



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

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

**Third periodic report**

**MADAGASCAR\* \*\***

[24 May 2005]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

\*\* The annexes to this report are available at the Committee secretariat.

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## ARTICLE 1

### Right of peoples to self-determination

1. Subsequent to the adoption of the new Malagasy Constitution of 1992, the following points can be highlighted.

#### At the political level

2. The 1992 Constitution, which was approved by referendum, provides for the following in its title II ("Economic, social and cultural rights and duties"):

- (a) The right to exercise political rights;
- (b) The right to protection of a person's health from the moment of conception;
- (c) The right to protection of the family;
- (d) Free access to State education;
- (e) Compulsory primary education;
- (f) Equal access to public positions;
- (g) The right to fair remuneration;
- (h) Freedom of the press;
- (i) The right to form and join trade unions;
- (j) Recognition of the right to strike;
- (k) Recognition of private property and the security of capital and investment;

(l) The political neutrality of the administration, the armed forces, the justice system, the police, and the education and training system.

This list reflects the country's adoption of democratic principles, recognition of a multiparty system, ending of censorship, recognition of freedom of opinion, economic liberalization and openness towards other countries.

3. The Constitution of 18 December 1992 allows plenty of scope for setting up political organizations. Its article 14 stipulates the following: "Citizens may organize themselves freely and without prior authorization into political associations or parties; however, political associations or parties which represent a threat to national unity or advocate totalitarianism or segregation of an ethnic, tribal or religious nature are prohibited."

### **At the economic level**

4. At the beginning of the 1980s, the country was gradually moving away from a centrally planned economy towards a free-market economy. Since 1982, the Bretton Woods institutions have helped alleviate its macroeconomic problems.
5. Otherwise, the comments made in Madagascar's last report still apply.
6. The mass demonstrations in 1991 led to the adoption of the "Panorama Convention" of 31 October 1991, which provided for a transitional government until the end of 1993.
7. Other measures have been taken to guarantee the freedom of citizens to exercise the rights set forth in the Covenant.
8. Ordinance No. 90-001 of 9 March 1990 on the general regulations governing political parties and organizations is backed up by article 8 of the 1992 Constitution, which stipulates that "citizens shall have full enjoyment of their civic rights and may freely form, in accordance with democratic rules, political parties or organizations".
9. Whereas the 1975 Constitution had established decentralized local authorities under central government control, the 1992 Constitution introduced autonomy for provinces.
10. In this connection, article 126, paragraph 1, of title IV stipulates that "the autonomous provinces are public authorities with legal personality and administrative and financial autonomy".
11. Madagascar has ratified the African Charter on Human and Peoples' Rights, article 20 of which states: "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."
12. Under the Constitution, the African Charter on Human and Peoples' Rights is an integral part of Malagasy positive law.
13. In addition to the above, the information provided in the last report remains valid.

## **ARTICLE 2**

### **Principle of non-discrimination**

14. Since its last report, Madagascar has abandoned a socialist system and opted for the new institutional framework enshrined in the Constitution of 18 September 1992 as amended by Constitutional Act No. 95-001 of 13 October 1995 and Constitutional Act No. 98-001 of 8 April 1998.

15. As a State party to the Covenant, Madagascar guarantees to all persons in its territory and within its jurisdiction the rights recognized in the Covenant without any discrimination, including discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth.

16. The new Malagasy Constitution considers the following an integral part of Malagasy positive law:

- (a) The International Bill of Human Rights;
- (b) The African Charter of Human and Peoples' Rights;
- (c) The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

17. The universal principles for the protection of human rights are reproduced in Malagasy law.

18. Equality before the law, the guarantee of a fair trial and the right to a defence are set out in article 8 of the Constitution, which stipulates that "nationals are equal before the law and enjoy the same fundamental freedoms under the protection of the law, without any discrimination on grounds of sex, level of education, property, origin, race, religious belief or opinion".

19. This wording is based on article 2, paragraph 1, of the Covenant.

20. Every person in national territory enjoys the same legal protection, within the limitations allowed by the Covenant.

### **Right to an effective remedy**

21. Every individual in Malagasy territory has the right to lodge an appeal with the courts to obtain redress for a legal injury.

22. To this end, article 13, paragraph 6, of the Constitution stipulates the following: "The law shall ensure that everyone has access to justice; lack of resources will be no obstacle thereto."

23. "In any case, legal assistance may be granted to any person, as well as to any public or charitable institution and any private association whose purpose is to provide assistance and which has legal personality, if, owing to insufficient resources, such persons, institutions or associations are unable to exercise their rights before the courts, either as plaintiffs or defendants."

24. In criminal matters, Act No. 97-036 of 30 October 1997, amending and supplementing the Code of Criminal Procedure with regard to the parties' defence, provides for assistance to be given to the suspect by counsel of his or her own choosing from the beginning of the preliminary investigation.

25. With a view to helping citizens gain a better understanding of their rights, the Government, through the intermediary of the Ministry of Justice, has set up a special service to publicize and educate the public in legal matters.

26. The main activities of the service are focused on:

(a) Presenting the following programmes for periodic radio or television broadcasts on national channels and private local channels:

- (i) Weekly programmes on national radio;
- (ii) Fortnightly programmes on national television; and
- (iii) Commercials on particular topics;

(b) Public meetings to explain legal matters in places that are a long way from a court, followed by question-and-answer sessions and the distribution of brochures and leaflets.

27. As part of efforts to introduce “community-based justice”, that is, to bring justice closer to the people, the Ministry of Justice and the courts are actively involved in information and education activities within their respective fields.

28. The dissemination of legal information enables citizens to claim their rights without having to resort to the services of intermediaries who take advantage of their ignorance of the law for financial gain.

29. In addition, every year the Ministry of Justice, in cooperation with the National School of the Judiciary and Court Officers, produces educational films on the promotion and protection of human rights.

30. Films have been made that deal with, for example:

- (a) Efforts to prevent the spread of HIV/AIDS in rural areas;
- (b) Domestic violence;
- (c) Combating the commercial sexual exploitation of minors;
- (d) Problems relating to the settlement of land disputes in Madagascar.

31. In addition to this, legal works aimed at judges, legal professionals and the general public have been published.

32. All these initiatives are helping to reduce corruption and improve the image of the judicial system.



### ARTICLE 3

#### **Equality between men and women in the enjoyment of civil and political rights**

33. Article 8 of the Constitution stipulates that “nationals are equal before the law and enjoy the same fundamental freedoms under the protection of the law, without any discrimination on grounds of sex, level of education, property, origin, race, religious belief or opinion”.

34. Moreover, article 3 of Ordinance No. 90-001 of 9 March 1990 on the general regulations governing political parties and organizations stipulates that “all Malagasy citizens of either sex over the age of 18 years enjoy their civic rights and are free to join a political party or organization in accordance with these provisions”.

35. Bearing in mind the observations issued by the Committee following its consideration of Madagascar’s last report in connection with the management of the household, article 16 of Act No. 90-014 of 20 July 1990 on matrimonial regimes stipulates that the sharing of a married couple’s property is governed by ordinary law or *zaramira*, which in Malagasy law means it is shared equally.

36. This law puts an end to the unfair practice of dividing up marital property on a two-thirds/one-third basis in favour of the man when a marriage is dissolved.

37. According to a study carried out in partnership with the United Nations Development Programme (UNDP) on the management of public affairs in 2003, practices and customs still have a very important influence on social behaviour.

38. Despite the legislative progress made, some customary practices are not conducive to the elimination of all forms of discrimination against women.

39. Women are marginalized for a number of reasons, including:

- (a) Illiteracy and lack of education;
- (b) Their status under the customs of certain communities;
- (c) Their marital situation, and particularly the low esteem in which single or childless women are held in some societies;
- (d) The position of families vis-à-vis traditions in the field of inheritance;
- (e) Poverty among women in rural areas.

40. These factors explain women’s low level of involvement in politics and public debates in general.

### **Progress made**

41. The Malagasy Government has drawn up a national gender and development action plan for the period 2004–2008. The aim of the plan is to remove, or at least reduce, the obstacles to and constraints on the promotion of gender-equitable sustainable development and to provide truly effective support for the participation of women in civil and political life.

42. The following points highlight some disparities:

- (a) In 1999, 10 per cent of parliamentarians (deputies and senators) were women;
- (b) In the current legislature, that proportion is down to 5 per cent;
- (c) About 25 per cent of posts in senior management and one third of mid-level managerial posts are occupied by women.

43. The proportion of working women has been increasing slightly. It was:

- (a) 46.6 per cent in 1997;
- (b) 46.7 per cent in 1998-1999; and
- (c) 48.8 per cent in 2001 (*source*: National Report on Human Development, 2003).

## **ARTICLE 4**

### **Public emergencies**

44. Article 4 of the Covenant provides for States to take measures derogating from their obligations under the Covenant in emergency situations.

45. Three types of emergency situation are distinguished in Malagasy legislation:

- (a) A state of emergency;
- (b) A state of national necessity;
- (c) Martial law.

46. Article 59 of the Constitution of 18 September 1982 provides as follows:

“In the event of a threat to the institutions of the Republic, the independence of the nation, its unity or the integrity of its territory, and when the normal functioning of the public authorities is compromised, the President of the Republic may proclaim an emergency situation, that is, a state of emergency, a state of national necessity or martial law, in all or part of the national territory. The decision shall be taken by the President of the Republic meeting with the Council of Ministers, after consultation with the presidents of the National Assembly, the Senate and the Constitutional High Court.”

47. Act No. 91-011 of 18 July 1991 on emergency situations sets out the procedures to be followed in each case.

### **State of emergency**

48. Article 13: A state of emergency may be proclaimed either in cases where there is an imminent danger resulting from serious violations of public order or State security or in cases where events, by virtue of their nature and seriousness, constitute a public disaster.

49. A state of emergency may be declared in all or part of the territory. The decree proclaiming the state of emergency stipulates the territorial district or districts within which the measures decreed are applicable.

50. A state of emergency lasts for two weeks.

51. This period may be extended under the conditions set out in article 3 of the above-cited law.

52. The proclamation of a state of emergency gives the President the power to:

- (a) Legislate by regulation;
- (b) Introduce a curfew to restrict or prohibit the movement of individuals or vehicles at certain times;
- (c) Ban from all or part of a district any person seeking to obstruct, in any way whatsoever, the action of the authorities;
- (d) Establish protection or security zones in which the presence of individuals is regulated;
- (e) Order the closure of theatres, dance halls, casinos, bars and all other places open to the public;
- (f) Order the handover of weapons of the first, second and third categories, together with ammunition, belonging to or in the possession of individuals, and require them to be handed over to the authorities in the places designated for this purpose, except for weapons belonging to members of institutions, in application of Decree No. 70-041 of 13 January 1970;
- (g) Order daytime or night-time searches of the houses of individuals whose activities pose a danger to public order or State security;
- (h) Take all necessary measures to monitor the press, publications and programmes of any kind and prohibit those that might disturb the public order or jeopardize national unity;

(i) Issue compulsory residence orders requiring any person whose activities pose a danger to public order and security to remain in a specific district or locality;

(j) Introduce a general or specific ban on meetings that might incite or fuel disorder.

53. A receipt is given for all weapons and ammunition handed over in these circumstances. Once the state of emergency has been lifted, all necessary steps are taken to ensure they are returned to their owners in the same condition as when they were handed over.

### **State of national necessity**

54. A state of national necessity can be proclaimed in the event of a political, economic or social crisis which, by virtue of its magnitude and seriousness, constitutes a threat to the future of the nation or is likely to hinder or prevent the normal functioning of the institutions of the Republic.

55. A state of national necessity is proclaimed throughout the country.

56. A state of national necessity lasts for three months.

57. The proclamation of a state of national necessity gives the President, in addition to the powers listed above, the right to:

(a) Order daytime or night-time searches of the houses of any individuals whose activities pose a danger to public order and security;

(b) Issue compulsory residence orders requiring any person whose activities might obstruct the action of the authorities to remain in a specific district or locality for a period lasting no longer than the state of national necessity;

(c) Require the State to take all necessary measures to ensure that the individuals subject to such orders have means of subsistence;

(d) Take all necessary measures to monitor the press and publications of any kind, as well as radio and television programmes;

(e) Monitor telephone calls and mail;

(f) Establish zones in which the presence of individuals is regulated;

(g) Ban all gatherings;

(h) Ban the sale of alcoholic drinks;

(i) Suspend by-elections.

## **Martial law**

58. The decree proclaiming martial law specifies the districts to which it applies.
59. Martial law can be proclaimed when there is an imminent danger that is likely to hinder or prevent the normal functioning of the institutions of the Republic as a result of an attack by a foreign force, bloody disturbances or an armed uprising.
60. The decree proclaiming martial law is announced to the country by the President in a message transmitted using all possible media.
61. Martial law lasts for three months. The period may be extended under the conditions provided for by law.
62. The proclamation of martial law transfers responsibility for defence, the police and the maintenance of order to the military authorities.
63. Outside these areas, administrative and civil officials continue to exercise the authority vested in them unless they have been expressly divested of this in full or in part by the competent military authorities.
64. Such divestment results from a written decision brought to the attention of both the official or department concerned and their direct superior in the hierarchy.
65. Responsibility is transferred to the military authorities designated by the President at the provincial, prefectural and communal levels.
66. All gatherings, demonstrations, marches or parades on the public highway are banned once martial law has been proclaimed, and will be dispersed automatically by the military authorities using all necessary means whilst avoiding bloodshed.
67. Troops intervening in such situations must avoid the use of weapons in the form of knives, firearms and explosive devices. The use of such weapons is authorized only in cases of self-defence.
68. These restrictions are necessary in times of emergency and are compatible with the derogatory measures accepted by the Covenant, and are always exercised without any discrimination on grounds of race, sex, religion or social origin.

## **ARTICLE 5**

### **Strict interpretation of the provisions of the Covenant**

69. Article 5 applies to the vast majority of the provisions of the Covenant.
70. The drafting of the new Constitution was an opportunity to enhance the observance and protection of fundamental freedoms and rights.

