



# PUNISHED FOR BEING POOR

UNJUSTIFIED, EXCESSIVE AND PROLONGED PRE-TRIAL DETENTION  
IN MADAGASCAR

AMNESTY  
INTERNATIONAL



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First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

**Index: AFR 35/8998/2018**

**Original language: English**

**[amnesty.org](http://amnesty.org)**



**Cover photo:** In MC Manakara, approximately 200 men, mostly pre-trial detainees, sleep on the floor of one of the prison's overcrowded cells. The lack of space is such that at night, they all turn around every hour, when the cell master gives the signal by clapping his hands © Amnesty International

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# EXECUTIVE SUMMARY



The unjustified, excessive, prolonged and otherwise abusive use of pre-trial detention in Madagascar has continued unabated for decades and has impacted negatively on the effective functioning of the criminal justice system.

Under international human rights law, it must not be the general rule for people awaiting trial to be detained. Pre-trial detainees, that is, individuals awaiting trial or whose trials are still ongoing, and who have not been convicted, are presumed innocent until proven guilty. Under international law they also have the rights, among others, to access to counsel, and to free legal services for indigent detainees, the right to be tried within a reasonable time, and to detained separately from convicted persons.

Unjustified, excessive and prolonged pre-trial detention affects men and women, adults and children. On paper, the law in Madagascar provides for the exceptional character of pre-trial detention, through two amendments to the Code of Criminal Procedure enacted in 2007 and 2016. However, Amnesty International's research has found that these reforms have failed to address in practice the prevailing crisis of pre-trial detentions.



*Detainees who are held in pre-trial detention raise their hands, MC Manakara. September 2018 @ Amnesty International*

Contrary to both its international legal obligation and its own laws providing that pre-trial detention is an exceptional measure, Madagascar's prisons hold more people who have not been convicted than those found guilty. As of October 2017, 55% or more than half of the total prison population were pre-trial detainees. Unjustified, excessive and lengthy use of pre-trial detention violates the rule of law, contributes to overcrowding of detention facilities, wastes public resources, and endangers the health and the rights of detainees, families and communities. Madagascar's prolonged pre-trial detention violates a range of human rights, including the right to liberty, presumption of innocence, and to be treated with humanity and with

respect for the inherent dignity of the human person. In fact, the miserably poor conditions of detention in which pre-trial detainees are held clearly amount to cruel, inhuman or degrading treatment or punishment.



*Like in other prisons, the men held in MC Manakara suffer from severe overcrowding, which poses threats to their health. August 2017 @ Amnesty International*



*Women are often held in pre-trial detention accused of non-violent, petty offences, and have no other choice but to keep their young children with them. MC Manakara, September 2018 @ Amnesty International*

While the majority of pre-trial detainees were men (89%), affected more directly by the lengthy and inhumane conditions of detention and the severe overcrowding, women (6%) and children (5%) were disproportionately affected by some of its consequences through gender-based and aged-based violations. For example, pregnant women and women with babies do not have access to appropriate healthcare. Children often do not have access to any educational or vocational activities, in violation of Madagascar's own laws. The pre-trial detention rate amongst women and children has increased at a worrying rate over the past ten years.

Detainees were often held in lengthy pre-trial detention for petty, non-violent offences such as theft of chickens or mobile phones, forgery or fake certificates: offences that should not warrant pre-trial detention, let alone prolonged detention.

Magistrates and judges interviewed by Amnesty International admitted that they routinely hand out pre-trial detention for petty and nonviolent crimes.

The majority of pre-trial detainees surveyed by Amnesty International were poor, from rural areas, lacked formal education and were under-informed of their rights. Not only do poor people unduly suffer pre-trial detention, often unable to hire lawyers, they are also disproportionately impacted by it. Their health, indeed lives, are threatened by the government's failure to provide adequate food, healthcare, and sanitary conditions of detention, they are less likely than those with money to afford to buy food, clothes, mattresses and blankets within the prison, or receive them from outside, to improve their detention conditions.



*In MC Manakara, a pre-trial detainee shows the daily portion of cassava he receives from the prison. Throughout all the prisons visited, the lack of adequate food was detainees' main concern. In September 2018, more than 130 malnourished detainees received additional food from religious organisations in MC Manakara. September 2018 @ Amnesty International*

This report highlights the impact of unjustified, excessive and prolonged pre-trial detention and the corresponding failure by the government to address the inhumane conditions detainees are held in - the cramped and unhygienic facilities, and the lack of adequate food and appropriate medical care. The report also highlights the difficulties detainees face in staying in contact with their families, the general lack of understanding of their cases, combined with the lack of access to legal assistance meaning that the poorest of them are those most at risk of being held in pre-trial detention for months or years, and suffering long-lasting physical and psychological damage as a result. Under Madagascar's national laws, pre-trial detention can last for up to five years and six months for adults, and 33 months for children. Amnesty International has interviewed men and women who have been held in detention for more than three years, and children for more than two years, without a trial.



*In MC Manakara, the overwhelming majority of boys in detention are in pre-trial detention, aged 13 to 17. They suffered particularly from the lack of access to food, from skin and respiratory diseases, from the lack of access to their families, and boredom. September 2018 @ Amnesty International*

## METHODOLOGY AND ACKNOWLEDGEMENTS

Amnesty International carried out field research in nine prisons in Madagascar in August 2017, to investigate the practice and conditions of pre-trial detention. The nine prisons visited, which included eight central prisons and one maximum security prison, were selected to represent diverse regions, both inland and coastal. Amnesty International visited some prisons which had amongst the worst rates of overcrowding and pre-trial detention in the country.

Amnesty International interviewed 70 people in total: 44 were pre-trial detainees (25 men and 19 women), including 11 children. The interviews were held individually, without the present of prison personnel, and were conducted in English, French and Malagasy with the assistance of translators. Amnesty International also interviewed 17 prison staff, including the Prison and Regional Directors, nine judicial staff, amongst whom were the President and the Prosecutor of the Court, the Chairman of the Bar Association, and the Head of the Union of Magistrates; civil society activists and government officials working on, and within the prison and judicial administration.

In addition to the interviews, researchers visited prison cells, kitchens, water and sanitation facilities, and offices of the prison staff.

Before and after conducting fieldwork, Amnesty International undertook extensive desk research, and examined relevant international and domestic law. Researchers also analysed four documents containing prison statistics, which were provided by the central prison department, and form the basis of the statistical analysis provided in the report. However, Amnesty International has found several inconsistencies within the official statistics as the Malagasy authorities do not have accurate, reliable and up-to-date information on prisons.

This report also benefited from analysis of a survey conducted in March 2018 by Amnesty International with the collaboration of prison officials across the nine prisons visited. Six prisons, involving approximately 2,000 pre-trial detainees, returned information on their level of education and legal awareness.

Amnesty International is grateful to the Malagasy authorities for allowing its researchers access to the country's prisons. In particular, we thank the Prison Administration staff members for their engagement and

cooperation during this research, including facilitating surveys, and sharing relevant information upon request. Finally, Amnesty International thanks all the prisoners for sharing their stories. To protect and respect the safety of individuals, no real names or identifying features of the detainees interviewed have been used in the report.

## CONDITIONS OF DETENTION

- **“Inside, the detainees are unhappy. They don’t sleep well, some have to stay up because they don’t have room, so they take turns to lie down. In room six, there are currently 133 detainees – nearly the capacity of this whole prison”.**

Regional Director overseeing MC Manakara prison, 25 August 2017



*In MC Manakara, detainees, the overwhelming majority in pre-trial detention, sleep in cells which hold more than four times their capacity. September 2018 @ Amnesty International*

Amnesty International’s visits to the nine prisons revealed the appalling conditions in which pre-trial detainees are held. Dark and filthy, most cells are extremely overcrowded, without much air or light, posing serious risks to the detainees’ physical and mental well-being. In 2017, 129 detainees died in Madagascar’s prisons, 52 of them pre-trial detainees. According to prison authorities, the main causes of death are respiratory problems, cardiovascular diseases, and what they describe as a general bad state [of health].

Prisons are dilapidated, ill-equipped, with lack of financial, material and general support. Prison staff complained about the lack of resources, ranging from sheets of paper, to computer equipment, furniture and transportation.

None of the prisons visited provide any separation between pre-trial and sentenced prisoners, as provided in international human rights law and standards, with three not even appropriately separating boys from men.

The prison administration reported that only 24 out of 42 central prisons have a separate section for minors, and that more than a hundred minors were held with adults, in violation of international and national laws. Girls were not separated from adult women, and even in new prisons being built, the separation between girls and women is not being planned.

Across all the prisons visited, researchers observed poor sanitation, absence of healthcare, lack of adequate food, educational or vocational opportunities and limited access to families.



Throughout the country's prisons, most detainees are held during the night in cells which do not provide toilets with running water. Because of the overcrowding, detainees are forced to sleep less than a meter away. September 2018 @ Amnesty International

## FLORENT\*



←  MC Maintirano August 2017 © Amnesty

A visibly malnourished Florent\* kept apologizing for his noticeably torn and dirty clothes.

**“I just have these clothes. I get cold at night. Water doesn't work sometimes, so we can't shower or wash our clothes. My clothes are dirty, my body is dirty.”**

Accused of stealing a zebu [cattle], Florent has spent three years and seven months in pre-trial detention. He had not seen his two sons since his detention. He said:

**“42 of us sleep in the same room but there is no room to sleep, I sleep on the floor. A lot of people get sick. Some cough, some shiver, some get very cold. And people fight about food because there isn't enough... I really want a trial because I really suffer here.”**

A key human right for detainees and prisoners, access to family was a main concern for pre-trial detainees for an additional reason - the government's failure to provide sufficient food and personal items, where families often step in to fill the gaps. Nearly a third of detainees interviewed said they had neither seen nor spoken to their families since their incarceration, some of whom have been in pre-trial detention for four years. Of the 14, four said their families were not aware of their detention, with two, including a child, believing that their family might think them dead.

## ENABLING INJUSTICE: GAPS IN LAW AND PRACTICE

Under Madagascar's national laws, pre-trial detention can last for up to five years and six months for adults, and up to 33 months for children. Such lengthy periods of pre-trial detention violate international and regional human rights laws and standards.

**“Please speed up my case so that I get a trial. Because it has been 14 months and I have not had a trial yet.”**

17-year old Sedera\*

The unjustified, excessive and lengthy pre-trial detention begins unfolding at the stage of arrest. While the initial period of police custody is 48 hours, the law allows for police custody to be extended for as long as 12 days depending on the distance between where the arrest happened and where the police officer in charge of the investigation is based.



Amnesty International researchers interviewed many pre-trial detainees who believed the only reason they were arrested and were being held was because someone paid the police to do so, not because there was any evidence against them.

Interviewees told Amnesty International that instead of conducting a thorough investigation, the police often resort to violence to obtain “confessions” from suspected individuals to close the case quickly.

Although they exist in the law, alternatives to detention are hardly ever used. In practice, pre-trial detainees often remain in pre-trial detention for close to the entire pre-trial period, particularly if they cannot afford to pay for a lawyer.

Out of 44 pre-trial detainees interviewed by Amnesty International, only eight said they had a lawyer, three of these were children in the Antanimora prison, where an NGO had appointed them. Amnesty International's survey of 1,911 pre-trial detainees in March 2018 found that 85% of respondents said they did not have a lawyer, and more than half said they did not know what a lawyer does. More worryingly, several magistrates in the judiciary administration themselves seemed unconvinced of the need to implement the laws providing for legal aid.

Amnesty International's research found that legal aid lawyers only appear at the time of the trial and for the most serious crimes, and seldom get paid at all. This is a disincentive to lawyers who often have to cover the costs of travelling, accommodation and food on their own, to provide legal assistance.

## SYSTEMIC CHALLENGES

Limited sessions and low frequency of the ordinary and special criminal courts are two of the major factors contributing to lengthy periods of pre-trial detention. Under the Code of Criminal Procedure, criminal court sessions are held twice a year, and additional sessions may be held if the number of cases calls for it, depending on available resources.

The proportion of the budget allocated to the Ministry of Justice has diminished since 2010, going from 2.4% of the overall budget in 2010 to only 1% in 2017. The budget allocated to the prison administration and the judiciary is insufficient to enable effective functioning of the criminal justice system. The number of prison staff and the material resources put at their disposal is not sufficient for the number of detainees and prisoners held.



*Prison guard, MC Antsirabe. September 2018 @ Amnesty International*



## CONCLUSION AND RECOMMENDATIONS

While Madagascar's Constitution provides that pre-trial detention is an exceptional measure, the reality is that more than half of the prison population are either awaiting trial or whose trials are still ongoing. This violates national, regional, and international human rights laws including the rights of individuals to freedom from arbitrary detention; to be promptly tried; to be presumed innocent until proven guilty after a fair trial; to freedom from torture and other cruel, inhuman or degrading treatment or punishment and a host of other human rights, including children's rights. Pre-trial detainees in Madagascar are held in appalling conditions that pose a threat to their lives, and fall far short of international, regional and national human rights law and standards.

The government has failed to prioritize much needed support to the criminal justice system, which has resulted in poor allocation of human and material resources.

It is mostly economically and otherwise disadvantaged people – the uneducated and underprivileged from rural areas – who are subjected to unjustified, excessive and lengthy pre-trial detentions. The majority of them spend long months or years in prison for non-violent, often petty offences like simple theft, fraud and forgery. With little knowledge or awareness of their rights and even less means to defend themselves, the poor are also the most likely to suffer most from their detention. Even in cases when individuals are released after a few months of pre-trial detention, their incarceration can have long-lasting consequences. They are likely to have lost their jobs, and to have plunged deeper into poverty. With the conditions they are held in, many are also likely to walk out of prison in a weaker physical and mental state.



*In MC Manakara, approximately a quarter of the female detainees, the overwhelming majority of them in pre-trial detention, had babies or young children living with them in poor conditions @ Amnesty International*

The authorities of Madagascar must take immediate steps to ensure that the various organs of justice effectively work to make pre-trial detention an exception, and when ordered, for them to be tried without delay. It must also ensure that all detainees are treated humanely and have their other human rights respected and protected. In doing so, the authorities would, beyond complying with the country's

international legal obligations, significantly reduce overcrowding in prisons, lessen the strain on the financial, material and human resources and ensure the effective and safe functioning of prisons

## KEY RECOMMENDATIONS

To the Malagasy authorities

- Take all necessary measures, in law, policy and practice, to end the use of unjustified, excessive and prolonged pre-trial detention, ensure fair procedures for all suspects and provide humane conditions of detention. In particular, steps must be taken to guarantee real equality before the law, so that poor people are not disproportionately affected by pre-trial detention.
- The Malagasy authorities should issue an invitation to the UN Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to carry out a country visit to Madagascar and grant them full and unfettered access.
- Ensure in law and in practice that release pending trial is the general rule, while pre-trial detention is restricted to cases where a court finds specific, concrete and compelling reasons to do so in the interest of justice or safety. Such a decision must be reviewed frequently and be subject to appeal.
- Amend the Code of Criminal Procedure to ensure that all arrested persons are brought promptly before a judge to determine the lawfulness of detention within a period never exceeding 48 hours, as required by international human rights standards.
- Ensure that all accused persons have legal representation at all stages of proceedings, including through providing legal aid to all detainees who cannot afford a lawyer; and amending the Code of Criminal Procedure Articles 65 and 68, that currently restrict the presence of lawyers to cases which entail a minimum sentence of five years.
- Provide reparations to victims of arbitrary arrest or detention and those who suffered torture or other cruel, inhuman or degrading treatment or punishment, including due to inhumane conditions of detention; in accordance with international standards and Articles 9 and 13 of the Constitution.
- Immediately release from detention any individuals held merely for offences attributed to their relatives.
- Urgently adopt a National Action Plan with concrete and time-bound goals to improve conditions of detention in Madagascar, and bring them into line with international standards, in particular, the Nelson Mandela Rules and (for women and girls) the Bangkok Rules.
- Urgently redevelop and restructure the prisons to ensure that there is sufficient space to separate different categories of prisoners, especially children and adults, in accordance with international law and standards.
- Increase the budget allocated to the Ministry of Justice, and specifically that allocated to the prison administration, to ensure that they have sufficient resources to enable the functioning of prisons in accordance with international law and standards.
- Ensure that detention pending trial is used only in very exceptional cases for children in conflict with the law and consider alternatives to detention as a priority (as per Law 2016-018), particularly for offences such as petty theft.
- Amend Law 2016-018 to reduce the maximum legal period of pre-trial detention for children.
- Increase the use of alternatives to imprisonment including bail and conditional release for pre-trial

detainees. This measure should include considering the capacity of the accused to pay fees so that economically disadvantaged persons are not discriminated against.

# GLOSSARY

AfDB	African Development Bank
BANGKOK RULES	UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
CAT	Committee Against Torture
CP	[Code pénal in French] Criminal Code
CPP	[Code de procédure pénale in French] Code of Criminal Procedure
CRC	Convention on the Rights of the Child
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IMF	International Monetary Fund
MC	[Maison Centrale in French] Central prison
MF	[Maison de Force in French] Maximum security prison
MS	[Maison de Sureté in French] Detention centre
NELSON MANDELA RULES	The UN Standard Minimum Rules for the Treatment of Prisoners
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OPC	[Ordonnance de Prise de Corps in French] An 'Order to take the suspect' allows maintaining the individual in detention once the investigation has determined that he or she is accused of a criminal offence and must be taken before a criminal court, while waiting for the trial to start. It is valid for 30 months as per Article 334 of the Code of Criminal Procedure (CPP below)
OTPCA	[Ordonnance de Transmission des Pièces à la Chambre d'Accusation in French] This order is given by the Prosecutor or Investigating judge in charge of the investigation in cases regarding of the most serious crimes, when they conclude that the individual should be charged with a criminal offence punishable with a life sentence or deportation, for a 'control' phase. This order for transfer is valid to

maintain the suspect in pre-trial detention for 12 months during this additional phase of the investigation as per Article 334 of the CPP, by which time the Indictment Chamber must decide whether or not to confirm the charges and send the case to a criminal court.

**SADC** Southern African Development Community

**TOKYO RULES** UN Standard Minimum Rules for Non-custodial Measures

**UN** United Nations

**UNDP** United Nations Development Programme

**UNICEF** United Nations Children's Fund

**WASH** Water Sanitation and Hygiene

# 1. METHODOLOGY

This report is based primarily on field research carried out in Madagascar between 16 and 30 August 2017. Amnesty International wanted to discover the conditions in prisons in Madagascar and the reasons for people being held in pre-trial detention.

Amnesty International visited eight central prisons (MCs) and one maximum security prison (MF) for its investigation into the practice and conditions of pre-trial detention:

- **MC Antanimora**
- **MC Antsirabe**
- **MC Ambositra**
- **MC Fianarantsoa**
- **MC Ihosy**
- **MC Farafangana**
- **MC Manakara**
- **MC Maintirano**
- **MF Tsiafahy.**

More than 80% of all pre-trial detainees in Madagascar are held in central prisons, so the nine prisons were selected accordingly, to represent diverse regions (both inland and coastal), with high rates of pre-trial detention and overcrowding. Amnesty International visited the two prisons with the highest pre-trial detention rates (MC Maintirano and MC Fianarantsoa) and the two with the highest overcrowding rates (MC Antanimora and MF Tsiafahy) according to official statistics as of December 2016, the most recent document provided to Amnesty International at the time.

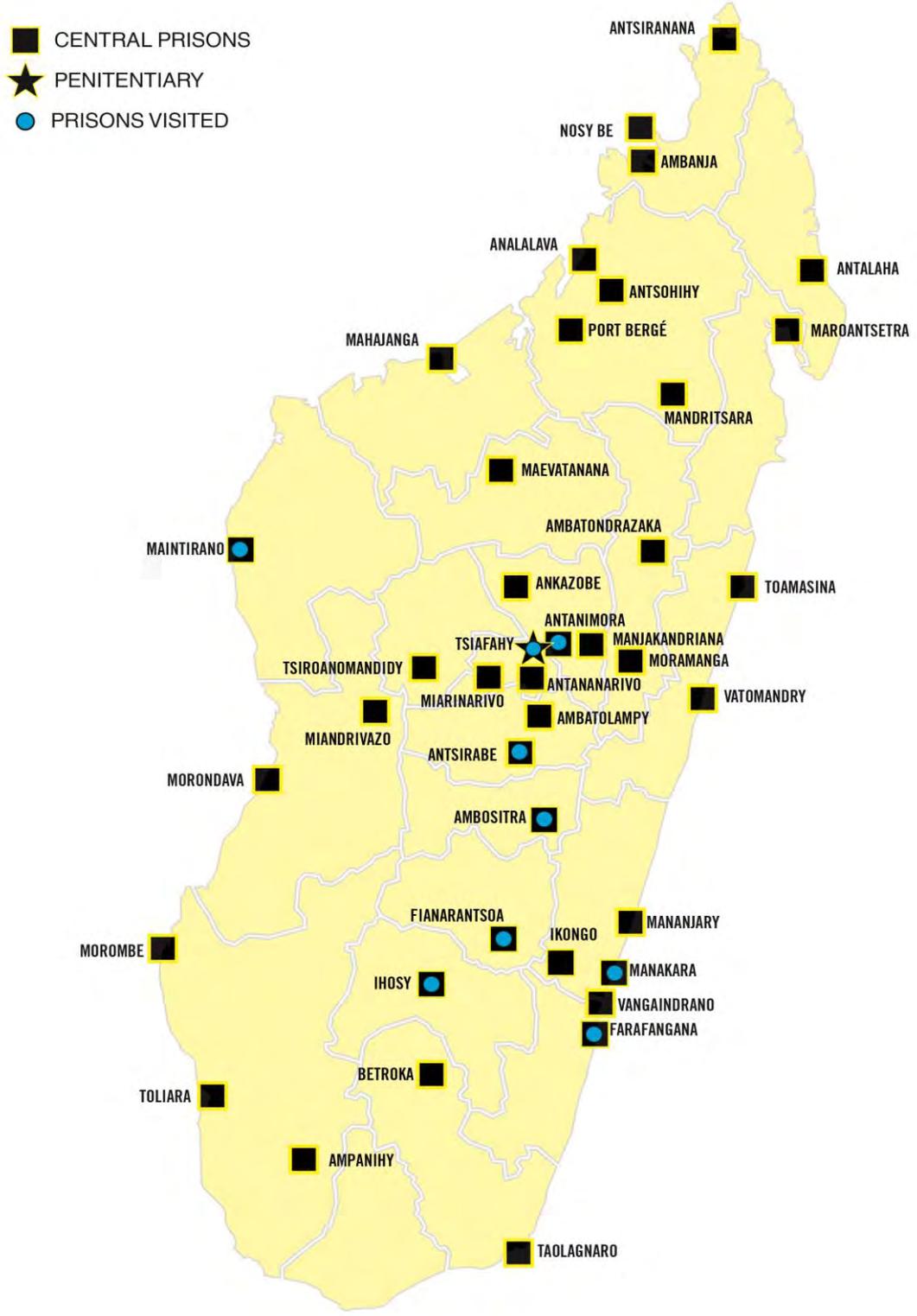
Researchers could not visit any prisons located in the north of the country, but they received credible information from other NGOs working there, all of which was in line with Amnesty International's own research in other regions.

In total, Amnesty International interviewed 70 people: 44 were pre-trial detainees (25 men and 19 women), including 11 children. The interviews were held individually, without the presence of prison personnel, and were conducted in English, French and Malagasy with the assistance of translators. The principles of informed consent were respected at all times. To protect and respect the safety and privacy of individuals, no real names or identifying features of the prisoners interviewed have been used in the report, and pseudonyms are denoted by an asterisk (\*) after the name. Several pseudonyms used for children in the report were chosen by them.

Amnesty International also interviewed 17 prison staff, including the Prison and Regional Directors; nine judicial staff, including the President and the Prosecutor of the Court, the Chairman of the Bar Association, and the Head of the Union of Magistrates; civil society activists and government officials working on, and within, the prison and judicial administration.

In addition to the interviews, researchers visited prison cells, kitchens, water and sanitation facilities, and offices of the prison staff. Since its visit to Madagascar, Amnesty International has received regular updates by phone and email.

**FIGURE 1:** PRISONS VISITED BY AMNESTY INTERNATIONAL IN AUGUST 2017



Before and after conducting fieldwork, Amnesty International undertook extensive desk research, and examined relevant international and domestic law. Researchers also analysed four documents containing prison statistics, which were provided by the central prison department and form the basis of the statistical analysis provided in the report:

- Statistics on all prisons dated December 2016, [in French: *Situation numérique par établissement des 16 Directions Régionales de l'Administration Pénitentiaire de Madagascar Décembre 2016*] (Document A),
- Statistics dated October 2017 [in French; “*Situation numérique par établissement des 17 Directions régionales d’administration pénitentiaire de Madagascar – Octobre 2017*”] (Document B),
- A list of prisons dated January 2018 [in French; « *Liste des établissements pénitentiaires de Madagascar*”] (Document C),
- Statistics on detainees from 2007 to 2016 [in French; “*Évolution de l’effectif de la population pénale a Madagascar*”] (Document D).

However, Amnesty International has found several inconsistencies within the official statistics as the Malagasy authorities do not have accurate, reliable and up-to-date information on prisons.

- In light of inconsistencies among the various documents, Amnesty International sought clarification from the prison administration through a letter sent in July 2018. The prison administration replied on 16 August in a letter that will be referred to as Document E.
- Amnesty International also sent letters to the Director of Judicial Administration, and the Head of the Bar Association, requesting additional information for the research. The Judicial Administration sent its response in August 2018, which has been incorporated in the report and will be referred to as Document F.
- The Head of the Bar Association did not respond to Amnesty International’s request at the time of publication.

This report also benefited from analysis of a survey conducted in March 2018 by Amnesty International with the collaboration of prison officials across the nine prisons visited. Six prisons, involving approximately 2,000 pre-trial detainees, returned information on their levels of education and legal awareness.<sup>1</sup> While Amnesty International cannot speak to the exactitude of the surveys, the responses are in line with the information gathered during individual interviews.

While acknowledging the important role of the police within the criminal justice system in general, and in pre-trial detention specifically, Amnesty International’s investigation focussed mainly on the prison and judiciary systems in Madagascar.

Amnesty International sent a letter to the Minister of Justice outlining our allegations and raising questions on 13 September 2018. On 28 September, the Ministry of Justice responded in writing, a copy of which is included in Annex 1.

Amnesty International is grateful to the Malagasy authorities for allowing its researchers access to the country’s prisons. In particular, we thank the Prisons Administration staff members for their engagement and cooperation during this research, including facilitating surveys, and sharing relevant information upon request. Finally, Amnesty International thanks all the prisoners for sharing their stories.

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<sup>1</sup> See Annex 2: one page of the survey carried out by prison officials with male pre-trial detainees in MC Manakara, sent to Amnesty International by email in March 2018

# 2. BACKGROUND



Madagascar, in the Indian Ocean, is the fourth largest island in the world, stretching over 587,051 km<sup>2</sup>. Part of the Southern African Development Community (SADC), its estimated population of 25 million people<sup>2</sup> is composed mainly of 18 ethnic groups.<sup>3</sup> The population is growing at a rate of 2.8% a year,<sup>4</sup> with nearly half the population under the age of 15.<sup>5</sup>

Madagascar has faced a series of political crises since its independence from France in 1960, most notably in 1972, 1991, 2001 and 2009.<sup>6</sup> Institutions, economic growth and major social sectors all suffered, and development efforts were compromised.<sup>7</sup> The most recent political crisis took place between 2009 and 2013, and led to Andry Nirina Rajoelina taking power as President of the High Transition Authority.<sup>8</sup> The international community and donors, including the United States of America (USA), the European Union (EU), the International Monetary Fund (IMF) the African Union (AU), and the Southern Africa Development Community (SADC), rejected this assumption of power, and imposed sanctions on Madagascar, including a freezing of development aid.<sup>9</sup> In 2010 Madagascar held a referendum to approve a new Constitution. After presidential and parliamentary elections in 2013, Hery Rajaonarimampianina took office in January 2014 as the President of Madagascar. The international community lifted its sanctions against Madagascar, but the years of isolation and aid cuts had drastically slowed down development progress in the country.

