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Madagascar*

The present report is a summary of 5 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to the United Nations translation services.

I. Background and framework

A. Scope of international obligations

1. Action by Christians for the Abolition of Torture – Madagascar (ACAT-Madagascar) recalls that Madagascar has not ratified the Optional Protocol to the Convention against Torture.² Franciscans International (FI) recommends that Madagascar ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.³

B. Constitutional and legislative framework

2. ACAT-Madagascar reports that the amended text of the Malagasy Constitution maintains the provisions concerning the Charter on Human Rights and the international treaties on the rights of women and the rights of the child as part of domestic positive law.⁴

3. ACAT-Madagascar notes that Act No. 2008-028 of 25 June 2008 provides a definition of torture and sets forth provisions relating to repression, measures for the protection of victims, and reparation.⁵ ACAT-Madagascar also makes reference to the law on the rights and the protection of the child, adopted in 2007, which deals with children at risk and the ill-treatment of children, among other issues.⁶

C. Institutional and human rights infrastructure

4. ACAT-Madagascar refers to the 2008 law establishing the National Human Rights Council (formerly the National Human Rights Commission). However, the Council is not yet operational.⁷ ACAT-Madagascar also notes the appointment of the new Ombudsman⁸ in 2008 and the creation of an Office of Human Rights and International Relations within the Ministry of Justice.⁹

D. Policy measures

5. FI reports that the inter-ministerial programmes set up to combat child exploitation and trafficking in persons have achieved negligible results. As a result, human trafficking, forced labour and the worst forms of child labour are increasingly widespread and the most vulnerable population groups — in particular, children — are left without protection against such practices.¹⁰

II. Promotion and protection of human rights on the ground

Implementation of international human rights obligations

1. Right to life, liberty and security of the person

6. Fundación Mundial Déjame Vivir En Paz (FMDVP) reported that beheading as a sentence to death is still applicable and recommended that the beheading sentence in the country be eliminated.¹¹ ACAT-Madagascar notes that the bill to abolish the death penalty, although submitted to Parliament by the Government, has still not been adopted.¹²

7. ACAT-Madagascar reports that the presidential guard made excessive use of force and firearms on 7 February 2009 when it opened fire on several hundred civilians, causing numerous casualties.¹³
8. ACAT-Madagascar recounts that, since the 2009 crisis, cases of unlawful arrest and arbitrary detention have occurred both before and after the new President of the Transition was sworn in.¹⁴ ACAT-Madagascar has found the house search, arrest and detention in July 2009, of Ms. Noro Rabemananjara, lawyer to the former Prime Minister, Mr. Manandafy Rakotonirina, to be unlawful insofar as they contravened the provisions of the 2003 Act on the legal profession.¹⁵
9. ACAT-Madagascar recalls that, with the assistance of the European Union and other partners, the Malagasy Government has taken extensive steps since 2005 to ease overcrowding in prisons and make prison conditions more humane. It has adopted several new laws and regulations to this effect, besides refurbishing a number of prisons and rehabilitation and reintegration centres for children in conflict with the law. In addition, the opening of the National School of Prison Administration (ENAP) in 2006 has facilitated the provision of training for officers, supervisors and teachers. Although these measures have helped eliminate cases of long-term pretrial detention and thus reduce overcrowding in prisons, according to ACAT-Madagascar, since the European Union's programme for the consolidation of the rule of law ended in July 2007 and the political crisis erupted in January 2009, the situation has again deteriorated.¹⁶
10. ACAT-Madagascar reports overcrowding in the country's prisons, along with rising malnutrition and unsanitary conditions.¹⁷ ACAT-Madagascar has also found that while children, women and men are detained in separate facilities at Antanimora central prison in Antananarivo, the principle of segregation of detainees is not always respected in other regions. Moreover, convicted prisoners are mixed with the remand prisoners who make up the majority of the prison population.¹⁸
11. ACAT-Madagascar reports that prison visits are regulated by a decree issued in 2006.
12. ACAT-Madagascar reports a worrying level of domestic violence against women, with 60 per cent of Malagasy women being affected.¹⁹
13. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) reported that corporal punishment against children is lawful in the home, in schools and in alternative care settings. In the penal system, it is unlawful as a sentence for crime but lawful as a disciplinary measure in penal institutions.²⁰ GIEACPC recommended that the Government introduce legislation as a matter of urgency to prohibit all corporal punishment of children in the home, and in schools and other institutions.²¹
14. FI reports that extreme poverty and the development of sex tourism in Madagascar provide fertile ground for growing sexual exploitation of young girls.²² FI also mentions that young girls in domestic service who refuse to accept inhuman and degrading treatment in their place of work become easy prey for prostitution networks.²³ FI adds that children are recruited into sexual exploitation in tourist areas, in the street, in nightclubs and in bars.²⁴ These practices are spreading, according to FI, despite the amendment of the provisions of the Criminal Code concerning violence against women in 2000 and of the provisions concerning trafficking in persons and sex tourism in 2007.²⁵ FI recommends that Madagascar effectively implement the Palermo Protocol as well as the laws on human trafficking and that it carry out public information and awareness-raising campaigns.²⁶
15. FI reports that female employees in export processing zones (EPZs) are forced to offer sexual favours to secure recruitment.²⁷ FI recommends that Madagascar establish a

