



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

Distr.: General  
23 February 2011  
English  
Original: French

---

**Committee against Torture**

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

**Initial periodic report of States parties due in 2007**

**Madagascar\***

[Received 29 October 2010]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

GE.11-41187 (E) 150711  
V.11-82694 (E) 140711 150711

**\*1182694\***

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.

## Acronyms

ACAT	Action by Christians for the Abolition of Torture
BEPC	Brevet d'Études du Premier Cycle (Lower Secondary School Certificate)
CAT	Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPE	Certificat d'Études Primaire Élémentaire (Certificate of Elementary Primary Studies)
CERD	Committee on the Elimination of Racial Discrimination
CNDH	Commission Nationale des Droits de l'Homme (National Human Rights Commission)
CODIS	Conseil de Discipline (Disciplinary Board)
CSAP	Conseil Supérieur de l'Administration Pénitentiaire (Supreme Council of the Prison Service)
CSM	Conseil Supérieur de la Magistrature (Supreme Council of the Judiciary)
CST	Conseil Supérieur de la Transition (Higher Transitional Council)
CT	Congrès de la Transition (Transitional Congress)
DGAP	Direction générale de l'administration pénitentiaire (Directorate-General of the Prison Service)
ECOSOC	Economic and Social Council
ENAP	École Nationale de l'Administration Pénitentiaire (National School for Prison Administration)
ENMG	École Nationale de la Magistrature et des Greffes (Justice Administration Training School)
GDP	Gross domestic product
HCC	Haute Cour Constitutionnelle (High Constitutional Court)
HDI	Human Development Index
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
INTERPOL	International Criminal Police Organization
IOC	Indian Ocean Commission
MDGs	Millennium Development Goals
MINJUS	Ministère de la Justice (Ministry of Justice)
PRSP	Poverty Reduction Strategy Paper
UPR	Universal Periodic Review

## **Part one**

### **Information of a general nature**

#### **A. Introduction**

1. Madagascar has experienced significant delays in the submission of its initial periodic reports on human rights, including its initial report on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. To remedy the situation, an inter-ministerial committee for the drafting of initial and periodic human rights reports was set up in 2003. The committee includes representatives of civil society and has drafted and presented five periodic reports on:

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in August 2004;
- The International Covenant on Civil and Political Rights (ICCPR) in March 2007;
- The International Covenant on Economic, Social and Cultural Rights in November 2009;
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in October 2008.

It has also made possible the submission of a report as part of the Universal Periodic Review (UPR). This report was presented to the Human Rights Council in February 2010.

3. The report on the application of the African Charter on Human and Peoples' Rights was sent to the African Commission on Human Rights. The date of consideration has not yet been decided. The same applies to the report on the application of the Convention on the Rights of the Child.

4. Since December 2008 the socio-political crisis has disrupted the submission of the present report.

#### **Country background**

5. Madagascar is an island situated 400 km from the coast of Mozambique in the south-west Indian Ocean. Its total surface area is 587,051 km<sup>2</sup>, with a coastline of 5,000 km. The capital is Antananarivo. The country is divided into 22 regions, 119 districts, 1,558 communes and 17,433 village communities. Madagascar's national language is Malagasy, and its official languages are Malagasy, French and English.

6. The population of Madagascar was estimated at 19,385,000 in 2009. Eight persons out of 10 live in rural areas.

7. In 2003-2004, fertility was estimated at 5.2 and is still high. Infant mortality is estimated at 58 per cent. Life expectancy at birth is 59.9 years. The average size of households is 4.9 persons.

8. In the economic sphere, the primary sector accounts for only 22.3 per cent of GDP, although it employs more than 82 per cent of the working population. The country has a Poverty Reduction Strategy Paper (PRSP) and a Madagascar Action Plan (MAP) for attaining the Millennium Development Goals (MDGs).

9. Since the introduction of free enterprise two decades ago, the country has witnessed an increase in economic growth, with a rate of 4.7 per cent in 2006 and 7.2 per cent in 2008. However, this has not always resulted in a higher standard of living for the population, especially in rural areas.

10. According to the Human Development Report 2009, Madagascar is ranked 145th out of 182 countries, with a Human Development Index (HDI) of 0.543.

### **General political structure**

11. Since acceding to independence on 26 June 1960, Madagascar has witnessed three republics marked by four successive transitional regimes in 1973, 1991, 1995 and 2009.

12. Following a protest movement which began in December 2008, directed against the ruling Government, the President of the Republic decided, on 17 March 2009, to transfer full powers to a military directorate. The latter in turn transferred power to the leader of the movement, Andry Nirina Rajoelina.

13. In its Decision No. 79-HCC/G of 18 March 2009, the High Constitutional Court ratified these two transfers of power and recognized Andry Nirina Rajoelina as the Transitional President exercising the functions of President of the Republic.

14. To overcome the crisis and establish the Fourth Republic, taking into consideration the difficulties of application of the Maputo and Addis Ababa Agreements, the Global Political Accord was signed by the various stakeholders in Ivato on 13 August 2010 and has set out a road map of the transition which plans:

- The establishment of Transitional Institutions, including the Transitional Parliament composed of the Higher Transitional Council (CST) and of the Transitional Congress (CT);
- The establishment of a national unity government;
- The proposal of an electoral timetable.

15. The National Conference, organized under the leadership of the “Committee of the Wise” (Ray amandreny mijoro) and of civil society, took place from 13 to 18 September 2010 and established election dates. It planned for the referendum on the new Constitution to be held on 17 November 2010 and local government elections to be held on 20 December 2010. Parliamentary elections were planned for March 2011 and presidential elections for May 2011.

16. The Transitional Parliament was established following Ordinance No. 2010-10 of 8 October 2010. This Parliament is comprised of the Higher Transitional Council, the equivalent of the Higher Chamber, and of the Transitional Congress, the equivalent of the Lower Chamber. The Higher Transitional Council and the Transitional Congress were established on 11 October 2010 and 12 October 2010 respectively. These have been operational since their members were appointed and their Presidents and the members of the bureau were elected.

### **Preparation of the report**

17. In accordance with the general guidelines contained in document CAT/C/4/Rev.3 of 18 July 2005 adopted by the Committee against Torture, this initial report has been prepared as described below.

18. Through the Ministry of Justice and the Ministry of Foreign Affairs, the Malagasy Government has, by inter-ministerial Order No. 18600 of 30 October 2003, set up a committee for drafting initial and periodic reports on international instruments relating to human rights.

19. The Committee is formed as follows:

- A Government Agency with representatives from the Government: the Ministries of Justice, Foreign Affairs, Health and Family Planning, Education, Public Security, the Economy, and Finance and Budget, which is represented by the National Institute of Statistics;
- A Non-Governmental Entity with members from human rights non-governmental organizations (NGOs) from six autonomous provinces;
- Members of civil society.

20. For the preparation of this report, successive consultations took place in 2007, 2008 and 2010, with the participation of officials from the ministries concerned and representatives of civil society, including Action by Christians for the Abolition of Torture (ACAT). These consultations enabled available information to be collected from each department.

21. A workshop was held in 2010, which focused on updating information following the entry into force of Act No. 2008-008 of 25 June 2008 against torture and other cruel, inhuman and degrading treatment or punishment (“National Law against Torture”).

22. However, it should be noted that, in criminal law, prior legislative reforms are required before the application of the provisions of the treaties recommending that States parties criminalize certain acts. Such is the case of the criminalization of acts of torture and other cruel, inhuman and degrading treatment or punishment.

23. To conform with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acts of torture are criminal offences in their own right under Malagasy law. The National Law against Torture enshrines the broad principles regarding prevention, prohibition, punishment, protection and redress and reflects the essential provisions and terms of the Convention, for its effective application throughout the country.

## **B. General legal framework within which human rights are protected**

### **Constitutional, criminal and administrative provisions regarding the prohibition of torture**

24. The provisions of the Malagasy Constitution do not expressly prohibit torture. As a party to the International Covenant on Civil and Political Rights, which prohibits torture and other cruel, inhuman and degrading treatment or punishment,

Madagascar is required to take measures to give effect to this prohibition within its national legislation.

25. Under the National Law against Torture, acts of torture and other cruel, inhuman and degrading treatment or punishment are criminal offences.

26. The National Human Rights Council, established under Act No. 2008-012 of 17 July 2008, is empowered to undertake administrative inquiries, acting on an individual or collective complaint relating to the practice of torture and ill-treatment.

#### **International legal instruments relating to torture and other cruel, inhuman or degrading treatment or punishment**

27. Madagascar is party to legal instruments prohibiting torture and other cruel, inhuman or degrading treatment or punishment, namely:

- Universal Declaration of Human Rights (art. 5);
- International Covenant on Civil and Political Rights (art. 7);
- Statute of the International Criminal Court (art. 7, para. 1 (f));
- Convention on the Rights of the Child (art. 37);
- International Convention on the Elimination of All Forms of Racial Discrimination (art. 5).