In April 2018, a new political crisis occurred, and in May the High Constitutional Court ordered the nomination of a new government ahead of the presidential elections.<sup>10</sup> In June, the new Prime Minister Christian Ntsay announced that the first round of the presidential elections will take place on 7 November 2018, and the second round on 19 December 2018, if needed.<sup>11</sup>

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<sup>2</sup> The last national population census dates back to 25 years ago. According to the World Bank, the population was 24.8 million as of 2016. The World Bank, Madagascar, Overview, <http://www.worldbank.org/en/country/madagascar/overview> A new general population census was being carried out in 2018 at the time of writing this report

<sup>3</sup> United Nations International Human Rights Instruments, *Core Document forming the initial part of the reports of States parties*, Madagascar, 30 December 2003, HRI/CORE/1/Add.31/Rev.1, 18 May 2004, Page 5

<sup>4</sup> Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth period reports of States parties due in 2011, Madagascar

<sup>5</sup> World Bank, *Face of poverty in Madagascar; Poverty, Gender and Inequality Assessment*, March 2014, Poverty Reduction and Economic Management (PREM), Africa Region, Report No. 78131-MG

<sup>6</sup> The World Bank, Report No. 120335-MG, 20 October 2017, Page 4  
<http://documents.worldbank.org/curated/en/714171511060426041/pdf/20171019Madagascar-PFSI2-DPO-PD-AFRDE-tarck-v2-Oct-19-10262017.pdf>

<sup>7</sup> World Food Programme, Madagascar Country Brief, January 2018,  
[https://docs.wfp.org/api/documents/6a9b1bdc621c4f399da258af14390619/download/?\\_ga=2.237683524.570700328.1527503026-1825678008.1521539042](https://docs.wfp.org/api/documents/6a9b1bdc621c4f399da258af14390619/download/?_ga=2.237683524.570700328.1527503026-1825678008.1521539042)

<sup>8</sup> M. Razafindrakoto, F. Roubaud, J.-M. Wachsberger, *L'Enigme et le Paradoxe, Economie politique de Madagascar*, 2017, Page 101

<sup>9</sup> See above, Page 102

<sup>10</sup> Al-Jazeera, *President announces new Madagascar government after court order*, 11 June 2018,  
<https://www.aljazeera.com/news/2018/06/president-announces-madagascar-government-court-order-180611172428390.html>

<sup>11</sup> Reuters, *Madagascar to hold presidential elections in November*, 29 June 2018, <https://www.reuters.com/article/us-madagascar-election/madagascar-to-hold-presidential-elections-in-november-idUSKBN1JPOXR>

## 2.1 RESOURCE-RICH BUT POOR IN HUMAN DEVELOPMENT

Despite its richness in natural resources, 76.2% of Malagasy people lived in extreme poverty in 2017, subsisting on less than USD1.90 per day.<sup>12</sup> The failure to curb poverty rates has led to appalling outcomes in education, health, nutrition, and access to clean water.<sup>13</sup> In 2016, the average Malagasy was 42% poorer than 50 years ago.<sup>14</sup> The United Nations Children's Fund (UNICEF) ranks Madagascar as the lowest country in the East and Southern Africa region in terms of contribution of the national budget to public spending, compared to its Gross National Product (GNP).<sup>15</sup>

- Access to food is extremely limited for the majority of Malagasy people. Madagascar is fourth among countries with the highest malnutrition rates. <sup>16</sup> In 2011, the UN Special Rapporteur on the Right to Food concluded that poverty and food insecurity had reached “dramatic proportions.” <sup>17</sup> **As of October 2016, 1.6 million people in the south-east region of Madagascar were still estimated to be severely food insecure.**<sup>18</sup>
- Madagascar also ranks fourth worst in the world for Water Sanitation and Hygiene (WASH) indicators: only 52% of the population has access to clean water.<sup>19</sup>
- Access to healthcare is poor, and child and maternal mortality rates remain a great challenge.<sup>20</sup>
- Despite improvements in the net enrolment rates in primary and secondary education since 2000, UNICEF estimated that approximately 1.5 million school-age children remained out of school at the end of 2016.<sup>21</sup>

Madagascar's economic geography is marked by two forms of disparity: between urban and rural areas on the one hand, and different regions on the other.<sup>22</sup> Close to 80% of Madagascar's population lives in rural areas,<sup>23</sup> where poverty is deeper.<sup>24</sup> Most development indicators, including infant mortality, life expectancy, literacy rates, access to food and safe drinking water, and school attendance are lower in the rural areas compared to the urban zones.<sup>25</sup>

Amnesty International's research and visits to prisons found that a large part of the pre-trial detention population came from rural areas. The poor literacy rates and access to education, combined with a lack of legal awareness and of the rule of law creates a distance between the general population and the state institutions, including the justice system.<sup>26</sup>

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<sup>12</sup> The World Bank, The World Bank in Madagascar, Overview, <http://www.worldbank.org/en/country/madagascar/overview>

<sup>13</sup> The country was positioned at 158 out of 188 countries and territories in the UNDP Human Development Index, which looks at indicators including life expectancy at births and expected years of schooling. It ranks below the average for countries in Sub-Saharan Africa. The Human Development Index aims at assessing progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living. Human Development Report 2016: Development for everyone, p. 200, 2016, UNDP, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>14</sup> Banque mondiale, *Surmonter les épreuves : soutenir les populations les plus pauvres de Madagascar en période de crise*, Octobre 2016 [www.banquemondiale.org/fr/results/2016/10/18/overcoming-hard-times-accompanying-madagascars-poorest-through-crises](http://www.banquemondiale.org/fr/results/2016/10/18/overcoming-hard-times-accompanying-madagascars-poorest-through-crises)

<sup>15</sup> UNICEF, *Analyse du budget des secteurs sociaux 2014-2018*, January 2018

<sup>16</sup> World Food Programme, Madagascar, [www1.wfp.org/countries/madagascar](http://www1.wfp.org/countries/madagascar)

<sup>17</sup> Report to the Human Rights Council, Special Rapporteur on the right to food, Addendum, Mission to Madagascar, [http://www.srfood.org/images/stories/pdf/officialreports/20130304\\_madagascarfinal\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20130304_madagascarfinal_en.pdf), Page 3. His report also highlighted prisoners' malnutrition and their dependency on contributions received from outside and recommended that the government make specific efforts to improve prisoners' access to food

<sup>18</sup> As of October 2017, World Food Programme, Madagascar, <http://www1.wfp.org/countries/madagascar>

<sup>19</sup> Madagascar WASH Sector, Key Results Framework (2016-2019), Water, Sanitation and Hygiene Ministry, <https://www.unicef.org/madagascar/eng/KeyResultsforWASHsectorarchivecopy.compressed.pdf> Page 2

<sup>20</sup> UNICEF, *Annual Report 2017*, Madagascar, [https://www.unicef.org/about/annualreport/files/Madagascar\\_2017\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Madagascar_2017_COAR.pdf)

<sup>21</sup> UNICEF, *Annual Report 2016*, Madagascar, [https://www.unicef.org/about/annualreport/files/Madagascar\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Madagascar_2016_COAR.pdf)

<sup>22</sup> African Development Bank, OECD, UNDP, *African Economic Outlook*, Madagascar, 2016

<sup>23</sup> Food security Portal, Madagascar page, available at <http://www.foodsecurityportal.org/madagascar/resources>

<sup>24</sup> The World Bank website: Madagascar: Poverty Assessment <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA0,,contentMDK:20204495~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:430367~isCURL:Y~isCURL:Y,00.html>

<sup>25</sup> IMF, Republic of Madagascar, *Selected Issues*, January 2015, <https://www.imf.org/external/pubs/ft/scr/2015/cr1525.pdf>

<sup>26</sup> UNDP, *Etude sur les dysfonctionnements de la chaîne pénale Malagasy*, 2014, Page 24

## 2.2 A BROKEN SYSTEM

The 2009 coup further weakened the limited national and local institutions, enabling corruption to thrive.<sup>27</sup> The criminal justice system particularly suffered during the transition period, with the main concerns revolving around its lack of independence<sup>28</sup> from the executive - exposure to political influence and corruption - delays in the administration of justice and lack of resources, personnel and proper training.<sup>29</sup>

Weak governance remains a challenge at all levels in Malagasy institutions, whose fragility “is rooted in the excessive centralization of power, weak accountability and a highly politicized and urban-based civil society”.<sup>30</sup> The UN Human Rights Committee (HRC) in 2017 expressed its concerns at the lack of independence of the judiciary.<sup>31</sup> There is a general perception among the Malagasy population that its criminal justice system is corrupt, inefficient, and lacks independence from the executive and others with power, and the population’s lack of confidence in its justice system appears to have worsened in recent years.<sup>32</sup> In 2017, the IMF reported that “court decisions have been so inconsistent and ill-founded that many stakeholders have become distrustful of the justice system”.<sup>33</sup>

Due to this distrust, the population often resorts to a less formal, traditional justice system called the *Dina*.<sup>34</sup> Despite efforts by the government to monitor it, the existence of the *Dina* courts raises serious concerns for fair trial guarantees.<sup>35</sup> The failure of the criminal justice system translates into a high prevalence of “mob justice” and lynching.<sup>36</sup> In May 2018, a survey conducted by Afrobarometer International found that 41% of the population agrees partly or completely with “mob justice”, and noted that the practice is becoming even more prevalent, particularly in the rural areas.<sup>37</sup> In September 2018, OHCHR reported that the phenomenon of mob justice is more prevalent than ever, and that its practice has become normalised in most regions: between 1 July 2016 and 31 August 2018, it caused the death of 152 people.<sup>38</sup>

## 2.3 NATIONAL LEGAL CONTEXT

### CONSTITUTIONAL RIGHTS

The Malagasy legal system is a mixture of civil and customary law, based both on the French civil law system and traditional Malagasy law. The Constitution of Madagascar states that “treaties or agreements regularly ratified or approved by Madagascar have, from the onset of their publication, an authority higher than that of laws”.<sup>39</sup>

The Constitution recognizes human rights, and contains several provisions that respect and protect people’s right to life, liberty and a fair trial.<sup>40</sup> Article 9 recognizes that “each person has the right to liberty and cannot be subject to arbitrary arrest or detention”. It also states that “any individual victim of illegal arrest or detention has the right to reparation”. Article 13 enshrines the rights of all arrested, detained, accused and imprisoned persons, and states that: “anyone accused has the right to the presumption of innocence until his or her guilt is established by a competent authority”; and “pre-trial detention is an exceptional measure”.

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<sup>27</sup> IMF, Republic of Madagascar, *Selected Issues*, January 2015, <https://www.imf.org/external/pubs/ft/scr/2015/cr1525.pdf> Page 5

<sup>28</sup> The World Economic Forum ranked Madagascar 126 out of 138 countries in judicial independence.

<sup>29</sup> Concluding observations of UN Human Rights Committee: Madagascar, UN Doc. CCPR/C/MDG/CO/4, (2017), paras. 11,12,45 (hereafter Concluding observations of UN HRC)

<sup>30</sup> UN, Executive Board of the UNDP, the United Nations Population Fund and the United Nations Office for Project Services, 2014, Draft country programme document for Madagascar (2015-2019), Paragraph 3

<sup>31</sup> Concluding observations of UN HRC

<sup>32</sup> M. Razafindrakoto, F. Roubaud, J-M. Wachsberger, *L'énigme et le paradoxe, Economie politique de Madagascar*, 2017, Page 183

<sup>33</sup> IMF, Country Report No. 17/224, Republic of Madagascar, *Selected Issues*, July 2017,

<sup>34</sup> In 2011, a government representative explained that the *Dina* is a ‘traditional village para-judicial system designed to maintain social cohesion. The decisions issued, also called *Dina*, were regulated by Act No. 2001-004’, Committee against Torture (CAT), Forty-seventh session, Summary record of the 1037<sup>th</sup> meeting, 11 November 2011, Initial periodic report of Madagascar (continued)

<sup>35</sup> Centre for Civil and Political Rights, Madagascar: Discrimination, corruption and flawed justice system threaten the protection of human rights in the country, <http://ccprcentre.org/ccprpages/madagascar-discrimination-and-flawed-justice-system-threaten-the-protection-of-human-rights-in-the-country>

<sup>36</sup> Human Rights Committee considers report of Madagascar, 11 July 2017, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21863&LangID=E>

<sup>37</sup> Ny Aina Rahaga, *La vindicte populaire acceptée par 41% de la population*, 1<sup>st</sup> June 2018, La Tribune <https://www.madagascar-tribune.com/La-vindicte-populaire-acceptee-par-23893.html>

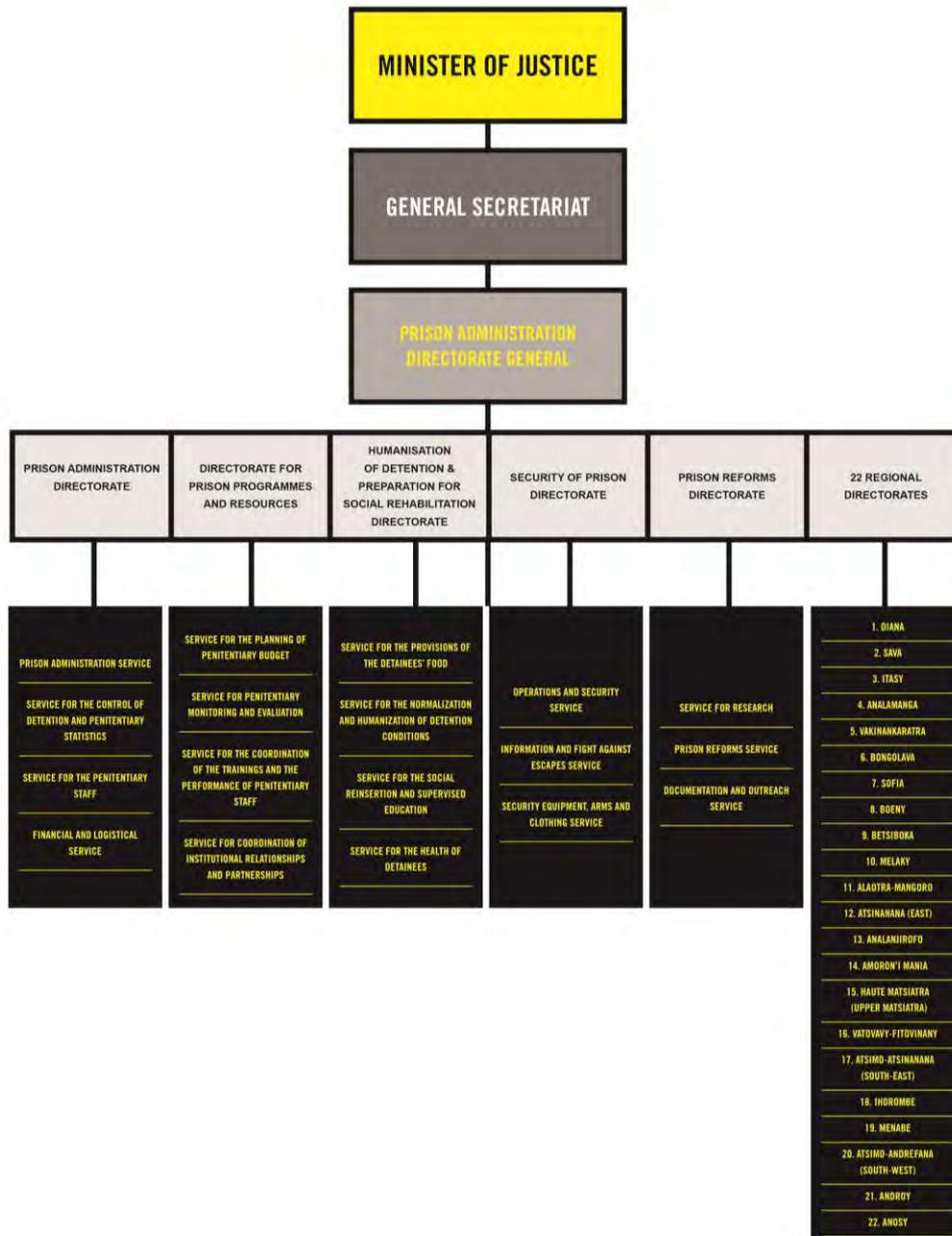
<sup>38</sup> Thematic Report on Human Rights and Mob Justice, OHCHR, August 2018

<sup>39</sup> Constitution of Madagascar, 2010, Article 137

<sup>40</sup> Constitution of Madagascar, 2010, in its Preamble provides that Madagascar endorses the International Charter on Human rights, and conventions on the rights of the child, the rights of women, protection of the environment, social, economic, civil and cultural rights

# THE PRISON ADMINISTRATION

**FIGURE 2:** ORGANIGRAMME OF THE PRISON ADMINISTRATION'S DIRECTORATE GENERAL<sup>41</sup>



The prison administration falls under the Ministry of Justice. It consists of core services based in the capital city, and 22 regional directorates throughout the country.<sup>42</sup> Each of the 22 regional directorates is led by a Regional Director, who oversees between three and ten prisons. The role includes coordinating activities within the districts, ensuring the due process of detentions, and carrying out regular inspections of the prisons. Each prison has a Director who reports to the Regional Director, and has authority over prison staff.<sup>43</sup>

<sup>41</sup> As per Decree 2016-352 setting out the responsibilities of the Minister of Justice, and the general organization of the Ministry

<sup>42</sup> Although the law organizing the 22 regions was passed seven years ago, in practice, documents shared by the prison administration show that they still only consider 17 regions

<sup>43</sup> As per Law 2006-015, Art. 2-4

Decree Number 2006-015 states that each prison should have a monitoring commission, in charge of monitoring the hygiene, security, food, healthcare, work, discipline, maintenance of records, and reintegration of detainees. The commission must meet at least once a year, and submit a report to the Ministry of Justice, the General Prosecutor, and the General Director of the Prison Administration.

## CRIME AND PUNISHMENT

The 1962 Malagasy Criminal Code<sup>44</sup> lists crimes and offences and their punishment, and the Code of Criminal Procedure<sup>45</sup>, adopted in the same year, sets out procedures for arrests and detentions.

The Criminal Code recognizes three types of offence:<sup>46</sup>

- *Contravention de police* – petty offences punishable by monetary fines, confiscation of seized objects, or imprisonment for one to 29 days (for example, disturbing the peace with antisocial behaviour).
- *Délit correctionnel* – correctional offences punishable by imprisonment for one month to 10 years (for example, vagrancy and theft).
- *Crime* – criminal offences punishable by imprisonment and/or hard labour for a specific term or for life, by deportation<sup>47</sup> (for example, arson and murder).

Amnesty International's research found that in some prisons, the majority of pre-trial detainees were held in detention for offences such as theft of cattle (*zebu*).

Madagascar has a total of 82 places of detention, distributed across five categories and holding different groups of detainees,<sup>48</sup> with an official total capacity of 10,360.<sup>49</sup> However, Amnesty International has noted inconsistencies among various documents received from the prison administration on the exact number of places of detention, and their capacity to hold detainees.<sup>50</sup>

Decree 2006-015 on the general organization of the prison service provides for the following categories of places of detention:

- **Central prisons (MC):** hold both pre-trial detainees and people who have been convicted for minor and serious offences, including children. There are 42 central prisons.<sup>51</sup>
- **Penitentiaries or high-security prisons (MF):** hold only people sentenced to life imprisonment, penal relegation<sup>52</sup>, or those deemed to be dangerous.<sup>53</sup> There are supposedly three penitentiaries in Madagascar<sup>54</sup> but the prison administration reported in August 2018 that only one, MF Tsiafahy, was functional.<sup>55</sup>
- **Detention centres (MS):** hold pre-trial detainees, as well as prisoners sentenced for up to two years' imprisonment, and those sentenced to imprisonment with hard labour. There are 37 detention centres.
- **Young offenders' institutions / re-education centres:** hold children "in conflict with the law". There are two such centres operational.<sup>56</sup>

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<sup>44</sup> Criminal Code of Madagascar (hereafter CP)

<sup>45</sup> Code of Criminal Procedure of Madagascar (hereafter CPP)

<sup>46</sup> CP, Article 1

<sup>47</sup> Article 17, CP provides that the sentence of deportation consists in being transported and remaining for life in a place determined by the law. As long as no place of deportation has yet been established, the sentenced person will carry out the detention sentence in a penitentiary for life

<sup>48</sup> Decree No. 2006-015 of 17 January 2006 on the general organization of the prison service, Article 6

<sup>49</sup> As per the Human Rights Committee, International Covenant on Civil and Political Rights, Fourth periodic reports of States parties due in 2011, Madagascar, 2015, Paragraph 199

<sup>50</sup> See Chapter 3.1.1 for more information

<sup>51</sup> Document E

<sup>52</sup> Relegation is a sentence inherited from the 1885 French criminal law, which consisted in "the perpetual internment in the territory of French colonies or possessions". It was used to keep unwanted criminals away from France. See Jean-Lucien Sachez, '*La relegation (loi du 27 mai 1885)*', <https://journals.openedition.org/criminocorpus/181>

<sup>53</sup> Decree No. 2006-015, Articles 7, 8, 9, 10 and 11

<sup>54</sup> Law 2011-489 on the reorganization of the Prison Administration Regional Directorates, Annex

<sup>55</sup> Document E stated that MF Vohitany is not currently functional, and that MF Andrangaranga is not functional because the building is in ruins

<sup>56</sup> Document E

- **Penal camps:** open establishments in the countryside under the overall authority of the director of the central prison or detention centre<sup>57</sup> that aim to provide social reintegration of prisoners through agricultural work.<sup>58</sup> The number of penal camps is not specified by Decree 2011-489.

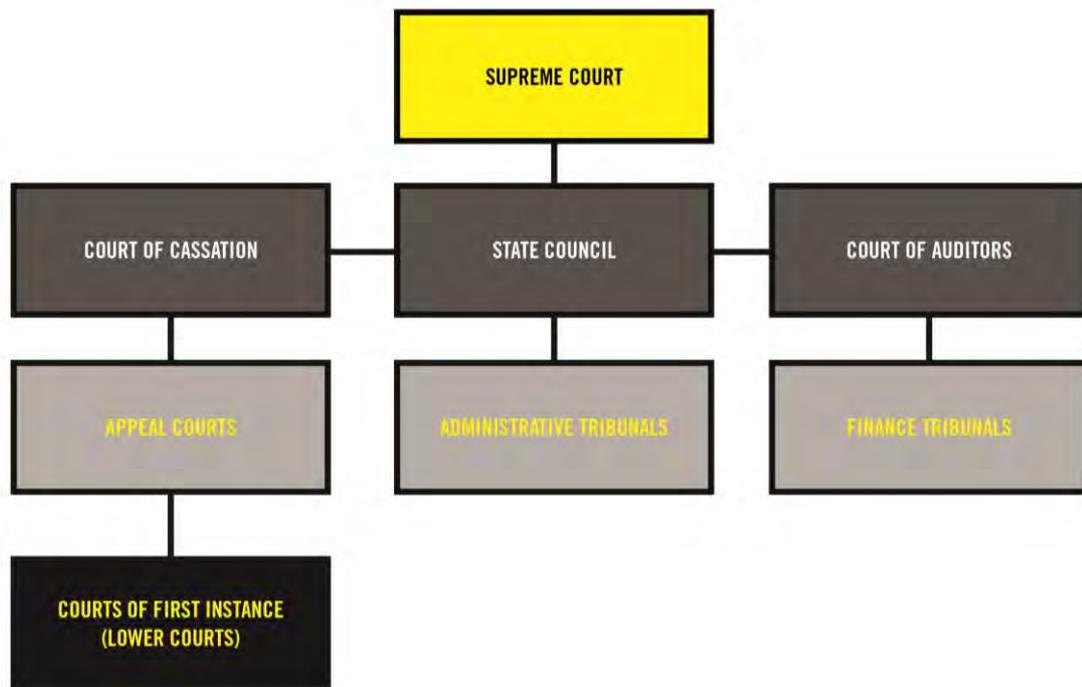
Analysis of the official statistics on prisons reveals that more than 80% of Madagascar’s detainees and prisoners are held in central prisons.<sup>59</sup> Although the penitentiaries should by law hold only people sentenced to life imprisonment, or convicted people considered dangerous, Amnesty International’s research found that in October 2017, of the 988 detainees in MF Tsiafahy, 570 were pre-trial detainees,<sup>60</sup> some of whom were accused of minor, non-violent offences.<sup>61</sup>

## THE JUDICIARY

There are three levels of courts in Madagascar.

- The lower courts, called the Courts of First Instance, hear civil cases and criminal cases carrying fines and sentences.<sup>62</sup>
- The Court of Appeals, which also serves as the criminal court of first instance for cases with sentences greater than five years.
- The Supreme Court, which functions as the highest court, hears appeals from the Court of Appeals.<sup>63</sup>

**FIGURE 3: COURTS SYSTEM IN MADAGASCAR**



<sup>57</sup> Decree No. 2006-015, Article 11, provides that the establishment of a penal camp is decided by order of the Minister of Justice  
<sup>58</sup> Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Initial period report of States parties due in 2007, Madagascar, 23 February 2011, Article 164  
<sup>59</sup> Amnesty International analysed the data shared by the government, on the number of detainees and prisoners held in the country’s prisons in October 2017: out of 20975, 18740 were held in the 38 central prisons listed.  
<sup>60</sup> Document B  
<sup>61</sup> See chapter 3.5 on MF Tsiafahy  
<sup>62</sup> CPP, Articles 18 - 23  
<sup>63</sup> CPP, Article 542

# 3. UNJUSTIFIED, EXCESSIVE AND PROLONGED PRE-TRIAL DETENTION



**“There was no explanation. They just put us in jail”.**

Celia, interviewed in Antsirabe prison, August 2017

Celia\* was only 17 years old when she was arrested, accused of murder, along with her husband, two of her brothers and her sister-in-law.<sup>64</sup> Three years and three months later, she was still awaiting trial in MC Antsirabe. She told Amnesty International that she did not understand the charges against her.

Like most of the pre-trial detainees Amnesty International spoke to, Celia was from a poor background. **“I don’t really know how to read... Our parents are very poor, they did not have money to send us [to school].”** Celia had never seen a lawyer: **“I don’t have a lawyer because we don’t have money”**. As a result, Celia has been unable to challenge the lawfulness of her lengthy detention, and feels lost:

**“I have been to court six times. Twice, when our detention warrant had expired, the court gave us a new one... We don’t understand why we are being accused. They [police officers] just brought us to the judge without proof. We are so sad that we can’t do anything... I really miss my parents. They are already 70 years old. They are the only ones who take care of us now, all my brothers are here. So my parents take care of the house, and work the land to survive.”**

Pre-trial detainees are individuals awaiting trial, or whose trials are still ongoing, and who have not been convicted. A critical distinction is that pre-trial detainees are presumed innocent until proven guilty,<sup>65</sup> affording them special rights in addition to those applicable to all detainees.<sup>66</sup> This includes, among other

<sup>64</sup> Amnesty International interview with Celia, Antsirabe central prison, August 2017

<sup>65</sup> Universal Declaration of Human Rights, Article 11. The Malagasy Constitution also highlights that all suspected or accused people are entitled to the presumption of innocence until their culpability is established by a competent jurisdiction

<sup>66</sup> Standard minimum rules for the treatment of prisoners (hereafter Nelson Mandela Rules), Rule 84 (2) provides that unconvicted prisoners are presumed innocent and shall be treated as such

rights, the right of access to counsel, and to free legal services for indigent detainees,<sup>67</sup> the right to be tried within a reasonable time,<sup>68</sup> and the right to be detained separately from convicted persons.<sup>69</sup>

The UN Human Rights Committee (HRC) has stated clearly that “detention in custody of persons awaiting trial shall be the exception rather than the rule.”<sup>70</sup> This means that individuals awaiting trial should as a rule be released, unless a court finds that there are compelling reasons to keep them in detention, such as flight or other risks, or the need for further investigations that require the suspect’s presence. The Committee adds that “After an initial determination has been made that pre-trial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in light of possible alternatives.”<sup>71</sup>

In Madagascar, as of October 2017, 55% - or more than half of the total prison population - were pre-trial detainees.<sup>72</sup> In contravention of international and regional standards, and its own Constitution, Madagascar’s unjustified, excessive, and prolonged use of pre-trial detention violates suspects’ right to presumption of innocence, and to be held in conditions which promote their dignity and humanity.<sup>73</sup>

Excessive pre-trial detention undermines the rule of law, contributes to overcrowding of detention facilities, wastes public resources, and endangers the health and the rights of detainees, families and communities. Prolonged pre-trial detention violates detainees’ other human rights, including their right to liberty, and adversely impacts their lives and livelihoods.

## 3.1 SCALE AND SCOPE

Contrary to both its international legal obligation and its own laws providing that pre-trial detention is an *exceptional* measure, Madagascar’s prisons hold more people who have not been convicted than those found guilty.<sup>74</sup>



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<sup>67</sup> Nelson Mandela Rules, Rule 93

<sup>68</sup> ICCPR, Article 9(3)

<sup>69</sup> Nelson Mandela Rules, Rule 8

<sup>70</sup> HRC, General comment No. 35, Article 9: Liberty and security of person, UN Doc. CCPR/C/GC/R.35/Rev.3, 10 April 2014, See Article 9(3) of the ICCPR, para. 38. In addition, Rule 6 of the Tokyo Rules provide: “Pre-trial detention shall be used as a means of last resort in criminal proceedings”.

<sup>71</sup> HRC, General comment No. 35

<sup>72</sup> Document B

<sup>73</sup> ICCPR, Article 10 and 14, and African Charter on Human and People’s Rights, Article 5

<sup>74</sup> “Anyone accused has the right to the presumption of innocence until his or her guilt is established by a competent authority” and “pre-trial detention is an exceptional measure...” Article 13 of the Constitution



*In MC Manakara, men awaiting trial raise their hands. September 2018 @ Amnesty International*

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) says: **“Everyone has the right to liberty and security of the person”**. And Article 9(3) states: **“Anyone arrested or detained on a criminal charge shall be ... entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody.”**<sup>75</sup>

Unjustified, excessive and prolonged pre-trial detention affects men and women, adults and children.<sup>76</sup> While the majority of pre-trial detainees were men (89%), affected more directly by the lengthy and inhumane conditions of detention, women (6%) and children (5%)<sup>77</sup> were disproportionately affected by some of its consequences through gender-based and aged-based violations.

More than 80% of all pre-trial detainees are held within the country’s 38 central prisons (MCs), with 23 holding more pre-trial detainees than sentenced ones.<sup>78</sup> (see Fig. 4 below).

On paper, the government of Madagascar has reinforced the exceptional character of pre-trial detention as stipulated by international human rights laws.<sup>79</sup> It has passed amendments to the Code of Criminal Procedure (CPP), in 2007, 2016,<sup>80</sup> and 2017.<sup>81</sup> The 2007 amendment to the CPP aimed to reduce the number of detainees in pre-trial detention by speeding up the proceedings and limiting the duration of pre-trial detention.<sup>82</sup> The 2016 amendment makes it mandatory to have a clear justification and motivation for pre-trial detention.<sup>83</sup> According to the Chairman of the Bar Association, the amendments requiring that pre-trial detention is only ordered following clear motives are not being applied in practice:

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<sup>75</sup> ICCPR, Article 9 (1) and 9(3)

<sup>76</sup> Document D

<sup>77</sup> Amnesty International analysis of Document B

<sup>78</sup> Document B. The remaining pre-trial detainees are held in penitentiaries, detention centres and penal camps

<sup>79</sup> See the ICCPR, Article 9(3) providing that “It shall not be the general rule that persons awaiting trial shall be detained in custody” and Article 14(3) providing that persons facing criminal charges “shall be entitled to trial within a reasonable time or to release”. See also the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), Rule 6 which provides that governments should make every effort to avoid pre-trial detention as far as possible

<sup>80</sup> Laws 2007-021 and 2016-017

<sup>81</sup> Law 2017-013

<sup>82</sup> The law also provides that magistrates, clerks and other public servants can be held accountable if they don’t comply with the time limits provided in the CPP, as per Article 614, amended by Law n°2007-021, Article 5

<sup>83</sup> Law n.2016-017, Article 13 provides that pre-trial detention can only be used to achieve one or several of the following nine objectives:

- Ensure that the suspect remains at the disposal of justice
- Prevent the subordination of witnesses or acts of pressure or reprisals on the victims and their families

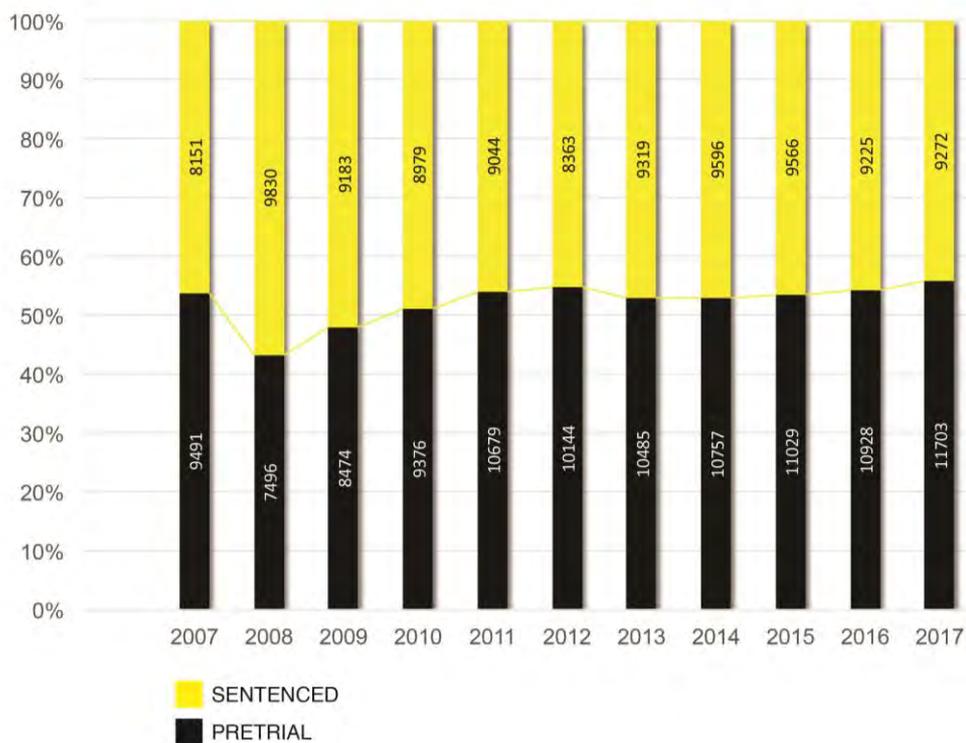
“The [2016] law was recently published, but the jurisdictions do not want to implement it. We intend to appeal to the Ministry for the implementation of this law in all the jurisdictions”.<sup>84</sup>

Finally, the 2017 amendment to the CPP aims at reinforcing the rights of the accused, including during the preliminary investigation and pre-trial detention. For instance, it provides that lawyers must be notified of the clear motives justifying a detention warrant, and also allows lawyers to make oral interventions at the level of the pre-trial detention chamber, to defend their clients. In practice however, Amnesty International’s research shows that these legal reforms have not translated into positive changes on the ground. For instance, the greater accessibility for lawyers has little effect as the vast majority of pre-trial detainees do not have access to lawyers.

A prison director confirmed the government’s failure to address the prevailing crisis of pre-trial detentions.

■ **“The government must show a political will to reduce pre-trial detention. But so far, there has not been any political will”.**<sup>85</sup>

**FIGURE 4: THE PRE-TRIAL DETENTION RATE HAS HOVERED OVER THE PAST DECADE**<sup>86</sup>



- Protect someone from the suspect
- Take into account tangible charges attributable to the suspect and the gravity of the offence
- Prevent a fraudulent collaboration between the suspect and their co-perpetrators or accomplices
- Preserve evidence or material indices which are necessary for the manifestation of the truth
- Put an end to the exceptional disruption of public order provoked by the seriousness of the offence, the circumstances of its commission, or the importance of the prejudice it caused
- Put an end to the offence or prevent it from renewing
- Repress the violation of judiciary control

<sup>84</sup> Amnesty International interview with the Chairman of the Bar Association, Anosy, 18 August 2017

<sup>85</sup> Amnesty International interview with MC Fianarantsoa Prison Director, Fianarantsoa, 21 August 2017

<sup>86</sup> Document B

### 3.1.1 INCONSISTENCIES IN OFFICIAL STATISTICS

In every prison in Madagascar, data on the number and category of detainees is recorded in a form called 'Modèle 18',<sup>87</sup> before being sent to the national prison administration each month, by post or sometimes email. The prison administration is then responsible for aggregating and analysing the information received. Amnesty International's research points to serious challenges, both in the recording of detainees' information at the prison level, and in the collection of statistics from the prisons at the central level.

