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Madagascar: Detainees and prisoners in Tsiafahy prison are living in an overcrowded 'hell'

Malagasy authorities must immediately stop sending new pre-trial detainees to Tsiafahy maximum security prison, decongest it and radically improve conditions, Amnesty International said today. The prison had a population of 988 prisoners as of October 2017, three times its official capacity, with nearly half awaiting trial, some of them for years.

The current conditions in Tsiafahy prison are totally unacceptable and amount to cruel, inhuman and degrading treatment or punishment, which are prohibited absolutely in international law. They are also in violation of the country's own Constitution and laws, and specifically Decree 2006-015, providing that it should house only sentenced prisoners, either serving life sentences or those considered dangerous.

Inhumane conditions of detention

In October, 2017 Amnesty International visited Tsiafahy and found prisoners kept in dark rooms, each hosting more than 200 people instead of the stipulated capacity of 70. Two concrete platforms in each room act as beds, where the prisoners sleep in cramped conditions, with no blankets or ventilation. The rooms are 12 metres long, five metres wide and five meters high. International standards provide, among other things, that "each prisoner shall... be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness."¹ They also provide that the minimum space available per prisoner should be 3.4 sqm per person in shared or dormitory accommodation.² In contrast, prisoners in Tsiafahy have approximately three times less room than those standards provide for. Prisoners interviewed by Amnesty International said that the overcrowding and lack of ventilation has dramatic consequences for their health. At night, they reported that it is so crowded that they cannot breathe properly, and because of the lack of space, have to sleep on their side.

The government has a responsibility to protect the lives and well-being and other human rights of all prisoners and to ensure prison conditions meet international human rights standards, but detention conditions in the country's maximum security prison breach international legal provisions prohibiting cruel inhuman or degrading treatment or punishment, which Madagascar is bound to comply with, including as a state party to the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This prohibition is also provided in Article 8 of Madagascar's Constitution. Prisoners' basic rights, including proper accommodation, adequate and appropriate food, washing and sanitary facilities, bedding, clothing, and health care are systematically violated, and several prisoners told Amnesty International that they were living 'in hell'.

¹ UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly resolution 70/175, 17 December 2015, Annex, Rule 21.

² See for instance International Committee of the Red Cross, *Water Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012), pp. 32-4.

Prison staff informed Amnesty International that at the time of the visit six prisoners were kept in five confinement cells as a punishment, with four held in solitary confinement and one of the cells containing two prisoners. The UN Special Rapporteur on Torture has called for an end to the practice of solitary confinement for pre-trial detainees, on grounds that it can create psychological pressure that can induce detainees to make incriminating statements.³ Yet one of the six prisoners in solitary confinement at the time of Amnesty International's visit was a pre-trial detainee.

The government has admitted to Amnesty International that Tsiafahy is not coping with the number of pre-trial detainees. When asked about the presence of pre-trial detainees in Tsiafahy, in violation even of the country's own law, the President of the Antananarivo court said: ***'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'***. Since the prohibition on torture and other cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, allowing for no exceptional circumstances in which it can be restricted, neither this nor any other justification is acceptable for holding people in such conditions, be they prisoners or pre-trial detainees.

In Tsiafahy there is no separation between pre-trial detainees and those who have already been sentenced. Pre-trial detainees are held in cramped and unhygienic cells, which undermines their status as unconvicted persons who must enjoy the right to be presumed innocent. This right is as provided in Article 14(2) of the International Covenant on Civil and Political Rights, which also provides explicitly for the separation of pretrial detainees from convicted prisoners (in Article 10(2)(a)). Rule 11 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provides for the classification and separation of different classes of prisoners, including on the basis of "the legal reasons for their detention and the necessities of their treatment" as well as providing explicitly that "[U]ntried prisoners shall be kept separate from convicted prisoners". The lack of separation between pre-trial detainees and those who have been sentenced violates Madagascar's own Code of Penal Procedure⁴, which provides that pre-trial detainees must be held in separate prisons or prison wings, as well as the Article 13 of the Constitution which provides for the presumption of innocence.

