



MADAGASCAR

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

120TH SESSION, 3-27 JULY 2017

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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CONTENT

1. INTRODUCTION	4
2. EXTRAJUDICIAL EXECUTIONS (ARTICLE 6)	4
RECOMMENDATIONS:	4
NATIONAL HUMAN RIGHTS COMMISSION	5
RECOMMENDATION:	5
3. RIGHT TO FREEDOM OF EXPRESSION (ARTICLE 19)	5
RECOMMENDATIONS:	6
4. HARMFUL TRADITIONAL PRACTICES AND DISCRIMINATION AGAINST TWINS IN MANANJARY (ARTICLES 2 AND 24)	6
RECOMMENDATIONS:	6
5. EXCESSIVE USE OF PRE-TRIAL DETENTION AND CONDITIONS OF DETENTION (ARTICLES 9 AND 10)	7
RECOMMENDATIONS:	7
6. DECRIMINALIZATION OF ABORTION	7
RECOMMENDATIONS:	8

1. INTRODUCTION

Amnesty International submits the following briefing to the United Nations (UN) Human Rights Committee (the Committee) in advance of its consideration of the fourth periodic report of Madagascar on its implementation of the International Covenant on Civil and Political Rights. This submission is not an exhaustive account of Amnesty International's concerns and relates primarily to questions on the right to life (questions 6, 7, 8), on traditional discriminatory practices (question 9), to the right to liberty and security of persons (question 16, 19), and the right to freedom of expression (question 24).

2. EXTRAJUDICIAL EXECUTIONS (ARTICLE 6)

Amnesty International is concerned about allegations of extrajudicial executions committed by law enforcement officials, many of which have occurred in the context of banditry linked to cattle thieves in the southern part of the country. Witnesses have told Amnesty International that in 2012, elderly people, people living with disabilities, children and others who were unable to flee their homes were burned alive when security forces indiscriminately set fire to villages as part of the military operation 'Tandroka' 1. Little information is available regarding the investigations and prosecutions carried out so far, the convictions and penalties given to those responsible, and reparations awarded to the victims.²

Amnesty International has also received reports of law enforcement officials seeking revenge after events of mob justice and lynching of other members of the police. In February 2017, police officers in Antsakabary allegedly burnt down five villages after two officers were killed by villagers. Following the attack, an elderly woman died from burns. Despite an investigation carried out by the National Independent Human Rights Commission that pointed to the responsibility of police officers for the burning of the villages, no information has been shared by the government regarding the investigation and prosecutions carried out against them, and reparations granted to the victims.

Amnesty International remains concerned that the authorities have not taken the necessary measures to prevent mob violence justice and lynching of people suspected of having committed a crime, nor to investigate, prosecute and sanction those responsible.

RECOMMENDATIONS TO THE STATE PARTY:

- Amnesty International calls on the State party to carry out a thorough, independent and impartial investigation into allegations of extrajudicial executions, including those officials involved in ordering, condoning or perpetrating them, to determine the circumstances in which they were committed, make the outcome of the investigations public and bring those suspected of criminal responsibility before justice in fair trials that meet international standards, and ensure that victims are provided with adequate reparations.

¹ <https://www.amnesty.org/en/latest/news/2012/11/madagascar-must-end-mass-killings-and-investigate-security-forces/>

² These recommendations were already made by Amnesty International in 2011, <https://www.amnesty.org/en/documents/afr35/001/2011/en/>

3. NATIONAL HUMAN RIGHTS COMMISSION

Amnesty International welcomes the establishment of a national human rights commission, but is concerned that the Commission Nationale Indépendante des Droits de l'Homme (CNIDH) does not have enough budget to fulfill its mission, in accordance to the Paris Principles.

RECOMMENDATION TO THE STATE PARTY:

- The State party should ensure that the National Commission has sufficient funding to carry out its mandate effectively.

4. RIGHT TO FREEDOM OF EXPRESSION (ARTICLE 19)

Amnesty International is concerned about continued threats to the enjoyment of the right to freedom of expression in Madagascar. The organization has received information that journalists and human rights defenders continue to be subjected to intimidation, threats and harassment by the authorities and others with power, in an attempt to silence them and obstruct their human rights work. Amnesty International is particularly concerned that those who dare to speak out against illegal trafficking of natural resources are being targeted because of their work by those who are profiting from the illegal trafficking and others who are in positions of influence.