The documents the Prison Administration supplied to Amnesty International contained several inconsistencies.

#### TOTAL NUMBER OF PRISONS

Based on information provided by Malagasy authorities, there appears to be confusion around the exact number of functioning prisons,<sup>88</sup> and the number of prisons within each of the five categories of prisons as provided by law.

Despite the 2011-489 decree providing for three penitentiaries (MF) to be established in the country, one government document provided to Amnesty International indicates that only one of them is functioning,<sup>89</sup> while another document stated that only two of them were functioning.<sup>90</sup> Amnesty International researchers verified the information with the prison administration, who confirmed that only one prison is functional:

- **"The Vohitany high-security prison is on hold, and the Andrangaranga high-security prison is not functional because the building is currently in ruins."<sup>91</sup>**

The prison administration explained in August 2018 that the term "on hold" implies that the prisons have been closed for various reasons, such as the deterioration of the building or lack of staff, but that the state aims to re-open them.<sup>92</sup>

Amnesty International also noted contradictions between various official documents and the laws in force: some prisons which are functioning according to information received by the government do not exist in the law, and vice-versa.<sup>93</sup>

The categorization of the country's prisons into central prisons (MC) and detention centres (MS) was also confusing. The most recent decree recognizes 38 central prisons,<sup>94</sup> but the latest document shared with Amnesty International (Document C) lists 40 central prisons. In August 2018, the prison administration reported that the number of central prisons was 42.<sup>95</sup>

Finally, the information provided regarding the official capacity of various prisons appears unreliable. During Amnesty International's prison visits, the prison directors often cited an official capacity of a prison that contradicts the official documents.<sup>96</sup> It is critical for the government to know the exact capacity of prisons to respond adequately to issues of overcrowding.

#### TOTAL NUMBER OF PRISONERS

In its report to the Committee Against Torture (CAT) in 2010, the Madagascar government stated that the country held 18,000 detainees as of 2007.<sup>97</sup> But in another document shared with Amnesty International, it

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<sup>87</sup> Also called 'Etat nominatif des personnes détenues de toutes catégories'. Among the information recorded is the prisoner number, name, gender, age, date of birth, incarceration date, incarceration motive and case number, authority responsible. In addition, there is a 'observations' column, which serves to register additional information, including the developments that took place since the incarceration, such as an extension of a detention warrant. See Annex 3 for an example

<sup>88</sup> The prison administration lists prisons as being either 'functioning' or '-non-functioning' / 'on hold'. In Document E, they explained to Amnesty International that the 'non-functioning' or 'on hold' status is explained by various reasons which include crumbling infrastructure and lack of prison staff. According to document D, as of January 2018 there were 15 prisons which were non-functioning

<sup>89</sup> According to a presentation shared by the prison administration in July 2017

<sup>90</sup> MF Andrangaranga is listed as being 'on hold' [temporarily out of function] in the list of prisons, Document C, and is not listed in the data shared by the government

<sup>91</sup> Document E

<sup>92</sup> Document E

<sup>93</sup> For example, the statistics shared by the prison administration mention a prison in Port-Bergé, although the Decree 2011-489 does not refer to it. At the contrary, the central house Ankazoaba, provided in the decree, is not mentioned in any of the documents shared by the prison administration

<sup>94</sup> Decree 2011-489

<sup>95</sup> Document E

<sup>96</sup> In Antsirabe, the prison staff told Amnesty International researchers that the total capacity of the prison was 210, against 248 stated by the central prison administration. In Manakara, the prison staff said that the prison's capacity was 150, against 121 according to the prison administration

<sup>97</sup> CAT, Initial periodic report of States parties due in 2007, Madagascar, (received 29 October 2010)

says that the number of detainees in 2007 was 17,642.<sup>98</sup> While this may not seem a significant variance, it is indeed a difference of 358 individual people. This highlights the discrepancy in information, but also raises serious questions about the state's accountability to detainees and their families.

### **PRISON DATA VERSUS CENTRALIZED DATA**

There were discrepancies between the statistics held at the prison level and those with the central Prison Administration. For example, according to the Prison Administration, MC Maintirano prison held 80 pre-trial detainees in October 2017,<sup>99</sup> whereas at the time of Amnesty International's visit two months earlier, there were 226<sup>100</sup> - a substantial difference in a short time frame. Amnesty International confirmed with the MC Maintirano Prison Director that the exact number of pre-trial detainees held in October 2017 was 236, nearly three times the numbers reported by the Prison Administration. Another example is from MC Toamasina. The Prison Administration claimed that the prison held 1,077 inmates as of December 2016, and zero in October 2017.

In August 2018, the prison administration admitted mistakes in their records and statistics to Amnesty International, including the MC Toamasina statistics, linked to a lack of technical capacity and resources.<sup>101</sup> It is highly possible that similar inaccuracies exist with other prisons. This lack of clarity and consistency has a significant bearing on the proper administration of the prison system.

## **3.2 PROFILE OF DETAINEES**

### **3.2.1 MEN**

When Amnesty International interviewed 36-year-old David\* in MC Antsirabe, he had already spent two years in detention awaiting trial. He had been shot by police officers when he was arrested at his house. He spent 21 days in hospital before being sent to the prison. While he was in hospital, police officers asked him to sign a paper.

**“I was too sick and asked if they could wait for me to get better before signing, but they said it's urgent.”<sup>102</sup>**

David signed the paper and only learned once he was in court that it indicated he had confessed to having committed murder.

**“The prosecutor asked me: why did you accept on the police record that you are guilty? I told her the police officers made me sign them and that I was too sick to read. Then it was the end of the hearing.”**

Privileged compared to other pre-trial detainees, David received regular visits from his family. However, his detention had a harsh impact on his children:

**“My wife comes to visit me every Thursday, but my children only once a month, because they need to pay for the bus... I don't want to explain to [my children] what has happened, they are too young. It makes me so sad to see my children come here... in tears. All I want is to be back home with my family, so that I can assume my responsibility as a father.”<sup>103</sup>**

<sup>98</sup> Document D

<sup>99</sup> Document C

<sup>100</sup> As of 26 August 2017

<sup>101</sup> Document E

<sup>102</sup> Amnesty International interview with David, MC Antsirabe, 19 August 2017

<sup>103</sup> Amnesty International interview with David, MC Antsirabe, 19 August 2017



*In MC Manakara, male detainees spend their days in an overcrowded courtyard. September 2018 @ Amnesty International*

Nearly 90% of all pre-trial detainees in Madagascar were men. Out of 19,196 men held in detention as of October 2017, more than half (10,385) were awaiting trial.<sup>104</sup> Men held in pre-trial detention throughout Madagascar's prisons are accused of a wide variety of offences, ranging from non-violent and petty offences such as simple theft, forgery and fraud, to the most serious crimes, including murder and rape. They are often detained linked to the theft of cattle.





*In the MC Fianarantsoa, the men awaiting trial – the overwhelming majority of the detainees – raise their hands. August 2017 @ Amnesty International*

### 3.2.2 WOMEN



28-year-old Nathalie\*, accused of petty theft, had been held in pre-trial detention with her baby in Antsirabe prison for more than a month when she met Amnesty International researchers.<sup>105</sup> Affected by the separation from her two older children, she had little hopes of getting out soon. She told Amnesty International that after her first court hearing she was issued a six-month detention warrant by the judge. Nathalie was accused of stealing 20,000 ariary [approximately USD6].

**“I wanted to hire a lawyer, but they asked for 600,000 ariary” [approximately USD200]. I can’t afford that.”<sup>106</sup>**

The state’s failure to provide legal aid means that Nathalie would have to cover her own legal fees, costing her 30 times more than the amount she was accused of stealing. Not having access to a lawyer significantly reduces the chances for women like Nathalie to be released before their trial, often plunging entire families into poverty:

**“My husband visits me sometimes, but does not always bring me food. We don’t have enough money. He comes by foot because he can’t afford to pay for transport.”**

In October, out of the total 994 women prisoners in Madagascar, 696 were pre-trial detainees, 70% of the total female prison population.<sup>107</sup> In the past ten years, there has been a 76% increase in the number of female pre-trial detainees,<sup>108</sup> a much steeper increase in comparison to men.<sup>109</sup>

<sup>105</sup> Amnesty International interview with Natalie, Antsirabe prison, 19 August 2017

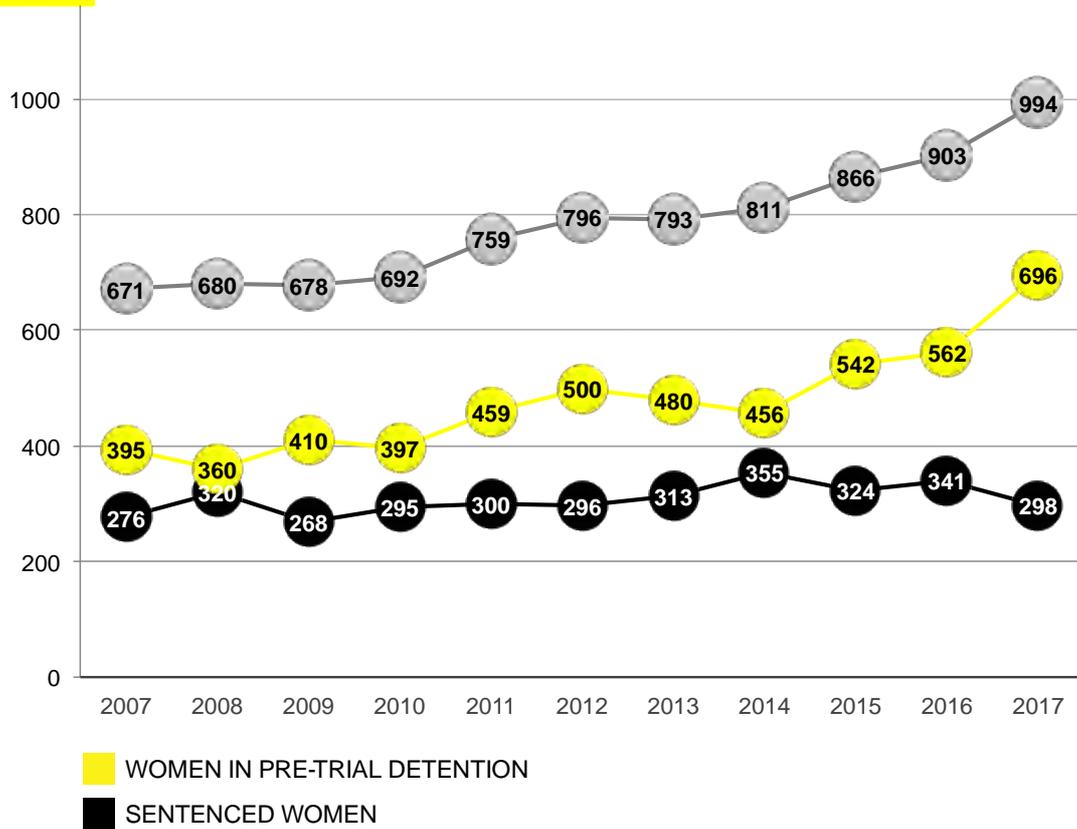
<sup>106</sup> Amnesty International interview with Natalie, Antsirabe prison, 19 August 2017

<sup>107</sup> Document B

<sup>108</sup> Document D provides that the number went from 395 in 2007 to 696 in October 2017

<sup>109</sup> Document D

**FIGURE 5: INCREASE IN THE NUMBER OF WOMEN IN PRE-TRIAL DETENTION OVER THE PAST DECADE**



MC Antanimora in the capital has the largest number of women detainees in the country: the statistics shared by the government for October 2017 indicate that there were a total of 314 women detained, of which 268 were held pending trial.<sup>110</sup> Approximately 60%<sup>111</sup> were detained on charges relating to petty offences: the most common charges were fraud, theft, forgery and falsification of records and identity documents, breach of trust, and “criminal association”.<sup>112</sup>

The physical, emotional, economic and social consequences of pre-trial detention on women are acute and enduring, and impact them differently than men. As they represent a minority of the prison population, women’s particular needs are often neglected. Issues such as separation from their children, pregnancy and childcare, and limited access to healthcare affect them particularly.

<sup>110</sup> Document B

<sup>111</sup> 109 women out of 176 according to the July 2017 *Modèle 18*

<sup>112</sup> According to the July 2017 *Modèle 18*. Offences such as breach of trust, criminal association and forgery are punishable by up to 5 years imprisonment. Article 337 of the Criminal Code provides that the woman or man guilty of adultery can be sentenced to up to one year’s imprisonment. Article 59 provides that accomplices of a crime or offence are punished with the same penalties as the perpetrators of the crime or offence. Article 61 provides that those who know of the criminal conduct of the perpetrators and provide them housing, or meeting places, will be punished as their accomplices



*In MC Manakara, like in the other prisons visited, women in pre-trial detention often had babies or their young children with them. September 2018 @ Amnesty International*

According to international standards, when sentencing or deciding on pre-trial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent. The Bangkok Rules provide that:

- **“Women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties... Alternative ways of managing women who commit offences ... shall be implemented wherever appropriate and possible.”**<sup>113</sup>

However, the criminal justice system in Madagascar fails to take any of this into consideration and routinely sends women to pre-trial detention.<sup>114</sup>

### **GUILT THROUGH FAMILY TIES**

Amnesty International documented four cases of women who said they were arrested because of alleged offences by their husbands or relatives. Two reported being arrested and subsequently detained as a way of making their husbands surrender whenever the police were unable to find them.<sup>115</sup>

Zana\*, 38 years old, told Amnesty International that she was arrested because the police failed to find her husband. They accused him of being responsible for the disappearance of members of his family who had stayed in their house for one night the previous month. The magistrate sent Zana to pre-trial detention in the Fianarantsoa prison, where she had spent the next two years and three months of her life.<sup>116</sup>

<sup>113</sup> Bangkok Rules, Rule 58

<sup>114</sup> According to the World Bank, 2016, <https://data.worldbank.org/indicator/SP.HOU.FEMA.ZS?locations=MG> over a quarter of households in Madagascar are led by women, and the number of female-headed households has been increasing in recent years. Hence, the pre-trial detention of women is likely to increasingly impact on women's dependents back home

<sup>115</sup> Interviews with female pre-trial detainees, Madagascar, from 16 to 29 August 2017

<sup>116</sup> Amnesty International interview with Zana, Fianarantsoa prison, 21 August 2017

- **“They asked me ‘Where is your husband?’ I told them that he was at the market, selling peanuts. [But] the police didn’t go looking for him... they took me. They said that if he came, they would release me... Since my arrest, my husband has never come to see me. I don’t know why, maybe he doesn’t love me anymore.”<sup>117</sup>**

There were 46 other women detained in that prison. However, only 13 had been convicted.<sup>118</sup>



*In MC Fianarantsoa, women in pre-trial detention are raising their hands. The overwhelming majority of female detainees had not been sentenced. August 2017 @ Amnesty International*

In 2011, the Committee against Torture expressed concern about this practice in Madagascar and deplored “the fact that women have allegedly been arrested and detained in order to force their husbands to turn themselves over to the police”.<sup>119</sup> The Committee recommended: “The State party should put an end to the practice of taking relatives of suspected criminals hostage and should expedite investigations with a view to punishing those responsible. This practice is a grievous violation of domestic law and the fundamental principles of human rights”.<sup>120</sup>

In view of the severity of the suffering of detainees inflicted by officials, as described in this report, whenever detention is intentionally imposed as punishment, to coerce or intimidate them or their families, for any reason based on discrimination, including on the basis of status, Amnesty International considers their ill-treatment to amount to torture as defined in Article 1(1) of the UN Convention against Torture.

## **WOMEN LIVING WITH CHILDREN**

- **“The use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.”**

UN Eight Congress on the Prevention of Crime and the Treatment of Offenders <sup>121</sup>

<sup>117</sup> Amnesty International interview with Zana, Fianarantsoa prison, 21 August 2017

<sup>118</sup> Amnesty International visit to Fianarantsoa prison, 21 August 2017

<sup>119</sup> CAT, 47th session, 31 October – 25 November 2011, Concluding observations of the Committee against Torture, Madagascar, para 15 (hereafter referred to as CAT Concluding observations)

<sup>120</sup> CAT Concluding observations

<sup>121</sup> Report of the Eighth United Nations congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19, *Management of criminal justice and development of sentencing policies*, UN Doc. A/Conf.144/28/Rev 1 (1990)



*In MC Antsirabe, a young woman in pre-trial detention carries her young child. At the time of Amnesty International's visit, they had spent already one year and a half awaiting trial. September 2018 @ Amnesty International*

When Amnesty International met with her, 25-year-old Ava\* was living with her infant child in MC Antsirabe prison, and was expecting another one soon. In pre-trial detention for four months, Ava explained that the police had arrested her when they couldn't find her husband.<sup>122</sup>

- **“I don't know why I'm here. It's my husband who is accused... I told the judge I don't know anything about the case, and that I should not be involved. But he didn't say anything, apart from that I will be in pre-trial detention.”<sup>123</sup>**

Following her arrest, her husband was also taken into custody, leaving her no choice but to bring her child to prison with her. She complained about the difficulty of living in such conditions while expecting:

- **“I need to go home. The fact that I have a baby, and that I'm about to give birth soon is a big problem. I don't have enough air [here], and the food isn't like outside.”**

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<sup>122</sup> Amnesty International interview with Ava, MC Antsirabe, 19 August 2017

<sup>123</sup> Amnesty International interview with Ava, MC Antsirabe, 19 August 2017



*In MC Manakara, a woman held in pre-trial detention with her young child holds the daily portion of cassava provided by the prison. September 2018 @ Amnesty International*

The Antsirabe prison held 31 more women pre-trial detainees, nearly a quarter of whom also had their babies with them or were pregnant. The proportion of women in pre-trial detention with young children, or pregnant, were similar in other prisons visited by Amnesty International.



*A child walks around in the women's quarter in MC Antsirabe, where her mother has been detained without a trial for more than a year and a half. September 2018 @ Amnesty International*

The women detained pending trial were held in conditions which violate their right to dignity and health, as provided in international law<sup>124</sup> and specifically in the Maputo Protocol, which Madagascar is party to.<sup>125</sup> As medical facilities in prisons are grossly inadequate, with hardly any doctors or supplies in the infirmaries, women - especially those who are pregnant or with young children, have trouble coping with the detention conditions, and suffer from the lack of adequate healthcare.

As most prisons lack ambulances or proper vehicles for transportation, Amnesty International researchers heard many reports of pregnant women going to the hospital by foot or by 'bush-taxi'<sup>126</sup> to give birth.

In MC Manakara for instance, Amnesty International spoke to Mimi\* who was breastfeeding her 2-week old baby. At the time of interview, Mimi had spent seven months in detention, accused of illegal possession of a weapon.<sup>127</sup> She was one of many pregnant women and women with their children to be held pending trial.

■ **“I had to walk two kilometres to go to the hospital to give birth.”<sup>128</sup>**

The Regional Director who oversees this prison told Amnesty International: “Sometimes, when the family cannot pay, it is the prison staff who pay for the bush-taxi to take people to the hospital, from their own money”.<sup>129</sup>



*In MC Manakara, a woman in pre-trial detention carries her sleeping baby on her back. September 2018 @ Amnesty International*

The government's unjustified, excessive, prolonged and abusive use of pre-trial detention for women, especially pregnant women and women living with children who are accused of petty, non-violent offences, falls short of the country's human rights obligations and poses serious risks to their physical and mental well-being.

<sup>124</sup> ICESCR, Article 12

<sup>125</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 24, provides that it is the state's responsibility to "ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity"

<sup>126</sup> 'Taxi-brousse' or informal bus service

<sup>127</sup> Amnesty International interview with Mimi, MC Manakara, 25 August 2017

<sup>128</sup> Amnesty International interview with Mimi, MC Manakara, 25 August 2017

<sup>129</sup> Amnesty International interview with Regional Director in charge of the Manakara prison, MC Manakara, 25 August 2017



*In MC Farafangana, the majority of women with their children were held in pre-trial detention. August 2017 @ Amnesty International*

### 3.2.3 CHILDREN

As of October 2017, Madagascar held 785 children in prisons. Of them, 622 children (80%) were held in pre-trial detention: 591 boys, and 31 girls.<sup>130</sup>



17-year-old Sedera\* had spent 14 months awaiting his trial in Antanimora prison when Amnesty International spoke to him in August 2017.<sup>131</sup> He was arrested in November 2015, and said he did not understand why he was accused of his aunt's murder:

**“One day, I went into my aunt’s house next door. I called her name but no one answered. I stayed downstairs, and then a man came into the house and asked me ‘where is your aunt?’. I said I did not know. I left and went home. A few minutes later, he came to our home and he was crying. He said: ‘Your aunt is dead’. He called the police, and when the police arrived, they interrogated me. I started crying. They took me to the police station, and after four days, they took me to prison.”**

Sedera had been waiting 14 months for his trial, but his detention warrant kept getting extended:

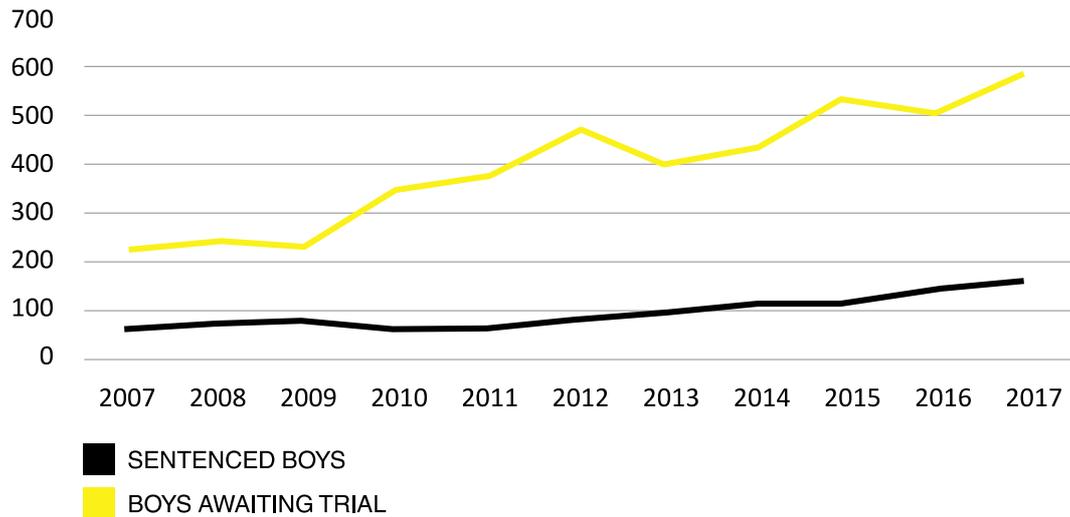
**“After my first court appearance, I stayed in prison for nine months. Then I went back, and they told me to sign something. The judge told me ‘put your signature, and we will take care of you’. But since then, I have not gone back to court.”**

<sup>130</sup> Document B

<sup>131</sup> Amnesty International interview with Sedera, MC Antanimora, 29 August 2017

The number of children, particularly boys, detained pending trial has more than doubled over the past 10 years.<sup>132</sup> In 2007, 230 boys were detained pending trial. Ten years later, the number had reached 591.<sup>133</sup>

**FIGURE 6: INCREASE IN THE NUMBER OF BOYS HELD IN PRE-TRIAL DETENTION FROM 2007 TO 2017**



*In MC Manakara, the overwhelming majority of children in detention had not been sentenced. September 2018 @ Amnesty International*

The majority of children held in pre-trial detention are between 15 and 17, but some are as young as 13 or 14. Detention most often lasts for up to one year, after which they are often released upon the expiry of the detention warrant, but for some pre-trial detention lasts for longer. In Antanimora prison, which held the highest number of children throughout the country, between April and June 2017, six children were sentenced or released after 12 to 18 months. For six others, their pre-trial detention had lasted for more than 18 months.

<sup>132</sup> Amnesty International analysis of Document D

<sup>133</sup> Document D

According to information provided by the government, as of October 2017, 12 prisons in Madagascar only held children in pre-trial detention.<sup>134</sup> Amnesty International visited two of them: in MC Fianarantsoa, all 28 children held were awaiting trial, as were all 10 children in MC Manakara.<sup>135</sup> The youngest child in Manakara, who thought he was 12 years old, was among three boys held for theft of a chicken and had already spent one month behind bars.<sup>136</sup> None of the 10 children had ever met a lawyer.<sup>137</sup>



*In MC Fianarantsoa, all 28 children held were awaiting trial. August 2017 @ Amnesty International*

Only one out of six children detained had been sentenced in Ihosy prison, one out of 24 in Farafangana prison, two out of 22 in Maintirano prison, and three out of 22 in Antsirabe prison.<sup>138</sup> In Antanimora, out of 113 children detained in July 2017, nearly 80% were awaiting trial: of these, more than half were held on charges of theft or other petty offences.

<sup>134</sup> Document B

<sup>135</sup> Prison records state that three were detained for chicken theft, one for cattle theft, one for theft of vanilla, and one for theft of 'diverse items'

<sup>136</sup> Interviews with children in MC Manakara, 25 August 2017

<sup>137</sup> Interviews with children in MC Manakara, 25 August 2017

<sup>138</sup> Amnesty International analysis of statistics gathered from prison visits between 16 and 29 August 2017

Effectif General					
Chambre	PRY	CON	CASS	APP	TOTAL
A	58	10	X	X	68
B	44	11	X	X	55
TOTAL	102	21	X	X	123

Date: 29/08/17  
Ezaka mpa Pufanaja  
Isika sy hy mpanabo

In MC Antanimora, the table in juvenile's quarter informs that out of 123 children, held, 102 are in pre-trial detention, August 2017 @ Amnesty international

Like adults, children were also held in overcrowded, dark and often unhygienic cells. Sanitation facilities inside the cells, particularly toilets and showers, were filthy, insufficient in number, and often without running water.



Left: In MC Ihosy, children are kept in this dark cell with little light and aeration. August 2017 @ Amnesty International

Right: In MC Manakara, children sleep on the floor, with thin mats provided by religious or non-governmental organisations. September 2018 @ Amnesty International



*In MC Manakara, one boy held in pre-trial detention shows where he sleeps at night, less than a meter away from the toilet area, in the cell he shares with 16 other boys. September 2018 @ Amnesty International*

Of all prisons visited, the detention conditions for children in Antanimora prison were relatively better, due to the support provided by NGOs and religious organizations. In the middle of the courtyard, which had been decorated with colourful graffiti, children had a foosball to play with, and had been provided with camera equipment by the NGO Grandir Dignement for them to develop new filming skills. They wore better clothes than children from other prisons. However, their rooms were not equipped with proper mattresses, and the kitchen and the toilets were in a poor state.



*In MC Antanimora, the children's quarter is decorated with graffiti. During the day, they play on a foosball and have activities provided by NGOs. @ Amnesty International*



*In MC Antanimora, children sleep on wooden planks @ Amnesty International*

Of the eight central prisons visited holding juveniles in detention, only three provided some recreational or educational activities for the boys, through volunteers or NGOs.<sup>139</sup> In the Antsirabe prison, children told Amnesty International that they had lessons twice a week, where they learned English and mathematics. In Fianarantsoa prison, where all 28 children held were awaiting trial, the minors' quarter was equipped with a

<sup>139</sup> This was the case for MC Antanimora, MC Fianarantsoa, and MC Antsirabe

recreational and music room, including a donated drum set, books and a world map on the wall. Volunteers provided vocational training on agriculture twice a week in this prison with evident benefits to the children's psychological well-being:

- **“I have been thinking a lot about what I will do once I am released from this place. I want to use the techniques I learn to make a living.”**<sup>140</sup> said 17-year-old Armand\*, who has spent nearly a year and a half in pre-trial detention in Fianarantsoa prison for arson.<sup>141</sup>

Girls, however, (who, in all the facilities visited by Amnesty International, were detained with adult women) did not have access to such educational or recreational activities.<sup>142</sup> In the other prisons visited, there were no classes or activities tailored to their educational needs.

- 16-year-old Pascal has spent 10 months in MC Antanimora, accused of stealing a car battery. He said: **“I want to get out as fast as possible because I want to study at school. Before being in prison, I was in 4eme [third year of secondary school]. I told my grandmother that I want to become a doctor. If my grandmother can pay, I hope to go back to school. I have a lot of friends there. I’m sad not to see them. They don’t know I’m here. When I get out, I won’t tell them. I’m scared they will think I’m a criminal”**.<sup>143</sup>



*In MC Manakara, the children's quarter offers little shade during the day. No vocational or educational activities are offered to them. September 2018 @ Amnesty International*

Lengthy pre-trial detention of school-going children interrupts their education, making it more difficult for some to return to school and find employment. The failure to provide educational services to children in detention also violates international human rights obligations, including the ICESCR and the CRC, as well as Madagascar's own Constitution, which states in Article 23 that every child has the right to instruction and to education.<sup>144</sup>

<sup>140</sup> Amnesty International interview with Armand, MC Fianarantsoa, 21 August 2017. Before his arrest, Armand worked as a labourer with his parents

<sup>141</sup> Amnesty International interview with Armand, MC Fianarantsoa, 21 August 2017

<sup>142</sup> Amnesty International visits to prisons between 16 August and 29 August 2017, Madagascar

<sup>143</sup> Amnesty International interview with Pascal, MC Antanimora, 27 August 2017

<sup>144</sup> Constitution of Madagascar, Article 23

The UN Convention on the Rights of the Child (CRC) states that no child shall be deprived of his or her liberty unlawfully or arbitrarily: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>145</sup>



*In MC Manakara, a boy held in pre-trial detention watches some of the other boys playing cards. September 2018 @ Amnesty International*

Madagascar’s own law reflects this principle, but despite provisions in law, pre-trial detention has been used abusively for children, with most of them being detained for cases of petty and non-violent offences, without any consideration of their specific rights and needs.<sup>146</sup>

The state has failed to explore alternatives to detention of children throughout the country, according to international and national laws. Madagascar has also failed to protect their right to be treated with respect and dignity, and to be detained in conditions taking into consideration their best interests.<sup>147</sup>

Since 2016, a new law<sup>148</sup> aimed at reinforcing the exceptional character of pre-trial detention for children has provided a range of alternatives to detention, which include extra-judicial processes, community work and probation, and stipulates that any placement of children in detention pending trial must be justified by at least one criterion in a list of six.<sup>149</sup> But the new law appears to have had little impact in reducing pre-trial detention for children in Madagascar.

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<sup>145</sup> CRC, Article 37(b). See also Rule 65 of the Bangkok Rules

<sup>146</sup> See above; At a regional level, this right is also enshrined in Article 17 of the African Charter on the Rights and Welfare of the Child, providing for the right for children to receive special treatment in a manner consistent with the child’s sense of dignity and worth

<sup>147</sup> CRC, article 3.1 and 37; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as “The Beijing Rules”, Rules 1 and 5. h

<sup>148</sup> Law 2016-018

<sup>149</sup> Article 85 provides that pre-trial detention for children can only be used if it is the only way to achieve one or several of the following objectives, and that these could not be achieved with the judiciary control: prevent the subordination of witnesses or threats on the victims or their families; protect the child; take into account tangible charges attributable to the child and the gravity of the offence; prevent a fraudulent collaboration between the child and his co-perpetrators or accomplices; end the exceptional disruption of public order caused by the gravity of the offence; restrain the violation of judiciary control

### 3.3 MINOR OFFENCES, MAJOR CONSEQUENCES

Mother-of-five Onorine\* was 56 years old when she spoke to Amnesty International. She had spent over two years in Antsirabe prison waiting for a trial. She used to wash people's clothes and sell coal for a living until she was arrested for getting fake birth certificates made for her husband's four children, born from another marriage.<sup>150</sup>

- "... [when] I took the certificates to court for confirmation... they told me that they were fake, and arrested me. I told the police: 'If I knew they were fake, I would not have brought it to the court'. I told the police who had done the certificates for me, and he was put in prison. So I really don't understand why I'm still here."

