



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
PURSUANT TO ARTICLE 44 OF THE CONVENTION**

**Second periodic reports of States parties due in 1998**

**MADAGASCAR**

[12 February 2001]

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## Introduction

1. The Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations on 20 November 1989, was submitted to the People's National Assembly of the Democratic Republic of Madagascar early in 1990. The Convention was the subject of Act No. 90-029 of 19 December 1990, which authorized its ratification.

2. The Government of Madagascar submitted its initial report on the implementation of the Convention to the Committee on the Rights of the Child in 1993 (CRC/C/8/Add.5). After requesting further clarification, the Committee considered the report on 29 and 30 September 1994.

3. The Committee adopted its concluding observations and recommendations for the Government of Madagascar on 14 October 1994 (CRC/C/15/Add.26).

4. It should be recalled that the preamble to the Constitution of Madagascar adopted on 18 September 1992 and amended by referendum on 15 March 1998 reaffirms that the Convention on the Rights of the Child is an integral part of Malagasy legislation. In other words, the Convention is directly binding on the judicial and administrative authorities by virtue of its ratification and does not require any general provisions in order to be implemented under Malagasy law.

5. The initial report submitted to the Committee covered the two years following the Convention's entry into force (1991–1992).

6. This report covers the next five years of implementation of the Convention (1993–1998).

7. In its recommendations and in its general guidelines on the form and contents of periodic reports (CRC/C/58), the Committee has repeatedly stressed the need for the widest possible participation of the relevant government departments and individuals in drafting the reports.

8. The Government of Madagascar, with the help of the United Nations Children's Fund (UNICEF), set up an inter-ministerial follow-up committee to draft the initial report; the drafting of the second report has been approached in the same spirit:

- An expert group consisting of specialized lawyers, juvenile court judges and doctors helped prepare the necessary documentation;
- An advisory board was set up as a precursor to a standing follow-up committee;
- Every ministerial department that was directly concerned was invited to appoint an official to update the documentation;
- The Ministry of Population, Women and Children, in close cooperation with UNICEF, oversaw the drafting of the report.

9. In addition, the closest possible attention has been paid to the concluding observations and recommendations made by the Committee in 1994 with regard to:

- The negative impact of natural disasters, increasing poverty, the worsening economic situation and the persistence of certain traditional customs;
- The need to update and modernize legislation relating to the protection of children, as a number of provisions date from the period immediately following independence (1960-1970);
- The persistence of disparities and inequalities between categories of children, particularly to the detriment of girls, rural children and young people in particularly difficult situations;
- The existence of a number of contradictions between domestic law and the provisions of the Convention;
- Serious shortcomings in the area of registering and recognizing the legal personality of children;
- Inadequate protection against violence and abuse directed towards children;
- Difficulties in obtaining access to primary health care, common medicines and drinking water;
- Insufficient progress in the area of primary education and the problems resulting from the high dropout rate, inadequate teacher training and the badly managed introduction of bilingualism in education;
- Manifest inadequacies in the monitoring of child labour;
- Insufficient measures to combat the sexual exploitation of minors;
- Gaps and shortcomings in criminal legislation dealing with juvenile delinquency, which needs to be updated and brought into line with the provisions of the Convention and other international conventions;
- The need to disseminate information on children's rights through the appropriate use of the media;
- The training of educators;
- The dissemination of the report on the implementation of the Convention to as wide a public as possible.

10. This report highlights what is new in Madagascar's policy on children, which has been brought into line with the Convention through the development and implementation of new programmes and the enactment of new laws.

11. At its seventh session, held from 25 to 29 April 1994, the Committee transmitted to the Government of Madagascar a list of 44 issues (CRC/C.7/WP.5), in which it asked for details to supplement the initial report. This report provides the replies to the Committee's questions.

12. The Government of Madagascar understands that the list of issues also included recommendations on, among other things, steps to be taken to improve the dissemination of the Convention, the role of international cooperation, the definition of the child, steps to be taken to bridge the gap between theoretical rights and reality, the role of the State in educating parents, the protection of children against ill-treatment and sexual abuse, the situation of handicapped children, improvements in the administration of juvenile justice and the protection of children against exploitation.

13. This report contains seven chapters covering the following topics: definition of the child (art. 1 of the Convention); general principles (arts. 2, 3, 6 and 12); civil rights and freedoms (arts. 7, 8, 13-17 and 37); family environment and alternative care (arts. 5, 9-11, 18-21, 25, 27 and 39); basic health and welfare (arts. 6, 18, 23, 24, 26 and 27); education, leisure and cultural activities (arts. 28, 29 and 31); and special protection measures (arts. 22, 30 and 32-40).

14. Before proceeding to an analysis of the implementation of the Convention during the period under consideration (chaps. I to VII), the report devotes a section to general measures, the new legal and administrative framework, financial data, the persistence of certain sociological phenomena, including a number of disparities, and efforts to disseminate and publicize the Convention.

15. A brief overview of the new measures taken between 1993 and 1998 provides a useful background for subsequent chapters.

16. As certain information has already been provided in the initial report (particularly on the geography of Madagascar and the socio-economic situation), this report will confine itself to updating certain data and highlighting new developments.

## **A. The new context of national life**

### **1. The new Constitution**

17. Madagascar's initial report referred to the adoption of the new Constitution of 18 September 1992 and analysed the structure of the branches of government, while stressing that the country was still in a period of transition. The Constitution was subsequently amended by Constitutional Act No. 95-001 of 13 October 1995. A referendum held on 15 March 1998 led to the adoption of a revised Constitution, which now provides the Constitutional framework for Madagascar.

18. In the light of the important amendments made to the initial Constitution of 18 September 1992, it seems necessary to provide a brief description and analysis of the constitutional setting, the basic provisions and the new structures, albeit only insofar as they affect the rights of the child and the implementation of the Convention.

19. It should be recalled that, according to the ordinance of 19 September 1962, the principles and rules listed in the preamble to the Constitution “apply to judges, who must, in all cases, ensure that they are respected and observed within the framework of the legislation in force”.
20. The preamble to the Constitution adopted on 15 March 1998 mentions the determination of the Malagasy people “to promote and develop its legacy of a pluralistic society that respects diversity and the wealth and dynamism of its ethical, spiritual and sociocultural values, including *fihavanana* and belief in the God of Creation”.
21. The concept of humanism and reconciliation between human beings and their Creator, their fellow human beings and their environment is also highlighted. Although these declarations are not new, their solemn repetition gives them a special value insofar as they add a spiritual dimension to the respect and protection that children should be given.
22. The preamble also reaffirms that the conventions dealing with women’s and children’s rights are considered an integral part of Malagasy law. This aspect of Malagasy constitutional law has already been discussed in the initial report; nevertheless, some clarification as to the actual effects of their integration is in order.
23. The preamble also confirms that the State must combat injustice, inequalities and all forms of discrimination. It must promote the establishment of the rule of law in order to ensure respect for and the protection of fundamental freedoms.
24. As all these assertions have the force of legal principles, they are by definition applicable to the promotion of the rights of the child.
25. Nevertheless, the Constitution is not limited to reaffirming principles: it confirms the binding nature of civil and political, economic, social and cultural rights and duties, which must be reflected in legislation, in the establishment of specialized institutions and in programmes and activities.
26. Most of these rights and duties were already included in the Constitution of 18 September 1992 and were briefly mentioned in the initial report. A list of the rights and duties directly affecting the rights of the child and family welfare is thus in order in this report:
- The prohibition of discrimination based on sex, educational level, property, origin, race, religious belief, or opinion;
  - Freedom of opinion and expression, communication, association, conscience and religion;
  - The right to information;
  - The protection of privacy;
  - The inviolability of the right to due process of law;

- The right to the integrity and dignity of the person;
- The right to full physical, intellectual and moral development;
- The right to health protection from the time of conception;
- State protection of the family, which is considered the fundamental unit of society;
- The right of mothers and children to be protected by the law and by the appropriate special institutions;
- The right of the child to schooling and education, for which parents are responsible and in which they exercise freedom of choice;
- The right of every young person to vocational training;
- The duty of the State to provide public education that is free of charge and accessible to all;
- Compulsory primary education for all;
- The right to participate in the cultural life of the community and in scientific progress and the benefits thereof;
- The duty of the State to meet the needs of every citizen who is unfit for work;
- The establishment of specialized bodies to ensure the promotion and protection of human rights.

27. Two objections may be raised to these declarations of rights:

- First, that they are declarations of principle and that a number of them are inapplicable given the State's actual capacities. However, it can be argued that the incorporation of these rights and duties in the body of the Constitution (arts. 8-40) constitutes a solemn commitment by the State and by civil society to take all practical steps to ensure the real implementation of these rights; moreover, the Government is currently taking measures to strengthen the capacity of State institutions at the national and regional levels, and civil society is taking steps to make its activities in favour of the most disadvantaged more effective;
- Second, that the Constitution appears to be intended mainly for adult citizens. This assertion is incorrect: the constitutional provisions apply to every human being who is a member of the national community, within the legal framework applicable to each category of persons.

28. Moreover, the Convention is not only part of Malagasy law but also, according to the general rules of constitutional law, takes precedence over domestic law.



29. In addition, the Convention might be considered as giving the child the status of a “child citizen”, with full enjoyment of the rights and prerogatives set forth in the Constitution.
30. One of the articles of the Constitution that deserves special mention is article 40, which stipulates that “the State ensures, through the establishment of specialized bodies, the promotion and protection of the rights of the child” (para. 2). Madagascar has two institutions for this purpose: the *Médiateur* and the National Human Rights Commission.
31. The *Médiateur* (Ordinance No. 92-012 of 29 April 1992) is responsible for defending the rights of individuals in conflict with institutions. The *Médiateur* is an independent institution with the authority to investigate and prepare cases completely independently; in some respects, the *Médiateur* is similar to an ombudsman, but has no decision-making power. He or she issues opinions and recommendations and prepares reports.
32. The Ordinance of 29 April 1992 makes no reference to the *Médiateur*'s authority in the area of children's rights; to date, the *Médiateur*'s office has not undertaken any studies of children's cases. However, cases of children in conflict with the law could be referred to the *Médiateur* (for example, cases involving a dispute between a child and a re-education centre, a claim to a social welfare office for maintenance, or a conflict in a hospital or basic health facility).
33. The National Human Rights Commission was established by Decree No. 96-1282 of 18 December 1996. The Commission is an independent institution, with a legal personality and administrative autonomy; it is responsible for the promotion of human rights. In particular, its task is to promote the ratification of international human rights instruments and to help incorporate human rights into educational and research programmes and to contribute to their implementation. It cooperates with the United Nations and its specialized agencies. When there are disputes, it looks for ways to reach an amicable settlement, transmits any complaints or requests to the competent authorities and gives its opinion or makes recommendations to the authorities.
34. The National Human Rights Commission consists of representatives of the State, parliamentarians, representatives of civil society, academics and individuals chosen because of their human rights expertise. Its members were appointed by order of the Prime Minister (Order No. 8415/98 of 5 October 1998). They are split into working groups responsible for bringing legislation into line with international instruments, incorporating human rights into educational curricula, and providing the general public with information about human rights. The members include a representative of the Ministry of Population, Women and Children, one of the presidents of the National Federation of Associations for the Defence and Protection of Children and Young People, and a representative of UNICEF.
35. As the Commission was only recently established, it is not yet possible to assess the results of its work. Nevertheless, the Commission is certain to be effective owing to the very broad representation of civil society in it and to the material resources that will be made available to it thanks to international assistance, including that of the Office of the United Nations High Commissioner for Human Rights (UNHCHR).

## **2. Creation of autonomous provinces**

36. The principal innovation of the Constitution of 15 March 1998 was the creation of autonomous provinces.

37. The general principles of the Constitution state that the Malagasy nation is founded on a system of autonomous provinces; this does not, however, affect the Republic's unity or its territorial integrity. The six autonomous provinces (Antananarivo, Antsiranana, Fianarantsoa, Mahajanga, Toamasina and Toliara) are regional authorities with a legal personality and administrative and financial autonomy. Each autonomous province manages its own affairs democratically and freely within the framework of its statutory laws. However, the Constitution applies to the Republic as a whole, and the State is solely responsible both for the administration of justice and for guaranteeing fundamental rights and freedoms. There is therefore no need for concern that legislation that discriminates against children will be adopted by the provincial authorities. The Constitution, the fundamental rights and freedoms contained therein and the Convention itself apply without exception to every child in the nation. While the autonomous provinces have legislative and regulatory powers, their competence is limited to local government administration, the establishment of provincial administrative offices and bodies and the provision of public services at the provincial level. This means that, as far as the rights of the child are concerned, the autonomous provinces can adopt legislation on implementation arrangements and the establishment of specialized institutions or protection services but they can in no way intervene, within the framework of their legislative function, in matters concerning the administration of justice or the guarantee of fundamental rights and freedoms. Article 135, paragraph 2, stipulates that "State law takes precedence over provincial law."

## **3. Difficulties encountered in implementing the Convention**

### **(a) Psychological or administrative obstacles**

38. It was stated in the first report and at the beginning of this report that the reference in the preamble to the Constitution to the fact that the Convention on the Rights of the Child is an integral part of Malagasy law means that the provisions of the Convention are directly applicable and are binding on judges and that there is no need to adopt legislative or regulatory provisions concerning their implementation. While this is true in principle, a closer analysis makes it necessary to mention certain difficulties. There are three psychological or purely administrative obstacles.

39. First, there is the obstacle posed by acquired habits and administrative routine. According to the rules of public international law an international convention takes precedence over domestic law but its implementation requires legislative or regulatory arrangements, amendments to laws and decrees contrary to its provisions and, sometimes, a restructuring of the domestic legal system. All these measures take time and disrupt the system to which the authorities and civil society itself are accustomed. There is therefore considerable temptation to resist change and to postpone necessary reforms. This is why various international conventions to which the State has acceded are not applied, since no measures have been taken to implement them. Such conventions therefore join the other grand declarations of principles that States use as "window dressing" for the international community.

40. This could not be the case with the Convention on the Rights of the Child because its provisions are directly applicable. However, habit and a lack of innovation and respect for the rule of law could postpone the application of the Convention pending the adoption of implementation provisions, which is in fact no longer required.

41. The two other obstacles are more serious and more difficult to overcome. Some of the provisions of the Convention are so general that legislative or regulatory arrangements are nonetheless necessary. This is true, for example, of article 3, paragraph 2, according to which “States parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” What sort of “protection” and what quality of “care” are intended? What are the “rights and duties” of parents? What is a “legal guardian”? Who are the “individuals legally responsible” for the child? What are “appropriate” measures?

42. Malagasy law already has answers for these, but not all, questions. It is therefore essential that Malagasy law be reviewed and amended.

43. Furthermore, while it is not necessary to adopt binding texts, some provisions require material, administrative or financial measures in order to make them effective. This is the case, for example, with article 28 of the Convention, which recognizes the right of the child to education, makes primary education compulsory and available free to all and makes higher education accessible to all on the basis of capacity by every appropriate means.

#### **(b) Definition and classification of children affected by the Convention**

44. With regard to articles 7, 8, 9, 18, 20, 23 to 25, 32, 34, 37 and 40 of the Convention, it is clear that the different categories of children need to be classified and defined as clearly as possible.

45. Classification is particularly useful since legislation pertaining to children has given rise to a specific category, which in turn has added a new dimension to the definition of the child protected by the Convention: children in particularly difficult situations. Under Malagasy law, the doctrine takes its inspiration from existing provisions, such as Ordinance No. 62-038 of 19 September 1962, as well as from internationally recognized distinctions based on sex and age.

46. Without being exhaustive, this doctrine identifies 14 categories of children targeted by the Convention and which are to be found in Malagasy social reality:

- Children struggling to survive;
- Morally or physically abandoned children;
- Children whose health is threatened, at risk or seriously affected;
- Children who are victims, in their mental and material security, of matrimonial crises or conflicts;

- Children whose security and psychological well-being are in jeopardy because of an aggressive, degrading or hostile social environment;
- Children whose physical integrity is in jeopardy or affected either by sexual abuse or ill-treatment or by neglect or negligent treatment;
- Children who are subjected to administrative or legal procedures that can have harmful effects owing to the trauma that they cause, or which are the result of a violation or infringement of the law or the excessively severe, inappropriate or inflexible application of the law;
- Children removed from their family environment because of placement or detention measures;
- Children deprived of mental and material security as a result of natural disasters;
- Child workers;
- Marginalized or excluded children;
- Street children;
- Children deprived of their identity and of all means of regaining it;
- Children with no access to cultural or leisure activities.

**(c) Harmonization of domestic legislation with the Convention, and change of attitudes**

47. The Convention as a whole has conferred on the child the status of “young citizen”. The child has the right to freedom of expression. Article 13, paragraph 1, provides that “this right shall include 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 the child’s choice”.

48. The child has the right to freedom of thought, conscience and religion. However, in this particular area, the Convention respects the rights and duties of parents to provide direction to the child in the exercise of freedom of thought.

49. The child has the right to freedom of association and peaceful assembly.

50. The child has the right to legal protection against arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and against attacks on his or her honour and reputation.

51. These various rights complement existing Malagasy legislation and form part of conventional measures to protect the child, such as the right to life to an identity, to education, to health and to the guarantees of due process of law.

52. The Convention goes even further, since it is not enough to exercise these rights. The preamble to the Convention states that “the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”.

53. In short, under these provisions, the Malagasy child becomes a “child king”, according to the somewhat hackneyed expression traditionally used when talking about Malagasy children. The general principle underpinning work in this area and the exercise of these rights is the notion of the best interests of the child. The adjective “best” is not redundant but rather enhances the banal expression “interests of the child”.

54. The main problem is to identify what the opposing interests are. The best interests of the child may compete with:

- The interests of the family, which regards the child as an asset and a blessing, the guarantor of the continuity of the family line, the future depository of ancestral wisdom, and also a providential helping hand in times of poverty and economic crisis affecting the family as a whole. The child is a human resource, a source of free manpower, an unpaid servant, but is nonetheless surrounded by affection;
- The interests of the parents or the couple responsible for the child. In some sectors, the problem of poverty is serious. Schooling is expensive. A child must be dressed, fed and raised. In return, he or she is expected to do work that may be contrary to his best interests;
- The interests of the other children within the same social or family group. There may be differences between younger and weaker children and older children who are in better health and sometimes brighter. The status of girls in relation to boys has already been mentioned. Inequalities may thus be established. The problem may become dramatic if the family itself is merely surviving and unknowingly sacrifices the weaker children or shows less concern for protection of the children who are at a disadvantage as far as their health and mental security are concerned;
- The interests of public order. The State must guarantee equal protection for society and the individual. If it is in the interest of society to exclude or isolate children under 18 years of age whose behaviour poses a threat, it may be asked where the children’s best interests lie.

55. Added to these conflicts of interests which, although not obstacles, present more or less serious problems for the real implementation of the Convention, are the conditions in which Malagasy children are traditionally educated: resignation, respect for their elders, the cult of the family, total obedience to parental authority, the complex network of traditional taboos, *fady* and rules the violation of which could create *tsiny* leading to *tody*.<sup>1</sup>

56. It should also be pointed out that, for children raised as Christians, education is very often based on unquestioning obedience.

57. These comments were already made in the first report. Little progress has been made with regard to the consideration that should be given to children, especially those living in a traditional rural environment. This is why, during the past five years, UNICEF has taken new steps to involve children directly in social surveys that concern them and in meetings especially designed to give them a voice.

58. The results achieved not only give cause for hope but also reflect children's new way of thinking and expressing themselves. This change in attitude and approach should be introduced and strengthened among adults. Such change is an essential prerequisite for bringing acts and decrees into line with the spirit and letter of the Convention.

59. The Ministry of Population, Women and Children is preparing to redesign the follow-up committee for the Convention by entrusting it with more extensive responsibilities in the field of popular education and the drafting of new legislation, particularly legislation on family welfare and criminal justice.

60. For example, UNICEF has taken the initiative to establish a committee to develop a programme to protect children against sexual abuse, violence and ill-treatment. One of the committee's first tasks has been to examine children's ability to react and to increase their willingness to "divulge" and to "speak".

61. Children's reactions could be a starting point for new legislative measures to protect children, as well as for new social initiatives.

62. One of the primary tasks of the recently established National Human Rights Commission is to harmonize domestic legislation with international instruments and to educate the public.

## **B. Child policy**

63. The economic and social context, the general objectives and the main legislative developments in the field of child policy will be presented here only briefly as they will be explained in detail in the chapters of the report.

### **1. Economic and social context**

64. After a period of political tension and inertia in the area of economic reforms, the national economy recovered slightly in 1993 and 1994, with a growth rate that did not match the rate of population growth. This resulted in a decline in the per capita gross domestic product (GDP), a decrease in purchasing power and an increase in the proportion of the population living below the poverty line.

65. If the birth rate remains at 44 per 1,000 inhabitants and the mortality rate at 14 per 1,000 inhabitants, which means an annual population growth of 3 per cent, the population of Madagascar, which totalled 14 million by the middle of 1998, should reach 28.4 million by 2025. However, over the past 20 years, Madagascar has become increasingly impoverished and has been classed as a country with a low level of human development. There are serious disparities to the detriment of the social groups most affected by poverty: women and children in difficult situations. Inflation, measured by implicit deflation of GDP, increased from 12.5 per cent in 1992 to 46.7 per cent in 1995.

66. In addition, demographic pressure has increased the need for sustainable human development. In 1994, it was estimated that 20 per cent more primary schools were needed, 125,000 more jobs must be generated every year, and huge amounts of food must be imported. At the same time, environmental problems were increasing and communication infrastructure (road and track networks) was deteriorating, with the result that hundreds of villages were isolated and some 30 per cent of rural producers were cut off for the whole season.

67. In 1994, Madagascar signed an agreement with the international financial institutions concerning the adoption of a strengthened structural adjustment programme. The impact of such a programme can be measured easily in a context of impoverishment of the population and reduced access to basic services. In order to limit the inevitable consequences of the structural adjustment programme, a national plan of action for social reconstruction was implemented; the plan was prepared in close cooperation with UNICEF.

68. When the plan was implemented “safety nets” or “social rescue nets” were introduced.

## **2. General objectives**

69. For the period from 1996 to 1999, the Government of Madagascar in consultation with the international financial institutions, prepared an economic policy framework paper (EPFP) that presents the main options for reversing this trend. The principal guidelines for social development policy as contained in EPFP are as follows.

### **Measures to combat poverty<sup>2</sup>**

70. The fight against poverty requires targeted action to restructure State expenditure in order to support growth and encourage the most underprivileged to participate actively in economic growth. It is therefore essential to define the targeted populations, including the very vulnerable group of children in difficult situations.

71. Investment in social sectors (basic health care, primary education, public safety) must be considered a priority.

72. Additional programmes must be introduced with the aim of mitigating the effects of adjustments and applying true cost pricing for the most disadvantaged sectors of the population, especially for essential products.

73. Medical centres and distribution channels for low-priced essential generic medicines must be established.

74. For disadvantaged groups and those most affected by the economic stabilization process, protection and revaluation mechanisms must be introduced in order to enable the integration of such groups into the development process.

### **Health**

75. The objective is to ensure that the population has access to a quality basic health service. It is necessary to modernize basic health facilities within the framework of health districts, provide public health structures with supplies, and include the population in the financing -

in accordance with their means - of the cost of medicines. There are also plans to allocate the necessary resources for those involved in preventing and fighting such illnesses as malaria, diarrhoeal illnesses, tuberculosis, sexually transmitted diseases such as AIDS, and bilharzia.

### **Education and training**

76. The main objective is to make primary education compulsory, improve the quality of such education, rehabilitate infrastructures and strengthen the capacities of the teaching staff.

77. The literacy campaign should be revitalized. School enrolment rate is expected to reach 70 per cent by 2000 and 97 per cent by 2005.

### **Ongoing objectives**

78. Among the objectives set prior to the period covered by this report and which remain ongoing reference objectives, the following should be cited: the national population policy for economic development, which was the subject of Act No. 90-030 of 19 September 1990 and the objectives for 2000 adopted at the World Summit for Children in 1990. The objectives for 2000 include:

- Reducing by one third the 1990 infant mortality rate and under-five mortality rate, or reducing them to 50 and 70 per 1,000 live births, respectively;
- Halving the 1990 rate of moderate and serious malnutrition among children under five;
- Providing all families with access to drinking water and sanitation;
- Generalizing basic education in order to ensure that at least 80 per cent of children complete primary education;
- Improving child protection for children living in particularly difficult conditions.

### **3. Principal legislative reforms**

79. A number of new legislative provisions should be mentioned. The following list is not exhaustive, and should be complemented by the other laws and decrees mentioned in the chapters of the report.

80. Labour and social laws:

- Act No. 94-029 of 25 August 1995, containing the Labour Code;
- Act No. 94-026 of 17 November 1994, containing the Social Protection Code;
- Act No. 94-027 of 17 November 1994, containing the Occupational Health and Work Environment Code.



81. Education:

- Act No. 94-033 of 13 March 1995, establishing general guidelines for the educational system;
- Decree No. 97-1400 of 10 December 1997, adopting the national education improvement programme;
- Order No. 6.743/98 reorganizing private education;
- Decree No. 98-433 on the status of general private education.

82. Public health:

- Decree No. 95-587 of 5 September 1995 adopting the national policy to combat iodine-deficiency disorders;
- Decree No. 97-657 of 7 May 1997 on the establishment, competence and operation of the national committee for national immunization days;
- Act No. 97-044 on disabled persons;
- Decree No. 98-145 of 12 February 1998 establishing general guidelines for the national health policy.

83. Civil society:

- Act No. 96-030 of 14 August 1997 on the special system for non-governmental organizations;
- Decree No. 98-711 on modalities for implementing the preceding Act.

84. Drug control:

- Act No. 97-039 of 4 November 1997 on control of narcotics, psychotropic substances and precursors in Madagascar;
- Decree No. 98-722 on the establishment, organization and operation of the Inter-ministerial Coordinating Commission on Drug Control;
- Criminal Code and Code of Criminal Procedure;
- Act No. 97-036 of 30 October 1997 on legal defence, inquiry proceedings and pre-trial detention during investigation and prosecution.

85. Other:

- Order No. 784 FIVREN/DLA/95 of 23 August 1995 establishing a municipal support platform for children in the Antananarivo urban district;
- Decree No. 96-1282 of 18 December 1996 establishing the National Human Rights Commission.

### **C. Cooperation with civil society**

86. Over the past five years, organizations, institutions and other concerned bodies have agreed that the most reliable basis for providing social protection for children is through synergy between the State, international assistance and civil society.

87. The State is increasingly reluctant to play the role of the welfare State. While continuing to discharge its sovereign duties (providing infrastructure, public safety, combating major endemics and protecting the national heritage), the State is withdrawing gradually from social activities that should be carried out through effective and more active participation by civil society.

88. Bilateral and multilateral international assistance continues to be provided through comprehensive agreements with the State. However, the main focus is on cooperation with civil society and on strengthening civil society's organizational capacities.

89. The expression "civil society" should be explained, since it came into use only recently and its meaning is vague. Civil society may be defined as all legally declared voluntary and non-profit organizations that work independently from and outside of the political community identified with the State and its divisions, including the armed forces, political parties and parapolitical organizations.

90. The liberalization of political and cultural life and of freedom of association in the early 1990s fostered the emergence of this civil society, composed of a patchwork of groups, including lay and religious associations; non-governmental organizations (NGOs); service clubs; professional associations and organizations; trade unions; foundations; and official and unofficial groups (family groups, women's groups and children's groups).

91. In recent years, an important new development has been the mobilization of segments of civil society that cooperate both with bilateral and multilateral assistance institutions and with specialized State services and local administrations.

92. This cooperation has proven to be particularly fruitful in the following fields: material assistance to the most disadvantaged social groups, including children whose survival is at stake; poverty reduction assistance, support for basic health training; and the establishment of basic health-care centres, reception centres and re-education centres for children in difficult situations, and of neighbourhood centres in the poorest areas of the big cities.

93. Civil society can also play an important role by creating structures for a dialogue between the State and the most disadvantaged groups and by promoting civic education activities and the training of social workers.

94. This kind of social mobilization can be fully effective only if there is a legal framework that gives civil society organizations prerogatives and means of action, and their managerial capabilities are strengthened through appropriate training.

### **1. Improvement of the legal framework**

95. The bodies that can be most effective in helping to protect children are NGOs. The term “NGO” soon came to be applied in a way that did not correspond to the reality of Malagasy law. It was first used to designate foreign organizations that had concluded a host agreement and which carried out activities in the social field.

96. In 1998, 57 per cent of foreign NGOs worked in child protection, prevention activities and health promotion; 31.42 per cent worked in maternal and child health; and 14.28 per cent in family planning.

97. Subsequently, however, several Malagasy civil law associations took the name NGO, which was a legal category that did not exist in Malagasy law. Ordinance No. 60-133 of 3 October 1960 governing associations, a text that relied heavily on the corresponding French law of 1901, was the only law governing associations. Nevertheless, some associations began calling themselves “NGOs”.

98. The Ordinance of 3 October 1960 establishes freedom of association and gives groups thus formed autonomy in their status as non-profit organizations. Under this Ordinance, associations may be declared to be “of public utility”.

99. In order for an association to be declared of public utility, various conditions must be met: length of service, experience as an association, and the nature of its activities and objectives. Associations that qualify are granted certain powers and broader prerogatives.

100. However, the Ordinance was considered to be too basic and thus insufficient for associations which, because of their financial and material means, their experience, the scope and nature of their activities, their partnerships and their technical and financial cooperation with State bodies or with bilateral or multilateral financial institutions or other foreign associations, required a broader legal framework.

101. Following a debate that necessitated the holding of several national and provincial workshops involving nearly all Malagasy associations, Act No. 96-030 on the special system for NGOs was adopted on 14 August 1997. Article 2 of the Act defines the term “NGO” as follows:

“For the purposes of this Act, an NGO is a group of natural or legal persons that is autonomous, private, structured, legally declared and authorized, a non-profit organization with a humanitarian objective, carrying out professionally and on an ongoing basis charitable, socio-economic, educational or cultural activities in the form of services or with a view to ensuring sustainable human development, community self-development or environmental protection.

“NGOs carry out their activities according to the principle of voluntary service with impartiality, without discrimination as to race, religion or political affiliation.

“They have at their disposal the human, material and financial resources required for their activities.”

102. The Act of 14 August 1997 contains various special provisions concerning the establishment of NGOs:

- The NGO must be authorized by a departmental or regional committee composed of State and NGO representatives;
- The internal organization of an NGO is similar to that of an association. However, an NGO must include an executive body and an auditor;
- NGOs are grouped at the national and regional levels, and may form collectives.

103. Decree No. 98-711 of 2 September 1998 sets out the modalities for implementing this Act, in particular the composition of the regional committees that take decisions on applications for approval.

104. A number of comments can be made on the text of this Act, which has still not been enforced because the implementing decree was only recently adopted.

105. NGOs have become specific, autonomous groups with their own capacities and activities that set them apart from others. However, it must be admitted that the procedure for establishing and approving NGOs is cumbersome and complex. A number of groups will clearly find it easier to maintain their status as associations and to ask to be declared public utility when this is necessary.

106. Furthermore, the specific provisions concerning foreign NGOs are rather restrictive, unless such organizations enter into special agreements (articles 37-39 of the Act).

107. Other charitable institutions, particularly church charitable organizations, make their own rules. Because of the separation of church and State, these may carry out social activities with complete independence, or they may act through chaplaincy.

## **2. Strengthening organizational capacity**

108. Once there is a genuine partnership between the State and associations or between international assistance institutions and NGOs, the associations concerned must have the following qualities: credibility, organizational capacity and a motivated staff capable of fulfilling the respective social and educational supervisory functions.

109. In some cases, the associations are bound by contracts that set out their specific mandates: they receive substantial assistance and their directors are trained “on the job” thanks to the presence of volunteer cooperation assistants who advise them in their work and pass on their knowledge.

110. UNICEF understands the importance of supporting training. In particular, the *Revue annuelle sectorielle: Enfants en situation particulièrement difficile* [Annual Sectoral Review: Children in particularly difficult situations] (1996) contained an assessment of a support programme to strengthen national capacities, addressing the needs of the municipal support platform for children in Antananarivo and NGOs carrying out social work in the poor districts of Antananarivo, Fianarantsoa and Mahajanga. This programme was the result of a partnership between UNICEF, Coopération française, international NGOs (CARE, Handicap International) and the analysis, programming and evaluation service of the Ministry of Population. On the whole, the assessment was positive.

111. According to a recent assessment, domestic NGOs generally carry out their activities in the field of child protection, and especially in the field of health:

- Preventive and curative care at health centres and dispensaries for which they are responsible or in which they participate (30.25 per cent);
- Preventive and collective care for maternal and child health (16.8 per cent);
- Family planning (15.12 per cent).

112. In 1997, prior to the implementation of a plan of action, UNICEF carried out an assessment of the growing role of Malagasy NGOs working in partnership with the State, municipal administrations and international NGOs, as part of its efforts to draw up a children's social protection policy.

113. The assessment focused above all on children in particularly difficult situations in the poor neighbourhoods of Antananarivo and Antsirabe, and concentrated on the fields of health, basic education and pre-vocational training.

114. The assessment identified some weaknesses:

- Late delivery and insufficiency of material, supplies and equipment vis-à-vis reported needs;
- Ineffectiveness of the system designed to identify children likely to drop out of school;
- Staff and budget management failures;
- Lack of teacher training: difficulties in finding financing for recruitment;
- Cumbersome administrative procedures;
- Weakness in coordination among NGOs, in particular owing to differences in the means available to them.

115. On the other hand, the assessment also highlighted some strong points:

- Proper functioning of information, education and communication in the field of adolescent reproductive health;
- Distribution of material assistance from international or national financial institutions;
- More tangible involvement of the authorities.

116. It is possible to measure how much progress has been made in expanding cooperation with civil society as compared with the preceding period.

117. This kind cooperation is, of course, not new, nor has it worked miracles. The progress is above all qualitative: synergy between civil society, the State and international institutions (multilateral or bilateral assistance) has become more effective. The State is gradually turning away from its usual role as the welfare State, in which it tried to do and control everything. The authorities, whether national, regional or municipal, are becoming involved in a new approach to the administrative and social protection of children.

118. For their part, NGOs are becoming better organized, are gaining awareness of the important role of good governance in social activities, and are increasingly able to benefit from the assistance provided by bilateral and multilateral aid institutions in support of training and supervisory tasks.

#### **D. Childhood, budgetary problems and international assistance**

119. The worsening economic and social situation, increasing poverty and the indirect effects of world economic development have led to serious funding problems in the area of the social protection of children. Greater attention has been paid to Madagascar's budgetary problems while, in the field of international assistance, considerable progress has been made in coordinating and "targeting" assistance.

##### **1. National budget**

120. The adjustment efforts undertaken in 1997 led to a clear improvement in Madagascar's economic environment. In general, the growth targets set out in the framework document for the economic programme were, on the whole met and sometimes even exceeded.

121. A short assessment of the impact of such progress on the national budget generally shows net growth in allocations to the ministries directly involved in child protection: the Ministry of Education, the Ministry of Health, the Public Safety Office, the Ministry of Population, Women and Children, the Ministry of Youth and Sport and the Department of Prison Administration and Supervised Education (Ministry of Justice).

122. For example, the operating budget of the Ministry of Secondary and Basic Education increased by 26.8 per cent between 1997 and 1998. The budget of the Ministry of Health increased by 16.21 per cent, and the budget of the Public Safety Office by 31 per cent.

123. The following figures appeared in the 1998 budget law:

Ministry	In Malagasy francs (FMG)	
	Adjusted 1997 budget law	1998 budget bill
Ministry of Secondary and Basic Education	235 498 568 000	332 500 077 000
Ministry of Technical Education and Vocational Training	15 780 852 000	17 462 731 000
Ministry of Youth and Sport	4 422 858 000	6 142 399 000
Ministry of Population, Women and Children	8 486 740 000	6 173 644 000
Ministry of Health	119 961 444 000	139 029 257 000

124. There was a slight decline in appropriations for the Ministry of Population, Women and Children; the amount allocated to the Department of Children and Family Welfare came to FMG 109,878,000.

125. From 1993 to 1998, the budgets allocated by the Ministry of Health to maternal and child health (combined) were:

1993	FMG 41 451 000
1994	FMG 47 451 000
1995	FMG 51 808 000
1996	FMG 46 008 000
1997	FMG 46 008 000
1998	FMG 50 000 000

126. The budget allocations for the Ministry of Justice deserve special mention, since minors are held in prisons either in pre-trial detention or as sentenced prisoners, or reside at the Ministry's re-education centre.

127. As of 16 December 1998, minors were placed as follows:

- Anjanamasina re-education centre (boys only): 25;
- Prisons (all categories): 65 sentenced minors, including 3 girls; 347 boys awaiting trial; 25 girls awaiting trial.

128. The prison administration budget is included in the operating budget of the Ministry of Justice, which amounted to FMG 22,736,879,000 in 1997 and FMG 41,556,910,000 in 1998. There was thus a significant increase in the budget of the Ministry of Justice, which includes allocations to the prison administration, covering an overall prison population of 19,163 (prison capacity is, however, only 13,202).

129. The budget allocated to protect children in detention is clearly insufficient, and the situation of minors in detention is critical. The number of minors awaiting trial - 372 - is abnormally high.

130. Not all minors whose cases have been decided by a juvenile court judge are placed in detention. If the juvenile court judge deems that a child is in moral or physical danger or has been abandoned, he may decide to place the child in the care of a trustworthy person or in a children's home. In such case, a placement allowance is disbursed, and is debited from a specific item of the budget of the Ministry of Justice, the criminal justice costs; this is dealt with in Decree No. 62-314 of 28 June 1962.

131. A government decree has set the allowance at FMG 5,000 a day. Currently, 165 children benefit from this allowance.

132. An overview of the budget allocations for the ministries directly involved in child protection indicates that:

- Bearing in mind population trends and the rising cost of living, the budget allocations for the ministries are insufficient;
- While an effort has no doubt been made every year to increase the budget allocations, the increase is absorbed by the increase in the child population and by price rises;
- Moreover it is not possible to determine with accuracy from the available budget allocation figures, the amounts allocated to children.

## **2. International assistance**

133. Over the past five years, there have been some significant changes in international assistance.

134. First, assistance has become more diversified and has increased. Aid from international institutions comes mainly from UNICEF, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the European Union, the World Bank group, the World Food Programme (WFP) and the World Health Organization (WHO). Bilateral assistance has increased thanks to the work of the French Cooperation and Cultural Action Mission, the United States Agency for International Development (USAID) and foreign agencies such as the German Agency for Technical Cooperation (GTZ).

135. Germany, Switzerland, Italy and Japan have made increasingly important contributions. Bilateral assistance is also provided by foreign NGOs, such as the Catholic Prisons Chaplaincy, Sentinelles, Médecins sans frontières or Scouts de France.

136. Secondly, a considerable amount of work was done to coordinate this very diversified assistance which, if provided haphazardly or misguidedly, could undermine efforts to harmonize assistance for children.

137. In this respect, UNICEF has taken steps to redefine targets and initiate activities involving coordination between State or municipal bodies, multilateral or bilateral aid institutions and foreign or national NGOs.



**(a) UNICEF**

138. UNICEF is implementing a master plan of operations for the 1996-2000 cooperation programme, the provisions of which are based on an agreement concluded with the Government on 15 May 1987. The master plan may be modified by mutual agreement and additional programmes may be included in the plan.