While Amnesty International welcomes Madagascar's efforts to decriminalize defamation, the organization is concerned that journalists continue to be persecuted through prosecution, by misusing the criminal justice system to target and silence those who criticize the government or others in power. Although law number 2016-031³ amended the cyber- criminality law so that article 20 does not criminalise defamation, it still provides for large fines in cases of defamation or insults against a range of public figures, including members of the armed forces, government officials, judges or members of the national assembly.

Whistle-blowers who have revealed information about human rights abuses continue to be prosecuted through charges including 'defamation', 'public disorder', 'rebellion against the state' which contravene the rights to freedom of expression and information. Moreover, the organization is concerned that those who are convicted under the new Communication Code⁴ are given large fines, and that the possibility of receiving large fines as a result of prosecution under the Code restricts their freedom of expression.

³ http://www.assemblee-nationale.mg/wp-content/uploads/2016/07/Loi-n%C2%B02016-031_fr.pdf

⁴ <https://www.amnesty.org/en/countries/africa/madagascar/report-madagascar/>

Clovis Razafimalala, an environmental activist that denounced the illegal trafficking of rosewood and other timber as part of his role as the Coordinator of the Maroantsetra Lampogno coalition, was detained for allegedly destroying public property and documents in a protest that he never attended. He was subsequently charged with rebellion, destruction of public documents and goods, and arson.⁵ He has been held in pre-trial detention for more than 9 months, and Amnesty International believes he is targeted by trumped-up charges as an attempt to restrict his environmental activism work.

RECOMMENDATIONS TO THE STATE PARTY:

- Amnesty International calls on the State party to address threats, attacks, harassment and intimidation against human rights defenders and journalists, including, where applicable, by thoroughly, promptly and independently investigating human rights violations and abuses against them and bringing the suspected perpetrators to justice in fair trials, and providing effective remedies and adequate reparations to the victims.
- Amnesty International calls on the State party to refrain from initiating criminal proceedings against individuals for the peaceful exercise of their human rights, including the right to freedom of expression, and ensure that the justice system is not misused to target or harass journalists and human rights defenders.
- Repeal or substantially amend the cyber-criminality law that restricts the right to freedom of expression by providing for large fines in cases of defamation
- Immediately and unconditionally release Clovis Razafimalala, as he is a prisoner of conscience detained solely for his peaceful human rights work.

5. HARMFUL TRADITIONAL PRACTICES AND DISCRIMINATION AGAINST TWINS IN MANANJARY (ARTICLES 2 AND 24)

Amnesty International is concerned that twins continue to face discrimination and are being abandoned by their parents despite efforts made by the State party, in partnership with the United Nations Development Programme (UNDP), particularly through awareness-raising activities, to combat the popular belief in the region of Mananjary that twins (or other multiple births) bring bad luck. Contrary to the State party's response to the List of Issues (paragraph 55),⁶ Amnesty International has received information that many parents and other members of the community are willing to challenge the traditional belief that twins bring bad luck and keep their twins, despite being stigmatized and excluded from the community, but feel pressured to abandon their children by the local village chiefs.

The State party has not provided information regarding the further steps it envisages implementing in light of the position taken by the Ampanjaka village chiefs to not offer their blessing to parents who decide to keep their twins.

RECOMMENDATIONS TO THE STATE PARTY:

⁵ <https://www.amnesty.org/en/latest/news/2017/03/madagascar-free-environmental-activist-detained-for-political-reasons/>

⁶ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMDG%2fQ%2f4%2fAdd.1&Lang=en p9

- Amnesty International calls on the State party to offer effective protections to twins and other children who resulting from multiple births in the region of Mananjary, and protect their rights to life and non-discrimination, in accordance with Madagascar's international human rights obligations and commitments.
- The State party should take immediate steps to tackle the harmful superstitious beliefs perpetuating human rights violations against children resulting from multiple births.

6. EXCESSIVE USE OF PRE-TRIAL DETENTION AND CONDITIONS OF DETENTION (ARTICLES 9 AND 10)

Amnesty International has received information that prolonged pre-trial detention remains common in Madagascar, with more than half of the country's detainees still awaiting trial, some for years. While law on. 2007-021 of 30 July 2007⁷ has amended the Penal Code to highlight the exceptionality of pre-trial detention, in many cases, lengthy pre-trial detention remains the norm.