28. In 2005 Madagascar ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **Legal status of the Convention in the domestic legal order**

29. In its preamble, the Malagasy Constitution endorses:

- The International Bill of Human Rights;
- The African Charter on Human and Peoples' Rights;
- The conventions related to women's and children's rights.

These conventions form an integral part of Malagasy positive law.

30. Prohibition of torture is therefore incorporated into the domestic law of Madagascar. Moreover, as regards the application of international instruments, article 132, paragraph 4, of the Constitution specifies that international treaties and agreements that are lawfully ratified have, upon their publication, an authority higher than that of the law.

31. Article 132 of the Constitution establishes that "*treaties or agreements that are duly ratified or adopted shall have, as from their publication, an authority higher than that of laws, subject, for each agreement or treaty, to its implementation by the other party*".

32. Those provisions establish the hierarchy of rules in the legal system in Madagascar. They enshrine the supremacy of ratified treaties, which have a higher authority than laws. In concrete terms, the provisions of the treaties take precedence in the case of a conflict of laws.

33. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been lawfully ratified by Madagascar, therefore acquires the status of being higher than the law.

34. In practice, certain provisions of international legal instruments that have been ratified are applied directly and immediately in domestic law, especially in the case of clear provisions which do not require prior legislative reforms.

35. One example is the application of the principles of non-discrimination in the Supreme Court of Madagascar case *Madame Dugain v Air Madagascar*. The Supreme Court quashed the judgement of the Court of Appeal on the grounds that it was based on a collective agreement that was discriminatory in relation to the gender and age of the applicant.

36. The questions of the enforceability and justiciability of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before the courts have been resolved by the adoption of a national law that integrates the main provisions of the said Convention.

## **Part two**

### **Information relating to each substantive article of the Convention**

34. In light of the implementation of its obligations arising from the ratification of this Convention in 2005, Madagascar has undertaken legislative reforms through the adoption of Act No. 2008-008 of 25 June 2008, the National Law against Torture.

#### **Application of article 1 of the Convention**

##### **Definition of torture**

**“1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.**

**2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”**

**Information on the definition of torture in national law**

35. Article 2 of the National Law against Torture provides a definition of what is understood by the term “torture”, stating that:

*“I. The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:*

*(1) Specifically:*

- Obtaining information, a statement or confessions from him or her or a third person,*
- Punishing him or her for an act he or she or a third person has committed or is suspected of having committed,*
- Intimidating or coercing him or her or a third person,*

*(2) For any reason based on discrimination of any kind.*

*(3) When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

*II. The term ‘public official’ means any of the following people, whether exercising their powers in Madagascar or abroad:*

*(1) A civil servant or any other person working on a public service mission*

*(2) A member of the law enforcement authorities or the armed forces*

*(3) Any person holding a public or elective office*

*(4) Any person invested with powers by the law of a foreign State which in Madagascar would be those mentioned in paragraph 1, 2 or 3 above.”*

36. The definition adopted by national legislation is almost identical to that of the Convention as a whole, with regard to the purpose, the intention and the position of the perpetrators, except that Malagasy law includes members of the law enforcement authorities and the armed forces among public officials capable of acts of torture and other ill-treatment.

37. This law has taken into account the recommendations of the Convention by making acts of torture criminal offences in their own right.

38. The application of this law will mean that torturers and perpetrators of other ill-treatment will be prosecuted on the basis of the penalties established in articles 10 to 12 and no longer on the basis of the offences and crimes established in the Criminal Code such as grievous bodily harm and involuntary homicide.

**Article 2 of the Convention****Absolute prevention and prohibition of torture**

**“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.**



2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”

**Paragraph 1 of article 2**

“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

**Measures preventing acts of torture during the period of custody and investigation**

39. Malagasy law recognizes the guarantees for the protection of the rights of persons under arrest. From the moment a person is deprived of liberty:

- He or she has the right for a member of his or her family or any other appropriate person to be informed of his or her detention and the place of detention;
- He or she has the right to a medical examination. According to the provisions of article 138 of the Code of Criminal Procedure of Madagascar, a person who is arrested may be given a medical examination at the moment he or she is taken into custody. This examination may be requested *propriu notu* or at the wish of a family member either by the officer of the Criminal Investigation Service in charge of the inquiry, or by the public prosecutor or his or her representative or by the counsel. The doctor performing the examination is required to produce a report;
- He or she has the right to a lawyer or to the assistance of a person of his or her choice according to the new article 53<sup>1</sup> of the Code of Criminal Procedure;
- He or she has the right to be informed of the rights specified above in a language he or she understands. The assistance of an interpreter may be granted at the request of the person concerned;
- The detaining authority is required to fill in a register, including the date, the time and the reason for the deprivation of liberty, in accordance with article 139 of the Code of Criminal Procedure.

40. To prevent and deter acts of torture, measures have been taken to limit the period of custody.

---

<sup>1</sup> “During the initial hearing of any person suspected of having committed an offence or a crime, the officer of the Criminal Investigation Service must advise the suspect of his or her right to choose a defence counsel from among the lawyers who are members of the Madagascar Bar or a business agent or any person of his or her choice subject to the legislation in force. The record of the hearing shall make mention of the fulfilment of this requirement, failing which the proceedings will be rendered null and void, without prejudice to the application of the provisions of article 112, paragraph 2, of this Code against the officer of the Criminal Investigation Service.”

**Duration of periods of custody**

41. Article 136 of the Code of Criminal Procedure stipulates that an officer of the Criminal Investigation Service may not detain a person for the purposes of the preliminary police investigation for more than 48 hours. This custody period may not be extended, except during weekends and public holidays or when the officer of the Criminal Investigation Service lives outside the town where the court or division of the court usually sits.

42. However, in an arrest carried out away from the habitual residence of the officer of the Criminal Investigation Service carrying out the investigation, the period of 48 hours is extended by one day for each 25 km and must not exceed 12 days between the moment in which the person is apprehended and the moment in which he or she is brought before the competent court (article 137).

43. Article 138 of the Code stipulates that: *“When the arrest has been carried out by a patrol or during service or during a police operation where the route and timetable have been fixed in advance, the distance of 25 km per day shall be measured on the basis of the actual route covered by the patrol or the troops who perform the planned service or police operation.”*

44. By virtue of his or her decision-making powers regarding the activities of officers of the Criminal Investigation Service, the public prosecutor is required to monitor the legality of the detention during custody.

45. To prevent arbitrary detention, records are kept systematically, containing the date and the time the suspect arrived and was released, as stipulated in article 4 of the National Law against Torture.

46. Article 90 of Decree No. 69-232 establishing regulations of the Internal Service for the National Gendarmerie stipulates that *“for each person who is apprehended or held in custody, details shall be recorded in a register indicating, in particular, the duration of the custody period and, if applicable, provisional lock-up”*.

**Secret detention**

47. The detention of a person who has been arrested or sentenced in an establishment or a place that is not officially registered as a place of deprivation of liberty or that is secret shall be punished by two to five years' imprisonment under articles 5 and 13 of the National Law against Torture, as set out below:

Article 5: *“The detention of a person in any place other than those established by the laws and regulations is prohibited.”*

Article 13: *“The detention of a person arrested or sentenced in an establishment or a place that is not officially registered as a place of deprivation of liberty or that is secret shall be punished by two to five years' imprisonment.”*

**Paragraph 2 of article 2**

**“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other state of emergency may be invoked as a justification of torture.”**

48. To prevent torture at all times and under any circumstance, the National Law against Torture establishes the absolute prohibition of torture.

49. Article 14 of the National Law against Torture stipulates that *“a state of war, a state of emergency, a state of national necessity or martial law may not be invoked as a justification of torture”*.

50. This provision means that the prohibition of torture may not be derogated from either in times of peace and or in times of war or armed conflict, including periods of political instability.

**Paragraph 3 of article 2**

**“An order from a superior officer or a public authority may not be invoked as a justification of torture.”**

51. Article 15 of the National Law against Torture stipulates that: *“An order from a superior officer or from a public authority may not be invoked as a justification of torture.”*

52. Thus, performing an order to commit acts of torture received from a superior officer or from a public authority does not mean that the person carrying out the order is not liable for prosecution.

53. So far, national courts have not handed down any decision regarding this aspect of article 15. However, training courses invite law enforcement officials to be guided by the rule concerned when such situations arise.

54. To enhance the effectiveness of the provisions referred to above, article 16 provides that disobeying an illegal order to commit an act of torture and other cruel, inhuman and degrading treatment or punishment is not punishable. Under the terms of this article, *“Under no circumstances shall any person be punished for disobeying an order to commit an act that is equivalent to torture or other cruel, inhuman and degrading treatment or punishment.”*

55. Specifically, the application of this article means that a person who disobeys is not exposed to a risk of disciplinary proceedings or criminal prosecution.

