implemented with regard to education and information regarding the prohibition against torture, and was urged to continue along those lines.

22. **Mr. Gaye** said that he was impressed by Madagascar's efforts to implement the Convention during what was a difficult period of political transition.

23. The State party was asked to provide further information on the steps it was taking to train doctors and other medical personnel to identify physical and psychological evidence of torture, and to carry out forensic examinations. Such training was particularly important in the light of the fact that there had been a number of incidents in which members of the security forces had opened fire on protestors. The Committee was

concerned that it continued to receive reports of demonstrations being forcibly broken up by the security forces, and of deaths and injuries that occurred as a result of such actions.

24. Turning to the issue of legal aid, he asked the State party whether a detainee that could not offered to hire a lawyer was offered legal assistance that was free of charge. He also asked whether police officers could refuse a detainee's request to be examined by a medical practitioner. The State party had informed the Committee that detainees could be released on bail. However, the Committee wished to know if, under Malagasy legislation, detainees were entitled to challenge the legality of their detention, since requesting bail would imply that they considered their arrest and detention to have been legitimate. That was of particular importance given that many NGOs, Malagasy parliamentarians and other stakeholders had reported the occurrence of many unlawful arrests.

25. Noting that Madagascar was in a period of political transition, he asked whether members of the previous and current Madagascar legislatures had been arrested, and whether they enjoyed immunity from prosecution. The Committee had learned that the Monitoring Commission had been criticized for failing to carry out thorough inspections of detention facilities and for failing to involve NGOs and other relevant stakeholders in its activities. Madagascar was urged to provide further information on that Commission, including on the resources at its disposal.

26. According to the State party's report and information received from NGOs, almost 20,000 persons were being held in facilities designed to house 13,000 detainees. Most of those persons were being held in preventive detention, in violation of Madagascar's Constitution, which provided for preventive detention only as an exceptional measure. In that regard, he asked what alternatives to detention could be applied with a view to alleviating overcrowding.

27. Turning to the issue of investigations in the event of acts of torture, he said that the Committee was concerned that it had received no information on investigations into allegations of torture carried out by members of the security forces. If that was indeed the case, the Committee wished to know why no investigations had been carried out, and reminded the delegation that failure to investigate acts of torture by members of the security forces would foster a climate of impunity. Although Ministerial authorization was no longer required before prosecutions could take place of judicial police officers accused of perpetrating criminal offences, the Criminal Code needed to be amended to reflect that change.

28. The Committee was concerned that the National Joint Commission of Inquiry had assumed duties that were usually carried out by other law enforcement authorities. Instead of expanding the role of that Commission, Madagascar should strive to ensure that the existing law enforcement authorities functioned effectively. The Committee asked for more information on the steps Madagascar was taking to protect witnesses and complainants from ill-treatment and intimidation as a consequence of their complaints or any evidence given, and noted with concern that there was no specialized service to provide such protection.

29. Further information was needed on rehabilitation services provided for victims of torture. Since according to Madagascar's report the State assumed responsibility for offences carried out by State officials, he asked what penalties were imposed on those officials with a view to combating impunity. He also asked the delegation to provide details of cases in which lawyers had declared evidence inadmissible on the ground that it had been extracted under torture.

30. Madagascar had stated in its report that, in cases involving torture or cruel, inhuman or degrading treatment, judges could base their rulings, *inter alia*, on decisions issued by the

European Court of Human Rights. Noting that Madagascar was not a European country, he asked the delegation how rulings by that Court were applicable in Madagascar.

31. No penalties for acts of cruel, inhuman or degrading treatment were set forth in Malagasy legislation. Penalties must be prescribed by law, and not left to the discretion of judges. He urged the State party to amend its legislation so that it clearly stipulated the penalties imposed for such offences. Although human trafficking remained a particular area of concern in the State party, its report had made no reference to that problem. Similarly, no information had been provided on the exploitation of children, including street children. The Committee was gravely concerned that traditional forms of justice were increasingly being employed in Madagascar, and that such justice mechanisms could try criminal as well as civil cases. That seemed completely at odds with the rule of law. The Committee required further information on how those justice mechanisms operated.