Onorine had five children of her own, but had agreed to take care of her husband's young children when both he and his ex-wife passed away. Now with her in prison for the past two years, the nine children have been left to fend for themselves.

- "My husband's four children, as well as my own children are in difficulty. So I tell them: 'Don't be worried about me. Worry about your money and take care of yourself first'. Two of them are not doing well, because there is no mother and no father... They don't go to school, they're just vagabonds. I am alone here, I really suffer... I think it's because I'm poor that the judge never believed me."

In Madagascar, men, women and children were often held in lengthy pre-trial detention for petty offences such as theft of chickens<sup>151</sup> or mobile phones, forgery or fake certificates: offences that should not warrant pre-trial detention, let alone prolonged detention.

The Regional Director responsible for MC Manakara acknowledges the injustice of such practices. "We have a 12-year-old child who is here for stealing a duck. We don't think this is normal."<sup>152</sup>



Boys play dominos in MC Antsirabe. September 2018 @ Amnesty International

<sup>150</sup> Amnesty International interview with Onorine, MC Antsirabe, 19 August 2017

<sup>151</sup> Under the Criminal Code misdemeanours, such as theft of food, can be punished by several years of imprisonment

<sup>152</sup> Amnesty International interview with Regional Director overseeing MC Manakara, 25 August 2017

Magistrates and judges interviewed by Amnesty International admitted that they routinely hand out pre-trial detention for petty and non-violent crimes, but blamed it on the social context. The judge of the Ihosy court explained:

- **“Even if it’s just a theft of chicken, maybe it was the only thing the person had... And if we don’t put the culprit in prison, there is the problem of mob justice. Here people get killed for pickpocketing. So maybe it’s to protect them that we put them in pre-trial detention”.**<sup>153</sup>



*A child holds peanuts in his hands. At the time of Amnesty International's visit, he had been in pre-trial detention for more than two months, accused of theft of peanuts. MC Antsirabe, September 2018 @ Amnesty International*

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<sup>153</sup> Amnesty International interview with Judge of the Ihosy court, Ihosy, 22 August 2017

HOMMES : 448	CONDAMNES : 152	MIZILO :
FEMMES : 032	PREVENUS : 495	TANTONGATO : 027
GARCONS : 015	CASSATIONNAIRE : 002	MAROFARIHY :
FILLES : 006	APPELANTS :	
APPELANTS :	OPPOSANTS :	
HOMMES :	PASSAGERS :	
FEMMES :		TOTAL :
GARCONS :		
FILLES :	TOTAL : 695	
PASSAGERS :	TOTAL MINEURS : 019	DONT :
HOMMES :	GARCONS :	PREVENUS :
FEMMES :	FILLES :	CONDAMNES :
GARCONS :	DONT :	
FILLES :	CONDAMNES :	
	PREVENUS :	

In MC Manakara, a table indicates that out of 695 detainees, 495 are in pre-trial detention. September 2018 @ Amnesty International

Apart from violating numerous rights of individuals, excessive pre-trial detention, especially for minor offences, can have major consequences for their families. The impact of pre-trial detention, particularly when it is indefinite, leads to loss of familial ties and livelihood, plunging families deeper into poverty, particularly when both parents are behind bars.<sup>154</sup> Of the 19 women interviewed by Amnesty International, at least three were held in pre-trial detention along with their husbands.

Zara\* was arrested by the police in 2015 with her husband when bringing food to Zara's brother who was in police custody.<sup>155</sup> They have been in pre-trial detention for two years in Manakara prison. Their arrest and detention has had a devastating impact on their five children, the youngest of whom was two years old at the time of arrest.<sup>156</sup>

- **“My main worry is my four-year-old son who can't take care of himself... my other four children don't have fixed people who take care of them. None of my children go to school, because my mother-in-law is too weak [to take them]. We are very poor... All I want is to get out of here, because I am really so sad for my son”.**<sup>157</sup>

Children often pay the price for their parents' pre-trial detention, as they often have to drop out of school, either because their detained parents are no longer able to provide for school costs, or because they need to work to replace the lost income. There is little access to education in Madagascar, with an estimated 1.5 million children out of school, having either never had the chance or having dropped out in the early years.<sup>158</sup> For children whose parents are in pre-trial detention, the chances of them remaining in school are even slimmer.

- **‘My husband doesn't work. We cannot read or write. I was the only one earning money. Now, I am worried for my three children. Our children go to school, but I'm worried because I can't afford to pay for their school supplies, and the school year starts next month’**,<sup>159</sup> said an anxious Nathalie\*, who feared that if her pre-trial detention lasted longer, her children would not receive any more education. Accused of stealing money, the 28-year-old mother had spent a month in pre-trial detention at the time of her interview.

<sup>154</sup> It is estimated that more than 3 households out of 4 are led by men and that an average household in Madagascar has 4.5 people, with 2.7 dependents. INSTAT, *Enquête nationale sur le suivi des objectifs du millénaire pour le développement à Madagascar, 2012-2013*, p.15

<sup>155</sup> Amnesty International interview with Zara, MC Manakara, 25 August 2017

<sup>156</sup> Amnesty International interview with Zara, MC Manakara, 25 August 2017

<sup>157</sup> Amnesty International interview with Zara, MC Manakara, 25 August 2017

<sup>158</sup> UNICEF, Madagascar, Education, <https://www.unicef.org/madagascar/eng/education.html>

<sup>159</sup> Amnesty International interview with Natalie, MC Antsirabe, 19 August 2017

## 3.4 DEEPENING THE CYCLE OF POVERTY

- “In Madagascar, prisons are built for those who have no money. That is the problem. If you are poor, you are in prison. If you are rich, no matter what you have done, you never stay more than one week in prison... If you go in there, you will see what kind of people are there. Almost all of them are barefoot. They don’t even have pants.”<sup>160</sup>
- 41-year-old man in pre-trial detention in the Ambositra prison, August 2017

In 2010, UNDP wrote that “the poor are more likely to come into conflict with the law, more likely to be confined pending trial, and less able to afford the ‘three Bs’ of pre-trial release: bribe, bail, or barrister”.<sup>161</sup>



*In the MC Manakara, a man, who has been in pre-trial detention for more than a year, looks through the door leading to the men’s quarter. September 2018 @ Amnesty International*

In March 2018, Amnesty International’s survey of nine prisons in Madagascar confirmed this observation. The majority of pre-trial detainees surveyed<sup>162</sup> were poor, from rural areas, lacked formal education and were under-informed of their rights. Out of the 1,911 pre-trial detainees who responded to Amnesty International’s survey, nearly half could not read or write, and had never been to school. Three quarters had never been to secondary school.

People with little education are less likely to understand and advocate for their rights. Securing pre-trial release depends not only on the nature of the charges, but also on being able to argue for that option, understanding the importance of hiring a lawyer and having the means to hire one. None of the pre-trial detainees interviewed had had access to legal aid. Pre-trial detainees are very unlikely to be granted alternatives to pre-trial detention, such as bail or temporary release.

Those without employment or property are also less likely to meet conditions for sureties: the law states that pre-trial detention can be justified when it is the only way to make sure, for example, that a suspect is

<sup>160</sup> Amnesty International interview, MC Ambositra, 20 August 2017

<sup>161</sup> UNDP, Open Society Justice Initiative, *The socioeconomic impact of pretrial detention*, 2010, Page 7

<sup>162</sup> In March 2018, Amnesty International sent a questionnaire with five basic questions to all nine prisons visited. Six prisons sent responses, highlighting the levels of education, literacy, legal awareness and access to legal aid of pre-trial detainees

available for trial.<sup>163</sup> If a suspect does not have a fixed property, he or she is more likely to be held in detention awaiting trial.

Not only do poor people unduly suffer pre-trial detention, they are also disproportionately impacted by it. Given the state's appalling failure to meet its duty of care for prisoners, they are the least equipped to deal with the experiences of detention. They are less likely than those with money to afford to buy food, clothes, mattresses and blankets within the prison, or receive them from outside, to improve their detention conditions.



*In MC Manakara, detainees' few personal belongings hang on the walls. The unhygienic and overcrowded facilities are conducive to the presence of bugs which bite detainees and end up being killed against the walls. September 2018 @ Amnesty International*

Pre-trial detainees, the majority of whom are aged between 20 and 40, are not only at risk of losing their employment at the time of detention, but also risk long-term unemployment after release because of social stigma, lost education and training opportunities.

While the Fianarantsoa prison was running a leather workshop where detainees could learn a new skill, in most of the prisons visited, work opportunities were extremely limited. In a few of the prisons visited, classes were provided once or several times a week for male detainees only who had been to school for less than one year. But for female detainees, or male detainees who had spent more than a year at school, there were no such provisions in the prisons visited.<sup>164</sup>

In August 2018, the prison administration reported: "At the moment, because of the lack of budget, it is private initiatives which implement training and education activities. Whether social rehabilitation activities take place depends on the presence of partners. If they exist, minors and women can take part in them, there are no restrictions."<sup>165</sup>

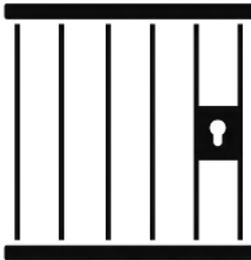
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<sup>163</sup> Article 333, CPP, amended by Law 2016-017, provides that pre-trial detention can only be used when it is demonstrated, with precise and detailed elements resulting from the proceedings, that it is the only way of achieving one or several of nine listed objectives, and that these objectives cannot be achieved with a placement under judicial control. Maintaining the suspect at the disposal of the justice is the first objective listed

<sup>164</sup> Amnesty International observations from prison visits, Madagascar, 16 to 29 August 2017

<sup>165</sup> Document E

## 3.5 MF TSIAFAHY: MAXIMUM SECURITY, MINIMUM RIGHTS



MF Tsiafahy is Madagascar's only functioning high-security prison.<sup>166</sup> According to the law,<sup>167</sup> this prison may hold only convicted detainees who have either been sentenced to life imprisonment or relegation, or who have been deemed dangerous.

MF Tsiafahy is very different from central prisons. Behind three stages of high security gates and walls, the atmosphere was much more tense than in other prisons. In the big courtyards, above the detainees' heads, a mesh roof serves as a floor for armed security guards, who walk up and down all day long, looking down for external and internal trouble.



*One of the rooms holding approximately 200 detainees including pre-trial detainees, Tsiafahy, August 2017 @ Amnesty International*

Contrary to the law, hundreds of men were held here in pre-trial detention, along with sentenced prisoners, in extremely overcrowded and life-threatening conditions. Four big cells were distributed around two courtyards, each holding approximately 420 detainees. Approximately 207 people slept in one cell built for no more than 70, with only one toilet/shower area. During Amnesty International's visit, the prison deputy director told Amnesty International that there is no permanent medical presence in the prison: a doctor comes on Wednesdays and Fridays only.<sup>168</sup> In August 2018 however, the prison administration reported that the MF Tsiafahy, along with the MC Antanimora, are the only prisons to be staffed with a full-time doctor.<sup>169</sup>

<sup>166</sup> According to Document C, there is another functional high-security prison, in Vohitany, but as of October 2017, it held only 2 prisoners. Decree no.2015-095 provides for three penitentiaries, but MF Andrangaranga is non-functional, according to Document C

<sup>167</sup> Decree 2006-015

<sup>168</sup> Amnesty International interview with MF Tsiafahy deputy director, 28 August 2017

<sup>169</sup> Document E

The prison administration reported that in 2017, three pre-trial detainees died during their detention in Tsiafahy, and 38 over the past ten years, of tuberculosis and strokes.<sup>170</sup>

In October 2017, the proportion of detainees awaiting trial had reached 57%.<sup>171</sup> This resulted in severe overcrowding: at the time, Tsiafahy accommodated 988 men, nearly three times its official capacity of 350.<sup>172</sup>

The authorities admit that MF Tsiafahy is not coping with the large number of pre-trial detainees.

■ **“The problem is that in Madagascar, we are victims of insecurity. Tsiafahy is the only place which is difficult to escape from, so that’s where prisoners are put. But the problem is that Tsiafahy is going to explode”.**<sup>173</sup>

This overcrowding in turn poses serious security risks and strains already limited human resources. The Deputy Director of the prison told Amnesty International that while 57 prison guards work in Tsiafahy, only 35 oversee security.<sup>174</sup> **“Considering the workload, it should be twice this number. When there is too much work, they [the prison guards] cannot take any days off, they need to wait”.**<sup>175</sup> The limited resources in such overcrowded conditions increase the risk of jailbreaks, violence and fights, and threaten the safe functioning of the prison.

Amnesty International noted that many pre-trial detainees were being held for non-violent and petty offences. As of July 2017 for example, at least a dozen men were held in pre-trial detention on charges of simple theft, fraud, and making counterfeit banknotes.<sup>176</sup>



**“Those on correctional charges should not be here. They don’t belong here. There are a lot of problems linked to the prisoners who are here for correctional cases: their experience here changes them,”** an experienced member of staff working in the prison told Amnesty International, adding that MF Tsiafahy was the hardest prison he had ever worked in: “The infrastructure is really bad, and yet the number of detainees keeps increasing. It’s a big security problem.”<sup>177</sup>

As there is no separation between pre-trial detainees and those who have already been sentenced, the most vulnerable individuals are particularly at risk of violence from the most dangerous convicts.

Amnesty International interviewed a former police officer who feared for his life. André\*, a 39-year-old husband and father of two young children, had been in pre-trial detention in Tsiafahy for more than a year on several charges, including criminal association, unauthorized possession of arms and armed assault. He was arrested with 11 others. His job put him at great risk of violence from other inmates.

Solitary confinement cell, Tsiafahy, August 2017 © Amnesty International

<sup>170</sup> Document E

<sup>171</sup> As per Document B, in October 2017, there were 418 sentenced prisoners, and 570 pre-trial detainees

<sup>172</sup> In Document E the prison administration reported that the official capacity of MF Tsiafahy is 350. In Document A which was shared by the prison administration a year earlier, as of 2016, the official capacity was described as 60

<sup>173</sup> Amnesty International interview with the President of the Antananarivo court, Anosy, 18 August 2017

<sup>174</sup> Amnesty International interview with MF Tsiafahy deputy director, 28 August 2017

<sup>175</sup> Amnesty International interview with MF Tsiafahy deputy director, 28 August 2017

<sup>176</sup> Analysis of Modèle 18, July 2017, MF Tsiafahy

<sup>177</sup> Amnesty International interview with prison staff, MF Tsiafahy, 28 August 2017

**“When I arrived here, they put me in Quarter 4. There were 70 of us there. I had a lot of problems there, because I am a policeman and they did not like me there. I was really scared at night, thinking they were going to attack me. I asked for [a room] change, but the other quarters are even worse – there were too many people. So I was put in the staff quarters. I still fear for my life though... they stab each other in this prison. There are a lot of accidents, and people keep going to the infirmary... I want to be transferred to the Antanimora prison – it is closer for my wife to bring food there. But only the judge can approve that decision.”<sup>178</sup>**

## **SOLITARY CONFINEMENT**

Prison staff informed Amnesty International that at the time of the visit, six prisoners, including one in pre-trial detention, were kept in five confinement cells as punishment<sup>179</sup> with one of the cells containing two prisoners.<sup>180</sup> Under the Nelson Mandela Rules “prolonged solitary confinement” - that is, beyond 15 days - is prohibited at all times. Prison documents examined by Amnesty International indicate that prolonged solitary confinement – longer than 15 days – is still practiced in Madagascar.<sup>181</sup> On the issue, the Tsiafahy prison Director told Amnesty International researchers: “We do use it [solitary confinement], but we try not to use it for too long.”<sup>182</sup>

Of the four pre-trial detainees interviewed by Amnesty International in August 2017 in MF Tsiafahy, only one could afford to pay for a lawyer; the other three had never seen one.

Amnesty International has called for an immediate end to the transfer of new pre-trial detainees to the Tsiafahy prison, and for the progressive transfer of pre-trial detainees already present to other prisons where the living conditions are relatively more humane.<sup>183</sup>



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<sup>178</sup> Amnesty International interview with André, MF Tsiafahy, 28 August 2017

<sup>179</sup> Decree 2006-015 provides two degrees of disciplinary faults. The first, which is the highest degree in terms of gravity, includes acts of physical violence against a prison staff member, and can lead to a disciplinary sanction of up to 30 days of solitary confinement. The second degree, which includes insults or threats committed towards a prison staff, is punishable by a sanction of up to 15 days in solitary confinement

<sup>180</sup> Amnesty International interview with prison staff, MF Tsiafahy, 29 August 2017

<sup>181</sup> Amnesty International noted in the *Modèle 18* documents of various prisons that detainees were held in solitary confinement

<sup>182</sup> Telephone interview with MF Tsiafahy deputy director, 27 July 2018

<sup>183</sup> Amnesty International, Madagascar : *Detainees and prisoners in Tsiafahy prison are living in an overcrowded 'hell'*, 12 February 2018, <https://www.amnesty.org/fr/documents/afr35/7879/2018/en/>

# 4. CONDITIONS OF DETENTION



- **“Inside, the detainees are unhappy. They don’t sleep well, some have to stay up because they don’t have room, so they take turns to lie down. In room six, there are currently 133 detainees – nearly the capacity of this whole prison”.<sup>184</sup>**

Amnesty International’s visits to the nine prisons revealed the appalling conditions in which pre-trial detainees are being held. Dark and filthy, most cells are extremely overcrowded, without much air or light, posing serious risks to the detainees’ physical and mental well-being.

None of the prisons visited had any separation between pre-trial and sentenced prisoners, with three not even appropriately separating the adults from children.

The researchers observed poor sanitation, absence of healthcare, lack of adequate food, educational or vocational opportunities, and limited access to families across all prisons visited.

The impact of spending several months, sometimes years, in such debilitating conditions was evident in the deteriorating physical and psychological health of many pre-trial detainees.

## FLORENT\*



←  MC Maintirano August 2017 © Amnesty International

A visibly malnourished Florent\* kept apologizing for his noticeably torn and dirty clothes.

**“I just have these clothes. I get cold at night. Water doesn’t work sometimes, so we can’t shower or wash our clothes. My clothes are dirty, my body is dirty.”**

Accused of stealing a zebu, Florent has spent three years and seven months in pre-trial detention. He had not seen his two sons since his detention. He said:

**“42 of us sleep in the same room but there is no room to sleep, I sleep on the floor. A lot of people get sick. Some cough, some shiver, some get very cold. And people fight about food because there isn’t enough... I really want a trial because I really suffer here.”<sup>185</sup>**

<sup>184</sup> Amnesty International interview with Regional Director overseeing MC Manakara, 25 August 2017

<sup>185</sup> Amnesty International interview with Florent, MC Maintirano, 27 August 2017

Conditions for pre-trial detainees in Madagascar are inhumane, violate detainees' human rights and pose serious threats to their lives. The prison administration told Amnesty International that in 2017, 129 detainees died, 52 of them pre-trial detainees. The main causes of death were respiratory problems, cardiovascular diseases, and what they describe as a generally bad state [of health].<sup>186</sup>

## 4.1 OVERCROWDING

- **“In the big rooms, we sleep on the side, and everyone touches each other, it’s unbearable. Hundreds of us are together. We sleep only one to two hours per night, it’s really bad... In November and December, it’s deadly, there’s no air. Once, I even collapsed and people had to take me out of there.”**<sup>187</sup>

49-year-old Jean\* has spent over a year living in a cramped cell of MF Tsiafahy maximum security prison, awaiting trial on charges of kidnapping and criminal association, along with 11 other people. Describing the congestion and harsh conditions inside prison, Jean elaborated:

**“It’s like a concentration camp here. We need more air”.**

The four cells in Tsiafahy are 12m long, 5m wide and 5m high.<sup>188</sup> International standards provide that the minimum space available per prisoner should be 3.4m<sup>2</sup> per person in shared or dormitory accommodation.<sup>189</sup> But prisoners in Tsiafahy have nearly three times less room than prescribed.

All the prisons Amnesty International visited were holding detainees in excess of their official capacity. In August 2017, 638 people were detained in Antsirabe prison, which had an official capacity of 210, while the Manakara prison in the south-eastern region held 546 detainees – nearly four times its official capacity of 150.<sup>190</sup>



*In MC Manakara, male detainees, the overwhelming majority of whom are in pre-trial detention, have to take turns at night to lie down. September 2018 @ Amnesty International*

<sup>186</sup> Document E

<sup>187</sup> Amnesty International interview with Jean in MF Tsiafahy prison, on 28 August 2017

<sup>188</sup> Amnesty International interview with MF Tsiafahy deputy director, 29 August 2017

<sup>189</sup> See for instance ICRC, Water Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance (2012), pp. 32-4

<sup>190</sup> Amnesty International interview with Regional Director overseeing MC Manakara, 25 August 2017



*In MC Ambositra, male detainees hardly have enough room to sleep. As in the other prisons, pre-trial and sentenced detainees are kept in the same cells. August 2017  
© Amnesty International*

The total capacity of Madagascar's prisons is 10,360, which is almost equal to the number of pre-trial detainees in the country (11,703).<sup>191</sup>



Haja\*, 43 years old, had been in Ambositra prison accused of cattle theft for only four months, but he had quickly learnt the art of survival.<sup>192</sup>

**“Normally a room has 90 prisoners. But, if you pay, you can go in a room with only 18 people... The price, it depends on the detainee. It can vary between 40,000 ariary (approximately USD12) and 200,000 ariary (USD62).”**

Although kept in similarly harsh conditions, with no consideration for their specific needs,<sup>193</sup> women detainees in most prisons were in a relatively better situation compared to men. But the overcrowding was still bad: for instance, in Fianarantsoa prison 58 women slept together in one room, built for 20.<sup>194</sup>

Madagascar has struggled with high rates of overcrowding for decades. As early as 1991, the government informed the HRC that it was “facing a serious problem of prison overcrowding since virtually no prisons had been built since independence”.<sup>195</sup> In 2009, it reported to the UN Committee on Economic, Social and

<sup>191</sup> Document B

<sup>192</sup> Amnesty International interview with Haja, MC Ambositra, August 2017

<sup>193</sup> The Bangkok Rules provide for the need to take into consideration the specific needs and realities of women as prisoners, including their hygiene, gender-specific health, and family needs, and makes specific provisions for pregnant women, or women imprisoned with their children

<sup>194</sup> Interviews in MC Fianarantsoa, 21 August 2017

<sup>195</sup> Concluding observations of the HRC: Madagascar, UN Doc. A/46/40 (1991), para. 543, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f46%2f40&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f46%2f40&Lang=en)

Cultural Rights that the situation was improving.<sup>196</sup> In 2017, it reported to the HRC that it was building new prisons to solve the problem of overcrowding.<sup>197</sup>

However, Amnesty International's research found little evidence of this on the ground. The only new prison construction that the researchers came across was one that was being built to replace the derelict Maintirano prison in the Western Melaky region. But six years after the work started, it is yet to be in use.

As a result, existing prisons in Madagascar are severely congested, with some prison cells holding up eight to ten times their capacity.<sup>198</sup>



*In MC Manakara, hundreds of men sleep in the same cell. September 2018 @ Amnesty International*

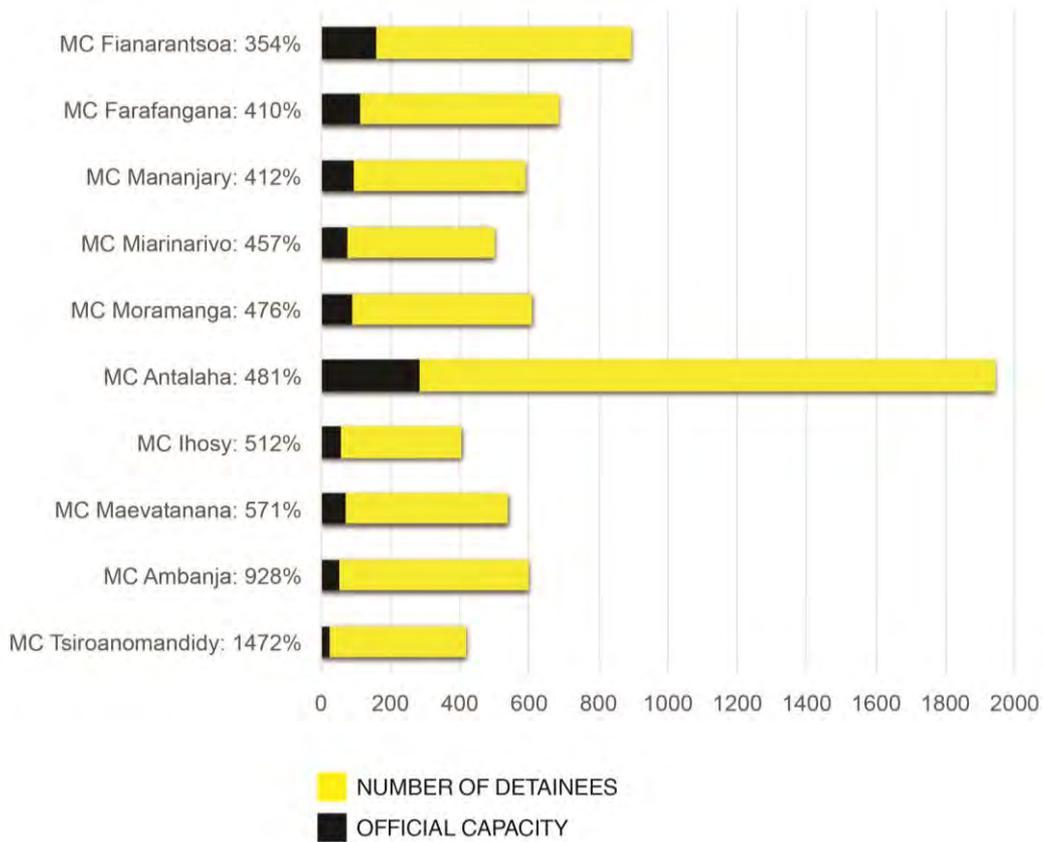


<sup>196</sup> Committee on Economic, Social and Cultural Rights, Second period report of Madagascar (continued), E/C.12/2009/SR.40, Paragraph 60 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2f2009%2fSR.40&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2f2009%2fSR.40&Lang=en)

<sup>197</sup> UN, HRC, 120eme session, Compte rendu analytique de la 3385eme séance, Quatrième rapport périodique de Madagascar (suite), Para. 33

<sup>198</sup> In MC Manakara, one of the rooms was built for 10 prisoners but held up to 80 detainees

**FIGURE 7: OVERCROWDING RATE IN THE 10 MOST OVERCROWDED PRISONS<sup>199</sup>**



Overcrowding also adds to the burden on prison officials who have to manage the security and movement of detainees. Illustrating this point, the Regional Director of Vatovavy Fitovinany narrated a recent incident from MC Ikongo, located in a remote part of the south-east of the country.<sup>200</sup> In December 2017, the prison was invaded by hundreds of villagers looking for 10 detainees suspected of murder. The prison staff was unable to fight back or control the chaos, and hundreds of detainees escaped from the prison.

The number of prison staff and resources at the disposal of regional directors are neither proportionate to the existing prison population nor equipped to cope with an increase. This poses serious security risks and generally undermines the functioning and efficiency of the criminal justice system.

<sup>199</sup> As per Document B

<sup>200</sup> Amnesty International interview with Regional Director of Vatovavy Fitovinany overseeing Manakara prison, 25 August 2017



*In some prisons, such as MC Antsirabe, detainees sleep on wooden bunks. Because of the severe overcrowding, some sleep on the concrete floor, some on the first floor, and others at the top, with hardly enough space to move. September 2018 @ Amnesty International*

## DISCREPANCIES IN OFFICIAL STATISTICS



Amnesty International found inconsistencies between various official statistics provided on the total capacity of prisons in Madagascar. For example, the document provided by the central prison Administration [Document A] indicates that the Antanimora central prison's official capacity is 110, but other official documents show its capacity as 800.<sup>201</sup> If the total capacity is 110, the Antanimora prison holds 31 times more people than its intended capacity. If it is 800, it holds four times more.

Another example is in the stated capacity of MF Tsiafahy: Document A puts it at 60, but prison officials in Tsiafahy gave different figures to Amnesty international. In August 2018, the prison administration clarified the current situation by explaining that the capacity of Antanimora is 1,000, and the capacity of Tsiafahy is 350. They further added: "The official capacity of prisons in Madagascar is being revised because of the advanced state of dilapidation of the infrastructure",<sup>202</sup> thus implying that it could be less than the stated total of 10,360.

Similarly, Document A provided that MC Ankazobe can hold up to 1,760 detainees, but the prison administration responded in August 2018 that this was a mistake, as the capacity is actually 150.<sup>203</sup> This implies that the announced official total capacity of 10,360, which includes the 1,760 figure, is erroneous.

Even if the total official capacity is 10,360,<sup>204</sup> Madagascar's prisons hold more than twice the number of people for whom they were originally built. As of October 2017, there were 20,975 prisoners throughout the country. While on paper, the overcrowding rate is 102%,<sup>205</sup> the real rate is significantly higher, as the government calculation takes into account the capacity of prisons which, according to their own records, are no longer functional.<sup>206</sup> For instance, the government's figure of 10,360 includes

<sup>201</sup> *Journée mondiale de la santé mentale : 'détention et santé mentale'*, Webpage of the General Directorate for the Financial management of state agents, <http://www.dggfpe.mg/index.php/2016/10/10/journee-mondiale-de-sante-mentale-detention-sante-mentale/>

<sup>202</sup> Document E

<sup>203</sup> Document E

<sup>204</sup> Document B

<sup>205</sup> Amnesty International analysis of Documents A and B

<sup>206</sup> Document D

the capacity of five detention centres (MS) which they claim are not functional in practice.<sup>207</sup> In central prisons, where 90% of the country's prisoners are held, the actual overcrowding rates are closer to 140%: the 38 central prisons have an official capacity of 7,962, but held 18,919 prisoners as of October 2017.<sup>208</sup>

Having precise and up-to-date information on each prison is critical for the government to accurately evaluate the needs and problems and address them effectively.

## 4.2 SEPARATION OF PRISONERS

International, regional, and national laws and standards are clear regarding the separation of categories of prisoners. For instance, Rule 11 of the Nelson Mandela Rules states: "The different categories of prisoners shall be kept in separate institutions, or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention, and the necessities of their treatment." The Rule goes on to provide that women must be housed separately from men, children kept separate from adults, and untried persons segregated from convicted persons - and be subject to separate treatment appropriate to their status as persons deprived of their liberty but not yet tried.<sup>209</sup>

In practice however, the only separation that takes place in Madagascar's prisons is between women and men. There is no separation between pre-trial detainees and convicted persons, and separation between juvenile and adults is only provided in some of the prisons.<sup>210</sup>

### 4.2.1 FAILURE TO SEPARATE PRE-TRIAL DETAINEES AND CONVICTED PRISONERS

**"Because of the lack of budget and the overcrowding, the prison administration is not able to provide separate spaces for pre-trial and sentenced detainees."<sup>211</sup>**

None of the prisons visited respected Madagascar's own laws providing that pre-trial detainees undergo their pre-trial detention in a separate prison, or at least in separate quarters from convicted individuals.<sup>212</sup> Pre-trial detainees, including men, women, girls and boys shared the same courtyards and rooms as convicted prisoners, and individuals suspected of petty offences were kept with convicted murderers, posing potential risks to the most vulnerable detainees.<sup>213</sup>

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<sup>207</sup> MS Marolambo, MS Sainte Marie, MS Soanierana, MS Bezaha, MS Faratsiho.