56. The duty to obey ceases when the order received concerns the commission of an act of torture, prohibited at all times and under any circumstance, including orders from the hierarchical superior.

**Article 3 of the Convention**

**Expulsion, refoulement, extradition**

**“1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.**

**2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations**

**including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”**

**Prohibition of refoulement to a State where the person may be in danger of being subjected to torture in national law**

57. To comply with article 3 of the Convention, article 19 of the National Law against Torture stipulates that: *“Without prejudice to the principles and regulations governing the extradition procedure, no person shall be extradited by the Malagasy authorities to a State where he or she runs the risk of being subjected to torture. In such cases, the courts shall be authorized to try the person on the events which are the subject of the extradition if these are punishable under the legislation in force in Madagascar or if they constitute an international crime.”*

**Absence of security considerations with regard to extradition**

58. Grounds for extradition or for refusing extradition are established in the Law against Torture and in the treaties. No reference is made to security concerns such as, inter alia, combating terrorism, circumstances arising from a state of emergency or national security.

59. During public emergencies, the provisions of article 3 common to the four Geneva Conventions may be applied from the start of a conflict, even if the state of war is not recognized. In this regard, the following are and remain prohibited at all times and in all places, for all civilians and members of the military:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Outrages upon personal dignity, in particular humiliating and degrading treatment.

60. With respect to the application of article 19 of the Law against Torture, the equivalent of article 3 of the Convention, expelling a person to a State where he or she may run a real risk of being subjected to torture is prohibited. An individual is not to be returned to another country by extradition, expulsion or refoulement when the country is known to practise torture.

61. However, in the absence of extradition or expulsion, the Malagasy authorities must ensure that perpetrators of torture or cruel, inhuman or degrading treatment are tried before the courts according to the legislation in force.

62. The obligation to prosecute an alleged perpetrator of acts of torture does not depend on the prior existence of a request for his or her extradition. Madagascar will prosecute an alleged torturer in the absence of an extradition request, except where there is insufficient evidence to prosecute.

63. According to article 4 of the Franco-Malagasy Agreement on Cooperation of 1973, all acts that constitute a crime may result in the extradition of the perpetrator. Article 6 provides for the internal protection and care of the person presumed to be guilty.

64. In the absence of other provisions, the courts may also apply the provisions of the United Nations Model Treaty on Extradition (General Assembly resolution 45/116).

65. As to whether the legislation and practices adopted with relation to terrorism, states of emergency, national security or other matters constitute an obstacle in implementing this prohibition, Madagascar has not faced such situations to date.

66. Refoulement<sup>2</sup> or expulsion of an alien are organized in accordance with the forms and conditions provided for in articles 12 to 14 of Act No. 62-006 of 6 June 1962 on the organization and monitoring of immigration.

#### **Authority empowered to grant extradition**

67. In extradition matters, the Ministry of Justice is the authority empowered to grant extradition, by an order, on the basis of a bilateral cooperation agreement on extradition or on the basis of a reciprocal diplomatic understanding.

68. Extradition may be refused, in particular, in the following cases:

- Political or related offences;
- Absence of dual criminality;
- Offences considered as failure to comply with military obligations;
- Offences that have already been the subject of a final judgement by the courts of Madagascar;
- Time-barring of public action or punishment according to the legislation of Madagascar or of the requesting State;
- Offences that were committed, either wholly or partially on Malagasy territory;
- An amnesty declared in one of the two States.

69. Expulsion and refoulement of an alien are declared, by an Order from the Minister of the Interior, if his or her presence in the country constitutes a threat to the maintenance of public order, if his or her entry to the country was illegal or if his or her residence permit has expired.

#### **Appeals against an expulsion or refoulement decision**

70. Any alien who is to be expelled or returned (“refoulé”) and who wishes the decision to be changed has the right to be heard before a special commission, either alone or assisted by counsel, eight days after notice of the expulsion decision. The expulsion is suspended until the decision of the Ministry of Internal Affairs on deferment.

---

<sup>2</sup> Article 13: “An alien authorized to reside temporarily in Madagascar may also be returned if his or her presence in the country constitutes a threat to the maintenance of public order or the protection of public health, morals or safety.”

Article 14: “The Minister of the Interior may order the expulsion of an alien if his or her residence in Madagascar constitutes a threat to public order and safety. If necessary, the expulsion order may be revoked under the same procedure.”

71. If the appeal to change the decision is unsuccessful, the complainant is entitled to bring the matter before the Council of State.

72. The National Police are responsible for escorting to the border aliens who are being expelled or returned.

73. To date, Madagascar has not carried out any refoulement, expulsion or extradition of a person to another State where there are substantial grounds to believe that he or she is at risk of being subjected to torture. No request in this regard has been received by the Government of Madagascar.

#### **Specialized training of those responsible for the expulsion, refoulement and extradition of aliens**

74. At present, there is no specific training given to public officials responsible for the expulsion, refoulement and extradition of aliens. On the other hand, such training is part of other teaching modules for law enforcement officials.

#### **Article 4**

##### **Criminalization and punishment of torture and attempted torture**

**“1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.**

**2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”**

#### **Provisions of criminal law on the prohibition of torture and other cruel, inhuman or degrading ill-treatment or punishment**

75. Under the National Law against Torture, acts of torture and other cruel, inhuman and degrading treatment or punishment are criminal offences in their own right. Penalties are incurred according to the seriousness of the acts.

76. Acts of torture are subject to the penalties set out in articles 10 to 12.

Article 10: *“Any person who has committed the act referred to in Article 2 (acts of torture) of this law shall be liable to a term of imprisonment of 2 to 5 years.”*

Article 11: *“I. The penalty incurred is a term of imprisonment of 5 to 10 years*

*1. If the act of torture was committed on a person under the age of 18 years or on a pregnant woman whose condition was apparent or known to the perpetrator.*

*2. If the act of torture was committed using equipment specifically designed for torture.*

*II. The penalty incurred is long-term forced labour:*

*1. If the act of torture led to the victim’s suffering from a disability.*

*2. If the act of torture was followed by mutilation, amputation, privation of the use of a sense organ or loss of the reproductive organ.*

*III. The perpetrator incurs the penalty of forced labour for life if the act of torture led to the death of the victim or if it was followed or preceded by rape.”*

Article 12: “Without prejudice to the penalties listed in articles 10 and 11 of this law, the whole or partial loss of civic rights set out in article 34 of the Criminal Code may be incurred.”

#### **Time-barring of offences of torture and other cruel, inhuman or degrading ill-treatment or punishment**

77. For offences of torture, the public right of action is time-barred after three years for offences categorized as ordinary offences (*délit*) and ten years for those categorized as crimes (*crimes*).

78. Currently, Madagascar does not have a database on the effective application of this article. Efforts are under way to raise awareness of the text and to train law enforcement officials.

#### **Disciplinary measures against officials presumed to have committed an offence of torture**

79. Law enforcement officials are investigated in the case of a complaint of bodily harm from a person under arrest. Criminal proceedings as well as disciplinary proceedings may be instituted against them.

80. Prior authorization is required to institute proceedings against law enforcement officials. For gendarmes, this authorization is issued by the Minister for the National Gendarmerie. Authorization for proceedings against the National Police is issued by the Minister for Public Security, and for proceedings against prison staff by the Minister of Justice.

#### **Proportionality of the penalty to the seriousness of the acts**

81. The sentences handed down are proportional to the seriousness of the acts in question. The offending official is liable to:

- Warning;
- Reprimand;
- Downgrading;
- Suspension of duties;
- Temporary exclusion from duties;
- Compulsory retirement;
- Removal from the post.

**Article 5  
Jurisdiction**

**“1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:**

**(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;**

**(b) When the alleged offender is a national of that State;**

**(c) When the victim is a national of that State if that State considers it appropriate.**

**2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.**

**3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.”**

82. Madagascar has established Malagasy jurisdiction over offences of torture and cruel, inhuman or degrading treatment, which are subject to the penalties set out in articles 10 to 12 of the National Law against Torture.

83. Article 18 stipulates that: *“Malagasy courts are competent to prosecute, sentence and punish any person who has committed an act of torture,*

- In the territory of the Republic of Madagascar,*
- On board a vessel registered under or identified in accordance with Malagasy law,*
- On board an aircraft registered in Madagascar,*
- When the perpetrator is of Malagasy nationality,*
- When the complainant or victim is of Malagasy nationality,*
- When the perpetrator is in Madagascar after the commitment of the offence.”*

84. As well as traditional criteria for jurisdiction, this article extended the possibility to prosecute and sentence to:

- A person who committed an offence of torture abroad who is resident or under arrest in Madagascar;*
- A person of Malagasy nationality who is the perpetrator or victim of an act of torture committed abroad.*

85. Madagascar may grant an extradition request if the relevant conditions are met.

86. To date, Madagascar has not received any request for extradition based on the prosecution of perpetrators of acts of torture committed abroad.