32. **Mr. Bruni** asked how often the National Law against Torture, which defined acts of torture, had been invoked in the courts, and what penalties had been imposed on offenders. He noted that the Criminal Investigation Service could, in certain circumstances, detain a suspect for the purposes of a preliminary investigation for up to 12 days: the Committee believed that such a period was too long and should be reduced. Under Malagasy legislation, a very short statute of limitations was prescribed for the prosecution of cases involving acts of torture or cruel, inhuman and degrading treatment. The Committee urged the State party to amend its legislation to lengthen that statute of limitations with a view to facilitating its implementation of the Convention.

33. He asked the delegation whether the State party was taking steps to increase awareness of the Istanbul Protocol among medical personnel and prison staff. He also urged Madagascar to urgently review the use of isolation cells and underlined the fact that holding detainees in extremely small isolation cells for long periods of time might, in itself, constitute a form of cruel, inhuman and degrading punishment.

34. **Ms. Sveaass** said that she had information according to which 30 per cent of girls aged 15 to 19 years were married, divorced or widowed and wished to know what steps had been taken to counter the practice of early marriage, in particular enforced and arranged marriages. She also wished to know how the ill-treatment or even murder of women by their husbands was dealt with under the law. Was it true that the engagement by the woman concerned in activities of which the husband did not approve constituted an extenuating circumstance? She wished to know how many individual complaints about human trafficking had been received by the National Human Rights Council and what the response had been. She asked when the State party intended to ratify the Convention on the Rights of Persons with Disabilities and requested more information on the conditions in which persons with mental illness lived. She also asked whether the police received specific training to enable them to detect and deal with domestic violence directed against women and children.

35. **Mr. Mariño Menéndez** said that the State party should adopt legislation on aliens and asylum, and incorporate the provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts Convention in its domestic law. He asked whether it was possible for a torture victim to launch civil proceedings for damages even if criminal proceedings with regard to the same case were still under way. He also asked for more information on the role of the Ombudsman in cases of conflict between individuals and the public administration. Was Act No. 2008-008 applicable to crimes committed by members of the armed forces or were they covered by separate legislation on crimes of torture and ill-treatment? In the light of the de facto moratorium on the death penalty, he would like to know if the State party was considering

ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

36. **Ms. Kleopas** asked the delegation whether the new authorities in the State party would pledge themselves to investigate and prosecute the perpetrators of crimes of torture and ill-treatment committed in the past in the State party and to disband groups like the Special Intervention Force, which had been responsible for such crimes. She wished to know more about the fate of Rakotompanahy Andry Faly and three other members of the Malagasy Broadcasting System (MBS) who had been arrested on 23 June 2009 and remained in detention without trial. Citing a report by Amnesty International after its visit to the State party in September 2011, she also expressed concern about prison conditions in Madagascar. According to the report, Antanimora central prison in Antananarivo had a maximum capacity of 800 inmates but currently held more than 2,830 prisoners, the majority in pretrial detention. Although women prisoners were kept apart from men, it appeared that some were detained with their babies and young children, who were thus exposed to potential health problems. Female inmates who were pregnant did not receive adequate medical attention and young girl detainees were held together with adult women.

37. **The Chairperson** asked whether the current absence of a proper Government was hindering implementation of the Madagascar Action Plan (MAP) for attaining the Millennium Development Goals and ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Had the current period of transition made it difficult for the delegation to appear before the Committee? She asked whether anything was known of the whereabouts of two opposition leaders, Fetison Rakoto Andrianirina and Zafilahy Stanislas, who had been listed by some NGOs as disappeared and who were thought to be held in undisclosed places of detention. She also asked how many complaints of torture and ill-treatment had been filed and what action had been taken in response to those complaints.

The public part of the meeting rose at 11.50 a.m.