<sup>208</sup> Document B

<sup>209</sup> ICCPR, Article 10(2)

<sup>210</sup> Amnesty International visits to prisons, Madagascar, 16 August to 29 August 2017

<sup>211</sup> Document E

<sup>212</sup> CPP, Article 550

<sup>213</sup> In 2015, the government reported to the HRC that "remand prisoners and convicted prisoners were originally detained separately, but owing to the shortage of space resulting from prison overcrowding, they are now housed in the same quarters"



*In Farafangana, those awaiting trial are raising their hands. Like the rest of the country, pre-trial and sentenced detainees are held together without separation. August 2017 @ Amnesty International*

Amnesty International interviewed Fernand ‘Cello’, a 31-year-old investigative journalist who was awaiting trial at MC Ihozy for non-violent offences, including stealing a check book and forgery.<sup>214</sup> He told researchers that he feared for his personal safety as he had had to share a room for three months with individuals who had been found guilty of serious and violent offences, including a prisoner who had been convicted following an investigation conducted by ‘Cello’ himself.<sup>215</sup> Researchers came across several such cases where no provisions were made to protect people whose jobs put them at specific risks during detention.

The Regional Director of the Manakara central prison appeared to have made some efforts by dedicating two out of the six cells of the male quarter to pre-trial detainees, holding over 200 individuals rather than their actual capacity of 60.<sup>216</sup> Still, he admitted that it wasn’t foolproof, as some pre-trial detainees slept in other cells too.

## 4.2.2 FAILURE TO SEPARATE CHILDREN AND ADULTS

International and national laws provide that all children in conflict with the law, and deprived of liberty, must be held separately from adults at all times, unless, exceptionally, this is counter to the child’s best interest.<sup>217</sup> The rationale is clear: “the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate.”<sup>218</sup>

<sup>214</sup> He was released from prison on 26 September 2017, after being handed a 2-year suspended sentence, which he has appealed

<sup>215</sup> Amnesty International interview with Fernand Cello, MC Ihozy, 22 August 2017

<sup>216</sup> Amnesty International interview with Regional Director overseeing MC Manakara, 25 August 2017

<sup>217</sup> Law 2016-018, Article 7; ICCPR, Article 10(2)(b) and (3); CRC, Article 37(c), African Charter on the Rights of the Child, Article 17(2)(b); African Youth Charter, Article 18(2)(b) and (c); Robben Island Guidelines, Article 36; Principles on Fair Trial in Africa, Section O(k) and (l)(viii)

<sup>218</sup> The UN Convention on the Rights of the Child and the ICCPR provide for the rights of children, including those in detention. They include the right not to be held together with adults, the rights to education, adequate health care, and to be treated with humanity and respect for the inherent dignity of the human person, in a manner which takes into account the needs of persons of his or her age. See also the CRC General Comment 10, para. 85; See also CPT 9th General Report on the CPT’s activities, CPT/Inf (99) 12, para. 25



*In MC Ihoay, minors as young as 13 spent their days held in the same courtyards as adults, August 2017 © Amnesty International*

Amnesty International visited MC Maintirano, a prison that did not provide any separation between children and adults, either during the day or night, with children as young as 13 being held with adult men.<sup>219</sup>

- In August 2018, the prison administration reported to Amnesty International that only 24 out of 42 central prisons have a quarter for minors, and that as of August 2018, 131 minors were held with adults. **“The budget allocated to the prison administration is not sufficient to build the separation infrastructure. But the overcrowding also [is responsible].”**<sup>220</sup>

Throughout the country, even in prisons that followed such separation, it was only boys who were kept separate from men. The principle of separating girls from adult women has been systematically violated: none of the prisons visited had separate cells or quarters for girls. Even in the prison newly built in 2016,<sup>221</sup> or the one under construction in Maintirano, separation between girls and adult women is not planned.<sup>222</sup>

It is not necessary to wait for new prisons to be built to provide separate quarters for different categories of prisoners. Several prisons visited by Amnesty International had disused rooms, which could easily be made usable with a bit of cleaning and minor repairs. Where there are no additional rooms available, the prison administration could still allocate specific rooms to pre-trial detainees, and to children, exclusively, so that they are at least separated from sentenced prisoners and adults respectively.

<sup>219</sup> Amnesty International interview with Regional Director overseeing MC Maintirano, 27 August 2017

<sup>220</sup> Email response from the penitentiary administration to Amnesty International’s request for additional information, 16 August 2018

<sup>221</sup> In 2017, the government reported that a new prison was built in 2016, providing three quarters: for men, women, and minors. The report however does not provide where the prison is located. UN, Comité des droits de l’homme, 120ème session, *Liste de points concernant le quatrième rapport périodique de Madagascar*, Additif, Réponse de Madagascar à la liste de points, Para. 100

<sup>222</sup> Amnesty International interview with Regional Director overseeing MC Maintirano, 27 August 2017

## 4.3 DILAPIDATED INFRASTRUCTURE

- **“The prisons were built during colonization... there’s been no renovations since. It’s just not a priority for the government.”<sup>223</sup>**

Built in the 20<sup>th</sup> century, and often located in the heart of the cities, next to busy avenues and market places, the Malagasy prisons are relics of the country’s French colonial past. Despite being several decades old, none of the prisons visited by Amnesty International appeared to have undergone any renovation. The buildings wore an abandoned look and several of them were on the verge of crumbling, posing a threat to the safety and security of both inmates and visitors.

In July 2017, a month before Amnesty International’s site visits, an internal wall of the Antsohihy prison in the northern Sofia region collapsed, killing four prisoners and injuring several more. Built around 1956, the prison’s infrastructure was too weak to withstand strong winds, and the building gave way.<sup>224</sup>

The internal facilities are no better. The rooms were often dimly lit, with very few windows, and offered poor ventilation at night.



Left: Minors’ room out of use in MC Farafangana, August 2017 © Amnesty International

Right: Infirmary out of use because of advanced stage of dilapidation, MC Maintirano, August 2017 © Amnesty International

- **“When we sleep it hurts, because we lie on the ground. I don’t have anything to cover myself when it gets cold”<sup>225</sup>** said 16-year-old Ivoko\*, held in pre-trial detention in the Farafangana central prison

In facilities at two prisons visited – for women in the Antanimora prison, and for women and boys in the Fianarantsoa prison – the detainees slept on proper mattresses provided by NGOs and religious organisations. But in most other prisons visited, detainees including children, slept on broken and dirty concrete or wooden planks. Due to lack of space, some slept directly on the cold floor, using thin mats or blankets if they had them, or simply on their backs.

In Ihosy prison, six boys held pending trial stayed in a very dark room with dirty walls, with a tiny window that hardly let in any daylight, and without mattresses or mats to sleep on. Prison staff interviewed complained

<sup>223</sup> Amnesty International interview with Regional Director of Analamanga, 18 August 2017

<sup>224</sup> La Vérité, *Prison d’Antsohihy – 4 morts et 10 blessés graves*, 9 July 2017, <http://laverite.mg/societe/item/4070-prison-d%E2%80%99antsohihy-4-morts-et-10-bless%C3%A9s-graves-dans-l%E2%80%99effondrement-d%E2%80%99un-mur.html>

<sup>225</sup> Amnesty International interview with Ivoko, MC Farafangana, 24 August 2017

that the lack of material resources, ranging from basic stationery to office furniture, beds to ambulances made the everyday running of the prisons particularly difficult.

In 2012, the government announced that prisons had been provided with computer equipment, furniture and transportation materials.<sup>226</sup> But Amnesty International's visits to prisons across the country exposed how critically ill-equipped most prisons were to this day, with lack of institutional support and scarce resources having an adverse impact on the morale and motivations of both the prisoners and the prison staff.



For instance, the registry office in Antanimora central prison has 20 registration officers overseeing more than 3,000 detainees' case files and movements. But there are only a handful of desks, two benches and a couple of chairs for them to use.

*Registry room in MC Antanimora, August 2017 @ Amnesty International*

- **“Here, we lack computers, chairs, desks, and even windows. As you can see, it’s cold and damp. We don’t have enough space to work... Normally, it’s up to the government to buy us uniforms, but right now, it’s up to us to buy them”** said the Prison Director.<sup>227</sup>

Acute shortage of vehicles for prisoner transport was another problem that was consistently raised. Two thirds of the prisons visited did not have a single functioning vehicle.<sup>228</sup> In the three prisons that did have cars or vans, the number was clearly insufficient,<sup>229</sup> and were often in such poor condition that they were at risk of breaking down at any time.<sup>230</sup>

In the country’s most populated central prison, Antanimora, there were only two functioning vans, serving a total of 3,473 detainees.<sup>231</sup> These too were provided only after a staff protest:

- **“In April 2016, we stopped taking prisoners to court, and we refused to accept new prisoners in the prison. The government finally gave us a new van, and repaired one of the two broken ones, so we now have two vehicles that can accommodate 50 detainees in total... But one of the big problems is that we don’t have an ambulance. In cases of medical evacuation, we sometimes take taxis. When the family can’t pay, it’s us who has to pay the taxi driver.”**<sup>232</sup>

The government’s failure to address such dire detention conditions violates the general obligation of Madagascar under Article 10 of the ICCPR to treat all persons deprived of liberty “with humanity and with respect for the inherent dignity of the human person”.<sup>233</sup> These conditions also violate Madagascar’s own laws. Decree 2006-015 states that detention must take place in satisfying hygiene conditions, providing sufficient air, lightening and ventilation.<sup>234</sup>

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<sup>226</sup> Response of the government of the republic of Madagascar, to note cu 2011/26 and note CU 2012/157/DO/JS, Open-ended intergovernmental group of experts on the Nelson Mandela Rules, UNDOC/CCPCJ/EG.6/2012/Gov.38 [https://www.unodc.org/documents/justice-and-prison-reform/Reply\\_Governments\\_Madagascar\\_merged.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Reply_Governments_Madagascar_merged.pdf)

<sup>227</sup> Amnesty International interview with the Director of the MC Antanimora, August 2017. Decree 2006-015, Article 14, states that prison agents are indeed required to wear uniforms

<sup>228</sup> This was the case for the Antsirabe, Farafangana, Ambositra, Ihosy, Manakara, and Maintirano prisons

<sup>229</sup> Fianarantsoa had one, and Antanimora and Tsiafahy had two

<sup>230</sup> In Fianarantsoa, the prison Director said the cars dated back to the Ravalomanana era. (2002-2009)

<sup>231</sup> Document B

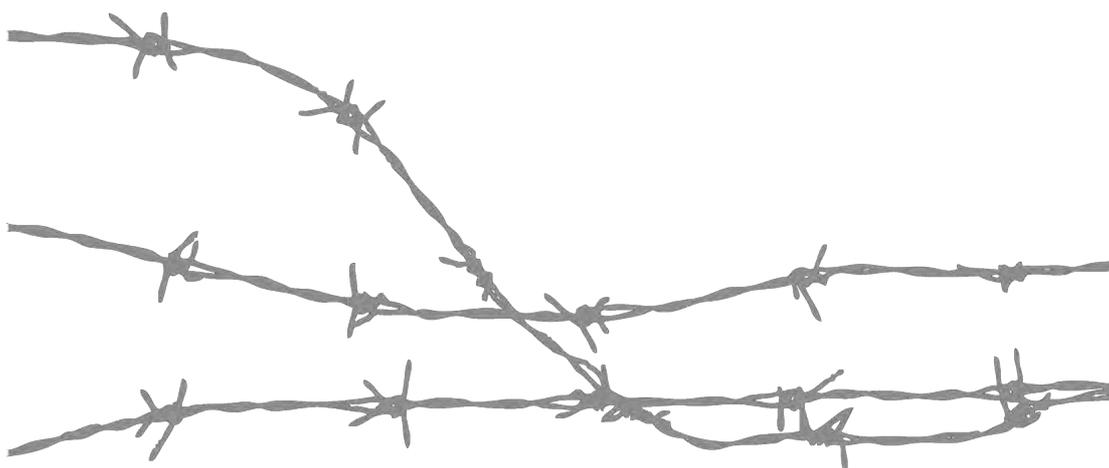
<sup>232</sup> Amnesty International interview with a prison official in MC Antanimora, 18 August 2017

<sup>233</sup> It also violates Rule 10 of the UN Standard Minimum Rules for Non-custodial Measures: “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”

<sup>234</sup> It also states that the windows must be big enough to enable fresh air to enter the room, and that sanitary installations must be clean, and that their number must be proportionate to the number of detainees



*A detainee cleans the courtyard in MC Antsirabe, September 2018 © Amnesty International*



## MAINTIRANO: A STRIKING EXAMPLE OF ABANDONMENT



**“There is always water on the ground here. It never dries, even during the dry season. When it’s the rainy season, it’s even worse. We have a lot of health problems, mainly skin diseases. During the rainy season, prisoners can’t sleep because of the water in their rooms. It lasts for three months every year.”<sup>235</sup>**

Of the nine prisons visited, MC Maintirano, located in the western Melaky region, had the worst infrastructure and conditions. It is located a very poor and difficult-to-access area, surrounded by ‘red zones’, where cattle banditry thrives. When Amnesty International visited, the prison was in a shocking state of decay. The Regional Director explained that it had been built on a riverbed, which made the living conditions there nearly unbearable. He said the prison had never been visited by any NGOs or prison officials.

When Amnesty International visited, there were 337 detainees, for an official capacity of 100. Among them, 226 were awaiting trial, and 111 had been convicted. With three quarters and six rooms in total, the lack of space meant that more than 40 detainees slept in the same room, built for less than half that number. There was no separation between adults and children, convicted prisoners and pre-trial detainees.



*One of the cells shared by more than 40 detainees in MC Maintirano. Mold is visible on the walls and the wooden planks are rotting. August 2017 @ Amnesty International*

Inside the prison walls, smells of excrement and mold filled the air. In the yard concrete floor slabs were missing, leaving the filth inside the septic tank in plain view. On the consequences of such unsanitary living conditions on detainees’ health, the Regional Director reported:

- **“Three prisoners are currently in the hospital for skin problems and diarrhoea, and many others suffer from scabies.”<sup>236</sup>**

The living conditions for female detainees were worse than the men’s. They lived in a makeshift quarter in the adjoining shop. Conditions in that place were so shocking that the Regional Director warned the Amnesty International team before leading them inside.

At the entrance of the corridor leading to the cells, a stream of excrement was flowing out from the men’s section. Tree trunks had been placed over the brown puddles to serve as a bridge.

To access their cells, female detainees have to cross this makeshift bridge over a stream of human excrement that flows from the men's quarter. August 2017 @ Amnesty International



This led to a long corridor full of gigantic spider webs, and dark and filthy rooms. There were no showers or toilets inside. The cells had tiny windows, and no electricity. On the floor of one of the three rooms lay a clean mat, on which one of the detained women slept.

The three women held there, all awaiting trial, were in great psychological distress. One of them had already spent nine months in these conditions, on charges of being an accomplice to murder. The two others, who had been there for one and two months respectively, were accused of theft with violence, and breach of trust. None of them had heard of a lawyer.



**“I can’t bear being inside. It’s so dirty. The wait for the trial makes me sick,” said 54-year-old Josie. A mother of 10 children, she complained about the lack of light, the filth, and the stultifying boredom: “We just pray that it will stop soon. I get dizzy, it hurts here [indicates her head]... At home, it’s very different. We have lots to do, we are independent and we do what we want. Here, we just follow orders. We just sit”.**<sup>237</sup>

The three women held in MC Maintirano spent as much time as allowed outside of their filthy quarter. August 2017 @ Amnesty International

Just 400m away from this decrepit building, a new prison has been standing empty since it was built in 2012. Detainees from the Maintirano prison were supposed to be transferred there years ago, but the prison could not be occupied because one supporting wall, paramount to the functioning of the prison,

<sup>235</sup> Amnesty International interview with Regional director overseeing MC Maintirano, 27 August 2017

<sup>236</sup> Amnesty International interview with Regional director overseeing MC Maintirano, 27 August 2017

<sup>237</sup> Amnesty International interview with Josie, MC Maintirano, 27 August 2017

had not yet been built. With an official capacity of 250, twice the old one, the new prison would be able to provide better living conditions for detainees, including separation between boys and men. But despite constant efforts and reminders from the Regional Director to the Ministry of Justice, the wall was not built until the end of 2017. As of the end of August 2018, the detainees had not been moved to the new prison because they were still waiting for the water and electricity to be available.<sup>238</sup>

In the meantime, standing exposed to the elements for the last six years, the new prison has already started dilapidating.

## 4.4 HEALTH AND SANITATION

Pre-trial detainees, many of whom were in visibly poor health, told Amnesty International that they did not receive timely or appropriate medical care. This is particularly concerning given the conditions they were forced to live in. Medical facilities in prisons visited were limited at best and negligible at worst. Prisoners rarely underwent any health checks when they arrived.

Most of the prisons visited had an infirmary in a separate room which was generally cleaner and more hygienic than the detainees' cells. However, nurses, doctors, medicines and basic medical facilities were in short supply. In August 2018, the prison administration explained that there were 64 nurses in total – to provide for 82 prisons and more than 20,000 detainees countrywide.<sup>239</sup> They also reported that out of the 82 prisons, 45 had an infirmary, but that these infirmaries were not fully equipped. Only two prisons throughout Madagascar have full-time doctors on site: MF Tsiafahy, and MC Antanimora (which currently holds more than 3,000 detainees). For the others, a doctor comes once to three times a week, or “only if a detainee has a serious condition”.<sup>240</sup>

In Ambositra prison, Amnesty International interviewed Riko\*, a pre-trial detainee accused of theft of cattle and money. Showing his injured finger wrapped in a bandage, he told researchers that the police officer who arrested him had axed his finger during interrogation.



■ **“Here, they give me injections for my finger. But I feel very weak. The medicine I’m receiving doesn’t work, I faint... three times already. The doctor says he does not have anything else, apart from the injection and the red pill”.**<sup>241</sup>

*Riko shows his injury which he alleges came from a police interrogation. MC Ambositra, August 2017 @ Amnesty International*

Madagascar’s laws provide that detention facilities must be clean and respect the standards of hygiene, minimum air space, lighting and aeration. International standards similarly provide for prisoners’ right to enjoy the highest attainable standard of mental and physical health.<sup>242</sup> The Nelson Mandela Rules detail

<sup>238</sup> Telephone call with Regional Director for Melaky, 31 August 2018

<sup>239</sup> Document E

<sup>240</sup> Document E

<sup>241</sup> Amnesty International interview with Riko, MC Ambositra, 20 August 2017

<sup>242</sup> Under international law and standards, all prisoners have the right to enjoy the highest attainable standard of physical and mental health. ICESCR, Article 12. See also UDHR, Article 25

how this right must be protected in practice.<sup>243</sup> Yet the picture on the ground is a far cry from these standards.

Prisons visited were not well ventilated and detainees complained about cells and dormitories being filthy, infested with rats and extremely hot, especially during summer - conditions which can foster the transmission of diseases. According to the International Committee of the Red Cross (ICRC), tuberculosis is one of the primary causes of death for inmates in Madagascar.<sup>244</sup>

Lack of appropriate healthcare was a concern in all prisons visited by Amnesty International.



*In MC Antsirabe, a man suffering from tuberculosis lies under a blanket in the prison's infirmary, which lacks adequate medical staff and supplies. September 2018 @ Amnesty International*

<sup>243</sup> See in particular Nelson Mandela Rules, Rules 24-35.

<sup>244</sup> CICR, *Bulletin du CICR*, Avril 2017

## LACK OF SANITATION

Across most prisons visited, Amnesty International researchers observed mold on the walls in the rooms where detainees slept. Several prison directors complained of dilapidated roofs which let the rain in. Most detainees did their best to keep their sleeping areas clean. But in the courtyards where detainees spent their days, puddles of mud, stagnant water and in a few cases, excrement, posed health risks for the inmates in several prisons visited.



*Ceiling covered with mold and spider webs in MC Maintirano's women quarters, August 2017 @ Amnesty*



*Puddles of stagnant water in Ihosy central prison, August 2017 @ Amnesty International*

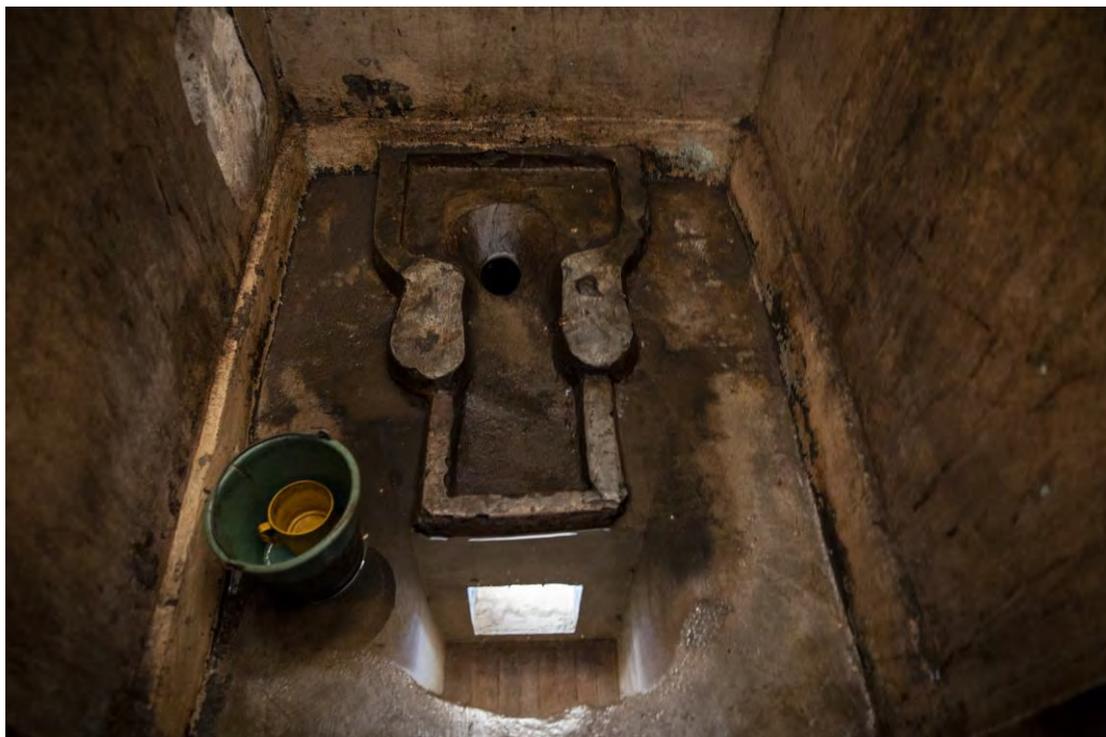
Toilets and bathrooms were in appalling condition and were too few to adequately serve the number of detainees.<sup>245</sup> Most cells did not have toilets or showers, and prisoners had to use plastic buckets as toilets during the night within their overcrowded cells, contributing further to the unhygienic conditions. In MF Tsiarahy, one toilet would serve as many as 200 detainees; the ICRC guidelines on prison infrastructure set a minimum specification of one toilet for every 25 detainees.<sup>246</sup> In the Fianarantsoa prison's male quarters, one toilet in each room served an average of 150 detainees per room.<sup>247</sup> Lack of regular maintenance throughout the prison system meant that toilets were regularly clogged, with human waste visible in and around the toilet facilities. Access to running water and electricity was also scarce in many prisons.

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<sup>245</sup> This violates Article 15 of the UN Minimum Standards on the Treatment of Prisoners which states that sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner; and Article 16, which states that adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower

<sup>246</sup> See ICRC, *Water Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012), pp. 52-3

<sup>247</sup> Prison visit to MC Fianarantsoa, 21 August 2017



*In MC Manakara, toilets serving hundreds of detainees inside the cells do not have running water. Because of the overcrowding, some detainees sleep less than a meter away. September 2018 @ Amnesty International*

## 4.5 LACK OF ADEQUATE FOOD

**“We need at least three times more budget. The priority is food: we can’t satisfy the needs [of detainees] anymore. Prisoners should get 750 grammes [of food] per day, but they only get 500.”<sup>248</sup>**

Like most of his colleagues, the Regional Director for Manakara is aware that the prisoners’ access to food is alarmingly deficient: both in quantity and in nutritional value. Dry cassava (or manioc) is the main food served in prisons. The Regional Director of Fianarantsoa prison explained:

**“We have serious problems with food. Dry cassava is the main food for detainees, but it’s not enough. It causes diseases and malnutrition”.**<sup>249</sup>

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<sup>248</sup> Amnesty International interview with the Regional Director overseeing the Manakara prison, 25 August 2017

<sup>249</sup> Amnesty International interview with the Regional Director overseeing MC Fianarantsoa, 21 August 2017



... MC Manakara, a detainee shows the ration of cassava received daily. Detainees complained about the meagre quantities and that the food they receive sometimes contains worms. September 2018 @ Amnesty International

Indeed, Amnesty International researchers observed that most of the detainees appeared underweight, with many male detainees complaining of weight-loss and weakness.

In 2011, the government of Madagascar declared it had achieved its goal of reducing the number of inmates suffering from malnutrition in Malagasy prisons to less than 4%.<sup>250</sup> However, malnutrition remains a critical threat to prisoners' lives. According to the ICRC,<sup>251</sup> almost one in every two prisoners in Madagascar suffers from moderate or severe malnutrition.<sup>252</sup> In 2015, the organization documented 27 deaths in the country's prisons due to malnutrition.<sup>253</sup>

Madagascar's national law states that detained persons must receive a varied diet, well prepared and corresponding to the standards of hygiene and dietetics. It also states that at least two meals must be distributed by the prison each day.<sup>254</sup>

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<sup>250</sup> CAT, Forty-seventh session, Initial period report of Madagascar (continued), 2012, CAT/C/SR.1037 GE.11-46906, Paragraph 34, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fSR.1037&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fSR.1037&Lang=en)

<sup>251</sup> The ICRC, NGOs and religious organizations play an important role in providing food to the most malnourished, including rice, and nutritional supplements: when Amnesty visited the Farafangana prison, the ICRC was providing special meals to 36 malnourished detainees

<sup>252</sup> ICRC, Madagascar: *Malnutrition can turn a prison sentence into a death sentence*, 26.07.2016, [http://www.icrcnewsroom.org/open.asp?ID=238&title=Madagascar\\_Malnutrition\\_can\\_turn\\_a\\_prison\\_sentence\\_into\\_a\\_death\\_sentence](http://www.icrcnewsroom.org/open.asp?ID=238&title=Madagascar_Malnutrition_can_turn_a_prison_sentence_into_a_death_sentence)

<sup>253</sup> ICRC, Madagascar: *A double sentence – prison and malnutrition*, 27 July 2016, [www.icrc.org/en/document/madagascar-double-sentence-prison-and-malnutrition](http://www.icrc.org/en/document/madagascar-double-sentence-prison-and-malnutrition)

<sup>254</sup> Decree 2006-015, Article 72

*The only vegetables available to detainees have to be bought from open markets within the prisons, if detainees can afford them. On the left: MC Farafangana male quarters, August 2017 @ Amnesty International On the right: MC Manakara, September 2018 @ Amnesty International*



While most prisons did distribute cassava once or twice a day, a few also served rice several times a week. However, detainees complained that the food tasted bad and that the quantities were meagre: one woman detainee in Maintirano prison said that a meal portion could fit in the palm of her hand.<sup>255</sup> Eggs, meat, fish and vegetables are not part of detainees' daily diets – such food items were on sale for detainees in the prisons' open markets.

While the distribution varies slightly between the regions, approximately 84% of the budgets allocated to prisons goes towards food. In some regions like Antsinanana, this increases to 90% of the budget, leaving very little for other expenses. However, this budget allocation represents on average only approximately 10 US cents per prisoner per day. Hence, despite food being the biggest spending line within their budgets, prison directors said that the pre-allocated budget for food did not allow them to provide sufficient quantities to the prisoners.

Consequently, most prisoners depend on visits from their families to get additional food. Some prisons have an open 'market' within their premises, that sells food such as dry fish and vegetables, and those who can afford it buy their weekly supplies from there. But the poor detainees are the most impacted by the lack of adequate food.

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<sup>255</sup> The Rule 22(1) of the Nelson Mandela Rules provides that "every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."

- **“Nobody from my family comes to visit me. I have no food, only cassava. So I make do with cassava, and praying.”** <sup>256</sup>



*Food distribution in MC Antsirabe, September 2018 @ Amnesty International*

## 4.6 ACCESS TO FAMILY

- **“My family is looking for me, they don’t know where I am. The last time I saw them, I told them I was leaving to earn some money. I want to call them but I don’t know where to find a phone, and I don’t have their number.”**<sup>257</sup>

Rakoto\* had spent two years and nine months in pre-trial detention in Fianarantsoa prison when he spoke to Amnesty International. His parents died when he was very young, and he started working at the age of 14 as a cattle-keeper. Rakoto was arrested along with his friend for cattle theft. In all this time, he had never contacted his family, including his children, not even to inform them of his detention.

Prisoners’ access to family visits is a key human right, enshrined in both international and national laws of Madagascar, and is not only critical for detainees’ mental state, but in the Malagasy context, also essential for their physical well-being, given the state’s failure to comply with its obligation to provide adequate food and medicine to people held in its care. <sup>258</sup>

However, Amnesty International’s interviews with detainees highlighted the poor access to their families, both at the stage of arrest, and throughout their pre-trial detention: 14 detainees, nearly a third of those interviewed, said that they had neither seen nor spoken to their families since their incarceration, some of whom have been in pre-trial detention for four years. Of the 14, four said their families were not aware of their detention, with two, including a child, believing that their families might think them dead.

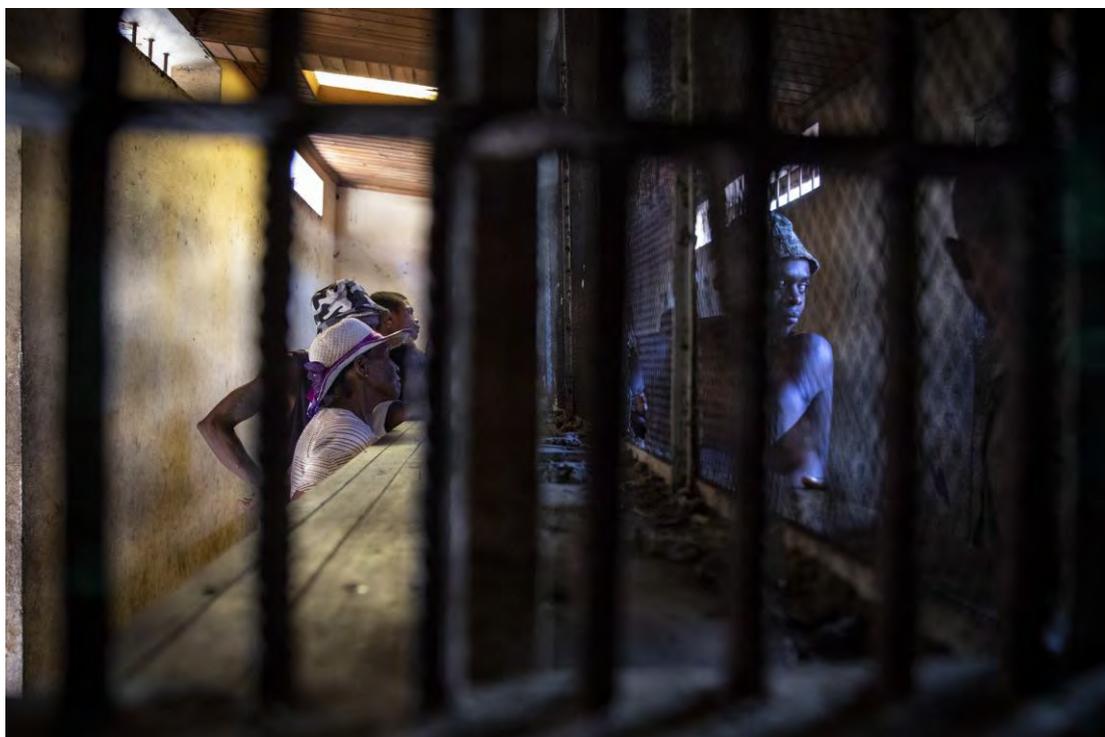
Andre\* had spent two and a half years in pre-trial detention in the Farafangana prison on charges of murder. A husband and father of three children, he was the sole breadwinner for his family, running his own stone business for 12 years.