87. The rules of the Malagasy Code of Criminal Procedure are applicable for the prosecution and sentencing of acts of torture.



88. With regard to prosecutions, the public prosecutor has competence to initiate public prosecution when the offences of torture were committed within his or her jurisdiction, or when the perpetrator resides or has been arrested within his or her district, although this may have been for other reasons.

89. With regard to preliminary investigations, the same criteria for jurisdiction apply. There are two types of preliminary investigation in Madagascar: summary proceedings and pretrial investigation proceedings.

90. With regard to summary proceedings, the public prosecutor is authorized to initiate proceedings against the perpetrators of offences categorized as ordinary offences or crimes that are not subject to the death penalty or the penalty of forced labour for life. In such cases, the duration of preventive detention is limited to three months.

91. With regard to pretrial investigation proceedings, the examining magistrate undertakes the investigation following the application for the opening of an investigation from the prosecutor. This procedure is obligatory when the penalty incurred is the death penalty or the penalty of forced labour for life.

92. The correctional court has competence to try offences of torture that are categorized as ordinary offences and the Criminal Court has competence to try those offences categorized as crimes.

93. When an alien who is a national of one of the States parties to the Convention and is suspected of committing acts of torture is located in Malagasy territory, the judicial authorities of Madagascar take measures to investigate, prosecute and try that person.

#### **Article 6**

##### **Pretrial detention**

**“1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.**

**2. Such State shall immediately make a preliminary inquiry into the facts.**

**3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.**

**4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall**

**promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.”**

#### **National legal provisions regarding pretrial detention**

94. In line with the provisions of this article, Madagascar adopted Act No. 2007-021 of 30 July 2007, amending and supplementing certain provisions of the Code of Criminal Procedure concerning pretrial detention and limiting the duration thereof.

95. The duration of pretrial detention is six months. This period may be extended by three months and renewed once in the case of ordinary offences.

96. In matters relating to crimes, the period is eight months and may be extended by six months and renewed once for a period of four months. In the case of a summary investigation proceedings by the public prosecutor, the duration of detention is limited to three months.

97. As regards pretrial investigation proceedings, article 3 §1 of Act No. 2007-021 limits the period of pretrial detention as follows:

- Six months for correctional offences with the possibility of an extension of three months which is renewable once;
- Eight months for crimes, with the possibility of an extension of six months which is renewable once for a period limited to four months.

98. The changes brought about by this Act lie in the differentiation of periods of detention for correctional offences and crimes. This did not previously exist. The period of detention for correctional offences has decreased, from 20 to 12 months, while it has decreased from 20 to 18 months for crimes.

99. The duration of pretrial detention following a writ of *habeas corpus* that is subject to immediate enforcement is 30 months. The duration was previously unlimited.

100. The decision in favour of pretrial detention is taken to ensure the presence of the suspect during the trial and to prevent him or her from escaping, but also to prevent recidivism and collusion with witnesses.

101. A foreign national who is the subject of proceedings and is detained is entitled to the assistance of the competent diplomatic representation on the basis of a notice of proceedings and detention sent from the Ministry of Justice to the embassy concerned through the Ministry of Foreign Affairs. The notice of proceedings<sup>3</sup> sent to the embassy contains a description of the facts, the charges against the accused, his or her means of defence, as well as the indictment.

102. There has not yet been any case in Madagascar of a foreign national being detained and being the subject of proceedings for committing an offence of torture.

---

<sup>3</sup> Such administrative measures have been taken specifically in Circulars No. 508/PG of 27 September 1963 and No. 521/PG of 10 March 2004. These circulars require the public prosecutor to advise the competent diplomatic representation of a foreign national who is facing charges and is or is not being held in pretrial detention.

103. Other States that also have jurisdiction are notified of the circumstances justifying the proceedings and the detention, as well as Madagascar's intention to retain jurisdiction.

**Authorities responsible for ruling on pretrial detention**

104. The judicial authorities responsible for applying the provisions of article 6 are:

- The public prosecutor in the case of summary proceedings;
- The examining magistrate in the case of pretrial investigation proceedings;
- The pretrial detention chambers in matters of applications for deferment and provisional release;
- The Indictment Chamber in matters concerning provisional release or a writ of *habeas corpus* that is subject to immediate enforcement;
- The trial courts for applications for provisional release or to rule on the advisability of deferment.

**Article 7  
Procedure**

**“1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.**

**2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.**

**3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.”**

105. To apply the provisions of this article, Madagascar has adopted the measures listed below.

**Right to the assistance of counsel**

106. The right to the assistance of counsel is guaranteed under article 53 of the Code of Criminal Procedure, which specifies that: *“During the initial hearing of any person suspected of having committed an offence or a crime, the officer of the Criminal Investigation Service shall advise the suspect of his or her right to choose a defence counsel from among the lawyers who are members of the Madagascar Bar or a business agent or any other person of his or her choice subject to the legislation in force. The record of the hearing shall make mention of the fulfilment of this requirement, failing which the proceedings will be rendered null and void, without prejudice to the application of the provisions of article 112, paragraph 2, of this Code against the officer of the Criminal Investigation Service.”*

**Fair treatment at all stages of the proceedings**

107. The presumed perpetrator of an offence is guaranteed measures for protection under article 13 of the Constitution, which stipulates that: *“The State shall guarantee full and inviolable rights to due process of law in all jurisdictions and all stages of procedure, including the preliminary investigation, the judicial police and the prosecution service.”*

108. The right to the assistance of counsel is guaranteed under article 53 of the Code of Criminal Procedure, which specifies that: *“During the initial hearing of any person suspected of having committed an offence or a crime, the officer of the Criminal Investigation Service shall advise the suspect of his or her right to choose a defence counsel from among the lawyers who are members of the Madagascar Bar or a business agent or any other person of his or her choice subject to the legislation in force. The record of the hearing shall make mention of the fulfilment of this requirement, failing which the proceedings will be rendered null and void, without prejudice to the application of the provisions of article 112, paragraph 2, of this Code against the officer of the Criminal Investigation Service.”*

109. This legislation aims to prevent the practice of torture during custody. Application thereof has significantly reduced allegations of torture during preliminary investigations.

**Presumption of innocence**

110. All defendants are presumed innocent until proven guilty by a final judgement handed down from a criminal court, in accordance with article 7 of the Constitution of Madagascar, which stipulates that: *“All individuals shall have the right to a fair hearing. This right shall include: (...) b- the right to be presumed innocent until proven guilty by a competent court.”*

111. This protection also means that a person held in custody has the right to not have their picture with their face uncovered published in newspapers.

**Equality before the courts**

112. Article 8 of the Constitution states that: *“All individuals shall be equal under the law.”* This constitutional provision means that all aliens receive equal treatment before the courts, in the same way as nationals.

113. That being so, the rules governing evidence in torture cases are the same for nationals as for aliens. Aliens are entitled to equal access to justice without any discrimination based on their nationality. They have the right to effectively exercise the rights to legal recourse, including formal objections, appeal and the right to judicial review.

114. The rules of extended jurisdiction enshrined in the National Law against Torture apply equally to an alien alleged to have committed acts of torture in another country.

115. In national law, offences may be proven by all the means of evidence listed in articles 374 to 394 of the Code of Criminal Procedure:

- Confession;
- Witness evidence;
- In general, official records and reports relating to the offence;
- Forensic reports.

116. An expert may be called to court to testify under oath, if necessary.

117. Application of the measures mentioned above is the same for other offences. There is no information on the practical application of these measures in cases of torture and other ill-treatment.

#### **Article 8 Extradition**

**“1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.**

**2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.**

**3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.**

**4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.”**

118. Madagascar considers torture and related offences to be offences justifying extradition, subject to certain conditions.

119. It is party to the Cooperation Agreement between France and Madagascar of 1973, which contains provisions on extradition and mutual judicial assistance.

120. Under the Agreement, some offences under the respective laws of the two countries constitute cases for extradition.

121. Extradition may not be granted except in the following cases:

- The offence has been the subject of a final judgement in one of the two States;
- Public action or punishment is time-barred;
- The offence was committed wholly or partially on the territory of the requested State;

- The offence was committed outside the territory of the requesting State by an alien to that State and the legislation of the requested State does not authorize the prosecution of the same offence committed outside its territory by an alien;
- An amnesty has been granted in the requesting State or an amnesty has been granted in the requested State, provided that, in the latter case, the offence is among those that may be prosecuted in that State in cases where it is committed outside its territory by an alien.

122. In view of the fact that Madagascar and France are both parties to the Convention and that they have both criminalized acts of torture in their domestic legislation, responses to extradition requests are granted, subject to the conditions listed above.

123. Where an extradition request is received from a State party to the Convention with which Madagascar has no treaty, it may take the Convention as a legal basis for extradition.