71. Legislative reform has included:

- (a) The introduction of matrimonial regimes requiring the equal sharing of the couple's property in the event of the dissolution of a marriage;
- (b) The repeal of criminal legislation that severely punished wives convicted of adultery;
- (c) Stiffer punishments for convicted paedophiles (Act No. 98-024 of 25 January 1999);
- (d) Legislation on violence against women and on sexual offences (Act No. 2000-021 of 28 November 2000);
- (e) The enactment of Act No. 97-044 of 2 February 1998 on disabled rights: Implementing Decree No. 2001-162 of 21 February 2001 stipulates the rights concerned, which include the rights to health, education and work and other social rights;
- (f) The enactment of Act No. 97-036 of 30 October 1997 on the right to a defence;
- (g) The ratification of the two optional protocols to the Convention on the Rights of the Child in January 2004, for which the instrument of ratification was deposited with the United Nations in September 2004 by the President of the Republic;
- (h) The ratification of the African Charter on the Rights and Welfare of the Child by parliament in November 2004.

72. In accordance with the recommendations made by the Committee following its consideration of Madagascar's last report, the revision of Ordinance No. 79-025 of 15 October 1979, as amended and supplemented by Ordinance No. 91-008 of 7 August 1991, and Act No. 97-037 of 30 October 1997 on the regulations governing the judiciary are in the process of being adopted by parliament.

73. These moves to reform its legislation are evidence of Madagascar's willingness to comply with the requirements of the Covenant.

## **ARTICLE 6**

### **Right to life**

74. Article 19 of the Constitution stipulates that "the State recognizes the right of every person to protection of his or her health as from the moment of conception" and article 21 stipulates that "the State shall protect the family, to allow its free development, as well as mothers and children, through legislation and appropriate social institutions".

75. Article 17 provides that “the State shall regulate the exercise of rights guaranteeing the individual’s inviolability and dignity of the person and his or her full physical, intellectual and moral development”.

### **Offences against the person**

76. Offences against the person are provided for and punished by the Malagasy Criminal Code.

77. The unborn child’s right to life is protected by the criminalization and punishment of abortion by article 317 of the Criminal Code.

78. In view of the upsurge in kidnappings in recent years, the Government has taken steps to ensure people’s physical safety. For example, the police have dismantled several networks involved in kidnappings targeting mostly Indian or Pakistani nationals.

### **Demographic trends and the situation of women and children**

79. In the context of respect for the right to life, a study on the situation of women and children deserves to be highlighted.

80. According to the Department of Demographics and Social Statistics (DDSS) of the National Statistical Institute (INSTAT), Madagascar in 2004 has a population of about 16,908,000, with a natural growth rate of 2.8 per cent. Half the population is under the age of 19. There are currently 8,447,000 men and 8,461,000 women.

(a) Total fertility rate (children per woman):

1975: 6.4

1984: 5.5

1993: 5.9

Demographic and Health Survey II: 6

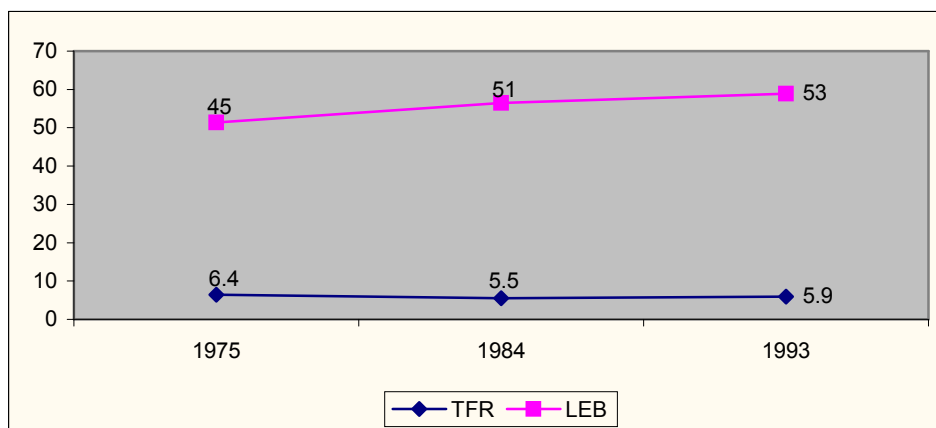
Demographic and Health Survey III, 2003-2004: 5.2

(b) Life expectancy at birth is rising gradually:

1975: 45 years

1984: 51 years

1993: 53 years

**Figure 1****Trends in total fertility rate (TFR) (children per woman) and life expectancy at birth (LEB) (in years)**

*Source:* INSTAT, DDSS.

81. A document entitled “The situation of women and children in Madagascar, 1999-2000”, published in cooperation with the United Nations Children’s Fund (UNICEF), gives a clear picture of the situation and the best way to deal with it.

82. Four indicators illustrate the insecurity to which women and children are exposed:

- (a) Maternal and infant mortality, which is a consequence of an inadequate diet during pregnancy and breastfeeding, often as a result of ignorance and poverty;
- (b) Abuse of herbal medicines during pregnancy;
- (c) Inadequate hygiene during and after birth;
- (d) Births outside a medical facility.

**Table 32****Trends in assistance at birth in Madagascar, 1992-2000**

	1992 (%)	1997 (%)	2000 (%)
Trained personnel	57.0	47.8	46.2
Traditional birth attendant	31.0	39.2	46.4
Other	10.7	11.6	23.1
No one	0.8	1.3	1.0

*Source:* INSTAT, DDSS, Multiple-Indicator Cluster Survey 2000.



**Table 33**  
**Infant and child mortality rates, 2000**

	Infant mortality	Child mortality	Infant/child mortality
Area of residence			
Urban	74	46	116
Rural	91	62	147
Sex			
Male	94	60	135
Female	82	58	142
Province			
Antananarivo	63	37	98
Fianarantsoa	118	91	198
Toamasina	102	73	168
Mahajanga	84	55	133
Toliara	92	63	149
Antsiranana	71	43	111
Mother's level of education			
None	111	83	185
Primary	83	54	132
Secondary or higher	66	39	102
Socio-economic category			
Poor	95	66	155
Average	86	57	137
Well-off	57	31	87
Overall	88	59	142

*Source:* INSTAT, DDSS, Multiple-Indicator Cluster Survey 2000.

83. Other problems related to ignorance of or unfamiliarity with modern contraceptive methods include abortion, unwanted children and sexually transmitted diseases.

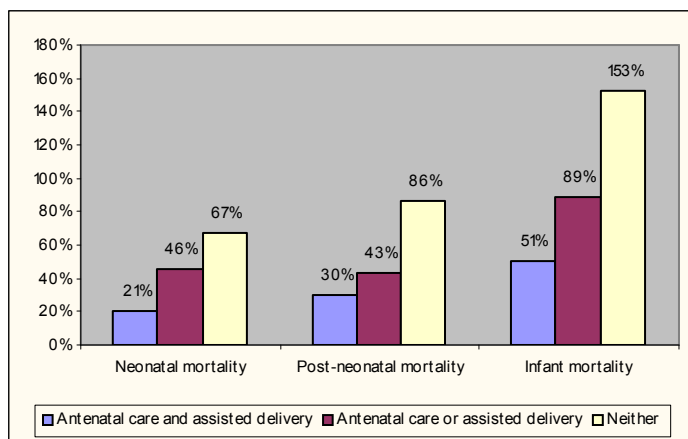
**Table 34**  
**Use, effectiveness and awareness of family-planning methods,  
by province (*faritany*)**

Province	Use (%)	Effectiveness (%)	Awareness (%)
Antananarivo	23.6	58.8	75.8
Fianarantsoa	11.4	46.2	44.3
Toamasina	19.7	45.9	60.0
Mahajanga	12.9	38.9	44.6
Toliara	11.3	25.2	36.0
Antsiranana	15.6	48.4	60.7
Madagascar	16.9	46.4	56.4

*Source:* INSTAT, Department of Household Statistics (DSM), Ongoing Household Survey 2001.

**Figure 2**

**Impact of antenatal care on mortality rates  
of children under 1 year of age**



**Other obstacles to the implementation of the Covenant**

84. The practices and customs of some rural communities are an obstacle to the full implementation of the provisions of the Covenant.

85. People in rural areas in Madagascar are very conservative and retain various traditions and beliefs that are incompatible with the requirements of the Covenant. Traditional values are perpetuated by the way in which villages and communities are organized, and remain deep-rooted in isolated areas.

86. In some villages in the south-east of the island, the birth of twins is taken as a bad omen, and twins are systematically rejected.

87. The Ministry of Health and Family Planning plays an important role in the implementation of the policy on child development and protection. The number of health districts has risen from 37 to 111.

88. The Ministry is taking action to significantly improve the well-being of women and children, by implementing a health and reproductive health policy consisting of:

- (a) Comprehensive treatment for childhood diseases;
- (b) Efforts to combat transmissible diseases;
- (c) Efforts to eradicate certain diseases, such as leprosy, polio, the plague and cholera.

89. In order to reduce maternal and infant mortality rates as much as possible, steps have been taken to increase the number of doctors and paramedical staff.

90. In 1999, the Ministry of Health hired 702 doctors (as compared with 240 in 1988) and 300 paramedics.

91. A training institute specialized in public and community health care was established with the support of the World Health Organization (WHO), UNICEF, the European Union, the French development cooperation agency, the United States Agency for International Development (USAID) and the German Agency for Technical Cooperation (GTZ).

92. The budget of the Ministry of Health has been increased by 10 billion Malagasy francs a year since 1996.

### **HIV/AIDS**

93. The AIDS pandemic is a nationwide concern. Since the first case of HIV infection was discovered by the Institut Pasteur in 1984, the disease has grown exponentially (the prevalence rate was 0.02 per cent in 1985; 0.05 per cent in 1990; 0.07 per cent in 1995; 0.16 per cent in 2000; and is currently 1.1 per cent).

94. A major national campaign against this affliction has been launched. It is being carried out with the help of many non-governmental organizations from all over the country under the auspices of the President and in close cooperation with the National AIDS Committee and the cross-sectoral AIDS-prevention project.

95. The national strategic programme to combat sexually transmitted infections and AIDS is aimed at reducing HIV transmission. The strategies to combat sexually transmitted infections and AIDS are based on:

(a) Primary prevention of the sexual transmission of HIV infections; various ministries and non-governmental organizations contribute to this strategy in a cross-sectoral, non-medical setting;

(b) Secondary prevention to control sexually transmitted infections through the provision of treatment and a syndrome-based approach so that patients can be offered accessible, acceptable and effective treatment, given that in Madagascar the classic sexually transmitted infections are the sixth biggest cause of morbidity among outpatients attending basic health centres;

(c) Prevention of transmission through blood, thanks to the introduction of safety measures for blood transfusions;

(d) Prevention of perinatal transmission, by taking the campaign to antenatal and family-planning clinics;

(e) Monitoring of HIV infection in the eight sites designated for this purpose, which makes it possible to follow the trends in the prevalence of HIV infection and the number of AIDS cases.

96. The monitoring sites are in the six provincial administrative centres, the town of Morondava and Nosy Boraha (Île Sainte-Marie), which are considered areas of high prevalence.

97. To further reduce maternal and infant mortality, other measures have also been taken, including:

(a) The use of low-risk birth methods; and

(b) Wider vaccination coverage, thanks to the Expanded Programme on Immunization.

**Table 35**

**Life expectancy, 1995-2003**

	1995	1997	1998	2000	2003
Life expectancy (%)		52.2	54.9	56.7	
Crude mortality rate (per 1,000)		14.4			
Infant mortality rate (per 1,000 live births)	93.0	93.0	96.4	88.0	58.0
Child mortality rate (per 1,000 live births)	76.7	76.0	69.1	59.0	38.0
Infant/child mortality rate (per 1,000 live births)	162.6	162.0	158.9	142.0	94.0
Maternal mortality rate (per 100,000 live births)	596.0		488.0		

*Source:* INSTAT, Demographic and Health Survey, General Population and Housing Census 1993, Multiple-Indicator Cluster Survey 2000.

**Table 36**

**Vaccination coverage of children aged between 12 and 23 months, by province (1992-1997) (%)**

	None		All		Measles		DPT <sup>a</sup>		Polio		BCG	
	1992	1997	1992	1997	1992	1997	1992	1997	1992	1997	1992	1997
Antananarivo	14.1	6.4	62.1	63.2	67.0	70.8	73.8	75.7	73.8	74.9	83.8	87.7
Fianarantsoa	20.7	23.8	36.1	19.4	50.3	31.8	47.6	35.2	47.4	32.5	68.5	52.4
Toamasina	16.2	17.2	46.0	42.0	55.5	52.2	56.0	55.8	56.0	55.8	78.9	71.3
Mahajanga	31.9	40.5	22.6	19.0	38.1	33.2	31.9	24.1	31.9	24.4	61.8	49.8
Toliara	15.8	32.0	39.6	15.0	51.1	23.4	47.1	23.3	47.1	24.9	81.5	45.3
Antsiranana	31.9	13.8	22.6	15.6	38.1	21.9	31.9	32.6	31.9	30.9	61.8	60.3
All	19.6	19.5	43.4	36.2	54.0	46.0	53.8	48.4	53.8	47.7	75.0	66.0

*Source:* Demographic and Health Survey 1992-1997.

<sup>a</sup> DTP: diphtheria, tetanus and pertussis.

