



# PUNISHED FOR BEING POOR

UNJUSTIFIED, EXCESSIVE  
AND PROLONGED PRE-TRIAL  
DETENTION IN MADAGASCAR

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*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 be 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.

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.



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

## **PUNISHED FOR BEING POOR**

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*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.





*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*

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.

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.

# METHODOLOGY AND ACKNOWLEDGEMENTS



*In MC Manakara, the overwhelming majority of boys in detention are in pre-trial detention, aged 13 to 17. They suffer 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*

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 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 [cattle], Florent has spent three years and seven months in pre-trial detention. He has 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*



*In MC Antanimora, the register room contains hundreds of casefiles, dating back from decades ago. There is limited digital recording. August 2017 @ 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.

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. 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.



*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*

# 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 Article 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.



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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.