139. Modifications to the master plan are generally introduced at mid-term reviews.

140. In the initial version, the overall objectives of the 1996-2000 cooperation programme were the following:

- Reduction of the infant mortality rate from 114 per 1,000 to 76 per 1,000, and of the under-five mortality rate from 166 per 1,000 to 111 per 1,000;
- Reduction of the moderate and severe malnutrition rate among children under five from 40 per cent to 20 per cent.

141. The sectoral objectives included health, nutrition, education, access to drinking water and sanitation in the living environment, protection of children in particularly difficult situations, improvement of the social and legal status of girls and emergency responses.

142. Sectoral work is part of the national programme of action for social reconstruction and is carried out in partnership with other international or bilateral agencies, foreign NGOs and civil society.

143. The following table illustrates the contribution of UNICEF to health and nutrition projects from 1993 to 1997 and in 1998.

**(In thousands of dollars; 1 dollar = FMG 5,395)**

Health projects	1993	1994	1995	1996	1997
Maternal and child health	2 470.9	1 341.8	1 751.7	1 018.6	1 476.4
FIB/BI <sup>a</sup>	503	499.9	1 016.2	612.9	421.3
Malaria	42.5	5.7	3.2	-	-
HIV/AIDS	64.1	38	79.7	30.3	19.6
Programme support	-	-	-	159.4	125.4
Total	3 080.5	1 885.4	2 850.8	1 821.2	2 042.7

**1998**

Health projects	Expenditure in dollars	Expenditure in Malagasy francs
FIB/BI <sup>a</sup>	697 131	3 733 136 505
Maternal and child health	1 899 876	10 173 835 980
HIV/AIDS	100 266	536 924 430
Total	2 697 273	14 443 896 915

<sup>a</sup> FIB/BI: *Fahasalamana Iraisam-bahoaka* (community participation in health) Bamako Initiative.

**In thousands of dollars**

Nutrition projects	1993	1994	1995	1996	1997
Anaemia	108.3	92.5	150	-	-
Iodine deficiency disorders	171.7	274.3	350.6	180.2	101.2
Community-based nutrition monitoring	67	127.1	98.7	249.9	206.1
General nutrition	79	154.8	217.7	-	-
Programme support	200.3	11.2	31.7	112.6	89.8
<b>Total</b>	<b>626.3</b>	<b>659.9</b>	<b>848.7</b>	<b>542.7</b>	<b>397.1</b>

**1998**

Nutrition projects	Expenditure in dollars	Expenditure in Malagasy francs
Community-based nutrition monitoring	217 137	1 162 822 185
Iodine deficiency disorders	111 867	599 047 785
<b>Total</b>	<b>329 004</b>	<b>1 761 869 970</b>

**(b) USAID (United States of America)**

144. USAID works through the Participation and Poverty programme, which is based on a subsidy agreement between the Government of Madagascar and the Government of the United States.

145. Some examples of USAID's activities are given below.

Child Life Span Project	Duration	Objective	Total (in dollars)
CRS/FACS (Catholic Relief Services, Food Assisted Child Survival)	1996-1999 (4 years)	To reduce the infant mortality rate and improve food security through the Child Survival Project	868 000
With UNICEF	1994-1998 (5 years)	Expanded programme on immunization	1 236 000 900 000
Peace Corps	1998-2002 (5 years)	To encourage behaviour to improve child survival through information, education and communication	1 641 625

Child Survival Project	Duration	Objective	Total (in dollars)
BASICS (Basic Support for Institutionalizing Child Survival)	1997-1998 (2 years)	Technical assistance for child survival projects	2 536 000
Health promotion support activities/IMCI	1997-1998 (2 years)	To improve child survival for children under 5	200 000
Health promotion support activities/ Antsirabe	1997-1998 (2 years)	"	71 067
Health promotion support activities/ Fianarantsoa	1997-1998 (2 years)	"	60 476
Care Touch 2000	1996-1999 (4 years)	To improve the situation of children under 5 (20,000 children selected in 22 <i>fokontany</i> )	2 460 000

**(c) GTZ (Germany)**

146. The project to strengthen basic health services which is part of the technical cooperation carried out by GTZ, has no specific budget item for child-related activities. The project has been in operation since 1987 to revitalize basic health-care centres in order to ensure that women and children have access to care.

147. In 1998 GTZ, in cooperation with WHO and UNICEF began work on the case management of childhood diseases (FMG 20 million for instructor training in July 1998).

**(d) French Cooperation and Cultural Action Mission**

148. The French Cooperation and Cultural Action Mission carries out many important large-scale projects of various types, including:

Revival of the use and teaching of French:	19.1 million French francs;
Programme to strengthen the Malagasy educational system:	30 million French francs.

**(e) Support for the educational system**

149. The following projects are worthy of mention:

Title	Project	Amount
African Development Bank	Strengthening of educational facilities	14.53 million African Development Fund (ADF) units of account
"	Support for the programme for the qualitative improvement of the Malagasy educational system	\$24 million
International Development Association	Allocation for strengthening the educational system (since 1990)	\$39 million
UNDP	Support for educational reform	\$500,000
UNFPA	Introduction of education on population issues in school curricula	\$500,000
UNICEF	Generalization of nutritional education and productive activities	\$4 million

**E. Regional disparities**

150. The geography of Madagascar was presented in its initial report, which described the various regions: the high plateau; the coastal region in the west, which slopes gently down from the plateau to the Mozambique Channel; the narrow strip of sedimentary formations that slopes steeply down from the plateau to the Indian Ocean; the north-eastern region; and the arid south, with its low rainfall and long dry season.

151. While this report will not revisit Madagascar's geography, it is necessary to mention additional factors that exacerbate the regional disparities and which are attributable to geographical features.

**1. Deterioration of the road infrastructure**

152. Road infrastructures have deteriorated in several regions and the inhabitants of remote and isolated areas are calling for the repair of the roads serving their communities. They also believe that the deterioration of the road infrastructure is the cause of their poverty:

- Local products are not easily marketable and are difficult to sell at a fair price; the price of fertilizers is rising steadily; and farmers know that a well-maintained road facilitates the movement of people and goods and cuts transport costs;

- Basic commodities are becoming rare, if not unobtainable; in any case, prices are high, often higher than villagers' purchasing power;
- People's health - particularly that of the most vulnerable group, children - is deteriorating; visits by the mobile vaccination units are less frequent or no longer possible; deliveries of drugs to basic health-care centres have become very difficult or have been interrupted; health facilities can no longer function;
- The population, particularly children, is suffering from malnutrition. Medical personnel who used to provide information and advice on child feeding can no longer make their visits. Malnutrition frequently results in death.

## **2. Deterioration of health facilities**

153. The deterioration of health facilities inevitably has an impact on the quality of the care to which children are entitled. According to a Malagasy proverb "Health is wealth" (*Ny fahasalamana no voalohan-karena*). In addition to the deterioration of health facilities, the number and quality of health-care staff have also declined. For budgetary reasons, the State has been obliged to freeze recruitment of civil servants and public officials, which has further reduced the numbers of active staff.

154. Health workers are also discouraged by the lack of security in the countryside and increasingly difficult living conditions. During difficult periods, basic health centres have had to be closed down.

## **3. Lack of security in the countryside**

155. Greater poverty and an easing of social pressure have led to increased insecurity: acts of banditry, cattle rustling - a real social problem - and the theft and destruction of crops are on the rise, causing villages to be abandoned and triggering migratory movements. This lack of security and its consequences take their toll on children who are already struggling to survive.

## **4. School abandonment**

156. Some parents, the best interests of the child notwithstanding, prefer to keep their children at home to help with everyday tasks. The main cause of school abandonment, however, is poverty. In poorer regions in particular, parents cannot meet even the minimal expenses of free education, and withdraw their children from school as soon as they can read and write. Other children are lucky enough to be able to stay on until they have obtained their primary school leavers' certificate. Children who could go on to secondary school are discouraged by the sheer distance to the nearest junior high school. Parents in some regions even give cows to the teachers or education officials to ensure that their children are not enrolled in school.

157. Thus, despite the efforts of the ministries involved, there has been a clear decline in school enrolment as a result of school abandonment, poverty, deteriorating infrastructure, overcrowded classes and a poor distribution of teaching staff.

## 5. Natural disasters

158. Mention must also be made of natural disasters: these may be regional or national in scale, and take the form of a series of atmospheric depressions and cyclones (some cyclones hit the same region twice), which destroy basic structures, forcing the population to leave. Moreover, the social and economic situation makes it difficult for emergency services to reach the affected areas, and hampers the delivery of food and the reconstruction of school or community infrastructures.

159. In addition, certain regions, particularly the south of Madagascar, have suffered an exceptionally long drought that has seriously affected subsistence crops and the survival of livestock.

160. Lastly, some regions have for several years experienced devastating plagues of locusts, against which defences have proved inadequate or have been slow to produce results.

161. This situation has accentuated the disparities between regions, exacerbating those deriving from the island's natural environment. While the plateau has escaped relatively unscathed, there are some regions which, having first suffered terrible drought, are now flooded following heavy rains. In other regions, a series of disasters has further undermined security and led even more people to abandon their villages.

## 6. Solutions

162. The authorities do not underestimate the extent of these disparities and have taken steps to correct them through legislation, public works and measures in the areas of health and primary and basic education.

### (a) Legal framework

163. Legal structures have already been put in place or are being established. The initial report mentioned decentralization initiatives, and the amended Constitution of 1998 enabled the establishment of the autonomous provinces with individual legal status and financial autonomy.

164. According to article 2 of the Constitution, the autonomous provinces are Antananarivo, Antsiranana, Fianarantsoa, Mahajanga, Toamasina and Toliara.

165. According to article 127, each autonomous province runs its own affairs democratically and freely, within the statutory framework adopted by the Provincial Council and in accordance with regulations established in an organization act.

166. There is a clear separation of powers in the autonomous provinces. According to article 130 of the Constitution, "in the autonomous provinces, the executive, legislative and judicial functions shall be performed by distinct bodies".

167. These powers are defined in articles 131 to 133. The government of each autonomous province consists of a governor and a number of commissioners-general. The government of an autonomous province thus holds executive power. The governor is elected by the Provincial Council and appoints the commissioners-general.

168. Legislative power is held by the Provincial Council. The statute of each autonomous province establishes the Council's composition, functions, and the rules governing election to the Council.

169. The judicial power is the exclusive competence of the judicial, administrative and financial courts.

170. According to article 131, paragraph 1, the autonomous provinces are competent in areas that are of specific concern to them, namely, local community administration, organization of administrative offices and bodies at the provincial level, urban and rural police, fairs and markets, public services of interest to the province and the disbursement of provincial scholarships and grants.

171. However, according to article 135, the State has exclusive competence in the areas of nationality, international relations, justice, national defence, internal security, strategic resources, the currency, finance and customs; the transfer of publicly owned enterprises to the private sector and vice versa; and the guarantee of fundamental rights and freedoms.

172. These new legal structures are expected to improve the distribution of budget allocations, thereby narrowing the gaps between the regions and ensuring an equitable division of national resources.

**(b) Public works**

173. The Ministry of Public Works is also helping to solve the problem of regional disparities through a short-term action plan under the Government's general policy programme. The aim of the action plan is to open up all Madagascar's regions, thereby facilitating the movement of people and goods.

174. One of the aims of the Government's highways policy is to identify the roads requiring urgent repair. This is a priority objective and, on the basis of studies, the Ministry of Public Works has identified the following interregional roads that constitute Madagascar's priority network (17,283 kilometres):

- Autonomous province of Antananarivo: 73 sections targeted, totalling 2,589 kilometres;
- Autonomous province of Fianarantsoa: 82 sections, 4,278 kilometres;
- Autonomous province of Antsiranana: 23 sections, 1,490 kilometres;
- Autonomous province of Toamasina: 17 sections, 1,926 kilometres;
- Autonomous province of Toliara: 27 sections, 3,579 kilometres;
- Autonomous province of Mahajanga: 26 sections, 3,421 kilometres.

**(c) Health**

175. The Ministry of Health is also making efforts to reduce regional disparities in terms of health facilities and personnel, in implementation of its slogan “Health for all for the year 2000”.

**Health facilities**

176. There are currently 2,199 health facilities in Madagascar, ranging from category 1 basic health-care centres to district and regional hospitals.

177. Antananarivo autonomous province has 111 category 2 basic health-care centres, distributed throughout all 19 of its *fivondronana* (municipalities), and 275 category 1 basic health-care centres, 13 category 1 district hospitals, 4 category 2 district hospitals and 13 university hospitals, giving a total of 416 facilities.

178. Antsiranana autonomous province has 198 health facilities. There are 164 category 1 basic health-care centres; the category 2 basic health-care centres are located in the 9 *fivondronana*; Vohemar, Andapa and Ambanja each have 5. Four of the *fivondronana* each have one category 1 district hospital, and three category 2 district hospitals are located in three of the other *fivondronana*. Antsiranana I has the autonomous province’s only regional hospital. There are as yet no specialized facilities or university hospitals in this northern part of Madagascar.

179. Fianarantsoa autonomous province has 482 facilities. The 362 category 1 basic health-care centres are distributed throughout the *fivondronana*. There are a total of 28 category 2 basic health-care centres; 3 *fivondronana* have none. Fianarantsoa has 16 category 2 basic health-care centres, 16 category 1 district hospitals, 5 category 2 district hospitals and 1 regional hospital.

180. Mahajanga autonomous province has 348 health facilities: 305 category 1 basic health-care centres, 33 category 2 basic health-care centres, 7 category 1 district hospitals and 1 category 2 district hospital. Apart from the capital, Mahajanga is the only autonomous province with two university hospitals.

181. Toamasina autonomous province has 410 health facilities: 328 category 1 basic health-care centres, 65 category 2 basic health-care centres, 10 category 1 district hospitals, 6 category 2 district hospitals and 1 regional hospital.

182. Toliara autonomous province has 345 health facilities: all *fivondronana* have category 1 basic health-care centres, and there are 40 category 2 basic health-care centres, 15 category 1 district hospitals, 4 category 2 district hospitals and 1 regional hospital.

183. The Ministry of Health has launched a major initiative intended not only to increase the number of health facilities but also to improve their quality, and a specialist doctor has been appointed at several category 1 district hospitals.



## Health workers

184. The Ministry of Health has implemented two measures in this regard: a staff redeployment exercise and a recruitment drive.

185. The redeployment exercise involves the equitable distribution of existing staff in all Madagascar's health facilities.

186. In 1997, the Ministry proposed a total of 734 posts in Madagascar as a whole, 664 of which were filled: 163 for Antananarivo autonomous province, 71 for Antsiranana, 78 for Fianarantsoa, 111 for Mahajanga, 124 for Toamasina and 117 for Toliara.

187. In 1998, Ministry of Health staff were redeployed as follows:

Antananarivo		Antsiranana		Fianarantsoa		Mahajanga		Toamasina		Toliara		Total		Overall total
Centre	DIRDS*	Centre	DIRDS	Centre	DIRDS	Centre	DIRDS	Centre	DIRDS	Centre	DIRDS	Centre	DIRDS	
33	107	20	51	17	61	11	101	22	102	28	89	131	511	642

\* Interregional Department of Health (DIRDS).

188. Despite budgetary constraints and the temporary freeze on public-sector recruitment, the Ministry of Health was given special dispensation to recruit 273 staff in 1997, of whom 39 were general practitioners and 190 were paramedics; in 1998, 427 staff were recruited, of whom 240 were doctors and 187 were paramedics; in 1999, 702 doctors were in the process of being recruited.

189. A major objective in the area of health coverage has thus been achieved, resulting in a considerable narrowing of regional disparities.

190. It is to be hoped that the Government will achieve its objective of providing each municipality with a clinic in 1999.

### (d) Primary and basic education

191. Much progress has been made by the Government in this area, particularly by the Ministry of Secondary and Basic Education, in the face of difficult circumstances and, frequently in the most deprived areas, in situations of great financial hardship.

192. The following table shows the situation of primary and basic education in 1997-1998.

Province	Schools in operation		Teachers		Pupils			
	State schools	Private schools	State schools	Private schools	State schools		Private schools	
					Boys and girls	Girls	Boys and girls	Girls
Antananarivo	2 389	1 874	8 122	7 313	370 122	178 699	237 139	116 352
Fianarantsoa	2 815	538	7 309	1 602	323 545	157 150	64 225	3 552
Toamasina	2 020	103	5 163	1 049	317 053	149 972	42 212	22 753
Mahajanga	1 419	98	3 052	706	182 151	87 961	26 315	12 274
Toliara	1 076	317	1 454	825	142 260	72 998	46 909	24 635
Antsiranana	891	98	1 879	559	146 325	72 692	22 528	11 565

193. With the help of loans from the Public Sector Investment Programme, 39 schools were refurbished in 1998, including 11 in Fianarantsoa province and 6 in Toliara province. Most of these schools were simply falling into disrepair, although some buildings had been destroyed by cyclones.

194. Teaching staff were redeployed by the relevant ministerial departments. Despite the budgetary constraints at the national level, major efforts have been made to correct the imbalance and inequality in the distribution of resources within the country.

195. Two of the commitments adopted at the 1995 World Summit for Social Development were the eradication of poverty and the promotion of disadvantaged, marginalized and isolated social groups, including the categories of children covered by the Convention on the Rights of the Child. These initiatives, which are to continue over the next few years, will help to achieve those objectives.

## F. Publicizing the Convention

196. The initial report mentioned initiatives in the areas of social mobilization, awareness-raising among adults and dissemination of information about the Convention. Not only have these initiatives been extended, particularly in remote towns and rural areas but others have been implemented.

### 1. Ongoing initiatives

#### Translation

197. Additional efforts have been made to translate and publicize the provisions of the Convention.

198. Although a translation of the Convention, published in the *Official Gazette* at the same time as the French version, is already available to State institutions, local administrations, NGOs working in the field and civil society in general, it must be admitted that the Malagasy version is in some respects difficult to understand. While the translation is quite correct, the legal and technical language employed is not always accessible to anyone who is not well acquainted with law. Efforts were therefore needed to simplify the text, albeit only in summary form, in order to make it accessible, at least to teachers and youth workers.

199. The problem will therefore be solved when Malagasy legal terminology has been made more accessible.

200. Regional dialects present another problem. Although nearly the entire population of Madagascar understands and speaks the standard language, dialects nevertheless exist and in certain regions serve as a medium for the communication of thought, ideas and knowledge.

201. These dialects may even enjoy a revival with the establishment of the autonomous provinces. They have an important dual role, which affects the dissemination of the Convention: they enable youth workers to explain its provisions more easily to mothers and children in areas remote from the major centres and, at the same time, they help to enrich the standard language. It is not uncommon to find a dialect term that is more precise and meaningful than a learned expression used in standard Malagasy.

### **Children's month**

202. There is now a well-established tradition of organizing a whole range of events during the month of June, not only in large towns but also in rural areas. These may take a variety of forms.

203. In some cases, visits to children's homes may be organized in conjunction with the customary distributions. At other times, street children may be gathered together to share a meal or receive clothing, or even for educational games or a few moments of relaxation.

204. There is the new trend of churches or civil society associations setting up discussion groups in order to make adults aware of children's problems and of how the Convention is implemented. For example, the medical services and the Academy of Science, Arts and Literature have organized meetings to discuss such specific problems as nutritional recovery in children with disabilities, the detection of child abuse, or the causes of school abandonment. Efforts are also being made to study problems more germane to particular fields or arising from sociological surveys.

205. The results of such meetings are published in periodicals and newspapers and, in some cases, provide the basis for round tables with media participation.

### **Civic education**

206. The Ministry of Secondary and Basic Education has carried out a thorough reform of school curricula. Special emphasis has been placed on issues relating to the Convention, and to children's rights in particular.

207. "Civic instruction" has changed enormously: it has become a subject in its own right, known as "civic education", in order to enhance its scope and status.

208. Civic education in primary schools is taught in Malagasy and known as *Fanabeazana sy fampivelarana ny maha olo-mendrika* (literally, "education and development of human dignity").

209. The Educational Study and Research Unit has published a civic education textbook covering five topics:

- School and society, which deals not only with the need for schooling but also with the highway code and taxes;
- The nation and the State: structure and organization;
- Human rights: general principles, children's rights, fundamental freedoms;
- Environmental protection;
- International relations.

210. Civic education is now a subject in its own right in Madagascar's schools.

## 2. New initiatives

211. The first point to mention is the greater involvement of NGOs, which have become important channels of communication in youth and educational support work and in the social mobilization programme. This has made it possible to disseminate information on such topics as development and lifestyle, and even such practical subjects as oral rehydration therapy, the vaccination programme, hygiene at all levels, measures to combat water pollution, or iodized salts.

212. The establishment of a municipal support platform for children in Antananarivo, by a decree dated 23 August 1995, provided an opportunity to bring together concerned individuals, NGOs and international institutions wishing to join forces to help children in particularly difficult situations in the Antananarivo urban area. The founders' intention was also that the platform should serve as an information centre for the general public and children themselves. UNICEF played a decisive role in establishing and setting up the platform.

213. Another particularly interesting initiative on the part of UNICEF, with help from a number of NGOs, was the Children's Congress. Street children were brought together and, when asked to give their opinion like any other young citizens, gave free rein to their expectations and hopes. The undertaking was something of a gamble, with the risk of boredom, apathy, lack of discipline, or disorder; however, it was a success, and it is to be hoped that it will continue. The children expressed themselves without restraint in their own language, as the organizers had hoped. Among other things, they rejected the name people used for them - *Quat'mis* - in favour of *Boay Kely*, a phrase that is not easy to translate but which conveys an awareness both of their physical weakness (*kely* means "small") and of their role as boy citizens.

214. In another initiative, a group of committed jurists - lawyers and judges who are members of the National Federation of Associations for the Defence and Protection of Children and Young People - produced the *Guide de la protection de l'enfance* (Guide to the Protection of

Children) comprising an aide-mémoire for the use of individuals directly involved in protecting and safeguarding children's rights, either professionally or through charity work or by virtue of their social position, and also a brief handbook for families, parents and, more generally, anyone responsible for the care of children.

215. The editorial team has made every effort to avoid the twin pitfalls of, on the one hand, trying to say too much and sacrificing readability to complicated technical analysis and, on the other, oversimplifying and thereby misleading the reader by saying too little. The Guide has eight sections: the development of the child's personality; the child in the family; children in crisis; forms of alternative care; the child in school; the child at work; children's health; and children in particularly difficult situations.

216. An evaluation of the real impact of the Guide to the Protection of Children will be made after it has been distributed to various NGOs and children's homes.

## **I. DEFINITION OF THE CHILD**

217. In accordance with the general guidelines on periodic reports (CRC/C/58), most of the questions asked by the Committee on the Rights of the Child may be considered to have been answered, not in the 1993 initial report but in the replies to the list of issues, which were submitted to the Committee. Other questions are answered in the following sections, which deal, among other things, with legal proceedings, identity and fundamental freedoms.

### **A. Majority**

218. According to article 1 of the Convention, a "child" means every human being below the age of 18 years. Under Malagasy law, the age of majority may vary, depending on the situation.

219. The age of marriage is 18. According to article 5 of Ordinance No. 62-089 of 1 October 1962, on marriage, "Minor, within the meaning of the present text, means a child below the age of 18."

220. According to article 4 of Ordinance No. 62-038 of 13 September 1962, on the protection of children, "The age of criminal liability is 18 [and] proof of minority shall be provided either through a court ruling on the date of birth or by physical examination, which may take the place of a birth certificate or a court ruling."

221. The right to vote may be exercised at the age of 18.

222. However, the age of civil majority remains 21, in accordance with article 15 of Ordinance No. 62-011 of 10 September 1962 on the general provisions of private law.

223. Nevertheless, in accordance with articles 101 et seq. of Act No. 63-022 of 20 November 1963 on filiation, adoption, rejection and guardianship, minors acquire full legal capacity on marriage.

224. A minor's guardian may also confer such legal capacity through an act of emancipation. A notarial or authenticated act of emancipation must be duly drawn up.

225. Failing emancipation, a minor shall be represented in all civil acts by his or her guardian, whose basic task is to care for the minor's person and to administer his or her property.

## **B. Minority**

226. In Malagasy culture, families attach special importance to children. A child is a treasure that ensures the continuity of the line. The birth of a child is therefore always a source of great joy in the family.

227. During their minority, children are under their parents' authority and care, and have a right to the protection of the family and of the statutory (legal) provisions.

### **1. Exercise of parental authority**

228. The child's domicile is that of his or her parents. Generally speaking, children should live with their parents, in their care.

229. Specifically, parental authority entails the duties of care, maintenance and education. Under Malagasy law, it is exercised jointly by the father and mother or by the person responsible for the child, whether the relationship is lawful, natural or adoptive.

#### **(a) Custody**

230. The right to custody allows parents to keep the child in the family home. The child may not leave the family home without the parents' permission.

231. Violations of the right to custody are punishable under criminal law: abduction of a minor is punishable by two to five years' imprisonment (Criminal Code, art. 356). The offence of failure to hand over a child to anyone who has the right to claim him or her (misuse of custody) is punishable by one month's to one year's imprisonment.

232. Custody must not become synonymous with deprivation of liberty.

233. The right to custody ensures the child's protection: children under 18 years of age may not marry without their parent's consent, which may be given by the father or the mother (Ordinance on marriage, art. 5).

234. One question that has been asked is how married children under 18 years of age are considered with respect to the age of majority, given the fact that boys may marry at 17 and girls at 14, or even earlier, provided that there are serious grounds and on dispensation from the president of the court situated in the place where the ceremony is to be held (Ordinance on marriage, art. 3).

235. Are such “children” protected under the Convention? The answer can be found in article 107 of the Act of 20 November 1963, which provides that full legal capacity (that is, majority) shall be granted to any minor on marriage. Under article 1 of the Convention, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.

236. The purpose of parental authorization is to protect the minor’s property and to protect the minor from misalliances that might result from a lack of experience.

237. Lastly, the right to custody entails a parental duty of supervision. To that end, article 222 of the Law on Obligations stipulates that “a father or mother, who is head of the family is responsible for damage caused by his or her minor children”.

**(b) Maintenance**

238. The duty of maintenance places parents under an obligation to support their children and, at the same time, provide constant care and the affection that children require in order to develop fully.

239. The duty of maintenance is explicitly mentioned in article 62 of the Ordinance on marriage, which stipulates that “spouses, by the very fact of marrying, enter into an obligation to feed and maintain their children”.

240. However, the parents of a child born out of wedlock cannot avoid that obligation, since the duty of maintenance is considered to derive from the condition of fatherhood or motherhood.

241. In principle, the duty of maintenance lapses when the child reaches the age of majority. Malagasy case law has nevertheless permitted the extension of that duty where children continue their studies beyond the age of 21 (the age of civil majority).

242. If a father or mother - lawful, natural or adoptive - fails to meet his or her moral or material obligations for more than two months, he or she may be prosecuted for abandonment of the family and be liable to a penalty of three months’ to one year’s imprisonment and/or a fine of between FMG 5,000 and FMG 200,000.

**(c) Education**

243. Malagasy parents have a duty to educate their children. They are free to choose what form that education should take (Constitution, art. 23).

244. Ministerial Decree No. 3949/87 of 2 September 1987 deals only with the minimum age (6) and the maximum age (16) of admission to a State school providing basic education.

## 2. Legal measures for the protection of children

245. Special measures for the protection of children are provided under Malagasy law, which prohibits:

- The rejection of a minor child; only an adult may be subject to rejection (Act No. 63-022 on filiation, art. 79);
- The division of inherited property without court authorization if one of the joint heirs is a minor;
- Sexual abuse of a child; or inciting a child to debauchery (Criminal Code, arts. 331 et seq.);
- Ill-treatment of a child; or abandonment or leaving a child in an isolated place (Criminal Code, arts. 312 and 345);
- The selling, or provision free of charge, of alcoholic drinks to minors under 18 years of age; or causing minors to drink until intoxicated;
- The employment of women under 18 years of age where drinks are sold for consumption on the premises;
- The admittance into bars of minors under 18 years of age who are not accompanied by their parents or by a person over 21 years of age (Act No. 61-053 of 13 December 1961, on measures to combat alcoholism).

246. Juvenile offenders have additional legal protection under Ordinance No. 62-038 of 19 September 1962. According to articles 35 et seq. of this Ordinance:

- Minors under 13 years of age are exempt from all criminal liability and no criminal sentence may be passed on them (art. 35);
- In respect of a minor between 13 and 16 years of age, the juvenile court or the juvenile criminal court shall consider the question of criminal liability;
- If the minor is held to be criminally responsible, age shall automatically be an extenuating circumstance and the sentence passed on the child may not exceed half the penalty that would have been incurred had he or she attained the age of majority;
- If, on the other hand, the child is not held liable, the juvenile court or the juvenile criminal court shall order educational measures or the return of the child to his or her family (art. 36);
- In respect of a minor between 16 and 18 years of age, the provisions of article 36 shall apply; the juvenile court shall, however, have the authority to disregard age as an extenuating circumstance, in a special substantiated ruling.



## II. GENERAL PRINCIPLES

### A. Non-discrimination

#### 1. Current situation

247. Although the equal status of all citizens is guaranteed in the Constitution, and Malagasy law recognizes a range of rights to all children regardless of their filiation, sex, religion or ethnic group, certain groups of children are still unable to exercise most of their rights, for the reasons given below.

#### (a) Customs

248. Certain unlawful customs persist and are practised regardless of the law. For example, there is a custom among the Antambahoaka tribe in the Mananjary region in the south-east of Madagascar, that forbids members of the tribe to raise twins. Twins are thus rejected at birth by their own parents and never know their biological parents or their family of origin.

249. Although such customs have a tendency to persist in remote areas, society's reaction is, increasingly, to rescue and protect such children. NGOs and religious organizations take charge of rejected children and sometimes even obtain parents' consent for the children to be placed in care.

250. A special form of discrimination is also found in large urban centres and in regions where bondage or traditional slavery used to be practised widely. While it is true that slavery was abolished in 1896 and that caste distinctions were done away with at about the same time, historical memory, the root of social custom, is slow to fade. Madagascar's history shows that the slaves freed in 1896 tried either to remain on the land that they cultivated or to become part of urban or village society. The majority succeeded, but certain customs that isolated them from society have persisted and now affect their descendants. The situation of children living in poor regions should be cause for special concern, since most of them are children in particularly difficult situations.

251. It is therefore essential to educate adults and make the children themselves aware of their disadvantaged position so that, with help from NGOs, they can better understand and overcome it.

#### (b) Poverty

252. The economic problems that Madagascar has been facing for a decade have resulted in:

- The emergence of the category "children in difficult situations" (currently some 4,500 in Antananarivo) who virtually live on the street and make their living from the street. With no shelter or protection and condemned to a daily struggle for survival, such children live and grow up in total insecurity and are prey to diseases of various kinds, sexual abuse, assault, ill-treatment, malnutrition and so on;
- A resurgence of child prostitution, with all the risks that involves for children: sexually transmitted diseases, AIDS and pregnancy.

**(c) Negative social practices**

253. Parents often discriminate among their own children, whether unconsciously or as a matter of custom. Such discrimination manifests itself in everyday life and in the decisions that parents take concerning their children:

- Girls are asked to help parents in household chores more often than boys;
- If the family faces financial hardship, girls are often obliged to leave school either to enable their brothers to continue their studies, or to look after their younger brothers and sisters so that their parents can work, or to look for jobs in order to support their family. The majority of these girls become teenage mothers.

**2. Administrative measures to combat discrimination**

254. Until recently, awareness-raising, information and discussion were the main means of combating discrimination against children.

255. For some years, however, the State and the decentralized local authorities have played a more active role in protecting individuals, including children, through development programmes and appropriate assistance measures.

256. In implementing such programmes, the State and the local authorities arrange for action to be taken at the local level, in coordination with NGOs or associations working with children. The following are some of the most important measures.

**(a) National action plan for girls' education**

257. The objective of the National Action Plan for Girls' Education (PANEF), approved by Decree No. 95-645 of 10 October 1995, is to prepare girls for their various roles as wife, mother, citizen and agent of development, and to encourage their personal development, for the following reasons:

- In the area of education, it is the mother who transmits values and knowledge to the community, an educational role that includes stimulating the child's intelligence and curiosity;
- In the area of health, the mother's instruction has a considerable positive effect on the child's survival and well-being; an educated mother will also bring up her children better in terms of health, hygiene and nutrition.

258. A unit responsible for conducting pilot projects and implementing PANEF was set up within the Educational Study and Research Unit, by Decree No. 377/96.

**(b) National action plan on child labour**

259. This plan was adopted in 1998 as part of the International Programme for the Eradication of Child Labour (IPEC) (MAG/97/Moi/FRA), the aim of which is to abolish child labour and, in the short term, improve their working conditions.

260. In order to implement programmes with these objectives, a national steering committee was established in 1998 to coordinate and approve the various national child labour programmes.

**(c) Antananarivo support platform**

261. By Decree No. 764/DLA/95 of 23 August 1995, a social action committee, known as “Platform for coordination, information and monitoring of children in difficult situations in the *fivondronana* of Antananarivo Renivohitra”, was set up in the urban district of Antananarivo.

262. The platform comprises representatives of the relevant ministerial departments, international institutions involved in protecting children in difficult situations, associations, bodies or groups interested in participating in the platform or its activities, and any other individuals directly involved in action of a general or local nature to help children in difficulties (art. 7).

263. The main objectives of the platform are to encourage, coordinate and give full effect to initiatives taken by bodies, associations or groups working or wishing to work with children in difficult situations, particularly in the social and economic risk areas of the *fivondronana* of Antananarivo Renivohitra (art. 3).

**(d) National action plan to combat urban poverty**

264. Adopted following a workshop held in Antananarivo in 1998 and organized by the Ministry of Town and Country Planning, this plan received support and input from the United Nations Centre for Human Settlements (UNCHS) (Habitat).

265. Initiatives under this plan aim, among other things, to eradicate urban poverty by facilitating access by disadvantaged urban groups to decent housing and basic urban and social services.

**3. Legal safeguards to protect children from discrimination**

**(a) Right to filiation**

266. In Malagasy law, filiation may be legitimate, out of wedlock or adoptive. Act No. 63-022 of 20 November 1963, on filiation essentially makes it easier to establish ties between the child and his or her father or mother, regardless of the legitimate or illegitimate nature of such ties. The Act does not, however, permit prohibited (incestuous) ties.

267. In order to ensure the child’s effective exercise of the right to filiation, article 23 of the Act provides for acknowledgement of filiation out of wedlock and a judicial procedure to establish paternity.

268. The establishment of filiation provides any child with the right to claim maintenance from his or her parents, and the right to support and education.

**(b) Right to nationality**

269. Malagasy nationality, which is governed by Ordinance No. 60-064 of 22 July 1960, is essentially nationality by filiation in accordance with *jus sanguinis*.

270. Parents transmit their original or acquired nationality to their children.

271. Where filiation is legitimate, nationality is transmitted to children by their father, except when the legitimate father is a stateless person or of unknown nationality, in which case the children take their mother's nationality (art. 94).

272. In cases of natural filiation out of wedlock, the mother transmits Malagasy nationality to her children since, according to Malagasy law, maternal filiation is always established in the first place by act of childbirth.

**(c) Right to work**

273. According to article 103 of the Labour Code, there shall be no discrimination between able-bodied persons and persons with disabilities in the area of work or employment as long as such persons possess equal abilities and aptitudes.

274. Disabled persons have the right to work and employment on the basis of equal opportunity, and to equal treatment with regard to apprenticeships, vocational training and employment.

**(d) Right to judicial protection**

275. Any child whose safety, nationality, health or education are at risk has the right to claim the protection of the court (Ordinance No. 62-038 on the protection of children).

**B. Best interests of the child**

276. The concept of the best interests of the child is a feature of the law in Madagascar. Article 21 of the Constitution refers to it, and the initial articles of Ordinance No. 62-030 of 19 September 1962 on the protection of children, define the child's place within the family and the roles of the family and the State in the protection of children.

277. In traditional Malagasy culture, the upbringing and education of children are duties entrusted to elders as the keepers of tradition. The task of protecting children falls to the members of the extended family, who all feel responsible as soon as the child faces any danger.

278. Under modern legislation, the role of the family in raising and protecting children is reaffirmed by the ordinance on the protection of children, except that the legislation specifies the father and mother of the child, or the person who has authority over the child, as responsible for playing this role.

279. Malagasy legislation offers no legal definition of the best interests of the child. The matter has always been left entirely to the discretion of the courts.

280. However, it may be observed from court rulings that the best interests of the child are protected when his or her acknowledged rights have been respected, and when the material and moral protection that the child needs, and the care necessary for the child's welfare and the development of his or her personality, have been provided by the family.

281. Hence, actions likely to jeopardize the morals, health, safety and upbringing of children are considered to be counter to their interests.

282. Ensuring a child's material and moral security involves providing food, clothing, schooling and decent housing and bringing the child up in a healthy environment free of all unworthy and immoral behaviour that may influence the child, such as blatant drunkenness on the part of the parents, arguments and ill-treatment.

283. Providing children with the requisite continuing care involves not only treating them in the event of sickness but also taking all possible preventive measures to keep them in good health so that they can exercise their physical and intellectual powers.

284. In practice, however, it is often difficult to reconcile protection of the best interests of the child with the interests of the family and those of the authorities.

### **1. The best interests of the child and the interests of the family**

285. In some Malagasy homes, children constitute a source of labour and free domestic help. They are often obliged to perform arduous household tasks that may have a harmful impact on their health: carrying water and wood, cutting firewood, cooking, laundry and so on.

286. Children may also constitute a source of income: they are sometimes obliged to work to ensure the family's survival, though such work (mechanic's assistant, carpenter's assistant in a furniture works, or prostitute) entails risks to their physical and moral security.

287. Which of the conflicting interests should be protected? This question is answered by article 3 of the ordinance on the protection of children, which provides that "when the family has failed to meet its obligations and the child's morality, health or safety are in jeopardy, the State shall intervene either to help the family in its child-raising role or to take appropriate measures in the field of educational assistance and supervision or, when the circumstances and the personality of the child appear to require it, to bring the minor before specialized judicial bodies".

### **2. Educational assistance**

288. It is difficult to put the provisions of article 3, which deals with educational assistance, into effect as they stand. Only the children's chamber of the Antananarivo court of first instance has a social service, which is composed of two social assistants who provide assistance to juvenile court judges in their tasks. In other courts, the juvenile court judges have to seek the help of social assistants working in private centres in order to perform their functions.

### **3. Placement of children in centres**

289. Children are placed in children's homes or re-education centres in the interests of their protection, either to remove them from the negative influences of their families, friends or acquaintances, or to protect them from themselves. However, it must be acknowledged that the state of the (public) centres is not such as to enable all the needs of the children placed in them to be met, owing to the inadequacy of reception facilities and individual social rehabilitation programmes and a shortage of specialized staff.

290. Moreover, the Ministry of Justice as yet has no educational service attached to the courts and specifically responsible for monitoring children placed in pre-trial detention.

291. Given these shortcomings, one may ask whether the placement of children in such centres really helps to protect their rights.

### **4. The best interests of the child and the interests of the State**

292. Conflicts of interest arise when the State or local authorities take decisions that are not conducive to protection of children's interests.

293. A decision taken by the Government at the suggestion of the Ministry of Health deserves mention in this context. In 1998, the Government decided to adopt a policy of charging patients for medical care, with the result that health care is no longer free of charge. The cost of medical consultations in public dispensaries ranges from FMG 100 to more than FMG 10,000. This appears to be a small amount, yet it is hard for some categories of people to obtain the sums required immediately when sickness strikes.