124. Madagascar has not, to date, received any extradition requests for persons alleged to have committed acts of torture or ill-treatment.

#### **Article 9**

##### **Mutual judicial assistance**

**“1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.**

**2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.”**

125. In 1973, Madagascar concluded a Cooperation Agreement with France on mutual judicial assistance in criminal matters. Such mutual judicial assistance applies in cases of torture, which are a criminal offence in the legislation of both countries.

126. Madagascar also benefits from the Indian Ocean Commission Regional Security Platform, whereby it can exchange intelligence and information with other member States on the location, arrest and interrogation of torturers.

127. The Platform comprises representatives from the Ministry of Justice, the National Police and the Gendarmerie.

128. International cooperation on criminal matters, organized through the International Criminal Police Organization (INTERPOL), is a practical expression of international mutual judicial assistance.

129. Madagascar became a member of INTERPOL on 4 September 1961. INTERPOL activities consist of conducting exchanges of information and, where necessary, undertaking arrests in cooperation with the Criminal Investigation Service. It also transmits requests for judicial assistance through the National Central Bureau and INTERPOL.

130. There are frequent requests for mutual judicial assistance to prosecute the perpetrators of offences other than torture, which are duly processed.

131. Madagascar's policy is to respond favourably to any request for judicial assistance involving cases of torture. However, no such request has been received to date.

#### **Article 10**

##### **Education and information regarding the prohibition against torture**

**“1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.**

**2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.”**

132. Article 8 of the National Law against Torture places an obligation on the State to provide training for civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

133. In implementation of article 10 of the Convention, training courses on the prohibition and prevention of torture have been organized every year since 2006 for the benefit of law enforcement officials, including judges, officers of the Criminal Investigation Service, lawyers and prison officials.

134. Specific training is also provided for doctors, with a view to improving their skill in detecting the physical and psychological signs of torture. Courses in legal medicine are provided at faculties of medicine and paramedical training institutes.

135. Once the Justice Administration Training School, the training colleges for the gendarmerie and the police, the National School for Prison Administration and the Institute of Professional Training for Lawyers had been set up, training courses in human rights were incorporated into the curriculum in each establishment.

136. Such training courses focus on the prevention, prohibition and proscription of torture and cruel, inhuman or degrading treatment. The courses include training on the significance of such aggravating circumstances as the vulnerability of minors and pregnant women, as set out in article 11 of the National Law against Torture. Both national and international experts contribute to these courses.

137. In future, such courses will also deal with the respectful and proper treatment of vulnerable groups, including women, minors, ethnic or religious groups and others, taking account of the fact that acts not constituting ill-treatment for other groups may constitute violations of articles 4 and 16 of the Convention or of articles 2 and 3 of the National Law against Torture.

138. In order to evaluate the effectiveness of the training programmes, Madagascar organizes follow-up, evaluation and data-collection activities among the institutions concerned, including the courts, the police, the gendarmerie and the prison service.

#### **Article 11**

##### **Review — treatment of persons arrested or detained**

**“Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”**

##### **Guarantees of protection in police custody**

139. Officers of the Criminal Investigation Service are responsible for gathering evidence and proof with a view to establishing that an offence occurred. In carrying out their duties, they act under the direction and control of the public prosecutor, who may at any point initiate a review of the regularity and legality of detention in police custody or in prison.

140. Most specifically, they are required to keep the public prosecutor informed of results obtained and to provide him or her with reports on investigations and information on custody time limits.

141. In order to prevent any act of torture, article 53 of the Code of Criminal Procedure (Act No. 97-036 of 30 October 1997) requires an officer of the Criminal Investigation Service during the first examination to inform persons suspected of offences of their right to choose a defence counsel from the Madagascar Bar or a business agent or any person of their choice, subject to existing legal provisions. Failure to observe this rule makes the proceedings null and void.

142. The presence of counsel during the preliminary investigation prevents torture or ill-treatment during the interrogation or police custody.

##### **Detention in prisons**

143. Persons deprived of liberty are entitled to refer their detention to the Remand Division for monitoring of its legality and submit an application for release on bail. Their detention may not exceed the maximum period established by the law. The case must also be heard without undue delay.

144. Prisoners have the right to lodge requests or complaints concerning their detention conditions with the prison authorities or the courts. This is stipulated in articles 123 and 124 of Decree No. 2006-015, which relate to the conduct of inspections by the prison service:

*Article 123: “Detainees may submit requests or complaints relating to life in detention to the prison governor. The latter shall grant them a hearing if they provide sufficient grounds.*

*Detainees may request a hearing by a judge or an official responsible for inspecting or visiting the prison without a member of the prison staff being present.”*



Article 124: “*Detainees may address correspondence to the judicial authorities at any time. Such correspondence may be sealed. On dispatch and arrival, it shall be entered in the register assigned for that purpose.*”

#### **Independent mechanism for the control and review of places of detention**

145. In accordance with articles 46<sup>4</sup> and 47<sup>5</sup> of Decree No. 2006-015 of 17 January 2006 on the general organization of the prison service, regular visits are paid to prisons.

146. Such visits are conducted by the judicial authorities and the Monitoring Commission.

147. The Monitoring Commission<sup>6</sup> is responsible for inspecting prisons to check on such matters as health conditions, safety, nutrition, provision of care, work, adherence to regulations, conduct of the registry, education and the preparation of prisoners’ return to society.

148. This is not an exhaustive list. The Commission may take on cases of human rights violations, including acts of torture or ill-treatment. Where a human rights violation has been identified, including the ill-treatment or torture of persons deprived of their freedom, the Commission is required to submit reports to the competent authorities.

149. In accordance with article 41 of Decree No. 2006-015, the Commission is made up of the President of the Court of First Instance, the public prosecutor or his or her deputy, the District Head or his or her representative and a doctor other than the one attached to the establishment of two members of the municipal council.

150. Moreover, article 42 provides that the President of the Court may co-opt to the Commission the President of the Bar Association or his or her representative and representatives of voluntary bodies working for prisoners. In practice, this means NGOs working in the area of the promotion and protection of prisoners’ rights.

151. Madagascar accepts visits from national NGOs, including ACAT, or international bodies, such as the International Committee of the Red Cross (ICRC).

#### **Notification of the right to use the services of a lawyer, to be examined by a doctor and to have contact with family members and notification of consular authorities in the case of aliens**

152. The right to communicate immediately with lawyers, doctors, family members and, in the case of aliens, consular authorities, is respected by investigators and the judicial authorities in Madagascar.

<sup>4</sup> “Without prejudice to the periodic visits by the judicial authorities and the Monitoring Commission, prisons are under the supervision of the Directorate-General of the Prison Service (DGAP), the regional directors and the Health Inspection Service.”

<sup>5</sup> “The Detention Monitoring and Statistics Services regularly carry out inspections in prisons, including the registry.”

<sup>6</sup> Articles 39-45 of Decree No. 2006-015 on the general organization of the prison service.

153. Article 4 of the National Law against Torture provides that: “As soon as a person is deprived of liberty, fundamental guarantees shall be applied, including:

- *The right to a family member of any other relevant person being informed of his or her detention and place of detention of the person concerned;*
- *The right to examination by a doctor;*
- *The right of the person concerned to a lawyer or the assistance of a person of his or her choice;*
- *The right of the person to be informed of the rights listed above in a language that he or she understands;*
- *The obligation on the prison authority to keep a record indicating the date, the time and the reason for the deprivation of liberty.”*

154. With regard to the notification of consular authorities in the event of the prosecution or imprisonment of an alien, the latter receives the help of his or her diplomatic mission. Notice of prosecution or imprisonment is dispatched to the embassy concerned by the Ministry of Justice through the Ministry of Foreign Affairs.

155. A notice of prosecution sent to the diplomatic mission contains a statement of the facts, what the person is accused of, the defence open to the person and the charges that have been brought.

156. Moreover, if a person who has been released from confinement shows apparent signs of wounds on release from custody, the public prosecutor draws up a report noting the fact and immediately opens an inquiry, even in the absence of a complaint by the victim.

157. Lastly, the prosecutor pays periodic, unannounced visits with a view to ensuring that police custody registers are properly kept, in order to prevent acts of torture during interrogation or police custody.

158. In order to prevent secret detention, detainees must be held in the prisons listed in Decree No. 2006-015 of 17 January 2006 on the general organization of the prison service. Article 6 of the Decree divides prisons into five categories:

- Central prisons;
- Penitentiaries;
- Detention centres;
- Young offenders’ institutions;
- Penal camps.