system of oversight at companies to ensure application of the 2000 law on sexual harassment in the workplace.²⁸

16. ACAT-Madagascar notes that the problem of twins is still not fully resolved, despite awareness-raising campaigns in the Mananjary region. The number of care facilities offering homes for twin children rejected by their families is being increased in an attempt to prevent attempts on these children's lives.²⁹

2. Administration of justice and the rule of law

17. ACAT-Madagascar reports that the adoption in 2008 of the organizational Act reforming the High Judicial Council (*Conseil Supérieur de la Magistrature*, CSM) has ensured greater independence from the executive in the management of the judiciary and a means of guaranteeing the latter's independence. However, ACAT-Madagascar denounces the appointment of two court administrators to the Antananarivo Court of Appeal following Mr. Andry Rajoelina's inauguration in March 2009 as President of the High Transitional Authority, on the grounds that the procedure established in the law governing the CSM was not respected.³⁰

18. ACAT-Madagascar reports that, although the right of defence is enshrined in the Constitution and the Code of Criminal Procedure, the absence of a legal counsel does not constitute grounds for delaying the inquiry process, which allows the police power to disregard this right.³¹ The Code of Criminal Procedure also provides for the medical examination of persons placed under arrest and held in custody.³² A decree regulating legal aid in civil and criminal proceedings was issued in 2009 but ACAT-Madagascar finds that the fees paid to court-appointed counsels in criminal proceedings are clearly inadequate.³³ ACAT-Madagascar reports that a maximum permissible period of pretrial detention for ordinary and serious offences has been established in a 2007 law amending and supplementing the Code of Criminal Procedure.³⁴ Visiting conditions for family members are set forth in a 2006 decree on the general organization of the prison system.³⁵ ACAT-Madagascar has found that although the Code of Criminal Procedure establishes time limits for pretrial detention, in practice, weekend arrests often lead to excessively long periods of custody.³⁶

3. Right to privacy, marriage and family life

19. ACAT-Madagascar notes that the 2007 Marriage Act sets the legal age for marriage at 18 for both sexes. However, heads of household are still men.³⁷

4. Freedom of religion or belief, expression, association and peaceful assembly

20. The Institute on Religion and Public Policy (IRPP) reported that the current Constitution states, in several articles, that all citizens have freedom to practice their religion without interference from the Government and that religion cannot be a ground for discrimination.³⁸ IRPP indicated that a 2007 constitutional referendum was passed to end the formal separation of church and State but no steps were taken to establish a State religion.³⁹