**Table 37****Percentage of children aged between 12 and 23 months vaccinated, by antigen, province, background and quintile**

	BCG	Polio (complete)	DTP <sup>a</sup> (complete)	ATR (measles)	All (fully vaccinated)	Polio (incomplete)	DTP <sup>a</sup> (incomplete)	None
Antananarivo	83.7	69.1	66	86.6	54.7	28	20.8	1.8
Fianarantsoa	69.8	54.4	52.5	78.1	44.4	37	31.5	11.6
Toamasina	63.2	44.7	35.2	54.5	23.6	44	35.1	23
Mahajanga	32.5	20.1	18.3	44.7	16.7	34	15.3	51.2
Toliara	53.5	23.1	22.4	61.8	12.8	45	34.6	29.1
Antsiranana	70.4	53	52.9	78.4	32.8	38	36.4	6.3
Capital	87.7	70.6	70.4	80.6	52.3	41	35.4	87.7
Other major urban centres	84.3	72.5	66.8	81.1	53.8	34	23	84.3
Secondary urban centres	73.3	54.3	57.7	77.1	40.3	42	35.4	73.3
Rural areas	63.8	46.1	41.8	69.3	33.6	36	26.7	63.8
Poorest quintile	58	33.3	33.2	60.5	26.9	38	29.5	27.6
Quintile 2	57.6	44	38.1	67.5	26.8	41	27	18.6
Quintile 3	72.4	49.2	48.6	68.3	36.7	37	30.2	16
Quintile 4	70.7	57.1	50.4	75	36.8	35	25.4	11.2
Richest quintile	79.8	68.4	65.4	89.1	58.1	29	27.4	6
Sex of head of household								
Male	66.8	52.3	49.3	71.4	38.6	35	26.9	16.2
Female	68.7	32.7	28.1	71.5	22.1	48	34.7	17.9
All	67.1	49.5	46.3	71.4	36.3	36	28	16.4

*Source:* INSTAT, Department of Household Statistics, Ongoing Household Survey 2001.

<sup>a</sup> DTP: diphtheria, tetanus and pertussis.

**Table 38****Child health indicators**

	1997	1999	2000
Infant mortality	91	..	85
Infant/child mortality	148	..	136
Newborns under 2,500 g (%)	14.3	..	10.6
Moderately underweight, 0-59 months (%)	45.5	33.1	22.0
Severely underweight, 0-59 months (%)	18.5	11.1	11.1
Severe acute malnutrition, 0-59 months (%)	16.4	13.7	9.1
Moderate acute malnutrition, 0-59 months (%)	5.0	4.6	4.6
Moderate chronic malnutrition, 0-59 months (%)	49.3	48.6	22.6
Severe chronic malnutrition, 0-59 months (%)	28.7	26.0	26.0
Full childhood vaccination coverage (%)	36.2	32.4	44.4
Measles vaccination coverage (%)	46.0	38.2	55.1
Use of oral rehydration therapy	..	..	34.8

*Source:* Social Performance Indicators: Health (Demographic and Health Survey, Ongoing Household Survey, Multiple-Indicator Cluster Survey).

98. Annual national vaccination campaigns have helped improve the situation. The most recent, an anti-measles vaccination campaign called “HIAKA 2004”,<sup>1</sup> achieved 99 per cent of its goals.

99. These measures have contributed to the effective implementation of the principles set forth in the Covenant.

### **Capital punishment**

100. Article 6, paragraph 1, of the Covenant stipulates that “no one shall be arbitrarily deprived of his life”.

101. The death penalty was introduced in 1958 and has not yet been abolished, though it is automatically commuted to hard labour for life. Madagascar is de facto an abolitionist State, as none of the 53 death sentences passed by the courts has been carried out.

102. In accordance with the requirements of the Covenant, the death penalty is reserved exclusively for the most serious crimes, such as murder or poisoning.

103. Articles 295 to 297 of the Criminal Code define murder as an offence and articles 301, 302 and 307 define poisoning as an offence.

104. The sentence can only be carried out when a pardon has been rejected.

105. Even if the convicted person does not appeal for a pardon, the death penalty is not carried out without an express decision rejecting a pardon.

106. The death penalty is not applicable to minors or pregnant women.

107. A draft bill to abolish the death penalty is currently under preparation.

### **Extrajudicial executions**

108. Since the last report, there has been a significant reduction in the number of cases of summary and extrajudicial execution following the implementation of *Dina* decisions issued by “customary courts”.

109. *Dina* are traditional collective agreements that reflect the wishes of the population of one or more village communities for the purpose of establishing the rules governing life in their societies.

110. In order to combat the practice of summary executions, new legislation has been introduced to provide a legal framework for the application of *Dina*.

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<sup>1</sup> *Hetsika ladiana amin'ny Kitrotro sy ny Aretina mpahazo ny Ankizy* (campaign against measles and childhood diseases).

111. Constitutional High Court Decision No. 15-HCC/D3 of 3 September 1998 declared as unconstitutional Act No. 94-030 on the organization of *Dina*-based customary courts that are not provided for in the Constitution.

112. Following this decision, Act No. 2001-004 of 25 October 2001 was adopted with a view to incorporating *Dina* in the Malagasy legal system.

113. The Act provides as follows:

(a) “All *Dina* must be in conformity with the laws and regulations in force” (chap. 1, art. 1, para. 2);

(b) “The *Dina* shall become enforceable only after it has been approved by the competent court of law or the court of appeal” (chap. 2, sect. 2, art. 7).

114. These legislative reforms help prevent abuses of the application of *Dina* when this would be in violation of the laws and regulations in force.

## ARTICLE 7

### Prohibition of torture

115. The Ministry of Justice is preparing the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

116. To ensure better implementation of article 7, Madagascar intends to ratify the Convention against Torture without delay. The ratification process is set in motion by the submission of the relevant documents to the Council of Government.

117. Following ratification, legislation will be reformed to take account of the Convention’s provisions.

118. To date no complaints have been received from persons claiming to have been subjected to cruel, inhuman or degrading treatment.

119. Madagascar observes the prohibition on subjecting a person to medical or scientific experimentation without his free consent.

## ARTICLE 8

### Prohibition of slavery

120. Slavery has not officially existed in Madagascar since it was abolished by King Radama I in the nineteenth century. However, one form of slavery endures, namely failure to pay a proper wage to certain workers, as reported in a survey carried out by the Miaramita research bureau in April 2004.

121. Forced or compulsory labour is absolutely prohibited in Madagascar under article 3 of Ordinance No. 94-029 of April 1995 on the Labour Code, as it pertains to forced or compulsory labour.

122. The principal new forms of modern slavery are connected with work that falls outside employment norms, namely low-paid or unpaid work.

123. Generally speaking, this category includes domestic workers and detainees.

### **Domestic employment**

124. People perform domestic work mainly because of lack of education, since half of all domestic workers have no education beyond primary school. In this kind of work, which is mainly done by women and children, workers are frequently underpaid or even not paid at all, and must also endure humiliation.

**Table 39**

#### **Common risks facing domestic workers**

	Percentage of victims
Non-payment of wages	25
Replacement of damaged tools or items	80
Sexual violence	14
Confiscation of identity papers	36
Summary dismissal	14

*Source:* Miaramita survey, April 2004.

125. The cost of damaged or lost items or utensils is reimbursed by withholding wages. This method is widely used to avoid paying wages to domestic workers.

126. In addition to their everyday tasks, some employees are forced to take part in their employer's income-generating activities without any monetary compensation for this extra work.

127. A domestic worker generally works between 13 and 16 hours a day for a monthly lump sum of 50,000 Malagasy francs (FMG) for girls aged from 15 to 18 and FMG 75,000 for adults, despite the fact that the guaranteed minimum wage is set at FMG 239,000 a month.

128. In most cases, the wages of child domestic workers are remitted directly to their parents.



**Table 40**

**Domestic employment situation in certain districts of Antananarivo**

District	Statistics
Anjezika	15 per cent of the 900 existing households employ children as domestic workers
Manarintsoa Isotry	Domestic workers are employed by 9 per cent of the 400 existing households: girls account for two thirds of this workforce
Mandialaza Ankadifotsy	40 per cent of the district's domestic workers are under 18: of these, 65 per cent are the children of washerwomen or come from areas outside the city
Ampahibe	64 out of 1,772 households employ children as domestic workers

*Source:* Miaramita survey, April 2004.

**Prison work**

*Obligation to work*

129. Article 68 of Decree No. 59-121 of 27 October 1959 on the general organization of Malagasy prison services states:

“All detainees, whether on remand or after sentencing, shall be obliged to work, except for prisoners remanded or convicted for ‘political’ offences, who shall only be assigned the duties of cleaning or maintaining the prison facilities.

As to remand prisoners, the investigating judge may always, and at any stage of the investigation, and without prejudice to the right to place the prisoner in solitary confinement, order that a prisoner shall under no circumstances perform work outside the prison facility, for as long as is considered appropriate.”

130. Some convicted prisoners perform unpaid work outside the prison.

131. Inmates at Antananarivo prison perform the following tasks, for example:

Domestic work/caretaking: 55 per cent;

Administrative/office work: 25 per cent;

Agricultural work/horticulture: 10 per cent;

Other tasks: 10 per cent.

*Use of prison labour*

132. Article 70 of the decree referred to above regulates work performed by prisoners in the following terms: "Prisoners shall be employed on projects managed by the authorities or assigned to an external contractor." However, no reference is made to the form of remuneration.

(a) Projects managed by the authorities:

"With a view to making the most efficient use of prison labour, workshops shall be established, or at least the necessary facilities shall be provided, where prisoners shall perform whatever work is most useful and productive, as dictated by the needs of the region.

A planning office shall be established at the head office of the Prison Service with a view to organizing such projects on an efficient and profitable basis."

(b) Assignment to an external contractor:

"Prisoners may be assigned to work for public services or corporations, or to private-sector enterprises or individuals when such work will be of benefit to the nation, as in the case of, for example, reforestation, tree planting for industrial or agricultural exploitation, or work of economic interest that is part of a plan approved by the regional or provincial economic services.

All requests to assign prison labour must specify the relevant details, including the name and nature of the requesting party, the number of prison workers required, the nature and estimated duration of the work, and the place where the work is to be performed. The assignment shall be authorized by the Ministry of Justice, which may delegate this decision.

If the work is of a long-term nature and is to be performed at some distance from the penal institution, a prison camp shall be established to house the prisoners.

The strength of the mandatory prison guard detail allocated to the contractor shall be specified by an official order."

## **ARTICLE 9**

### **Right to liberty and security of person**

133. The Malagasy Constitution recognizes every individual's right to liberty and security of person.

134. Article 9, paragraph 1, of the Covenant states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

135. Articles 119, 120 and 122 of the Malagasy Criminal Code prohibit and punish unlawful arrest and arbitrary detention.

136. Article 119 of the Code of Criminal Procedure states that “public officials charged with administrative and judicial police functions who refuse or neglect to comply with a legal request to attest to the illegality or arbitrariness of a person’s detention, whether in a facility designed for the custody of detainees or elsewhere, and who fail to report the matter to a higher authority, shall be liable to loss of civic rights and payment of damages, which shall be regulated under the provisions of article 117”.

137. Article 120 states the following (with reference to Ordinance No. 60-161 of 3 October 1960): “Staff at prisons, central prisons, short-stay prisons or detention centres who admit a prisoner without a warrant or judicial decision; persons who, in cases of expulsion or extradition, detain an individual in the absence of a provisional government order, or refuse to present the individual to the police officer or the person transmitting his orders, without an injunction from a public prosecutor or a judge; and persons who refuse to produce custody registers to a police officer shall be deemed to be guilty of arbitrary detention, liable to a prison term of between six months and two years and a fine of between FMG 25,000 and 75,000.”

138. Article 122 states the following: “Principal public prosecutors or public prosecutors, deputy public prosecutors, judges or public officers who detain an individual or cause an individual to be detained outside facilities designated by the Government or State agencies, or who bring a citizen before a criminal court without previously laying charges as specified by law, shall forfeit their civic rights.”

139. In addition, article 136 of the Code of Criminal Procedure states that “a judicial police officer may not detain a person at his discretion for the purposes of the preliminary police investigation for more than 48 hours”.

140. Once this period has expired, the detainee must be released or brought before an officer of the Public Prosecutor’s Office. If the 48-hour period expires on a Saturday, Sunday or public holiday, the judge on call or the officer of the Public Prosecutor’s Office must be informed of the time at which the person is to be presented.

141. If the officer of the Public Prosecutor’s Office is away from home, this period shall be extended to three days. If the home of the judicial police officer is situated outside the town where the court or division of the court usually sits, he may ask the judge or officer of the Public Prosecutor’s Office of his judicial district for permission to extend police custody for a period not exceeding 48 hours. Such authorization must be confirmed in writing and attached to the police report.

142. Once this period has expired, the detainee must be released or brought before the competent judge or officer of the Public Prosecutor’s Office.

143. The prosecution service must decide what further action to take.
144. To comply with the requirement that the offender should be tried within a reasonable time, the Ministry of Justice, through the Criminal Reform Commission (CRSP), is planning to put forward a reform package with the aim, first of all, of cutting the time spent in detention before sentencing and, second, of instituting a rapid, simplified procedure involving an immediate appearance in court.
145. The envisaged procedure aims to allow a person who has committed a minor or slightly more serious offence to be brought before a court without delay.
146. The right to petition a competent court to rule on the lawfulness of detention flows from the recognition of the principle of *nullum crimen, nulla poena sine lege* enshrined in article 13, paragraph 4, of the Malagasy Constitution and article 4 of the Criminal Code.
147. Persons in pretrial detention have the right to petition the Remand Division for release.
148. Under article 343 of the Code of Criminal Procedure, the Remand Division is competent to rule on petitions for release.
149. This provision signals a break with the past because responsibility for ruling on petitions for release pending trial has been taken away from the remanding authority and reassigned to a remand division comprising a panel of three judges.
150. The possibility of release on bail, the nature and amount of which shall be determined by the Remand Division, is also provided for (Code of Criminal Procedure, art. 346).

#### **Article 9, paragraph 2, of the Covenant**

151. In accordance with the spirit of the Covenant, anyone who is arrested shall be informed, as soon as possible, of the reasons for their arrest and shall be promptly informed of any charges against them.
152. Pursuant to Act No. 97-036 of 30 October 1997, it is incumbent on the investigator to inform suspects of the reasons for their arrest and the charges against them. Efforts have been made to expedite the processing of case files involving detention with a view to bringing the offenders to trial within a reasonable time, both in Antananarivo and other jurisdictions.
153. These statutory measures address the situations envisaged by article 9 of the Covenant.