159. The following are sent to central prisons:

- Remand prisoners;
- Persons sentenced to terms of imprisonment for serious offences or minor offences;
- Persons sentenced to long-term imprisonment;

- Debtors;
  - Prisoners in transit.
160. The following are sent to penitentiaries:
- Persons sentenced to death or life imprisonment;
  - Persons sentenced to penal relegation;
  - Convicts known to be dangerous.
161. The following are sent to detention centres:
- Remand prisoners;
  - Persons sentenced to a term of imprisonment of six months to two years;
  - Persons sentenced to imprisonment for minor offences;
  - Debtors;
  - Prisoners assigned to community service;
  - Persons held in transit.
162. Detention centres are located in the premises of courts of first instance.
163. Penal camps are open establishments in the countryside, under the overall authority of the governor of the central prison or detention centre. The establishment of a penal camp is decided by order of the Minister of Justice. The order sets out the specific administrative and operational conditions suitable for the requirements of each camp.
164. Such penal camps play a part in the social reintegration of prisoners through agricultural work.

#### **Article 12**

##### **Impartial investigation in the event of an act of torture**

**“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”**

##### **Competent authorities in criminal matters**

165. Where there is reason to believe that an act of torture or ill-treatment has been committed, officers of the Criminal Investigation Service of which the alleged perpetrator is a member, the public prosecutor or the examining magistrate is informed of the situation and may take any necessary steps to set up an immediate inquiry to establish the facts. The police force of which the alleged perpetrator is a member may undertake an investigation and replace the culpable officer by another. It is required to report on the situation to the public prosecutor to request instructions on further action.

166. On the basis of information or intelligence reports concerning the existence of an act of torture or ill-treatment, the public prosecutor may launch an investigation with a view to establishing the truth of the allegations of torture or ill-treatment.

In the event that such serious charges are brought, the person may be prosecuted and brought before the relevant criminal court.

167. The examining magistrate may inform the public prosecutor of any act of ill-treatment uncovered by the investigation. The public prosecutor decides what course of action to follow and may take steps to open an inquiry. The results of such an inquiry may be communicated to the examining magistrate in order to help him to reach a decision without resorting to confessions obtained by torture.

168. The prosecution of a perpetrator of acts of torture is a separate procedure. It is thus the responsibility of the criminal court hearing the case to pronounce a sentence against a torturer, where there is deemed to be sufficient evidence.

169. In 2006, the Fianarantsoa Court of First Instance sentenced an investigator to six months' imprisonment and a fine of 500,000 ariary for wilfully striking and wounding a person in the course of interrogation. It should be noted that this conviction came before the promulgation of the National Law against Torture, which was adopted in 2008.

170. Article 138 bis of the Code of Criminal Procedure provides that *“a person who is arrested may be given a medical examination at the request of the officer of the Criminal Investigation Service in charge of the inquiry at the moment he or she is taken into custody. The public prosecutor or his or her representative may, proprio motu or at the request of a family member, appoint a doctor, who shall examine the person in police custody and submit a report. Such an examination may be requested by the legal counsel.”*

171. The public prosecutor or the examining magistrate may also order application to be made for medical and legal expert reports in order to establish the facts of torture or ill-treatment.

172. An officer who is culpable is relieved of his duties during the course of the inquiry.

173. Criminal prosecution does not preclude disciplinary proceedings.

#### **Competent authorities in disciplinary matters**

174. The body having disciplinary powers and competent to institute disciplinary procedures against a culpable judge is the Supreme Council of the Judiciary.

175. The competent authority for the National Police is the Disciplinary Board of the National Police.

176. For the gendarmerie, the competent authority is the Disciplinary Board of the National Gendarmerie.

177. For the prison service, the relevant body is the Supreme Council of the Prison Service.

178. For the civil service, the Supreme Council for the Civil Service has disciplinary powers.

### **Medical examination and medical or legal reports**

179. It may be recalled that article 4 of the National Law against Torture provides that the victim is entitled to be examined by a doctor. An immediate medical examination or an application for a medical report may be ordered at the request of the victim or his counsel.

180. Article 138 bis of the Code of Criminal Procedure provides that *“at the moment he or she is taken into custody, a person who is arrested may be given a medical examination at the request of the officer of the Criminal Investigation Service in charge of the inquiry. The public prosecutor or his or her representative may, proprio motu or at the request of a family member, appoint a doctor, who shall examine the person held in police custody and submit a report. Such an examination may be requested by the legal counsel.”*

181. An immediate medical examination or medical or legal report is carried out in the case of persons suffering from injuries inflicted prior to their appearance before the Criminal Investigation Service, the aim being to determine whether such injuries might not have been caused during the police custody.

182. If the injuries were inflicted prior to the appearance of the person concerned before the Criminal Investigation Service, the public prosecutor or the examining magistrate, any of those may officially order an immediate medical examination in order to determine the causes of the injuries. The perpetrators of such acts are subject to prosecution under articles 2 or 3, 4, 10, 11 and 12 of the National Law against Torture.

183. In accordance with article 79 of Decree No. 2006-015, before incarceration and with a view to identifying ill-treatment before admission into the prison, the detainee is visited by the prison doctor, who submits a report to the prison governor. The governor informs the public prosecutor or the examining magistrate in charge of the case, who may, in turn, order medical or legal reports in order to determine whether ill-treatment or acts of torture have occurred.

184. If it is established that serious charges need to be brought against an officer suspected of having committed acts of torture or ill-treatment, the officer is relieved of his or her duties and is no longer entitled to pursue the investigation. Measures are taken to prevent any contact between the officer and the alleged victim, in order to ensure that the latter is not subjected to attempts at intimidation or threats in accordance with article 20 of the National Law against Torture, which provides that: *“The State shall take adequate measures to ensure the protection of victims of acts of torture, witnesses ... and their families against violence, threats of violence or any other form of intimidation or reprisals arising from complaints launched, hearings held, statements made, reports submitted or the investigation being conducted.”*

### **Penalties imposed**

185. Following prosecution for acts of torture, if there is sufficient evidence, the penalties set out in articles 10, 11 and 12 of the National Law against Torture are imposed by the courts.

**Article 13****Right of complaint**

**“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”**

**Remedies open to victims****(a) Judicial remedy**

186. There have been few complaints of acts of torture, which is explained by the fear of reprisals and the absence of a guarantee of legal protection for victims and witnesses prior to the adoption of the National Law against Torture.

187. Articles 20 and 21 of the Law provide for guarantees of protection and the right for victims to obtain redress for harm resulting from acts of torture or ill-treatment.

188. A victim has the right to lodge a complaint with the Criminal Investigation Service or the public prosecutor, who assess the advisability of prosecution. If they consider a complaint well founded, they initiate a prosecution by means of:

- Direct summons;
- Summary proceedings;
- Pretrial investigation proceedings.

**(b) Other non-judicial remedies**

189. In addition to the mechanism of a complaint lodged with the judicial authorities, victims may also apply to the National Human Rights Council, which has the authority to carry out investigations and inform the competent authorities. The results of such investigations may be used by the competent authorities to establish the truth of the allegations.

190. The Council, which was established by Act No. 2008-012 of 17 July 2008, is authorized to receive and consider individual or collective complaints relating to human rights violations.

191. It may also conduct inquiries and inform the competent authorities, pursuant to article 3, which provides that:

*“The Council shall undertake studies, inquiries and publications on all questions concerning human rights and fundamental freedoms. The Council shall inform the competent authorities about cases of violations with regard to:*

*(a) Torture or other cruel, inhuman or degrading punishment or treatment during police custody or detention in a prison or in an education and reintegration centre;*

- (b) *The existence of premises where incommunicado detention takes place;*
- (c) *Forced disappearances or secret transfers;*
- (d) *Racial discrimination, the worst forms of child labour or trafficking in persons.”*

192. The Council’s activities can assist the victims in asserting their rights. Investigators can use the Council’s work as basic documents.

193. Lastly, the NGO ACAT actively participates in promoting action against torture by paying periodic visits to places of detention.

#### **Remedies available to a complainant in the event of a refusal by the competent authorities**

194. In the event that the Office of the Public Prosecutor refuses to take the public right of action on the grounds that prosecution is not advisable, a victim has two kinds of remedy available to him:

- A direct summons initiated by the victim with a view to bringing the perpetrator before a correctional court without going through the Public Prosecutor’s Office, in accordance with article 182 of the Code of Criminal Procedure, which provides that:

*“A person who claims injury as the result of an offence may summon the perpetrator of that offence, the persons who are civilly liable and, where relevant, their third-party insurers before a correctional court;”*

- The bringing of criminal indemnification proceedings before an examining magistrate, in accordance with the provisions of article 183 of the Code of Criminal Procedure, which provides that:

*“A person claiming injury as the result of an offence may bring criminal indemnification proceedings before an examining magistrate by lodging a complaint.”*

195. In both cases, the public right of action is set in motion, with a guaranteed referral to a trial court, unless there are grounds preventing such referral, such as the extinction of the public right of action by prescription, an amnesty or the death of the perpetrator, or if the case has already been heard.