<sup>256</sup> Amnesty International interview with Riko, MC Ambositra, 20 August 2017

<sup>257</sup> Amnesty International interview with Rakoto, MC Fianarantsoa, 21 August 2017

<sup>258</sup> The Constitution states that the family is the natural and fundamental unit of society, and the decree on the organization of prisons provides the conditions in which family visits can take place. The Nelson Mandela Rules not only enshrine this right, they provide that “special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both”

- **“My family has come to see me, but it was nine months ago. I think they have not come since because my father is tired and weak, and they have to pay 40,000 ariary (approximately USD12) for the transport. It takes them 2 days to come by bus.”** said Andre, adding that he had once even paid the prison guards 1,000 ariary (approximately 30 US cents) to call his family: **“I have their phone number but I have no credit to call them. I gave the phone number to the prison guards so they could call them, but they said it does not work.”**<sup>259</sup>



*In Mc Manakara, family members visit their relatives in prison, September 2018 @ Amnesty International*

Some interviewees told Amnesty International that police officers did not provide them the right or means to contact family members. Others said that they had access to their families when they were in police custody, but had not received any visits since their incarceration. This violates Madagascar’s national law providing the right for family members to be informed of the detention and place of detention of the person concerned.<sup>260</sup>

The prisons are often located far from detainees’ homes, with their families often having to travel several hours or even days to visit their relatives in detention. Several pre-trial detainees told Amnesty International that their families were forced to sell their belongings, including land and cattle, to cover the transportation costs, purchase of food and personal items and, often, for bribes.

Amnesty International also received reports of prison guards asking for bribes in exchange for family visits. These could consist of either one-off payments in cash, or in kind where the agents kept for themselves some of the items (such as food) brought by the family. Two women outside MC Fianarantsoa waiting to visit their husbands in pre-trial detention told researchers that they were each asked by prison staff to pay a one-off bribe of 70,000 ariary (approximately USD22) to get their visits.

<sup>259</sup> Amnesty International interview with André, Farafangana prison, Madagascar, 24 August 2017

<sup>260</sup> National Law against Torture (2008-008) states in Article 4: “from the moment a person is deprived of their freedom, fundamental guarantees must be applied, notably: the right for a family member or any other appropriate person to be informed of their detention and the place of detention”. The UN Body of Principles similarly provide that “Promptly after arrest... a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment”

## CHILDREN'S LACK OF ACCESS TO FAMILY

Siari\* was 17 years old and had already spent 14 months in pre-trial detention on charges of theft of a zebu when he spoke to Amnesty International.<sup>261</sup> He has never been to school, and was working the land with his parents before his arrest. For over a year, Siari has not been able to contact his family.

■ **“My family don’t know I am here. I tried to send them letters, but nothing comes back. Maybe my parents think I’m dead. It’s been nearly two years that I’ve been gone. I’m really sad.”**



*A young boy watches his fellow detainees play football in MC Antsirabe. After 6pm, once the men go into their cells, the children are allowed to play football in the male quarters, as their own minors' quarter is too small to allow them to run and play football. September 2018 @ Amnesty International*

The CRC states that detained children “shall have the right to maintain contact with his or her family through correspondence and visits”.<sup>262</sup> However, out of 11 child detainees interviewed, three told Amnesty International that they had not seen their families since their arrest: two of them believed their families did not know where they were.

Lack of detained children’s access to their families in Madagascar contravenes both national and international law, which states that parents, legal guardians or relatives should be immediately notified of their child’s arrest.<sup>263</sup>

<sup>261</sup> Amnesty International interview with Siari, MC Fianarantsoa, Madagascar, 21 August 2017

<sup>262</sup> Article 37(c)

<sup>263</sup> Article 4, National Law against Torture, Rule 10.1 of the Beijing Rules, Guideline 3 para. 43(e) of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Section O(g) of the Principles on Fair Trial in Africa.

In September 2017, the government of Madagascar ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). On 1 June 2018, the National Assembly adopted the draft law n.02-2018/PL, extending the mandate of the National Human Rights Commission of Madagascar to include the National Preventive Mechanism against Torture (NPM). At the time of writing, the draft law was about to be reviewed by the National Assembly again, after amendments were introduced by the Senate. While these steps are commendable, it remains to be seen whether they will be translated into improvements on the ground.



# 5. ENABLING INJUSTICE: GAPS IN LAW AND PRACTICE



## 5.1 LENGTHY PRE-TRIAL DETENTION PERMITTED BY LAW

Under Madagascar's national laws, pre-trial detention can last for up to five years and six months for adults.<sup>264</sup> Such lengthy periods of pre-trial detention violate international and regional human rights laws and standards.<sup>265</sup>

■ **“Please speed up my case so that I get a trial. Because it has been 14 months and I have not had a trial yet.”<sup>266</sup>**

17-year old Sedera\*

The Malagasy Criminal Code recognizes three types of offence:<sup>267</sup>

- **Contravention de police – petty offences** punishable by monetary fines, confiscation of seized objects, or imprisonment for one to 29 days (for instance, disturbing the peace of inhabitants at night with noises). This type of offence cannot lead to pre-trial detention.
- **Délit correctionnel – correctional offences** punishable by imprisonment for one month to 10 years (for instance, vagrancy and theft)
- **Crime – criminal offences** punishable by imprisonment and/or hard labour for a specific period of time or for life or by deportation<sup>268</sup> (for instance murder and crimes against State security).

Only individuals suspected of having committed a correctional offence punishable by imprisonment or a criminal offence may be subject to pre-trial detention, from their arrest to the opening of the trial or until the charges are dropped.

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<sup>264</sup> As per the CPP, and Law 2007-021 amending parts of it, if a person is accused of criminal charges for which the incurred penalty is higher than five years, then the person can be handed down an 18 months detention warrant (CPP, art 334), which can be followed by a 12-months OTPCA (Art. 334, CPP), which can be followed in turn by a 30 months OPC (art. 334, CPP). In addition, the pre-trial detention can be further extended for a maximum of six months (art. 334, CPP)

<sup>265</sup> Article 14(3)(c) of the ICCPR states that “everyone charged with a criminal offence shall have the right to be tried without undue delay”, and the African Commission Guidelines on the Conditions of Arrest, Police Custody, and Pre-trial Detention, Article 13 states: “anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time.”

<sup>266</sup> Amnesty International interview with Sedera, MC Antanimora, Madagascar, 29 August 2017

<sup>267</sup> CP, Article 1

<sup>268</sup> See footnote 47 on deportation

## 5.1.1 POLICE CUSTODY



The unjustified, excessive and lengthy pre-trial detention begins unfolding at the stage of arrest. While the initial period of police custody is 48 hours - after which the person must either be released or taken before a Prosecutor<sup>269</sup> - the law allows for police custody to be extended for as long as 12 days depending on the distance between where the arrest happened and where the police officer in charge of the investigation lives.<sup>270</sup> In 2011, the CAT called this extension “excessive”.<sup>271</sup> Amnesty International interviewed several pre-trial detainees who said they had spent more than 12 days in police custody before their first hearing; two said they stayed as long as one month.<sup>272</sup>

## 5.1.2 TIME LIMITS ON PRE-TRIAL DETENTION

Once the individual arrested has been heard by the Prosecution’s office and is suspected of having committed a correctional or criminal offence, he or she might be transferred to pre-trial detention in prison while the investigation is conducted. Following the stage of arrest, the legal time limits of pre-trial detention vary according to the gravity of the offence committed (correctional or criminal offences), and the procedure applied at the investigative stage (summary information or preliminary investigation).<sup>273</sup>

In cases of correctional or criminal offences, the Malagasy Code of Criminal Procedure provides for two types of investigative procedures (Articles 178 and 179, CPP):

- **The procedure of “summary information”** [*information sommaire in French*] is a simplified procedure led by the Prosecutor in “simple” cases which should not require extensive investigative action. It may be used for cases of criminal offences in *flagrante delicto*,<sup>274</sup> which are not punishable by forced labour for life or “deportation”. It may also be used for correctional offences, in the following three scenarios: (i) when the offence is *flagrante delicto*, (ii) when the offence is established by police statements, or (iii) when perpetrators of the offence are identified and can have either confessions or manifest charges held against them.<sup>275</sup> It provides relatively shorter periods of pre-trial detention than the preliminary investigation path. This procedure cannot be used in the case of children (Article 46, Law 2016-018).
- **The procedure of “preliminary investigation”** [*instruction préparatoire in French*] is the ordinary procedure, led and supervised by an investigative judge – therefore theoretically more protective of the accused’s rights, but also lengthier. It is mandatorily applied to all other cases of criminal or correctional offences, that is to say: (i) *flagrante delicto* criminal offences which are punishable with life sentences or deportation, (ii) *non-flagrante delicto* criminal offences, (iii) criminal and correctional offences whose perpetrators are unknown, or who have fled abroad, and (iv) for offences described in articles 419-421 of the Criminal Code or by laws which make the involvement of an investigating judge necessary.<sup>276</sup>

## CORRECTIONAL OFFENCE

Correctional offences can be prosecuted through the summary information path (see above) or through the preliminary investigation path. In cases of a summary investigation procedure, pre-trial detention during investigation can last for up to three months (as stated in CPP Articles 103), which can then be renewed

<sup>269</sup> as set by the CPP, Article 136

<sup>270</sup> Article 137, CPP, states that “when the arrest takes place outside from the habitual residence of the police officer in charge of the investigation, the 48-hour period is prolonged by one day per 25 km without ever going beyond a maximum period of 12 days between the moment the person is arrested and the moment he or she is presented to the competent magistrate

<sup>271</sup> Concluding observations by the Committee against Torture: Madagascar, UN Doc. CAT/C/MDG/CO/1, para. 9

<sup>272</sup> Interviews with pre-trial detainees, Madagascar prisons, 16 to 29 August 2017

<sup>273</sup> as regulated by articles 333 to 352 of the CPP

<sup>274</sup> Article 206 of the CPP states: “is qualified as a flagrante delicto criminal or correctional offence the criminal or correctional offence that is currently being committed, or which has just been committed. A criminal or correctional offence is also flagrante delicto when, in a time very close to the action, the person accused is identified by public outcry, or found in possession of objects, or shows traces or clues suggesting that he or she has participated in the offence which just took place”

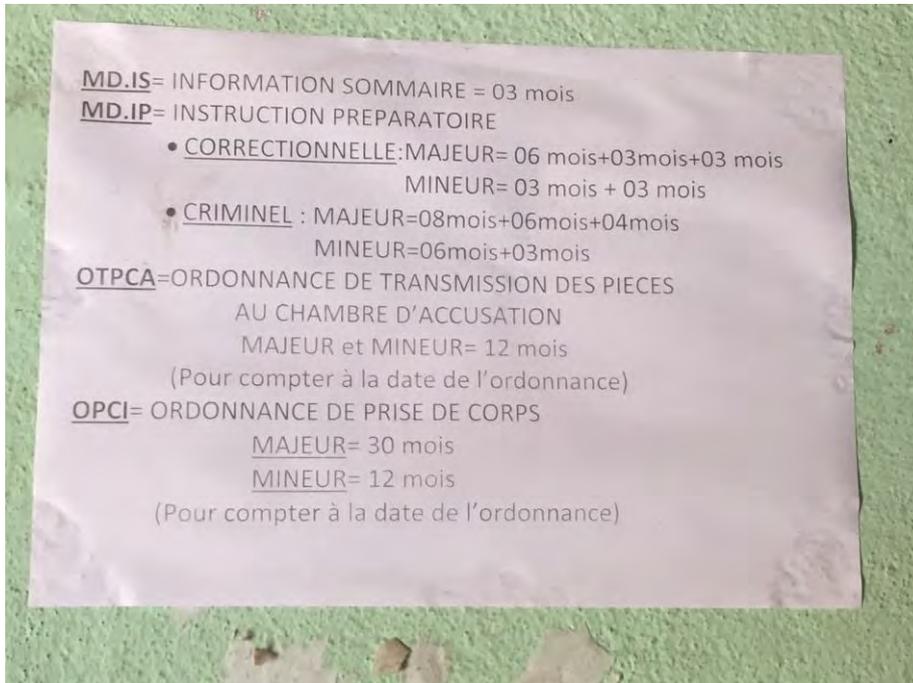
<sup>275</sup> CPP, Art. 178

<sup>276</sup> CPP, Article 179

once for an additional two months for cases of offences punishable by more than five years of imprisonment only (CPP Article 231), bringing it to five months of pre-trial detention maximum.

For correctional offences that go through the preliminary investigation procedure, pre-trial detention during the investigation can last for up to 12 months in total (an initial period of six months which can then be extended twice, for three months each time – CPP Article 334 bis).

Once the investigation is over, the case is in principle transferred before the correctional court without delay. Pre-trial detention can nevertheless further be extended to up to three months by the trial court if necessary (CPP Article 334 quinqto). This brings the maximum duration of pre-trial detention in correctional cases to 15 months in total.



*Memo in MC Manakara highlights the legal limits of pre-trial detention, August 2017 @ Amnesty International*

## CRIMINAL OFFENCE

In cases of criminal offences, which are prosecuted through the summary information procedure, pre-trial detention during the investigation can last for up to three months (CPP Articles 103 and 232), and can be extended for two more months (CPP Article 231).

In criminal cases that go through the preliminary investigation procedure, pre-trial detention during the investigation is set at eight months, with two possible extensions; first for six months and then for a maximum of four months, adding up to a total of 18 months (CPP Article 334 bis).

With the most serious crimes, where the Prosecutor or the investigating judge in charge of the investigation concludes that the individual should be charged with a criminal offence punishable with a life sentence or deportation, such as murder, the case is sent to the Indictment Chamber through an OTPCA [*Ordonnance de Transmission des Pieces à la Chambre d'Accusation* in French], or order for transfer of the case (CPP Article 290) for a “control phase” of the investigation. This order for transfer is also valid to maintain the suspect in pre-trial detention for 12 months during this additional phase of the investigation (CPP Article 334 ter), by which time the Indictment Chamber must decide whether or not to confirm the charges and send the case to a criminal court.

In all cases, once the investigation is closed and the competent authority (Prosecutor, investigative judge or Indictment Chamber) is satisfied that the case can proceed to trial, the case is transferred to the competent criminal court, when necessary accompanied by an OPC, [*Ordonnance de Prise de Corps* in French] or “Order to take the suspect” (CPP Articles 238, 291 and 309). This order allows keeping the individual in detention once the investigation has determined that he or she is accused of a criminal offence and must be

taken before a criminal court, while waiting for the trial to start. It is valid for 30 months (CPP Article 334 ter).<sup>277</sup>

Finally, the trial court itself can also decide to postpone the case to a following session, provided that it does not delay the opening of the trial, and therefore extend the pre-trial detention of the accused, by an additional six months (CPP Article 334 quater).

**In summary, under Malagasy law, pre-trial detention can legally last for as long as five years and six months for cases of crimes punishable by life sentences or deportation.**

CHOSEN PROCEDURE	(CONTRAVENTION)	CORRECTIONAL OFFENCE		'CRIMINAL' OFFENCE	
		SUMMARY INFORMATION	PRELIMINARY INVESTIGATION	SUMMARY INFORMATION	PRELIMINARY INVESTIGATION
TIME LIMIT OF PRE-TRIAL DETENTION DURING THE INVESTIGATION OR INFORMATION PHASE	PRE-TRIAL DETENTION IS NOT ALLOWED FOR 'CONTRAVENTIONS'	FROM THE PUBLIC MINISTRY: 15 DAYS, RENEWABLE ONCE		FROM THE PUBLIC MINISTRY: 15 DAYS (RENEWABLE ONCE)	BY THE INVESTIGATING JUDGE OF THE PRE-TRIAL DETENTION CHAMBER:
		FROM THE PROSECUTOR OR THE SUBSTITUTE: 3 MONTHS (NON-RENEWABLE)	FROM THE INVESTIGATING JUDGE OR THE PRE-TRIAL DETENTION CHAMBER: 8 MONTHS RENEWABLE TWICE FOR 3 MONTHS EACH (12 MONTHS IN TOTAL)	FROM THE PROSECUTOR OR SUBSTITUTE: 3 MONTHS (NON-RENEWABLE)	8 MONTHS RENEWABLE ONCE FOR 6 MONTHS AND A SECOND TIME FOR 4 MONTHS (18 MONTHS IN TOTAL) 12 MONTHS IN CASE OF AN ORDER OF TRANSFER OF THE CASE TO THE INDICTMENT CHAMBER, OR OPTCA (ORDONNANCE DE TRANSMISSION DES PIECES A LA CHAMBRE D'ACCUSATION) BY THE INVESTIGATING JUDGE OF THE INDICTMENT CHAMBER
		FROM THE PRE-TRIAL DETENTION CHAMBER IN CASE OF OPPOSITION TO TEMPORARY RELEASE: 2 MONTHS (NON-RENEWABLE)		FROM THE PRE-TRIAL DETENTION CHAMBER IN CASE OF OPPOSITION TO TEMPORARY RELEASE: 2 MONTHS NON RENEWABLE	
AFTER THE INVESTIGATION OR INFORMATION PHASE		3 MONTHS NON-RENEWABLE FROM THE CORRECTIONAL COURT	3 MONTHS NON-RENEWABLE FROM THE CORRECTIONAL COURT	30 MONTHS IN CASE OF A WRIT OF CAPIAS, OR OPC (ORDONNANCE DE PRISE DE CORPS) BY THE INVESTIGATING JUDGE OR THE PUBLIC PROSECUTOR	
				IN ADDITION, AN ADDITIONAL 6 MONTHS EXTENSION CAN PROLONG THE PRE-TRIAL DETENTION	
		8 MONTHS MAXIMUM	15 MONTHS MAXIMUM	41 MONTHS MAXIMUM	IN TOTAL, 5 YEARS AND 6 MONTHS MAXIMUM

There is one safeguard, under Article 334 of the Code of Criminal Procedure, which aims at limiting prolonged pre-trial detentions, by providing that pre-trial detention can never be extended for more than the maximum time for the custodial sentence incurred.

Amnesty International is, however, concerned that while this provision potentially provides some safeguards against excessive pre-trial detentions, it still falls short of international human rights standards on fair trials and rights of accused persons. The Human Rights Committee has repeatedly raised concerns – in 2000, 2005 and 2009<sup>278</sup> – about laws that set the maximum time of pre-trial detention in relation to the possible penalty against the alleged offence, as these laws are inconsistent with the presumption of innocence.

<sup>277</sup> Law 2007-021, amending parts of the CPP, states in Article 3, paragraph 2: "In the cases covered by articles 238, 290, 291 and 309 of the Code of Criminal Procedure, relating to committal orders by the public prosecutor, transfer orders, committal orders by the investigating judge and 'orders to take the suspect', the period of validity of the 'order to take the suspect' is limited to thirty (30) months from the date of the order, subject to immediate enforcement". In cases of children, the law 2016-018, Article 93, states that an 'order to take the suspect' is limited to 12 months

<sup>278</sup> HRC Concluding Observations: Argentina, UN Doc. CCPR/CO/70/ARG (2000) para. 10, Moldova, UN Doc. CCPR/C/MDA/CO/2 (2009) para. 19, Italy, UN Doc. CCPR/C/ITA/CO/5 (2005) para. 14

## LENGTHY PRE-TRIAL DETENTIONS FOR CHILDREN

Malagasy law also permits lengthy periods of detention pending trial for children from the age of 13,<sup>279</sup> violating their right to have a speedy trial and in direct violation of Article 37 of the CRC.<sup>280</sup> In 2007, the UN Committee on the Rights of the Child called for a final decision on charges not later than six months after they have been presented.<sup>281</sup> But in Madagascar, children can be legally held for up to 33 months pending trial for the most serious criminal offences, and for up to six months for correctional offences.<sup>282</sup>

Law 2016-018 establishes the legal framework applicable to children from the age of 13 in conflict with the law in Madagascar.

When arrested, the delay of 12 days in police custody applies to children from the age of 13.<sup>283</sup> Amnesty International interviewed two boys who said they had been held respectively for 14 and 30 days under police custody before their case progressed to pre-trial detention under court order. Combined with their lack of access to family members or legal representation, such delays increase the risk of children being subjected to torture or other ill-treatment, as well as forced confessions.

During the investigation, the judge for juvenile court can issue an arrest or detention warrant valid for three months for correctional cases, and six months in criminal cases (Article 92). *“In the event that the continuing detention is indispensable to the continuation of the information or to the sound administration of justice”*,<sup>284</sup> the child’s pre-trial detention, both for correctional and criminal cases, can be extended for three additional months (Article 92).

A circular published in January 2017 following Law 2016-018 specifies:<sup>285</sup>

“Given that no specific provision of the new law [2016-018] provides the procedure to be followed for cases involving children which must be subjected to a transfer of the case to the indictment chamber, the procedure to be followed and the applicable time limits are those provided by the CPP, in conformity with the provisions of Article 122 of the current law.”<sup>286</sup>

This means that in cases concerning crimes punishable by life sentences or deportation, which must go through the Indictment Chamber at the investigative stage, pre-trial detention during the investigation could be further extended by an additional 12 months. Amnesty International accessed prison registers that showed that children are indeed being held in pre-trial detention on orders for transfer of the case to the Indictment Chamber.

Once the investigation is closed, and if it concluded that the case must proceed to the criminal court, Article 93 states that children can then be handed an OPC or “Order to take the suspect”, which allows for the child to be maintained in pre-trial detention while awaiting trial and is limited to 12 months.<sup>287</sup> Finally, Article 93 also highlights that “any case involving a child must be tried by the criminal court within the 12 months following the investigation’s closing date”.

**In summary, the maximum duration of pre-trial detention for children is six months for correctional offences, and 33 months for the most serious criminal offences.**

<sup>279</sup> Law 2016-018, Article 89

<sup>280</sup> CRC, Article 37

<sup>281</sup> CRC General Comment 10, para. 83

<sup>282</sup> If a child is accused of a criminal charge, he or she can be handed down a six-month detention warrant, renewable once for a three-month period (art. 92 of Law 2016-018). If the crime the child is accused of is punishable with a life sentence, then the child can be handed down a 12-month OTPCA (Art.53. of Law 2016-018). In criminal cases, children can also be handed down a 12-month OPC (Art. 93 of Law 2016-018).

<sup>283</sup> Law 2016-018, Article 38

<sup>284</sup> Law 2016-018, Article 92

<sup>285</sup> *Implementing circular on the provisions of Law 2016-018, 22 August 2016 on the measures and procedures applicable for children in conflict with the law regarding pre-trial detention*, 31 January 2017, <http://www.justice.mg/wp-content/uploads/2017/02/Circulaire%20d%27application%20de%20la%20loi%202016-018.pdf>

<sup>286</sup> Law 2016-018, Article 122 states: “in all the matters which are not regulated by the current law, the procedure will be in conformity with the Code of Criminal Procedure”

<sup>287</sup> As opposed to adults for whom it is valid for 30 months

## 5.2 ARBITRARY ARRESTS AND DETENTION

In line with the ICCPR, Article 9 of the Malagasy Constitution provides that everyone is entitled to the right to liberty, and cannot be subject to arbitrary arrest or detention.<sup>288</sup> The notion of “arbitrary” includes that the detention is proportional to the aim sought, reasonable, and necessary.<sup>289</sup> Other international instruments state that a person cannot be arrested unless there is a strong suspicion that they have committed a crime<sup>290</sup> and there is sufficient proof that the crime itself took place. Moreover, police officers cannot arrest individuals on criminal charges where there is insufficient evidence, or without a warrant.



In MC Manakara, a detainee looks out of the cell he shares with hundreds of other detainees, mostly awaiting trial. September 2018 @ Amnesty International



But despite these safeguards in international and national law, arbitrary arrests and detentions appear to be widespread practices in Madagascar.

Amnesty International researchers interviewed many pre-trial detainees who believed the only reason they were arrested and were being held was because someone paid the police to do so, not because there was any evidence against them.

Some judicial and law enforcement officials that Amnesty International interviewed confirmed the widespread practice of arbitrary arrests and detention of individuals based on insufficient evidence or on weak grounds. ***“Everyone defines proof in their own way. It will have to be much better defined. Often, we [magistrates] send back [cases] to the investigating judge because at the prosecution stage, it’s not possible [to continue proceedings], there just isn’t enough proof.”***<sup>291</sup>

<sup>288</sup> Constitution of Madagascar, 2010, Article 9

<sup>289</sup> See e.g. Human Rights Committee, *A. v. Australia*; *Marques de Morais v. Angola*, communication No. 1128/2002, Views adopted on 29 March 2005, para. 6.1; Inter-American Court of Human Rights, *Gangaram Panday v. Suriname*, Judgement, Ser. C, No. 16, 1994, para. 47; Working Group, opinions No. 4/2011 (Switzerland); No. 3/2004 (Israel)

<sup>290</sup> African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (AC Principles), DOC/OS (xxx) 247 (2001), Article M(1)(b)

<sup>291</sup> Amnesty International interview with the President of the Union of Magistrates, Antananarivo, 30 August 2017

**“In most cases that go to the criminal court sessions, the people are acquitted, because of a lack of a proof, after a lot of time [spent in pre-trial detention]. Here in Madagascar, the biggest evidence is testimonies.” said the President of the Antananarivo court.<sup>292</sup>**

Amnesty International researchers came across multiple cases where individuals seemed to have been sent to pre-trial detention based on insufficient evidence or on weak grounds.

Haja\*, a geologist, had been in pre-trial detention for four months, on charges of theft of zebu, and murder.

**“The police did not do any investigation. They just listened to the family. The family established a list of persons [as] the perpetrators of the crime. And I am on this list. I don’t know why the family named me. We never had a problem before. This has destroyed my job. This has destroyed my image. I don’t have any trust in the existence of truth. And when you are sent to the prison, you lose all your rights.”<sup>293</sup>**

Interviewees told Amnesty International that instead of conducting a thorough investigation, the police often resort to violence to obtain confessions from suspected individuals to close the case quickly.



*In MC Manakara, a writing on the wall reads “Stop violence”, September 2018 @ Amnesty International*

■ **“When they arrested us, they beat my husband and my brother. They continued beating them, and told them ‘don’t look at our faces’. They beat me up too, and wanted me to admit that I had committed [the offence]. (...) Some of us admitted to the offence. But I refused until the end.”<sup>294</sup>**

This lack of adequate evidence produced by the investigating bodies has resulted in high acquittal rates. The President of the Antananarivo court said:

<sup>292</sup> Amnesty International interview with the President of the Antananarivo court, Antananarivo, 17 August 2017

<sup>293</sup> Amnesty International interview with Haja, MC Ambositra, August 2017

<sup>294</sup> Amnesty International interview with Celia, Antsirabe prison, Madagascar, 19 August 2017

- “I don’t know the exact numbers, but I can tell you that more than half of the pre-trial detainees [that I have dealt with] get their case dismissed.”<sup>295</sup>

The Regional Director of the Prison Administration in Fianarantsoa confirms this worrying trend:

- “It often happens that after 12 months, or even two years, people are acquitted because of the benefit of the doubt.”<sup>296</sup>

A quick analysis of the Modèle 18 document for the Antanimora prison shows that it is the same case for minors: in the second quarter of 2017, more than 45% of minors released from prison were released after their detention warrant had expired – in other words, without having a trial.<sup>297</sup>

The UNDP recommended in 2014 that Madagascar’s government develop the technical and forensic capacity of the police.<sup>298</sup> Amnesty International’s interviews with pre-trial detainees, prison staff and magistrates on the ground revealed that even without such sophisticated tools, the police need to improve on their basic investigations skills and susceptibility to corruption.

The Code of Criminal Procedure holds both the prison staff and the magistrates accountable for arbitrary detentions. It instructs the former to only receive, and maintain in detention, a person who has an appropriate detention order, failing which they shall be held responsible for arbitrary detention.<sup>299</sup>

The law also provides that magistrates, clerks and public servants can be held accountable for failing to “uphold the time periods provided by the CPP, particularly those applicable for pre-trial detention”.<sup>300</sup>

## 5.3 USING ALTERNATIVES TO DETENTION

Given that detention pending trial should be exceptional, international standards provide for alternative, less restrictive measures pending trial.<sup>301</sup> Similarly, Madagascar’s Code of Criminal Procedure contains regulations on alternatives to provisional detention.<sup>302</sup>

The three major alternatives to pre-trial detention currently provided in law are:

- **Temporary release:** a request for temporary release can be made by any individual in pre-trial detention, or by their counsel, to a court at any stage (CPP Article 342). Conditions can be imposed, particularly bail or a bank guarantee. (CPP Articles 346 to 349).
- **Judicial control** is technically a measure that falls between pre-trial detention and temporary release.<sup>303</sup> When granted, the accused person’s freedom of movement remains under the control of the judiciary, but without them being held in prison. The person must comply to a number of conditions, which can include, for instance, remaining within determined geographical limits among other conditions, for a time period decided by the magistrate in charge of the case.<sup>304</sup>
- **Bail** consists in paying a certain amount of money determined by court as guarantee that accused person will not abscond and will attend his or her trial at the designated date.<sup>305</sup>

Since 2016, additional alternatives to detention are provided for children by the new Law 2016-018,<sup>306</sup> which include placing the accused child with a trusted person, and custodial supervision.<sup>307</sup> Custodial supervision

<sup>295</sup> Amnesty International interview with the President of the Antananarivo court, Anosy, 17 August 2017

<sup>296</sup> Amnesty International interview with the Regional Director of the Prison administration overseeing the MC Fianarantsoa, 21 August 2017

<sup>297</sup> Analysis of Modèle 18, Antanimora prison, April – June 2017

<sup>298</sup> UNDP, *Etude sur les dysfonctionnements de la chaine pénale Malagasy*, 2014, page 31

<sup>299</sup> CPP, Article 335 and 558

<sup>300</sup> Law 2007-021, Article 5

<sup>301</sup> Tokyo Rules, Article 6.1 and 6.2

<sup>302</sup> Provided by law 2016-017 which amends the CPP, and article 346-350 of the CPP

<sup>303</sup> In 2016, law 2016-017 amending parts of the CPP introduced a new alternative measure to detention, presented as an intermediary measure between the placement in pre-trial detention and provisional liberty: judicial control. It is defined by Article 15 as a measure pronounced against a person suspected of having committed an offence punishable by a custodial sentence. A person under judicial control is required to subject themselves to one or several obligations, which can include responding to the judiciary authority’s summons, and remaining within determined geographical limits among other conditions, for a time-limit decided by the magistrate in charge of the case

<sup>304</sup> CPP, Articles 223, 232, 273, 309, 333, 334, 335, 341

<sup>305</sup> CPP, Article 346

<sup>306</sup> Law 2016-018

<sup>307</sup> Law 2016-018, Article 69

has been used increasingly in the Antananarivo region, but is yet to be used throughout the country. Amnesty International's research showed that although they exist in the law, alternatives to detention are hardly ever used in practice. Prison staff explained that they are rarely requested by defendants, and even when they are, they are often rejected. In practice, pre-trial detainees often remain in pre-trial detention for close to the entire pre-trial period.

The Regional Director of the Prison Administration for Vatovavy Fitovinany told Amnesty International:

- **“We encourage pre-trial detainees to submit requests for temporary release because it’s their right. But they get a negative answer [from magistrates].”**<sup>308</sup>



*In MC Fianarantsoa, those in pre-trial detention raise their hands. They represent the vast majority of the prison population. August 2017 @ Amnesty International*

When Amnesty International asked members of the judiciary why bail was not a more common practice, they said it is because it is complicated to implement the law in its current form. The President and the Public Prosecutor of the Ihozy court told Amnesty International that granting bail would be viewed negatively by the public, for example, as a bribe or payment for release.<sup>309</sup>

They also explained that as the law does not stipulate fixed amounts of bail for various offences, but makes it the discretion of the magistrates, it is susceptible to corrupt practices. Magistrates told Amnesty International that they would like a decree setting the conditions and amount of bail to be passed:

- **“It would be great to use bail more often. But first, we need to determine the minimum and maximum amounts, and the list of offences for which it can be used.”**<sup>310</sup>

Prosecutors interviewed by Amnesty International claimed that public pressure and growing insecurity and crime are pushing magistrates to use pre-trial detention excessively.