## ARTICLE 10

### Humane treatment of detainees

#### Humane treatment and respect for the dignity of the human person in prison

154. Article 28 (a) and (b) of Act No. 59-28 of 24 February 1959 on the Prison Service, through its implementing Decree No. 59-121 of 27 October 1959 on the general organization of Malagasy prison services, provides for the humane treatment and respect for the inherent dignity of the human person: “Members of staff at penal establishments are prohibited from assaulting detainees, using insulting or offensive language to them, or entertaining personal relations with them. Nor shall detainees perform work on their behalf or be permitted to assist staff in their duties, unless exceptionally authorized to do so by a decision of the director of the Prison Service.”

155. These provisions are in keeping with article 5 of the Universal Declaration of Human Rights, which reads as follows: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

156. Most of Madagascar’s penal establishments date from colonial times. In view of their decrepitude, the Government has made efforts to refurbish them in partnership with foreign diplomatic missions and international institutions.

#### Segregation of detainees in separate facilities

157. Article 38, paragraphs 1 and 2, state: “Persons charged with an offence, defendants and accused persons shall be detained separately from convicted prisoners. If no special facilities are available in short-stay prisons and detention centres, separate facilities shall be arranged.”

158. “All penal establishments shall possess special quarters for the following categories of detainees:

- (a) Minors under 18;
- (b) Women;
- (c) Persons convicted of political crimes;
- (d) Debtors;
- (e) Persons sentenced to rigorous imprisonment.”

159. It has not been possible to implement article 10 of the Covenant in full owing to lack of material, financial and human resources. Another factor is the increase in the size of the prison population.

*Separate facilities in penal establishments*

160. Decree No. 59-121 of 27 October 1959 on the general organization of Malagasy prison services, which comprises 76 articles, makes provision for separate sections in prisons.

161. One section of the establishment is reserved for male detainees, without distinction as to their penal situation. 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.

162. The section previously reserved for political offenders is now occupied by persons detained in connection with ordinary law offences.

163. Another section of the establishment is reserved for women prisoners, some of whom may have their newborn babies with them.

164. Minors are detained in a specially adapted section.

**Table 41**

**Number of prisoners at Antanimora central prison in Antananarivo,  
December 2002-December 2003**

Category of detainee	December 2002	December 2003
Remand prisoners	2 422	2 111
Convicted prisoners	1 105	1 202
Total	3 507	3 303

**Table 42**

**Number of women prisoners at Antanimora central prison in Antananarivo,  
December 2002-December 2003**

Category of detainee	December 2002	December 2003
Remand prisoners	116	115
Convicted prisoners	46	71
Total	162	186

**Table 43**

**Number of minors detained at Antanimora central prison in Antananarivo,  
December 2002-December 2003**

Category of detainee	December 2002	December 2003
Boys		
Remand prisoners	43	40
Convicted prisoners	7	5
Total	50	45
Girls		
Remand prisoners	2	9
Convicted prisoners	0	1
Total	2	10

165. Minors detained at the central prison are aged between 14 and 18, in accordance with the provisions of Act No. 62-038 of 19 September 1962 on the protection of children. This statute is currently being revised to bring it into line with the provisions of the Convention on the Rights of the Child.

166. In addition to penal establishments, the law makes provision for the establishment of rehabilitation centres.

167. Juvenile delinquents aged under 14 are placed in rehabilitation centres.

168. The Anjanamasina rehabilitation centre established under Decree No. 60-376 of 29 September 1960 is reserved for young male offenders.

169. By order of a juvenile judge, young female offenders are for the moment placed in private centres at Faravohitra or Ambohidratrimo.

170. According to article 1 of Decree No. 63-176 of 29 September 1960 on the organization of the Anjanamasina rehabilitation centre, "the Anjanamasina rehabilitation centre is intended to accommodate juvenile delinquents, abandoned children and maladjusted children whose placement has been decided upon by a competent judge".

171. In addition, article 2 of the same decree stipulates that "exceptionally, and on a revocable basis, minors aged over 18 or minors who have received a custodial sentence may be admitted to the rehabilitation centre".

172. The Fanantenana rehabilitation centre in Antsirabe has also been established in line with the provisions of the aforementioned decree.

Table 44

## Penal establishments in Madagascar, as at 31 December 2002

Regional authority	Prison	Population at 31/12/2002	Capacity	Population/capacity ratio
Antananarivo	Antananarivo	2 461	800	3.1
	Tsiafahy	565	200	2.8
	Miarinarivo	341	200	1.7
	Arivonimamo	115	100	1.2
Antsirabe	Antsirabe	638	250	2.6
	Ambatolampy	266	200	1.3
Antsiranana	Antsiranana	617	500	1.2
	Ambanja	322	100	3.2
Antalaha	Sambava	145	100	1.5
	Andapa	78	50	1.6
	Vohémar	114	60	1.9
Fianarantsoa	Fianarantsoa	776	500	1.6
	Ihosy	304	250	1.2
	Ambositra	371	250	1.5
Farafangana	Farafangana	517	300	1.7
	Manakara	350	300	1.2
	Mananjary	436	300	1.5
Mahajanga	Mahajanga	573	500	1.1
	Maevatanana	512	200	2.6
	Port Berge	612	250	2.4
	Mandritsara	327	250	1.3
	Antsohihy	387	100	3.9
	Maintirano	Maintirano	471	300
Toamasina	Besalampy	142	100	1.4
	Toamasina	996	300	3.3
Ambatondrazaka	Vatomandry	317	50	6.3
	Maroantsetra	313	50	6.3
	Mananara-Nord	134	30	4.5
	Ambatondrazaka	941	100	9.4
Toliara	Moramanga	285	30	9.5
	Toliara	463	400	1.2
Morondava	Morombe	252	150	1.7
	Morondava	364	250	1.5
Tolanaro	Tolanaro	441	250	1.8
	Betroka	362	150	2.4
Total		16 530	7 920	2.1

Source: SCDS (Ministry of Justice).



### **Treatment of convicted prisoners**

173. Articles 51, 52, 55, 67, 68, 70 and 71 of the aforementioned decree stipulate how detainees are to be treated; the underlying aim is to rehabilitate them and promote their reintegration into society.

### **Prison regime**

174. The Prison Service has a duty to monitor the physical state and health of the detainees committed to its charge. Decree No. 59-121 of 27 October 1959 on the general organization of Malagasy prison services regulates the prison regime.

175. Thus, members of staff in penal establishments are prohibited from:

- (a) Assaulting detainees or using insulting or offensive language to them;
- (b) Entertaining personal relations with them;
- (c) Using detainees to perform work on their behalf or permitting detainees to assist staff in their duties, unless exceptionally authorized to do so by a decision of the director of the Prison Service;
- (d) Receiving from any category of detainee, or from a person acting on their behalf, any gift, loan or other advantage;
- (e) Running errands or purchasing or selling any item for a detainee.

### *Monitoring of detainees' health*

176. Article 29 of the same decree regulates prison health visits: "A physician appointed by the Minister of Health or by the minister's representative shall be responsible for the health service at the penal establishment."

### *Medical examinations*

177. A medical examination is compulsory for each new detainee, and for all detainees at least once a week.

178. Cells, dormitories and workshops are disinfected regularly.

179. The prison administration is responsible for feeding sick inmates and for providing special diets prescribed by the physician.

180. Owing to lack of resources, the requirement to make special health and dietary arrangements is not always respected.

181. Article 29, paragraph 3, of the decree provides that, in order to guarantee prison hygiene, the physician shall propose whatever sanitary measures seem appropriate.

182. To provide a written record of a new detainee's state of health, a report is filed in a special register. Likewise, before any transfer, the physician must meet with the detainee concerned (art. 2, para. 4).

183. The death of a detainee is noted on the memorandum of imprisonment by the prison registrar. The local mayor or registrar is notified. An inventory is made of the detainee's effects, papers and money. The deceased's most recent abode is indicated in an annex to the death certificate.

#### *Infant mortality in prison*

184. The mortality rate in penal establishments is not higher than normal.

#### *Incidence of disease in 2004*

185. In the month of June 2004 there were roughly 45 medical consultations and six medical evacuations.

186. Hospital admissions and medical evacuations are often connected with problems that existed prior to incarceration, such as cardiovascular disease, asthma attacks and hypertension.

#### *Detainees involved in the events of 2002*

187. Six detainees were evacuated for medical reasons (statistics from June 2004).

#### *Measures to prevent HIV/AIDS and sexually transmitted diseases in prison*

188. Information, education and outreach campaigns are being conducted to prevent the spread and transmission of HIV and sexually transmitted diseases.

189. This initiative is funded by Madagascar's technical and financial partners.

190. Under the training-the-trainers initiative that is part of the national AIDS programme, a physician attached to the Ministry of Justice is employed to train Prison Service supervisory staff. Training is also organized for peer instructors who, once their training is complete, will in turn instruct other detainees.

*Visiting rights*

191. Article 51 of the decree concerns detainees' visiting rights: "Persons charged with an offence, defendants and accused persons shall only be permitted visits authorized by competent legal officers, under the provisions of article 17. Lawyers may visit their clients in detention every day during working hours, or at any other time in an emergency."

192. Article 52 of the decree refers to the persons entitled to visit detainees: "All convicted prisoners have the right to be visited regularly by members of their family, up to a limit of two persons per visiting day, or by their guardian or surrogate guardian."

193. The maintenance of family contacts is absolutely essential to avoid institutionalization and to facilitate social reintegration. Accordingly, article 51 of Decree No. 59-121 of 27 October 1959 outlines visiting arrangements in Malagasy prisons:

(a) Remand prisoners may be visited twice a week, preferably on Thursdays and Sundays between 2 p.m. and 4 p.m. Visits take place in the visitors' room in the presence of a guard; in the case of client/attorney contacts, visits take place in a special room without guards;

(b) Convicted prisoners may be visited once a week by family members only, up to a limit of two persons per visiting day, preferably on Sundays;

(c) Certain other persons may be permitted to visit on an exceptional basis. Lawyers are permitted to communicate with clients who have been finally convicted.

194. In practice there is no distinction between the arrangements for visits to remand and convicted prisoners; both are entitled to two visits a week.

*Detainees' correspondence*

195. Article 55 of the decree outlines the arrangements for detainees' correspondence: "All convicted prisoners are permitted to write to their spouse and members of their family. Exceptionally, the provincial inspector may authorize them to write to other persons."

196. The use of mobile telephones is not permitted in penal establishments.

**Penal establishments in Madagascar**

197. Articles 1 and 2 of Act No. 59-028 of 24 February 1959 on the Prison Service list the various establishments under its jurisdiction.

198. **Prisons** (Tsiarafahy, Nosilava) house convicted prisoners serving a custodial sentence for a criminal offence; convicted prisoners sentenced to five or more years' imprisonment, or whose aggregated sentence amounts to or exceeds five years in length; convicted prisoners sentenced to rigorous imprisonment; and those serving lower sentences but who are considered a danger to the public. In 2000, Tsiarafahy prison had 539 inmates (all sections) and Nosilava prison 130 (all sections).

199. **Central prisons** are used to house:

- (a) Defendants, persons charged with offences and accused persons;
- (b) Convicted prisoners sentenced to less than five years' imprisonment for a serious crime or other indictable offence; and those serving a custodial sentence for a minor offence;
- (c) Debtors (no longer applicable).

200. **Short-stay prisons** are used to house:

- (a) Defendants, persons charged with offences and accused persons;
- (b) Convicted prisoners sentenced to up to two years' imprisonment for a serious crime or other indictable offence; and those serving a custodial sentence for a minor offence.

201. **Detention centres** are used to house:

- (a) Persons charged with offences and defendants;
- (b) Convicted prisoners who, on the day their sentence enters into force, are scheduled to spend another six months at most in detention;
- (c) Convicted prisoners assigned to community service;
- (d) Prisoners in transit.

202. It has not been possible to implement the provisions of article 10 on the segregation of remand prisoners and convicted prisoners owing to lack of material, financial and human resources.

203. Efforts have been made to segregate minor detainees from adults at Antananarivo central prison. Similar efforts are being made throughout Madagascar.

## Trends in the prison population

Table 45

Trends in the prison population, from 1961 to March 2004, by category of detainee (remand/convicted; men/women; minors/adults)

Year	Convicted prisoners				Remand prisoners				Total
	Men	Women	Girls	Boys	Men	Women	Girls	Boys	
1961	-	-	-	-	-	-	-	-	9 064
1971	6 042	83	-	49	5 778	145	-	323	12 420
1972	5 914	72	-	22	6 063	153	-	244	12 468
1973	5 480	95	1	23	6 220	127	20	284	12 258
1974	5 509	63	2	29	7 190	165	30	362	13 350
1975	5 822	68	3	35	7 297	163	14	341	13 743
1976	6 538	73	-	27	10 066	295	21	463	17 483
1977	7 330	84	1	28	11 115	309	17	399	19 291
1978	8 255	59	2	21	11 483	326	17	415	20 578
1979	8 848	176	3	40	12 306	342	21	352	22 088
1980	9 524	162	24	2	12 596	308	10	342	22 968
1981	9 506	159	1	22	12 003	325	17	238	22 271
1982	9 192	168	1	23	12 480	267	31	215	22 377
1983	9 263	164	-	17	12 905	248	16	208	22 821
1984	8 499	178	1	19	12 278	269	32	225	21 501
1985	8 896	187	8	65	12 015	375	60	370	21 976
1986	8 724	243	19	80	12 319	446	90	329	22 250
1987	7 866	235	29	79	13 370	506	44	303	21 432
1988	8 659	250	18	124	12 779	423	83	369	22 705
1989	7 549	236	11	69	12 246	502	61	419	21 093
1990	7 429	201	9	64	12 043	456	55	486	20 743
1991	6 269	174	2	89	11 596	438	65	416	19 043
1992	5 980	248	7	66	11 220	450	57	342	18 370
1993	6 226	153	17	47	13 446	559	45	400	21 658
1994	7 012	202	6	44	13 372	562	79	381	21 658
1995	6 616	184	1	34	14 133	613	69	556	22 206
1996	7 455	261	4	33	12 410	532	35	483	21 213
1997	6 667	252	2	40	11 954	414	38	376	19 743
1998	6 368	206	2	72	11 698	414	19	354	19 143
1999									19 215
2000									18 735
2001									19 602
2002	5 375	163	4	34	12 554	603	5	274	18 440
2003	6 198	204	1	26	11 770	414	22	266	18 901
March 2004	6 179	196	0	23	12 160	463	22	343	19 339

### **Rehabilitation, humane treatment and social reintegration**

204. In November 1997, in order to ensure that detainees were treated with humanity, the Ministry of Justice, in collaboration with national and international organizations, embarked on a programme to:

- (a) Improve detention conditions by extending and constructing new facilities; and
- (b) Expedite the trial of long-time remand prisoners.