294. The first victims will necessarily be the children of families in need, since mothers resort to traditional practices in order to avoid spending money, with all the potential medical consequences.

### **5. Social security**

295. Only a tiny proportion of the population benefits from social security.

296. In the public sector, the State reimburses 100 per cent of the medical costs of State employees and their families (spouse and children). In the private sector, the National Social Insurance Fund provides social insurance for registered workers. Those who belong to neither of the above-mentioned sectors (occasional workers, farmers, etc.) have no solution when illness strikes.

297. In order to alleviate this situation, "village community pharmacies" have been established at the initiative of villagers in places where basic health-care centres have been located since 1996. These pharmacies have managed to operate thanks to contributions from villagers, who have set up funds to buy everyday medicines to treat diarrhoea, malaria, influenza, respiratory infections and so on.

## **6. A measure to protect children's interests**

298. A major step forward in the protection of the best interests of the child was taken with the publication of the Guide to the Protection of Children, which was prepared by the National Federation of Associations for the Defence and Protection of Children and Young People and published by UNICEF (see paragraph 214 above).

### **C. Right to life, survival and development**

299. Article 6 of the Convention provides that “every child has the inherent right to life”. The State must ensure to the extent possible the survival and continuous development of the child. As human beings, children have the right to live and to be protected against all situations that might place their lives in danger.

300. In Malagasy tradition, this protection was provided by the extended family, whose members watched over children and helped them during their tender years, so that they always had a roof over their heads and a person to feed them and attend to their welfare; their upbringing was supervised by the elder who was head of the family.

301. Modern law has maintained and strengthened the existing traditional protection. The rights to life, survival and education are guaranteed by the Constitution. Children are protected by the law from conception to adulthood:

- Abortion, infanticide, ill-treatment and neglect are offences under the Criminal Code;
- Parents (or those who have authority over each child) have an obligation to feed, maintain and educate them.

#### **1. Current situation**

302. Most Malagasy parents attach paramount importance to the life, welfare and development of their children; to have prosperous and worthy descendants is an honour for parents, and a source of pride for the entire family.

303. However, the economic crisis that Madagascar has experienced in recent years has led to an alarming decline in the standard of living. Purchasing power has fallen, leading to a reduction in consumption by families in all areas, with harmful impacts on the nutrition, health and upbringing of children, thus endangering their lives and development.

#### **(a) Constraints on the free enjoyment of the rights set out in article 6 of the Convention**

##### *Poverty*

304. For the past 10 years or so, low household incomes have made it difficult for many rural and urban families to meet the food requirements of their members. A change has been observed in eating habits: quantity prevails over the quality of food in certain families, while some, as a survival strategy, obtain their daily food by improvising - stealing from fields in the countryside, theft in the towns and, in the most serious cases, rooting in rubbish bins.

305. Malnutrition is the main cause of infant morbidity and mortality. Malnutrition also has a negative impact on children's performance at school and at work; some children are forced to work, most often in the informal sector, in order to survive.

306. The right to development implies an obligation to meet the health needs of children in the event of illness, to offer them decent housing or simply a roof over their heads and to give them the upbringing they need for their development.

307. According to a report on the MADIO project submitted to the Ministry of Planning concerning the results of income surveys between 1993 and 1998, monthly pay for principal employment stands at FMG 215,000, while median pay does not exceed FMG 150,000.

308. In the public sector, the average monthly income is higher in public enterprises than in the administration (FMG 435,000 against FMG 342,000).

309. In the private sector, the average monthly income is FMG 262,000.

310. For a higher number of hours of work, employees in enterprises operating in export processing zones earn an average of FMG 184,000.

311. The informal sector is the least well paid, at FMG 152,000.

312. Since May 1998, the minimum initial wage has stood at FMG 123,000.

#### *Negative social practices*

313. In rural areas, in the midwest where cattle are raised on a large scale, parents forbid their children to attend school so that they can become cowherds.

314. In urban areas, the practices of certain sects, which prohibit their members from consulting doctors or going to hospital when sick, violate the right of children to receive the care necessary to their health.

#### **(b) Measures taken to overcome constraints**

315. Measures to combat poverty: adoption in April 1998 of a national plan of action to combat poverty.

316. In education:

- State contribution to school fees for the children of civil servants at the beginning of each school year;
- The Ministry of Secondary Education and Basic Education has opted for a decentralization policy in order to provide sufficient numbers of teachers to schools located in remote areas;



- Pupils in basic State schools and in certain religious schools have their studies rounded out with extracurricular subjects such as sewing, carpentry, and elementary farming and livestock-raising;
- Support for the establishment of children's homes for the protection of marginalized children.

## 2. Summary table

Indicator	Year	
	1992/93	1998
Infant mortality	93 per 1,000 live births	77 per 1,000 live births
Life expectancy at birth	51 for men 53 for women	57 for men 60 for women
Illiteracy rate	54% - 61% in rural areas and 32% in urban areas	
Gross primary school enrolment rate		77 for boys 74 for girls
Percentage of children reaching the last year of primary education		36% for boys 41% for girls
Gross secondary school enrolment rate		15% for the two sexes

Source: Brochure on the activities of UNFPA in 1998.

### D. Respect for the views of the child

317. The Convention provides that "States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

318. Article 10 of the Constitution provides that "freedom of opinion and expression, communication and the press are guaranteed to all".

319. The Constitution makes no distinctions as to age, stipulating only that nationals are equal before the law.

320. These rights apply to children who are of Malagasy nationality through their father or mother.

321. Children have the right to express their opinions freely. The Constitution underlines that the exercise of this freedom calls for powers of judgement, that is, a certain degree of maturity.

322. How and when do children exercise this right? They do so in the family and at school, in a manner consistent with their evolving capacities.

### **1. In the family**

323. The family is the pre-eminent environment for the child's physical, intellectual and moral development. The parents may choose how they plan to bring up their child. They bear principal responsibility for guiding and advising their child. The parents guide and direct the child in the exercise of the child's rights, and it is in the family that the child develops and begins to express his or her opinions.

324. However, in traditional society, women and children do not often have the right to speak when decisions are taken at the community level, even in matters of concern to them.

325. Tradition dictates that children come in third place after women. Men always take decisions concerning the family and the village. The child has only duties - to carry out the orders of adults.

326. However, thanks to a major effort by the State, which provides schools in all regions, even the most remote, children are gradually being freed from the hold of patriarchy or tradition, and are discovering a new area of expression at school.

### **2. At school**

327. Education, whose primary purpose is the development and advancement of children, promotes the establishment of a dialogue between children and adults.

328. Instruction is therefore a means to enable children to improve themselves, acquire knowledge, recognize their rights and demand them. Thanks to schooling, children have a critical spirit, reach a certain degree of maturity and possess powers of judgement. They may make suggestions or express opinions relating to issues of interest to them. For children - the future stakeholders in political or economic life - school is a place for learning, where they begin to express themselves and form their personalities.

329. Some schools have a policy of involving pupils in administrative tasks. Pupils send representatives to staff meetings. During the meetings, the children's views are sought with the aim of improving the teachers' performance or working methods, and this produces satisfactory results at the end of the school year.

## **III. CIVIL RIGHTS AND FREEDOMS**

330. This chapter is devoted to civil rights and fundamental freedoms, the protection of identity, relating particularly to name, nationality and filiation, the protection of privacy; access to information, and the right to physical integrity.

331. The first report of Madagascar contained lengthy observations on the provisions of the law on all these issues. There would appear to be no need to cover this ground again, except where there have been substantive changes or new provisions in the legislation, in which case the changes or innovations will be specifically introduced and commented on.

332. Given that the importance of a law lies in its effective implementation, this chapter will be devoted to new social phenomena, to initiatives taken to publicize the law and facilitate its application and to research and studies initiated to pinpoint difficulties arising in its application.

333. In this context, mention will be made of the activities of the Ministry of Justice and the Ministry of Population, Women and Children, major initiatives taken by UNICEF and the encouragement given to NGOs whose activities are particularly child-oriented.

334. The years 1993-1998 were notable for events or developments in society that had a negative impact on the application of the provisions of the Convention, such as:

- The increase in poverty;
- The deterioration in the local administration, especially at the commune level;
- The corresponding collapse of civil registration services;
- The rise in violence and the decline in security, both in the countryside and in urban areas, threatening or affecting the moral or physical safety of the most vulnerable members of society, including children;
- The deterioration in moral standards, fostering breaches of the moral order and standards of behaviour;
- The reduction in respect for children, resulting from poverty, increasing violence and falling moral standards.

#### **A. Fundamental freedoms**

335. Articles 13 to 15 of the Convention provide that children have the right to freedom of expression, freedom of thought, conscience and religion, freedom of association and freedom of peaceful assembly.

336. These freedoms were covered in the first report, which, however, pointed out that Malagasy law contained few laws and regulations on the subject, and that none of them specifically related to children.

337. Consequently, this report contains a review of the actual scope of general instruments granting these freedoms in the context of their application to the rights of the child.

338. The most important instrument in this regard is the 1992 Constitution which, as already mentioned, was thoroughly revised by Constitution Act No. 95-001 of 13 October 1995, and subsequently by a referendum on 15 March 1998. Madagascar is now in practice operating under a new constitutional regime.

## 1. Contributions at the constitutional level

339. In the matter of rights of the child, the legal experts first re-examined the preamble to the Constitution. This states that the conventions on the rights of women and the child are considered to be an integral part of the law. The incorporation of the Convention into Malagasy law has thus been confirmed and strengthened.

340. The consequences stemming from this incorporation were the subject of earlier comments, of which it is worth restating the three main elements.

341. The Ordinance of 19 September 1962, concerning general provisions of private law clearly states that “the general principles set out in the preamble of the Constitution are binding on the courts, which must in all cases ensure that they are observed and respected within the framework of the legislation in force”. As the Convention forms an integral part of the law, its provisions form part of “the legislation in force”.

342. This in no way prevents Malagasy legislators from specifying arrangements for the application of the provisions of the Convention when the latter appear too broad or require supplementary regulations.

343. However, the element that appears most important relates to the new concept of the child as citizen, which clearly emerges from the provisions of the Convention. Children acquire a status characterized both by the breadth of the legal protection instituted for them and by the important rights that are granted to them. In the words of the preamble to the Convention, “childhood is entitled to special care and assistance”; the “harmonious development of [the child’s] personality” must be guaranteed, and “the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”.

344. In other words, the Convention enhances the juridical status of the child. While it is true that the child must “grow up in a family environment” and, “by reason of his physical and mental immaturity, needs special safeguards”, the child acquires prerogatives such as the free expression of his or her opinion and the freedoms enumerated above. These prerogatives are new in Malagasy tradition and culture which, while displaying great affection towards children, lock them into a network of obligations and teach them respect for elders and the duty to obey.

345. Once the respect due to the child diminishes under the impact of the breakdown of the family group, poverty and increasing violence, the “child as king” becomes the “child as servant”. To avoid such adverse developments, there is a need to restore the full meaning of the concept of the child as a citizen, who has not yet reached the age of majority but who is preparing for life by learning to become a full citizen.

346. Thus, it must be affirmed that the fundamental rights granted to individuals by the Constitution are also granted to children, unless such rights are expressly restricted by the Convention or specific Malagasy legislation. Such restrictions stem, for example, from the right of parental guidance, the rules governing the age of majority, and the prohibitions imposed on children in their own interest, for their moral or physical safety or for their health.

347. This is the spirit in which the following articles of the Constitution should be interpreted:

Article 19: “The exercise and the protection of individual rights and fundamental freedoms are regulated by the law.”

Article 10: “The freedoms of opinion and expression, communication, the press, association, assembly, movement, conscience and religion are guaranteed to all and may be restricted only for the sake of respect for the rights and freedoms of others and the imperative need to safeguard public order.”

Article 17: “The State regulates the exercise of rights guaranteeing for the individual the integrity and dignity of his or her person, and his or her full physical, intellectual and moral development.”

Article 26: “Everyone has the right to participate in the cultural life of the community, in scientific progress and in the resulting benefits.”

348. In contrast, a restriction is exemplified by article 23 of the Constitution, under which “every child has a right to instruction and education, for which the parents shall be responsible and their freedom of choice shall be respected”.

349. These considerations of a legal nature are illustrated by the following provisions of Act No. 94-033 of 13 March 1995 establishing general guidelines for the education and training system:

Article 2: “Education and training in Madagascar are designed to promote the physical, intellectual, moral and artistic development of the personality of the individual in a context of full enjoyment of his or her freedom.”

Article 29: “The purpose of primary or elementary schools is to ensure the *autonomy* of the child and provide the child with the means to influence his or her existence and society, to participate fully in development, to take enlightened decisions and to continue to learn in a spirit of lifelong education.”

## **2. Exercise of fundamental freedoms**

350. Although the efforts made by the authorities, specialized agencies, particularly UNICEF, NGOs, associations and religious communities are still inadequate to publicize the Convention and ensure its effective application, various initiatives to foster the all-round development of children offer grounds to hope for increasingly meaningful progress in creating awareness of “children as citizens”.

### **(a) Education of parents**

351. Against a background of such tangible phenomena as the breakdown or weakening of the family group, initiatives have been pursued over the past five years to reintroduce what were known as “schools for parents”. Non-governmental organizations and especially religious communities (Catholic for the most part, Protestant to a lesser degree) organized encounters with

parents either at parents' meetings in private schools, or in parishes, or among parents whose children participate in youth movements, particularly scouting. Volunteer group leaders were able to establish a dialogue with parents, guardians or those responsible for children within families. In general, the aim was not to dispense educational or moral advice but to draw attention to the real prerogatives that children enjoy under the Convention.

352. However, it must be acknowledged that these initiatives, which have been well received, mostly benefited parents who were already well informed - those who, while encountering difficulties arising, from the conflict between the traditions of a basic education inculcating obedience and resignation and the new prerogatives of the child, were in a position to resolve such conflicts.

353. Matters are different in the suburban or rural areas where elders rule supreme and attitudes towards children's rights are those of resistance or even rejection. When fully realized, these rights threaten the cohesion of the extended family, which is already fragmented, and constitute a handicap for a society pursuing a survival strategy, in which children supply labour, household help and, sometimes, wealth.

354. There is a need for many more initiatives directed towards parents and those who, by virtue of their role in society, occupy a special place within family groups. These will help to lessen traditional resistance to the advancement of the "child as citizen".

**(b) Actions directed towards children**

355. Increasingly, in the circles referred to above, interested associations, volunteer group leaders and volunteer teachers have been striving to gather teenagers together, avoiding any authoritarian approach and drawing on each child's ability to prepare for his or her role as a young citizen: the children or teenagers are invited to voice their opinions freely, identify their own problems and express their wishes, needs and views without the presence or interference of their parents.

356. Children who have been reached are generally from modest backgrounds and belong to the category of children in particularly difficult situations, including children who live in the street and make a living on the street.

357. These initiatives originated in a major activity organized by UNICEF in cooperation with the Ministry of Population, Women and Children. With the help of interested NGOs, *boay kely* (young boys) were assembled in "workshops" in a relaxed atmosphere and, once their trust had been gained, prompted to express their views.

358. The initiative seemed strange to many of them, and gave rise to more curiosity and scepticism than enthusiasm. However, on realizing the serious-minded way in which the meetings had been organized and their opinions listened to, most of the children and teenagers displayed unexpected maturity. The replies dealt in particular with the lack of leisure, and the fact that it was impossible to attend school like their peers. The need for food or money, while firmly expressed, was not a priority.

359. Despite organizational difficulties, such initiatives should be repeated, especially as a part of neighbourhood activities and through the establishment of “children’s clubs” run by the children themselves.

360. In the countryside, such activities should be highly effective. Rural children, who are accustomed to performing adult tasks, protecting and even assuming responsibility for their younger sisters and brothers, have a greater ability to take matters in hand than city children, even if they are illiterate.

**(c) The child’s capacity to form his or her own views**

361. Efforts by “young citizens” to learn to live in a community can be envisaged only in the case of teenagers who have acquired a degree of maturity. This is acknowledged by the Convention itself, which states that the child must be given “appropriate direction and guidance in the exercise ... of the rights recognized in the present Convention” (art. 5) “in a manner consistent with the evolving capacities of the child” (art. 14). Article 12 is still more explicit: in respect of a major fundamental freedom, the right to express one’s views freely, the child must be “capable of forming his or her own views”.

362. Legal experts, psychologists and sociologists have pondered the criteria of “capacity to form one’s own views” and “evolving capacities”. The legal experts generally refer to the provisions of criminal legislation relating to under-age offenders:

- In traditional Malagasy law, article 156 of the Code of 305 Articles (1881) provides that children aged 10 and under are not liable to criminal penalties. This provision has subsequently been interpreted as recognizing extenuating circumstances on the grounds of age in the same way as articles 66 et seq. of the French Criminal Code. It is true that the effect of this interpretation was to seek the basis of this impunity in the child’s age; however, the original text in Malagasy went further, stating that children could not be sentenced by criminal courts because they had not attained a sufficient level of intelligence (*tsy ampy saina*). Hence, the tradition was already based on the concept of inadequate understanding of what the offence involved.
- In colonial legislation, the former decree of 30 November 1928 stipulated that minors under 16 years of age who had committed an offence could be acquitted or discharged on the grounds that they had acted without the capacity to form their own views.
- Ordinance No. 62-038 of 19 September 1962, on the protection of children, stipulates that, when a criminal offence is committed, only measures involving educational assistance, and no criminal penalties, may be applied to a child under 13 years of age.
- For children between 13 and 16 years of age, the court must consider the extent of their criminal liability. In other words, the court will draw on any information that has been gathered on the personality of the minors and, in particular, on any social survey or medical examination that has been conducted, and then take a decision - which is final - on whether or not it is appropriate to recognize extenuating circumstances on the grounds of age.

- If the children are between 16 and 18 years of age, the same procedure is followed but the extenuating circumstances on grounds of age may be set aside by means of a special and substantiated decision, and the minors will then be tried as adults.

363. It follows from these explanations that, in legal matters, the criteria involved in assessing the child's ability to form his or her own views are the age of the child and an appraisal of his or her level of maturity. Age is not a sufficient criterion for evaluation because it is automatic and imprecise and because of the risks of error owing to the disorganization of the civil registration system. Meanwhile, evaluation of the level of maturity often amounts to the mere questioning of the child who, under the procedure, "may be heard" by the court. Medical examinations and social surveys are carried out only in major urban centres where specialists and professionally competent persons are to be found. Lastly, it should not be forgotten that the legal criteria are of use only in determining the extent of criminal liability.

364. Evaluation of the child's capacity to form his or her own views, or the state of the child's evolving capacities, must be confined to a pragmatic evaluation, taking into account the child's environment, the number of years of schooling received, living conditions and background.

365. For this purpose, questionnaires could be prepared to which the children could reply in an atmosphere of trust and confidentiality. Non-governmental organizations are involved in the preparation of such questionnaires, which could be used to draw up fact sheets for assistance and follow-up and to target children whose capacity to become young citizens could be effectively developed.

### **B. Right to identity and the preservation of identity**

366. Articles 7 and 8 of the Convention relate to the right of children to a name, the right to acquire a nationality, the right to know one's parents and the right to preserve one's identity.

367. The fundamental aspects of the child's identity are covered in this section. Identity is closely connected with name, nationality and filiation, which is at the origin of family relations.

368. The first report dealt at length with the efforts of the legislature, particularly between 1960 and 1963, following independence, when the following were enacted:

- Act No. 61-025 of 9 October 1961 on civil registration documents;
- Ordinance No. 62-003 of 26 July 1962 on name, domicile and absence;
- The Nationality Code (Ordinance No. 60-064 of 22 July 1960);
- Ordinance No. 62-089 of 1 October 1962 on marriage;
- Act No. 63-022 of 20 November 1963 on filiation, adoption, rejection and guardianship.



369. These laws have been mentioned on several occasions and have been the subject of a technical presentation and a commentary that need not be repeated. While it is true that some articles have been modified, these changes do not affect Malagasy legislation, which on the whole has remained remarkably unchanged in the sphere of identity and the preservation of identity.

370. On the other hand, mention should be made of the problems that have arisen in the past five years and the initiatives taken to apply the laws more effectively.

### **1. Initiatives**

#### **(a) Operation “identity card”**

371. During the various elections held in recent years, it was found that a large number of citizens had no identity cards and were therefore unable to prove their identity.

372. Consequently, it was necessary to organize a veritable operation identity card in order to facilitate the issue of the documents needed for the preparation of such cards.

373. While this operation did not affect the children protected under the Convention, it did highlight how inadequate the national civil registration services were: records had been lost or were in such a sorry state as to be unusable; the maintenance of civil records and the checking of the records by the judicial and administrative authorities had been neglected; the task of keeping duplicate records suffered from neglect and chaos; and there were no birth certificates - in other words, no births had been registered.

374. On becoming aware of this situation, the authorities concerned made appropriate arrangements to ensure better maintenance of civil records in the short term, and subsequently to restore the services at the various levels: reactivation of the *firaisana* archives and reconstitution of communal archives, reactivation of surveillance and checks, and efforts to motivate staff responsible for civil registration.

375. A large number of round tables, discussions and inter-ministerial meetings were held, although no tangible results can be pinpointed.

376. In the sphere of foreign assistance, the French Cooperation and Cultural Action Mission offered substantial assistance for rehabilitation of the civil registration system.

#### **(b) The “judicial ruling operation”**

377. At the initiative of the Ministry of Population and UNICEF, a “judicial ruling operation” was launched in 1996/97 in the urban district of Antananarivo.

378. The authorities had noted the very poor state of civil records as regards registration of births, as well as the reluctance of families to register births, because of the great distances separating them from registration centres, or to have dealings with an administration that was overwhelmed by other concerns and demoralized by the scale of the task to be accomplished.

379. Under the operation, efforts were made to enable children who had no birth certificates to be issued with judicial rulings in place of them wherever possible. With the help of UNICEF and the participation of NGOs, families, particularly those that lived far away from civil registration centres and were unaware of the formalities to be completed, were approached; the families in question completed the requisite administrative forms and took their children who had no birth certificates to courts of first instance where, despite their heavy workload, the judges regularly held hearings for the purpose of issuing judicial rulings to replace birth certificates.

380. This operation, which is to be repeated owing to the large number of children who have not yet been covered, should be taken as an example in all the major urban centres and rural areas.

**(c) Rehabilitation of the civil registration service**

381. The “judicial ruling operation” was essentially a one-off effort and highlighted the shortcomings of the civil registration service at the national level. In the first report, mention was made of the provisions of Act No. 61-025 of 9 October 1961 on civil registration documents.

382. Unfortunately, it must be noted that, during the period 1993-1998, not only was no progress made in the registration of births, despite an undeniable population boom, but there was a slow deterioration in services, in terms of both registration itself and the maintenance and checking of civil records by the judicial authorities or the appropriate administrative authorities.

383. This observation was also made previously and in the first report. However, over the past four years, the situation has markedly worsened, for reasons that are worth enumerating:

- The distance separating the population from the civil registration centres, and the failure to take steps to decentralize civil registration and bring the staff of the system closer to the public;
- Poverty, together with the deterioration in means of communication, resulting in weariness and indifference on the part of parents, most of whom opt for late registration, which becomes necessary when their children start school. In addition, although registration formalities are free of charge, travel costs added to the cost of unavoidable minor items such as stamps discourage even parents with the best of intentions;
- At the communal administration level, there was demoralization among the staff, who were in addition poorly prepared for their civil registration tasks. Elected officials at the communal level had little experience; the special delegations that replaced them during periods of crisis were quickly discouraged by the scale and nature of the task to be accomplished;
- Civil registration is a thankless and complex task that offers neither benefits nor honours, and there is a lack of status and sense of public service as compared with other more high-profile functions;

- Despite the provisions of article 26 of the Act of 9 October 1961, which requires members of the medical profession (doctors and midwives) to submit to civil registration officials in the place of birth a certificate relating to the birth, and health institutions to report the births of children delivered at such institutions, no significant progress has been observed, owing principally to the excessive number of tasks that paramedical and medical staff must accomplish, and to the remoteness of some rural areas;
- The situation regarding equipment and materials is also discouraging: visitors are not made to feel welcome; records are not properly kept; supplies are inadequate; in rural areas in particular, unsupervised and malicious staff oblige persons wishing to register to make repeated visits;
- The administrative authorities responsible for checking the civil records, who are in any case not always properly informed of the required formalities, have neither the time nor the inclination to conduct such checks. The judicial authorities (prosecutors and their deputies) themselves recognize that, because of the scale of their responsibilities and their limited numbers, they have no time to carry out periodic checks. It must also be acknowledged that the formalities for judicial checks are particularly complex and needlessly cumbersome. Yet it is through regular checks that errors can be corrected, gaps filled and corrective action ordered - all of which will help to protect the identities of children.

384. For all these reasons, the Government has decided to rehabilitate the civil registration service; it is helped in this immense task by assistance bodies, particularly the French Fonds de solidarité prioritaire (formerly the Fonds d'aide et de coopération).

385. This rehabilitation may cover three areas: enforcement of the law, training of civil registration officials and improvement of their working conditions.

386. First, the rehabilitation of civil registration involves enforcement of the Act itself. Mention has already been made of the declarations of birth covered by article 26 of the Act; however, it is too often forgotten that declarations of birth can be made by close relatives, anyone who was present at the birth, or the person in whose house the delivery took place. This provision should underpin a campaign to mobilize the family and all friends and relatives in the village or neighbourhood. The declaration of birth, which is an act designed to protect the identity of the child, is not only a parental duty: it is a civic duty.

387. Article 28 requires anyone who has found a newborn child to report the fact to the civil registration official for the place where the discovery took place. A clarification should be added concerning the nature of this statement. In fact, two documents need to be drawn up. A report containing all the information concerning the circumstances in which the child was discovered is prepared by the civil registration official, who places it in the register of births. This document can be communicated only to the child concerned, the child's known parents or other relatives, or the child's guardian or legal representative if he or she declares himself or herself to the prosecutor. The second document, by contrast, is a genuine birth certificate bearing only the name of the person declaring the birth, the sex of the child, his or her apparent age and the first name and surname given to the child by the civil registration official.

388. This procedure seems complicated. It was designed both to give the child an identity and to keep the birth confidential vis-à-vis third parties. The child can use the record of the discovery to try to find his or her real parents. Although little use is made of these provisions, they preserve the child's identity and at the same time protect an important element of the child's private life: the confidentiality of his or her birth.

389. In the context of the rehabilitation of the civil registration service, some provisions that are too often ignored have been pinpointed. Article 29 of the Act, for example, provides that "declaring the birth of an illegitimate child is equivalent to recognizing the child if the declaration emanates from the father himself". This provision gives the child not only an identity but also a filiation.

390. Civil records have, regrettably, disappeared (as a result of fire, a natural disaster that destroyed the premises of the civil registration centre, and the removal of some entries from a register). Articles 47 et seq. of the Act relate to formalities for the reconstitution and rectification of civil registration documents; article 55 stipulates that, if a civil record held in accordance with the law is modified or destroyed while another remains intact, or if the persons concerned can produce authentic copies of the records that have disappeared, the total or partial reconstitution of the register can be ordered following a simplified judicial procedure.

391. Articles 60 to 64 of the Act provide for the issue of a family record book when a marriage is registered. It has been observed that, owing to their short supply, such books are not always provided; yet they are useful in ascertaining a child's identity and for the purpose of obtaining a full or abbreviated birth certificate or a copy of an entry in the register of births.

392. It was observed that, under the influence of the Christian churches, the number of marriages registered was rising; above all, couples were regularizing their status after a long period of cohabitation. Such regularizations provide the children of such couples with the security of legitimate filiation.

393. Rehabilitation of the civil registration service must therefore include an awareness-raising campaign to encourage marriage before a civil registration official, and also a major effort to print more family record books.

394. Although the Act of 9 October 1961 is not sufficiently precise concerning birth certificates and judicial rulings by means of which certain de facto situations are recognized, it has been customary to consider these documents as substitutes for copies of entries in the register of births for certain purposes. Children who do not have a copy of the relevant entry in the register of births may be issued a birth certificate or granted a judicial ruling. The latter document may be issued only for purposes of drawing up an identity document or in preparation for marriage, despite these limitations, the document may be useful for children under 18.

395. Secondly, rehabilitation must cover the training of civil registration officials. Strictly speaking, there are no staff who specialize in the functions of civil registration officials. General training is given in the institution that trains field workers. However, such workers are very rare in remote mayors' offices or civil registration centres. In addition to general awareness-raising among all staff, training in the keeping of civil records must be provided in Malagasy. Ongoing training for elected municipal officials is also required.

396. A team of legal experts could draw up a simple handbook to replace the long and complex circulars designed principally for the major civil registration centres.

397. Thirdly, the rehabilitation of the civil registration service involves improving working conditions. A civil registration centre should be designed, even when funds are very limited, as a place where citizens know that they will be received with the respect due to persons who have come to perform a civic duty.

398. In this regard, declaring a birth must be given its full importance: it is an act from which the future young citizen originates. In the first place, the civil registration centres should be brought closer to the people. Ideally, a civil registration centre should be located in each *fokontany* (village), however, a large number of material difficulties make this impractical for the moment. Nevertheless, it would be useful to set up secondary civil registration centres to handle, at the very least, declarations of birth within the time limits established by law. The declarations would then be regularly forwarded to the main civil registration centres. The minimum time limit for the declaration should also be extended, at least in the regions where communication problems so dictate.

399. Each outposted civil registration centre should be regularly provided with registers, supplies, family record books and miscellaneous forms. This recommendation may appear superfluous for the major centres, but it is not so for remote areas or communes.

## 2. The right to a name

400. The initial report provided details on the provisions of Ordinance No. 62-003 of 26 July 1962, which stipulated (art. 1) that “every Malagasy shall bear a name, recorded in his or her birth certificate”.

401. The initial report also mentioned that changes of name, which are traditional in Malagasy custom, had been made subject to a judicial procedure in order to reduce their frequency.

402. Essentially, it was the wish of legislators, who anticipated the drafters of the Constitution in this respect, that children’s names should remain attributes of their personality and should be permanent elements of their identity. In that spirit, opportunities for changing names have progressively been reduced, and it is now required that a name be specified in the birth certificate.

403. While progress has been made in this area after 36 years of application in Madagascar’s principal cities and large villages, study of the situation since the first report was prepared shows that Malagasy legislation is encountering obstacles originating in the shortcomings of the civil registration service, and also in traditions.

404. There is no need to reiterate the shortcomings of civil registration and the efforts being made to rehabilitate the system; however, the persistence of customs must be emphasized: the name declared to the civil registration authorities is not always considered to be a permanent attribute of the child’s identity and personality. Since the child’s personality, according to

ancestral beliefs, changes on the occasion of the events that mark his or her life, custom allows this name to be modified. The events that give rise to a traditional change of name are of various kinds:

- It may be the death of an old and respected person in the family group, whose name is given to the child even though the child has an official name that was registered at birth; a happy event may have deeply affected the life of the family, leading the parents to give the child a name different from his or her registered name; a visit to the village by a famous person may lead the parents to name their child after that person;
- The child's life is punctuated by events that are assigned such importance that they lead to a change of name: the first haircut, the unexpected birth of a younger sister or brother, the child's first steps, success in an examination, recovery after a serious illness, circumcision and so on. In all these circumstances, whether or not the birth of the child was properly registered, a new name is agreed by the family and perhaps even a wider social group and is given to the child;
- If the child happens to suffer from a malformation or physical defect or differs from his or her peers because of physical features or exceptional intelligence, he or she is given a name that is more like a nickname than a name conferred in accordance with tradition. Through a phenomenon of family consensus, this nickname is so enduring that the official name - if one has been recorded with the civil registration service - is forgotten. Conferring a nickname or a hurtful-sounding name on a malformed child or one who suffers from a physical defect, or whose filiation is not recognized by society, might be considered to violate the child's dignity and even his or her privacy.

405. It may reasonably be considered that, once a name has been agreed on by the community, the child's identity is protected. However, this special situation must be noted and must be further studied, insofar as a change of name effected in accordance with custom and tradition may run counter to the best interests of the child.

### **3. The right to a nationality**

406. According to article 7 of the Convention, a child whose birth has been registered has the right to a name, a nationality and, as far as possible, the right to know and be cared for by his or her parents.

407. In the previous report, explanations were provided on the main provisions of Ordinance 60-064 of 22 July 1960 on the Nationality Code, and subsequent amendments.

408. The provisions of the Ordinance, which have not been amended, should nevertheless be reconsidered in the light of the ways in which they have been applied as a result of new developments in society over the past five years.

409. Malagasy nationality is essentially nationality by filiation. The law grants Malagasy nationality only to persons who are from Madagascar or have a Malagasy parent or a parent who is presumed to be Malagasy. Article 11 of the Ordinance provides that "a child born in

Madagascar of unknown parents, at least one of whom may be presumed to be Malagasy, is Malagasy". To support this presumption the law adds: "The name of the child, his or her physical characteristics, the personality of the persons raising the child and the conditions in which the child came into their hands, the upbringing the child is receiving, the environment in which the child is living, inter alia, may be taken into account ... a newborn child found in Madagascar is presumed to have been born there, unless proof is found to the contrary."

410. This provision is cited because it plays a role in helping children in difficult situations who have been born to unknown parents to acquire Malagasy nationality, which is an element of their identity and personality.

411. While precise statistics are unavailable, it is noted that the number of street children whose parents are unknown is rising. It is also noted that, because Madagascar is an island, a place of transit, passage or immigration for minorities that are also increasing in number (Asians, Indians, Comorians and, recently, Africans), it is sometimes difficult to determine the origin of children born as a result of short-lived relationships.

412. It is true that, under article 10 of the Nationality Code, an illegitimate child born to a Malagasy mother is always Malagasy from birth, since in civil law "maternal filiation results from childbirth itself". In other words, when the actual fact of childbirth has been established, and the mother is Malagasy, the child is automatically Malagasy from birth, whether or not paternal filiation has been established and whether or not the father is of foreign or unknown nationality.

413. Nevertheless, in the increasingly frequent cases where the mother or the father do not make themselves known and where the actual fact of childbirth has not been established (for example, in the case of foundlings), it is important to be able to invoke legislative provisions granting a nationality to the child.

414. When an illegitimate child has a Malagasy father, the Nationality Code grants the child Malagasy nationality automatically, whereas civil law (Act of 20 November 1963 on filiation, adoption, rejection and guardianship) contains important provisions that make it considerably easier to establish natural filiation through the father. This provision of article 10 of the Nationality Code is also of importance insofar as filiation in respect of the mother has not been established, and especially when filiation is established in respect of a foreign mother: in the latter case, if filiation in respect of the mother is established in the first place, the child may claim Malagasy nationality under article 16 of the Nationality Code.

415. Legitimate children are Malagasy if born to Malagasy fathers. A child is also Malagasy if he or she is born to a Malagasy mother and a father who has no nationality or whose nationality is unknown (article 9 of the Nationality Code).

416. The singular nature of this last provision may be noted in that it does not automatically grant Malagasy nationality to a legitimate child who was born to a Malagasy mother but whose father has a known foreign nationality, obliging the child who wishes to invoke his or her mother's nationality to follow the more complex procedure of naturalization - whereas, in the spirit of Malagasy law, *jus sanguinis* should prevail in cases where one of the parents is Malagasy.

417. These various provisions have been mentioned in view of the increase in cases where children have no known parents, or where children born to unknown parents are unable to benefit from the presumptions referred to in article 11 of Ordinance No. 60-064, or where children in fact have dual nationality.

418. Special care must be taken in applying the provisions of the Nationality Code to cases of children in difficult situations who require an identity in the eyes of the law, or children undergoing judicial adoption to give them the status of legitimate children of their adoptive parents.

### **C. Protection of privacy**

419. It has already been mentioned above that, since the Convention has been incorporated into Malagasy law, the young citizen enjoys the protection provided by the Constitution of Madagascar.

420. Article 16, paragraph 1, of the Convention guarantees protection of the privacy of the child: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation".

421. How is protection against arbitrary or unlawful interference ensured? The answer to this question is given by article 13 of the Constitution, which provides that:

"Everyone shall be assured the inviolability of his or her person, his or her domicile and his or her correspondence.

"No search may take place except under law on the written order of the competent judicial authority, except in cases of flagrante delicto.

"No one may be prosecuted, arrested or detained except in cases determined by law, according to the forms prescribed by law."

422. As the guarantor of human rights and fundamental freedoms, the State provides protection for the family and its individual members.

423. There is a special text for the protection of the child: Ordinance No. 62-038 of 19 September 1962 on the protection of childhood. The Ordinance has already been mentioned above.

424. The special importance that the State attaches to the protection of children is made clear in the first article of this Ordinance, which provides that "the child occupies a privileged place within the family: he or she is entitled to material and psychological security that is as complete as possible".

425. In order to enforce these rights, which are guaranteed to all citizens, particularly children, all violations of such rights are punishable by law.

426. Thus, attacks on a person's physical integrity violation of domestic privacy or of correspondence, and attacks on honour or reputation by defamatory utterances are covered and



punishable under the Criminal Code. The child victim may be represented in judicial proceedings by his or her parents, or any other person having authority over him or her, with a view to obtaining compensation for damage caused. Children placed in a reception or treatment centre by a court decision enjoy the same protection provided by Ordinance No. 62-038 and the protection provided by Malagasy law. Thus, they have the right to receive care, education, visits or correspondence, and have access to information.

427. In cases where a minor commits a crime or an offence, it is prohibited to display his or her picture in public, in order to preserve his or her honour.

428. The Ordinance also provides that information shall be secret and that the trial shall be held in camera.

429. Unfortunately, the strict application of the law is hindered by certain media practices that require more vigorous responses from the authorities, or protection measures on the part of NGOs, particularly with a view to safeguarding and protecting children.

430. The audio-visual communication media and the press are currently developing at an extraordinary pace. At the same time, the authorities, justly concerned at offences defined as “paedophilia”, have promulgated an act (considered below in the section dealing with the right of children to physical integrity) that has attracted the attention of the media, which are eager to broadcast or publish, on the pretext of providing information, brief reports of incidents, televised reports and sensational news containing images that offend against public decency and which involve minors of both sexes, who are usually victims.

431. Such information is not only punishable by law (generally, no precautions are taken to disguise or conceal the identity of the victims) but they violate the dignity, privacy, reputation and honour of the minors concerned. The authorities and civil society should, certainly, take steps to ensure greater respect for information ethics in the best interests of the child.

#### **D. Access to information**

432. According to article 17 of the Convention, “States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”.

433. The initial report referred to the state of the texts governing young people’s access to performances, and monitoring of publications. In essence, the report stated that, since the provisions of the Convention were actually being applied, the State was the guarantor of the freedoms of communication and the press. The only restrictions imposed were respect for the rights and freedoms of others and the need to maintain public order.

434. Article 11 of the Constitution provides that everyone, including young citizens, “has the right to information ... Conditions of freedom of information and its responsibility shall be determined by law and by codes of professional ethics”. The initial report also mentioned that, in addition to legal provisions, it was necessary to bear in mind various elements of a social

nature, which can be summarized as follows. These measures, which have been proposed by the Convention to States parties, consist in improving the media intended for children. Such media should be socially and culturally useful to children.

### **1. Measures recommended by Madagascar**

435. Since the provisions of the Conventions are being applied, Madagascar is the guarantor of the freedoms of communication and the press. This guarantee is contained in article 10 of the Constitution. Information is free in Madagascar. Article 11 of the Constitution stipulates that “information in all its forms shall not be subject to prior restraint”. The only restrictions on these freedoms are respect for the rights and freedoms of others and the need to maintain public order.