#### **Mechanisms to ensure the protection of complainants or witnesses**

196. The protection of complainants, witnesses, investigators and their families against any act of intimidation or reprisal as a result of complaints made of torture or ill-treatment is enshrined in article 20 of the National Law against Torture.

197. This provision extends beyond the requirements of the Convention, in that it extends protection to investigators and their families, who may be subject to acts of intimidation or reprisal because of an investigation or reports included as part of a complaint lodged concerning torture or ill-treatment.

198. Madagascar currently has no official service specializing in combating torture.

**Article 14**

**Right to obtain redress**

**“1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.**

**2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.”**

**Procedures for the compensation of victims of torture and their families and for their social rehabilitation**

199. Article 6 of the Code of Criminal Procedure, on criminal indemnification, and article 21 of the National Law against Torture, taken together, provide for a victim’s right to obtain redress for damages suffered as the result of an act of torture or ill-treatment. In addition to compensation for material and moral injury, the provisions state that adequate redress also includes the costs of the relevant medical treatment, medical rehabilitation and any measures required for social reintegration.

**Engagement of the civil liability of the State**

200. Under article 21 of the Law, the State guarantees the victim of an act of torture the right to obtain redress. Where the perpetrator is not in a position or is unable to redress the damage caused by acts committed in the exercise of his or her duties, therefore, the responsibility of the State as having civil liability for the actions of its agents may arise.

201. In order to ensure the effective implementation of the new National Law against Torture and, eventually, to obtain quantified data on cases of torture, Madagascar is organizing training courses for those responsible for implementing the law, in order to ensure that cases are pleaded before the courts and that the courts implement the law. Training courses will thus be held in the former chief towns of four provinces.

**Article 15**

**Inadmissibility of any statement obtained under torture**

**“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”**

**Prohibition on using a statement obtained under torture as evidence**

202. Article 6 of the National Law against Torture provides that *“any statement which is established to have been made as a result of the use of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”*.



203. In the case of a confession extorted by the use of torture, criminal courts must base their decision the other evidence, such as the seizure of a crime weapon bearing traces of the perpetrator's fingerprints or blood.

#### **Admission of circumstantial evidence**

204. Malagasy law provides for freedom of proof in criminal cases, whereby confession, witness testimony, material and medical evidence and expert opinions are all acceptable. Conviction may thus be based on evidence other than that obtained by torture.

#### **Article 16**

##### **Prohibition of cruel, inhuman or degrading treatment or punishment**

**"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.**

**2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion."**

#### **Prohibition of acts constituting cruel, inhuman or degrading treatment or punishment**

205. Like the Convention, article 3 of the National Law against Torture does not give a definition of what is meant by "cruel, inhuman or degrading treatment or punishment".

#### **Measures taken to prevent acts that constitute ill-treatment**

206. In order to try to make up for this deficiency, at both the international and regional level, the Human Rights Committee, the Committee against Torture and the European Court of Human Rights have, through their decisions, clarified what cruel, inhuman or degrading treatment or punishment actually comprises.

207. The decisions of the European Court of Human Rights can help national judges determine whether an act constitutes cruel, inhuman or degrading treatment or punishment.

208. These decisions serve as educational references and teaching supports in the series of courses organized for those responsible for implementing the law, including judges, the Criminal Investigation Service, prison officials and members of the bar.

209. The training courses focus on the criteria for determining whether an act is cruel, inhuman or degrading.

210. The Human Rights Committee and the Committee against Torture have, in their decisions, highlighted the following factors in determining whether an act constitutes ill-treatment.

211. The Committee against Torture considered that the following acts constituted a violation of article 16 rather than article 1 of the Convention:

- The long-term detention of asylum-seekers during the consideration of their case;
- Being held in a cell for 22 hours a day without any activity to occupy the prisoner. The absence of separate facilities for men, women and children in detention;
- The reported cases of bullying in the armed forces, resulting in self-inflicted injuries and suicides;
- The abusive use by the forces of law and order of chemical, irritant, incapacitating or mechanical weapons in crowd control operations;
- Reprisals, intimidation or threats against persons who expose acts of torture or ill-treatment;
- Payment by prisoners for part of the cost of their imprisonment;
- The wearing of hoods or masks by officers conducting forcible deportations.

212. In the case of *Dzemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000), the Committee concluded that the burning and destruction of the complainants' houses and property constituted cruel, inhuman or degrading treatment. The situation had been aggravated in this case by the fact that some of the complainants were present when the camp was razed and by the highly racial nature of the attacks.

213. In the case of *Agiza v. Sweden* (CAT/C/34/D/233/2003), the Committee concluded that the complainant had suffered violations of his rights under article 16 during his forced journey from Sweden to Egypt with United States officials. When he was led to the aircraft, his head was covered by a hood, he was searched and his hands and feet were bound and chained to a harness.

214. For the Human Rights Committee, the following factors constituted cruel and inhuman or degrading treatment:

- The victim had been beaten unconscious, been the subject of a mock execution and been denied access to proper medical care;
- The victim had been badly beaten with truncheons, iron pipes and cudgels and had not been given medical treatment for his injuries;
- The victim had been badly beaten by prison officers, who had threatened to kill him;
- The victim had been kept in a cell for 23 hours a day, without bed or mattress, without toilet facilities, without natural light, without any kind of occupation, without decent food and without the appropriate medical treatment.

215. At the national level, the holding of simulation and role-playing workshops based on the case law described above has the aim of getting law enforcement

officials to understand the criteria for determining what acts constitute torture or ill-treatment.

### **Living conditions in police detention centres and prisons**

#### **Living conditions in police detention premises**

216. A person suspected of committing a criminal offence may be placed in police custody, depending on the seriousness of the allegations.

217. At the moment he or she is taken into custody, a person who is arrested may, at his own request or that of his legal counsel or on the initiative of the officer of the Criminal Investigation Service in charge of the inquiry, be given a medical examination. The public prosecutor or his or her representative may, *proprio motu* or at the request of a family member, appoint a doctor who will examine the person held in police custody and submit a report (art. 138 bis).<sup>7</sup>

218. In order to avoid any risk of secret detention, a person placed in police custody has to be systematically entered in a register specially assigned for that purpose, with a note of the day, date and hour of his arrival and release, with a statement of the reason for the custody and the name of the officer of the Criminal Investigation Service in charge of the investigation. These details are also entered in the record.

219. A person held in custody in police premises may not be detained longer than the period fixed by law. This period is 48 hours, according to article 136<sup>8</sup> of the Code of Criminal Procedure, except in the cases provided for in articles 137 and 138 of the Code.

220. A person in custody has the right to food. The custody premises are provided with a lavatory, a bench, light and ventilation. The person concerned is entitled to communicate freely with his lawyer.

221. Where there are mass arrests, the capacity of the police premises is sometimes exceeded.

222. Men and women are not held in custody in the same premises.

<sup>7</sup> “At the moment he or she is taken into custody, a person who is arrested may be given a medical examination at the request of the officer of the Criminal Investigation Service in charge of the inquiry. The public prosecutor or his or her representative, may *proprio motu* or at the request of a family member, appoint a doctor, who shall examine the person held in police custody and submit a report. Such an examination may be requested by the counsel.”

<sup>8</sup> “An officer of the Criminal Investigation Service may not hold a person for the purpose of a preliminary investigation for more than 48 hours. At the end of that period, the detainee must be released or brought before the public prosecutor. If the period ends on a Saturday, Sunday or public holiday, the duty judge or the public prosecutor should be advised of the time at which the person will be brought before the court.

“If the public prosecutor is not in residence, the detention period is extended to 3 days. If the residence of the officer of the Criminal Investigation Service is situated outside the town where a court or part of a court is based, he may request the judge or public prosecutor of his district for authorization to extend custody of the person concerned for a period not exceeding 48 hours. Such authorization shall be confirmed in writing and attached to the record. At the end of that period, the detainee shall be released or brought before the relevant judge or public prosecutor.”

**Living conditions in prisons**

223. With a view to preventing arbitrary detention, the conditions for admission to a detention centre are regulated by articles 558 and 559 of the Code of Criminal Procedure. An officer failing to abide by these provisions is subject to disciplinary and/or criminal proceedings.

224. Under article 558 of the Code of Criminal Procedure, *“an officer of the prison service shall not, on pain of prosecution or punishment for false imprisonment, accept or hold any person except pursuant to a sentence or judgement, a warrant of commitment, a detention warrant, an arrest and detention warrant or an arrest warrant on the basis of which the suspect is placed in pretrial detention or given a committal note, or without this being entered in the prison register.”*

225. Under article 559, *“a prosecutor or officer of the prosecution service or an examining magistrate who receives a report of a case of irregular detention in a prison establishment shall undertake the necessary checks with all possible speed. An officer of the prison service shall, at the request of a public prosecutor or officer of the prosecution service or an examining magistrate, or an officer of the Criminal Investigation Service appointed by them, show his registers to those making the request, allow them to make a copy of such parts of the registers as they may deem necessary, show them the detainee in person or present the order preventing him or her from doing so. An officer who refuses to fulfil these requirements may be prosecuted as guilty of or accessory to false imprisonment.”*

226. Act No. 2007-021 of 30 July 2007, amending and supplementing certain provisions of the Code of Criminal Procedure relating to pretrial detention and limiting the period thereof, strengthens the above provisions to prevent excessive or arbitrary detention.