205. In the period 1997-2000, some 3,791 detainees were found to have spent more than five years on remand. Of these cases, 2,497 were brought to trial in 2001.

206. Since 2001, nine sessions of the Criminal Court have been held each year, instead of the usual two, with a view to processing detainees at Antananarivo central prison and Tsiafahy prison. Seventy-six cases have been filed per session.

207. Other measures have been taken in partnership with the embassies of the United States of America and the United Kingdom. The following departments have been established within the Prison Service:

- (a) The Department for Health and Humane Treatment (2002);
- (b) The Department for Correctional Schools (2004).

208. The latter department deals with minors in prison and minors who have been provisionally placed in a rehabilitation centre at the direction of a juvenile judge.

209. In the context of efforts to improve the quality of the State prison service, the National School for the Prison Service was established in Toamasina.

### **Amnesties**

210. Legislative and regulatory measures have been adopted to tackle the problems of prison overcrowding.

211. In 2000, a total of 4,705 convicted prisoners were amnestied pursuant to Act No. 99-033 of 5 January 2000 on amnesties.

212. Another 1,561 became eligible for remission of their sentence under Decree No. 2000/010 of 6 January 2000.

213. The following convicted prisoners were granted amnesties:

- (a) 1,469 convicted prisoners sentenced to a maximum of one year in prison;
- (b) 26 persons who were under the age of 18 at the time of their offence and who were sentenced to a maximum of two years in detention;

- (c) 5 pregnant women sentenced to a maximum of two years in detention;
- (d) 61 convicted prisoners of both sexes who were aged 60 or over on 1 January 2000 and who had already spent a minimum of 20 years in detention.

214. Remissions of sentence were granted as follows:

- (a) 12 months' remission for 3,267 convicted prisoners with sentences ranging from one to five years;
- (b) 20 months' remission for 1,343 convicted prisoners serving custodial sentences of five years or more;
- (c) Complete remission of sentence for 79 convicted prisoners aged between 50 and 60 on the date of publication of the decree;
- (d) Complete remission of sentence for 16 convicted prisoners sentenced to rigorous imprisonment.

**Social reintegration in the context of article 10, paragraph 3, of the Covenant**

215. To promote the reintegration into society of detainees from Antananarivo central prison, the Prison Service collaborates with non-governmental organizations and associations active in protecting and promoting human rights to organize training in the following areas:

- (a) Literacy;
- (b) Training "peer instructors";
- (c) Foreign language instruction;
- (d) Spiritual (religious) education;
- (e) Embroidery and dressmaking;
- (f) Aerobics (for women);
- (g) Dance;
- (h) Basket-making;
- (i) Painting.

216. An exhibition of female detainees' artistic endeavours and embroidery, including those of minors, is held every 10 December on the occasion of Human Rights Day. The Prison Service is actively involved in this exhibition, which is organized by the Working Group on Human Rights and run by the Ministry of Justice.

217. In addition, inmates at Antanimora central prison may engage in lawful entertainment and leisure activities (such as football and educational games).

218. The Government may place juvenile delinquents and abandoned or maladjusted children in privately-run registered establishments. These establishments charge a daily fee to cover the board, lodging, care and clothing of the minors entrusted to them under the provisions of Ordinance No. 62-038 of 19 September 1962 on the protection of children and article 1 of Decree No. 72-294 of 28 July 1972 on the costs of caring for juvenile delinquents and abandoned or maladjusted children.

219. To date no official complaints of human rights abuses have been registered.

## ARTICLE 11

### **Prohibition of imprisonment for civil debt**

220. As stated in paragraph 150 of its previous report (CCPR/C/28/Add.13, pp. 29-30), the Ministry of Justice, in an effort to clear up the matter and establish an order of priority for the various norms in force, issued a circular stating that the Covenant ranks higher than the law.

221. Having ratified the Covenant, Madagascar was obliged to incorporate the prohibition of imprisonment for civil debt into its domestic law.

222. Consequently, all previous statutory provisions contrary to the Covenant became obsolete, namely:

(a) Article 4 of Ordinance No. 62-063 of 27 September 1962 concerning farm credits, which is governed by the convention that national instruments contrary to the Covenant shall no longer apply;

(b) Article 17 of Ordinance No. 62-069 of 29 September 1962 concerning credits for cooperatives;

(c) Article 2 of Ordinance No. 62-113 of 1 October 1962 containing regulations on loans for the construction and purchase of movable and immovable property.

223. Henceforth, imprisonment for debt as stipulated in the aforementioned provisions no longer exists and recovery of civil debts is effected through the civil courts.

224. To ensure better implementation of article 11 of the Covenant, the criminal courts oversee the legality of recovery proceedings.

225. Before instituting a public prosecution, the Public Prosecutor's Office must ascertain the civil or criminal nature of the facts before it. Imprisonment is envisaged only in the event of breaches of the criminal law. This oversight is exercised throughout the criminal court system at the level of the trial court, the Court of Appeal and the Court of Cassation.



226. The following clarifications should be made with regard to the application of article 408, paragraph 2, of the Criminal Code, dealing with embezzlement. This article provides for conviction and the possibility of imprisonment for refusal to fulfil contractual obligations when the debtor is in a position to honour his commitments.

227. Imprisonment as envisaged by this article of the Code is not incompatible with article 11 of the Covenant, which stipulates that no one shall be imprisoned “merely on the ground” of inability to fulfil a contractual obligation. Imprisonment as specified by the Code is contingent upon a bad faith refusal to carry out contractual obligations when the debtor is able to meet these obligations.

228. In its judgement No. 99 of 1 August 2002, the Supreme Court convened *en banc* stated that article 408, paragraph 2, of the Criminal Code does not apply to non-performance of contractual obligations. In the case in question, the Court held that failure to complete work and failure to use the proper materials for the work constituted grounds for a civil action.

## ARTICLE 12

### **Right to liberty of movement and freedom to choose one’s residence**

229. Developments since the previous report have been enshrined in the Constitution.

230. Articles 10 and 12 of the Constitution set forth the principles of liberty of movement and freedom to choose one’s residence.

231. According to article 10, freedom of movement “shall be guaranteed to all and may be restricted only for the sake of respect for the freedoms and rights of others and the need to safeguard public order”.

232. According to article 12, paragraph 2, “everyone shall have the right to travel and to settle freely in the territory of the Republic while respecting the rights of others and the requirements of the law”.

233. In addition, foreigners are afforded the possibility of obtaining entry visas at the airport or port of disembarkation in accordance with inter-ministerial order No. 8421/97 (MAE/MININTER/MI/SESP) of 19 September 1997 on the implementation of the aforementioned Decree No. 94-652 of 11 October 1994.

234. This measure contrasts with the situation that existed previously.

235. The provisions of the Covenant regarding the freedom to leave any country, including one’s own, have been incorporated into the 1992 Constitution, article 12, paragraph 1, of which states that “every Malagasy national shall have the right to leave the national territory and to enter it under conditions established by law”.

236. Thus the former requirement that Malagasy citizens had to obtain an exit visa has been abolished.

## ARTICLE 13

### Expulsion of foreigners

237. Act No. 62-006 of 6 June 1962 on the organization and control of immigration lays down the arrangements that apply in cases of return (refoulement) or expulsion of a foreigner.

238. The procedures for the return or expulsion of a foreigner are laid down in the manner and conditions provided for in articles 12 to 14 of this Act:

(a) Article 12: “A foreigner who has entered Madagascar unlawfully or fails to leave Madagascar when the period of residence granted to him expires may be returned, without prejudice to any sentences he may have incurred”;

(b) Article 13: “A foreigner authorized to reside temporarily in Madagascar may also be returned if his presence in the country constitutes a threat to the maintenance of public order or the protection of public health, morals or safety”;

(c) Article 14: “The Minister of the Interior may order the expulsion of a foreigner if the foreigner’s residence in Madagascar constitutes a threat to public order and safety. If necessary, the expulsion order may be revoked under the same procedure”.

239. A foreigner subject to an expulsion order has the opportunity, if he or she so requests, to appear before a special commission, either alone or assisted by counsel, pursuant to article 34 of Decree No. 94-652 of 11 October 1994 regarding the implementation of the aforementioned Act. The special commission comprises:

(a) The chairman or vice-chairman of the provincial authority (*Délégation Spéciale du Faritany*);

(b) The chairman of the district authority (*Délégation Spéciale du Fivondronampokontany*) in the place where the foreigner resides, or the chairman’s representative;

(c) The regional director of security and police, or the director’s representative;

(d) An official appointed by the chairman of the provincial authority, who acts as secretary to the commission.

240. At the end of the hearing, the commission files a report including “the case made by the individual in question and, where appropriate, the results of any other inquiries, together with the commission’s conclusions, stating reasons” (art. 37).

241. The case file is then referred to the Ministry of the Interior and Administrative Reform for a decision.

242. If the Ministry of the Interior upholds the expulsion order, it is open to the foreigner concerned to lodge an application for judicial review before the Administrative Division.

### Situation of refugees

244. Although it has signed the 1951 United Nations Convention relating to the Status of Refugees and the 1969 Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa, Madagascar has yet to ratify either of these instruments.

245. Madagascar has agreed to admit refugees to its territory, but has been unable to care for them.

246. At a seminar held in Antananarivo from 17 to 19 October 2000 on the impact of international instruments concerning refugees and stateless persons, organized by UNDP for Malagasy officials, the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNDP thanked the Malagasy Government for adhering to the principle of non-refoulement of refugees in Madagascar and affording them effective protection until such time as UNHCR could identify a solution.

**Table 46**

#### **Refugees in Madagascar, 2001-2004**

Country of origin	Number of refugees	Number of dependants
Angola	1	0
Burundi	2	0
Cameroon	1	1
Congo	12	12
Ethiopia	2	2
Liberia	8	7
Palestine	1	4
Rwanda	2	14
Subtotal	29	27
Total		56

*Source:* UNDP.

### **ARTICLE 14**

#### **Right to a fair trial**

247. In response to the Committee's recommendations following the consideration of Madagascar's previous report, the following improvements have been made:

(a) The National School of the Judiciary and Court Officers was established in 1997, resulting in an increase in the number of judicial and court officers. There are currently 565 judges and 732 judicial officers (410 registrars and 322 clerks in the prosecution service).

248. The increase in the number of trial courts (there are now 36) is part of the Government's policy of bringing justice closer to the public.

249. In the same vein, whereas previously there was just one Court of Appeal in Antananarivo for the whole of Madagascar, there are now four other appellate courts, sitting in Toamasina, Toliara, Mahajanga and Fianarantsoa. Another appeal court will be established in Antsiranana in the near future.

(a) Likewise, administrative and financial courts have been set up pursuant to Act No. 2001-025 of 9 April 2003, as amended by Act No. 2004-021 of 19 August 2004. These courts, which sit in each provincial centre, are competent to examine at first instance the legality of acts of the authorities at the provincial level.

250. The Council of State examines by way of appeal or cassation judgements handed down by the administrative courts in the autonomous provinces.

251. The Court of Audit examines by way of appeal judgements handed down by financial courts or administrative bodies of a judicial nature.

252. The establishment of these courts, whose function is to administer impartial and independent justice, is in keeping with the provisions of the Covenant.

253. Moreover, the following specific steps have been taken to process cases within a reasonable time:

(a) A revision of civil procedure, including the institution of a judge directing preparations for trial;

(b) An increase in the number of criminal court sessions, designed to adjudicate reasonably quickly on cases in which the defendants have spent a considerable time in pretrial detention.

254. Likewise, in an effort to administer justice fairly, it has been decided to abolish special courts such as the Special Criminal Court and the Special Economic Court. Henceforth, crimes falling within the competence of these courts shall be tried by the ordinary courts.

255. The following additional measures are intended to make it easier for everyone to have access to justice:

(a) The overhaul of legal aid for persons unable to afford legal fees, in collaboration with the African Development Bank;

(b) The stipulation, pursuant to Act No. 97-036 of 30 October 1997, that a suspect may be assisted by the counsel of his or her choice from the time of the preliminary investigation, thereby giving effect to the provisions of article 13 of the Constitution.

256. This article guarantees the full and inviolable right to due process of law in all courts and at all stages of proceedings, including the preliminary investigation handled by the judicial police and the prosecution service:

(a) The establishment of a Criminal Reform Commission charged with revising and simplifying criminal procedure, reducing the length of time spent in detention and expediting the processing of case files;

(b) The holding of a fair trial implies the modernization of the justice system, whence the efforts that have been made in the following fields:

- (i) Harmonization of provisions currently in force with the requirements of international organizations, including the reform of business law through the Business Law Reform Commission. The reform aims to promote an environment that favours better protection for investments and legal security for investors;
- (ii) Computerization of commercial court registries;
- (iii) Computerization of the national commercial and companies register, locally in the courts and centrally at the Ministry of Justice.

257. In addition, international cooperation agencies have made a significant contribution to improving the workings of the justice system.

258. Thus the Antananarivo prosecution service is currently being computerized with joint financing from the French development cooperation agency and UNDP.

259. USAID has contributed to capacity-building efforts by providing legal texts to law officers.

260. The European Union, the United Kingdom and Switzerland have made important contributions to the refurbishment and extension of penal establishments.

261. In the event of violations of the Covenant, citizens may avail themselves of the remedies outlined in Supreme Court Order No. 231 of 5 September 2003.

