



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

MADAGASCAR

1. The Committee considered the third periodic report of Madagascar (CCPR/C/MDG/2005/3) at its 2425th and 2426th meetings (CCPR/C/SR.2425 and CCPR/C/SR.2426), held on 12 and 13 March 2007, and adopted the following concluding observations at its 2442nd meeting (CCPR/C/SR.2442) on 23 March 2007.

A. Introduction

2. The Committee is pleased to be able to resume the dialogue with the State party, 15 years having passed since the consideration of the previous report (CCPR/C/28/Add.13). It notes that the report submitted by the State party contains useful information on domestic legislation and on changes in certain legal and institutional areas since the consideration of the second periodic report. The Committee welcomes the dialogue with the delegation and notes with interest the oral and written responses to its questions.

B. Positive aspects

3. The Committee welcomes the efforts undertaken by the State party to improve the situation of certain categories of vulnerable groups, in particular persons infected with the HIV/AIDS virus and the disabled.

4. The Committee takes note with interest of the efforts by the State party to improve the functioning of its judicial institutions and underlines the importance of the Code of Ethics for magistrates established in accordance with the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex).

C. Principal areas of concern and recommendations

5. The Committee regrets the lack of specific information on the exact status of the Covenant in the legal system of the State party. It also regrets the lack of significant jurisprudence on the implementation of the Covenant and on the possibilities it offers for the protection of the rights of individuals (art. 2).

The State party should ensure that the Covenant is accorded the status it is given in both the preamble and the body of its Constitution, and see that it can be effectively invoked before and applied by the courts.

6. The Committee notes the indication by the State party that article 8 of the Constitution in both French and in English prohibits discrimination only against nationals while the Malagasy text extends protection to all individuals under the jurisdiction of the State party. The English and French texts might give rise to violations of the Covenant.

The State party should ensure linguistic concordance among the texts in order to limit the possibility of discrimination and give full effect to the provisions of the Covenant for the benefit of all persons under its jurisdiction.

7. The Committee notes with interest that a National Human Rights Commission was established in 1996. It notes, however, that the membership has not been renewed and the mandate of its members has not been extended. This Commission is not presently operative and is not able to hear complaints from individuals (art. 2).

The State party should take the necessary measures to ensure the resumption of the work of the Commission, in accordance with the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights (General Assembly resolution 48/124, annex). The State party is also invited to provide the Commission with adequate resources to fulfil its role effectively, fully and regularly.

8. The Committee is concerned by practices and customs which pose obstacles to equality between men and women and hinder efforts for the promotion and protection of women (art. 3).

The State party should strengthen its efforts in education and training so as to bring about genuine equality between men and women and help to change mindsets and attitudes in order to promote effective observance of the Covenant.

9. The Committee notes that despite the progress made in equality between men and women, women's employment in managerial positions in both the public and private sectors remains low. It is also concerned by the pay disparities between men and women. The participation of women in political life also remains insufficient (arts. 3 and 26).

The State party should develop specific programmes and targeted measures to allow women to enjoy equal access to the job market in the public and private sectors, including managerial positions, and equal pay for work of equal value. The participation of women in political life should also be encouraged and strengthened by means of measures effectively applied.

10. The Committee remains concerned by the prevailing inequality in women's right to inherit property (arts. 3 and 26).

The State party should take appropriate measures in this regard and allow women to inherit property on the same basis as male heirs.

11. The Committee is concerned by information reporting numerous cases of domestic violence. The victims of such violence reportedly do not file complaints because of social and family constraints (arts. 3 and 7).

The State party should provide better protection for women, strengthen preventive measures and punishment for domestic violence against women and children, and address the factors underlying women's vulnerability, including economic dependence on their partners. It should also establish support structures for victims and programmes to raise awareness, including training courses for law enforcement officials.

12. The Committee regrets that, although it is prohibited under the Criminal Code, polygamy persists in some regions, and this undermines the dignity of women (arts. 3 and 26).

The State party should ensure that the relevant provisions of its Criminal Code are enforced without reservation throughout its territory, in order to put an end to this practice and ensure respect for the Covenant.

13. The Committee regrets that the regime for a state of emergency does not specify the derogations that can be made to the Covenant and does not define the guarantees relative to the implementation of such derogations.

The State party should revise its legislation to make it fully compatible with article 4 of the Covenant. The Committee also recalls that under article 4, paragraph 3, of the Covenant, each time a state of emergency is declared by a State party, the latter is required to inform all States parties through the Secretary-General.

14. The Committee is concerned about the law on abortion, especially in cases where the life of the mother is in danger (art. 6).

The State party should amend its legislation to help women avoid unwanted pregnancies and recourse to clandestine abortion at the risk of their lives. It should also consider amending its legislation on abortion so as to bring it into line with the Covenant.

15. The Committee notes with concern that the Criminal Code lists a large number of crimes punishable by the death penalty, including stealing cattle. It takes note of the assurance by the State party that in practice the sentences imposed are automatically commuted to life imprisonment (art. 6).