### **2. Unequal access of children to information**

436. Although the text provides that the freedoms of opinion, expression, communication and the press are guaranteed to everyone, there is a difference between the relatively small number of children from more or less well-off families and the great majority of children who come from disadvantaged segments of society.

437. Children who are more or less privileged have easier access to information because they are able to travel and visit foreign cultural centres. Moreover, they have the means to obtain books, newspapers, radios, video cassettes and so forth, and they know at least one foreign language. Most children are almost completely deprived of information, have a low school-enrolment rate and do not know any foreign language, which poses an obstacle to their access to information.

438. The State is making efforts to provide children with appropriate information. Every year, the Ministry of Population, the Ministry of Culture and Information and the Ministry of Justice, together with UNICEF, hold round-table discussions, demonstrations and meetings between young people with a view to providing them with information and contributing to their social, spiritual and moral well-being. Sometimes there are radio or television broadcasts for children.

439. At the international level, certain Malagasy cities and high schools have been twinned with foreign cities and high schools. There are exchanges of information, works and know-how between the young people of these schools; this helps them to develop their personalities and abilities or competence.

440. Information does not only bring benefits. Some information is harmful to good moral standards.

### **3. Protection against harmful information**

441. The State protects children against information that is harmful to good moral standards. The publication of newspapers and periodicals likely to disrupt the public order or jeopardize national unity or constitute an affront to decency is formally prohibited (Ordinance No. 75-015 of 7 August 1975).

442. Article 473 of the Criminal Code punishes persons who display, or cause to be displayed, in public places posters or images that are contrary to decency.

443. However, it is primarily up to parents to raise their children properly and provide for their education and development in order to prepare them to assume the responsibilities of life. In this regard, it should be recalled that article 21 of the Constitution provides that “the State shall protect the family in order to ensure its full development, as well as mothers and children through legislation and appropriate social institutions”.

444. Article 23 of the Constitution complements these provisions by declaring that “every child has a right to instruction and education for which the parents shall be responsible and their freedom of choice shall be respected”.

445. Finally, article 26 states that “everyone has the right to participate in the cultural life of the community, in scientific progress and in the resulting benefits”.

#### **4. The new context**

446. Over the past five years, a new context has emerged in the field of providing information to young people: new laws have given particular importance to education and communication systems.

447. Act No. 90-031 of 21 December 1990 on communication was mentioned very briefly in the initial report. The Act guarantees freedom of expression and the press and governs communications bodies and the media. It states that the responsibility of the press is to report every event or fact that may be of interest to the public or which may contribute to its education.

448. Article 14 of the Act establishes a High Commission on Communication, which is responsible for monitoring the advertising, videogram and cinematographic activities of radio and television stations.

449. The new social phenomenon at the time of the initial report was that, in the 1990s, precisely at a time of civil unrest, the number of private radio and television stations increased, and the press increased rapidly. The development of audio-visual means accelerated, and the 1990 act on communication took on new importance.

450. It should be noted that Act No. 90-031, which is still in force, contains important provisions that protect children and young people.

451. Article 39 of the Act provides that “films of a pornographic nature, films advocating violence and racism, films prejudicial to good order, public safety and the peace [and] films that are morally or physically disturbing shall not be shown to the public, either free of charge or for a fee”.

452. Article 59 provides that “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.”

453. Offences to public decency committed by the press are punished under article 80, which also punishes the dissemination or exhibition of obscene drawings, engravings, paintings, emblems or images.

454. Because of the rapid expansion of the audio-visual media, Ordinance No. 92-039 of 14 September 1992 on audio-visual communication was promulgated. The Ordinance contains provisions that deserve attention.

455. Article 17 makes the High Audio-visual Council responsible, among its other functions, for “ensuring protection of children and teenagers in the programming of broadcasts by an audio-visual communication enterprise”.

456. Article 61 prohibits the public production of pornographic videograms or films, or videograms or films that may be prejudicial to national unity, public order, public safety and the peace.

457. Article 114 prohibits the publication by audio-visual or any other means, of any information, whether consisting of all text or all illustration, concerning the identity of persons under 18 years of age who have left their parents, guardian or the person or institution responsible for their custody or to whom or which they were entrusted.

458. Obviously, all these provisions are essentially repressive. However, they are complemented by the aforementioned provisions of the Constitution concerning the duty of both the State and the relevant institutions of civil society to ensure the intellectual development and cultural promotion of the community and of every individual.

459. Moreover, Act No. 94-033 of 13 March 1995 establishing general guidelines for the education and training system contains important instructive recommendations concerning the objectives of education: respect for the rights of the person, the consideration of humanist values, preparation of individuals for an active life that is integrated into social, economic and cultural development, respect for Malagasy culture and the teachings of universal civilization, implementation of a national linguistic policy that provides for primary education in the mother tongue, the modernization of the mother tongue, and the study of foreign languages.

460. In addition to these principles concerning education and information, there have been remarkable developments in the field of communication concerning environmental protection.

461. In the new context of cultural expansion, the dramatic increase in audio-visual communication, and the rapid accession of the well-off to the Internet, it is easy to understand the interest that children have in reading, watching television and listening to various radio stations. In remote villages, families make efforts to obtain radios. In small or medium-sized towns, the spread of regional television broadcasting stations has led to the rapid increase in the number of television sets and of provincial broadcasts.

462. Moreover, it is surprising that there has been no rise in school enrolment to match this expansion of the media. This finding leads to the conclusion that, in spite of the rapid expansion of written or audio-visual communication networks, a large number of children, most of whom are struggling to survive or are in particularly difficult situations, in isolated or enclosed rural areas, do not have access either to information or even to schools.

463. Social inequalities among children have therefore worsened and the risks of marginalization or even exclusion have increased for categories of children who should nevertheless be covered by the provisions of the Convention.

### **E. Right to physical integrity**

464. Article 37, paragraph (a), of the Convention provides that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

465. It seemed more convenient to consider the application of this provision at the same time as that of article 19, concerning protection against ill-treatment, and that of article 34, concerning violence and sexual exploitation. (According to the general guidelines regarding the submission of periodic reports (CRC/C/58), these various provisions should have been treated separately.)

466. In order to avoid repetition, it was considered preferable to include attacks on the physical integrity of children under the same heading, using a multidisciplinary (social, economic and legal) approach and in an effort to synthesize subjects that have received broad public attention thanks to international organizations, particularly UNICEF: ill-treatment, sexual abuse and child labour.

467. This will also provide an opportunity to discuss new developments in family and social life, which has been seriously affected by the economic crisis, poverty, the rise in violence and the loss of moral references and values.

468. This new context, which became particularly noticeable over the past five years, has been a source of concern to both the authorities and civil society and has given rise to responses taking the form of initiatives in the field of training and social control, or legislative reforms.

469. The following topics will be examined: ill-treatment; the expanded concept of ill-treatment; sexual abuse; and changes in attitudes, and legislative reforms.

#### **1. Ill-treatment**

470. Under this heading, consideration will be given to the causes and manifestations of violence against children and the measures taken by the State to protect them.

##### **(a) Causes and manifestations of ill-treatment**

471. The causes of violence against and ill-treatment of children are poor education or the lack of education, undernourishment and the breakdown of the family. In short, as everywhere else, poverty in all its aspects disrupts the system of social values.

472. Poverty leads parents to believe that their children are the main source of their “suffering”. Children’s exclusion from compulsory education and their being forced to beg and their ill-treatment by their parents are merely the consequences of this state of pauperization.

473. Let us take, as an example, the case of the province of Antananarivo, which has 3,601,127 inhabitants, including 1,258,446 school-age children, of whom 225,984 have never attended school, 387,163 have dropped out of school and 645,199 attend school.

474. Out of a sample of 246 school-age children, 71.7 per cent attend school and 28.3 do not attend - or have never attended - school. For the latter category, there are many reasons for not attending school:

- Lack of money 48.5 per cent
- Imprisonment 7.4 per cent
- Need to work 11.8 per cent
- Illness 8.8 per cent
- Invalidity 8.8 per cent
- Laziness 7.4 per cent
- Pregnancy 2.9 per cent
- School failure 1.5 per cent
- Ill-treatment by teacher 2.9 per cent

Children who do not attend school become street children.

475. The country's socio-economic situation should be taken into account in any attempt to come to grips with the problem: between 75 and 80 per cent of the population live below the poverty line. In an extremely pauperized country, the population's priorities are different from those of a rich country. In Madagascar, any means are used to meet basic needs. Children are a legitimate and normal source of income. There are, therefore, many complex situations in which children seem to be ill-treated, but this is not always the perception of the people around them. Such situations include sexual abuse, abuse of child labour and child servants who are victims of exploitation, sexual abuse and confinement.

476. In general, the victims of such violence are young girls in the provinces whom their parents "sell", or give up for adoption, to well-off city dwellers or foreigners; children and teenagers who live in and make their living from, the street with their families; children and teenagers who live in the street and who take their "salaries" back to their families every week, street children ill-treated by the police or certain adults; minors and young adults who work as prostitutes, and children subjected to domestic violence.

477. The harshness of life also has a negative effect on parent-child relations because populations weakened by difficult socio-economic conditions have a greater tendency to become individualists, and the application of the principle of solidarity is no longer evident. This results in family breakdowns, the cause of "mental violence" against children. Mental violence results in emotional disorders.

478. "Cultural violence", such as the murder or rejection of children born on an unlucky day is beginning to disappear in Madagascar. In the daily life of the population of the city of

Antananarivo, this phenomenon has almost disappeared. However, the rejection, or even murder, of twins in the Mananjary region (south-eastern Madagascar) is currently the subject of a discussion between traditionalists and intellectuals in that region.

479. Generally, an ill-treated child is a child who has physically suffered from deliberate violence or the voluntary refusal of his or her parents or of the adults responsible for him or her to provide care.

480. A study on violence against children was carried out on the initiative of the Ministry of Population and UNICEF. It covers the year 1998 and contains the following information.

481. The reply to the question "Have you ever been hit?" is alarming mainly because no less than 93.4 per cent of the children surveyed responded in the affirmative (313 out of 335), while only 6.6 per cent (22) said that they had never been hit.

482. The frequency distribution for the 283 replies is as follows:

• Every day	14	4.9 per cent
• Every week	46	16.3 per cent
• Occasionally	91	32.2 per cent
• Rarely	130	45.9 per cent
• Other	2	0.8 per cent

It is clear that violence is not a daily phenomenon and that, in 78.1 per cent of the cases, it is infrequent. It nevertheless remains that 4.9 per cent of the children questioned are hit every day, and 16.3 per cent every week.

483. The violence occurs most often (76.8 per cent) in the family, where it is used by mothers and fathers, then by the extended family, and also by brothers, fathers-in-law and husbands (12.2 per cent):

• Mother	49.5 per cent
• Father	27.3 per cent
• Extended family	5.5 per cent
• Brother	4.8 per cent
• Father-in-law	1.3 per cent
• Husband	0.6 per cent

484. However, ill-treatment is also committed by adults (prisoners, dormitory monitors), educators (teachers, scout leaders) or persons who are supposed to hold a position of authority

(policemen, nurses) in 6.6 per cent of the cases (led by teachers, with 4.5 per cent). There were 311 respondents, 13 (4.2 per cent) of whom replied that the ill-treatment was committed by persons whom the child did not know but who were also adults.

485. As for the reasons for the violence, in 81.3 per cent of the cases, children were hit for having misbehaved (disobedience, stubbornness, insolence, laziness) [246 children out of 303 replies]; 5 per cent were struck because of poor school grades; 2.6 per cent were struck by a drunken adult (in eight cases, by a father or father-in-law); 0.7 per cent because they had not brought home any money (the case of street children); 1.7 per cent in a fight; 3 per cent because of jealousy; 0.3 per cent because of anger; and 5.3 per cent for no reason. It seems therefore that beating is considered to be part of the education process.

486. The objects used to strike children were: wooden object (37.5 per cent); belt (22.2 per cent); hand (21.7 per cent); whip (1.8 per cent); fist (1.8 per cent); and other (15.6 per cent; for example, with both hand and belt). It should be noted that the wooden object is most often a stick and, rarely, branches.

487. Apparently, the children surveyed had a different understanding of the question "Have you ever been beaten?" (instead of "Have you ever been hit?"), since the results were different: out of the 326 children questioned, 131 (40.2 per cent) said that they had been beaten and 195 (59.8 per cent) said that they had not. The replies to the other questions break down as follows:

Person who struck the child:

• Father	19.1 per cent
• Mother	9.9 per cent
• Brother	6.1 per cent
• Various	36.6 per cent
• Policeman or guardian	8.4 per cent
• Other	13 per cent
• Boss	1.5 per cent
• <i>Fokonolona</i> (local community)	3.1 per cent
• Husband	2.3 per cent

Frequency:

• Every day	4.3 per cent
• Every week	19.8 per cent
• Occasionally	25.9 per cent
• Rarely	50 per cent



Reason:

- Anger 22.5 per cent
- Drunkenness 8.3 per cent
- Disobedience, insolence 15 per cent
- Fight 21.7 per cent
- Inquiry 5.8 per cent
- Theft 9.2 per cent
- Other 17.5 per cent

Manner in which the violence was inflicted:

- Kick 25.2 per cent
- Punch 11.3 per cent
- Head 7.0 per cent
- Wooden object 13.9 per cent
- Burning 4.3 per cent
- “Beaten to death”\* 10.5 per cent
- Other 27.8 per cent

488. Poverty is considered to be the main cause of physical and mental violence. To this can be added the invasion of violent and pornographic films.

**(b) Measures to protect children against ill-treatment**

489. According to article 19 of the Convention, the State must protect the child from all forms of ill-treatment by his or her parents or by any other person who has the care of the child, and the State establishes appropriate social programmes to prevent ill-treatment and to treat victims.

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\* The term “beaten to death” means that the person was viciously beaten with the firm intention of inflicting blows that would wound his or her body, or even have after-effects (as is the case with children who are caught stealing).

**(c) Administrative measures**

490. These include protection measures taken by the Government of Madagascar through the two relevant ministries, the Ministry of Population and the Ministry of Education. In its efforts to protect the rights of the child, the Ministry of Population cooperates with UNICEF.

491. The objectives are, on the one hand, to make the population aware of the rights of the child and, on the other, to find solutions to the problems involved in protecting such rights.

492. Thus, following the recommendations of studies, meetings and other activities undertaken to deal with the ill-treatment of minors, the Ministry of Population is planning to carry out activities and take concrete steps with a view to containing the phenomenon of children at risk, children in difficult situations and ill-treated children, beginning with the cities of Antananarivo and Toamasina.

493. To this end, in November 1998 a workshop was held on the identification of "messages" to be disseminated, and training courses were organized for the persons responsible for disseminating such messages. The messages are intended for parents, authorities, social centres and NGOs.

494. A reception centre was established in 1998 in a densely populated district of the city of Antananarivo; the Ministry of Population plans to establish such centres in all districts. The purpose of the centre, to which everyone has access, is to raise awareness and provide guidance.

495. The targeted public includes children and teenagers who live in the street, children and teenagers who are victims of domestic or other violence, and children and teenagers who need psychological support or counselling.

496. The Ministry of Population does not claim to remove children from their everyday surroundings: the street. That would require long-term projects and responses adapted to each situation. Moreover, most of these children do not live alone in the streets: in many cases, their families are also with them. A policy to assist families in distress should be considered.

497. The objectives of the Ministry of Education are to improve the quality of instruction and ensure the highest possible school enrolment. To this end, the Ministry plans to use the resources that it has received from donors to reopen and renovate schools that have been shut down in order to bring schools closer to the children, and to recruit teachers.

498. The Ministry of Education is also planning measures to reduce malnutrition and establish school canteens in every public primary school.

499. Lastly, social safety nets are used to assist parents with the costs of sending their children to school; parents who are civil servants receive education grants, and notebooks and pens are sold in schools at lower prices.

**(d) Legislative measures**

500. There are laws on the protection of children and on the ill-treatment of minors. In Madagascar, children have - at least in theory - the rights set out in many Malagasy legislative texts.

**Protection of infants and young children**

501. Article 6 of the Convention recognizes that every child has the right to life and to survival.

502. Moreover, article 24, paragraph 2 (a), provides that States parties shall take appropriate measures to “diminish infant and child mortality”.

503. Article 19 protects the child against all forms of violence by parents or any other person who has the care of the child.

504. These provisions can, in particular, apply to newborns or infants who have been abandoned.

**Infanticide**

505. Criminal law punishes infanticide, which is the homicide or murder of a newborn child.

506. The definition of the crime stipulates that the infant must have been put to death at birth or at a time shortly after its birth. According to case law, a child ceases to be a newborn as soon as it has been registered with the civil registration service or when the 12-day time limit for its declaration has elapsed.

507. Moreover, infanticide occurs when the child was living when the criminal act was committed. It matters little whether or not the infant was born viable.

508. These elements take on importance in the determination of the penalty incurred: murder is punishable by death and homicide by forced labour for life.

509. Article 302 of the Criminal Code provides that the mother, whether principally responsible for, or an accomplice in, the murder or homicide of the newborn child, may be sentenced to forced labour for a specific period or for life. However, this provision, which favours the mother, cannot be applied to her accomplices. The attitude of legislators towards mothers can be explained by the special circumstances that often accompany infanticide.

**Child abandonment or exposure**

510. Abandonment is the desertion of the child.

511. These offences are covered by articles 349 et seq. of the Criminal Code. Those who have exposed or abandoned in an isolated place, or have had others expose or abandon in an isolated

place, a child or incapable person, who is unable to protect himself or herself owing to his or her physical or mental state, shall be punishable by a prison sentence of between one and three years and a fine of between FMG 25,000 and FMG 225,000.

512. Child exposure involves a very young child who is not capable of moving.

513. Desertion involves an older child who is capable of moving and who is intentionally left in a state of abandonment.

514. Article 349 of the Criminal Code stipulates that the victim can be a child or an incapable person who cannot protect himself or herself owing to his or her physical or mental state.

515. The law severely punishes such actions by distinguishing the places where the child has been abandoned or exposed: in an isolated place or in a public place. Punishment is relatively severe in cases where a child has been abandoned in an isolated place, depending on the consequences suffered by the child.

516. An aggravating personal circumstance of between two and five years' imprisonment and a fine of between FMG 25,000 and FMG 450,000 is applied if exposure was the result of action by the parents of the child or of any of the child's ascendants or of the person exercising authority over the child or who was entrusted with the care of the child (article 350 of the Criminal Code).

517. If there has been a violation of the child's physical integrity - illness or incapacity lasting longer than 20 days - the maximum punishment is applied and an aggravating personal circumstance is provided if the violation was committed by the child's parents or one of its ascendants.

518. If the child has acquired a permanent disability, or has been mutilated or crippled, a prison sentence and an aggravating circumstance are incurred if those responsible are ascendants or guardians. If the child dies, the penalty for murder is incurred.

519. Article 352 of the Criminal Code covers abandonment of a child in a non-isolated place. The concept of "non-isolated place" is applied very broadly by the courts. Punishment is less severe but is aggravated by the degree of harm to the child or the identity of the perpetrators.

### **Violation of the freedom of the child**

520. Young children are exposed, more than others, to criminal acts intended to deprive them of their liberty for reprehensible purposes.

521. Articles 35 and 36 of the Convention provide that it is the duty of States parties to prevent "the abduction of, the sale of or traffic in children for any purpose".

522. The Criminal Code of Madagascar contains scattered provisions that cannot always be easily synthesized. For example, a clear distinction should be made between provisions concerning very young children looked after by a nanny or placed in another person's care, and older children who are capable of reasoning and, if necessary, reacting in self-defence and who allow themselves to be kidnapped or corrupted.

523. Article 345 of the Criminal Code punishes those guilty of kidnapping or concealing a child, abducting a newborn, substituting a child or attributing a child to a woman who has not given birth.
524. The penalty is imprisonment. However, if it is proven that the child has survived, the penalty is a prison term of between one month and five years.
525. If it is proven that the child has not survived, the penalty is a prison term of between six days and two months.
526. The last paragraph of article 345 provides that a prison term is incurred by persons who were responsible for a child and who do not bring him to the persons who have the right to claim him or her. This paragraph is included in the provisions concerning the kidnapping and concealment of a child or the abduction of a newborn, the substitution of a child and the attribution of a child.
527. The offences thus committed are both offences that violate the personality and freedom of the child and violations of the regulations concerning civil status.
528. Article 348 of the Criminal Code punishes persons entrusted with the care of a child under 7 years of age who bring the child “to a home”. This article, which reproduces the wording of a provision of the French Criminal Code, has little application in Madagascar.
529. Articles 354 et seq. of the Criminal Code punish the kidnapping of minors and make a distinction between kidnapping involving fraud or violence and kidnapping that does not involve either fraud or violence.
530. As a general rule, kidnapping of a minor through the use of fraud or violence is punishable by between 5 and 10 years’ imprisonment.
531. Aggravating circumstances: the penalty of forced labour for life is incurred if the minor kidnapped through the use of fraud or violence is under 15 years of age, or if, irrespective of the minor’s age, the guilty party obtained a ransom or intended to demand a ransom (art. 359).
532. If the kidnapping was followed by the death of the minor, the death penalty is incurred.
533. Kidnapping or corruption or any attempt to kidnap or corrupt a minor under 18 years of age, without the use of fraud or violence, is punishable by between two and five years’ imprisonment.
534. If the kidnapping or corruption is followed by the marriage of the perpetrator to the victim, prosecution is possible only upon the complaint of the persons who have the right to demand the annulment of the marriage. No sentence can be handed down until the annulment takes place.
535. Article 356 of the Criminal Code punishes the offence of failure to represent the child. This offence consists of the act of flouting a court decision concerning the custody of a minor.

The non-representation or kidnapping of a minor in disregard of a court decision is punishable by a prison term of between one month and one year and a fine of between FMG 25,000 and FMG 100,000.

536. It should be emphasized that conflicts concerning the custody of minors result in psychological and emotional instability in the child who is the subject of the dispute.

### **Protection of the child against violence and assault**

537. Articles 295 et seq. of the Criminal Code punishes murder, homicide and poisoning. Articles 309 and 311 punishes injury, wilful battery, violence and assault. These provisions are applicable when the victims have attained the age of majority or are minors over the age of 15. There are special provisions to protect victims under the age of 15.

538. In accordance with article 312, paragraph 6, of the Criminal Code anyone who wilfully injures, strikes or commits any other kind of violence or assault against the person of a child under 15 years of age is punishable by between one and five years' imprisonment.

539. Aggravating circumstances increase the severity of the penalty:

- When the criminal acts result in an illness or disability of 20 days, or if the acts were premeditated or involved a trap, the penalty is from between 3 and 10 years' imprisonment and a fine of between FMG 25,000 and FMG 100,000;
- If the criminal acts were followed by mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye, or any other permanent disability, or if they caused the unintentional death of the victim, the penalty is forced labour for a fixed period;
- If the criminal acts were committed by the lawful, natural or adoptive father or mother, or by other ascendants or any other person having authority over or custody of the child, punishment is aggravated as follows:

If there was no illness or disability that lasted more than 20 days, and no premeditation or trap, the guilty parties are punishable by between 3 and 10 years' imprisonment and, if the opposite is the case, by between 5 and 10 years' imprisonment;

If the criminal acts were followed by mutilation, amputation or deprivation of the use of a limb, blindness, the loss of an eye or any other permanent disability, or if they resulted in the unintentional death of the victim, the penalty is forced labour for life when the guilty parties are the lawful, natural or adoptive father and mother or other legally recognized ascendants;

If the criminal acts were committed with the intention of causing death, the guilty parties are liable to the same punishment as those guilty of murder or attempted murder. In such cases, the death penalty is incurred.

### Expanded concept of ill-treatment

540. It is necessary to bear in mind the current context in order to gain a better understanding of a wider approach to the concept of ill-treatment. Although this concept is still not well known among specialists in education or lawyers because of its didactic nature, it has the advantage of allowing all persons concerned to acquire a better understanding of all forms of ill-treatment, instead of adhering to a narrow legal definition.

541. The current situation in Madagascar, which has already been mentioned, may be described as follows:

- The economic crisis, the population explosion and the impact of globalization cause poverty;
- Environmental degradation leads to the deterioration of infrastructures, isolating populations, exhausting natural resources and affecting people's health and well-being, and the most vulnerable categories - which include children - are the most affected;
- The loss of references and moral values leads to a rise in violence, increased insecurity, moral degeneration and less respect for children;
- The consequences of the economic and financial crisis and the inadequacy, at all levels, of the resources available to the community are felt in the fields of public health and basic education, and in efforts to meet the living requirements of the most underprivileged social classes;
- Social disruption, which widens the gap between the privileged classes and those excluded from development, is increasing.

542. However, our objective is not to confine ourselves to a discussion of shortcomings. This report also contains a detailed description of the efforts being made by the authorities in cooperation with civil society: such efforts should result in the effective application of the Convention, in the spirit of the Constitution of Madagascar, article 21 of which provides that the State shall "protect the well-being of the family, the mother and child, by legislation and *by appropriate social institutions*". Nevertheless, awareness of the current situation makes it possible to discover many aspects and the effects of ill-treatment or maltreatment, as well as measures that can be devised and implemented to combat them.

543. A global view makes it possible to situate all forms of ill-treatment in a socio-medical, and particularly family, context. It also makes it possible to provide a better explanation of articles 19 and 37 to 39 of the Convention, the provisions of which apparently deal with several different problems that in reality are closely related:

- The need to protect the child from all forms of ill-treatment, including "mental" violence, neglect or negligent treatment, exploitation and sexual violence;

- The seriousness of such violence and ill-treatment when the child is in the family or entrusted to any other (natural or legal) person;
- The need to take measures to provide legislative, administrative, social and educational protection;<sup>3</sup>
- The inclusion of these measures in social programmes to provide assistance to children and those responsible for them;
- Preparation of prevention programmes;
- Implementation of appropriate procedures adapted to every stage of the process leading to the global solution of every case of ill-treatment (identification, reporting, referral, investigation, treatment and follow-up);
- Judicial involvement, as appropriate.

544. Article 312 of the Criminal Code has already been mentioned in connection with the consideration of criminal sanctions in the case of injuries and wilful battery of a child under 15 years of age. The same provisions also provide that two categories of reprehensible acts are punishable by the same penalties, with the same aggravating circumstances, when perpetrated on a child under the age of 15. These two categories are known in practice under the generic term “ill-treatment” and consist of actions (violence or assault) or failure to take action (wilful deprivation of food or care that compromises the child’s health).

### **Violence or assault**

545. Although violence or assault is not fundamentally different from assault and battery, legislators wanted to cover more insidious and specific acts because they leave few traces, may be frequent or even habitual, inflicting suffering on the child that leads to mental disturbances and personality disorders (burning, beating with a belt, dousing with boiling water, burning with lit cigarettes, immobilization by means of bonds, exposing the naked child in the street and to cold, and so on). Such forms of violence are also known as “physical abuse”; very often, such violence is inflicted on young children who are incapable of moving or calling out.

546. Violence can be “mental” (the term “mental violence” is used in article 19 of the Convention) and consist of all forms of excessive behaviour relating, for example, to objects to which the child is attached, verbal abuse (hurtful remarks, coarse references to a handicap, and so on). Another form of violence is deprivation of care and food; this can include unnatural parents who neglect the child or lock it up, or administrators of centres who misappropriate food intended for children or deprive children of food as a form of punishment.

547. This interpretation of article 312, paragraph 6, makes it possible to define the crime of parents who make their very young children beg: this would involve abandonment in a non-isolated place (art. 352 of the Criminal Code), violence (the child’s fear of punishment if he or she does not bring home enough money) and deprivation of care.



### **Ill-treatment in general**

548. Although they are already punishable under other provisions, acts of violence constitute ill-treatment, such as sexual violence, all forms of exploitation, abandonment, desertion and confinement.

549. Acts such as the excessive exercise of the right to inflict corporal punishment, constant humiliation, physical abuse or deprivation on a young servant, or a child considered as such, can be defined as violence and assault when the child is under 15 years of age.

550. The following conclusion can be made: ill-treatment is most often committed by parents or persons who exercise authority over the child. It is therefore difficult to ascertain the facts, and one must rely primarily on neighbours or the extended family. In this regard, the decline of solidarity and of society's willingness to react is a sad fact.

551. The action of social workers, primary schoolteachers, members of the medical profession and paramedics, who have the opportunity to observe traces of blows, injuries and suspicious fractures, can be more effective.

552. On the other hand, the role of NGOs should be decisive in the following fields:

- “Discovery” of children who are victims of ill-treatment during get-togethers and outreach activities;
- Direct contact with children in order to win their confidence and attempt to gain information about their families, their living environment and the circumstances in which they were ill-treated;
- Location of families and gaining their confidence;
- Efforts (which can take time) to convince the family to agree to a solution (the assistance of persons close to the family may be necessary);
- If necessary, recourse to a structure (police, health station, *fokontany* (village) authorities);
- When the child is in real danger, and taking account of his or her state, referral to the juvenile court judge.

553. The principal constraint arises from the difficulty of getting the family to cooperate, studying the possibility of and providing psychological and material assistance, and possibly calling for medical intervention.

554. If the removal, even temporarily, of the child from his or her family seems necessary, efforts should be made to have the family acknowledge this necessity, and the case should be referred to the children's judge.

555. There is another, well-known, constraint: the nearly universal unfamiliarity with the law and the way in which it should be applied.

556. Unless there is an obvious deficiency that justifies the removal of the child as soon as possible, the family remains the main unit of protection. Putting an end to ill-treatment consists less of relying on law enforcement, which can backfire against the child, than on finding a solution that involves several elements: immediate medical and nutritional follow-up and monitoring, possible action to remove the child, material assistance to the family but which is intended for the child.

557. The authorities responsible for maintaining order and for the activities of the criminal investigation police have not been informed of any torture, cruel punishment or treatment. The methods of monitoring the conduct of inquiries have increased, and the assistance of a lawyer has been made possible by a recent act.

558. On the other hand, attention should be drawn to verbal abuse, brutal intimidating behaviour, assault that leaves no traces, sexual molestation and even sexual abuse to which minors of both sexes are sometimes subjected during preliminary investigations.

### **Failure to assist a child**

559. When children in difficult situations, particularly children who, because of their age, physical weakness or inability to defend themselves or at least request assistance when their physical integrity is violated or when their safety is in imminent danger, are not able to assert their rights (rights to life and survival, right to protection against violence, brutality and ill-treatment), the solidarity of their community and the social reaction of conscientious citizens should be able to make up for the lack of a family unit and compensate for the deterioration of the habitual living environment.

560. In other words, once it has been informed of the ill-treatment inflicted on children or of a situation involving neglect or lack of food, the community (*fokonolona*, the extended family, informal district associations) or, more generally, any citizen conscious of his or her duty to society, particularly to the weakest members of society, should behave appropriately: in emergencies, they should have recourse to the law enforcement authorities or to a juvenile court judge, and in all cases should contact the family and, when necessary, provide immediate assistance with a view to protecting the child.

### **Existing legislation**

561. Articles 62 and 63 of the Criminal Code provide for various hypothetical situations in which society has the moral obligation to react by virtue of the solidarity created by neighbourhood and collective consciousness.

562. Article 62 concerns reporting to the administrative or judicial authorities when one is aware of a crime that has already been attempted or committed, and one has reason to believe “that the guilty parties, or one of them, would commit new crimes”.

563. This hypothetical situation would not have any direct relation to the security of minors if it were not for the provision contained in article 62, paragraph 2: the parents or close allies of the perpetrators of, or accomplices to, the crime or attempted crime cannot be prosecuted on the basis of article 62 “except in cases of crimes committed against minors *under 15 years of age*”.

564. Article 63 concerns failure to provide assistance; it does not refer explicitly to minors but, a fortiori, any minor under 18 years of age is included among the victims protected by this article.

565. What victims are protected under article 63? There are three categories of persons at risk:

- Persons threatened by a crime or offence that can violate their physical integrity;
- Persons threatened by any danger;
- Persons involved in a legal process and who are incarcerated for that reason, while a testimony could prove their innocence.

566. In these three hypothetical cases, a minor under the age of 18 whose physical security or liberty is threatened could be effectively assisted, either by a positive action to safeguard and protect those rights, or by evidence.

567. The person who is able to provide, or initiate the provision of, assistance and who of his or her own free will fails to do so may be prosecuted in accordance with the provisions of article 63 (between three and five months' imprisonment and a fine of between FMG 18,000 and FMG 750,000).

568. With regard to the criminal protection of minors, article 63 is of undeniable use, particularly when it deals with battered children and young servants subjected to physical abuse, and very young children deprived of basic care and food. Depending on the case, society's reaction should come from the neighbourhood that heard the cries, weeping or calls for help or from social workers or medical personnel or teachers alerted by the physical condition of the children.

569. There are at least two constraints:

- (i) With regard to the application of article 63, the very wording of the law reveals the legislator's hesitation between the pre-eminence of the civic duty to provide assistance and protection against abusive or erroneous interpretations that may unjustly affect the person who refrained from taking action for reasons that he or she may consider to be humanly valid: the law provides that the judge shall consider, in each case, the exact circumstances of the criminal failure to act. A person who refrained from taking action should have been in a position to prevent the danger through an "immediate act"; the person presumed guilty can always demonstrate that he or she lacked the material means to intervene immediately or request assistance because of his or her isolation or remoteness. The law provides, moreover, that the person who refrained from taking action can invoke, in his or her defence, "a risk for himself or herself or for third parties";

What should be the nature of the risk, and how can it be evaluated in the light of the failure to provide assistance? How can the presumed guilty party's awareness of the existence and the extent of the danger be assessed? A number of

questions may be raised in the current circumstances: can a neighbour who clearly hears a minor's calls for help object that, since the incident occurred at night, the state of general insecurity constitutes a danger that he does not wish to confront? A doctor refusing to go out at night can invoke not only general insecurity but also the uselessness of his intervention, which he considers that he alone can assess;

It should nevertheless be pointed out that case law is relatively severe with regard to the validity of the arguments adduced by the person presumed guilty. From this standpoint, the best interests of the child should prevail while, obviously, the pretexts of material impossibility or risk incurred are much more the result of fear, cowardice or indifference;

- (ii) With regard to social solidarity, it is certainly true that the decline of traditional values adds to the withdrawal of families as a survival tactic and diminishes society's willingness to react.

570. It should also be added that the shortcomings of community education, lack of familiarity with child protection legislation and, especially, the feeling of powerlessness that persons with the best of intentions experience in the face of indifference, passivity and the lack of basic means to respond on the part of the social and administrative services that should be responsible, if not for providing immediate assistance, at least for responding positively to every call or information coming from the community or individuals.

### 3. Sexual abuse

571. The Convention attaches particular importance to protecting children from all forms of sexual exploitation and sexual abuse, as well as to safeguarding their education and morality and thus protecting them from debauchery and sexual depravity (art. 34).

#### (a) Causes and forms of sexual abuse

572. Early sexual relations and teenage pregnancies can be considered as two forms of sexual abuse.

573. In general, sexual abuse is the result of gaps in the sex education offered to Malagasy children. Admittedly it is talked about everywhere, in schools, hospitals and churches, and everyone seems to agree that sex education is very important in combating sexual abuse. Parents, however, do not realize how important and useful it is to include sex education in their children's education. It is a taboo subject, and there is a long way to go before it can be discussed freely within the family.

574. According to one survey, 106 (42.1 per cent) out of 252 respondents considered sexuality a taboo subject, as opposed to 146 (57.9 per cent) who did not. The reasons given were that it is:

- Bad 28 (12.7 per cent);
- Prohibited 10 (4.5 per cent);
- Shameful 45 (20.5 per cent);
- Dangerous 3 (1.4 per cent).

575. About 62 per cent of children consider themselves well informed about sexuality. According to Malagasy custom, talk about sexuality complies with certain avoidance behaviours (it is discussed by people of the same sex).

**(b) Protection of minors from sexual exploitation**

576. The Malagasy Criminal Code punishes procurement, defining a procurer as a man or woman who:

- (i) In some way helps, assists or knowingly encourages the prostitution of another person or soliciting for the purposes of prostitution;
- (ii) In some form shares the proceeds of another person's prostitution or receives payments from a person who habitually engages in prostitution;
- (iii) Together with a person who habitually engages in prostitution, refuses or is unable to prove that he or she has sufficient resources to pay his or her own living costs;
- (iv) Recruits, entices or retains a person, even if that person is a consenting adult, for the purposes of prostitution or leads a person into prostitution or debauchery;
- (v) Acts as an intermediary of any kind whatsoever between persons engaging in prostitution or debauchery and the individuals taking advantage of or paying for the prostitution or debauchery of another person.

577. Article 334 of the Criminal Code punishes procurement by a prison sentence of six months to two years and a fine of FMG 300,000, without prejudice to a heavier sentence where appropriate.

578. Committing the offence on a minor is treated as an aggravating circumstance. In such cases, the offender is punished, under article 334 bis, by a prison sentence of two to five years and a fine of FMG 750,000 to 7.5 million (see the section on legislative reform below).

579. The same article (art. 334 bis, in para. 2) also punishes anyone committing an immoral act by habitually inciting, encouraging or facilitating the debauchery or corruption of young persons of either sex under the age of 21 or, even if only occasionally, anyone under the age of 16.

580. It is an offence to:

- Incite minors to debauchery (for example by organizing unwholesome gatherings intended to lead to immoral acts);
- Encourage debauchery (for example by providing premises for this purpose or offering any product that might facilitate debauchery, such as alcoholic drinks or drugs, or arranging dubious meetings between adults and minors).

581. The penalties incurred are the same as those for procurement.

582. In short, the legislator's main aim is to protect young people from all forms of corruption and immorality. However, the reality is that few cases of incitement of minors to debauchery reach the Juveniles and Vice Police (PMM) in Antananarivo, to which only six such cases were referred in 1998.

**(c) Protecting minors from sexual abuse**

583. Article 34 of the Convention sets forth the child's right to be protected from all forms of sexual exploitation and sexual abuse.

584. Malagasy law contains sufficiently strict provisions in this respect.

*Indecent assault*

585. Indecent assault involves physical contact, such as touching, and physical or mental violence.

586. The concept of non-violent indecent assault was introduced above all to protect vulnerable persons unable to defend themselves or to understand the nature or seriousness of the acts to which they are subjected.

587. Non-violent indecent assault or attempted indecent assault on the person of a child of either sex under the age of 14 is punishable by 5 to 10 years' imprisonment. Aggravating circumstances that increase the penalty include commission of the acts by an ascendant or, in general, by anyone whose position gives them moral authority over the child. In such cases, the punishment is long-term hard labour.

588. Indecent or unnatural acts (homosexual acts) committed on a person under the age of 21 are punishable by a prison sentence of between six months and three years and a fine of FMG 5,000 to 100,000.

589. Indecent assault or attempted indecent assault with violence on a child under the age of 15 is punishable by long-term hard labour.

*Rape*

590. The rape of a child under the age of 15 is punishable by long-term hard labour.

591. A person found guilty of raping a child over the age of 15 is liable to 5 to 10 years' imprisonment.

592. The number of cases of immoral acts referred to the public prosecutor at the Antananarivo court of first instance in 1996 was 498, out of a total of 16,304 cases referred to the public prosecution service; in 1997 it was 408, out of 14,973 cases referred to the service.

#### 4. Changes in attitudes and legislative reforms

593. The deterioration in the way people behave towards children leads to the conclusion that certain phenomena are on the increase: paedophilia, the use of children of both sexes in the making of shocking films or indecent photographs for private use, and sexual tourism have all made their appearance.

594. More in-depth sociological studies have been carried out, while legal analyses have made it possible to better define the problems.