262. This order enshrines the primacy of properly ratified international conventions and underlines the constitutional provision to this effect (art. 82.3.VIII).

263. In the course of their work, the Malagasy courts adhere to the provisions of the Covenant on the following points:

(a) Presumption of innocence;

(b) The right to be informed of the nature and cause of the charges against the person being prosecuted;

- (c) Special proceedings in the case of juvenile delinquents;
- (d) Respect for the right of appeal;
- (e) Application of the rule that a person must not be tried twice for the same offence;
- (f) The possibility of a retrial in the event of a miscarriage of justice.

264. In addition, respect for the right to a fair trial implies a high level of integrity among the judiciary. Accordingly, Madagascar has ratified United Nations and African conventions to combat corruption.

265. The good faith implementation of these conventions is demonstrated by the following initiatives:

(a) The adoption of a law against corruption (Act No. 2004-030 of 9 September 2004); and

(b) The establishment of relevant and appropriate structures such as the High Council to Combat Corruption (CSLCC), the Independent Anti-corruption Office (BIANCO), an anti-corruption network called the Chaîne pénale anti-corruption, and a financial service.

266. Madagascar is also committed to fighting transnational organized crime, having ratified the relevant international legal instruments and passed a law that criminalizes money laundering.

267. Under national law, failure by the persons listed below to declare their assets is an offence punishable by imprisonment for between six months and five years and a fine ranging from FMG 50 million to 200 million:

- (a) The Prime Minister, as head of the Government;
- (b) Senators and deputies;
- (c) Members of the Constitutional High Court;
- (d) Governors of autonomous provinces, chief executives of regions and mayors;
- (e) Judges of the ordinary, administrative and financial courts;
- (f) High-ranking public officials equal or superior in rank to a ministerial head of department;
- (g) Inspectors of State property, and treasury, customs, and tax and finance inspectors;
- (h) Military commanders above the rank of company commander;

(i) Inspectors working for the General State Inspectorate, the General Inspectorate of the Malagasy Army and the General Inspectorate of the National Gendarmerie;

(j) Any person performing the duties of a financial or judicial police officer.

268. Taken together, these measures indicate the Malagasy Government's willingness to take action to eliminate or at least minimize the effects of corruption, which is acknowledged as being incompatible with the creation of an environment conducive to economic development.

## ARTICLE 15

### **Principle of *nullum crimen, nulla poena sine lege***

269. The lawfulness of the statutes creating criminal offences and of penal sanctions is recognized by the Constitution of 18 September 1992.

270. Article 13 stipulates that "no one may be prosecuted, arrested or detained except in cases determined by law and according to the forms prescribed by law" and that "no one may be punished except by virtue of a law promulgated and published prior to the commission of the punishable act".

271. These constitutional provisions are echoed by article 4 of the Criminal Code: "No misdemeanour, offence or crime shall be punished except as established by law prior to the commission thereof."

272. Efforts have been made to eradicate certain customary practices that provide for penalties not stipulated in the criminal law.

273. Thus, article 7 of Act No. 2001-004 of 25 October 2001 on the general regulation of *Dina* in reference to public safety states: "The *Dina* shall become enforceable only after it has been approved by the competent court of law or the court of appeal and made public by posting in a public place, public announcement or some other form of publicity."

274. Through this Act, the State exercises prior control over the lawfulness of penalties prescribed by *Dina*. Consequently, a criminal penalty that is unlawful and contrary to the Covenant will not be approved.

275. The principles of non-retroactivity of criminal laws and application of the least onerous penalty, as prescribed in the Covenant, are recognized under the Constitution and applied by the criminal courts.

## ARTICLE 16

### **Right to recognition as a person before the law**

276. The recognition of everyone as a person before the law implies the assignment of certain attributes to each individual to distinguish them from their fellow-citizens. This recognition is denoted by the individual's civil status.

277. Recognition before the law ensures protection for individual rights under the Covenant, whether these be property or other rights.
278. Progress has been made in the area of recognition of legal status thanks to an operation to provide a court ruling in place of a birth certificate to anyone not registered at birth.
279. The acquisition of civil status facilitates the exercise, enjoyment and protection of the civil and political rights recognized under the Covenant.
280. The UNICEF-funded operation to ensure that every child has evidence of their civil status also plays an important part in the implementation of the Education for All policy.

## **ARTICLE 17**

### **Right to protection of privacy**

281. The inviolability of the individual's person, home and correspondence is protected under article 13, paragraphs 1 and 2, of the Constitution.
282. The inviolability of the person is a safeguard against any violation of the individual's physical and psychological integrity or honour.
283. Violations of these rights are punishable by law; the law also recognizes the right to reparation in the form of compensation for any harm suffered.
284. Interference with the home is punishable under article 184 of the Criminal Code, except in cases provided for by the Constitution and the law.
285. Under the Constitution, "no search may take place except in accordance with the law and on the written order of the competent judicial authority, except in cases of flagrante delicto".
286. Under article 259 of the Code of Criminal Procedure, "no search or inspection of a home may commence before 5 a.m. or after 7 p.m.".
287. Any search begun before 7 p.m. may be completed.
288. Night searches are authorized in cases of (a) crimes or offences against internal State security, (b) flagrante delicto, and (c) narcotics operations, under article 119 of Act No. 97-039 of 4 November 1997 on the control of narcotics and psychotropic substances in Madagascar.
289. Attacks on honour or reputation are the subject of a special law on media offences, while interference with correspondence is covered by the Criminal Code.

### **Attacks on honour**

290. Article 85, paragraph 1, of Act No. 90-031 of 21 December 1990 on communications states that "defamation of private individuals ... shall be punishable by a prison term of one to six months and/or a fine of FMG 30,000 to 1 million".



### **Interference with correspondence**

291. Tampering with correspondence is punishable under article 187 of the Criminal Code, which states the following:

“Any withholding or opening of a letter entrusted to the postal service, or any facilitation thereof, by any employee or official of the Government or the postal administration, shall be punishable by a fine of 25,000 to 150,000 francs and three months’ to five years’ imprisonment. The offender shall also be barred from holding any public office or employment for a period of not less than 5 and not more than 10 years.

In addition to the cases referred to in the first paragraph of this article, any malicious withholding or opening of correspondence addressed to third parties shall be punishable by a prison term of six days to one year and/or a fine of 25,000 to 150,000 francs.”

292. Monitoring of telephone communications is authorized only by order of the public prosecutor or the investigating judge as part of preliminary judicial proceedings.

## **ARTICLE 18**

### **Freedom of thought, conscience and religion**

293. Article 10 of the Constitution states that “the freedoms of opinion and expression, communication, the press, association, assembly, movement, conscience and religion shall be guaranteed to all and may be restricted only for the sake of respect for the freedoms and rights of others and the need to safeguard public order”.

294. The freedoms of religion and religious association are regulated by Ordinance No. 62-117 of 1 October 1962.

295. Ordinance No. 60-133 of 3 October 1960 regulates the formation and dissolution of non-profit associations.

296. The spread of religious associations other than the traditional religions (Catholicism, Protestantism and Islam) throughout the country demonstrates Madagascar’s respect for religious freedom, as recognized under the Covenant:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

297. The religious freedoms referred to in article 18 of the Covenant may be restricted only for the sake of respect for the freedoms and rights of others and the need to safeguard public order.

298. The Administrative Division of the Supreme Court may, in the event of a legal challenge, review the lawfulness of restrictive measures, suspensions or dissolutions ordered by the Government in respect of religious associations. Such judicial control safeguards the exercise and enjoyment of the freedoms recognized in article 18 of the Covenant.

299. Madagascar respects parents' freedom to bring up their children in accordance with their own religious and moral convictions.

300. Since the secular nature of the State prohibits any interference in religious matters, it may not defray any expenses involved in religious observance.

## **ARTICLE 19**

### **Freedom of opinion and expression**

301. The freedoms of opinion and expression are indivisible. The former denotes the individual's freedom to think what they believe to be true, while the latter denotes the freedom to express their thoughts to others.

302. Protection of these freedoms entails prohibiting the suppression of opinions or the expression of opinions.

303. Crimes of conscience do not exist in Malagasy law.

304. Certain restrictions are nonetheless provided for under article 10 of the Constitution, which states that "the freedoms of opinion and expression, communication, the press, association, assembly, movement, conscience and religion shall be guaranteed to all and may be restricted only for the sake of respect for the freedoms and rights of others and the need to safeguard public order".

305. Article 11 of the Constitution also provides that the right to information shall not be subject to any prior restraint.

306. Article 2, paragraph 1, of Act No. 90-031 of 21 December 1990 stipulates that "everyone has the right to express their opinion and their ideas in the press, regardless of the medium employed".

307. The right to freedom of the press and to information are also protected under Ordinance No. 92-039 of 14 September 1992 on audio-visual communications.

308. Under article 2, paragraph 2, of Act No. 90-031, "the press has a mandate to publish any opinion and report any event likely to be of interest or educational value to the public, in full freedom and independence of spirit"; while under paragraph 3, "expressions of this freedom shall be restricted only for the sake of respect for the rights and dignity of others".

309. This legislation gives everyone the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

310. Article 59 provides as follows: “The public has the right to full information that is in conformity with facts and events. The guarantee of the quality of information is ensured by intellectual rigour, integrity and honesty.”

311. Restrictions on the exercise of the right to freedom of the press and information are justified where there is a need to respect the rights and dignity of others or to safeguard morals and public order.

312. Such restrictive measures are in no way contrary to the requirements of the Convention.

313. The following tables show the progress of the liberalization of the communications sector.

**Table 47**

**Radio stations per province, November 2004**

Province	Government agreement	State-run	Private (licensed)	Regularization in progress	Private (illegal)	Total
Antananarivo	04	03	52	03	04	66
Fianarantsoa	02	04	18	04	04	32
Toamasina	01	07	17	05	07	37
Toliara	01	08	18	05	06	38
Antsiranana	01	03	13	08	20	45
Mahajanga	00	05	08	05	02	20
Total	09	30	126	30	43	238

*Source:* Department of Information, Regulation and Media (DIRM), SRR/CSCA (17 November 2004).

**Table 48**

**Television stations per province, November 2004**

Province	State-run	Private (licensed)	Regularization in progress	Total
Antananarivo	01	13	00	14
Fianarantsoa	01	02	01	04
Toamasina	01	01	01	03
Toliara	01	02	01	04
Antsiranana	01	00	01	02
Mahajanga	01	02	00	03
Total	06	20	04	30

*Source:* Department of Information, Regulation and Media, SRR/CSCA (17 November 2004).

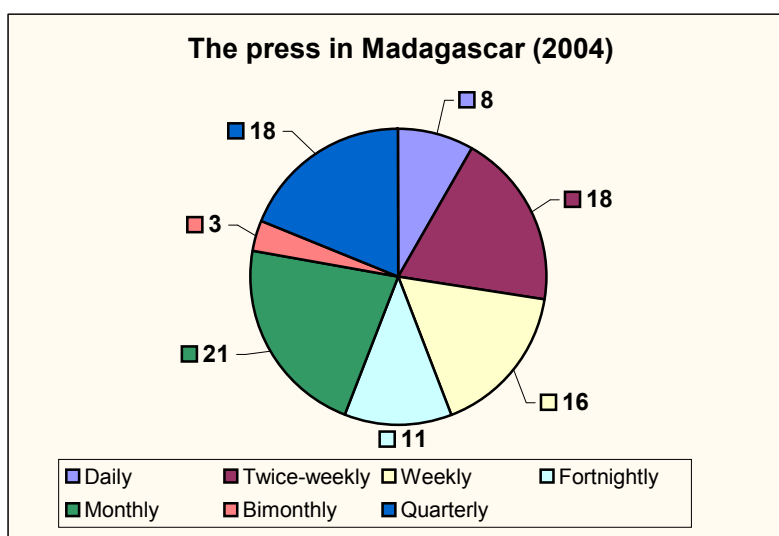
**Table 49**

**Main dailies and weeklies**

Dailies	Weeklies
Express de Madagascar	Dans les Médias Demain (DMD)
Gazetiko	Imongo Vaovao
La Gazette de la Grande Ile	Ngah (humorous publication)
Madagascar Tribune	Telonohorefy
Midi Madagasikara	Lakroan'i Madagasikara
Ny Gazety Androany	Revue de l'Océan Indien
Le quotidien	L'Hebdo de Madagascar
Ny Vaovaontsika	
Les Nouvelles	
Taratra	
Malaza	

**Figure 3**

**Madagascar's main dailies and weeklies**



*Source:* Department of Information, Regulation and Media, SRR/CSCA (17 November 2004).

314. These tables indicate that the era of the State monopoly over the introduction and operation of radio and television is at an end. The advent of satellite broadcasting has further hastened the demise of that monopoly.

315. The Malagasy Telecommunications Monitoring and Regulation Office (OMERT) is responsible for issuing licences to private radio and television stations and supervising and monitoring the use of frequencies in accordance with the law.

## **ARTICLE 20**

### **Prohibition of any propaganda for war and any advocacy of national, racial or religious hatred**

316. Malagasy law prohibits propaganda for war and all incitement to hatred.
317. The law takes account of the extremely serious nature of incitement to war and does not hold back from imposing the death penalty on those found guilty. The severity of the punishment is intended as a deterrent to anyone tempted to engage in such activities.
318. Under article 91 of the Criminal Code, “any attempt either to incite civil war by arming citizens or inhabitants against one another, or causing them to be so armed, or to bring about destruction, massacre or pillage in one or more communities, shall be punishable by death”.
319. In addition, under article 75, paragraph 5, “anyone inciting discrimination, hatred or violence, by any of the means mentioned in article 74, against a person or group of persons on account of their origin, colour, sex, family situation or membership or non-membership of a given national, racial or religious grouping, shall be liable to a prison term of one month to one year and a fine of FMG 100,000 to 3 million”.
320. Under article 115 of the Criminal Code, “anyone who knowingly denies another person a right on grounds of origin, colour, sex, family situation or actual or supposed membership or non-membership of a given ethnic, national, racial or religious grouping” is liable to a prison term of one month to one year and/or a fine of FMG 50,000 to 250,000.
321. The above penalties are doubled where the offence is committed by a public official in the performance of his or her duties.