21. IRPP indicated that religious organizations are encouraged to report to the Government by officially registering with the Ministry of Interior. IRPP reported the rules for the recognition of religious associations and religious organizations, namely that all members of their administrative council shall be citizens. If a member of an organization's or association's administrative council is not a citizen, then the organization may only be recognized as an organization "reputed to be foreign". Religious groups that do not meet any of these requirements have to instead register as an association, which forbids them from holding religious services and receiving gifts. There are an estimated 1,000 religious

associations which are not legally recognized and only 109 which are recognized by the Government.⁴⁰ According to IRPP, this rule has the tendency to negatively impact Muslim groups because many of them are recent immigrants who cannot show a maternal lineage of citizenship in Madagascar.⁴¹

22. IRPP noted that some religious groups report that they censor themselves to avoid being shut down by the Government.⁴² IRPP indicated that no incidents of religious discrimination have been reported since President Rajoelina came to power but mentioned several specific cases occurring between 2005 and 2007.⁴³

23. ACAT-Madagascar reports that freedom of expression and freedom of the press are not respected. The Communications Code has not yet been reformed, leaving open the possibility of prison sentences for journalists.⁴⁴ ACAT-Madagascar also reports that a number of politicians have been sentenced to imprisonment for fabricated common-law offences.⁴⁵ IRPP reported that the Government owns the only radio and television stations that are allowed to broadcast nationally.⁴⁶

24. IRPP indicated that the restrictions placed on the freedom of speech contributed to the overthrow of the Government in early 2009. VIVA, a major television and radio station was shut down in December 2008 for airing an interview the Government claimed would disrupt the public order. The former head of VIVA and mayor of Antananarivo, Andry Rajoelina, led demonstrations and riots calling for the resignation of the Government in power at that time.⁴⁷

5. Right to work and to just and favourable conditions of work

25. ACAT-Madagascar refers to information campaigns and initiatives carried out in partnership with UNICEF and the Union of Social Workers to raise awareness of the slave-like conditions that facilitate abuse against minors in domestic service.⁴⁸

6. Right to social security and to an adequate standard of living

26. FI recalls that more than 70 per cent of the Malagasy population live below the poverty line, which explains the country's large homeless population.⁴⁹ FI recalls that families living on the streets lack access to employment, education and health care. Other families are forced to spend most of their time on the streets to earn a living.⁵⁰ FI points out that, these people face high exposure to alcoholism, drug abuse, violence and prostitution.⁵¹ FI recommends that Madagascar adopt a national integration and support scheme to address the challenge of homelessness and the problems encountered by families living on or off the streets, taking as its model the cash transfer programmes proposed by the United Nations Independent Expert on the question of human rights and extreme poverty.⁵²

27. FI describes the housing crisis caused by high rental and property prices. It also draws attention to the loss of welfare housing and the fact that some families are being affected by the sanitation plan for the capital, which is driving the homeless to the outskirts of the city, with a resurgence in the number of shanty dwellings since the 2009 crisis.⁵³

28. With regard to the health-care situation, FI highlights the limited availability of medical assistance for women during childbirth, the inadequate skills level in existing health-care facilities, and the difficulties of accessing health centres. More than 12 per cent of infants die before reaching the age of five, mainly as a result of malaria, diarrhoea and respiratory infections. Although 77 per cent of the urban population has access to drinking water, in rural areas this percentage falls to just 35.⁵⁴

29. FI reports that, in Antananarivo, almost 10,000 people have lost their livelihoods since the socio-political events of January 2009 due to pillaging, arson and destruction of the shops where they worked.⁵⁵

30. FI reports that, with only 13 per cent of agricultural land under cultivation, agricultural policy is not conducive to rational land use. As a result, there are too many peasant farmers on overexploited land, at the expense of family-sized holdings. This explains the high rate of malnutrition, particularly among children. As a result of the 2009 crisis, Malagasies have been struggling to feed and provide for themselves and to achieve an adequate standard of living.⁵⁶ FI recommends that Madagascar strengthen the national malnutrition alert, prevention and treatment system.⁵⁷