595. The Criminal Code punishes reprehensible acts whose purpose and effect is to incite, encourage or facilitate the debauchery or corruption of young people of either sex. Article 334 bis (para. 2) provides expressly for the punishment of acts that habitually encourage or facilitate debauchery and corruption: in the case of children under the age of 16, such acts may even be occasional ones.

596. The vague wording of article 334 bis (para. 2) means that an effort has to be made to determine the legislator's precise intent: debauchery is first distinguished from prostitution and does not necessarily include an attempt to make a financial profit. Nor is it a question of procurement as such, which is covered by other provisions. The offence is established once the act has taken place.

597. Moreover, the Malagasy legislators retained the provisions from the Order of 5 May 1939 prohibiting "at any time, in places open to the public, soliciting in all its forms: direct or indirect proposals, walking around for long periods, standing at the same place, provocative gestures, attitudes or dress". The Order prohibits the running of brothels and bordellos. The owners of cafes, bars or lodging houses are prohibited from harbouring streetwalkers and from encouraging prostitution.

598. Administrative or criminal protection measures against debauchery and procurement are not enough to protect children in difficult situations from sexual abuse.

599. The Convention mentions quite clearly on several occasions these particular forms of offence against the person: article 19 stipulates that States parties must take all appropriate measures to protect the child from sexual abuse by anyone who has or exercises parental authority. Article 34 sets forth the right of the child to be protected from all forms of sexual exploitation and sexual abuse.

600. Malagasy law contains some strict provisions in this respect:

“Anyone who rapes a child under the age of 15 may be sentenced to long-term hard labour.

“In other cases, a person found guilty of rape or attempted rape may be sentenced to 5 to 10 years' imprisonment.

“Anyone found guilty of indecent assault or attempted indecent assault with violence on a child under the age of 15 may be sentenced to long-term hard labour.

“In other cases, the punishment is two to five years’ imprisonment.” (Article 332 of the Criminal Code.)

“Non-violent indecent assault or attempted indecent assault on the person of a child of either sex under the age of 14 is punishable by 5 to 10 years’ imprisonment. Aggravating circumstances that increase the penalty include commission of the acts by an ascendant or, in general, by anyone whose position gives them moral authority over the child (e.g. a minister of religion, a teacher or a civil servant).” (Article 333 of the Criminal Code.)

601. It can be seen that the law uses different terms depending on the nature of the acts. It should be recalled that:

- Rape involves sexual relations, or attempted sexual relations, between a person of the male sex and a minor of the female sex, perpetrated with mental or physical violence;
- Indecent assault involves physical contact, such as touching, and violence;
- The concept of non-violent indecent assault was introduced above all to protect vulnerable persons;
- In all cases of indecent assault, the sex of the perpetrator, like the absence of violence, is unimportant;
- An “indecent or unnatural act” is the homosexual act: when committed against a minor (a person under the age of 21 according to the Malagasy Criminal Code), it is punishable by six to seven months’ imprisonment (art. 331, para. 3);
- Indecent exposure (article 330 of the Criminal Code) consists of exhibiting one’s body in public or in a public place in a way that is shocking or likely to shock persons of all ages. The penalty for this is a prison term of between three months and two years (article 330 of the Criminal Code);
- The protection of minors arises only if they are witnesses to the offending act, although, in cases where there is insufficient evidence to press charges for indecent assault or even attempted rape of a minor, there may be stronger grounds for a prosecution for indecent exposure.

602. It is surprising to note the low number of cases of immoral acts recorded by the vice police. The table below, on the acts brought to the attention of the relevant department of the vice police, reveals the relatively low figures



**Sexual offences committed in Antananarivo in 1994 and 1995**

Offence	1994			1995 (January-October)		
	No. of victims	Sex	Age (years)	No. of victims	Sex	Age (years)
Rape	27	Female	3-17	42	Female	4-17
Indecent assault	19	Female	5-17	13	Female	3-16
Abduction of a minor <sup>a</sup>	89	Female	11-17	108	Female	11-17

Source: Juveniles and Vice Police (Tsaralalana).

<sup>a</sup> The legal definition of “abduction of a minor” should probably also be applicable to kidnapping accompanied by deception or violence as well as to abductions of female minors who run away to escape ill-treatment or who have been physically or mentally neglected in their usual place of abode

603. It emerges from the replies collected during the investigation (of which there were unfortunately not many, and some of these were evasive) that the main victims are female minors:

- Girls struggling to survive, for whom immoral acts (other than violence that seriously damages their physical health) are “incidents” and occasional prostitution a means of survival;
- Girls caught up in family conflicts and exposed to the behaviour of the partner of their mother or father or the person responsible for them;
- Girls who are mentally or physically neglected and who spend their days in an aggressive or degrading environment;
- Girls working as servants, forced to do difficult tasks and subjected to physical and sexual abuse by their employer or by members of the family;
- Mentally handicapped girls;
- Girls facing criminal prosecution who are subjected to sexual abuse while in detention (the acts of violence may be of a psychological nature) by those responsible for establishing the facts while respecting the child’s right to be presumed innocent and to physical safety;
- Girls placed in badly run centres;
- Working girls exposed to harassment by managers or supervisors.

604. Prevention and punishment come up against problems of various kinds:

- The over-complexity of legal definitions of offences, which are intended to extend punishment to the maximum number of reprehensible acts by giving the definition as wide a scope as possible;
- The law-enforcement officers responsible for the first steps in the prosecution are already overwhelmed by acts of increasing violence that pose a serious threat to public order in the poorest districts and they are tempted to see immoral acts as being in the nature of things and as something for families to keep an eye on, and to be settled in private or at the community level; nor do they always fully understand the nuances in the definitions of offences or know what action to take first in order to establish the facts, in the light of the nature of the complaint;
- Well-meaning persons from non-governmental organizations (NGOs), religious communities or traditional groups who are willing to intervene and help families and minors through the formalities come up against a wall of silence, mistrust or downright hostility that discourages them, despite their having the best of intentions: such behaviour is a real obstacle;
- The slowness of the inquiry and proceedings when a prosecution goes ahead;
- The attitude and defence resources of guilty parties who manage to avoid being convicted thanks to the complexities of a legal and judicial system taken straight from the law and practice of French courts;
- A complex set of sociological factors makes it more difficult to know what approach, attitude or behaviour to adopt and what solutions to propose: problems relating to offences against public decency and sexual abuse are simply not raised in public or discussed with neighbours or officials as a result of the combination of the lingering taboos on sex and strict traditions regarding incest and abstinence from sexual relations in specific cases (with close relatives, on “inauspicious days” or when they are prohibited by surviving taboos based on origin or class distinctions). In some families, a strict Christian upbringing is a strong influence, as is, paradoxically, a certain permissiveness that can be traced back as far as the oldest traditions (libations during the “turning of the bones”, wakes or circumcisions). Poverty can also affect the nature of the relations between the perpetrator of immoral acts and the victim’s family. Traditionally, the family has considered that its honour has been besmirched and that reparation must be made privately to restore the social equilibrium and cover up the scandal. Not only does this tradition persist, but reparation has become a source of income for families struggling to survive: in this case, any suggestion that a complaint should be filed or any outside assistance that would involve the courts is perceived not only as interference in the exercise of family or community prerogatives, but also as an obstacle to successful “negotiations”;

- The arrival of a child, often described as a blessing for the family whoever the father may be, is nowadays increasingly seen by the girl as a source of shame and trouble for her family, leading her to have a dangerous abortion or to abandon the newborn, and by the family as scandalous and an extra burden for the future.

### *Legislative reforms*

605. The emergence of sex tourism - a phenomenon already known in other countries - during the international tourist boom has led the authorities responsible for the police and the courts to clamp down on cases of indecent assault.

606. The Tourist Code (Act No. 95-017) stipulates that every traveller, whether they are day trippers or tourists, must abide by the laws and regulations in force and, in particular, those relating to public order, stays by foreign tourists, respect for local traditions and customs, public morals and public health. The law containing the Tourist Code is also intended to protect minors from sex tourism.

607. Act No. 98-024 of 25 January 1999 contains the amended Criminal Code provisions intended to protect minors and check falling moral standards. The main provisions are as follows:

Article 330: Any person found guilty of gross indecency shall be punished by a prison term of three months to two years and a fine of FMG 100,000 to 1 million;

The penalty shall be a prison term of one to three years and a fine of FMG 5 million to 20 million if the crime is committed in the presence of a minor;

Article 331: (1) Non-violent indecent assault or attempted indecent assault on the person of a child of either sex under the age of 14 is punishable by 5 years' imprisonment and a fine of FMG 10 million to 50 million;

(2) Indecent assault by an ascendant on the person of a minor under the age of 21, even if the child is over the age of 14, but not emancipated by marriage, shall carry the penalty set out in paragraph (1);

(3) Without prejudice to the stiffer penalties provided for in the preceding paragraphs or in articles 332 and 333 of this Code, anyone who commits an indecent or unnatural act with an individual of the same sex who is a minor under the age of 21 shall be punished by two to five years' imprisonment and a fine of FMG 10 million to 100 million;

Article 332: Anyone who commits the crime of rape or attempted rape on the person of a child under the age of 15 shall be punished with long-term hard labour;

In other cases, the person guilty of rape or attempted rape shall be punished by 5 to 10 years' imprisonment. Anyone who commits or attempts to commit indecent assault with violence on a child under the age of 15 shall be punished by long-term hard labour;

In other cases, the penalty shall be two to five years' imprisonment;

Article 333: If the guilty parties are ascendants of the person subjected to the attack, if they are among those who have authority over that person, if they are that person's teachers or paid servants or paid servants of the persons specified above, if they are civil servants or ministers of religion, or if the guilty party, whoever that may be, was aided in committing the crime by one or more persons, the penalty shall be one of life imprisonment with hard labour in the cases provided for in article 332, paragraph 1, long-term hard labour in the cases provided for in article 331, paragraph 1, and article 332, paragraph 3, and 5 to 10 years' imprisonment in the cases provided for in article 332, paragraphs 3 and 4.

608. In article 334 of the Criminal Code, the provisions that define and punish procurement have been amended so as to increase the penalties and broaden the definition. The penalty of imprisonment for six months to two years and a fine of FMG 300,000 to 3 million has been raised to two to five years' imprisonment and a fine of FMG 5 million to 50 million.

609. As far as the classification of offences is concerned, helping a procurer to account for fictitious resources and acting in such a way as to impede preventive action and inspection, assistance and rehabilitation activities designed to help persons engaged in prostitution or at risk of being led into it are now liable to prosecution.

610. Article 334 bis also increases the penalties and broadens the definitions in cases where the act of procurement relates to a minor or someone who is especially vulnerable because of their age, a disease, a physical or mental disability or pregnancy.

#### **IV. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

611. Since the publication of Madagascar's initial report, and particularly in the last five years, economic and social conditions in Madagascar have undergone some major changes, although the country's legislation has remained remarkably stable. The developments outlined below therefore concentrate much more on the fallout from the more difficult economic and social situation than on the rare legislative amendments.

612. Nevertheless, the current law has undergone some modifications that reflect developments in court practice and the way the family group has adapted to new situations.

##### **A. Parental guidance**

613. According to the Convention, it is up to parents, members of the family or community, legal guardians or other persons legally responsible for the child "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention" (art. 5).

614. The child must not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine otherwise in the best interests of the child (art. 9).

615. States parties must encourage family reunification and take all appropriate measures to combat the illicit transfer and non-return of children abroad (art. 11).
616. It is primarily the responsibility of the parents or other persons responsible for the child to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development (art. 27, para. 2).
617. In accordance with their means, State parties must assist parents or those responsible for the child to implement the child's right to material assistance and support programmes, particularly with regard to nutrition, clothing and housing (art. 27, para. 3).
618. The two parents share responsibility for the upbringing and development of the child. The best interests of the child must be their basic concern. States parties must render appropriate assistance to parents and ensure the development of institutions, facilities and services for the care of children (art. 18).
619. A child temporarily or permanently deprived of his or her family environment, or who, in his or her own best interests, cannot be allowed to remain in that environment, is entitled to special protection and assistance provided by the State. Such alternative care must be in accordance with national laws and may take the form of adoption or placement in a suitable institution (art. 20).
620. These various requirements of the Convention are generally observed in Malagasy domestic legislation, which was analysed succinctly in the initial report.
621. That analysis drew on the laws and customs governing the family.
622. In Madagascar, by tradition, the extended family has a leading role in the guidance and upbringing of children.
623. The family elder, or head of the family, passes on traditions and customs and knowledge to the child so that the latter can grow up in harmony with the traditional rules.
624. Protection is provided jointly by the parents of the child and members of the extended family.
625. In modern positive law, this tradition has been constantly upheld by the legislation in force.
626. The 1992 Constitution clearly defines the respective roles of the State and parents in the protection of the child:

“The family, a natural and fundamental part of society, shall be protected by the State; every individual has the right to found a family ... The State shall protect the family, so that it may develop freely, as well as the mother and the child, by legislation and by appropriate social institutions” (arts. 20 and 21);

“Every child has the right to schooling and education, for which the child's parents are responsible and which they are free to choose” (art. 23).

627. Meanwhile, Ordinance No. 62-038 of 19 September 1962 on child protection stipulates the following:

“The child shall have a privileged place within the family and is entitled to the fullest possible physical and psychological security” (art. 1);

“The primary responsibility for the child’s education lies with the family, which shall ensure the harmonious development of his or her personality” (art. 2).

628. Various legal provisions, such as those relating to marriage and filiation, rely on customs to designate the person responsible for the protection of the child when the parents divorce or to appoint a guardian.

629. It is clear from the aforementioned articles that the State should intervene only as a last resort in the guidance and upbringing of children.

### **1. Filiation**

630. In Madagascar, filiation is governed by Act No. 63-022 of 20 November 1963.

631. According to the provisions of this law, paternal filiation is determined either by statutory presumption or recognition of paternity, or by a court declaration.

632. Under Malagasy law, filiation may be legitimate, extramarital or adoptive.

#### **(a) Legitimate filiation**

633. Within marriage, maternal filiation is established by the act of giving birth, while paternal filiation is based on presumption (“the husband of the mother is the father of a child conceived or born during marriage”).

634. Certain categories of children are ascribed to a marriage and considered as legitimate children after certain steps have been taken to establish their status.

635. According to article 7, the following are considered legitimate:

- A child born out of wedlock whose father and mother marry after filiation has been established with regard to one of the spouses;
- A child recognized by the husband and born before his marriage to an unmarried woman, when the husband personally takes part in the act of recognition or ratifies it;
- A child born before the mother’s marriage to an unmarried man, when the husband expressly states in writing that he considers the child his own;
- A child disowned by the husband, when the mother marries the father;
- A child born to the husband, while he is married, and to an unmarried woman, when, after the child has been recognized, he later marries the mother.

**(b) Extramarital filiation**

636. When the child is born out of wedlock, maternal filiation is always established by the actual birth, while paternal filiation is established as follows:

- When the father and mother are living together and their union was celebrated according to custom but not registered, the male partner is the father of a child conceived or born during the union (art. 4);
- Paternity can be recognized by the man claiming to be the father of the child even before the child is born, either in front of a registrar or in a deed or will (art. 16);
- Paternity outside wedlock can be declared by a court (in a court declaration of paternity) in cases where:
  - The alleged father seduced the mother; or
  - The alleged father has provided for or participated in the upkeep and education of the child as a father would; or
  - Evidence is produced that the alleged father had a steady relationship with the mother during the legal period of conception (art. 23).

**(c) Adoptive filiation**

637. Legal adoption creates a tie of filiation between the adopter and the adoptee which legitimizes the child.

**2. Parental responsibility of a married couple**

638. The Convention expressly stipulates that the parents share the primary responsibility for bringing up a child. Parental responsibility has to be exercised in a number of very different areas: parents have not only to ensure that their children's basic needs are met in areas such as health, food, schooling and education, but also to protect them from all forms of violence.

639. These duties are shared between the spouses. The father, who has parental authority, is head of the family and, as such, has a duty to provide for the household's needs.

640. The mother's contribution is merely to provide additional resources. However, economic pressures force parents on low incomes to each contribute towards household costs.

**3. Responsibility of the father and mother and of persons responsible for the child by custom or by law**

641. According to Ordinance No. 62-089 of 1 October 1962 on marriage, "simply by virtue of their marriage, the spouses undertake jointly the obligation to feed, maintain, bring up and educate their children" (art. 62).

642. By taking up the exact wording of article 203 of the French Civil Code, the Malagasy legislature, in its haste to draft the most comprehensive legislation possible on marriage before a registrar, missed the chance to break new ground by establishing in positive law a general rule on the child's right to maintenance, schooling and education and by separating the obligation to feed and educate children from the obligations arising exclusively from marriage.

643. The child's right to maintenance, which includes "nutrition, clothing and housing" (article 27 of the Convention), and to schooling and education should really be based, not on the obligations arising from marriage, but on the act of procreation. Moreover, this is the way the obligation to bring up and look after children has always been seen in the oldest Malagasy customs and in traditional law. Indeed, regardless of the provisions of article 62 of the ordinance on marriage, Malagasy civil law contains provisions awarding "maintenance" to children born out of wedlock. For example, Act No. 63-022 of 20 November 1963 on filiation and other matters provides for the natural father to pay maintenance for the child (articles 29 and 31 of the Act).

644. Act No. 67-030 of 18 December 1967 on matrimonial regimes provides for maintenance to be granted to illegitimate children, regardless of whether they are simply illegitimate or born of adulterous or incestuous relationships.

645. With regard to family allowances for dependent children who are effectively in the care of the person receiving the allowances, both the administrative regulations for civil servants and the Code on Family Allowances for Workers in the Private Sector specify that family allowances are payable not only for legitimate children but also for legally adopted children and children born out of wedlock.

646. It might be tempting to interpret the different rights enjoyed by children in the following way:

- The parents of legitimate children, under the above-cited article 62, have a broadly defined obligation to provide for their upkeep, education and upbringing;
- The maintenance obligation for all other children, particularly children born outside a marriage held before a registrar, is much more limited than the one that applies to legitimate children.

647. Such discrimination would be quite alien to a Malagasy tradition based on local customs or practices or even on former written law. The current law, despite the restrictions in the above-cited article 62, is merely a continuation of this traditional concept: all children are equal. When the law sets forth the conditions necessary for the child's full development, it makes no distinction between the various categories into which children can be classified according to their filiation.

648. It is in the same spirit that the Convention defines the child, associating the child with both of his or her parents according to filiation ties governed by domestic law while still situating the child in a family setting. It does not discriminate in any way between different types of family (art. 5).



649. Malagasy family law operates in the same spirit: the child has a privileged place within the family, which is the main unit of protection.

#### **4. Single-parent families**

650. Under Malagasy law, marriage creates a family consisting of a father and mother who provide for the upkeep, schooling and education of their children.

651. If one parent dies or if the marital tie is broken by separation or a divorce decreed by a court, a single-parent family is created within which the parent with custody of the children has sole parental authority. This parent usually receives help from the extended family, which acts as a support structure.

652. If both parents die, or if the parent with custody of the children discharges his or her duties badly, general social mechanisms safeguard the child's best interests. By custom, it is often a close relative from the extended family who takes care of the children. In addition, the Act of 20 November 1963 regulates the transmission and exercise of the powers of guardianship.

653. In extreme cases where children are abandoned or their physical and psychological security is at risk, the juvenile court judge has the authority to order their placement in a suitable children's home. This exceptional situation will be considered in chapter VII (on special protection measures).

654. Moreover, Malagasy positive law exists side by side with tradition and custom. A family group established by virtue of a traditional union functions in the same way as the family of a married couple, but the child's situation is more precarious as the ties in a traditional union are more fragile. The establishment of filiation ties is also more complex: generally, the responsibilities related to parental authority are borne by the mother, who is closer to her children and is helped by the extended family.

655. It is mainly in cases of cohabitation or in the remaining cases of polygamy that the child's situation deserves particular attention, when the parent or the person designated by custom to exercise parental authority is incapable of performing his or her duties properly, or is too poor to do so, and the extended family is absent.

656. In such cases, the children are in a particularly difficult situation and special measures must be taken to protect them (a non-governmental charity may take responsibility for them, or they may be placed in a suitable centre run by the municipal authorities, pursuant to an administrative decision or decision of the courts).

#### **5. Changing social context**

657. The preceding paragraphs suggest that parental guidance or, in its absence, the protection of children who are deprived of their family environment or who are in a particularly difficult situation is guaranteed by custom, or else by experienced public services, juvenile court judges or civil society (e.g. associations providing protection or non-governmental charities).

658. The social context has been described on several occasions. We know that the poorest family groups are struggling to survive and that the customary forms of protection are not enough to cope with poverty and shortcomings in the social infrastructure.

659. The State and its constituent parts (decentralized authorities, municipalities, basic social services) do not on their own have sufficient resources to alleviate poverty, take care of children struggling to survive and pay for the upkeep of children placed in homes.

660. It might be suggested that, in the current context, it is up to the State, in accordance with the provisions of the Convention, to take the necessary practical steps to take charge of the most complex cases of children in difficult situations.

661. Indeed, efforts have been made by certain municipalities which have the resources: children placed in care by the juvenile court judge receive daily maintenance payments and charitable organizations are subsidized.

662. However, the concept of administrative protection needs to be broader and more ambitious, as in fact is stated in the Constitution (article 21, cited above, on the State's commitment to guarantee protection of the child through "legislation and appropriate social institutions").

663. Given the economic and social problems facing it, the Government seems generally to be:

- Withdrawing from social work and entrusting it to civil society, even though the latter is badly managed and ill-prepared;
- Concentrating its efforts on strengthened structural adjustment, the social consequences of which are far from obvious;
- Relying on aid from international institutions and on bilateral assistance.

664. There is clearly no question of returning to the outdated notion of the welfare State, but it would be better to target areas of extreme poverty and the poorest social categories: the protection and guidance of children deprived of family protection could then be better assured by a proper social and administrative protection mechanism with its own institutions.

## **B. Upheavals in the family environment**

665. Exceptional events can upset the balance of the family environment, which guarantees the child's physical and psychological security, to such an extent and so profoundly that exceptional measures need to be taken by the State in order to give the child a family environment in which he or she can again feel secure.

666. These measures take different forms depending on whether they are taken at the level of the family group, a broader social group or region, the State itself or two or more States.

667. The following exceptional circumstances are provided for in the Convention:

- Children separated from their parents (art. 9);
- The right of children and their parents to be reunited if they are forced to live in different States, to maintain personal relations and contacts when parents and children are living in different States, and the right of children and their parents to leave any country, including their own, and to return to their own country (arts. 9 and 10);
- The illicit transfer and non-return of children abroad: this arises when parents are disputing custody and the child is kidnapped or abducted, taken abroad and not returned (art. 11);
- The child is temporarily or permanently deprived of his or her family environment (art. 20);
- The child, in his or her own best interests, cannot be allowed to remain in the family environment (art. 20);
- Children abandoned by a parent who is liable to pay maintenance for them and who refuses to do so or is abroad (art. 27).

### **1. Global events**

668. A prefatory remark is in order here: it is likely that the Convention was heavily influenced by global events in Africa or Europe or, to a lesser extent, Asia and the Middle East. Inter-ethnic conflicts marked by violence and flagrant violations of human rights particularly affected the most vulnerable social units and everyone who would normally have been protected by these units: the village, the traditional local authority, the extended family, the couple and children.

669. The situation was different in Madagascar, where, during the years covered by the initial report and the second periodic report, there were no serious disturbances or interregional violence that might have led to any of the above-mentioned threats to the best interests of the child.

670. However, certain articles of the Convention are applicable to the Malagasy situation: for example, article 9 is applicable to the withdrawal of the child from an inadequate family environment in which the child is ill-treated or from one that is short of material and financial resources.

671. Articles 9 and 10 are applicable when parents of different nationalities separate and one of them leaves Malagasy territory, possibly taking one or two children, and goes back to his or her country of origin, which may be France or some other European country, a neighbouring island, Africa or the United States, to quote some real-life examples. The problems arise when there is a need to settle disputes over custody of the children, parental visiting rights or the children's return to the country of origin of their choosing.

672. Article 11 could apply to a situation in which one of the parents leaves the marital home, taking one or two children and subsequently refusing any contact with the partner who remains in the country.

673. Children temporarily or permanently deprived of their family environment, as described in article 20, may be children who have been taken away and placed in another family or in a special home for children in difficult situations pursuant to an administrative decision or decision of the courts. However, the description could also be applied to children whose families split up after a climatic disaster such as a cyclone or some event that affects all of society (as when the population moves away from a region undergoing desertification, or is driven out by famine or terrorized by gangs of looters or cattle thieves) and who are left to their own devices, temporarily lost or too weak to follow the family over long distances.

674. Admittedly, in these cases, the extended family resumes its role as a support structure and takes charge of the children, who are mostly under the direct protection of the person designated by custom (e.g. grandfather, maternal uncle or head of the extended family), but the extended family itself may find itself being split up and thus unable to perform its traditional duty to protect the children.

675. The State must then assume its responsibilities under the Constitution, while NGOs, as the representatives of civil society, must take care of abandoned children who have been placed, by a decision of the courts or at the initiative of the NGOs themselves, in homes that provide lodging and schooling to children struggling to survive for want of a family environment.

## **2. Separation from parents**

676. The applicability of article 9 of the Convention has already been mentioned. More particularly, in the case of children separated from their parents when the couple is itself in crisis and the child is deprived of parental protection, there are several categories of children who can be described as separated from their parents or deprived of their family environment:

- Children whose safety, morality, health or education are at risk;
- Abandoned or distressed children;
- Children struggling to survive.

677. Most of these children in fact elude parental control. The family, being itself in crisis, is incapable of looking after them, providing for even their most basic needs or, far less, giving them an education. While it is rare for neither parent to be there, unless they have both died, sometimes the father is sick or unstable, or the woman has been left by her husband or partner, or the father (or the mother's partner) is unemployed, alcoholic or in poor health, perhaps also violent and incapable of showing the slightest love or affection. In most cases, the extended family lives far away or prefers to keep its distance.

678. Under article 20 of the Convention, States parties must provide children deprived of their parents with suitable alternative care. This requirement is reflected in Malagasy legislation: care takes the form of placement in a foster family that is able to meet the needs of a child deprived of his or her family environment, placement in a home or adoption.

679. The children concerned are:

- Children separated from their families by a decision of the courts or because of particular family circumstances (death, abandonment), when no member of the extended family can take care of them in acceptable living conditions;
- Children taken away from their family environment for their own good (e.g. because they have been beaten or abused).

680. The State acts “to aid and assist the family in its role of natural educator of a child” at two levels:

- Through the intermediary of the ministries concerned (notably the Ministry of Population), giving children in difficult situations and street children greater access to the services necessary for their education and survival (health care, civil register, basic education);
- With the assistance of NGOs and specialized courts, within/following a special legal procedure.

681. Under article 3 of Ordinance No. 62-038 of 19 September 1962, “the State intervenes ... when the circumstances and the child’s personality appear to require it, in order to bring the minor before special courts”.

682. As this measure involves educational assistance, educational, moral and medical issues are closely intertwined with issues of a legal nature, and social workers or volunteers who enjoy the confidence of judges assist the courts in this task. Despite the prevailing economic situation, the costs of caring for a child in a home are guaranteed. This shows that the State is not prepared to neglect child protection and assistance.

683. Other categories of children are also concerned:

- Children whose health is at risk, affected or seriously damaged. Such children are not necessarily deprived of affection and care; they are often young children who are undernourished and suffering from a disease or serious health problems. It is physically impossible for the parent, or parents, to reach a hospital, or they are beyond the reach of the health-care networks. Without prompt action, the child is condemned to a slow death or will remain impaired in some way;
- Children deprived of psychological and physical security because of natural disasters. There are not many cases of this, as family solidarity comes to the fore in circumstances in which the child loses his or her “bearings”;

- Working children and street children;
- Juvenile delinquents who have committed an offence under the Criminal Code.

684. Children in these categories may need to be withdrawn from the family environment, but even when they are separated from their parents they have the right to maintain personal relations and direct contacts with their parents on a regular basis. According to the Convention, the State's role is then to ensure that family cohesion is protected in the best interests of the child.

685. The Convention also stipulates that "in all actions concerning children, whether undertaken by ... social welfare institutions, courts of law, [or] administrative authorities ... the best interests of the child shall be a primary consideration" (art. 3). Accordingly, the child should not be sidelined when decisions are being taken that affect him or her.

686. Malagasy legislation is perfectly in line with the Convention in this area. Article 10 of the above-cited ordinance permits children to take their case before the juvenile court judge if their safety is at risk.

687. The table below gives the 1997 figures for the number of neglected children and the relevant decisions of the juvenile court judges at the Antananarivo court of first instance (this court has jurisdiction over several administrative or municipal districts and is by far the busiest court in Madagascar).

#### **Protection of psychologically and physically neglected minors (1997)**

Age (years)	Cases predating 1 January 1997		Cases entered during 1997		Decisions on the placement of minors			Cases pending as at 31 December 1997	
	No. of cases	No. of minors	No. of cases	No. of minors	Placed in care of parents or legal representatives	Placed in care of a trustworthy person	Placed in care of an approved institution	No. of cases	No. of minors
Under 13	24	24	150	173	29	48	69	4	4
13-16	2	2	24	24	19	3	2	0	0
16-18	0	0	8	8	7	2	2	0	0
Total	26	26	182	205	55	53	73	4	4

### **3. Family reunification**

688. The problems concerning family reunification in Madagascar mostly relate to cases in which:

- There is a de facto separation or abandonment of the marital home by one of the spouses in a mixed marriage, which is sometimes more unstable than one between persons of the same nationality;

- In a marriage or union between Malagasy nationals, one of the parents acquires a foreign nationality or settles abroad after the couple has separated.

689. In these cases, problems may arise when there is a dispute between the parents over the custody of the child, visiting rights or opportunities for the child to have direct and regular contacts with his or her parents. If there are no bilateral agreements between the countries concerned, it can be difficult to resolve such problems in cases where officers of the courts or, more often, lawyers who have counterparts abroad fail to mediate an amicable arrangement.

#### **4. Illicit transfer and non-return**

690. The provisions contained in article 11 of the Convention rarely apply in Madagascar. However, for reasons that have already been explained (marriages with foreigners, immigration, closer relations between islands in the Indian Ocean), one might expect an increase in the number of children abducted from their family environment by a parent leaving the country to live abroad who then refuses to return the child or even to allow the child to keep in touch with the parent who remains in Madagascar.

691. If Madagascar has a bilateral agreement permitting a Malagasy court's decision to be enforced in a foreign territory, the parent whose child has been taken away against that parent's wishes may file a suit which, if successful, will be subject to the international procedure for enforcing a foreign judgement. However, the only such agreement signed by Madagascar is the French-Malagasy Agreement on Judicial Cooperation.

692. The Malagasy authorities have thus taken steps in the area of prevention. Border controls are tight when a child leaves the country. Evidence that the child's departure is lawful is obtained by a careful examination of the child's travel document (passport) and relationship with the person accompanying him or her. However, such checks are only effective when the departure is from an international airport. It is more complicated to check on unlawful departures by sea, for example on makeshift craft such as the dhows sailing between Madagascar and certain neighbouring islands such as Anjouan and the Comoros.

#### **5. Recovery of maintenance**

693. It has been explained previously that once filiation has been established between a child and the parent responsible for supporting the child, maintenance must be paid, in accordance with the child's right to maintenance, education and schooling: payment can be enforced through the courts.

694. When the parents are of Malagasy nationality and live in Madagascar, a distinction needs to be made between several possible situations:

- The parents are still married even though the marriage is in crisis: articles 60 and 62 of the Ordinance of 1 October 1962 on marriage cover the duty to support, bring up and educate children as one of the "responsibilities of marriage" to which spouses contribute according to their ability. If one of the spouses fails to fulfil his or her obligations, the other may ask a judge, by means of an application for a judicial order, for the attachment of all or part of the other partner's earnings, according to the

applicant's needs. If the applicant has de facto custody of the children, the amount of the attachment comprises the financial resources necessary for the children's maintenance;

- The recalcitrant partner is living abroad: in this case the applicant must obtain an enforcement order whereby the attachment can be enforced in foreign territory. However, the problem mentioned above arises: there must be an agreement on judicial cooperation between the two countries concerned, unless diplomatic and consular relations between them permit enforcement by mutual agreement;
- The two parents are not married to each other: a maintenance order may be enforced through the courts but, in this case, the parent taking action must prove filiation between the child and the parent who is being called upon to fulfil his or her maintenance obligation. To make it easier to prove this, the Malagasy legislature, in Act No. 63-022 of 20 November 1962 on filiation and other matters, provided for several ways to establish filiation. Mostly, these concern the father for whom there is a presumption of paternity. The mother can also file a suit to obtain a judicial declaration of paternity against the father. Filiation is also established if the father recognizes the child as his by law.

695. When the mother is of Malagasy nationality and the father of foreign nationality, but they do not form a married couple, two possible situations can be distinguished:

- If both parents live in Malagasy territory, the mother can file a suit to obtain maintenance for the child, in compliance with the rules of private international law;
- If the parent liable for maintenance lives abroad and is also a foreigner, the mother can still take action by providing evidence of paternity and applying for payment of maintenance, in accordance with the rules of private international law. Again, there is the problem of whether or not there is an agreement on judicial cooperation.

### **C. Adoption**

696. Adoption is one of the suitable alternative measures available for children deprived of their parents in Madagascar.

697. The Convention pays a good deal of attention to this subject. Its overriding concern is for the best interests of the child and its requirements are formulated with this in mind. Article 21 stipulates that States parties shall "ensure that the adoption of a child is authorized only by competent authorities ... [and] that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians".

698. The process of adoption needs to be governed by detailed regulations. The regulations established under Malagasy law are set forth in Act No. 63-022 of 20 November 1963 and Decree No. 94-272 of 19 April 1994.

699. Act No. 63-022 of 20 November 1963 provides for two forms of adoption, simple adoption and legal adoption, which differ in their procedures and consequences.



## 1. Simple adoption

700. Simple adoption has its roots in tradition and is a legal act creating a fictitious kinship that strengthens an existing kinship or tie.

701. Simple adoption imposes on the adoptive parent an obligation to feed, help and assist the adoptee.

702. It is the subject of a declaration before the registrar and requires the consent of at least one blood parent.

## 2. Legal adoption

703. Legal adoption confers on the adoptee the status of a legitimate child. The adoption order is granted by a competent court and is subject to strict conditions regarding the number of children the adoptive parent has and the age of the adoptee as well as that of the adoptive parent.

704. The conditions laid down in Act No. 63-022 are as follows:

- The adoptive parent must be at least 30 years old and must have fewer than three children;
- Children under 10 years of age who are already related to one of the adoptive parents or who have been abandoned or whose parents are unknown or deceased may be adopted.

705. Simple adoption has the advantage of being simple and flexible; as no strict conditions are attached to it, it is available to different categories of children. However, it is not very popular. Families still prefer the informal system of “godparents”, which permits a family member with no dependents, a *ray aman-dreny* (elder) or *mpiantoka* (guarantor), to raise a young relative (*taiza*) whose ties with his or her original family are intact but who is in a new environment. The uninitiated are not always able to tell the difference between the blood parent, the legal guardian, the *ray aman-dreny* and the *mpiantoka*, or distinguish the informal ties between them and the child.

706. The complex and strict conditions for legal adoption do not encourage those concerned to apply for it, and this limits its use, but its importance should not be underestimated; it can be in the best interests of the child, in that it gives him or her a real family, and of families in need because of a large number of children or poverty, in that it reduces the burden on them.

707. It should be recalled that legal adoption creates a filiation tie that confers on the adoptee the status of a legitimate child (article 54 of the Act of 20 November 1963).

708. The adoption order is granted by a court, and the judge must make it clear in the judgement that the adoption is taking place “for valid reasons and in the interests of the adoptee” (article 53 of the above-mentioned Act).

709. The general public was upset to find that this procedure was being applied to children of Malagasy nationality adopted by foreigners. It should be pointed out that the concerns expressed

have sometimes been exaggerated and are not justified by the statistics. The table below shows that the number of international adoptions is limited and has not increased from one year to the next.

#### International legal adoptions

Nationality	Number
1997	
French	89
French/German	1
Swiss	9
Belgian	17
American/Dutch	1
German	2
Dutch	1
Italian	6
French/Malagasy	1
Spanish	2
Belgian/Canadian	1
Comorian	1
French-Swiss	1
French/Belgian	1
Total	133
1998	
French	91
Chinese	2
Swiss	7
Spanish	7
British	1
Belgian	22
Italian	4
Total	134

710. The Malagasy legislature has also increased the precautions against abuse of international adoption, for fear of child-trafficking or inconsiderate behaviour by mothers who abandon their children.

711. Decree No. 94-272 of 19 April 1994 established an administrative commission to carry out a preliminary examination of decisions on applications by foreign nationals to legally adopt Malagasy children. The commission consists of representatives of the ministries of justice, foreign affairs, the interior and population.

712. Its main tasks are to:

- Centralize all applications by foreign nationals to legally adopt Malagasy children;
- Verify that the necessary documents in the legal adoption file are complete and in order;

- Issue a summary of the views expressed by commission members during consultations on the file;
- Identify, where appropriate, children ready for adoption;
- Produce an annual report on its activities for the Prime Minister and the ministers concerned.

713. Thanks to its composition and remit, the commission appears to be better placed than any other body to appreciate the appropriateness of the measures taken.

714. Malagasy legislation meets the requirements of the Convention in part, but does not offer any guarantee that children's rights will be monitored in the country where they will be living, as the relationship between children and their new (adoptive) parents is only monitored in the lead-up to adoption.

715. At the end of this administrative procedure, legal proceedings that are subject to the rules of ordinary civil law are initiated: they are brought at the request of the adoptive parent or the couple wishing to adopt and submitted to the government attorney's office, which may require the juvenile court judge to carry out an investigation.

716. The only remedy available to the parties is an appeal. The adopter or adoptive parents are under an obligation not to leave the country until the deadline for an appeal (one month) has passed.

717. In some quarters, there is continued concern about what some consider to be a procedure for exporting Malagasy children. In the same quarters, there is also some concern about the best interests of the child after the adoption decision, as the ties of filiation with the natural mother are definitively cut and legal adoption cannot be revoked on any grounds.

718. A Malagasy association that is particularly concerned with acting as a link between the family of the future adoptee and the future adoptive parents has set itself the task of checking the conditions in which the adopted child is raised in his or her new family. So far no failures have been observed among international adoptions.

719. The most sensitive problem has to do with the natural mother; both the administrative commission and the judge who delivers the adoption order must satisfy themselves that the mother is acting with full knowledge of the facts when she gives up her child. The best interests of the child must be weighed up with the utmost clarity. Although no failures have been observed among international adoptions, there has been more than one case in which the natural mother has withdrawn at the last minute before the administrative procedure gets under way, or even during the court proceedings.

## V. BASIC HEALTH AND WELFARE

(articles 6, 23, 24, 26 and 27 of the Convention)

### A. General

720. This chapter, devoted to the health of children in general and their welfare, is of particular importance. This is justified by the wide range of issues discussed, which go beyond the narrow framework of the health situation, and by the multiplicity of problems encountered during the period from 1992 to 1998.

721. An initial analysis is made of the main difficulties and the solutions which have been found for them or are being worked on. Overall, a difficult period (1992 to 1996) can be identified along with a more hopeful period from 1997 onwards.