The Committee invites the State party officially to abolish the death penalty. The State party is also invited to ratify the second Optional Protocol to the Covenant.

16. The Committee is concerned about the existence of a system of customary justice (*Dina*) which does not always produce fair trials. It regrets that summary executions have been perpetrated on the strength of *Dina* decisions. It takes note of the assurance by the State party that *Dina* can no longer intervene in anything other than minor offences, and under judicial supervision (arts. 6 and 14).

The State party should ensure that the *Dina* administer a fair justice system under the supervision of the State courts. The State party is invited to ensure that no further summary executions are perpetrated on the strength of *Dina* decisions and that every accused person benefits from all the safeguards set forth in the Covenant.

17. The Committee is also concerned by the fact that in the south-eastern region, the birth of twins is considered a bad omen (CCPR/C/MDG/2005/3, para. 86) and therefore only one of the newborns is kept by the family, while the other is automatically abandoned (arts. 6 and 24).

While taking note of the explanations provided by the State party in this regard, the Committee requests it to take appropriate vigorous, binding measures to eradicate this practice and ensure that twins are kept by their families so that every child benefits from effective protection measures.

18. The Committee notes that the State party has not responded to its request for information on allegations of torture and cruel, inhuman or degrading treatment during arrest or detention.

The State party should submit information on existing measures for the prevention of torture and similar maltreatment, and on the number of complaints of such treatment received and the action taken in response.

19. While noting that the State party has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is concerned by the fact that national legislation does not contain a definition of torture, and that torture is not a separate offence (art. 7).

The State party should define torture in its legislation, taking into account internationally established norms, and make it a separate offence with appropriate sanctions.

20. The Committee notes that, even though under the national legislation in force, every person arrested may meet with a lawyer, in practice this right is not often observed. Moreover, legal assistance is provided only to those who risk prison sentences of over five years (arts. 7, 9, 10 and 14).

The State party should amend its legislation and its practice in order to guarantee to anyone under arrest access to effective legal assistance from the moment of arrest, in particular where people are unable to pay a private defence attorney.

21. The Committee takes note of reports that children are often employed as domestic servants in conditions that are often tantamount to slavery and lend themselves to all kinds of abuse, in violation of articles 8 and 24 of the Covenant.

The State party should conduct information campaigns and take the necessary measures to put an end to this practice, and ensure compliance with articles 8 and 24 of the Covenant.

22. The Committee regrets that, even though new prison infrastructure has been built recently and the renovation of existing prisons has been undertaken, the prisons remain overcrowded. Conditions of detention are said to be deplorable, and detainees are reportedly not provided with sufficient food. The Committee is concerned that frequently persons being held for questioning are not separated from convicted prisoners, and minors are held with adults (arts. 9 and 10).

The State party should continue the efforts undertaken to improve conditions of detention in its territory and ensure, in that regard, that the Covenant is observed. It should in particular establish a programme of prison rehabilitation and put in place a system to ensure that accused persons are separated from convicted prisoners, and minors from other detainees.

23. The Committee remains concerned by the excessive length of police custody and remand detention which leads to persons being held for lengthy, sometimes indefinite periods (arts. 9 and 10).

The State party should bring its legislation and its practice into conformity with the Covenant and take vigorous measures to limit the duration of police custody and remand detention. Consequently, the Code of Criminal Procedure should be amended.

24. The Committee remains concerned by certain dysfunctions in the State party's judicial system. Numerous files of court cases are said to have been lost or mismanaged (arts. 9 and 14).

The State party should ensure the proper functioning of its judicial structures in accordance with the Covenant and with the principles governing the rule of law. The judiciary should be given sufficient resources to allow it to function properly. Detainees whose case files are missing should be released without delay.

25. The Committee notes with concern that the delegation mentioned the existence of a prisoner who has been held pending appeal since 1978 (application for appeal filed on 21 June 1979 according to a written response from the State party). Supposedly this is not an isolated case (arts. 9 and 14).

The State party should ensure that any case registered may be heard without excessive delay, in accordance with article 14, paragraph 3 (c), of the Covenant.

26. The Committee remains concerned by the procedures in effect for appointing members of the Supreme Council of the Judiciary (CSM), as the Council holds extensive powers, in particular regarding the nomination, promotion and removal of judges. No mechanism is in place to prevent possible interference by the executive branch in the affairs of the judiciary (art. 14).

The State party should change the mechanism for the appointment of members of the CSM and guarantee the total independence and impartiality of the judiciary.

27. The State party should disseminate widely its third periodic report and the present concluding observations.

28. In accordance with rule 71, paragraph 5, of the rules of procedure of the Committee, the State party should provide additional information within a year updating the situation and concerning the implementation of the recommendations found in paragraphs 7, 24 and 25. The Committee requests the State party to provide information concerning the other recommendations made and the implementation of the Covenant as a whole in its next report, which should be submitted by 23 March 2011.