Prison overcrowding is high, and conditions of detention remain very poor Amnesty International has spoken to detainees who have spoken about malnutrition, fears of being poisoned while in detention, and difficulties in accessing the medical care they require.

RECOMMENDATIONS TO THE STATE PARTY:

- Amnesty International calls on the State party to increase its efforts to improve prison conditions, including measures to tackle overcrowding and malnutrition in accordance to the UN Standard Minimum Rules for the treatment of prisoners (the Nelson Mandela Rules), and to reduce the number of people in pre-trial detention.
- Amnesty International urges the State party to ensure that pre-trial detention is an exceptional measure used only as a last resort, based on an individual determination of its necessity and proportionality in each case with due regard for the investigation of the alleged offence and for the protection the victim and the rights of others.

7. DECRIMINALIZATION OF ABORTION

Amnesty International is very concerned that abortion and provision of abortion-related information remain criminal offences in the state party, particularly given that an estimated 16% of maternal deaths are due to unsafe abortions. In its report, Madagascar has indicated that abortion may be punished by a fine instead of a prison sentence.

⁷ <http://www.assemblee-nationale.mg/?loi=loi-n2007-021&lang=en>

The CEDAW Committee has noted in its General Recommendation 24 on women and health that “it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.”⁸ The Committee has also noted that restrictive abortion laws are a form of discrimination against women.⁹

Amnesty International considers that laws that criminalize or punish women and girls seeking abortions, and/or health-care providers and others who assist such women and girls are discriminatory.¹⁰ Amnesty International’s research on different countries has demonstrated that criminalization of abortion and provision of abortion-related information creates a barrier to women’s and girls’ access to healthcare and the enjoyment of their right to health and other sexual and reproductive rights.¹¹ Amnesty International calls on the State party to decriminalize the provision of abortion-related information and abortion services in all circumstances.

RECOMMENDATIONS TO THE STATE PARTY:

- Decriminalize the provision of abortion-related information and abortion services in all circumstances.
- Repeal article 89 of the Law number 2011-002 from 15th July 2011¹², which prohibits different types of medical professionals from “proceeding with a voluntary termination of pregnancy or to favour an abortion, or indicating how to get an abortion”, and imposes penalties under article 317¹³ of the Penal Code. Punishment under article 317 includes sentences ranging up to 5 years of imprisonment (or 10 years of imprisonment if the person commonly performs abortion) and large fines, except in the limited circumstances prescribed by the applicable law. In addition, article 317 provides for the different types of medical professionals to be suspended for at least five years or completely forbidden to practice their professional activity.
- Amend all legislation related to the provision and procurement of abortion services, and remove legal, administrative and practical barriers to accessing safe and legal abortion services;
- Ensure that the legislative framework guarantees access to abortion both in law and practice, at a minimum, in cases where the pregnancy poses a risk to the life or to the physical or mental health of a pregnant woman or girl, in cases of severe and fatal foetal impairment, and where the pregnancy is the result of rape or incest.
- Provide updated information on the status of the proposal to make abortion a minor offence, as mentioned in the State party’s fourth period report (CCPR/C/MDG/4, para 142), and specify whether this would also apply to medical professionals.
- Ensure all women and girls can access sexual and reproductive health information, services and commodities, including modern methods of contraception (including emergency contraception), and comprehensive sexuality education both in and out of school.
- Comply with the recommendations made by the Committee on the Elimination of Discrimination against Women in its concluding observations on the combined sixth and seventh periodic reports of Madagascar (CEDAW/C/MDG/CO/6-7), to “mandate, support and finance research and data collection on the scope, causes and consequences of unsafe, illegal abortion and its impact on the health and life of girls and women.”¹⁴

⁸ CEDAW Committee General Recommendation 24 on Women and Health (1999), para 11.

⁹ CEDAW Committee, *LC v. Peru* (2011); CEDAW Committee General Recommendation 19 on Violence Against Women (1992), para 24(m).

¹⁰ <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/>

¹¹ <https://www.amnesty.org/en/documents/AMR43/001/2009/en/>; <https://www.amnesty.org/en/documents/AMR29/003/2014/en/>;
<https://www.amnesty.org/en/documents/eur29/1597/2015/en/>

¹² <http://www.assemblee-nationale.mg/lois/2011-002.pdf>

¹³ https://www.imolin.org/doc/amlid/Madagascar_Code_penal_annexes.pdf

¹⁴ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MDG/CO/6-7&Lang=En

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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