#### 1. Sources of information

722. On the occasion of the first report and the replies submitted by the Republic of Madagascar to the additional questions posed by the Committee, reference was made to the over-abundance of sources of information, the confusion to which it gave rise, and the lack of consistency of the data provided. The situation has not basically changed, but new documents enable reliable data to be produced, and have facilitated a consolidated approach and contributed to giving more consistency to the study of somewhat mixed questions and to updating essential data as far as possible. The sources include the following:

- Demographic and health survey (DHS 1997, Ministry of Health);
- UNICEF brochure, The State of the World's Children 1998;
- Framework programme for the 1996-2000 cooperation programme (agreement between the Republic of Madagascar and UNICEF);
- Mid-term review of the UNICEF programme (1998);
- Reports prepared in the context of the MADIO project (National Institute of Statistics);
- State of the World Population 1998 (brochure concerning the activities of the United Nations Population Fund (UNFPA) in Madagascar).

723. Recourse was also had to the media; in recent years, a remarkable information effort has been observed in the media, which, not content with relating events concerning the health of mothers and children, are increasingly concerned to furnish information based on reliable documentation to the public at large. Credit is due here to the information, education and communication activities of the specialized agencies of the United Nations system and local information furnished by certain NGOs such as Médecins sans frontières or ENDA Indian Ocean.

## 2. General developments in mother and child health

724. Between 1992 and 1996, the Republic of Madagascar went through a period of political changes and economic and financial difficulties which did not always allow proper attention to be given to social problems.

725. The essential data collected from various sources on the situation of mother and child health in 1991 should be recalled at this point:

- Infant mortality rate: 94 per thousand (national data, certainly underestimated);
- Maternal mortality rate: 570 per 100,000 live births (estimate);
- 55 per cent of births are assisted (8 per cent by a doctor);
- Immunization coverage rate: 4.5 per cent;
- Principal reason for medical consultation: acute respiratory infections;
- Second reason for medical consultation: diarrhoea;
- Third reason for medical consultation: malaria;
- Prevalence of infantile tuberculosis: 2.8 per cent;
- Prevalence of maternal tuberculosis: 55 per 100,000;
- Prevalence of neonatal tetanus: 1.5 per cent in urban areas, 9.3 per cent in rural areas;
- Prevalence of contraception: 3.7 per cent;
- Prevalence of STD: between 10 and 30 per cent of the population (35 per cent of prostitutes and 30 per cent of drivers), including 320 cases of syphilis per 100,000 inhabitants and 400 cases of gonorrhoea per 100,000 inhabitants;
- Prevalence of AIDS, seropositivity rate: 4 per 10,000;
- Prevalence of anaemia: between 38 and 50 per cent of pregnant women.
- Rate of use of ORT (oral rehydration therapy): 25 per cent;
- Rate of accessibility to health centres: 65 per cent (this means that only 65 per cent of the population lives less than an hour's walking distance from a health centre);
- One out of every three deliveries (35 per cent) took place in a primary health care centre (1998, rural areas);
- Portion of the budget devoted to health: 4.5 per cent.

726. Overall, little improvement was seen during this period and constraints were considerable. For example, constraints on implementing population programmes were of several types:

- **Institutional:** the instability of the structures and the considerable mobility of the population make it impossible to carry out long-term and lasting actions in depth since this would require the resumption of awareness-raising activities and training of human resources;
- **The search for or the assertion of leadership** has always been an obstacle to the coordination and implementation of programmes;
- **The lack of resources assigned to the social sector** makes the implementation of programmes uncertain;
- **Cultural and religious factors** are not always on the side of social progress. Furthermore, prejudices to the effect that the population policy is tantamount to birth control remain very much in evidence.

Population policy aims to remove these obstacles by means of increased awareness-raising activities and through discussion with the various strata involved in or benefiting from the programmes.

727. Health coverage in health establishments has constantly proved inadequate despite efforts by the Ministry of Health. Supplies of medicines have been extremely irregular for reasons already described earlier - inadequate financial resources, deterioration of the road network, which has increased the number of areas which are cut off or inaccessible for a large part of the year, and the lack of human resources, both because of the recruitment freeze and because of the lack of motivation in remote and poorly equipped establishments or centres which remain isolated for several months every year.

728. Generally speaking, poverty and the decrease in purchasing power in the poorest families (suburban areas and deprived rural areas) also constitute increasing obstacles to access to social and medical services.

729. The effects of the Ministry of Health's programme were not yet being felt in 1996/97; the decentralization of decision-making was not yet effective.

730. As a result of bilateral assistance or action undertaken by international NGOs, however, a new, albeit timid, impetus was given to rehabilitating health instructors (the regional hospital centres of Toamasina and Toliara with the help of the French and the Japanese cooperation agencies, the Ambohimandra paediatric hospital in Antananarivo with the help of the NGO Appel, and various professional or private clinics).

731. The establishment of management committees for the primary health care units has enabled the first step to be taken in community participation.

732. A medical costs recovery system has been implemented in Toamasina and Toliara. This problem will be discussed at greater length but it can be seen at this point that the initial efforts have not given the tangible results expected. Access by indigent patients to health establishments, however, has been considerably reduced.

733. The establishment of the Sambatra pharmaceuticals procurement centre was a first important step in ensuring a better supply of essential medications, but its real impact still remains to be assessed.

### **3. Factors of stagnation or deterioration**

734. The introduction to this report mentioned such difficulties as the deterioration of road infrastructures, the decline in the quality and quantity of health establishment personnel, the deterioration of facilities and the lack of security in rural areas.

735. Coming back to demographic data, however, despite the divergence in information sources it can be calculated that since the population of the Republic of Madagascar reached 14 million in the first half of 1998, it will be 19.4 million in 2010 and 28.4 million in 2025. The population will double within 23 years if the following figures remain constant: a birth rate of 44 per 1,000, and an infant mortality rate of 96 per 1,000 live births. The population is young; 47 per cent are under 15 years of age and 3 per cent over 65 years of age. Average life expectancy is 51 years of age for men and 53 for women. The figure most commonly put forward for the urban population is 22 per cent and 78 per cent for the rural population. Where the urban population is concerned, however, this figure should be confirmed and corrected since it is certainly higher than 35 per cent if the suburban population, which it is very difficult to count, is included. It is, however, known that because of the insecurity and the loss of natural resources due in particular to fires destroying the forests, the rural population most certainly accounts for less than 65 per cent.

736. The result is a permanent need for medical care in rural areas and increased demand in urban built-up areas.

737. Attention should next be drawn to the increase in the price of medications and the worsening of poverty in the most deprived environments. Taking the sole example of the city of Antananarivo, which is by far the largest built-up area, and draws in the neighbouring rural populations, medical care on average costs FMG 20,000 in hospitals, FMG 25,500 in private medical centres, FMG 12,000 with traditional practitioners and FMG 2,800 in basic health centres. Nearly 20 per cent of the monthly earnings of the poorest households goes on financing their health expenses, while this proportion is only 4 per cent for the wealthiest households. Free access to care for all is thus a mere chimera.

738. Regarding the three projects involving cost-sharing with the population (community pharmacies in the project for support to the health districts of Mahajanga, the FIB Project/Bamako Initiative and the community pharmacies supported by Coopération suisse), cost-sharing by users of community-managed pharmacies is currently becoming generalized in the basic health centres of the six provinces.

739. In addition, a number of confessional and non-confessional NGOs have long had cost recovery systems in place. These also exist in some public hospitals with independent status (regional hospitals of Toamasina and Toliara).

740. A change in the financing of the sector is effectively taking place under the pressure of socio-economic constraints; the main new element is the direct participation of households in financing services and the participation of the community in managing the basic health centres. International aid for the health sector has gone from US\$ 1.5 per inhabitant in 1990 to US\$ 0.95 (CRESI study, 1995), while the coverage for sub-Saharan Africa is approximately US\$ 2.50 per inhabitant (World Bank: Better Health in Africa: Experience and Lessons Learned, 1994).

741. During the period 1992-1997, the essential medications policy was initiated with the definitive adoption of lists of essential medications under their generic name, by level and category of health structures on the basis of standardized flow charts, adapted to Madagascar's epidemiological profile. At the same time, a national pharmaceuticals policy was introduced to put essential medications at the disposal of all health establishments, improve access to them for the population at large, enable their rational use and introduce an adequate system for financing health, making particular use of the community (or village) pharmacies system and the cost recovery system.

742. Health coverage is inadequate for a number of reasons: quantitatively, while the peri-urban population of the most deprived target areas is increasing as a result of two factors - uncontrolled population increase and the arrival of "*mpiavy*" (emigrants) from neighbouring regions, fleeing poverty and insecurity - coverage is declining and can be estimated at one doctor per 16,000 inhabitants and one paramedic per 6,000 inhabitants.

743. Private consultancies are becoming increasingly numerous as are clinics with full or part-time general practitioners and specialists. This phenomenon, however, only concerns a clientele located in the central or residential districts, companies having agreements with such clinics, or persons who can go out of town and afford the fees charged by such establishments, which reflect their investment in supplies and equipment and qualified staff.

744. Qualitatively, the worsening of the budgetary situation, both within the State and the community, has inevitable consequences on the deterioration of buildings, equipment, infrastructures and the most basic health facilities. The supply of medicines is irregular, notoriously inadequate and often non-existent (apart from paracetamol). It is not clear where gifts of medicines and medical supplies (cotton wool, and dressings, disinfectants) end up.

745. The public authorities are endeavouring to direct health policy towards care which is at least partially fee-based; this is not an unreasonable move and is the result of careful thought followed by logical action. Nevertheless, in order to break progressively with a policy of free care, inherited from what has been called "indigenous medical assistance", accompanying measures should have been prepared and implemented to facilitate transitions and differentiate between establishments, without discrimination but taking into account the standard of living of the surrounding population. Vigorous supervision and a rational management of the use of medicines and equipment (maintenance) should be or should have been introduced; cost-sharing should provide offsetting financing for setting up reception facilities - perhaps basic but clean, constituting the minimum considered compatible with the dignity and condition of the patients.



“*Andriana ny marary*”, as the saying went among ancient doctors sworn to the priesthood (literally, “the patient is a noble”); in other words, the patient has the right to the respect and solicitude his or her state requires. Particularly if the patient is a child in a difficult situation, he or she has the right to a proper reception, in a substitute environment which meets the concerns of the Convention.

746. An accompanying measure has recently been taken; Order No. 83/7/95 of 12 October 1995 stipulates that uncooked food is to be provided to patients hospitalized in district hospitals or in consultation in basic health centres, and establishes the arrangements for the distribution of these inputs. The daily rations comprise white rice, starches and vegetables. The persons benefiting are women who have given birth and hospitalized children under 5. The food is provided raw and the family prepares it.

747. There has been no opportunity to assess the real effects of this most timely measure in association with the family or the community. It would, however, be helpful to know what administrative measures have been taken to supervise the purchase and distribution of food, and the assistance provided to facilitate its preparation, bearing in mind that families are already in the habit of providing meals for patients.

748. At the present time, there is increasing recourse to traditional practitioners: chiropractors - more dangerous than efficient - “*renin-jaza*” (matrons), “*mpimasy*”, “*mpitaiza*” and providers of “*fanafody gasy*” (traditional medicines) or “*tambavy*” (infusions).

749. The treatment administered is not necessarily harmful and traditional medicine does not always fail. The pursuit of profit, however, the generalized poverty in this environment and the unscrupulous nature of charlatans has too often caused irreparable damage (wound infections which have become gangrenous, paralysis of lower limbs due to clumsy manipulations, unknown secondary effects, infectious diseases, long and costly treatments which mask the real infection, etc.).

750. Medicinal plants can perform miracles. Their use needs to be mastered, however, plants subject to controlled sales (Malagasy Institute for Applied Research, National Centre for Pharmaceutical Research) can no longer be afforded by the poorest.

751. No form of criminal sanction can be envisaged, although offences can be identified. The remedy is to be found in a two-stage policy:

- Control of medicinal plant resources under scientific supervision; inter-ministerial Order No. 4249 of 23 November 1976, regulating the use, marketing and protection of medicinal plants, could be replaced by a text taking into account existing administrative structures, scientific progress in this field, and the dual need to manage use and processing by including an environmental dimension and to select products likely to make a real contribution at a reasonable cost to the pharmaceutical supplies of the popular pharmacies;
- A support programme for mutual benefit health structures in vulnerable urban environments; a programme of village community pharmacies could serve as reference, although to what extent is still to be assessed.

752. The weaknesses of the health programme, a cooperative effort between the Republic of Madagascar and UNICEF, should also be mentioned. It should be clarified that this is not a question of deterioration, but only of weaknesses noted during the mid-term review (1998) which have been rectified as required.

753. Three projects may be mentioned here:

**Bamako Initiative (FIB/IB)**

- Low levels of capability of health and community development personnel;
- Community participation in financing and managing health services still limited;
- Problems of the supply of basic medications because of the inability of the Salama procurement centre to meet orders;
- Inadequate quality control.

**Mother and child health care project**

**Expanded Programme of Immunization (EPI)**

- Laxity in supervisory activities;
- Lack of a social mobilization plan for routine EPI activities;
- Low level of immunization coverage;
- Lack of follow-up to periodic district meetings;
- Control of EPI management still inadequate;
- State contribution to the purchase of vaccines still inadequate (6 per cent).

**Baby-friendly Hospital Initiative (BFHI)**

- Lack of collaboration between the directors of the major hospital centres and the heads of the maternity and paediatrics services;
- Laxity of the baby-friendly hospitals;
- Difficulty of setting up support groups in the community;
- Difficulty of banning the distribution or modestly priced sale of breast milk substitutes;
- High cost of oversight of baby-friendly hospitals.

### **Control of diarrhoeal diseases (CDD)**

- Inadequate follow-up and supervision;
- Large numbers of health personnel still have doubts as to the efficiency of oral rehydration therapy;
- Community health promotion activities are only just beginning.

### **Nutrition Programme**

- Low level of accountability of the regional agents for the implementation of and follow-up to the programme.

## **4. Factors for hope**

754. Although the period 1992-1996 was marked by relative stagnation and, in some regions affected by natural disasters, a decline in resources and the deterioration of health infrastructures, there is considerable hope for the current period. It should be recalled here that in Madagascar the right to health benefits from a permanent legal and institutional framework.

### **B. Right to health**

#### **1. Existing legislation**

##### **(a) Declarations of principle**

755. The Convention stipulates the right to life and survival (art. 6), the right to a full and decent life for physically disabled children (art. 23), the right to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (art. 24), the right to benefit from social security, including social insurance (art. 26), and the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27).

756. It may be noted in article 24 that the right to health is interpreted as "the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution" and as information on the health of the environment. In conjunction with other declarations (Rio Declaration, Charter of the Malagasy Environment), these are the components of children's right to a healthy environment, the constant improvement of the framework of urban life and to city sanitation.

##### **(b) Constitution**

757. Article 19 of the Constitution stipulates that everyone has the right to health protection. The reference to "starting from conception", may give rise to questions concerning the interruption of pregnancy and abortion.

758. Article 21 gives the State an active role in the protection of mothers and children by legislation and by appropriate social institutions.

759. Article 39 recalls the duty of citizens and the State to respect and protect the environment.

**(c) Public Health Code**

760. There is a relative abundance of regulations, concerning in particular the powers of the Ministry of Health, the creation of specialized services and institutions, various committees, the organization of professions and how professional associations operate.

761. Old though it is, the basic text is still the Public Health Code (Ordinance No 62-072 of 29 September 1962), updated in December 1997.

**2. Implementation of the right to health**

762. The provisions of article 24 of the Convention are sufficiently explicit as regards activities to be carried out. They constitute the basis of the Government's programmes:

- Reduction of infant and child mortality;
- Medical assistance and health care needed for all children;
- Focus on primary health care;
- Fight against disease and malnutrition;
- Water policy and protection against the risks of environmental pollution;
- Prenatal and post-natal health care for mothers;
- Information for all segments of society concerning health, child nutrition, the advantages of breastfeeding, hygiene and environmental sanitation;
- Accident prevention;
- Development of preventive care;
- Family planning;
- Abolition of traditional practices prejudicial to the health of children;
- Recourse to international cooperation.

763. Referring back to the demographic and health study of 1997, the progress achieved must be acknowledged but also the constraints concerning certain illnesses and infections and some sectors of the health programmes.

### **Malaria**

764. The development of a national anti-malaria policy is a strong point but the constraints continue to be: the development of the resistance of *Plasmodium falciparum* to chloroquine; the high cost of medicines, which are out of reach of the majority; the difficulty of supervising and managing community clinics; an inadequate budget.

### **Tuberculosis and leprosy**

765. The strong points are the development of a national anti-tuberculosis policy, foreign assistance in the provision of tuberculosis drugs (Co-opération française), and the training of staff for the university hospitals (CHU), regional hospitals (CHR) and clinics.

766. The constraints are the inadequate resources for staff training at all levels and the difficulties of getting medicines to isolated regions.

### **STD and AIDS**

767. The strong point is the increase in the number of aware persons.

768. The constraints are the prevalence of STD and the high cost of medication, out of reach of the majority.

### **Diarrhoeal diseases and acute respiratory infections**

769. Despite the relative availability of packs of oral rehydration salts, their use is considerably restricted by the budgetary limitations of hospitals and clinics and by the difficulty of getting them to isolated areas.

### **Family planning**

770. The strong points are the considerable increase in the coverage of services provided; the improvement in dealing with young people in terms of IEC (information, education and communication); and the noteworthy increase in the number of women familiar with family planning and modern contraceptive methods.

771. It is nevertheless true that more than a quarter of women in a marital relationship (26 per cent) have family planning needs which have not been met, either in terms of limiting births (12 per cent) or spacing them (14 per cent). At the time of the survey (1997), fewer than 1 woman in 10 in a marital relationship used a modern method of contraception, demonstrating that considerable reluctance still exists in that regard.

### **Prenatal follow-up and assisted delivery**

772. The strong point is the considerable increase in the number of mothers who attend prenatal consultations.

773. The constraints are on the one hand the excessive disparities which still exist between the towns and rural areas, and on the other the level of education. This seems to be related to problems of accessibility to health centres and the inadequacy of qualified staff as a result of the recruitment freeze.

### **Nutrition**

774. The strong points are the efforts undertaken to encourage breastfeeding, particularly in the “baby-friendly” hospitals; Decree No. 96-322, which regulates the marketing of breast-milk substitutes; and assistance and collaboration from international agencies and NGOs involved in the SECALINE (Food Security and Nutrition) project.

775. The constraint is the growing poverty of the population, while food costs continue to increase.

### **Information, education and communication**

776. The strong point is that effective use has been made of all the means currently available (press, radio, mass campaigns, etc.), for combating the main causes of mortality and morbidity, for nutrition or for family planning.

## **3. Recent measures**

777. Decree No 136-97 of 23 March 1997 reorganized the health system and set out the health objectives for the year 2000.

778. The following paragraphs list the main aspects of the objectives, strategies and results expected in primary health care and reproductive health. They enable the efforts made to be measured at a time when the socio-economic context is not encouraging.

### **(a) Objectives**

779. • Reduction of morbidity and mortality levels, particularly those of mothers and children, by 2 per cent by the year 2000;
- Fertility planning so as to achieve a rate of growth of the population compatible with attaining national socio-economic objectives.

### **(b) Strategies**

#### *Primary health care and morbidity*

780. • Extension and reinforcement of specialized basic health structures and programmes;
- Development of special health education programmes;
- Reinforcement of measures to control and combat transmissible diseases.

*Reproductive health*

781. • Extension of the scope of reproductive health services (including the reproductive health of adolescents);
- Reinforced coordination of the national reproductive health programme;
  - Reinforcement of the fight against STD/AIDS.

**(c) Results expected**

*Primary health care*

782. • Reduction of the infant mortality rate, the maternal mortality rate and the children and young persons mortality rate;
- Rehabilitation of 100 health training centres;
  - Increase of immunization coverage to 80 per cent (20,000 children under 12 months of age will be targeted annually);
  - Reinforcement of the capacity of 100 health training centres for the prevention and treatment of acute respiratory infections and diarrhoeal diseases;
  - Reinforcement of NGO participation in primary health care programmes;
  - Community participation in primary health care programmes and coverage of children at risk;
  - Reduction of the incidence of morbidity and mortality of schoolchildren and students by making them responsible for their own health;
  - Responsibility for spastics and support from NGOs working in that area;
  - Reinforcement of the system of rapid diagnosis and early drug-based therapy for malaria;
  - Combating the vectors of malaria transmission;
  - Reinforcement of community participation in treating malaria;
  - Reinforcement of epidemiological tuberculosis research and surveillance;
  - Tuberculosis prevention and treatment;
  - Coverage of 75 per cent of areas exposed to plague;
  - Community participation in vector elimination;

- Establishment of epidemiological surveillance networks for plague;
- Progressive involvement of technical cooperation in all medical sectors;
- Prevention of new cases of leprosy;
- Examination of the population in contact with recorded cases of leprosy.

*Reproductive health*

- 783.
- Revision and adaptation of reproductive health texts;
  - Rehabilitation of the 400 health training centres for family planning services;
  - Incorporation of family planning in the 400 health training centres;
  - Promotion of the reproductive health of adolescent girls;
  - Increase in the contraceptive prevalence rate to 14 per cent by 2000;
  - Reproductive health awareness-training for leaders;
  - Prevention and treatment of infertility;
  - Advocacy of reproductive health, in particular spacing of births;
  - Involvement of the religious communities in the reproductive health programme;
  - Improvement of the health planning system;
  - Reinforcement of the reproductive health information system;
  - Reinforcement of health management and follow-up capacities;
  - Development of actions to prevent transmission of STD/AIDS and reinforcement of diagnosis and transfusion supervision capacity;
  - Development of fundamental research on STD/AIDS;
  - Reduction of the incidence of STD/AIDS;
  - Managing AIDS.

**(d) Bamako Initiative**

784. It was considered helpful to reproduce in full the following text of a press release from the Ministry of Health, concerning the Bamako Initiative; its aim is health for all by the year 2000 and one of its principles is the sharing of health costs.



785. In 1987, the WHO Regional Committee held its thirty-seventh session in Bamako, capital of Mali. The participants in the meeting (the ministers of health of the sub-Saharan region, including Madagascar) admitted that there has been a deterioration in the quality of service at all levels of the health system, as evidenced by a shortage of medicines in health establishments, the extremely dilapidated state of infrastructures and the lack of motivation on the part of health personnel whose numbers are already inadequate.

This is due to a lack of means together with inefficient resource management.

In view of the situation, the participants have launched the Bamako Initiative with the objective of "Health for All by the Year 2000".

In order to achieve this objective, it is essential to revitalize the district health systems in order to ensure a new impetus to primary health care and contribute to reducing maternal and infant mortality.

The principles of the Bamako Initiative are:

- Access to and availability of a minimum package of health services comprising essential medicines;
- Cost-sharing;
- Involvement of the communities in health service management.

Madagascar was one of the first countries to engage on the road to change. The Bamako Initiative has been applied in various forms. From 1992 to 1997, on the proposal of community health leaders, the basic health centres introduced a mutual benefits system, in the form of an annual contribution during harvest periods. The community decides on the rate of the annual contribution; this is the community pharmacy system or Phacom. Initially, 365 Phacoms were registered, 240 of which are currently in operation in the provinces of Antananarivo and Fianarantsoa.

This system of annual contributions has not had the expected results since medicines have been out of stock in some health centres. In addition, members may not be ill in a particular year and are therefore not motivated the following year.

In parallel with this system of annual contributions, the health authorities instituted the 1993 FIB/IB. Treatment is paid for per period of illness. A flow chart is available to health personnel. The patients pay for the full treatment with the new system. To date it is applied by 181 health centres.

Despite these changes, Madagascar's senior health authorities have observed that much remains to be done in terms of the procedure for introducing these systems; they also constitute factors of exclusion, and furthermore the rate of coverage throughout Madagascar is low.

At this rate, it will take 20 years to revitalize all the health centres 100 per cent. The objective of "Health for All by the Year 2000" will not therefore be achieved.

In its concern for fairness, good governance and better access to primary health care for the majority of the population, the Ministry of Health has set up a new system known as “Community-managed pharmacies” based on the financial participation of the users. On the basis of a survey in Marovoay Majunga in February 1998, it appears that the community-managed pharmacies have become generalized in all health establishments. The results are more than satisfactory; the numbers of patients in health establishments have increased, medicines are available, the decentralized territorial communities and the community in general have become involved in health management and the population is satisfied.

There is a need, however, for a general awareness of responsibilities since the community-managed pharmacies involve joint management and joint financing, in other words, teamwork among the health personnel, the community and the State. Awareness-raising is therefore required so that people will work together to improve the management of health establishments and health in general.

In the light of previous experiences, it is difficult to ensure the permanent availability of medicines in Madagascar’s health establishments throughout the year. The State is not able to cover all health expenses, although cost-sharing between the State and community (users) is essential in order to revitalize the health system in Madagascar.

**(e) Programme of cooperation with UNICEF**

786. Several references have already been made to this cooperation, but it seems helpful to recall the objectives achieved by the health programme in 1998:

- 132 basic health centres revitalized;
- Increase in health coverage: the rate of use of curative care is on average 35 per cent and goes up to 80-100 per cent in some basic health centres; the average effective coverage of the Extended Programme of Immunization is 50 per cent;
- The financial viability of the community financing machinery is established: the average mark-up at the basic health centres is 1.61; the level of recovery of the core expenditure of the centres is 1.38; an attempt is in progress with GTZ (German cooperation) to harmonize the approaches of community participation/financing;
- Improvement of cold chain coverage (54 per cent in 1996, 65 per cent in 1997);
- Approximately 100 per cent coverage for the 1997 immunization days;
- 50 hospitals are now “baby-friendly”;
- Improvement in the rate of exclusive breastfeeding (0-3 months ): 47.7 per cent (EDS 1992) to 61 per cent (EDS 1997).

#### 4. General health policy trends

787. Decree No 98-145 of 12 February 1998 establishes the general lines of health policy. They will be considered according to the following plan: 1. Disabled children; 2. Health and medical services; 3. Malnutrition; 4. Immunization, vaccination.

##### 1. Disabled children (art. 23)

###### (a) General considerations

788. Definition of “disability”: Any person with a congenital or acquired impairment of his or her physical or mental capacities, preventing him or her from dealing personally with all or part of his or her individual or social needs, is considered to be disabled. (*Les enfants handicapés et l'école - des enquêtes pour approcher la réalité à Madagascar*, Handicap International, 1998).

789. Three types of disability are distinguished:

- Physical or motor disabilities: sequelae of poliomyelitis, club foot, congenital and acquired malformations and spastic impairment;
- Mental disabilities: reduced intellectual capacity as a result of a genetic anomaly, an accident or a serious illness. Autistic, trisomic and “mentally retarded” persons are classified in this group;
- Sensorial disabilities: persons who are blind, partially sighted, deaf or partially deaf.

790. Physical disabilities are those most frequently encountered and noticed, since they are easy to see. Mental and sensorial disabilities, however, are less frequent since families conceal their disabled members.

791. It should be noted that no difference is made between the care of an adult and that of a disabled child, which explains why there are no accurate figures for disabled children in Madagascar.

792. Various bodies work for disabled persons, most often disabled persons' associations, support structures, charitable institutions and public establishments. Their assistance covers cultural and economic activities, sports, education and vocational training, coverage of care, hospital expenses, physiotherapy and prosthetic devices.

###### (b) Participation in social life

###### Integration in the education system

793. Ninety per cent of disabled children do not attend school; the majority are in the primary cycle. Compared with other children, their schooling is brief.

794. Generally speaking, physically disabled children follow the normal scholastic progression within the education system and have no difficulty in their integration with other children. Their disability is not an obstacle to school attendance, or only to a minor degree, apart

from problems of access and movement. They are well accepted by the school community (pupils, parents and teachers). Mentally handicapped children, however, are only integrated into the education system if they are not aggressive. Otherwise they are taken into specialized establishments. Children with sensorial disabilities also receive very little schooling.

795. There are few specialized establishments and they take a limited number of children. There is a shortage of places and the children enrolled often have a wait of two to three years before they can get in. In these specialized centres, integration is achieved through the follow-up of a child's school work and frequent care, specialized education and vocational training, or through the social and professional support of the children and their families. The instructors are given special education training.

### **Social reintegration**

796. The social reintegration of disabled children is achieved through voluntary activities in which they benefit from psycho-educational and psychological support through cultural, spiritual and economic activities (farming, sewing, knitting, basket-work, animal breeding, scouting, dance, sign language choirs, music, etc.), sports activities (table tennis, volleyball, football, handball, *pétanque*, swimming, etc.) and vocational type training and creation of income-earning activities.

797. In addition, the families of these children are directed to social centres or NGOs which can help them to understand their child's disability and provide them with financial and psychological support.

### **(c) Right to specific care and promotion activities**

798. Care for disabled children is not free of charge. A cost recovery system has therefore been implemented. The family is required to make a financial contribution, and each case is studied individually. When the family is unable to contribute to the cost, it is directed to an NGO or to a support structure which helps families to purchase orthopaedic devices, or to cover the cost of care or hospitalization, physiotherapy or functional rehabilitation.

799. Various types of training are offered to enable disabled children to benefit from adequate coverage at all levels:

- Medical personnel, physiotherapists and prosthesis manufacturers: training in the medical care to be provided, prostheses and rehabilitation, but also in awareness techniques, so that the care staff can take medical charge of disabled children while making the child's family and circle aware of the disability;
- Sports instructors so that they can support the children during specialized sports activities for disabled persons;
- Primary schoolteachers in the context of collaboration between Handicap International Madagascar, the Ministry of Secondary and Basic Education and UNICEF.

800. Increasing the awareness of children, parents and persons in charge of education (teachers and educators) and the public at large is essential for the social integration of disabled persons, and children in particular.

801. Several projects have been established, such as the puppet shows initiated by the NGO Handicap International Madagascar; organizational responsibility for this has been entrusted to AED/ACTION (former students of technical communication in the sciences/action). These shows have been put on in Antananarivo in various public primary schools, in the Akamasoa-Ambohimahitsy centre, and in the regions of Mahajanga, Roamasina, Toliara and Tolagnaro. Since 1995, the International Day of Disabled Persons has provided an opportunity to promote a group of disabled singers which tours the six provinces of Madagascar. The group sings published songs but also performs personal works and compositions.

802. It may also be noted that the cultural association of disabled persons of Madagascar has created a newspaper (*HandiJournal*).

803. It should also be recalled that Order No. 6363/93 of 10 December 1993 regulates the movement of blind persons with white sticks. Persons carrying white sticks, including accompanied minors, benefit from priority in traffic on an equal footing with the drivers of priority vehicles in service.

**(d) Legislative action**

804. Act No. 97-044 on disabled persons was promulgated in 1998 and its main provisions are set out below. In view of its recent nature and the fact that implementation has just begun, the only institution in existence is the national education centre for physically disabled children at Antsirabe. The decentralization of this structure is under study.

**Title 1**

**Definition and scope**

Article 1. The object of this Act is to ensure for all disabled persons the recognition, enjoyment and exercise by such persons or by others of all the rights granted to all citizens without distinction.

Article 2. "Disabled person" means any person with a congenital or acquired impairment of his or her physical or mental capacities which prevents him or her from personally providing for all or part of the needs of a normal individual or social life.

Article 3. A disabled person shall enjoy and exercise personally, or through a third party, the rights recognized by the Constitution, the Declaration on the Rights of Disabled Persons of the United Nations General Assembly, and the international conventions ratified by the Republic of Madagascar in respect of all citizens.

## **Title II**

### **Rights of disabled persons**

#### **Chapter 1**

##### **Right to health**

Article 4. Every disabled person has the right to enjoy and benefit from medical services and specialized re-education.

Every disabled person has the right to quality physical and mental health care.

Article 5. The State shall take the necessary measures to prevent illnesses and to ensure the exchange and circulation of information on preventive health care.

Article 6. The State shall encourage:

- The access of disabled persons to the necessary health care, to adequate psychological and functional medical treatment and to prosthetic and orthotic appliances;
- The functional and motor rehabilitation of disabled persons.

Article 7. All disabled persons shall have a detailed medical file, regularly updated.

Article 8. The State shall encourage the creation and extension of hospitals and hospices and special reception services for severely disabled persons and disabled persons who no longer have any living family.

#### **Chapter II**

##### **Right to education**

Article 9. A disabled child has as much right to learn as a normal child.

In consultation with non-governmental organizations, the State shall ensure access to adequate education for every disabled child and to recreational activities capable of ensuring his or her personal, cultural and spiritual development.

#### **2. Health and medical services**

805. Information was given in the introduction to this report on health policy, access to medical services and regional disparities. The following paragraphs will merely provide some additional information.

##### **(a) Access to medical services**

806. In the context of the decentralization of the health system, an organization has been established, based on the health districts resulting from the break-up of the former

medical districts. There are three categories of health establishments: the basic health centres, the primary health-care referral centres and the secondary referral centres.

#### *Basic health centres*

807. The term “basic health centres” covers a series of health establishments which are endeavouring to harmonize their organization and their services to the population.

808. Approximately 1,900 basic health centres operate under the Ministry of Health, in addition to approximately 100 infirmaries and army health units, 12 health centres in inter-company health organizations, 8 company clinics and some hundred non-profit-making health centres, giving a total of approximately 2,100 basic health centres or similar.

809. Characteristic of these centres is the low rate of attendance, the advanced state of dilapidation of the buildings, the inadequate, ill-adapted and antiquated equipment, the almost permanent absence of stocks of basic medicines, the inadequacy of the operating budget allocated by the State and the poor performance of the staff.

#### **Primary health-care referral centres**

810. These centres include 20 former medical and surgical hospitals, 50 former ordinary secondary hospitals from the former medical districts, 8 non-profit-making private sector hospitals and 4 private clinics. Depending on the technical facilities available to them, they take in referral cases after regular surgical operations.

#### *Secondary referral centres*

811. These centres comprise the regional hospitals and the university hospitals.

812. As regards human resources, the following figures may be noted:

- The total number of doctors (all categories) is estimated at 4,500, with 220 pharmacists and 320 dentists;
- 24 per cent of doctors serve in the public sector, compared with 34 per cent in the private sector;
- 42 per cent are out of work or underemployed;
- There are 1,635 midwives, 3,124 nurses and 1,282 nursing aides.

813. These figures were supplied by a 1995 CREDES study, which also found that approximately 65 per cent of the population lived less than 5 km from a health-care centre.

814. A 1995 study gave the following percentages for the comparative use of health services:

- Public health services: 44 per cent;
- Self-medication: 26 per cent;

- Private doctor: 17 per cent;
- Semi-public health training: 9 per cent;
- Healer: 2 per cent;
- Private health training: 2 per cent.

**(b) Medical evacuations**

815. Decree No. 95-611, which entered into force in November 1995, clarified an earlier regulation and governs medical evacuations abroad. Provision for medical evacuation only concerns serious cases requiring care and equipment which Madagascar's health establishments are unable to provide or do not possess.

816. An inter-ministerial commission gives its opinion on the basis of medical certificates and the opinions of specialists and decides whether or not it is necessary for a doctor or another person to accompany a child of seven years of age or under.

**(c) Regional disparities**

817. The general causes of regional disparities have already been studied, but it seems helpful to provide more detailed information from different sources which was not collected at the same time.

*Antananarivo*

818. The Antananarivo region and Madagascar's capital have the best health conditions and the best health indicators in Madagascar, although further efforts are worth pursuing.

819. As regards primary health care, the infant mortality rate is 80 per 1,000, and the infant and child mortality rate is 152 per 1,000 (73.3 per 1,000 and 152 per 1,000 respectively for the city of Antananarivo). Medical personnel are heavily concentrated in the capital, where health establishments are in better condition and benefit from the best means and equipment. There is a higher level of immunization coverage for children, accounting for 62 per cent of all immunizations in 1992 according to the EDS, as the 1995 INSTAT/UNICEF Multiple Indicators Cluster Survey confirms (62.6 per cent to 63 per cent in 1997 (EDS 1997)).

820. As regards reproductive health, according to the EDS, the total fertility rate in 1992 was 5.7 for the region and 3.2 for the capital, while the global contraceptive prevalence rate for women in a marital relationship was 28.7 per cent for the region and 51 per cent for the capital compared with a prevalence rate for modern contraception of 9.4 per cent for the region and 21 per cent for the capital. The average age of first cohabitation and first sexual relations is higher than the national averages (19.5 and 18.3 years of age).

821. As regards prenatal care, in 75.8 per cent of births the pregnancy was monitored by a midwife and in 15.1 per cent by a doctor, while the national averages are 68.5 per cent and 9.7 per cent, respectively.



822. As regards the place of delivery, 50 per cent of births took place in health establishments compared with a national average of 45 per cent. Where assistance during delivery was concerned, 74.5 per cent of births were attended by health personnel and 18 per cent by a traditional birth attendant compared with the national averages of 57 per cent and 31 per cent, and, in terms of capacity, 92 per cent and 7 per cent, respectively; this gives some idea of the differences in health coverage between the capital and the rest of the region.

823. With reference to post-natal care and fever, 67 per cent of children suffering from fevers in the region of Antananarivo receive health visits (70 per cent for the capital) compared with a national average of 46.7 per cent.

824. As regards access (distance) to mother and child health/family planning services, distances are shorter in the Antananarivo region (60 per cent of women travel less than 5 km for family planning services, compared with 25 per cent for Mahajanga), thus illustrating the better health-care coverage of the region, despite existing internal disparities.

825. Sexually transmitted diseases, however, have flared up in the region, because of sexual licentiousness, the unregulated proliferation of local video libraries, inadequate means of diagnosis and control, and the increase in all types of prostitution.

#### *Fianarantsoa*

826. The health problems here are serious. The regional mortality indicators, according to the EDS, are the highest in the country: the mortality rate is 117 per 1,000 compared with a national average of 93 per 1,000 while the infant and child mortality rate is 196 per 1,000 compared with 165 per 1,000 nationally.

827. Immunization coverage is below the national average with 36 per cent (for all immunizations) for infants aged 12 to 13 months, as was also confirmed by the INSTAT/UNICEF survey (35 per cent).

828. As regards reproductive health, the total fertility rate in the region is the highest in the country at 6.75 according to the 1992 EDS. The use of contraception by women in a marital relationship is 10.3 per cent (including all methods) and 1.5 per cent for modern methods, the lowest rate in Madagascar. A woman's first sexual relations take place on average at 16.3 years of age - lower than the national average; this increases the risk of pregnancy among teenage girls and the prevalence of STD.

829. Fianarantsoa is the region of Madagascar where traditional birth attendants are most used for prenatal care (16 per cent), and where medical assistance for the same care is naturally at its lowest (68 per cent compared with 78 per cent); this may increase the risk of maternal mortality if these birth attendants do not practise in a hygienic environment.

830. This is also the region with the highest percentage of home births (68.4 per cent) as against a low rate of deliveries in health establishments (31.3 per cent compared with 45 per cent nationally); 52 per cent of births are attended by traditional birth attendants.

831. For post-natal care, there is a 31 per cent rate of prevalence of fever among children under 5 years of age. There is a 48 per cent rate of hospital consultations. The prevalence of respiratory and diarrhoeal diseases and malaria is high.

*Toamasina*

832. The infant mortality rate is the lowest after the Antananarivo region (104 per 1,000) but the infant and child mortality rate is relatively high (195 per 1,000).

833. Where primary health care is concerned, as in Madagascar as a whole, there is a high prevalence of malaria and diarrhoeal, respiratory, skin and intestinal diseases and a resurgence of tuberculosis.

834. The *faritany* has 40 per cent of Madagascar's health establishments (one regional hospital, 4 CHD 2, 13 CHD 1, 7 mother and child health centres, and 373 basic health centres, of which 20 are non-operational).