<sup>308</sup> Amnesty International interview with the Regional Director of Vatovavy Fitovinany, Madagascar, 25 August 2017

<sup>309</sup> Amnesty International interview with the President and the Public Prosecutor of the Ihozy court, 22 August 2017

<sup>310</sup> Amnesty International interview with Public Prosecutor of Antananarivo court, 18 August 2017

The Public Prosecutor from Ihosy said:

- **“We are forced to put people in prison, to put everyone in, to silence the population. Then, we are told ‘we must unclog [the prisons]!’ , so we do it. But once everyone is out, not even three months later, the crime rate goes up again. That’s roughly the cycle in Madagascar.”<sup>311</sup>**

## 5.4: LACK OF LEGAL AID AND LEGAL AWARENESS

For nearly three years, 30-year-old Andy\* has been waiting for his trial to begin. His detention warrant has been extended twice since he arrived in Ihosy prison in October 2014. Accused of hijacking, Andy was arrested on 14 October 2014. But he only realised the predicament he was in a few days later when he went to court:

- **“The judge said: ‘If you have a lawyer, you can get out of here because no one has accused you. But you don’t [seem to] have a lawyer to defend your case.’ No-one accused me, it’s the state who brought me here [in prison]. That is what is making me sad, because until now I haven’t had a trial. I spent two years and 10 months here without any complainant.”<sup>312</sup>**



*In MC Antsirabe, detainees get regular visits from the churches, and are taught to sow. September 2018 @ Amnesty International*

Madagascar’s own Constitution echoes the right to legal counsel provided in international law.<sup>313</sup>

*“The law assures to all the right that justice will be rendered, and that insufficiency of resources will not be an obstacle. The State guarantees the plenitude and the inviolability of the rights to defence before all the jurisdictions and at all the stages of the procedure,*

<sup>311</sup> Amnesty International interview with the Prosecutor of the Ihosy court, 22 August 2017

<sup>312</sup> Amnesty International interview with Andy, in MC Ihosy, 22 August 2017

<sup>313</sup> ICCPR, Article 14(3)d) states, among other things, that any person facing criminal proceedings has the right “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”

including that of the preliminary investigation, and at the level of the judicial police or of prosecution.”<sup>314</sup>

However, the CPP states that the presence of a lawyer is compulsory only for some: those accused of criminal charges, those accused of correctional charges, or those at the Appeals Court if the penalty incurred is longer than five years’ imprisonment.<sup>315</sup>

In practice, the majority of pre-trial detainees in Madagascar have no access to a lawyer prior to their trial. Out of 44 pre-trial detainees interviewed by Amnesty International, only eight said they had a lawyer. Three of these were children in the Antanimora prison, where an NGO had appointed them,<sup>316</sup> and two of the eight had never seen their lawyer. Out of the 44 pre-trial detainees interviewed, 17 of them did not know what a lawyer does.

Amnesty International’s survey of 1,911 pre-trial detainees in March 2018 found that 85% of respondents said they did not have a lawyer, and more than half said they did not know what a lawyer does.<sup>317</sup>

**QUESTIONNAIRES POUR LES PRÉVENUS HOMMES**  
✓ = oui, et X = non

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Age	45	34	50	29	21	18	19	34	27	18	27	25	18	32	23	33	22	24	29	29	22	33	20	31	20	50	18	29	32	32
Peux-tu lire et écrire ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
As-tu été à l'école ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Si oui, as-tu été à l'école secondaire ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sais-tu ce qu'est un avocat ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
As-tu un avocat ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
Age	28	26	28	32	40	30	40	30	25	46	41	26	50	28	37	30	33	35	32	42	27	30	25	18	41	38	20	32	44	31
Peux-tu lire et écrire ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
As-tu été à l'école ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Si oui, as-tu été à l'école secondaire ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sais-tu ce qu'est un avocat ?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
As-tu un avocat	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

The vast majority of pre-trial detainees in MC Ambositra indicated in a survey that they did not have a lawyer, and many of them did not know what a lawyer was. August 2017 @ Amnesty International

Of the 310 women in pre-trial detention surveyed, 80% stated that they did not have a lawyer, and two-thirds did not know what a lawyer does.

More worryingly, several magistrates in the judiciary administration themselves seemed unconvinced of the importance of implementing the laws providing for legal aid:

- **“I think some defendants might say they don’t have enough money to pay for a lawyer even if they do, and they will abuse the system. Particularly for those living in rural areas, it is difficult to check their state of indigence.”<sup>318</sup>**

<sup>314</sup> Constitution of Madagascar, Article 13

<sup>315</sup> CPP, Article 65 and 68

<sup>316</sup> The NGO Grandir Dignement provides free legal aid to detainees in the Antanimora central prison

<sup>317</sup> Answers to the surveys sent out by Amnesty International in March 2018. Six prisons out of nine sent their responses

<sup>318</sup> Amnesty International interview with the Vice-President of the Antananarivo court, Anosy, 18 August 2017

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems highlights that it is the state's responsibility to ensure that information on the right to legal aid and what such aid consists of, is made available.<sup>319</sup>

The right to adequate legal representation<sup>320</sup> is rendered meaningless and indeed discriminatory, if they are enjoyed only by those who can afford to pay for a lawyer's services.

- **“According to our Code of Criminal Procedure, everyone has the right to be assisted by a lawyer. But they don't have access. Only the rich do.”<sup>321</sup>**

International human rights standards reiterate that states must provide legal counsel free of charge to those who cannot pay for it.<sup>322</sup> Pre-trial detainees are both less able to contribute to the preparation of their defence than defendants who remain at liberty; and are unable to afford private lawyers, making them dependent on the state's legal aid services, which are inadequate and ineffective.

The Code for Criminal Procedure states that both lawyers and lawyers in their pupillage years who are members of the Bar Association can work as legal aid officers.<sup>323</sup> Any existing legal aid is provided by lawyers in their pupillage years<sup>324</sup> with little experience; thereby raising questions about the effectiveness of legal representation.<sup>325</sup>

In practice, legal representation does not start till very late in the proceedings, if at all:

- **“Our habit is only to seek legal counsel at the (final) hearing, because during the (initial) hearing, we need them to tell the truth.”<sup>326</sup>**



<sup>319</sup> UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 42 a)

<sup>320</sup> ICCPR Article 14 (3) (d)

<sup>321</sup> Amnesty International interview with Prison director, MC Antanimora prison, 18 August 2017

<sup>322</sup> See for instance UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988, Principle 17(2); Principle 3 and Guideline 3 para. 43(b) of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by UN General Assembly resolution 67/187 of 28 March 2013; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 38

<sup>323</sup> CPP, Article 66

<sup>324</sup> Amnesty International interview with Head of Legal Bar Association, 18th August 2017, Antananarivo, Madagascar

<sup>325</sup> The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa states that where a lawyer is assigned by the court to a case, they must be “qualified to represent” their client, and “have the necessary training and experience corresponding to the nature and seriousness of the matters”

<sup>326</sup> Amnesty International interview with the Public Prosecutor of the Antananarivo court, Anosy, 18 August 2017



*Like in other prisons visited, the overwhelming majority of pre-trial detainees in MC Antsirabe had never seen a lawyer. September 2018 @ Amnesty International*

In July 2017, the government reported to the HRC that it is difficult for detainees to have access to a lawyer because there are very few of them in Madagascar, and that some districts do not have any at all.<sup>327</sup> Access to lawyers is particularly difficult for those living in rural areas: civil society organizations have highlighted in their report to the HRC that: “lawyers act only in towns where courts of first instance exist and most of those liable to appear in court cannot afford to pay lawyers’ travel expenses”.<sup>328</sup>

There are approximately 900 lawyers<sup>329</sup> covering the entire country, but only a minority of them carry out legal aid work.

Amnesty International’s research also found legal aid lawyers seldom get paid at all.<sup>330</sup> This is a disincentive to lawyers who often have to cover the costs of travelling, accommodation and food on their own, in order to provide legal assistance.<sup>331</sup>

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provides that states should make adequate and specific budget provisions for legal aid services, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.<sup>332</sup>

Further, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems highlights that “a functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization.”<sup>333</sup>

<sup>327</sup> UN Comité des droits de l’homme, Quatrième rapport périodique de Madagascar (suite), Examen des rapports soumis par les états parties en application de l’article 40 du Pacte, 120e session, Compte rendu analytique de la 3385e séance, 13 Septembre 2017

<sup>328</sup> UN Comité des droits de l’homme, Quatrième rapport périodique de Madagascar (suite), Examen des rapports soumis par les états parties en application de l’article 40 du Pacte, 120e session, Compte rendu analytique de la 3385e séance, 13 Septembre 2017, Paragraph 31

<sup>329</sup> Les Nouvelles, *Justice : les avocats en sous-effectif*, 31 March 2017, <http://www.newsmada.com/2017/03/31/justice-les-avocats-en-sous-effectif/>

<sup>330</sup> Telephone interview with a legal aid lawyer under pupillage who requested anonymity, June 2018

<sup>331</sup> The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, state that the remuneration to the appointed lawyer should be sufficient to be an incentive for adequate and effective representation

<sup>332</sup> UN General Assembly resolution adopted on the report of the third committee (A/67/458)

<sup>333</sup> UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Annex, Introduction, para 3

## CHILDREN AND LEGAL AID

Amnesty International interviewed 16-year-old Ivoko\*, who had been detained for two years and seven months in MC Farafangana.<sup>334</sup> He was detained with 23 other boys, only one of whom had been tried, convicted and sentenced.

■ **“I want a lawyer, I need one. I didn’t ask the judge for one, I don’t know why. I thought I needed money.”**

The Convention of the Rights of the Child (CRC) states that children deprived of their liberty must be guaranteed legal and other appropriate assistance, with prompt access.<sup>335</sup> Furthermore, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems<sup>336</sup> states that children should receive priority for legal aid, and that it should be free of charge. Madagascar’s own laws state that legal aid must be provided as soon as the preliminary investigation begins, and that if the child or his or her representative does not choose a lawyer, the judge for juveniles appoints one.<sup>337</sup> But in practice, most of the children interviewed by Amnesty International had never seen a lawyer, even after several years spent in pre-trial detention. Out of 99 children in pre-trial detention surveyed, 83 stated that they had never seen a lawyer. More than half of the children agreed they did not know what a lawyer does.

International standards also require that a child should not be questioned unless a lawyer and a parent or guardian are present, which helps deter torture and other ill-treatment, including to obtain coerced “confessions.”<sup>338</sup> This is particularly important in the context of Madagascar where children can remain in police custody for up to 12 days under law.<sup>339</sup>

A 17-year-old boy, Sedera\*, interviewed by Amnesty International, explained that he was accused of the murder of his aunt, a charge that he stopped denying after repeated beatings by the police.<sup>340</sup> He had spent 14 months awaiting his trial in MC Antanimora.

■ **“I stayed at the police for four days. They asked me to pick up small stones, and to get water in a bucket. Then, they told me to kneel on the small stones, and then they hit me, and told me to carry the bucket. Then they did the investigation and told me I killed [my aunt]. At first, I did not accept. Then I was hit. The investigators yelled at me... Before I came to the prison, there was a last investigation but I did not deny anymore because I had already been hit, so we went to the court. Then they closed my investigation. I accepted everything, because I had already said yes and I couldn’t deny it again.”** Thanks to an NGO, Sedera had had access to a lawyer. But he had seen her once only: **“Up till now, I’ve seen a lawyer once. She told me: “Don’t be afraid, I will look closely at your case. Until now, I have not gone back to court.”**<sup>341</sup>

<sup>334</sup> Amnesty International interview with Ivoko, MC Farafangana, 24 August 2017

<sup>335</sup> Article 37(d) of the CRC states: “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

<sup>336</sup> Principle 11 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)

<sup>337</sup> Law 2016-018, Article 32-33

<sup>338</sup> See HRC General Comment 32, para. 42

<sup>339</sup> CPP, Article 137

<sup>340</sup> Amnesty International interview with Sedera, 17-year-old, in the Antanimora prison, Madagascar, 29 August 2017

<sup>341</sup> Amnesty International interview with Sedera, 17-year-old, in the Antanimora prison, Madagascar, 29 August 2017

# 6. SYSTEMIC CHALLENGES CONTRIBUTING TO RIGHTS VIOLATIONS



The unjustified, excessive, prolonged and otherwise abusive use of pre-trial detention takes place in a context of systemic challenges related to administrative and budgetary issues.

## 6.1 DELAYS IN CRIMINAL PROCEEDINGS

**“There aren’t enough [court] sessions. To reduce the number of pre-trial detainees, we need to increase the number of sessions, to at least four each year. One of the pre-trial detainees here has been waiting for a trial since 2014, but his case never gets enrolled.”**

Amnesty International interview with Farafangana prison director, August 2017.

Limited sessions and the low frequency of the ordinary and special criminal courts are two of the major factors contributing to lengthy periods of pre-trial detention. Under the Code of Criminal Procedure, criminal court sessions are held twice a year, and additional sessions may be held if the number of cases calls for it, depending on available resources.<sup>342</sup>

Amnesty International’s research showed that a large percentage of male pre-trial detainees were held on charges linked to cattle theft. For instance, in MC Maintirano, 99 out of 215 pre-trial detainees were being held on offences linked to cattle.<sup>343</sup> The fact that the criminal court hearings relating to these offences only take place twice a year contributes to serious delays in pre-trial detainees’ access to a trial, resulting in severe overcrowding.

<sup>342</sup> CPP, Articles 404, 405

<sup>343</sup> Amnesty International analysis of Modèle 18 document received from MC Maintirano, 2017

## SPECIAL CRIMINAL COURTS [COURS CRIMINELLES SPECIALES IN FRENCH]

- “For cattle theft, there is one session in September and one in November. After that, we have to wait for the next year” said the Director of the Farafangana central prison, where 70% of detainees were awaiting trial.
- “And sometimes, they even postpone it, depending on the budget, because they have to buy paper, spend money for transport, and so on.”<sup>344</sup>

Offences linked to cattle (zebu), vanilla, and precious wood thefts are tried by the non-permanent, special criminal courts.<sup>345</sup> The fact that these special criminal courts only take place twice a year contributes to serious delays in pre-trial detainees’ access to a trial, and to severe overcrowding. Sentences for these thefts are much heavier than the theft of other items. For instance, the Criminal Code provides a sentence of one to five years imprisonment for the theft of domestic animals, yet anyone found guilty of theft of cattle can be handed a sentence ranging from five years of hard labour to a life sentence of hard labour.<sup>346</sup> In addition, the Code of Criminal Procedure provides that courts cannot mete out suspended sentences for offences linked to vanilla, rosewood and ebony.<sup>347</sup>



*Inside of the Ihoisy court where trials take place, August 2017 @ Amnesty International*

<sup>344</sup> Amnesty International interview with the Prison Director of MC Farafangana, 24 August 2017

<sup>345</sup> Law n° 60-106, 27 September 1960, on the prosecution of cattle theft provides the proceedings to prosecute anyone accused of offences linked to cattle theft. Law n. 88-028, 16 December 1988 provides the proceedings for theft of vanilla, and law 2015-056 provides the proceedings for offences linked to rosewood or ebony

<sup>346</sup> If the offence was committed with at least three aggravating circumstances. Law 60-106, Article 5, states that the five aggravating factors are: committed at night, by two people or more, bearing arms, with violence, claiming a false order by a civil or military authority

<sup>347</sup> CPP, Article 569, 570 and 571

## 6.2 LACK OF ADEQUATE BUDGET

### 6.2.1 THE MINISTRY OF JUSTICE: 1% OF THE NATIONAL BUDGET

**“The problem is that the government is not interested in the prisoners, because they consider them as having committed faults, although many are innocent.”<sup>348</sup>**

Amnesty International interview with Regional Director, Antanimora prison, 18 August 2017

Madagascar's national budget for 2017 was 7,300 billion ariary, (approximately USD2.2 billion).<sup>349</sup> Nearly 80% of the budget is allocated to ten of the 38 institutions and ministries in the country.<sup>350</sup> The other 28 ministries, which include the Ministry of Justice, share the remaining 21% of the budget - approximately 1% for each ministry.

While Madagascar's overall budget has increased by 186% between 2010 and 2017,<sup>351</sup> the Ministry of Justice's budget for the same period has increased by only 58%.<sup>352</sup> Hence, the proportion of the budget allocated to the Ministry of Justice has diminished since 2010, going from 2.4% of the overall budget in 2010 to only 1% in 2017.<sup>353</sup> Even within the Ministry of Justice, the Prison department fares poorly compared to its counterpart, the Judiciary. In 2010, the budgets of the Judiciary and the Prison Administration were nearly equal. However, in 2017, the judiciary budget was 77% larger than that of the Prison Administration.<sup>354</sup>

Regional Directors said that the lack of funds available for investment makes their work very difficult, as they are unable to improve detention conditions in the long term, by improving infrastructure, for instance.<sup>355</sup>

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<sup>348</sup> Amnesty International interview with Regional Director, MC Antanimora, 18 August 2017

<sup>349</sup> Finance law 2017, *Document budgétaire, Annexe au projet de loi n. 012/2017 du 06 Juin 2017 portant loi de finances rectificative pour 2017*, Tome 2, [http://www.mefb.gov.mg/textes\\_lois/PLFR2017/TOME%20%20ANNEXES\\_PROJET.pdf](http://www.mefb.gov.mg/textes_lois/PLFR2017/TOME%20%20ANNEXES_PROJET.pdf)

<sup>350</sup> UNICEF : *Analyse du budget des secteurs sociaux, 2014-2018*, January 2018, Page 8

<sup>351</sup> 2 643 680 301 682 ariary in 2010 and 7 353 334 228 000 in 2017 as per the 2010 Loi de Finances Rectificatives and the 2017 Loi de Finance

<sup>352</sup> 65 750 255 847 in 2010 and 104 319 282 000 in 2017 as per the 2010 Loi de Finances Rectificatives and the 2017 Loi de Finance

<sup>353</sup> The budget allocated to the Ministry of Justice was 104 billion ariary, approximately 32 million US dollars: *Projet de loi n. 012-2017 du 06 Juin 2017 portant loi de finances rectificative pour 2017*, [Projet de loi n/012/2017 du 06 Juin 2017 portant loi de finances rectificative pour 2017, http://www.mefb.gov.mg/textes\\_lois/PLFR2017/CORPS\\_PLFR\\_2017.pdf](http://www.mefb.gov.mg/textes_lois/PLFR2017/CORPS_PLFR_2017.pdf)

<sup>354</sup> As above

<sup>355</sup> Interviews with Regional Directors, 16-30 August 2017, Madagascar



*In MC Antsirabe, a prison guard writes down information related to detainees' movements, September 2018 @ Amnesty International*

The Regional Directorates' budget has also diminished. In 2017, out of the 9 billion ariary (approximately USD2.7 million) provided to the Prison Administration, only 3.2 billion (approximately USD960,000) was given to the Regional Directorates. This is less than they received in 2010.<sup>356</sup>

When Regional Directors receive their budgets, these are already allocated across the spending lines, such as food for detainees, water and electricity, pharmaceutical products, and office furniture, among others. Across regions, most of the budget goes towards the purchase of food for the detainees. Yet, as discussed in Chapter 4, none of the prisons visited could provide adequate food to the prisoners and the little amount which remained for other spending lines did not enable them to respond to the other needs of the prison. In 2017, the Analamanga regional directorate covering four prisons, holding nearly 5,000 prisoners, received 1.2 million ariary (approximately USD360) for the year to purchase office furniture and other similar items.<sup>357</sup> Such an amount is far from adequate to respond to the needs. The prison staff of the largest prison, the Antanimora central prison, told Amnesty International:

■ **“We don't even have enough budget to buy paper on which to register the arrival of new detainees.”<sup>358</sup>**

## 6.2.2 DWINDLING FUNDS FOR LEGAL COSTS

The legal costs fund is supposed to cover fees incurred by the *frais de justice pénale et assimilés*, (FJPA), or the administration of criminal justice.<sup>359</sup>

The Code of Criminal Procedure provides that four citizen observers, chosen by lot, must be present at all criminal court sessions, and this number goes up to six for special criminal courts.<sup>360</sup> As per law, observers' allowances, which include compensation for travel costs and possibly missing days of work, are to be paid by

<sup>356</sup> Approximately 4.3 billion ariary, as per Annex 5 to the 2011 rectifying finance law, [http://www.mefb.gov.mg/textes\\_lois/lf/05-ANNEXES-LFI2011-ANNEXE5-DEPENSES\\_PAR\\_SERVICE.pdf](http://www.mefb.gov.mg/textes_lois/lf/05-ANNEXES-LFI2011-ANNEXE5-DEPENSES_PAR_SERVICE.pdf)

<sup>357</sup> 2017 data shared by the government indicates that there are four prisons in the Analamanga region, and 4688 prisoners as of October 2017

<sup>358</sup> Amnesty International interview with MC Antanimora prison Director, 18 August 2017

<sup>359</sup> The FJPA are provided by Decree 2009-1441, and are the costs incurred by the justice system, which include the allowances to the clerks and public servants, transfer costs for the prisoners, transport cost for the files and items of evidence, travel allowances for magistrates, interpreters and other experts, costs to prepare the criminal court sessions, investigation costs, etc.

<sup>360</sup> CPP, Articles 408 and 409. Assessors are drawn from a list of 18 names of citizens aged at least 25 years old, who can read and write, and enjoy their civic and political rights

this fund. But the lack of budgetary allocation for this fund often results in observers' allowances not being paid, threatening their role and the functioning of the criminal sessions.<sup>361</sup>

The Prosecutor of the Ihosy court explained:

- **“When the Appeal Court magistrates come to the region to hold the ordinary criminal sessions, they are required to pay in advance for their accommodation and meals.”**<sup>362</sup>

All these bottlenecks have an impact on the criminal chain, from the investigation to the judgment.

According to a 2014 report by UNDP, the budget assigned to the legal cost fund was reduced by 86% between 2010 and 2014.<sup>363</sup> The report states that, consequently, judicial police officers were hardly getting paid their allowances, resulting in tensions between the police and the judiciary.

In its 2017 report to the Human Rights Committee, the government of Madagascar explained that, “because of the financial and logistical problems of some police departments, it is in the litigants’ interests to offer support – [implying financial support] – to ensure that the clues and evidence do not disappear, but that it is not imposed on them.”<sup>364</sup> This amounts to an acknowledgement of the fact that it is common practice in Madagascar for litigants to pay for police investigations to take place. This, in turn, paves the way for corruption, seriously undermines the impartiality and efficiency of police investigations, and destroys the credibility of the criminal justice system as a whole. Several pre-trial detainees told Amnesty International that they believed they were arrested because of bribes paid to police officers.

The 2014 report by UNDP also details how, due to lack of payment, doctors were reluctant to carry out medical examinations – essential for the investigation of criminal cases.<sup>365</sup> Delays and insufficient remuneration to bailiffs, whose role it is to serve summons to individuals called to appear in court, resulted in bailiffs refusing to do their jobs. All this led to cases being constantly postponed.<sup>366</sup>

A reform of the legal costs fund is necessary to address both the low amounts provided by the current system and the complexity of obtaining them, as it affects everyone in the justice system, from legal aid lawyers to magistrates, judiciary police, observers and experts.<sup>367</sup>

## 6.2.3 SHORTAGE OF STAFF

- **“Security is difficult because we don’t have many guards, the prison is overcrowded, and every day we live in fear of a prison break.”**<sup>368</sup>

There is an acute shortage of key staff within the criminal justice system, ranging from the number of judiciary police officers, to magistrates, lawyers and prison staff.

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<sup>361</sup> UNDP, *Etude sur les dysfonctionnements de la chaine pénale Malagasy*, 2014

<sup>362</sup> Amnesty International interview with the Prosecutor of the Ihosy court, Ihosy, 22 August 2017

<sup>363</sup> UNDP, *Etude sur les dysfonctionnements de la chaine pénale Malagasy*, 2014, page 20

<sup>364</sup> UN Comité des Droits de l’Homme, *Compte rendu analytique de la 3385e séance*, 13 Septembre 2017, CCPR/C/SR.3385, Para. 31

<sup>365</sup> UNDP, *Etude sur les dysfonctionnements de la chaine pénale malagasy*, 2014

<sup>366</sup> ETIKA, 2014, n/0009, [http://www.csi.gov.mg/wp-content/uploads/2017/04/Etika\\_0009.pdf](http://www.csi.gov.mg/wp-content/uploads/2017/04/Etika_0009.pdf), Page 6

<sup>367</sup> ACAT reported that allowances offered to legal aid lawyers are equivalent to one Euro, completely insufficient to cover their transportation and hotel fees. ACAT, *Rapport présenté dans le cadre de l’examen périodique universel*, Aout 2009, Conseil des droits de l’homme

<sup>368</sup> Amnesty International interview with the Regional Director of the Vatovavy Fitovinany region, 23 August 2017



*In MC Manakara, a prison staff looks at the male detainees. September 2018 @ Amnesty International*

The budget allocated to the prison administration and the judiciary is insufficient to enable effective functioning of the criminal justice system. The number of prison staff and the material resources put at their disposal is not sufficient for the number of detainees and prisoners held. In 2017, there were 838 magistrates and substitute magistrates<sup>369</sup> and approximately 900 lawyers.<sup>370</sup> There is a shortage of judiciary staff, including clerks. Combined with the lack of adequate material resources, this leads to massive case backlogs.<sup>371</sup>

In 2017, there were 1,823 prison agents covering all the prisons. Although their number had increased from 1,678 in 2016,<sup>372</sup> it remains low compared to the prison population: on average, one agent oversees 11.5 prisoners. The 2017 Finance Law indicates that the number was expected to stay the same in 2018 and 2019.<sup>373</sup>

- **“When prisoners get transported to the court by foot, sometimes there is [*sic*] just one or two guards for 30 prisoners. Every month, we have the case where we fall short of guards [and so detainees cannot be taken to court]... We have 40 guards for 700 prisoners.”** Prison Director of MC Antsirabe, which held 638 people in August 2017, despite an official capacity of 210.<sup>374</sup>

<sup>369</sup> Finance Law 2017; Document budgétaire, annexe à la loi n. 2016-032 portant loi de finances pour 2017, [http://www.mefb.gov.mg/textes\\_lois/LF-2017/TOME2.pdf](http://www.mefb.gov.mg/textes_lois/LF-2017/TOME2.pdf)

<sup>370</sup> Les Nouvelles, *Justice : les avocats en sous-effectif*, 31 March 2017, <http://www.newsmada.com/2017/03/31/justice-les-avocats-en-sous-effectif/>

<sup>371</sup> Common Country Assessment 2012, April 2013, Page 32

[http://mg.one.un.org/content/dam/unct/madagascar/docs/Document%20CCA%202012%20MADAGASCAR\\_Final.pdf](http://mg.one.un.org/content/dam/unct/madagascar/docs/Document%20CCA%202012%20MADAGASCAR_Final.pdf)

<sup>372</sup> Finance Law 2016

<sup>373</sup> Document budgétaire, annexe à la loi n. 2016-032 portant loi de finances pour 2017, [http://www.mefb.gov.mg/textes\\_lois/LF-2017/TOME2.pdf](http://www.mefb.gov.mg/textes_lois/LF-2017/TOME2.pdf)

<sup>374</sup> Amnesty International interview with the Director of MC Antsirabe, 19 August 2017



*A prison guard watches the prisoners from a watchtower. September 2018 @ Amnesty International*



## 6.3 KEEPING RECORDS OF DETENTION

**“An essential element in protecting the rights of prisoners is good record-keeping so they can be located.”**

Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. <sup>375</sup>



### **CYRIL\* - CONSIDERED A PRE-TRIAL DETAINEE FOR 27 YEARS**

During the visit to Antanimora prison, Amnesty International researchers met 55-year-old Cyril\*,<sup>376</sup> who had been detained for 27 years, accused of murder, who was still registered as pre-trial detainee according to the prison register. Prison staff considered him a pre-trial detainee, and he himself was not aware that he had had a trial in his absence. Cyril explained:

**“I have been here for 27 years. I was arrested in September 1990. All I remember is that none of my family members have come here to give me food. In prison, I am only given manioc, in 27 years I have suffered a lot... I have already been heard by the court, but I don't know when my next hearing will take place. I don't have a lawyer, and I have never seen one... I did not know I have the right to see a lawyer.”**

Cyril said that he worked for other prisoners, giving them massages, in order to be able to buy a bit more food to supplement the meagre prison diet.

Amnesty International researchers managed to get access to the *Modèle 18* document, which contains information of each detainee, and confirmed that he was listed among the pre-trial detainees: the table indicating that his detention warrant, which is limited in time as per the Code of Criminal Procedure, was issued in 1990. In the observations column, it was written that he had been tried in his absence, as he had escaped the prison at the time. Amnesty International was able to verify that Cyril has indeed been tried, in 1993. However, the lack of coordination between the courts and the prisons had resulted in the prison never being informed of Cyril's trial taking place. This situation had terrible consequences on his mental health, as he was still waiting for a trial to take place and unaware of the status of his case, in violation of fair trial rights. Before leaving, Cyril said:

**“All I want is to get out of here, go to Antsirabe and look for my daughter. She was two years old when I was arrested.”**

Unfortunately, this is not altogether surprising. Amnesty International researchers saw first-hand the way the prison staff documented and communicated the court hearing dates to detainees. The combination of lack of resources, including registers to record things, overworked staff and lack of coordination between various departments, can make the whole process prone to error, with the impact felt by the pre-trial detainees first hand.

Records are an essential tool for protecting and upholding detainees' human rights. As provided in the Nelson Mandela Rules, detailed information about the arrest, place of detention and treatment of detainees and prisoners, made widely available, provides some protection against abuse.<sup>377</sup> Maintaining accurate and updated records is also essential to identify and release prisoners whose detention orders have expired. Malagasy laws provide that if a pre-trial detainee's detention order expires, they must be immediately released, or else it is considered arbitrary detention.<sup>378</sup>

Prison directors play a crucial role in the prevention of arbitrary detentions. Each month, the directors send a list to the competent court containing names of pre-trial detainees whose detention is about to reach the legal time limit. It is then up to the magistrates to either extend their detention with a new order (whenever

<sup>375</sup> UNODC, *Handbook on prisoner file management*, 2008, [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoner\\_File\\_Management.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoner_File_Management.pdf)

<sup>376</sup> Amnesty International interview with Cyril, MC Antanimora, 18 August 2017

<sup>377</sup> See in particular Rules 6-10

<sup>378</sup> CPP, Article 334 ter

applicable), or instruct their release. The directors informed Amnesty International that often the magistrates never sent a response, consequently making it the responsibility of the prison administration staff to release the eligible pre-trial detainees.

The main obstacles to ensuring accurate and regularly updated prisoner records are lack of financial and material resources, outdated record-keeping systems, and poor coordination between the prisons and the judiciary.



*In MC Antanimora, the register room contains hundreds of casefiles, dating back decades. There is limited digital recording. August 2017 @ Amnesty International*

Madagascar's law provides that for each person deprived of their liberty, both in police custody and in pre-trial detention, details be recorded in a specific register.<sup>379</sup> During the prison visits, Amnesty International observed that all nine prisons maintained such registers. But in the absence of electronic record-keeping systems, all necessary information, including the detainees' personal details, next date of court hearing, and detention, extension or extraction orders were all being recorded manually. This is a very time-consuming and painstaking process for the prison staff, who are already overworked.

In MC Antanimora, which accepts around 20 new detainees every day, the Prison Director exposed the consequences of the lack of resources:

- **“Here, we have 20 prison clerks, but we don’t have enough resources. We only have two computers so they have to share. We don’t have enough recording books, so we now use the papers from the court to write down their details. It is really hard for the staff, they suffer from stress and psychological problems.”<sup>380</sup>**

All prisoner details and case updates contained in the registers have been recorded by hand since 1956. As a result, one can find hundreds of old registry books crammed into the back of the prison record-keeping

<sup>379</sup> Decree 69-232 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. This is also provided for by the Code of Criminal Procedure. Records are also made of appearances of the pre-trial detainee before the judge

<sup>380</sup> Amnesty International interview with MC Antanimora prison director, 18 August 2017

rooms. In most prisons that Amnesty International visited, these rooms were in such a state of disrepair – broken windows, cold temperatures, and damp seepage on the walls – that many of the registers had started to rot, with rodents chewing on some of them.