## **ARTICLE 21**

### **Freedom of assembly**

322. Article 10 of the Constitution, on freedom of assembly, represents a step forward since the previous report.
323. The term “assembly” denotes meetings held in a meeting room, in private or on the public highway.
324. This freedom may be restricted only for the sake of respect for the rights and freedoms of others and the need to safeguard public order.
325. Under articles 1 and 2 of Ordinance No. 60-104 of 21 September 1960 on public gatherings, a meeting held on the public highway ceases to be peaceful if any participant is openly carrying a weapon.
326. Act No. 91-011 of 18 July 1991 on emergency situations prohibits gatherings and demonstrations on the public highway. This prohibition is described in more detail above, in the section on the implementation of article 4 of the Covenant.

## ARTICLE 22

### Freedom of association and the right to form and join trade unions

#### Freedom of association

327. The details of the exercise of the freedom of association guaranteed under article 10 of the Constitution are set forth in the following laws and regulations:

(a) Ordinance No. 60-133 of 3 October 1960 on the general regulations governing associations;

(b) Decree No. 60-383 of 5 October 1960 on the implementation of Ordinance No. 60-133;

(c) Ordinance No. 90-011 of 9 March 1990 on the general regulations governing political parties and organizations;

(d) Act No. 96-030 of 14 August 1997 on the special regulations for non-governmental organizations;

(e) Decree No. 98-711 of 2 September 1998 on arrangements for implementing Act No. 96-030.

328. The right to freedom of association is guaranteed by judicial supervision exercised by the Administrative Division of the Supreme Court. Any appeals must relate to the protection of members' collective interests.

329. Associations may appeal to the Court in the event of any violation of their rights and freedoms.

#### Right to form and join trade unions

330. Trade unions' mission is to defend the collective interests of their members.

331. At the international level, Madagascar has ratified the International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organize (Convention No. 87 of 9 July 1948).

332. Article 31 of the Constitution recognizes the right of all workers to defend their interests through union action and in particular the freedom to form a trade union. The right to join a trade union is unrestricted.

333. Article 33 of the Constitution stipulates that the right to strike shall be exercised in accordance with the law.

334. By decision No. 112 of 23 February 1983 (*Raharison v. State of Madagascar*), the Administrative Division of the Supreme Court ruled as follows:

“That the right to strike may be exercised only in accordance with the law of the land, which in the case of Madagascar means specifically Ordinance No. 60-149 of 3 October 1960, which has not been repealed and thus remains in force, and which prohibits all organized withdrawal of labour for certain categories of public servants and officials.

That Mr. Raharison and others ... belonged to one of the categories of public officials who were not permitted to strike.”

335. Similarly, decision No. 114 of 23 February 1983 (*Ramanoarisoa Basile - Rasamoelina Henri Solo v. State of Madagascar*) states that:

“Whereas the investigation shows that the appellants were employed in the Meteorological Service; that, in accordance with the aforementioned Ordinance, they were members of one of the categories of officials not permitted to strike, either because they are planning officials or for security reasons or because their service is one whose disruption would cause significant harm to the nation; and that, having gone on strike from 8 to 16 August 1979, the appellants were guilty of professional misconduct.”

336. In opinion No. 01-HCC/AV of 6 April 2005, on the interpretation of article 33 of the Constitution, the Constitutional High Court stated that:

“... strikes by public officials must be conducted in accordance with the current legal order, namely the Constitution, the law and the regulations;

Any regulations governing strikes by public officials must take account of the special legal status of such officials;

Such regulations are legally applicable only to the defence of professional collective interests.

The withholding of pay is not a punitive measure, given that a report of a failure to provide service implies no evaluation of the official’s personal conduct, as it would in the context of disciplinary proceedings.

Officials who stop work for a strike have no right to remuneration provided they have clearly failed to perform their duty.”

337. In accordance with article 22, paragraph 2, of the Covenant, the right to strike is not recognized to members of the armed forces, the police or the gendarmerie, in the interests of security and public order.

### **Trade union rights in the private sector**

338. Under Act No. 94-029 of 25 August 1995 on the Labour Code, trade unions are no longer compelled to affiliate to the parties of the Front national pour la défense de la révolution.

339. Article 4 of the Act states that “the exercise of trade union rights is recognized as one of the rights and freedoms guaranteed by the Constitution”.

340. Article 5 states that “workers and employers, without distinction of any kind and regardless of their occupation, have the right to freely form trade unions and professional associations, without prior authorization, and to join any such associations as they choose, provided only that they abide by the statutes of the said associations”.

341. Workers’ and employers’ associations now work in partnership in negotiating wages and solving labour problems.

342. The old tripartite body known as the National Employment Board, which is made up of representatives of the State and of workers’ and employers’ organizations, has now been replaced by the National Labour Board.

343. The new Labour Act (No. 2003-044 of 28 July 2004) has incorporated ILO recommendations on the involvement of the various actors in creating a worker-friendly environment, including (a) vocational training, (b) health and safety, and (c) social security and benefits.

344. The Board has been set up as a tripartite body for consultation, dialogue, cooperation and negotiation between employers and workers, and to provide information on employment, training, social security, work and pay.

345. Progress made in this area includes constitutional, legal and judicial protection for trade union rights and the right to strike.

### **Trade union rights in the civil service**

346. Under Act No. 2003-011 of 9 September 2003 on the general status of civil servants, the Civil Service Council was retained as a channel for dialogue and cooperation between the State and the civil service unions.

347. According to Decree No. 18536/2004 of 1 October 2004, 20 civil service unions are now represented on the Civil Service Council.

348. Moves towards federation, as a means of facilitating inter-union cooperation, have led to the formation of the Conference of Malagasy Workers.

### **Employers’ organizations**

349. Two Malagasy employers’ associations, the Madagascar Business Group and the Fivondronan’ny Mpandraharaha Malagasy, are founder members of the Confederation of Organisations of Employers of the Indian Ocean (COEOI), which comprises (a) the Comoros Employers’ Association, (b) the Mauritius Employers’ Federation, (c) the Liaison Committee for the Economic Interests of Réunion and (d) the Federation of Employers’ Associations of Seychelles.



350. COEOI is a subregional federation of the most representative employers' associations of the Indian Ocean.

351. At the regional level, Madagascar is participating in the Programme for the Promotion of Social Dialogue in French-speaking Africa, a regional programme set up by ILO and the Government in 1997.

## **ARTICLE 23**

### **Protection of the family and of children**

#### **Protection of the family**

352. The most significant development to have taken place since the last report is the incorporation of the provisions of article 23, paragraph 1, of the Covenant, into article 20 of the Constitution.

353. Article 20 of the Constitution states: "The family, which is the natural and fundamental unit of society, shall be protected by the State. Everyone is entitled to found a family and to bequeath their personal property."

354. The family enjoys extensive protection under article 21 of the Constitution: "The State shall protect the family, to allow its free development, as well as mothers and children, through legislation and appropriate social institutions."

355. Act No. 90-013 of 20 July 1990, amending Ordinance No. 62-089 of 1 October 1962 concerning marriage, also represents a new development, insofar as it prohibits any discrimination against the wife at any time during a marriage.

356. This law stipulates that the couple shall jointly decide on the place of marital residence and that "where disagreements arise in the course of a marriage over the choice of place of residence, one of the spouses may apply to the court for interim relief".

357. Article 57 states that "either spouse may give the other general or ad hoc power of attorney to represent the couple".

358. Improvements to the matrimonial regime have been made under Act No. 90-014 of 20 July 1990, which introduced equal division of marital property as the rule in the event of the dissolution of a marriage.

359. Lastly, in the area of criminal law, husbands and wives found guilty of adultery are liable to the same penalties under article 357 of the Criminal Code and Act No. 96-009 of 9 August 1996.

360. With the aim of promoting equal rights and responsibilities between spouses, the State, jointly with UNDP, has produced a document entitled "Egalité de l'homme et de la femme pour le développement" ("Male-female equality for development").

## **Protection of children**

361. New developments are reflected in the ratification of international children's rights instruments.

362. Madagascar has ratified:

(a) The Convention on the Rights of the Child (ratified on 19 March 1991);

(b) The African Charter on the Rights and Welfare of the Child (17 January 2005);

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2 February 2004); and

(d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2 February 2004).

363. Efforts are now being made to amend legislation in order to give full effect to the conventions thus ratified.

## **ARTICLE 24**

### **Children's rights and juvenile justice**

#### **Children's rights**

364. Madagascar has new laws reinforcing the protection of children's rights.

365. Article 3 of the African Charter on the Rights and Welfare of the Child states that: "every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status".

366. New legislation in line with the recommendations of the Committee on the Rights of the Child has been introduced since the second report was prepared, including Act No. 2004-004 of 26 July 2004 on the general organization of the education and training system in Madagascar. Every area of education and training is covered by the new legislation.

367. Education is accessible to all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, and they have the right to such measures of protection from family, society and the State, as are required by their status as minors.

368. The Constitution recognizes every child's right to teaching and education under the parents' responsibility and respecting their freedom of choice.

*Education sector*

369. Since school enrolment is an effective means of protecting children, the Ministry of Education and Scientific Research is concentrating on implementing the Education for All policy, the objectives of which are:

- (a) Universal primary school enrolment (first cycle, basic education; target of 100 per cent by 2015);
- (b) Increased access and attainment levels in the second cycle of basic education, with a projected doubling of student numbers;
- (c) Increased capacity and enhanced performance in high schools.

*Legislative measures*

370. Act No. 2004-004 of 26 July 2004, on the general organization of the education and training system in Madagascar, places particular emphasis on non-formal education, providing vocational training for children who have dropped out of school or have never been to school.

371. Civics education aims to help children acquire the life skills necessary to defend themselves from the dangers they face.

372. In order to better safeguard children's rights, Madagascar has adopted the ILO Convention concerning Minimum Age for Admission to Employment (No. 138) and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182).

*Administrative measures*

373. The Government has made efforts to implement its education policy by, inter alia:

- (a) Covering all State-school enrolment fees;
- (b) Making a contribution to private-school enrolment fees;
- (c) Providing school kits for children in both State and private schools;
- (d) Providing teaching kits for teachers in both State and private schools;
- (e) Giving teachers incentives in the form of allowances for teaching in remote locations and for expenses (the so-called "chalk allowance");
- (f) Providing textbooks.

374. These measures should encourage parents to enrol their children in school and should help improve attendance.

375. In addition, it is hoped that technical measures within the education sector, such as the introduction of a skills-based approach, will help improve graduation rates.

376. Outside the education system, various inter-ministerial child-protection programmes have been launched: a programme to combat child labour; a campaign against the worst forms of child labour; new legislation on adoption; and an anti-slavery and trafficking campaign.

377. In order to ensure a decent future for coming generations, the Ministry of the Civil Service, Labour and Social Legislation and the Ministry of Population, Welfare and Leisure are setting up education and training centres for street children, school dropouts, children who have never been to school and victims of child abuse.

### **Juvenile justice**

378. Attention is drawn to the comments below, which are provided in response to the recommendations of the Committee on the Rights of the Child (CRC/C/15/Add.218, 27 October 2003).

379. Article 40 of the Convention on the Rights of the Child recognizes the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth and which takes into account the child's age and the desirability of promoting the child's reintegration into society. The child has the right to certain basic guarantees, including legal or other appropriate assistance for his or her defence. Whenever possible, judicial proceedings and institutional care should be avoided.

380. In addition, the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") deal, inter alia, with the age of criminal responsibility, the rights to be guaranteed to juveniles at all stages of proceedings, investigation and prosecution by extrajudicial means, adjudication and disposition of cases and non-institutional and institutional treatment.

381. These international instruments provide for a set of rights to be recognized to children throughout the proceedings in order to ensure a fair trial and treatment appropriate to their age. They also recommend establishing a special procedure for children, as far as possible to be extrajudicial in nature. The rules in the following areas should be applied in all cases:

- (a) Presumption of innocence;
- (b) The right to be informed of the charges;
- (c) The right to the assistance of counsel;
- (d) The right to have parents or a guardian present;
- (e) The right to question or confront witnesses;
- (f) The right of appeal.

382. In application of this principle, Ordinance No. 62-038 of 19 September 1962 on the protection of children makes special provision for minors involved in criminal proceedings.
383. This ordinance establishes three categories in order to determine minors' criminal responsibility.
384. Children aged under 13 are not criminally responsible.
385. Children aged between 13 and 16 may be found guilty without being held fully responsible, that is, their criminal responsibility may be diminished depending on their capacity for judgement, their social background and their level of education.
386. Lastly, children aged between 16 and 18 may be found guilty and held fully responsible. In this category, the law allows extenuating circumstances on grounds of age to be set aside.
387. Despite this possibility, however, courts have in practice always admitted extenuating circumstances on grounds of age for minors aged between 16 and 18.
388. The age of criminal majority is 18.
389. The law allows criminal proceedings to be taken against minors over the age of 13. In such cases, priority will be given to educational rather than punitive measures.
390. As part of the current reform, consideration is being given to the possibility of instituting a system of criminal mediation or extrajudicial treatment.
391. Act No. 97-036 of 30 October 1997 reinforces the rules on defence for the parties in proceedings and makes good the deficiencies of Ordinance No. 62-038.
392. As a result, minors now have the right to the assistance of counsel at all stages of the proceedings.
393. The following juvenile criminal courts exist in Madagascar:
- (a) The juvenile court responsible for preliminary investigations in proceedings against minors;
  - (b) The juvenile court competent to try offences committed by minors; and
  - (c) The juvenile criminal court.
394. Efforts are also under way to boost the number of social workers by establishing a special training college for them.
395. Minors are held separately from adults not only in the central prison in Antananarivo, but also in the penal establishments in Toamasina, Ambatondrazaka, Antalaha, Antsiranana, Antsirabe, Tolanaro, Toliara, Morondava and Farafangana.