835. As regards reproductive health, the average age of first sexual relations is 17 years of age and 19.4 for the first cohabitation.

836. The total fertility rate is 5.69, as for the region of Antananarivo, where the levels are the lowest in Madagascar.

837. In the *faritany* of Toamasina, the use of traditional birth attendants is the lowest after Antananarivo - 5.3 per cent for prenatal care and 22.1 per cent for assistance during delivery. Health establishments and home are equally popular for giving birth.

838. Immunization coverage is 46 per cent according to the 1992 EDS and the 1995 INSTAT/UNICEF, but was 42 per cent in 1997 (EDS 1997).

*Mahajanga*

839. The death rate and health indicators reveal an infant mortality rate of 106.8 per 1,000 for the region of Mahajanga, as for Antananarivo. The health centres are in a state of dilapidation and attendance is low. The main reason is their frequently deplorable quality (particularly reception, difficulty of access and lack of follow-up and of resources in health establishments).

840. Traditional medicine has developed to a very considerable extent, particularly in the area of Antsohihy/Port-Bergé/Madrtsara.

841. As regards reproductive health, the total fertility rate was 6.36 in 1992 (as for Antsiranana) the highest after Fianarantsoa. Sexually transmitted diseases are very prevalent. In 1993, 12 per cent of pregnant women in prenatal consultations had syphilis.

842. An increase has been observed in the use of condoms and because of AIDS the urban clinic has even distributed condoms free of charge.

843. The average age for first sexual relations is early (16), as is the age of first cohabitation. These are the earliest in Madagascar, along with those of Antsiranana.

844. Immunization coverage is the lowest in Madagascar (with Antsiranana), at 23 per cent in 1992, 33 per cent in 1995 and 16 per cent in 1997.

#### *Toliary*

845. Infant mortality (11 per 1,000) is the highest in Madagascar, as in the Fianarantsoa region, while infant and child mortality is 176.2 per 1,000.

846. The difficulty of access to clean water and the shortage of water in an arid region favour the prevalence of diarrhoeal and all waterborne diseases (bilharzia, ascariidiosis, etc.). The prevalence of leprosy, tuberculosis, goitre and food poisoning, as well as skin diseases such as scabies, is considerable.

847. As regards reproductive health, the prevalence of contraception is low and the total fertility rate stands at 6.1. Women do not often go to the health centres or the mother and child health services in view of the distances they have to travel; the result is that family planning is often neglected.

848. There is a high prevalence of STD (syphilis, gonorrhoea), extra-uterine pregnancies and sterility.

849. The average age for first sexual relations and first cohabitation is very low (15.5 and 17.2 years of age), resulting in precocious fertility.

850. Naturally, home deliveries predominate and there is frequent recourse to traditional birth attendants (59.4 per cent).

851. The rate of immunization coverage was 39.6 per cent in 1995 (INSTAT/UNICEF) and 15 per cent in 1997 (ESD 1997).

#### *Antsiranana*

852. After Antananarivo and Toamasina, the Antsiranana region has the best infant mortality rate (107 per 1,000), although it is higher than the national average of 93 per 1,000 in 1992 (EDS). The infant and child mortality rate is 181 per 1,000, a relatively high level.

853. As regards primary health care, the resurgence of diseases such as malaria, diarrhoea, respiratory infections and tuberculosis can be observed along with dental and mouth infections.

854. Health establishments lack medical personnel. The existence of taboos contributes to a failure to comply with hygiene measures and increases malnutrition.

855. As regards reproductive health, the total fertility rate was 6.36 in 1992, as in Mahajanga, which has similar levels of health indicators. Sexual relations are seen to commence very early, stimulated by sexual licentiousness and the strategic situation of the region. In addition, the phenomenon of multiple partners is very much in evidence. These are all factors which increase the risks of STD.

856. Along with Mahajanga the region registers the lowest rates of immunization coverage - 16 per cent in 1997.

857. Non-governmental organizations find it difficult to carry out their activities or to intervene in any way.

### 3. Morbidity and mortality (art. 24)

858. Morbidity is the incidence of disease in a given population, while mortality is the proportion of deaths in the population during a given period.

#### (a) Basic indicators compared to those of other countries

859. Basic indicators from reliable sources, particularly the UNICEF report *The State of the World's Children 1998*, have to be used to assess the situation of children in Madagascar, which has thus been compared to the situation in the African countries of Ethiopia, Burundi, Côte d'Ivoire and Cameroon.

860. The following table ranks countries according to the under-five mortality rate:

Country	Under-5 mortality rate	
	Rate	Rank
Ethiopia	177	16
Burundi	176	17
Madagascar	164	21
Côte d'Ivoire	150	25
Cameroon	102	51

861. The main basic indicators are given in the following table:

Country	Rank by country	Under-5 mortality rate Infant mortality rate (under 1)		Total population (thousands)		Annual No. of births (thousands)	Annual No. of under-5 deaths (thousands)	
		1960	1996	1960	1996	1996	1996	1996
Cameroon	51	264	102	156	63	13 360	539	55
Côte d'Ivoire	25	300	150	195	90	14 015	523	78
Ethiopia	16	280	177	175	113	58 243	2	506
Madagascar	21	364	164	219	100	15 353	856	105

#### (b) Child morbidity

862. The main causes of morbidity in children between zero and five years were determined on the basis of data provided by sentinel epidemiological surveillance stations (1996/97).

863. The causes of morbidity (in descending order) were determined in hospitals:

Outpatient treatment:

0-14 years

1. Acute respiratory infections (35 per cent)
2. Diarrhoea (24 per cent)
3. Suspected malaria (21 per cent)
4. Skin infections (6 per cent)
5. Oral-dental disease (3 per cent)
6. Malnutrition (2 per cent)
7. Conjunctivitis (2 per cent)
8. Urinary bilharziosis (1 per cent)
9. Intestinal bilharziosis (1 per cent)
10. Epilepsy/convulsions (1.6 per cent)

Hospitalization:

0-4 years

1. Suspected severe malaria (37 per cent)
2. Diarrhoea (36 per cent)
3. Malnutrition (14 per cent)
4. Acute bronchopneumonia (10 per cent)
5. Other acute respiratory infections (5 per cent)
6. Suspected typhoid fever (2 per cent)

5 years and over

1. Suspected severe malaria (30 per cent)
2. Pulmonary tuberculosis BK+ (13 per cent)
3. Diarrhoea (11 per cent)
4. Acute bronchopneumonia (10 per cent)

5. Malnutrition (8 per cent)
6. Other acute upper respiratory infections (7 per cent)
7. Stroke (6 per cent)

Under 5 years (Tsaralalana Children's Hospital, 1993)

1. Diarrhoea (38 per cent)
2. Acute respiratory infections (35 per cent)
3. Neurological illnesses (8 per cent)
4. Malnutrition (7 per cent)
5. Measles, pertussis, tetanus (4 per cent)
6. Malaria (3 per cent)

Outpatient treatment:

1. Acute respiratory infections
2. Diarrhoea
3. Malaria
4. Intestinal helminthiases

Toamasina Hospital (1996), medical conditions of children who have been hospitalized (0-5 years):

Infectious parasitic diseases (32 per cent):

- Diarrhoea (30 per cent)
- Malaria (30 per cent)
- Typhoid fever (13 per cent)
- Bacterial meningitis (13 per cent)
- Helminthiases (7 per cent)

Acute respiratory infections (16 per cent)

- Upper respiratory tract (86 per cent)
- Acute pulmonary diseases (14 per cent)

Neurological diseases (9 per cent)

    Febrile convulsions (92 per cent)

    Epilepsy (8 per cent)

Anaemia

Dermatology (47 per cent)

Scabies (80 per cent)

Poisoning (3 per cent)

    By petroleum (60 per cent)

Cardiology (2 per cent)

    Severe rheumatic fever (60 per cent).

864. The fact that there is no entry on “malnutrition” may seem rather surprising, but, in fact, malnutrition is of such great importance that it is dealt with in greater detail below. It is nevertheless pointed out that protein-energy malnutrition affects half of young children.

**(c) Infant mortality**

865. Finding reliable data on infant and infant-child mortality involves a problem which has already been encountered, namely, that there is a variety of sources and methods of investigation. However, infant mortality is very high and on the increase: 93 per 1,000 in 1992 and 96 per 1,000 in 1997.

866. For children under 5, the most significant figures are 153 per 1,000 in 1992 and 159 per 1,000 in 1997.

867. The following table shows figures for the entire country, as well as maternal mortality rates and assisted birth rates:

Infant mortality rates

    102.9 per 1,000 in 1992 (UNICEF)

    100 per 1,000 in 1996 (UNICEF)

    96.3 per 1,000 in 1997 (EDS 1997)

Infant-child mortality rates

    166 per 1,000 in 1994

    164 per 1,000 in 1996 (UNICEF)

    159 per 1,000 in 1997 (UNICEF)

Maternal mortality rates

570 to 600 per 100,000 live births in 1994

488 to 507 per 100,000 live births in 1997 (EDS 1997)

Assisted birth rates

57 per cent in 1992

47 per cent in 1997, including 8 per cent by a physician in 1992 and 12 per cent in 1997 (EDS 1997).

**(d) Causes of infant mortality**

868. As a general rule, infant mortality may be attributed to the following causes: diarrhoea, malnutrition, malaria and respiratory infections. On the basis of health statistics and hospital mortality data, the main causes of mortality in 1997 may be determined as follows:

Under-one mortality

0 to 1 year

- (1) Diarrhoeal malnutrition
- (2) Respiratory infections (+RA)
- (3) Malaria
- (4) Malnutrition

Newborns

- (1) Infection (57.7 per cent)
- (2) Haemorrhage (28.5 per cent)
- (3) Very premature births (12.9 per cent)
- (4) Congenital malformation (2.9 per cent) (Source: Malagasy Academy, meeting of 21 July 1994)

Infant-child mortality

- (1) Diarrhoea
- (2) Malnutrition
- (3) Malaria



- (4) Acute respiratory infections
- (5) Chronic obstructive lung disease
- (6) Pulmonary tuberculosis
- (7) Heart disease

869. Malnutrition as a cause of death will be discussed below.

#### **4. Immunization and vaccination (art. 24)**

870. As stated above, the objective of the Expanded Programme of Immunization is to achieve 80 per cent immunization coverage against six target childhood diseases: measles, diphtheria, tetanus, poliomyelitis, pertussis and tuberculosis.

##### **(a) Change**

871. From 1994 to 1997, the immunization coverage rate for selected target diseases was as follows:

##### BCG

- 77 per cent in 1994 (UNICEF)
- 87 per cent in 1995-1996 (UNICEF)
- 66 per cent in 1997 (EDS 1997)

##### DPT3

- 49 per cent in 1994 (UNICEF)
- 73 per cent in 1995-1996 (UNICEF)
- 48.4 per cent in 1997 (UNICEF)

##### Polio 3

- 49 per cent in 1994 (UNICEF)
- 73 per cent in 1995-1996 (UNICEF)
- 48.3 per cent in 1997 (EDS 1997)

##### Measles vaccine

- 51 per cent in 1994 (UNICEF)
- 68 per cent in 1995-1996 (UNICEF)
- 46 per cent in 1997 (EDS 1997)

Fully vaccinated children: 36.2 per cent in 1997

Pregnant women immunized against tetanus (two doses)

33 per cent in 1995-1996

35 per cent in 1997 (EDS 1997).

872. Despite the progress achieved since the start of the Expanded Programme of Immunization, actual coverage increased from 35 per cent in 1995 to 55 per cent in 1997 and considerable efforts will have to be made to achieve the 80 per cent immunization coverage goal.

873. There was a slight improvement compared to 1991: BCG increased from 58.4 per cent to 66 per cent; DPT3, from 43 per cent to 48 per cent; and measles, from 34.4 per cent to 46 per cent. However, 20 per cent of children (one in five) did not receive any immunization and only 31 per cent of children aged between 12 and 35 months received all immunizations before the age of 1.

874. There is an enormous difference depending on the mother's place of residence, province and level of education:

- The immunization coverage rate is much higher in urban areas (66 per cent in Antananarivo, 42 per cent in other cities) than in rural areas (34 per cent);
- While the coverage rate in Antananarivo is 63 per cent, it drops to 42 per cent in Toamasina and plummets to 19 per cent in Fianarantsoa and Mahajanga, 16 per cent in Antsiranana and 15 per cent in Toliary;
- The coverage rate is 55 per cent for mothers with secondary and higher education, but only 38 per cent for those who went to primary school and just under 13 per cent for those with no education.

875. It should therefore come as no surprise that the diseases targeted by the immunization programme continue to be prevalent. Compared to 1992, for example, there was an increase in the number of declared cases of tuberculosis, pertussis and especially measles (measles, from 2,000 to 5,765; pertussis, from 274 to 717; and tuberculosis, from 196 to 221).

876. Considerable efforts still have to be made. It may be noted that poor results were achieved during the five-year period from 1993 to 1998 in the following areas:

- Continuing inadequate immunization coverage in rural areas and in cities other than the capital;
- Obvious inadequacy in the provinces (other than Antananarivo);
- Obvious inadequacy for uneducated mothers (and even for those with primary education), thus calling for the adaptation of methods of disseminating information and of information, education and communication in general.

**(b) National immunization days**

877. Since the results were not very good, at least in some remote regions, the Government organized "National Immunization Days". Decree No. 97-657 of 7 May 1997 established the

National Immunization Days Steering Committee, which is responsible for planning and organizing the immunization days and ensuring that they take place throughout the country. It is also responsible for implementing strategies to combat poliomyelitis, in particular, but also the diseases targeted by the Expanded Programme of Immunization.

878. The first AVA (Malagasy abbreviation of “immunization days”) campaign took place in 1997. In 1998, it was held from 2 to 5 September and from 7 to 10 October, when vitamin A was also distributed.

879. When the operation was launched, it was stated that it involved the entire country and that armed forces’ health units would be called on in order to make up for the lack of immunization sites.

880. Efforts focused on the province of Antananarivo, which has 722,859 children aged between 0 and 5 years. The authorities welcomed the results achieved and the immunization coverage rate exceeded expectations. As seen above, however, there is a great difference between the province of Antananarivo and the other provinces as far as the immunization programme is concerned. Efforts will continue to be made, but, in cooperation with civil society, the competent departments would like to expand immunization activities in the provinces and especially in rural areas far from the main towns.

## **5. Malnutrition (art. 24)**

881. The importance attached to the “environment” of malnutrition is justified: the basic indicators have to be specified, the situation of children in Madagascar has to be analysed, information has to be provided on programmes to combat malnutrition and attention must be paid to malnutrition as a cause of death.

### **(a) General trends**

882. The Malagasy authorities have paid the closest attention to the worsening of malnutrition in Madagascar, taking into account factors that have already been discussed in detail. They have also reviewed current general trends in action to combat malnutrition throughout the world.

883. In this connection, attention is drawn to the foreword by the United Nations Secretary-General to the UNICEF report The State of the World’s Children:

- Malnutrition is rarely regarded as an emergency. It is invisible and yet contributes to over half of the deaths of children in the world. It affects the productivity and the capacities of entire societies;
- Malnutrition is the result of the combination of inadequate food intake and infection. Malnourished children are small and thin for their age. Their physical and mental development is compromised;
- Malnutrition is not only the result of a lack of protein and high-energy food, but also of an insufficient intake of minerals, such as iron, zinc and iodine, vitamin A and essential fatty acids;

- Children who are malnourished suffer from permanent disabilities and their immune systems are weakened; their learning ability, motivation and curiosity are considerably impaired;
- All of these negative factors contribute to reduced communication and interaction by malnourished children with their environment and the persons or institutions responsible for them;
- According to the World Declaration and Plan of Action on the Survival, Protection and Development of Children (World Summit for Children), the main goal, by the end of the century, i.e. 2000, is the reduction in severe, as well as moderate, malnutrition among under-5 children to 50 per cent of 1990 levels, and the reduction of the rate of low birth weight to less than 10 per cent;
- The types of action to be taken have to be constantly improved, in particular through the mobilization of science;
- Particular attention must be paid to women's health so that they can exclusively breastfeed their children until age 6;
- The food security of households must be guaranteed;
- Mother's milk contains all the nutrients, antibodies, hormones and antioxidants an infant needs in order to thrive. It protects the mucous membranes of the gastro-intestinal tract from diarrhoea and prevents infections of the upper respiratory tract.

**(b) Situation in Madagascar**

884. Malnutrition ranks third among illnesses treated on an in-patient basis (14 per cent) and only sixth among those treated on an out-patient basis (2 per cent). This seems to show that, outside hospitals, there is not enough concern about the detection and treatment of malnutrition, particularly as surveys (EDS 1997) have found that 48 per cent of children under 3 years of age are stunted, 40 per cent do not weigh enough and 7 per cent are wasted. Nearly one child in five is severely stunted. Stunted growth affects almost two thirds of children aged between 12 and 23 months. It is much more common in Antananarivo province (57 per cent) than in Antsiranana province (37 per cent).

885. Wasting affects 7 per cent of children aged under 3 years. The 10 to 13-month age group (12 per cent) is the most affected. The proportion of wasted children is lower in towns (5 per cent) than in rural areas (8 per cent). There is a disparity in the provinces, with 4 per cent in Antsiranana and 9 per cent in Toamasina. The educational levels of mothers also vary (5 per cent with secondary education and 8 per cent with primary education).

886. The following table compares the situation in Madagascar to that in other countries in 1997:

Country	Under-5 mortality rank	Percentage of infants with low birth weight (1990-1994)	Number of children (1990-1996) who are:			Percentage of under-5s (1990-1997) suffering from:				Total goitre rate (6-11 years) (percentage) 1985-1994
			exclusively breastfed (0-3 years)	breastfed with complementary food (6-9 months)	still breastfeeding (20-23 months)	underweight		wasting moderate and severe	stunting moderate and severe	
						moderate and severe	severe			
Cameroon	51	13	7	77	35	14	3	3	24	26
Côte d'Ivoire	25	14	62	64	-	24	6	8	24	6
Ethiopia	16	16	74	-	35	48	16	8	64	31
Madagascar	21	17	47	80	45	34	10	7	50	24

887. The following table relates to anaemia in children aged between 6 and 35 months (percentage and degree). Account has been taken of certain social and cultural statistics on mothers in particular (1997).

### Anaemia level

Characteristic	Severe <sup>a</sup>	Moderate <sup>b</sup>	Slight <sup>c</sup>	Number
Mothers age (years)				
15-24	8.0	44.5	16.3	1 037
25-34	6.7	42.0	18.4	1 140
35 or over	7.0	37.3	18.0	502
Living in				
Capital	4.1	42.8	20.1	96
Other towns	5.2	38.2	23.3	431
Urban areas	5.0	39.0	22.7	527
Rural areas	7.8	42.9	16.2	2 153
Province ( <i>faritany</i> )				
Antananarivo	2.3	34.9	17.9	826
Fianarantsoa	8.7	43.7	15.8	604
Toamasina	12.3	49.3	15.1	378
Mahajanga	11.0	44.5	15.5	354
Toliary	4.9	47.9	22.4	340
Antsiranana	11.7	48.3	21.6	178
Mother's level of education				
None	9.4	44.5	14.3	593
Primary	7.5	42.1	17.7	1 499
Secondary or over	4.4	39.6	20.1	587
Sex of the child				
Male	8.2	44.5	16.8	1 351
Female	6.2	39.7	18.3	1 329
Child's age (months)				
6-11	12.5	46.9	13.9	595
12-23	7.5	46.1	18.3	1 155
24-35	3.5	34.0	18.8	930

<sup>a</sup> Haemoglobin level under 7.0 g/dl.

<sup>b</sup> Haemoglobin level from 7.0 to 9.9 g/dl.

<sup>c</sup> Haemoglobin level from 10.0 to 11.9 g/dl.

**(c) Vitamin and mineral deficiency**

888. The surveys conducted in 1997 by the Nutritional Anthropology Department of the Antananarivo Faculty of Sciences showed that there are large calcium (-28 to -63 per cent), iron (-52 per cent in Ambohimandra), vitamin A (-50 to -68 per cent), vitamin B1 (-21 to -69 per cent) and vitamin B2 (-65 to -82) deficiencies in the food consumed in rural areas (Ambodigoavy, Tsaratanana, Ifanadiana National Park) and in the suburban part of the capital (Ambohimandra).

889. The prevalence of goitres was 15 per cent in 1997 (EDS 1997), but, since the introduction of salt iodization, 73 per cent of Malagasy households have been using iodized salt. There seems to have been an improvement in this regard, but another survey would have to be conducted to determine how much the 1990 map has changed.

890. There is also a large calcium deficiency in the food consumed in suburban rural areas (calcium is essential for bone formation and growth and the operation of the nervous system).

**(d) Government Nutritional Programme and UNICEF Master Plan**

891. This programme, which is supposed to last five years as of 1996, has two parts:

- Community-based nutrition (CBN);
- Elimination of iodine-deficiency disorders (IDD).

892. The ministries of health, agriculture and research are involved in the implementation of this UNICEF programme. The following achievements were highlighted during the mid-term review of the programme:

- Community participation, volunteerism, health official, agricultural and NGO support;
- Improvement of health/nutrition behaviour;
- Outreach strategy health activities;
- Increase in food production;
- Reduction of the malnutrition rate by 10 to 15 per cent;
- IEC support at CBN sites for nutritional education;
- Increase of population's awareness of various nutritional topics;
- Low distribution rate of vitamin A capsules despite their availability;
- Improvement in the ability of officials and volunteers in 13 districts to manage CBN activities;
- Evaluation of CBN sites.

## IDD

75 per cent of iodized salt;

94 districts out of 110 covered;

80 per cent of population consumes iodized salt;

Implementation order adopted, but implementation still too low;

TGT: 48 per cent in 1990, 22 per cent in 1995, 15 per cent in 1998.

Training and follow-up:

- Ability of health officials to provide support for prevention campaigns;
- Ability of salt workers to iodize salt;
- Regular epidemiological follow-up.

### (e) **Food security and nutrition (SECALINE) project**

893. Decree No. 92-612, as amended by Decree No. 93-043 of 27 January 1993, establishes and organizes a community association responsible for the Expanded Food Security and Nutrition Project (SECALINE), which coordinates the following activities:

- Community Nutrition Programme (PCN);
- Action to combat iodine deficiency disorders (TDCI);
- Work for food (VCT);
- Information, education, communication (IEC) ;
- Development Activities Fund (FID).

894. Decree No. 95-587 of 5 September 1995 provides for the adoption of the national policy for action to combat iodine deficiency disorders, stating that, as of 1 January 1996, salt that is imported or produced in Malagasy territory must be iodized in accordance with technical guidelines issued by the ministries concerned. An interdepartmental order of 2 June 1994 established the standard relating to kitchen salt and iodized salt.

895. Decree No. 97-1363 of 4 December 1997 provides that the National Food Security Strategy drafted in the context of the SECALINE project should be adopted as the Government's food security policy.

896. The Community Nutrition Programme is designed to combat malnutrition and food insecurity. It is based on community commitment and participation at all stages of the solution of food and nutritional problems, including:



- Analysis of real and deep-seated causes of food problems;
- Ways and means of solving these problems;
- Adoption of action to improve individual, family and community nutritional status.

897. PCN is intended primarily for children aged between 0 and 36 months and, subsequently, for children aged between 37 and 60 months.

898. PCN's general objectives are to attenuate the effects of food insecurity for vulnerable households and to increase their access to food; and to improve the nutritional status of children in these households.

899. PCN's specific objectives are:

- To increase the awareness of the communities concerned of their food problems and the need to find durable solutions to them;
- To ensure monthly follow-up, through Community Nutritional Monitoring (SNC), of the growth of children aged between 0 and 5 years in the areas identified;
- To provide food supplementation for 30 malnourished children five days a week for a period of four months, through the Supplementary Feeding Programme (PAA);
- To refer severely malnourished children to the Therapeutic Rehabilitation Centres (CRT);
- To provide health, nutritional and agricultural instruction designed to improve the community's nutritional status, by means of information, education and communication (IEC);
- To shift vulnerable households and target communities towards income-earning activities.

900. PCN is operating in the *fi vondronana* of Antananarivo-Atsimondrano, Antananarivo-Avaradrano, Ambatolampy, Ambohidratin, Andramasina, Anjozorobe, Ankazobe, Antanifotsy, Antsirabe I, Antsirabe II, Arivonimamo, Betafo, Faratsiho, Fenoarivobe, Manjakandriana, Miarinarivo, Soavinandriana and Tsiroamandida.

901. The SECALINE project's objectives, particularly with regard to the extension of activities to the national level, were set in November 1998: 4,040 sites were targeted for the benefit of 1,730,000 persons, including children aged under three years. It is planned that 5,000 schools, which have 1,078,913 students, as well as 1,535,015 unenrolled children, will be reached in the six provinces within five years.

902. It should be noted that, although there appear to be many overlapping national programmes of multilateral and bilateral assistance, coordination and cooperation in respect of

implementation also exist, especially with regard to the distribution of target areas. The main thing is that the best interests of the child should be protected, without any discrimination or regional disparity.

**(f) Breastfeeding**

903. Attention has been drawn on several occasions to the importance of exclusive breastfeeding and breastfeeding with complementary food. It may be noted that the exclusive breastfeeding rate increased from 47 per cent in 1992 to 64 per cent in 1997. Breastfeeding with complementary food increased from 86 per cent in 1992 to 95 per cent in 1997.

**(g) Malnutrition and mortality**

904. Malnutrition is a major cause of deaths of young children in Madagascar. Eighty-eight of 1,000 births before the age of 5 years are linked to malnutrition (54 per cent of all deaths before the age of 5 years). Because it is so prevalent, slight to moderate malnutrition causes more deaths (69 per 1,000) than severe malnutrition (20 per 1,000). Consequently, slight to moderate malnutrition is responsible for 78 per cent of deaths of children aged under 5 years resulting from malnutrition.

## **VI. EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### **(Articles 28, 29 and 31 of the Convention)**

#### **A. General**

905. The initial report briefly described the background to instruction and education policies and the situation with regard to primary and basic education, as well as traditional leisure activities.

906. The replies to the additional questions gave details on pre-school education and on adult education, which could also meet the educational needs of adolescents. They also provided general information on teacher training and the National Programme for the Improvement of Education.

907. The present report describes the fresh impetus being given to educational policies and the closer attention being paid to youth policy in Madagascar, bearing in mind the growing difficulties faced by the authorities, who are being supported by international assistance and private education in their efforts to deal with a deteriorating situation and to overcome the constraints of structural adjustment.

#### **1. The school crisis**

908. The figures show how far Madagascar had fallen behind in the years immediately following the submission of the initial report. The following table, which contains well-known points of comparison, gives an idea of how far Madagascar is lagging behind and of the stagnation in literacy and primary and basic education.

Country	Under-5 mortality rank	Adult literacy rate				Primary school enrolment ratio						Percentage of primary school children reaching 7th grade 1990-1995	Secondary school enrolment ratio 1990-1995 (gross)	
		1990		1995		1960 (gross)		1990-1995 (gross)		1993-1997 (gross)			Boys	Girls
		Men	Women	Men	Women	Boys	Girls	Boys	Girls	Boys	Girls			
Cameroon	51	59	30	75	52	81	40	93	64	69	60	32	22	
Côte d'Ivoire	25	34	14	50	30	64	23	78	59	59	46	33	17	
Ethiopia	16	32	14	46	25	9	3	33	21	28	19	11	10	
Madagascar	21	56	43	60	32	74	57	75	72	62	61	14	14	

909. Surveys conducted in 1995 indicated that the net primary school enrolment rate was at a standstill and that the performance of the educational system was poor (the primary school enrolment rate was 61 per cent in 1993 and 65 per cent in 1995).

910. A sample survey conducted with the assistance of international organizations in the third quarter of 1997 showed that the proportion of non-functional schools ranged from 3 per cent to 12 per cent in urban areas and from 3 per cent to 9 per cent in rural areas.

911. For example, in Bekily, a sub-prefecture located in a region of the southernmost part of the country that is completely cut off, an estimated 77 per cent of public schools were closed, there was a glaring lack of teachers and infrastructures were practically non-existent or rundown. Some 70 per cent of the population of the sub-prefecture was illiterate and the success rate in the 1997/1998 baccalaureate was 0 per cent.

912. There have been no noticeable improvements in the situation described in the initial report, despite the efforts being made, in conditions which become more difficult every year, to prevent school attendance from declining and to combat truancy and dropping out.

## **2. School attendance**

913. Non-enrolment is the result of poverty, financial problems that prevent households from buying supplies and paying school fees, the fact that children are far away from schools and the fact that parents do not know that their children should be enrolled in school.

914. In some cases, already poor communities have been discouraged because they are responsible for teachers' maintenance and contributing to school construction, even despite government assistance. Because some categories of teachers have financial problems, schools have been closed down, teachers' performance has been poor and the level of education has declined nearly everywhere.

915. The obstacles to access to education are the following: low level of economic development, precarious situation of many families, insufficient financial resources, scattering of the population and lack of interest in technical and vocational training.

916. Progress in education is still uneven: children in the countryside are at a disadvantage compared to those in the towns, girls are at a disadvantage compared to boys in secondary education and technical and vocational training have still not hit their stride. Education suffers from a serious shortage of schools, equipment and teachers, in particular.

## **3. Action to combat truancy and dropping out**

917. Absenteeism is the practice of frequently staying away from work. In the case of the education system, it is the practice of frequently staying away from school, but not actually leaving school for good.

918. Absence may be for health or family reasons (taking care of young children, helping parents with farm work during crop season or lean periods). Teachers are often away from school in order to cash their paychecks and have to travel long distances in order to do so.

919. Quitting means leaving a job and no longer working, whereas, in school, dropping out means leaving during the school year or during a course without completing it.

920. The causes of dropping out are:

- Lack of education of heads of household, especially those who work in the informal sector; children from the poorest socio-economic and cultural backgrounds are the most likely never to have gone to school; older children from such backgrounds are the most vulnerable in terms of the likelihood of dropping out of school;
- Poverty; many parents tend not to enrol their children or to take them out of school because of the lack of financial resources;
- Girls are more likely than boys to drop out of school, even though they are treated quite fairly in school;
- Teacher absenteeism.

921. Action to combat dropping out cannot be dissociated from action to promote school attendance in general and the quality of education in particular. Any measures and action taken to increase the attendance rate and to improve the quality of education, both on admission and during the course of study, have an impact on dropping out.

922. Dropping out is attributable to:

- The child himself: lack of motivation, physical or intellectual disability, inability to study, repetition of several grades. This inability is found particularly in rural and suburban areas, where parents tend to take their children out of school too early in order to make them work and thus support the family or themselves;
- The system: cost of school attendance and educational constraints for disadvantaged children from single-parent families or broken homes, lack of financial support for deprived children, unmotivated teachers, unsuitability of education to community needs, employment problems, school closings, lack of teaching materials, absence of teachers.

923. Most orphans, deprived children, disabled children (crippled, physically handicapped, deformed), marginalized children and children deprived of liberty do not have access to education, either because they are incapable or because of the lack of financial support.

#### **4. Numbers**

924. The following figures are taken from the 1995/96 General Statistical Yearbook: 13,325 primary schools were in operation, including 2,508 private schools; 97 per cent of public primary schools are in rural areas.

925. There were 1,638,187 students, an 8.4 per cent increase over 1994/95 (801,691 were girls, i.e. 49 per cent).

926. In secondary education in 1995/96, 112 junior high schools were in operation, including 18 in the private sector.

927. There were 56,316 students, 5.19 per cent fewer than in 1994/95 (there were 28,114 girls, i.e. 49.92 per cent of the total number).

928. There are too few teachers both in primary and in secondary education and they are unevenly distributed.

929. The above-mentioned Economic Policy Framework Document proposes that primary education should be more widely available (by strengthening measures to motivate teachers, raising the level of teaching staff and improving school management).

930. The following table gives some indications of general changes in the population attending school (1993 to 1998).

Age group	Boys	Girls	Total
1993			
Primary 6-10 years	437 436	437 772	875 208
Secondary 11-14 years	430 383	426 349	856 732
Total	867 819	864 121	1 731 940
1994			
Primary 6-10 years	447 575	449 639	897 214
Secondary 11-14 years	434 340	430 237	864 577
Total	881 915	879 876	1 761 791
1995			
Primary 6-10 years	457 966	461 843	919 809
Secondary 11-14 years	438 334	434 166	872 500
Total	896 300	896 009	1 792 309
1996			
Primary 6-10 years	468 614	474 394	943 008
Secondary 11-14 years	442 368	438 132	880 500
Total	910 982	912 526	1 823 508
1997			
Primary 6-10 years	479 527	487 302	966 829
Secondary 11-14 years	446 440	442 136	888 576
Total	925 967	929 438	1 855 405
1998			
Primary 6-10 years	490 712	500 579	991 291
Secondary 11-14 years	450 551	446 181	896 736
Total	941 263	946 760	1 888 023

These figures must be compared to those of the population by age and by sex in 1998.

Age	Total	Male	Female
0-4 years	2 650 897	1 343 891	1 307 006
5-9 years	1 976 823	991 712	985 111
10-14 years	1 606 314	811 487	794 827
15-19 years	1 489 572	752 955	736 617

931. At the start of the September 1998 school year, the Ministry of Secondary and Basic Education estimated that the ratio of 1 teacher to every 40 students should be attained.

932. However, some important institutional and legal measures were taken and the National Programme for the Improvement of Education (PNAE II) was implemented. The following sections of the report will thus deal with the strengthening of the institutional and legal framework, current objectives, evaluation and leisure and recreational and cultural activities. Some cautious optimism for the years to come should follow on a period of hesitation, stagnation and, in the case of some disadvantaged regions, deterioration.

### **B. Strengthening of the institutional and legal framework**

933. The period covered by the present report was characterized by intense legislative activity in the fields of education, leisure and cultural activities. Particularly from 1995 to 1998, on the initiative of the Government, which was aware of the measures that needed to be taken to strengthen the institutional and legal framework of education policy in general, a renovation programme and a legal system were drawn up to give fresh impetus to the education and leisure policy, in response to the concerns expressed in the Convention.

934. With regard to these concerns, the Madagascar authorities paid particular attention to the following provisions:

- Encouragement of the development of different forms of education and making them accessible to every child;
- Educational and vocational information and guidance;
- Encouragement of international cooperation with a view to facilitating access to scientific and technical knowledge and modern teaching methods (art. 28);
- Respect for the natural environment;
- Directing education to teaching children respect for human rights, their language, and their cultural values and preparing for them for responsible life in a free society;
- Liberty to establish and direct private institutions in accordance with the minimum standards laid down by the State (art. 29);
- The right of the child to participate freely in cultural life and the arts;
- Encouragement of recreational activities (art. 31).

## 1. Constitution

935. The Constitution of the Republic of Madagascar, as amended by the referendum of 15 March 1998, contains important provisions that have already been mentioned, but are worth recalling:

- The preamble states that the sovereign people “resolves to promote and develop its heritage as a pluralistic society which respects the diversity, wealth and dynamism of its ethical, spiritual and socio-cultural values”; that “it is aware of the need to reconcile man with nature and his environment”; and that the “development of the personality and identity of every individual is the key to integrated, harmonious and sustainable development”.

936. Article 22 provides that the State shall guarantee the intellectual development of every individual, subject only to that individual’s abilities, while article 23 recalls that “every child shall have the right to education and training under the responsibility of the parents and based on respect for their freedom of choice. Every adolescent shall be entitled to vocational training.”

937. According to articles 24 and 25, the State organizes public education which is free and accessible to all and recognizes the right to private education. Primary education is compulsory for all.

938. Article 26 gives everyone the right to participate in the cultural life of the community, in scientific progress and in the resulting benefits.

939. Some provisions obviously set objectives that the State is trying to achieve, such as primary education that is compulsory for all, the right to take part in scientific progress and the right to vocational training.

## 2. Act of 13 March 1995

940. During earlier periods, which were characterized by regime changes, the system of education and training was heavily influenced by three pieces of legislation that must now be regarded as repealed: Order No. 60-049 of 22 June 1960; the Order of 2 July 1976 organizing basic education; and Act No. 78-040 of 17 July 1978.

941. Act No. 94-033 of 13 March 1995 establishes the general policy for the system of education and training in Madagascar. The preamble refers, inter alia, to the outmodedness of the former system of education and training, the obligation for the Republic of Madagascar to fulfil its international obligations in respect of education for all and the imperative nature of the strengthening of the education sector.

942. On account of the innovations it introduces, this Act calls for a comment which will help strengthen the belief that the Malagasy legislature has made fresh efforts to comply with the Convention, both in letter and in spirit.

943. A preliminary remark is that the Act, which establishes a new system, is drafted in an abstract style that does not always make it easy to understand and suggests that it will have to be



supplemented by enabling legislation, circulars and instructions and explained in handbooks written in more transparent and simple language, particularly for teachers and education officials.

**(a) Basic principles of the system of education and training**

944. The Act divides the basic principles of the system into five headings, which are summarized below.

*First principle*

945. The State recognizes that every person, whether a child, an adolescent or an adult, is entitled to education and training designed to ensure his or her full development and teach him or her respect for the environment, the national heritage, human rights and universally recognized humanist values.

946. Education and training must combine to prepare individuals for active involvement in social and economic development.

*Second principle*

947. The State's powers and jurisdiction are exercised by the ministers of education and training, who formulate national policy in a performance contract. The current Government is composed of the Minister of Higher Education, the Minister of Secondary and Basic Education, the Minister of Technical Education and Vocational Training, the Minister of Youth and Sports and the Minister of Culture and Information.

948. Training leading to occupations and trades is defined by the above-mentioned ministers, who monitor qualifications, award diplomas and conduct equivalency studies. Cooperation between ministers is provided for, as is cooperation with partners and users.

*Third principle*

949. The autonomous provinces, which have been organized as decentralized local governments, are free to administer educational affairs is vested in them by law. The executive formulates and implements a development strategy which is contained in a performance contract and is in keeping with the national policy formulated in response to the country's demand for education and training. The decentralized departments of the ministers concerned support and monitor education and training activities in the autonomous provinces.

950. It should be noted that the above-mentioned provisions were drafted in 1994, although the establishment of the autonomous provinces was scheduled to take place in 1998. The extent to which provincial education and training policies are independent of national policy can therefore not be determined until the provincial system has been set up. The Constitution already contains some answers:

- The State is exclusively responsible for guaranteeing fundamental rights and freedoms, including the right to education and vocational training;

- The State acts to guarantee the protection of the judiciary.

*Fourth principle*

951. The establishment of partnerships is a key element of education and training strategy. Public and private bodies and associations, NGOs, research institutions, economic operators and religious bodies, inter alia, are recognized as full partners.

952. With regard to the status of private education, the Act states that, in the framework of the convention containing a performance contract, private educational establishments help to provide a public service.

*Fifth principle*

953. Language problems: like earlier Constitutions, the amended Constitution clearly provides that Malagasy is the national language, but the Act of 1995 establishes policies which should enable the Malagasy language to develop and to coexist with other languages.

954. To this end, it contains general guidelines for linguists, teachers, researchers, language schools, the technical departments of the ministries of education and training, high-level education system decision-makers, authors and editors of school textbooks at all levels, universities and public and private vocational training institutions.