*In MC Antanimora, the register room contains hundreds of case files, dating back from decades ago. The lower shelf contains cases from 1984 to 1991. Prison staff complained about the records being destroyed by humidity and eaten by rodents. August 2017 @ Amnesty International*



The Regional Director of MC Antanimora explained that the judgment order, which is issued by the court in hard copy, often does not reach the clerks in the prisons. Or sometimes, detainees' case files get lost when being transferred from one court to another.<sup>381</sup> Cyril is a living example of how poor record-keeping and lack of coordination between the court and the prisons can destroy a person's life and hopes. The unfortunate reality is that he is not the only one.

## 6.4 CORRUPTION



When Amnesty International researchers met Greg\*, he had already spent one year and nine months in Ihosy prison, awaiting trial. He was accused of complicity in the theft of a zebu and was arrested in November 2015 while tending his land in his village.

**“The judge asked me if I stole the zebu. I said no. Then, he just sent me to prison... I sent four requests for temporary release, and I have already spent 10 million ariary (approximately USD3000) [in bribes], but I am still here [in prison].”**

Greg, who had left school at the age of 11, was the primary caregiver for his large family, but he had to ask them to sell their land and belongings to arrange for bribes for his release.

**“My family tried to solve our problems at court. People told them ‘come and pay and he will be released’. So, they paid 1.9 million ariary (approximately USD570) to the substitute judge and 3 million each (approximately USD900) to the judge, the President of the court, and the Prosecutor.”**

Greg explained:

**“I don’t have a lawyer, because it’s always about money, and we don’t have enough money. People like us who come from the rural area, we are afraid of the State. We just heard that we need to pay the judge, and we paid. No one told me anything else. We have no education, so we know nothing about this.”<sup>382</sup>**

Reports of bribery go right through the ranks and departments. In Ihosy prison, for example, several detainees reported that despite their detention warrants having expired, high-ranking prison staff kept individuals in detention until they paid bribes to be released.

<sup>381</sup> Amnesty International interview with Regional Director overseeing MC Antanimora, 18 August 2017

<sup>382</sup> Amnesty International interview with Greg, MC Ihosy, August 2017



In MC Manakara, a writing on the wall reads: 'We do not take bribes' September 2018 @ Amnesty International

Corruption throughout the criminal justice chain contributes to the excessive use of pre-trial detention, as bribes can influence who is held in pre-trial detention, and for how long. Amnesty International's interviews in prisons highlighted the range of corruption throughout the justice system. In fact, due to its high prevalence, the UNDP refers to it as a "corruption chain" in its 2014 report on the challenges in the Malagasy criminal justice system.<sup>383</sup>



54-year-old Fred\* was a popular tour guide in the Ihoisy region for 38 years. Although he never went to school and could not read or write, Fred had a special set of skills: during his many years working with tourists he was able to master four languages. His life changed suddenly when other tour guides accused him of the murder of the chief guide, who was killed in July 2017. Since his arrest, Fred had spent a month and a half awaiting trial in MC Ihoisy when he met with Amnesty International, and had little hope of getting one soon.

**“In court, everyone is a champion of bribes. If you have money, then no problem. If I had money to pay the court or a lawyer, I would not be here. Even if it were true that I was guilty, and that there was evidence, I would never have come to prison.”<sup>384</sup>**



Entrance to the Ihoisy tribunal, August 2017 @ Amnesty International

<sup>383</sup> UNDP, *Etude sur les dysfonctionnements de la chaîne pénale Malagasy*, 2014, Page 24

<sup>384</sup> Amnesty International interview with Fred, MC Ihoisy, 22 August 2017

Civil society organizations working in Madagascar corroborate the view that corruption in Madagascar is endemic:

- **“Magistrates are corrupt, they are paid to put people in prison. The detention warrant is a proof that the magistrate is doing his or her job. In Madagascar, going to prison is shameful, so it’s [seen as] a punishment.”<sup>385</sup>**

This, according to them, is also what prevents judges from using alternative measures to detention.

- **“On the issue of judicial control [an alternative measure to detention], for example: although the law came out in 2016, I can tell you that until now, I do not dare to apply it, by [sic] fear of being called corrupt, or unprofessional,”** said the judge of the Ihosy court.<sup>386</sup>

This argument turns the notion of justice on its head. International legal standards provide that detention pending trial must be justified by a reasonable suspicion that the individual has committed an offence, and that pre-trial detention is the only way of averting further harm or obstruction of justice.



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<sup>385</sup> Amnesty International interview with the head of a local NGO working in prisons, who requested anonymity, 29 August 2017

<sup>386</sup> Amnesty International interview with the Judge of the Ihosy court, 22 August 2017

# 7. CONCLUSION AND RECOMMENDATIONS



While Madagascar's Constitution, in line with the state's international legal obligations, provides that pre-trial detention is an exceptional measure, the reality is that more than half of the prison population are either awaiting trial or whose trials are still ongoing. This violates national, regional and international human rights laws.

This unjustified, excessive, prolonged and otherwise abusive use of pre-trial detention violates the rights of individuals to freedom from arbitrary detention; to be promptly tried; to be presumed innocent until proven guilty after a fair trial; to freedom from torture and other cruel, inhuman or degrading treatment or punishment; and a host of other human rights, including children's rights. The failures of the Malagasy criminal justice system also violate the right to legal assistance throughout the process.



*Amongst the male detainees, those who are held in pre-trial detention raise their hands. Their main message: 'we want our trial'. MC Antsirabe, September 2018 @ Amnesty International*

The government has failed to prioritize much-needed support for the criminal justice system, which has resulted in poor allocation of human and material resources. Most prisons visited lacked basic resources, critical to the functioning of the prisons, including transport, furniture, sufficient food for detainees and even sheets of paper. In addition to the severe lack of resources, the lack of training of staff, the poor coordination among the judiciary and the prison institutions, the slow pace of police investigation, and delayed judicial disposal of cases has meant that thousands of people continue to remain detained in prisons for months and years without a trial. Magistrates have failed to effectively play their role in limiting the length of pre-trial detention and preventing or ending arbitrary detentions. Instead, they have adopted a punitive approach, deliberately sending people to pre-trial detention, on a weak and twisted defence of “being seen to be doing justice”, and a conservative approach to using alternatives to detention.

It is mostly economically and otherwise disadvantaged people – the uneducated and underprivileged from rural areas – who are subjected to unjustified, excessive and lengthy pre-trial detentions. The majority of them spend long months or years in prison for non-violent, often petty offences like simple theft, fraud and forgery. With little knowledge or awareness of their rights and even less means to defend themselves, the poor and the marginalized are also the most likely to suffer the most from their detention.

Pre-trial detainees in Madagascar are held in appalling conditions that pose a threat to their lives, and fall far short of international, regional and national human rights laws and standards, to the extent that they constitute cruel, inhuman or degrading treatment or punishment, and in some cases amount to torture. The prisons are overcrowded, with extremely poor sanitation and medical care and very few opportunities for learning or training of inmates. Detainees receive food in insufficient quantities and of poor quality, leading to cases of malnutrition.

Even in cases where individuals are released after a few months of pre-trial detention, their incarceration can have long-lasting consequences. They are likely to have lost their jobs, and to have plunged deeper into poverty. Due to the conditions in which they are held, many are also likely to walk out of prison in a weaker physical and mental state than when they arrived. These consequences are obviously exacerbated when detention extends to long months and years. In addition to the impact on the detainees, pre-trial detention often has a harmful impact on their families and children, who are likely to sink deeper into poverty because of the loss of income resulting from the detention of the main breadwinner, or the absence of the primary caregiver, with damaging consequences for their children’s education, well-being, and future.



*By 6pm, boys are requested to go into their shared cell, where they spend the night and wait for the next morning. The law allows their pre-trial detention to last for up to 33 months if they are accused of serious criminal offences. MC Manakara, September 2018 @ Amnesty International*

The authorities of Madagascar must take immediate steps to ensure that the various organs of justice effectively work to make pre-trial detention an exception, and when ordered, for them to be tried without delay. They must also ensure that all detainees are treated humanely and have their other human rights respected and protected. They must support the independence of the judiciary, and protect it from pressures from the general population. Raising awareness in the general population about the criminal justice system, the role and independence of the judiciary, and alternatives to detention, as well as tackling widespread corruption within the criminal justice system, is necessary as part of efforts to reduce pre-trial detention in Madagascar.

By reducing the use of pre-trial detention, the authorities of Madagascar would strengthen its criminal justice system and make it more human rights-compliant. In doing so, they would also, beyond complying with the country's international legal obligations, significantly reduce overcrowding in prisons, lessen the strain on the financial, material and human resources, and ensure the effective and safe functioning of prisons to hold individuals who have been convicted.

## RECOMMENDATIONS

### FOR THE MADAGASCAR AUTHORITIES

The Malagasy authorities must take all necessary measures, in law, policy and practice, to end the use of unjustified, excessive and prolonged pre-trial detention, ensure fair procedures for all suspects and provide humane conditions of detention. In particular, steps must be taken to guarantee real equality before the law, so that poor people are not disproportionately affected by pre-trial detention.

As an immediate step, the Malagasy authorities must release all individuals whose detentions have been arbitrary, including detentions that have been excessively long or a result of detainees being poor, and provide reparations to victims of unlawful arrest or detention in accordance with Article 13 of the Constitution.

The Malagasy authorities should issue an invitation to the UN Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to carry out a country visit to Madagascar and grant them full and unfettered access.

Amnesty International makes the following detailed recommendations to the Malagasy government for changes to law and practice:

#### CHANGES TO MALAGASY LAW

- Ensure in law that release pending trial is the general rule. Pre-trial detention should be restricted to cases where a court finds specific, concrete and compelling reasons to do so in the interest of justice or safety. Such a decision must be reviewed frequently and be subject to appeal.
- Amend the Code of Criminal Procedure to ensure that all arrested persons are brought promptly before a judge to determine the lawfulness of detention within a period never exceeding 48 hours, as required by international human rights standards.
- Ensure that all accused persons have legal representation at all stages of proceedings, including through providing legal aid to all detainees who cannot afford a lawyer, and amending the Code of Criminal Procedure Articles 65 and 68, which currently restrict the presence of lawyers to cases that entail a minimum sentence of five years.
- Immediately restrict solitary confinement to where it is unavoidable and make sure it used for as short a period as possible. It should never be used on children, pregnant and breastfeeding women or when it would exacerbate conditions of prisoners with mental or physical disabilities. Outlaw all prolonged solitary confinement -that is, for more than 15 days - by amending Law 2006-015, Article 134.

- Provide in law and ensure in practice that the government regularly publishes and makes accessible official statistics on pre-trial detention policies, practices and population, disaggregated by categories.

### **CHANGES TO PRACTICE**

- Invest in measures aiming at tackling corruption, and run public awareness campaigns on the principles of justice, pre-trial detention, the various roles of magistrates within the criminal justice, and human rights.
- Provide reparations to victims of arbitrary arrest or detention and those who suffered torture or other cruel, inhuman or degrading treatment or punishment, including due to inhumane conditions of detention, in accordance with international standards and Articles 9 and 13 of the Constitution.
- Immediately release from detention any individuals held merely for offences attributed to their relatives.

### **UPHOLD HUMAN RIGHTS STANDARDS FOR TREATMENT IN PRISONS**

- Urgently adopt a National Action Plan with concrete and time-bound goals to improve conditions of detention in Madagascar, and bring them into line with international standards, in particular, the Nelson Mandela Rules and (for women and girls) the Bangkok Rules. Specifically:
  - Ensure that detainees and prisoners live in hygienic conditions, including being mindful of gender-specific needs of women, and have adequate and sufficient access to healthcare, food, water, medicine, beds, blankets and pillows, and adequate clothes.
  - Ensure that detainees and prisoners who are poor do not have to rely on their families or other prisoners to enjoy humane conditions of detention.
- Ensure that pregnant and breastfeeding mothers are given adequate food to meet the level of nutrition necessary for them and their babies or infants.
- Urgently redevelop and restructure the prisons to ensure that there is sufficient space to separate different categories of prisoners, especially children and adults, in accordance with international law and standards.
- Install sewage systems and rubbish management facilities in all prisons, provide fumigation and insecticides, and ensure that prison compounds are cleaned regularly.
- Provide enough opportunities for training and education of prisoners, including by updating equipment and facilities, and by recruiting additional teachers and trainers, to meet the goals of rehabilitation as articulated in international law and standards.
- Ensure that the law establishing the National Preventive Mechanism (NPM) is in line with the OPCAT. Once established and operational, the NPM should prioritise pre-trial detainees and their conditions of detention. The government should consider seriously any recommendations made by the NPM in this regard.

### **INCREASE RESOURCES FOR THE CRIMINAL JUSTICE SYSTEM**

- Increase the budget allocated to the Ministry of Justice, and specifically that allocated to the prison administration, to ensure that they have sufficient resources to enable the functioning of prisons in accordance with international law and standards.
- Provide adequate staffing levels for all prisons, by increasing the number of prison staff, providing

proper training, including in relevant human rights law and standards, and ensuring that staff members work in favourable conditions and are adequately paid.

- Increase the budget allocated to the functioning of the criminal court sessions, to ensure they can take place regularly, to prevent delays in pre-trial detainees' access to a trial.
- Take urgent steps to set up a computerized database and tracking system for detainees and prisoners in all prisons, and ensure that statistics are updated at all levels of the government, to protect the rights of detainees and prevent cases of arbitrary detention.

### **IMPROVE THE TREATMENT OF CHILDREN**

- Ensure that detention pending trial is used only in very exceptional cases for children in conflict with the law and consider alternatives to detention as a priority (as per Law 2016-018), particularly for offences such as petty theft.
- Amend Law 2016-018 to reduce the maximum legal period of pre-trial detention for children.
- Ensure that parents whose children are in police custody or in prison are promptly informed by the police, prison and judicial authorities.
- Ensure that all children in detention have access to educational and training activities to facilitate their reintegration into society, and in line with the CRC.

### **IMPROVE JUDICIAL OVERSIGHT**

- Increase the use of alternatives to imprisonment, including bail and conditional release for pre-trial detainees. This measure should include considering the capacity of the accused to pay fees so that economically disadvantaged persons are not discriminated against.
- Exercise judicial oversight over all detentions promptly and regularly to ensure that those arrested without sufficient legal grounds or evidence, or contrary to procedures established by law are released.

## **FOR INTERNATIONAL DONORS AND TRADING PARTNERS**

Amnesty International recommends that Madagascar's leading international donors and trading partners, including the EU, France, the USA, China, and INGOs should support the Malagasy government through increased and coordinated financial and technical support for the reform of the criminal justice system.

Specifically, donors should play an important role in upholding the rights of detainees by:

- Supporting the reconstruction and improvement of prison buildings
- Supporting the establishment of a free legal aid system
- Strengthening the capacity of the judiciary, including the police, through funding, training (including in human rights) and acquisition of resources.
- Supporting the government of Madagascar in developing public awareness campaigns on human rights, including those related to arrest and detention, and supporting civil society organizations working on human rights and fair trial rights.

## **FOR THE UNITED NATIONS**

- The Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment should urgently express concerns at the situation in Madagascar and urge the government to take immediate steps to address the lengthy pre-trial detentions and arbitrary detentions and to immediately improve conditions of detention in Madagascar.

- The Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is encouraged to seek invitations to carry out a country visit to Madagascar.

## **FOR THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS**

- Issue a public statement expressing concern over the excessive use of pre-trial detention in Madagascar, the abhorrent prison conditions in the country, the lack of separation between pre-trial detainees and sentenced detainees, and the lack of adequate access to appropriate food, healthcare, educational and vocational opportunities, and family.
- Urge the government of Madagascar to take immediate actions to ensure it is compliant with the Commission's 2014 Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.
- Urgently request a visit to Madagascar to assess the condition of prisons and places of detention, to which the delegation of the Commission should be granted unconditional and full access.
- Pursuant to Article 62 of the African Charter on Human and Peoples' Rights, call on the government of Madagascar to submit, without further delay, its pending state party reports.

## **FOR THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND THE WELFARE OF THE CHILD**

- Issue a public statement expressing concern over the excessive use of pre-trial detention for children and the lack of effective separation between minors and adults.
- Urgently request a visit to Madagascar to assess the situation of children in detention. If and when the request for the visit is granted, the delegation of the Committee should be allowed unconditional and full access to prisons and places of detention in the country.
- Pursuant to Article 43 of the African Charter on the Rights and Welfare of the Child, urge the government of Madagascar to submit, without further delay, its initial periodic state party report, which was due in 2010.

# ANNEX 1: RESPONSE FROM MINISTRY OF JUSTICE

REPUBLIC OF MADAGASCAR  
Love- Fatherland - Progress

MINISTRY OF JUSTICE  
N°363 MJ/SP/18

Antananarivo, 28 September 2018

KEEPER OF THE SEALS

MINISTRY OF JUSTICE

To: Regional Director for Southern Africa  
AMNESTY INTERNATIONAL

**RE: Response to your correspondence**

*Reference: Your letter dated 13 September 2018*

Dear Sir,

**Articles 9 and 13** of the Constitution of Madagascar guarantee respect for and protection of fundamental freedoms and laws through an independent justice system, for instance **the right to freedom, the exceptional nature of pre-trial detention, a prohibition of arbitrary detention and the presumption of innocence.**

In addition, Madagascar has committed to respecting and protecting human rights by ratifying the international legal instruments pertaining to human rights.

In recent years, problems associated with overcrowding in prisons and the disproportionate number of people held in pre-trial custody as compared to those sentenced have been raised. However, without disregarding the criticisms levelled against the justice system, it must also be acknowledged that population growth and an increase in crime rates have had a substantial impact on the situation.

Aware of this situation and with the aim of remedying it, the Ministry of Justice has stepped up its efforts by establishing new legal frameworks, adopting policies to reduce overcrowding in prisons and improving conditions for the detention of suspects.

## **1- In legislative terms:**

The Ministry of Justice has undertaken various reforms of Malagasy criminal procedure through the following laws:

n° 2016-017 of 22 August 2016 amending and completing some provisions of the Criminal Procedure Code whereby well-defined and objective criteria are demanded of judges in order to keep a suspect in custody, and where an alternative measure is put in place, notably placing the suspect under court supervision;

n° 2016-018 of 22 August 2016 relating to the measures and procedure applicable to children in conflict with the law, which provides for specific norms and rules of procedure in their regard, such as the extra-judicial procedure termed the "conciliation procedure", parole, or their placement with a trusted person or host family;

n° 2017-013 of 26 July 2017 amending and completing measures of the Criminal Procedure Code pertaining to the defence of parties, preliminary investigations and pre-trial detention during investigations. This law permits a defendant to appeal against a decision on their confinement if the Pre-Trial Chamber does not comply with objective criteria.

## **2- Policies adopted by the Ministry involving:**

Courts and tribunals expediting and simplifying procedures for handling cases,

The creation, by Ministerial Order n° 10.322/2018 of 26 April 2018, of a “Judicial Guarantees” technical committee whose aim is to promote respect for the rights of detainees,

An increase in the hearings of the Criminal Court,

The establishment of a strategic monitoring unit whose role will be to oversee a speeding up of the handling of criminal cases in order to reverse the sentenced-accused ratio.

### 3- Detention conditions

There has been a significant increase in the budget allocated to the Prison Service.

- A pilot project has been launched in two penal institutions to improve the detainees’ food rations, with the aim of offering a more varied and diversified diet that meets all their necessary nutritional requirements.
- Projects to revive penal camps and prison farms are operational.
- Posting nurses to prison institutions, cooperation with the Regional Health Department and the establishment of a central pharmacy have all contributed to detainees’ improved access to healthcare.
- There are efforts underway to separate children from adults in penal institutions that do not yet have a section for minors as well as to renovate the prison infrastructure and, eventually, to construct new central prisons.
- All these efforts undertaken by the Ministry of Justice are aimed at conforming with national, regional and international requirements.

MINISTRY OF JUSTICE

Harimisa Noro Vololona

[signed]

# ANNEXE 2 : SURVEY ON MEN IN PRE-TRIAL DETENTION IN MC MANAKARA, MARCH 2018

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	19 1	19 2	19 3	19 4	19 5	19 6	19 7	19 8	19 9	20 0	20 1	20 2	20 3	20 4	20 5	20 6	20 7	20 8	20 9	21 0	21 1	21 2	21 3	21 4	21 5	21 6	21 7	21 8	21 9	22 0
Age	20	25	18	15	28	21	18	18	23	28	31	29	35	18	37	18	16	26	29	29	15	20	24	18	38	21	20	27	36	27
Peux-tu lire et écrire ?	✓	x	x	✓	✓	✓	x	x	✓	x	✓	x	✓	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x
As-tu été à l'école ?	✓	x	x	✓	✓	✓	x	x	✓	x	✓	x	✓	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x
Si oui, as-tu été à l'école secondaire ?	✓	x	x	✓	✓	✓	x	x	✓	x	x	x	x	x	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	
Sais-tu ce qu'est un avocat ?	x	x	x	x	✓	✓	x	x	✓	x	✓	✓	✓	x	✓	x	✓	✓	x	x	x	x	x	x	x	✓	x	x	x	
As-tu un avocat ?	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	

	22 1	22 2	22 3	22 4	22 5	22 6	22 7	22 8	22 9	23 0	23 1	23 2	23 3	23 4	23 5	23 6	23 7	23 8	23 9	24 0	24 1	24 2	24 3	24 4	24 5	24 6	24 7	24 8	24 9	25 0
Age	30	46	18	24	25	42	40	24	23	18	52	34	45	30	18	26	20	67	36	23	33	38	49							
Peux-tu lire et écrire ?	x	✓	x	x	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	✓	✓							
As-tu été à l'école ?	x	✓	x	x	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	✓	✓							
Si oui, as-tu été à l'école secondaire ?	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	✓	✓							
Sais-tu ce qu'est un avocat ?	x	✓	x	x	x	x	x	x	✓	x	x	x	x	✓	x	x	✓	✓	✓	✓	✓	✓	✓							
As-tu un avocat ?	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	x	✓	x	x						

Questions asked:

- Age
- Can you read and write?
- Have you been to school?
- If yes, have you been to secondary school?
- Do you know what a lawyer is?
- Do you have a lawyer?

## ANNEX 3: EXAMPLE OF INFORMATION CONTAINED IN THE PRISON DOCUMENT CALLED 'ETAT NOMINATIF DES PERSONNES DÉTENUES DE TOUTES CATÉGORIES', OR 'MODÈLE 18'

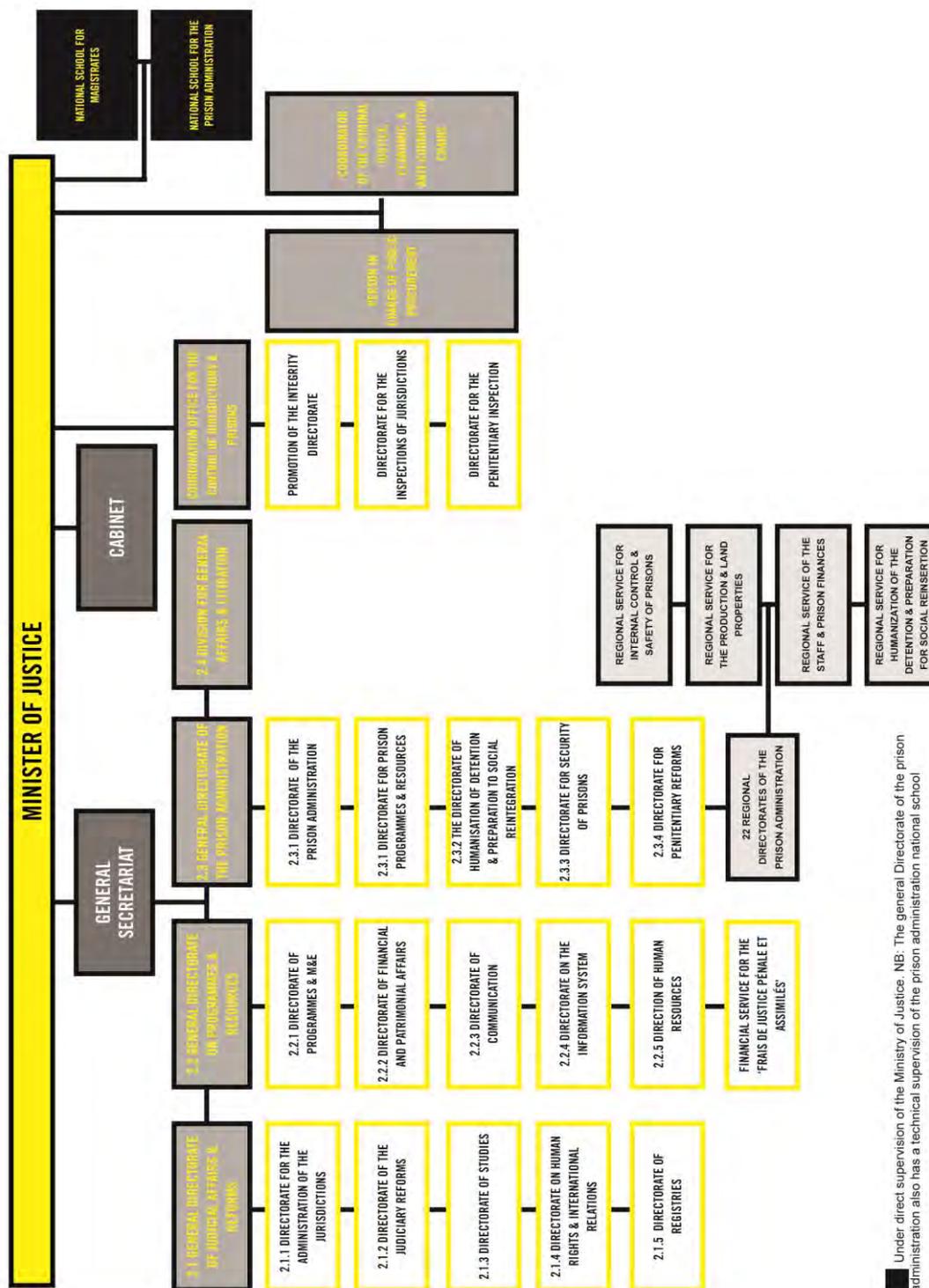
Prisoner number*	Surname and first name*	Dates of birth*	Incarceration date	Motive of the incarceration	Authority mandated	Observations
x	x	x	19/08/16	complicity in cattle theft	J1	OTPCA N°1041/RP/16/RI/J1/S1J 19-CR/16/J1 DU 31/10/16
x	x	x	19/08/16	complicity in cattle theft	J1	OTPCA N°1041/RP/16/RI/J1/S1J 19-CR/16/J1 DU 31/10/16
x	x	x	19/08/16	complicity in cattle theft	J1	OTPCA N°1041/RP/16/RI/J1/S1J 19-CR/16/J1 DU 31/10/16
x	x	x	19/08/16	complicity in cattle theft	J1	OTPCA N°1041/RP/16/RI/J1/S1J 19-CR/16/J1 DU 31/10/16
x	x	x	19/08/16	complicity in cattle theft	J1	OTPCA N°1041/RP/16/RI/J1/S1J 19-CR/16/J1 DU 31/10/16
x	x	x	29/08/16	murder	J4	OTPCA N°1077-RP/16/RI/J1/SR 18-CR/16/J4 DU 18/10/16
x	x	x	31/08/16	break-and-enter	J1	OPC-ORCCO N°1086/RP/RI/16/J1/S1J 20-CR/16/J1 DU 19/09/16
x	x	x	03/09/16	theft of a cow, killing and mutilation of cattle	S1J	OPC-ORCCS N°1107-RP/16/IS/CR DU 18/11/16
x	x	x	03/09/16	theft of a cow, killing and mutilation	S1J	OPC-ORCCS N°1107-RP/16/IS/CR DU 18/11/16
x	x	x	22/09/16	murder	J1	OTPCA N°1211-RP/16/RI/J1/S1J DU 14/04/17 (22-CR/J1/16)
x	x	x	22/09/16	mortal blows	ST	OPC-ORCCO N°1195-RP/16/IS/ST/CR DU 30/11/16
x	x	x	22/09/16	theft and sale of cattle	JE	OPC-ORCCS N°1213-RP/16/RI/J1/ST/02/CCS/17/JE DU 20/06/17 10-CCS/16/J3
x	x	x	22/10/16	theft of cattle	J3	OPC-ORCCS N°1213-RP/16/RI/J1/ST/02/CCS/17/JE DU 20/06/17 10-CCS/16/J3
x	x	x	25/10/16	theft of diverse objects with weapons	J4	OTPCA N°1395-RP/16/RI/S1J DU 01/02/17
x	x	x	22/11/16	attempted theft committed during the night	J1	OPC-ORCCO N°1540/RP/RI/16/J1/ST du 24/02/17 (36-CR/16/J1)
x	x	x	22/11/16	attempted theft committed during the night	J1	OPC-ORCCO N°1540/RP/RI/16/J1/ST du 24/02/17 (36-CR/16/J1)
x	x	x	22/11/16	attempted theft committed during the night	J1	OPC-ORCCO N°1540/RP/RI/16/J1/ST du 24/02/17 (36-CR/16/J1)

\* Detainees' numbers, names and dates of birth were removed to protect their identity

## ANNEX 4: STATISTICS OF PRISONS VISITED BY AMNESTY INTERNATIONAL IN AUGUST 2017, AS PER DOCUMENT B

Visiting order	Prison visited	Men		Women		Boys		Girls		Overall pre-trial detention rate	Capacity	Total population	Overcrowding rate
		Number of men in pre-trial detention	Male pre-trial detention rate	Number of women in pre-trial detention	Female pre-trial detention rate	Boys in pre-trial detention	Pre-trial detention rate amongst boys	Girls in pre-trial detention	Pre-trial detention rate amongst girls				
1	Antanimora central prison	1647	54%	268	85%	128	87,6%	13	92%	59%	1000	3473	247%
2	Antsirabe central prison	378	56%	37	71%	20	90%	0	0	58%	248	742	200%
3	Ambositra central prison	218	77%	3	50%	8	88%	0	0	65%	268	349	30%
4	Fianarantsoa central prison	543	81%	34	89%	24	96%	2	100%	82%	161	732	354%
5	Ibohy central prison	254	77%	12	92%	9	100%	0	0	78%	57	349	512%
6	Farafangana central prison	317	60%	10	52%	25	73%	0	0	61%	112	572	410%
7	Manakara central prison	333	61%	16	84%	18	94%	0	0	63%	121	578	377%
8	Maintirano central prison	215	67%	4	80%	17	89%	0	0	69%	165	341	106%
9	Tsiatahy penitentiary	570	57%	0	0	0	0	0	0	57%	350	988	182%

# ANNEX 5: ORGANIGRAMME OF THE MINISTRY OF JUSTICE OF MADAGASCAR



Under direct supervision of the Ministry of Justice. NB: The general Directorate of the prison administration also has a technical supervision of the prison administration national school <http://www.justice.mg/organisation-judiciaire/les-principaux-textes-de-la-justice/organigramme/>

As per Decree 2016-352

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

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# PUNISHED FOR BEING POOR

## UNJUSTIFIED, EXCESSIVE AND PROLONGED PRE-TRIAL DETENTION IN MADAGASCAR

Madagascar's current judicial policies insist that people accused of a crime are routinely put in prison pending trial. They can be waiting for a trial for years, with little or no information on their cases. This has led to the extraordinary situation where Madagascar's prisons hold more people who have not been convicted than those found guilty.

The use of unjustified, excessive and prolonged arbitrary pre-trial detention in Madagascar has led to a wide array of human rights violations, which Amnesty International exposed in its research into the prison system of the country.

For the most part it is the poorest men, women and children, with the least recourse to legal help, who suffer the most from their imprisonment. While in prison, they and their families face physical violence, threats, loss of income and education, malnutrition, poor health as well as the stigma of being accused of a crime without the chance to prove their innocence. Corruption and underfunding have led to a system on the verge of collapse.

It is time for the authorities in Madagascar to reform the country's judicial and prison systems. Amnesty International recommends that police and courts stop sending people wholesale to prison pending trial, and use the alternatives allowed in law. They need to reduce the serious overcrowding in the prisons and respect the human rights of the population in Madagascar.