396. Upon completion of judicial proceedings, a statutory rehabilitation and social reintegration programme is provided under Decree No. 2004-160 of 3 February 2004.
397. This decree provides for the establishment of a service within the Department of Prison Administration of the Ministry of Justice, to provide supervised education.
398. Improvements have been made in the provinces of Mahajanga, Toamasina and Fianarantsoa, with private associations and non-governmental organizations assisting in the creation of reception facilities for young offenders.
399. One example is the Association for the Protection of Children (ASPE), in Toamasina, which cares for 150 children, including around 50 offenders.
400. The Association has constructed three reception buildings, in cooperation with the Ministry of Justice and the British Embassy.
401. Under article 3 of Ordinance No. 62-038, the State covers the costs of care for children placed in such centres by judicial decision.
402. Madagascar has ratified the optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict.
403. In an effort to combat the clandestine sale of children conducted under cover of international adoption procedures, draft legislation will be put before Parliament for adoption at its May 2005 session.

### **Civil status and nationality**

404. Act No. 61-025 of 9 October 1961, on civil registration, has been amended three times, most recently under Act No. 90-015 of 20 July 1990. This progression testifies to the State's willingness to enhance its legislation on the registration of births.
405. Campaigns to provide judicial rulings to make up for the lack of birth certificates have been organized on the outskirts of large cities and in rural areas - particularly the more remote regions - as part of the "*Ezaka Kopia ho an'ny Ankizy*" operation.
406. The Malagasy Nationality Code is based essentially on nationality by filiation. Articles 9 to 11 of Ordinance No. 60-064 of 22 July 1960 on the Nationality Code provide for the application of this rule. Article 11 is sufficiently broad to be interpreted in favour of any child born in Madagascar of unknown parents.

## **ARTICLE 25**

### **Political rights**

407. Positive steps have been taken to implement article 25, paragraph 1 (a), of the Covenant, as reflected in the 1992 Constitution, which no longer discriminates against non-members of the Front national pour la défense de la révolution.

408. Article 14 of the Constitution introduces political pluralism, in the following terms: “Citizens may organize themselves freely and without prior authorization into political associations or parties; however, political associations or parties which represent a threat to national unity or advocate totalitarianism or segregation ... are prohibited.”

### **Eligibility for office**

409. Equality in respect of the right to vote and stand for office in elections is governed by article 15 of the Constitution, which states that “all citizens, without discrimination on the grounds of membership or otherwise of a political party or of endorsement by a political party, shall have the right to stand for elections under this Constitution, subject to the conditions laid down by law”.

410. This provision of the Constitution is implemented by the Act establishing the Electoral Code (No. 2000-014 of 24 August 2000).

411. Article 4 of the Electoral Code recognizes the right of every citizen to stand for office in general elections: “All Malagasy citizens, regardless of sex, shall be eligible for office, provided they meet the requirements for eligibility to vote and any requirements laid down in the regulations governing each type of election, including:

- (a) Being registered on the electoral rolls;
- (b) Being of the age required for a given elected office; and
- (c) Never having been convicted of an offence.”

412. Several elections have taken place since the last report: (a) presidential elections in 1992, 1996 and 2001; (b) parliamentary elections in 1993, 1998 and 2003; and (c) municipal elections in 1994, 1998 and 2003.

413. Government measures in this regard have been aimed at ensuring regular, fair elections on the basis of universal suffrage and the secret ballot. Madagascar therefore allows national and international observers to verify that elections are conducted properly and fairly.

414. In order to better facilitate the free expression of the electorate’s wishes, the Electoral Code has been modified in the light of the elections held. Amendments were made in 1992, 1996 and 2002.

### **Electoral disputes**

415. The Act establishing the Electoral Code reinforces Ordinance No. 92-041 of 2 October 1992, as amended, on the Electoral Code, and sets forth the rules for elections on the basis of direct or indirect universal suffrage, held at regular intervals and “with a guarantee of a free, secret and fair ballot”.

416. In the area of electoral disputes, there has been a major change in the law with regard to the respective jurisdictions of the constitutional courts and the administrative courts.

417. The Constitutional High Court tries in first and last instance all appeals in respect of referendums and presidential and parliamentary elections.

418. The Council of State hears appeals in cases of violations of the law, while the Administrative Court established under Act No. 2001-025 of 9 April 2003 tries in first and last instance all appeals in respect of provincial, regional and municipal elections.

### **Eligibility to vote**

419. Article 2 of the Electoral Code sets forth the conditions for application of article 6, paragraph 2, of the Constitution, in the following terms: "All Malagasy nationals, regardless of sex, who have reached the age of 18 by the date of the election, and who reside within national territory and enjoy full civil and political rights, may vote."

### **Participation by local authorities**

420. The creation of decentralized authorities has encouraged the participation of the population at large in the organization of free, transparent elections. The smallest administrative units, for example - the *Fokontany*, or neighbourhoods - play an important part in drawing up the electoral registers under article 6 of the Act establishing the Electoral Code.

421. Article 7 of the Code refers to "a local voter-registration board, to be established within each *Fokontany*, which shall register all citizens who fulfil the legal requirements to exercise the right to vote".

### **Election monitoring and verification**

422. The creation of the National Electoral Council in 1992 made it possible to monitor and verify elections more closely. Under article 114 of the Act establishing the Electoral Code, "a national council shall be established as the moral guarantor of the proper conduct and fairness of the ballot, and shall oversee all operations to ensure the proper conduct of elections and referendums".

423. Other measures have also been adopted to ensure the proper conduct of elections:

(a) Observation of elections by non-political committees made up of citizens selected without regard for ethnic origin or religion;

(b) Provision for regional and international organizations to observe elections;

(c) Election monitoring by federations of observer associations;

(d) Establishment, by a non-political grouping of civil society organizations or bodies, of a committee to coordinate election observers, to encourage greater compliance with democratic principles in elections. The committee is made up entirely of non-governmental organizations accredited by the National Electoral Council;

(e) Creation of a consortium of observers who attended a training course run by the National Electoral Council in 2001.



424. Ordinance No. 92-041 of 2 October 1992 on the Electoral Code defines the scope of action by the election observers committee:

- (a) To verify compliance with the relevant laws and regulations;
- (b) To educate the public at large on the relationship between the status of citizen and the significance of the election, and the connection between the individual vote and the running of the country;
- (c) To train association members and polling station staff;
- (d) To prepare a national agreement on the observation of elections.

### **Election observers**

425. Madagascar allows foreign observers to enter the country freely in order to observe the electoral process.

426. Civil society involvement takes the form of checks on the proper conduct and fairness of the elections through the election observers committees.

### **National Electoral Council**

427. The National Electoral Council was established in 1992 to oversee all operations relating to the proper conduct of elections and referendums, in accordance with article 113 of the Act establishing the Electoral Code.

428. The Council comprises:

- (a) One member appointed by the President;
- (b) The Ombudsman or a deputy;
- (c) One member appointed by the Ministry of the Interior;
- (d) One member appointed by the Bar Association;
- (e) One member appointed by the Press Association;
- (f) One member appointed by the First President of the Supreme Court; and
- (g) One member appointed by the principal public procurator of the Supreme Court.

429. Article 23: The Council advises and assists the authorities responsible for organizing the elections and ensures the proper execution of the work relating to election procedures.

430. Article 31: The Council issues accreditation to non-governmental organizations wishing to participate in the observation of election proceedings.

431. Article 27, paragraph 2: "... It may also initiate proceedings of its own motion, by lodging a complaint, a protest, a challenge, an enforcement request or an appeal in law against the elections with the competent courts. To that end it has locus standi."

### **Access to public service**

432. Article 27 of the 1992 Constitution sets forth the requirements for access to public service:

"All citizens have the right and duty to work and receive occupational training. Access to public service is open to all citizens subject only to their ability and competence. However, recruitment to public service may be subject to quotas for the autonomous provinces during periods and under conditions to be established by law."

433. The Constitution establishes the general conditions for equality of access to public service while allowing positive discrimination in favour of applicants from the provinces. This measure should be seen as a remedial action that is needed to level a playing field distorted by the inadequate provision of material and human resources for education in the provinces.

434. In legislative terms, Act No. 2003-011 of 3 September 2003 on the general regulations for civil servants sets out the broad requirements for access to public service.

435. Article 17 stipulates that "no one may be appointed to a public service post unless they are:

- (a) Of Malagasy nationality;
- (b) In full possession of their civil rights;
- (c) In compliance with national service requirements;
- (d) Physically and medically fit for service;
- (e) Aged not less than 18 and not more than 45 on 1 January of the year of the competition (first-time applicants);
- (f) A holder of the relevant qualification for the minimum recruitment grade and scale."

436. The administrative court will punish any act on the part of the Administration that violates equality of access to public service.

437. A case in point is Administrative Division ruling No. 30/76-ADM of 7 May 1997, which declared admissible an action brought by the Union of Price and Economic Survey Inspectors in defence of the interests of its members wishing to become price commissioners through either competitive examination or promotion, given that the statutory number of price commissioners is limited and the decision challenged had failed to observe the normal requirements for a transfer from one unit to another.

438. Similarly, in its rulings Nos. 17/78-ADM and 39/78-ADM of 7 April 1979, the Administrative Division declared void the results of a competitive examination on the grounds that the decree announcing the examination had not been published until 19 days after the closing date for applications. These rulings held that there had been a violation of the principle of candidates' equal access to the civil service competitive entrance examination.

## ARTICLE 26

### **Principle of non-discrimination before the law**

439. The new Constitution adopted in 1992 attests to the progress made in the application of the principle of equality before the law.

440. The authors of the Constitution were guided by the vision of a new liberal, democratic foundation for political activity.

441. The right to participate in political life is no longer conditional upon membership of a political party affiliated to the Front national pour la défense de la révolution.

442. In addition, the Constitution establishes the principle that everyone is equal before the law, that is, that no one should suffer or benefit by reason of their sex, race, language, religion or membership of a political party.

443. In this connection, article 8 of the 1992 Constitution stipulates that "nationals are equal before the law and enjoy the same fundamental freedoms under the protection of the law without any discrimination on grounds of sex, level of education, property, origin, race, religious belief or opinion".

444. Specific measures have also been taken to prevent and punish all forms of discrimination.

445. Article 115 of the Criminal Code punishes the denial of a person's rights on grounds of origin, colour, sex, family situation or actual or supposed membership or non-membership of a given ethnic, national, racial or religious grouping.

446. The penalty is a prison term of one month to one year and/or a fine of FMG 50,000 to 250,000.

447. The penalty is doubled where the violation is committed by a government official or by a citizen charged with a public service in the course of their official duties.

448. Legislative reforms have been carried out to put an end to discrimination against women. Thus the law on matrimonial regimes has been amended to ensure the equal sharing of property in the event of the dissolution of a marriage.

449. In remote areas of the country there is resistance based on custom to the application of the principle of equality between men and women.

450. Publicity and awareness-raising campaigns have been launched by government and parliamentary authorities in an attempt to encourage people to act in a manner conducive to fair and equitable treatment.

## **ARTICLE 27**

### **Rights of ethnic, religious and linguistic minorities**

#### **Ethnic minorities**

451. Madagascar has no ethnic minorities that suffer from discrimination within the meaning of the Covenant.

452. The enjoyment and exercise of civil and political rights are protected without discrimination on the basis of ethnic origin.

#### **Freedom of religion**

453. Freedom of religion, as established in article 10 of the Constitution, is governed by Act No. 62-117 of 1 October 1962.

454. Freedom of worship gives members of every religious community an equal opportunity to engage in the practices specific to their faith.

455. Every community of believers, regardless of the kind of church they attend, has the same freedom to practise their faith both inside and outside their places of worship, provided they do not cause a breach of public order or violate the freedoms or rights of others.

456. The freedoms of worship and religious instruction are respected in private faith schools, which are not closed to pupils of other faiths.

457. In accordance with the principle of the secular State, religious instruction is not provided in State schools.

#### **Rights of linguistic minorities**

458. The use of an official language as well as regional dialects helps consolidate national unity and social cohesion in Madagascar.

459. Foreign minorities are free to use their own language for educational, religious and artistic or cultural activities. They may access public and private services using their own language, with the assistance of an interpreter.

## **CONCLUSION**

460. A number of remarks should be made in conclusion. The post-election crisis of 2002, the devastation caused in rice-growing areas by cyclones and floods, the rise in petrol and rice prices on the international markets and the slide in Madagascar's currency have led to a deterioration in the country's economic situation.

461. Despite this, two years after the crisis, the State had:

(a) Attained an economic growth rate of around 5 per cent and reached the completion point on its external debt, a large tranche of which was subsequently written off;

(b) Met the eligibility requirements for the Millennium Challenge Account programme; and

(c) Obtained financial and technical support from other partners, including the European Union.

462. The State's first step was to see that security was restored without delay and remove the roadblocks that were preventing the free movement of people and goods. Steps were also taken to repair the infrastructure damaged during the crisis.

463. Those responsible for acts of violence, crimes and offences resulting in damage to public works, or for incitement to racial hatred or secession, were arrested and tried.

464. The Government then held general and municipal elections for representatives who would be able to legislate on behalf of the people and help run the affairs of State.

465. At the same time, economic and institutional reforms were implemented to ensure market liberalization - withdrawal of the State, regulation of the market by the laws of supply and demand, the gradual introduction of free competition and the opening up of the economy.

466. In cooperation with its international partners, the Government has taken steps to rehabilitate the country in all sectors, particularly the economic, education, health, agricultural and justice sectors.

467. Road-building and repair programmes have also been carried out in order to create a development-friendly environment, with the aim of cutting poverty rates by 50 per cent by 2010.

468. One of the Government's main priorities in its efforts to establish the rule of law, good governance and a democratic society, is to combat corruption. As well as ratifying the United Nations Convention against Corruption, Madagascar has also embarked upon a reform of its domestic legislation and the creation of independent bodies to combat corruption.

469. This report, which was prepared with the support of the European Union and UNDP, demonstrates the firm desire of the State of Madagascar to discharge the obligations it assumed upon ratification of the International Covenant on Civil and Political Rights and to apply in good faith the guidelines for its implementation in domestic law.

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