An experienced staff member working in the prison told Amnesty International that Tsiafahy was the hardest prison he has ever worked in. When asked about the presence of pre-trial detainees, he said: ***'There are a lot of problems linked to the prisoners who are here for correctional cases: their experience here changes them.'***

Another failure of the authorities lies in the fact that there is no consideration of whether Tsiafahy's security measures are necessary or proportionate for each individual detainee or prisoner. Instead, authorities impose high-security measures on people as a matter of routine based on an assumed generalized risk association exclusively with the decision to send them to this prison. As a result, even a person who poses no actual security threat can be held in Madagascar's harshest detention regime. Persons awaiting trial are thus placed into a regime which treats them identically to persons who are held there convicted of serious crimes. This further – and seriously - undermines the right of suspects to be presumed innocent until proven guilty. Several detainees had been waiting for more than four years for the trial at the time of Amnesty's visit. Article 14(3)(c) of the ICCPR provides clearly that everyone charged with a criminal offence has the right "[T]o be tried without undue delay". Such prolonged pretrial detention also violates the right to freedom from arbitrary detention, provided in Article 9(1) of the ICCPR.

³ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, 5 August 2011, paras. 73, 85.

⁴ Article 550 of the Code of Penal Procedure

While the International Committee of the Red Cross (ICRC) guidelines on prison infrastructure have set the minimum specification of one toilet for every 25 detainees,⁵ in Tsiafahy there is only one toilet per room, for approximately 200 people. Moreover, toilets were not in working order when Amnesty International visited the prison and there was no running water, meaning the toilets could not be flushed. Access to clean water and electricity was also extremely scarce.

All detainees Amnesty International spoke to complained about health problems linked to the overcrowding and the lack of access to appropriate medical care. Prisoners complained about the lack of air and unbearably high temperatures at night linked to the lack of ventilation, about the presence of rats due to the unhygienic detention conditions, and the difficulty to get proper medical treatment when needed. Prisoners told Amnesty International that inmates with tuberculosis were locked in a separate room and had to pay bribes to go to the hospital.

Access to appropriate food is extremely limited, with the prison providing inmates with cassava only. Cassava is an insufficient meal, both quantitatively and qualitatively as cassava does not on its own have the necessary or sufficient nutritional value required to live on. Prisoners reported depending on family visits to get enough food. Some prisoners told Amnesty International their family members were not aware of their detention, and so these prisoners had to resort to working for other prisoners in order to buy additional food from inside the prison.

Prisoners told Amnesty International that bribery was frequent, with prison staff taking some of the food brought by families, and demanding money in exchange for taking a sick prisoner to the hospital.

No effective remedy

Another major failing of Tsiafahy is that detainees and prisoners do not have effective ways to challenge their initial placement in the maximum security prison, and it is difficult once inside for prisoners to get transferred to a different facility with a less harsh regime.

Despite the passing of a new decree in 2009 aiming at enabling people to receive legal aid, access to free legal aid in Tsiafahy is non-existent, and prisoners' right to legal counsel is violated. As a result, most pre-trial detainees are unable to consult with lawyers in preparation of their trial.

In 2002, Amnesty International raised concerns about the living conditions of prisoners in Tsiafahy, stressing that they could amount to cruel, inhuman or degrading treatment, and posing a serious threat to prisoners' lives.⁶ At the time, the government assured Amnesty International that improving the detention conditions was one of their priorities. However, 16 years later, the conditions seem to have only worsened.

Amnesty International will be releasing a comprehensive report later this year detailing human rights violations around the use of pre-trial detention and detention conditions in Madagascar.

The organisation calls on the government of Madagascar to take immediate and longer term steps to ensure that actual practice conform fully to international human rights law and standards. In particular:

1. The government must take immediate steps to stop the transfer of new pre-trial detainees to Tsiafahy
2. The government must immediately address overcrowding, poor hygiene and other poor conditions in Tsiafahy prison and bring them into line with international standards. Among other things, adequate medical care must be provided immediately to all prisoners and sick prisoners requiring hospitalisation must be transferred to hospital without undue delay;

⁵ See International Committee of the Red Cross, *Water Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012), pp. 52-3.

⁶ Amnesty International, Madagascar, *Une justice sélective*, AFR 35/004/2002, December 2002,

3. Pre-trial detainees present in Tsiafahy must progressively be transferred to other prisons where the living conditions are humane. Both pending and after transfer they must be held separately from convicted prisoners;
4. The authorities must urgently address delays in carrying out trials, and review pretrial detentions with a view to keeping people in pretrial detention only when unavoidable;
5. All prisoners must be granted access to appropriate food, water, sanitation and living conditions which enable them to live in dignity;
6. The government should ensure that domestic law and practice conform fully with international human rights treaties ratified by Madagascar as well as international and regional human rights standards, in particular, the African Union Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the treatment of prisoners (the Nelson Mandela Rules).

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