7. Right to education and to participate in the cultural life of the community

31. FI reports that, despite the Government's efforts, access to education for young girls is limited by their parents' inability to adequately support them, as well as by early pregnancies and extreme poverty. In addition, the persistence of certain customs and attitudes obstructs the promotion and protection of women's rights and therefore discourages education for young girls.⁵⁸

32. FI reports that rural areas with negligible levels of economic development also have very low school enrolment rates.⁵⁹ FI recommends that Madagascar establish a system for allocating educational resources that takes account of the limited availability of school facilities in rural areas and that it introduce incentives to attract teachers who see little appeal in rural communities.⁶⁰

III. Achievements, best practices, challenges and constraints

N/A

IV. Key national priorities, initiatives and commitments

N/A

V. Capacity-building and technical assistance

N/A

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

Civil society

ACAT-Madagascar	Action des chrétiens pour l'abolition de la torture- Madagascar ; Antananarivo, Madagascar;
FI	Franciscans International; Geneva, Switzerland*;
FMDVP	Fundación Mundial Déjame Vivir En Paz;
GIEACPC	Global Initiative to End All Corporal Punishment of Children; London, United Kingdom;
IRRP	Institute on Religion and Public Policy, Washington D.C.; USA.

² ACAT-Madagascar, para. 26.

³ FI, para. 22 (a)

⁴ ACAT-Madagascar, p. 3.

⁵ ACAT-Madagascar, p. 4 et para. 14.

- ⁶ ACAT-Madagascar, para. 18.
⁷ ACAT-Madagascar, para. 16.
⁸ ACAT-Madagascar, para. 17.
⁹ ACAT-Madagascar, para. 20.
¹⁰ FI, para. 21.
¹¹ FMDVP, p. 3.
¹² ACAT-Madagascar, para. 25.
¹³ ACAT-Madagascar, p. 4.
¹⁴ ACAT-Madagascar, para. 13.
¹⁵ ACAT-Madagascar, para. 7.
¹⁶ ACAT-Madagascar, para. 8.
¹⁷ ACAT-Madagascar, para. 9.
¹⁸ ACAT-Madagascar, para. 10.
¹⁹ ACAT-Madagascar, para. 24.
²⁰ GIEACPC, p. 2.
²¹ GIEACPC, p. 1.
²² FI, para. 14.
²³ FI, para. 20.
²⁴ FI, para. 17.
²⁵ FI, para. 18.
²⁶ FI, para. 22 (f).
²⁷ FI, para. 19.
²⁸ FI, para. 22 (g).
²⁹ ACAT-Madagascar, para. 23; see also FI, para. 11.
³⁰ ACAT-Madagascar, para. 14.
³¹ ACAT-Madagascar, para. 2.
³² ACAT-Madagascar, para. 2.
³³ ACAT-Madagascar, para. 3.
³⁴ ACAT-Madagascar, para. 4.
³⁵ ACAT-Madagascar, para. 5.
³⁶ ACAT-Madagascar, para. 6.
³⁷ ACAT-Madagascar, paras. 19 and 22.
³⁸ IRPP, para. 8.
³⁹ IRPP, para. 9.
⁴⁰ IRPP, para. 10.
⁴¹ IRPP, para. 12.
⁴² IRPP, para. 5.
⁴³ IRPP, paras. 11–15.
⁴⁴ ACAT-Madagascar, para. 27.
⁴⁵ ACAT-Madagascar, para. 28.
⁴⁶ IRPP, para. 5.
⁴⁷ IRPP, para. 6.
⁴⁸ ACAT-Madagascar, para. 21.
⁴⁹ FI, para. 1.
⁵⁰ FI, paras. 2–3.
⁵¹ FI, para. 5.
⁵² FI, para. 22 (b).
⁵³ FI, para. 6.
⁵⁴ FI, para. 7.
⁵⁵ FI, para. 4.
⁵⁶ FI, para. 10.

⁵⁷ FI, para. 22 (d).

⁵⁸ FI, para. 11.

⁵⁹ FI, para. 12.

⁶⁰ FI, para. 22 (e).