227. During their detention, detainees may address complaints or claims to the judicial authorities or prison officials, including the public prosecutor, an examining magistrate or the governor of the prison.

228. In accordance with the requirements in article 28 of Decree No. 2006-015 on the general organization of the prison service, men, women and children are held in different establishments or units. Detainees are supervised by persons of their own sex. Every effort has to be made to prevent the possibility of any communication between the various groups. Prisoners awaiting trial also have to be separated from convicts.

229. Under Order No. 62-038 of 19 September 1962, which provides for the exemption from criminal liability of children aged up to 13, minors held in prison in Madagascar are between 14 and 18 years of age.

230. Offenders under 14 are placed in re-education centres rather than in detention. When a child placed in a re-education centre runs away, he or she is considered to have fled and not to have absconded. He or she is not subject to prosecution or punishment for absconding.

231. There are two establishments for young male offenders in the district of Antananarivo, the Anjanamasina Centre and the Vonjeo ny Tanora Centre in Faravohitra.

232. Young female offenders are placed, by order of a children's judge, in one of two Akany Avoko centres in Faravohitra and Ambohidratrimo.

233. In other towns, such as Mahajanga, Antsirabe or Toamasina, both male and female young offenders can be placed in private centres.

234. Like other countries, Madagascar is facing problems due to prison overpopulation.

**The table below shows the situation in 2007**

<i>Category</i>	<i>Convicted</i>	<i>Awaiting trial</i>	<i>Total</i>	<i>Per cent</i>
Men	6 907	10 034	16 941	94.11
Women	250	481	731	4.06
Boys	57	247	304	1.68
Girls	0	24	24	0.13
<b>Total</b>	<b>7 214</b>	<b>10 786</b>	<b>18 000</b>	–
Per cent	40.007	59.92	–	100

*Source:* Detention Monitoring and Statistics Service/DGAP/MINJUS.

235. Efforts have been made to rectify the situation. That is why Act No. 2007-021 of 30 July 2007, amending and supplementing certain provisions of the Code of Criminal Procedure relating to pretrial detention and limiting the period thereof, was adopted.

236. Action has also been taken to update the parole procedure. This means that a convicted person who has served half his or her sentence can serve the rest outside the prison, if he or she fulfils the necessary requirements, including good conduct during his or her time in prison.

237. In addition, a programme to reduce numbers in overcrowded prisons has made it possible to move surplus numbers to other, less crowded establishments.

**Violence among prisoners or against prison officers and disciplinary proceedings relating thereto**

238. Instances of violence among prisoners constituting a disciplinary offence are listed in articles 125, 126 and 127 of Decree No. 2006-015 on the general organization of the prison service.

Article 125: “*Disciplinary offences placed in two categories, according to their seriousness.*”

Article 126: “*The following actions by a prisoner shall constitute a first-degree disciplinary offence:*

1. *Using physical violence against a member of the prison staff or a person working in or visiting the prison;*
2. *Participating in any collective action endangering prison security;*
3. *Possessing drugs or other objects or substances endangering the safety of the person or the prison, or trafficking in such objects or substances;*

4. *Obtaining or attempting to obtain by the threat of violence or force the promise, surrender or transfer of any property whatsoever or a sexual relationship;*
5. *Using physical violence against a fellow prisoner;*
6. *Participating in an escape or an attempted escape;*
7. *Causing deliberate damage to prison premises or equipment;*
8. *Intentionally committing acts that may endanger the safety of another person;*
9. *Inciting a fellow prisoner to commit one of the actions listed in this article.”*

Article 127: *“The following actions by a prisoner shall constitute a second-degree disciplinary offence:*

1. *Insulting or threatening a member of the prison staff or a person working in or visiting the prison;*
2. *Committing or attempting to commit theft or other fraudulent act against another person’s property;*
3. *Refusing to submit to a security measure required under prison service regulations and instructions;*
4. *Refusing to comply with an order from a member of the prison staff;*
5. *Engaging in trafficking or trade not authorized by the regulations or deals with fellow prisoners or other persons;*
6. *Disturbing the peace;*
7. *Attempting to obtain any advantage from a staff member or a person working in the prison through offers, promises, donations or gifts;*
8. *Inciting a fellow prisoner to commit one of the offences listed in this article;*
9. *Avoiding by deception an obligation to maintain the premises or himself or herself.”*

### **Disciplinary proceedings**

239. Articles 132 and 133 set out the procedures for taking action against a prisoner who has committed a disciplinary offence against fellow prisoners or prison staff.

Article 132: *“Where disciplinary proceedings are instituted, the prisoner shall be brought before the prison governor for a hearing regarding the acts of which he or she is accused. The decision on a disciplinary sanction shall be pronounced in the presence of the prisoner, following a statement of the grounds.”*

Article 133: *“The prison governor shall inform the regional director of such decision within five days of the pronouncement of the disciplinary sanction. If the prisoner is awaiting trial, the governor shall also report to the judge or the court responsible for the file and to the public prosecutor.”*

### **Disciplinary sanctions**

240. Articles 134 to 138 define the kinds of sanction applicable to each category of offence.

Article 134: *“The following disciplinary sanctions may be imposed for any disciplinary offence:*

1. *Warning;*
2. *Dismissal from temporary or permanent employment, where the disciplinary offence was committed at or in the course of work;*
3. *Denial of visits for a maximum period of one month, where the offence was committed at or during a visit;*
4. *With the agreement of the prisoner, cleaning or maintenance work on the premises, where the disciplinary offence related to a breach of hygiene regulations or an act causing damage or defacement. In the event of the prisoner’s refusal, the prison governor shall impose another sanction;*
5. *A maximum of 15 days in a punishment cell in the case of a second-degree offence and 30 days in the case of a first-degree offence. This sanction may be suspended.”*

Article 135: *“A stay in a punishment cell shall consist of the placement of a prisoner in a cell fitted up for that purpose, which he must occupy alone. The sanction shall entail loss of all visiting rights, with the exception of visits from his lawyer, and of the right to participate in all activities.*

*Prisoners placed in a punishment cell shall, however, be permitted an hour’s walk a day in a separate courtyard. Moreover, the sanction does not entail any restriction on their right to written correspondence.*

*Minors under the age of 16 may not be sentenced to a period in a punishment cell.”*

Article 136: *“A prisoner placed in a punishment cell shall retain his clothes, shall be provided with a blanket if climatic conditions so require and shall be provided with adequate food.”*

Article 137: *“A punishment cell shall be at least 2 metres in length, 1 metre wide and 2½ metres high. It shall be equipped with a structure for the prisoner’s sleeping and hygiene needs.”*

Article 138: *“A list of the persons held in the punishment unit shall be communicated daily to the medical team, which shall examine each prisoner on site at least twice a week. A punishment shall be suspended if a doctor reports that its continuation may endanger the prisoner’s health.”*

### **Food and medical and sanitary conditions**

241. Articles 69 to 75 provide for ways of ensuring that conditions are sufficiently hygienic and healthy, that the correct items of clothing are provided, that food is varied and adequate, that there is sufficient space to sleep and that the prisoner can take exercise out of doors.

242. Special efforts have been made to improve food and hygiene conditions, thanks to an increase in the budget allocated to the prison service.

243. In accordance with articles 76 to 81, prisons have medical services and facilities for pregnant women. Prisoners enjoy periodic medical visits. Every prisoner receives an individual medical follow-up and has a personal medical file. Where necessary, a prisoner is entitled to be admitted to a specialized hospital.

244. The most frequent illnesses in prisons are skin diseases, respiratory infections, diseases aggravated by malnutrition and sexually transmitted diseases.

245. The table below shows some data on the medical and sanitary situation of prisoners in 2006:

Number of districts in the prison catchment area	14
Number of prisons	87
Prison population	17 495
Hospital treatment	1 054
Deaths	228

*Source:* Detention Monitoring and Statistics Service/DGAP/MINJUS.

As a percentage:      Hospital cases:      6.03 per cent

Deaths:                      1.30 per cent

#### **Detention conditions for minors**

246. Minors are held in units separate from those of adults. Their treatment is appropriate to their situation. They have the right to education and training. Some young prisoners have been able to obtain their Certificate of Elementary Primary Studies (CEPE) and the Lower Secondary School Certificate (BEPC) while in detention.

247. They also have the same rights as adults, including the right to visits, the right to communicate with members of their family and the right to be assisted by a lawyer.