955. The guidelines may be summarized as follows:

- Malagasy, as it is used in daily life and as a language of instruction, must promote “education and training activities” throughout the national territory;
- The implementation of the language policy must take account of the international conventions which the Republic of Madagascar has incorporated into its positive law: for example, the Convention makes it an obligation for States parties to teach children to respect their language (art. 29) and to facilitate access to scientific and technical knowledge and modern teaching methods (art. 28), and this involves the use of foreign languages;
- The right to the development of the mother tongue as a modern language is an inalienable right of all human beings;
- Knowledge and the harmonious coexistence of several languages is the basis for language learning. The place of each foreign language will be determined by comparison with and on the basis of the mother tongue in order to establish functional complementarity;
- The purposes of language policy are: to serve as an instrument of development and access to various kinds of knowledge; and to promote exposure to the outside world through the learning of languages of international and/or regional importance (Indian Ocean region).

956. These apparently complex guidelines, which are expressed in terms that are sometimes difficult to understand, are in fact of fundamental importance because they should make it possible to deal with the following constraints:

- Madagascar's insular isolation;
- Constant hesitation as to whether the Malagasy language or a foreign language should be used in education, thus creating generations of children, adolescents and even university students who cannot speak their national language well and who do not know French, much less English, well enough;
- Exclusion or marginalization of children from rural regions or regions far from main towns who do not have access to adequate knowledge of a foreign language - French, in this case - because of the mediocre standard of teaching and the lack of teaching aids;
- Long delays in research on the Malagasy language, national literature and modernization efforts.

957. Mention must, of course, be made of the progress achieved during the past five years: foreign cultural centres are making substantial efforts with regard to language study, access to universal culture and the expansion of knowledge at the international level as a result of the extraordinary growth of communications at the planetary level that has taken place in the last few years.

958. Attention is also drawn to the ease with which young Malagasies with sufficient schooling learn foreign languages: French for cultural and historical reasons and English and German as well.

959. New generations of teachers are now taking over, while more research tools (laboratory equipment, computers, Internet, etc.) are becoming available and are increasingly accessible to young people.

960. Three questions must, however, still be answered:

- Which of the categories of young people referred to in the Convention are benefiting from the progress made?
- Is genuine importance attached to Malagasy cultural identity?
- What is the future of dialects, which are in fact too close to the language commonly used, but have their own richness, peculiarities and role to play in communicating values?

**(b) Organization of the system**

961. In addition to the list of fundamental principles, the Act of 13 March 1995 describes the organization of the system of education and training:

- Formulation of multisectoral strategies and plans of action with a view to an operational master plan;
- Participation of partners;
- The definition of final goals and objectives, as well as medium-term objectives;
- Need to provide for methods of monitoring and measuring the progress made.

962. The Act goes on to describe the objectives in each area of education and training. Particular attention is drawn to matters relating to children and adolescents protected by the Convention.

963. The general objective of nursery school is to develop all of a child's potential to enable him or her to form his or her personality through physical, communication, oral and written expression and artistic, scientific and technological activities.

964. The aim of primary or elementary school for children who are at least 6 years of age is to promote their autonomy and enable them to have an influence on their own lives and on society in order to participate fully in development, take enlightened decisions and continue to learn on the basis of an ongoing training approach. When they have completed primary or elementary school, children may choose between general junior high schools and vocational training centres.

**(c) Formal and informal education**

965. The Act makes a distinction between formal education within the system organized according to the legal rules and informal education designed to offer apprenticeship opportunities to anyone who has been unable to benefit from the formal education system in preparing for working life. It involves functional literacy activities and the implementation of pre-literacy programmes and training for family and social life with a view, inter alia, to supplementing civic education.

966. The Act calls on partners (religious organizations, other private organizations, NGOs) to take part in implementing informal educational activities.

**(d) High schools (*collèges* and *lycées*)**

967. The purpose of general secondary education (*collèges* and *lycées*) is cultural and human advancement; development of personality and preparation for entry into working life; gradual learning of the concept of responsibility as a citizen and member of a democratic society in a State governed by the rule of law; and preparation for advanced studies.

**(e) Technical and vocational training**

968. The purpose of technical and vocational training is to enable all adolescents and adults to acquire knowledge, know-how, life skills and knowledge in the making, which are essential components of positive integration into working life. The Act distinguishes between various types of training: general technological training, introductory technical vocational training, skills training and on-the-job training.

**(f) Teaching staff**

969. The Act contains important provisions on teaching staff and monitoring, advisory and programming bodies which should eventually guarantee better training and more effective guidance for teachers, improved working conditions and the restructuring of the education and training system. There are plans to adopt multisectoral remedial measures to correct certain regional imbalances that now exist.

970. In view of the social and economic problems which have been referred to on a number of occasions in the present report and with which the Republic of Madagascar must cope, it is fair to say that the Act of 13 March 1995 primarily embodies intentions and major objectives to be fitted into a short-, medium- and long-term implementation plan.

**3. Other legislation**

971. Various measures contained in different pieces of legislation have been taken since 1995. They are referred to non-exhaustively.

972. Through the Educational Study and Research Unit, the Ministry of Education has been providing information on the Convention in schools since 1995. Primary school curricula have been rectified and teaching guides prepared for this purpose. The aim is to make students more responsible, bearing in mind the rights to which they are entitled.

973. The curricula for grades 3, 4 and 5 were amended by Order No. 2677-96 of 17 May 1996 and thus contain legal concepts which are regarded as relevant in Madagascar and which are: the right to health, the right to a healthy environment, the right to a family, the right to protection (against any form of discrimination), the right to freedom of expression, the right to leisure activities, the right to information, the right to life and the right to protection against drugs.

974. A leaflet gives teachers more information on the concepts underlying the rights of the child, thereby enabling them to play their assigned educational role, both in school and outside school.

975. Attention is drawn to the following efforts that are being made to provide health information: the TRO/IRA Teachers' Guide has been available in schools since 1997; and the Teachers Guide on the "child to child" approach to health is intended for teachers of grades 3, 4 and 5.

976. The same is true of the "*Mba fantatrao moa ny zonao*" ("Do you know your rights?") comic strips and the teachers' guide, which is designed to teach students in grades 4 and 5 the main rights to which children are entitled.

977. Since November 1997, 52 schools in 6 school districts have received such information.

978. Attention must also be drawn to Decree No. 98-433 providing for general private education. The Decree defines and characterizes the establishment of general private education (art. 2). It also provides that private general education is an integral part of the system of education and training and that establishments may therefore be affiliated to a group. It is part of the Education Department. No private general educational establishment may operate in

Madagascar without the authorization of the ministries concerned (art. 6). All establishments are required to comply with the System of Education and Training Act of 13 March 1995 (art. 7) and, according to article 17, accredited and non-accredited private establishments which have concluded a performance contract may receive material, financial and teaching assistance from the State.

979. Order No. 5217/1996 relates to the functions and authority of the staff of high schools which report to the Ministry of Secondary and Basic Education and contains the following provisions:

Article 27: The principal and deputy principals are in charge of education, and this involves a dialogue with the parents or any other person who is responsible for a student's custody.

Article 36: The teachers are responsible for the children's guidance and education.

#### **4. National Plan of Action for the Education of Girls**

980. A multidisciplinary team of researchers, experts, administrative officials and social workers from national and international NGOs working in the Educational Study and Research Unit of the Ministry of Education drew up a national plan of action for the education of girls (PANEF), which was adopted in a solemn declaration by the Government in October 1995. The declaration referred to various declarations and resolutions adopted, particularly at the international level, at the 1990 World Summit for Children, the 1990 World Conference on Education for All, the 1993 Pan-African Conference on the Education of Girls and the 1994 International Conference on Population and Development.

981. The adoption of the Plan was accepted in a decree stating that the aim was to prepare girls for their roles as wives, mothers, citizens and development partners and to promote their full development, as well as in the establishment of a pilot group within the Educational Study and Research Unit.

982. The Plan contained the following components: the formal education of girls; non-formal education; studies and research; an appropriate mechanism for access by girls to education.

983. The Plan's originality lay primarily in the fact that, for each component of the operational objectives, it contained a detailed description of the activities to be carried out and of the sectors concerned, which were linked to institutional anchorages involving national institutions, NGOs and the ministries directly concerned.

984. The Plan covered the period 1996-2000. Because of its broad ambitions, it is still too early to evaluate its results. It also provided for long-term objectives that called for ongoing action. It has the very great advantage of constituting a genuine charter for social mobilization that is very complete and may serve as a basis for an ongoing awareness campaign at all levels.

## **5. Act of 8 August 1997**

985. Although the Convention does not directly refer to sports activities as a component of a right of the child, it is obvious that such activities promote the physical development of the child (art. 27) and the development of his or her personality.

986. Attention is therefore drawn to some provisions of this Act:

Article 1: The State shall organize the exercise of rights guaranteeing the integrity and dignity of the human person and his or her full physical, intellectual and moral development.

Article 2: In accordance with the economic, social and cultural rights and duties provided for in the Constitution and the international commitments of the Malagasy people, the Republic of Madagascar recognizes the right of every person to engage in physical and sports activities.

Article 8: The State shall be responsible for teaching physical and sports education in schools under the authority of the ministers responsible for education, in accordance with the provisions of Act No. 94-033 on the general policy for the system of education and training in Madagascar.

## **6. Decree of 10 December 1997**

987. According to Decree No. 97-1400 of 10 December 1997 providing for the adoption of the National Programme for the Improvement of Education (PNAE, phase II), the comprehensive sectoral policy involves education and training projects which must be in keeping with the country's development needs and its human resources. The education and training sector is thus responsible for teaching the population; training the country's human resources; and educating citizens. This specifically means that primary education meets the basic educational needs of all Malagasy children and provides all school-age Malagasy children with the basic teaching and education needed for their development and that of the country.

988. Since phase II of the PNAE is currently the basis of education and training policy objectives, it will be discussed below.

### **C. Current objectives**

#### **1. Primary education**

989. The main focus and objectives are to universalize primary education through quantitative and qualitative improvements by keeping numbers and the management of students under control.

##### **(a) Quantitative improvement**

990. Increasing the school attendance rate of school-age children from 62.83 per cent in 1993 to 70 per cent in 2000, 80 per cent in 2005 and 97 per cent in 2015 will mean:

- Raising the net admission rate to first grade from 62 per cent in 1994 to 95 per cent in 2000;

- Maintaining the net admission rate at about 97 per cent until 2017;
- Ensuring that 60 per cent reach third grade by:
  - Cutting the drop-out rate in half in each school year as of 1997/1998;
  - Reducing the repeat rate in grades 2, 3, 4 and 5 by 10 per cent per year starting in 2000 and gradually increasing the promotion rate.

**(b) Flow regulation**

991. The aim is to increase total numbers by an average of 4 per cent each year until 2005.

**(c) Qualitative improvement**

992. Setting up a pre-school or nursery section in each primary school;

School mapping, with a view to:

- The full decentralization of the management of the educational and decision-making system from the Provincial Education Department to the school district, the school director and the head of the administrative and educational area;
- Universal primary enrolment of the 6-10 year age group;
- Improvement of teaching quality with the cooperation of the various education projects financed by UNICEF, the Programme to Strengthen Malagasy Education (PRESEM), the Education Sector Development Project (CRESED), WWF, UNFPA, UNESCO and various NGOs whose activities involve training, internships, refresher courses for teachers and school renovation, with various sources of funding;
- The implementation of new programmes;
- The use of textbooks and teaching materials in sufficient numbers;
- Improvement of the planning of national education in respect of courses of study and curricula.

## **2. Secondary education**

**(a) Quantitative improvement**

993. • Ensure that 80 per cent of each age cohort admitted to grade 6 completes secondary education in 2005;
- Ensure that 80 per cent of each age cohort admitted to grade 10 completes secondary education in 2005.



**(b) Flow regulation**

994. • Increase the growth rate of the existing annual class size by 2 per cent in junior high school education (grades 6 to 9);
- Increase the growth rate of the existing annual class size by 1 per cent in senior high school education (grade 10 to final year).

**(c) Qualitative improvement**

995. • School mapping (see “Primary education”);
- Functional schools: general junior high schools and high schools in the management of which decentralized local governments will be involved;
- Teachers who are properly distributed, trained, managed and motivated;
- Cooperation with education projects financed by UNICEF, PRESEM, CRESED, WWF and various NGOs (training, internships, teaching and academic refresher courses, provision of school supplies, teaching materials and school textbooks);
- Renovation of schools financed by NGOs and private associations.

**3. Technical education**

996. • Consolidation of the benefits of the reform of the national vocational training system; upgrading of technical education and vocational training in order to provide the skilled manpower needed for the country’s economic growth;
- Job creation for social rehabilitation by encouraging private initiative and the vocational integration of the persons trained;
- Reform of initial youth training in the light of the positive results of vocational skill and module training.

**4. Higher education**

997. • Ongoing reform of higher education in order to bring about a modern, high-quality system of training, research, expertise and service which is in keeping with international standards and will contribute to the development of training designed to professionalize higher education.

**5. Education of the population**

998. • Upgrading human resources through the adoption of a new non-formal education strategy and the establishment of a literate environment for the maintenance and improvement of literacy achievements;

- Advancement of women with a view to the improvement of their economic and social environment and full participation in development.

## 6. Strategy

### (a) Primary education level

999. • Assignment of new teachers graduating from primary teachers' training colleges (ENNI), reopening of 10 per cent of closed schools;
- Doubling of the number of teachers in grades 1 to 5 in public primary schools;
  - Reassignment of teachers to public primary schools throughout the country;
  - School visits and management;
  - Visits and/or training of public primary school teachers.

### (b) Junior and senior high school education level

1000. • Rationalization of the distribution of teachers in high schools (*collèges* and *lycées*);
- Visits and ongoing training of high school teachers in cooperation with educational project partners.

### (c) At all levels

1001. **Primary school level:** Popularization of school radio and community school libraries; equitable distribution of the safety net, especially to the most underprivileged schools and families in material and financial need; promotion of the education of girls through a national programme; implementation of PANEF (1996-2000).

1002. **National level:** At all educational levels: Adopt a student-focused strategy based on school. With students as the focal point, the rehabilitation and development of the subsector will be based on schools, community participation, decentralized local government, partnership and the conclusion of school contracts by the State, the community and local administrative and education officials. The preparation and implementation of the national education budget will be in keeping with the objectives and strategies defined.

## D. Evaluation

1003. Unfortunately the information needed for thorough evaluation of the reporting period is lacking. The Act of 13 March 1995 established evaluation, advisory and planning bodies, with a view to securing concrete results:

- A general inspection service responsible for follow-up and monitoring of implementation of ministerial decisions;

- The education and training councils in each *faritany* (autonomous provinces under the 1998 revised constitution); these councils appraise draft legislative texts and regulations, propose guidelines for the education and training system, and ensure that the smooth functioning of that system is not disturbed by excessively frequent reviews;
- The scientific education and training councils evaluate the effectiveness of the education system, and give their views of major education and training projects;
- The National Office for Education and Training Programmes, on the basis of recommendations by the scientific councils, is responsible for programme formulation.

1004. A coordination committee bringing government and donor representatives together with project managers was convened recently for a presentation of phase II of PNAE; the committee also discussed the general use of the system of performance contracts (5,520 establishments covered by CRESED and UNICEF projects).

1005. The primary and pre-school education sector is of particular concern: 95 per cent of pupils receive no pre-school education and only 27 per cent of children in primary education complete the cycle.

1006. The mid-term review of the UNICEF education programme noted the following results:

- Increase in staffing at target State-sector primary schools: 1995/96, 37 per cent; 1996/97, 16 per cent; 1997/98, 2 per cent;
- IEC education-related activities: posters and leaflets, radio broadcasts, puppet shows, interschool competitions;
- Follow-up and evaluation: establishment of a follow-up system; 310 management and monitoring officials trained; monitoring committee set up; committee of directors established;
- First and second grade curricula completed and distributed.
- Third grade curricula being printed;
- Fourth and fifth grade curricula under development;
- Production of civic education guides (first to fourth grade);
- Research activities: evaluation of levels of school performance, pedagogical approaches, guides for multi-year classes;
- Support for the formulation of PANEF;
- Practical support for the Educational Study and Research Unit (UERP);

- Practical support for NGOs engaged with school dropouts and young children in poor urban areas;
- Campaigns to reduce school dropout rates;
- Preparation and distribution of a pre-school education text book;
- Training of 300 pre-school teachers;
- Practical support for pre-school centres at target State primary schools.

### **E. Education, leisure and cultural activities**

1007. Article 31 of the Convention sets forth the right of the child to rest and leisure. The Republic of Madagascar, in accordance with the economic, social and cultural rights and duties set forth in the Constitution, and in consonance with the international commitments of the Malagasy people, recognizes the right of all individuals, including children, to engage in sports and physical activities.

1008. In a country in which the child is king, the problem is acute since children play a supporting role in the welfare of the family. Children, especially in rural areas, are removed from school to meet the needs of the family or their own needs. It should be borne in mind that children have a right to leisure, and to recreational and cultural activities.

1009. Rest, which is a necessity for the maintenance of health, must be studied, especially in the case of underprivileged children. Consideration must be given to alleviating family burdens.

1010. Leisure is the sum of the entertainment activities to which all children have a right as children; leisure also has educational value. Malagasy tradition offers a socio-cultural set of traditional games structured in accordance with the age and sex of the child. These games range from children's songs to mimicry of family life and preparations for social and cultural life through riddles, proverbs and a knowledge of popular literature. There are games requiring significant physical capabilities, including wrestling, training of oxen, canoe racing, etc.

1011. Traditional Malagasy culture reflects the importance of leisure for children: storytelling, group games (group movement and dance), traditional songs and events. Today traditional entertainment, which should be kept alive, is rivalled by modern forms of entertainment. A combination of the two kinds of leisure is desirable. Parents and community must seek out appropriate recreational activities for their children; such activities should promote the intellectual and physical development and education of the child (for example, learning to live in society). Such recreational activities must also promote the education of the parents so as to ensure the continued relevance of the activities and to strengthen the impact of leisure on society.

1012. Act No. 97-014 of 8 August 1997 (cited above) on the organization and promotion of physical and sports activities demonstrates the will of the authorities to satisfy the provisions of the Convention. The Act reinforces the right to engage in sports, sets out the authority and functions of the State and of decentralized local governments and sports organizations, and

establishes the system for the organization of sports as well as quality standards and regulations for the conduct of sports activities.

1013. Links are currently being made with education (“Rugby - School for Life” project); sports schools seek to promote the physical, moral and intellectual development of children and young people as well as training of athletes at the international level.

1014. The Ministry of Secondary and Basic Education, through its office for extra-curricular and out-of-school activities, oversees the right to leisure. Thus, sports activities of level I schools (primary) have been organized along championship lines. The same is true of games and visits organized for the most deserving schools in the context of extra-curricular and out-of-school activities.

1015. The essential problems regarding leisure relate to the fact that there are few places where youngsters can enjoy themselves. Moreover young people do not have an opportunity to make their own entertainment, hence the growth of “false leisure activities”, such as drugs and alcohol.

1016. Solutions such as the following may be advanced:

- Promotion of simple, low-cost leisure activities;
- Establishment of support structures for young people on the basis of the autonomous provinces and the *fokontany*;
- Support for young peoples’ organization and centres through training or practical assistance;
- Promotion of young people’s creativity through attractive, progressive activities;
- Making young people responsible so that they can take control of their own destinies.

## VII. SPECIAL PROTECTION MEASURES

1017. This chapter is devoted to categories of children whose safety, morality, health or, education is threatened and who, owing to emergencies and the particular circumstances in which they find themselves, have the right to special protection measures.

1018. Such children may have been referred to under earlier chapters. This is true in particular of children who are victims of abuse or ill-treatment, and children separated from the family environment. The chapters on the family environment (chap. IV), the definition of the child (chap. I) and basic health and welfare (chap. V) report on categories of children in difficult circumstances or barely surviving.

1019. However, other children are directly threatened in terms of their physical safety and survival: their situation imposes on State authorities, families and civil society the need to take appropriate emergency, legislative, administrative or social measures to offer an effective response to urgent needs or new circumstances aggravating the situation of the child.

1020. Without any claim to being exhaustive given that there are new kinds of deterioration not yet fully understood owing to rapid social change, clarification is given below of:

- Children in conflict with the law;
- Narcotics-control activities;
- Children at work;
- Minority children.

#### **A. Children in conflict with the law**

1021. In contrast to the areas considered above, the protection of children in conflict with the law is not the subject of major legislative change: the basic legislation is that analysed in the first report, Ordinance No. 62-038 of 19 September 1962 on the protection of children. The Ordinance states that the child has the right to physical and moral safety which is as comprehensive as possible, and that responsibility for the education and harmonious development of the child rests first and foremost with the family, within which he or she occupies a privileged place.

1022. In the event of breakdown of the family and where the safety, morality, health or education of a minor under 18 years of age is threatened or compromised, the State will intervene to take educational assistance measures or refer the minor to special judicial authorities.

1023. Act No. 97-036 of 30 October 1997 introduced major provisions on defence, preliminary inquiries and detention on remand during proceedings and in the investigation phase into the Code of Criminal Procedure. These new provisions are based on a more liberal approach, reflecting a concern to guarantee due process. Thus, from the first hearing of any person suspected of having committed a crime or other offence, the criminal investigation police officer must inform the person of his or her right to choose a defence counsel, who can be a lawyer. A person may not be detained longer than 48 hours for the purposes of the preliminary inquiries, with a possible extension of police custody, on the authorization of a competent judge, not to exceed an additional period of 48 hours. The person under arrest may be medically examined once in police custody.

1024. In practice, application of the 1997 Act creates various difficulties, but the fundamental question is that of whether the minor who is subject to police authority can benefit from its innovative provisions, which cannot but improve protection against the vicissitudes of a procedure over which the child has no control.

1025. The 1962 Ordinance concerns minors under 18 only. The legislation derogates from the Code of Criminal Procedure, and certain provisions are not compatible with the 1997 Act. Article 70 provides, however, that "proceedings in all matters not covered by this ordinance shall be conducted in accordance with the Code of Criminal Procedure".

1026. In the best interests of the child, and bearing in mind the verbal and physical abuse suffered by a certain number of children of either sex during informal inquiries, preliminary inquiries and police custody, it would be desirable for these provisions to be applicable to them. This, moreover, is the view taken by juvenile court judges as indicated below.

1027. It is intended to update Ordinance No. 62-038 of 19 September 1962. The opportunity could be taken to delete obsolete provisions, ensure compliance with the Convention, strengthen the protection of children subject to educational assistance measures and better guarantee due process.

### **1. Administration of juvenile justice**

1028. A child may be the perpetrator of a criminal offence causing physical injury or property damage and thus requiring intervention by society in the form of criminal proceedings. Malagasy law seeks to strike a balance between the protection of society and the best interests of the child, who, under article 40 of the Convention, has the right to treatment consistent with the promotion of the child's sense of dignity and worth.

1029. Two instruments - the Code of Criminal Procedure and Ordinance No. 62-038 of 19 September 1962 on the protection of children - are applicable.

1030. Firstly, the Code of Criminal Procedure establishes the general principles of law such as non-retroactivity of criminal law, presumption of innocence, guarantees of due process, the right of appeal, respect for private life. These rules are applicable to adults as well as to children.

1031. Regarding due process in particular, Act No. 97-036 of 30 October 1997 made an important change by amending and supplementing the provisions of the Code of Criminal Procedure relating to due process. During the preliminary inquiry by a criminal investigation police officer, any person suspected of having committed an offence must be advised in the initial hearing of his or her right to choose a defence counsel from among the lawyers who are members of the Madagascar Bar or a business agent or any person of his or her choice subject to the legislation in force.

1032. Similarly, during the investigation, in the first appearance the examining magistrate or public prosecutor must warn an accused person who has not selected a defence counsel in the preliminary inquiry of his or her right to choose counsel from among the trainee lawyers listed with the Madagascar Bar or a business agent or any other person of his or her choice subject to the law.

1033. Minors also benefit from these provisions. They are of course already assisted by their counsel, but may also be given the assistance of a lawyer in the preliminary inquiry. Further, the new Act limits the duration of police custody to 48 hours, following which the case must be referred to the public prosecutor.

1034. Ordinance No. 62-038 on the protection of children provides for specific procedures with regard to proceedings against children and measures to be taken with respect to children at risk.

**(a) Offences**

1035. The case is referred to the juvenile court judge by the public prosecutor. The judge conducts inquiries in accordance with the rules of ordinary law following the procedures established by the Code of Criminal Procedure. At this stage the judge may order placement of the child in a prison - provisional detention - or in a private institution - temporary placement. Once the investigation is concluded, the examining magistrate, who is also a juvenile court judge, orders committal for trial before a juvenile court competent to hear offences committed by minors under 18 years of age. In the event of a crime, the examining magistrate orders committal for trial before a juvenile criminal court.

**(b) Educational assistance (social cases)**

1036. With respect to a minor at risk and in the absence of any offence, the procedure is simple. The case is referred to the juvenile court judge, either by the minor's close relatives, or social workers, or NGOs; the judge may also take on the case on his or her own initiative. The judge must hear all persons whose testimony he or she deems necessary. The judge must form a complete picture of the child's living conditions, history, school attendance, material and psychological circumstances, and appropriate means for his or her re-education. This comprises a social investigation, as provided for in articles 10 and 11 of Ordinance No. 62-038. Following the investigation the child is placed in a private centre in accordance with his or her interest. Placement lasts until a solution meeting the needs of the child can be found: living in the family environment, being educated, and receiving support that allows his or her harmonious physical, emotional and intellectual development. Placement is monitored by the juvenile court judge.

1037. It is relevant to provide technical clarification of educational assistance measures, application of which is becoming increasingly difficult in current circumstances.<sup>4</sup> Decisions by the juvenile court judge or special criminal courts include the protection measures required by the situation of the child at risk.

**(c) Conditions for implementation of measures**

1038. The educational assistance measures that special courts may prescribe are listed in various provisions of the Ordinance of 19 September 1962. Under article 10, paragraph 2, the juvenile court judge may order placement of the minor with his or her parents or legal representative, a trustworthy person or a State-approved institution. But legislators have given different enumerations in other provisions.

1039. Article 12 of the Ordinance reproduces the provisions of article 10, and adds that the juvenile court judge may place the child "in a hospital or institution able to provide the care required by the child's state of health". But the scope of this important provision is limited since it is applied only "during the inquiry".

1040. The juvenile court judge, hearing the case following an offence and considering placement justified, may place the minor with his or her parents, guardian, the person having custody or a trustworthy person, or place the child on probation.



1041. Other special criminal courts - juvenile court and juvenile criminal court - may, where appropriate, order educational assistance measures in the case of children under 13 other than placement in a re-education centre; such measures are limited to placement with the parents, guardian, person having custody or a trustworthy person.

1042. With regard to minors from 13 to 16 years of age, a broader choice is available since the courts may also place the minor in a re-education centre.

1043. Two concerns seem to have guided the legislator: a desire to make a separate option of placement in a re-education centre, doubtless reflecting the fact that it is both educational and also, to some extent, intimidating, so that the measure has been restricted to certain categories of minors; and to place children for preference outside their family.

1044. The following paragraphs set forth the conditions for implementation of these various educational assistance measures.

*Placement of the minor with parents, guardian or person having custody*

1045. Other than cases involving probation, placement of the minor with his or her parents or legal guardian without appropriate monitoring or supervision cannot be considered as a protection measure. In fact the juvenile court judge, on conclusion of the inquiry, is likely to conclude that there is no need to order any protection measures; such a determination can be likened to dismissal of the case by an examining magistrate.

1046. However, if, during the inquiry, the child's parents accept a suggestion by the judge or person in charge of the inquiry that the child should be placed in an appropriate institution, or undertake to provide the child with the medical treatment required by his or her condition, the juvenile court judge can provide the parents with formal acknowledgement of their acceptance or commitment while placing the child in their care. Such a decision gives the judge grounds for an amended placement order if the parents do not follow up on their acceptance or commitment.

1047. The juvenile court judge can also ensure that the child is actually placed with or cared for by his or her parents and note this in the statement of reasons and operative provisions of the order placing the child with the family.

*Placement of the minor with a trustworthy person*

1048. Placement with a trustworthy person or in an institution provides a genuine educational assistance measure, removing the child from the environment in which she or he lives and placing him or her with an institution able to provide moral support and the care needed.

1049. To facilitate the task of the judge and allow him or her freedom in the choice of the environment in which the child is to find a new way of life, the legislator has refrained from entering into detail that would limit placement possibilities.

1050. The expression "trustworthy person" has been very broadly interpreted by judges: this can be a family member, a person engaged in charitable work, head of a school offering boarding, or a director of a children's home, etc.

1051. Although the law does not specifically mention placing the child in an institution, juvenile court judges have in practice always taken the view that either an individual or institution is appropriate, and that accordingly an association or private institution, which can be a medical establishment or authorized pedagogical medical institution, may be suitable.

1052. During the inquiry the juvenile court judge must of course obtain information on the person concerned, secure his or her agreement and explain the constraints to which they are subject and the obligations that they undertake to discharge: too many people think that placement is a measure offering them a low-cost domestic.

*Placement of the minor in a State-approved institution*

1053. The juvenile court judge may also place the child in a State-approved institution: an orphanage, a State institution, a private children's home, which may or may not receive public subsidies, or a young persons' hostel established and maintained by religious missions or Churches.

1054. State approval takes the form of a decision by a juvenile court judge who gives a ruling on the recommendation of the public prosecutor after gathering the necessary information.

1055. Decree No. 61-436 of 31 July 1961 states that "any person or institution accepting a minor must inform the juvenile court judge of the conditions on which the person or institution agrees to take care of the minor".

1056. Order No. 2041, PRM-SCCS of 24 June 1966, specifies the age-limit for children in mixed orphanages in Madagascar. It contains general provisions, which are binding on the juvenile court judge. In Madagascar there is an age-limit of 15 for children in mixed orphanages. This age-limit may be extended for a maximum of one year, at the express request, with reasons, of the director of the establishment supported by a detailed opinion by the administrative board, and subject to agreement by the competent authorities.

1057. Public authorities (State, provinces, communes) may provide subsidies to private institutions dedicated to taking in children placed by a juvenile court judge. Institutions thus subsidized are subject to the provisions of Ordinance No. 60-133 of 3 October 1960 containing general regulations governing associations and Decree No. 63-436 of 11 July 1963 placing under government control associations, enterprises, societies and private groups in receipt of different State funding. Attention should also be drawn to the provisions of Decree No. 59-17 of 4 February 1959 on State monitoring of private establishments for young people (JORM, 1959, p. 458).

*Placement in a re-education centre*

1058. The intent of the legislator was to restrict placement in a re-education centre to minors over 13 years of age who have committed an offence or crime and against whom no criminal penalties were to be taken. This is the literal interpretation of a reading of articles 14, 35 and 36, paragraph 3, of the Ordinance of 19 September 1962.

1059. In practice, strict application of these provisions has run into difficulties: in Madagascar there exists only a single re-education centre under the Ministry of Justice, the Anjanamasina

re-education centre, 18 kilometres from Antananarivo. The centre can house up to 80 minors. The resources available to it, however modest and inadequate, allow it to take in minors other than those required by the law. Thus juvenile court judges do not hesitate to place minors who have not committed any anti-social act.

1060. This shows that the number of centres able to take in children at risk is woefully inadequate. It would be desirable for State or non-State re-education centres with specialized staff to be established throughout each province.

1061. The educational assistance measures outlined above entail a financial burden. The law allows the person incurring such costs to reclaim reimbursement. The oft-amended Decree No. 61-436 of 31 July 1961 governs reimbursement of the cost of providing care: the person or institution entrusted with custody of the child can claim up to FMG 5,000 per day.

1062. This allowance is paid monthly in arrears on submission of a monthly statement, required under the provisions of Decree No. 62-314 of 1962 on criminal justice costs. The statement is checked, and the amount calculated and paid. A claim for the sum thus disbursed by the State can be made against the child's parents or guardian. But the juvenile court judge can determine other arrangements, where appropriate, for the maintenance of the child in care. The judge may establish the contribution due from the parents or, in general, make any appropriate provision.

1063. If the person or institution with custody of the child is unable, for material or psychological reasons, to continue to care for the child, an application may be made to the judge for annulment of custody. In this case the judge may amend the placement order and, where appropriate, take all necessary provisional measures.

1064. These are the financial measures in existence, but they have been criticized. The Ministry of Justice budget section on criminal justice costs covers expenditure on social measures only. Moreover there are no provisions compelling parents to participate in custody costs.

1065. It is regrettable that the legislator limited the latitude available to juvenile court judges and special courts to placement measures outside the family. Juvenile court judges, convinced of the appropriateness of the placement decisions they take in good conscience, are on occasion surprised to note that the new material conditions afforded the minor in custody do not compensate for the lack of affection which the child, far from the family and brothers and sisters, suffers from. Thus, juvenile court judges have been urged to be cautious. Circular No. 5PG of 17 March 1965 from the senior judges of the Antananarivo appeals court sets forth the concerns to be taken into account by juvenile court judges:

“A minor whose morality, health or education are seriously compromised and whose case is brought to the knowledge of the prosecution service or juvenile court judge must be the subject of protection measures.

“This act must result in the child being removed from the environment in which he or she has been ill-treated or feels abandoned. As this is a natural environment, this is a serious measure which must be ordered only after thorough investigation and careful consideration.

“Suddenly removing a child from an environment to which there are unconscious emotional bonds may have more harmful consequences than the facts motivating the action.

“If there is no alternative to such removal, custody of the minor shall preferably be entrusted to a relative or a person able to offer affection rather than to a special institution where community life may result in serious psychological disturbance.”

1066. It would have been preferable for the legislator to have accompanied placement with parents by monitoring and supervision measures under the authority of the juvenile court judge. However, in what appears to be an oversight, such measures, which are specifically provided for in temporary placement during an inquiry, are not authorized under article 10 of the Ordinance of 19 September 1962.

1067. It is certainly the case that in invoking the general provisions of article 3 of the Ordinance some juvenile court judges include in the decision placing the child with his or her parents supervision measures, implementation of which is entrusted to the court’s social service or a welfare worker. Yet this practice, however helpful, has no justification, as no instrument allows a judge to go beyond periodic monitoring, with the possible sanction of amended custody, whereas the judge should be able to propose and even impose educational assistance measures intended to supplement the functions of the parents.

1068. Supervision measures may be added to decisions ordering placement with a trustworthy person or an institution.

1069. Moreover, any person or institution responsible for the upkeep and education of a minor must submit periodic reports on the health and conduct of the minor in care. In practice such reports are rarely prepared, but welfare workers regularly visit centres taking in minors and report to juvenile court judges.

## **2. Treatment of children placed in centres or deprived of liberty, including children in detention or imprisonment of any kind**

### **(a) Juvenile delinquents**

1070. Juvenile delinquents are placed either in private re-education centres or in prisons, such as the Antinamora jail and the Anjanamasina re-education centre for the city of Antananarivo. Prisons in which minors are placed temporarily or following conviction receive assistance from NGOs, such as Médecins sans frontières (MSF), which in particular monitors the health of detained minors.

1071. Médecins sans frontières offers the following assessment.

1072. With regard to medical issues, even without visits by an MSF team the proper functioning of infirmaries is apparent; children have ready access to basic care. The MSF team provides support for, supervision of and follow-up to curative and preventive medical activities, supply of essential medications and minor medical equipment.

1073. In terms of nutrition, an increase in the calorie intake of detained minors is still a concern of officials. Instances of malnutrition are still evident, in general among those newly admitted, and indications remain for two to three months after arrival. This period of adaptation explains why the children are thin.

1074. In terms of living conditions, supervision of detainees has improved, as has accommodation. Ill-treatment has diminished.

1075. Regarding quarters for girls and women, thus far female minors have not been separated from adults. During the day they are taught; in the evening they sleep with their mothers and their babies. The number of female minors is still below 15 (9 in December 1997); for various family reasons, 34 babies are with their mothers in prison. Female minors attend education and training workshops.

1076. Regarding quarters for male minors, throughout 1997 the population (between 70 and 90) was below capacity, namely 100 places. Ill-treatment takes place, with threats and intimidation of all kinds by prison guards, who are drunk every day. Teaching personnel seconded from the Ministry of Education give lessons to boys, ranging from literacy classes to fifth grade, but the boys cannot enter official examinations. Physical education activities are permitted, but are not organized. Thus the boys simply play rugby or football, not without violence, owing to a lack of supervision.

1077. The Anjanamasina re-education centre is situated 18 km from Antananarivo, on the Majunga road. The centre, under the direct authority of the Ministry of Justice, is for male minors. The centre does not receive any allowance for custody costs; the operating budget is provided by the penal administration, on the same basis as for the Antinamora jail; as a result funding is unsatisfactory.

1078. The capacity of the centre is 80 places, but the number of children has decreased, and in 1997 there were only 26 boys.

1079. The programme of assistance to minors in detention is up and running. Sanitary facilities at the Anjanamasina centre are appropriate.

**(b) Children placed in centres**

1080. On the order of a juvenile court judge, or by an administrative placement order, or by a family decision, the social protection of children who a defective family environment and inadequate or non-existent care facilities place at risk of abandonment can be assured by private centres, the nature, function and organization of which vary according to their aims and the resources available to them.

1081. These may be charitable associations, homes opened by one or two people of good will, or religious institutions. They may be intended solely for minors of the same sex or may be mixed.

1082. In major centres, at least, their number is on the increase, and concerns arise as to safeguarding the best interests of the child when it is apparent that some centres are properly managed and have competent and dedicated teaching staff, whereas others are poorly equipped, badly managed and run by infamous incompetents.

1083. This situation has attracted the attention of the competent authorities, in particular the Ministry of Population, Women and Children, and UNICEF.

1084. A committee has been set up to conduct a survey of the centres, draw up regulations reflecting the provisions of the Convention, and prepare what will be a charter for the centres comprising model regulations and monitoring mechanisms relating in particular to sanitary conditions, minimum standards of comfort, education and training, food and quality of teaching staff.

1085. The establishment of a new organization assisting and supervising centres is intended to represent a partnership between the State and relevant NGOs.

1086. A children's home should offer a replacement environment in which the child finds his or her bearings and bonds of affection that have been lost. It must also be a place for development and social reintegration. It should under no circumstances be a profit-making enterprise sacrificing the best interests of the child.

### **(c) Sentencing of minors**

1087. Pursuant to the Convention, the age of a minor, whether accused of a crime or an offence, is a mitigating factor.

#### *Minor under 13 years of age*

1088. Even where the facts are established, a minor under 13 years of age cannot be the subject of educational measures alone. Placement with the family, guardian or person having custody, or with a trustworthy individual, will be ordered by the juvenile court judge.

#### *13-16 years of age*

1089. The juvenile court first considers the question of criminal responsibility. If this is determined, the sentence cannot exceed half that which would have been imposed had the minor been an adult at the time of the offence.

#### *16-18 years of age*

1090. If detention on remand is ordered, the court passes sentence as in the case of minors between 13 and 16 years of age.

### **Crimes**

#### *Minors under 13 years of age*

1091. Only educational measures may be ordered.

*13-16 years of age*

1092. Where the minor's responsibility is determined, the court may order the following sentences:

Where the death penalty, life imprisonment with hard labour or deportation are available as sentences, the minor is sentenced to a term of 10 to 20 years' imprisonment;

Where the minor is liable to long-term hard labour or a long term of imprisonment, he or she is sentenced to a term not to exceed half that which would have been applicable had the offender been an adult at the time of the offence.

*16-18 years of age*

1093. The minor benefits from the same provisions as minors of 13 to 16 years of age, but, in a special reasoned judgement, the court may disregard age as a mitigating factor.

1094. However, under the Convention, the death penalty may never be imposed on a minor under 18 years of age.

1095. In practice minors always benefit from suspension of sentence.

1096. In concluding this analysis of the protection of the child in conflict with the law, it is regrettable that the non-involvement of the State in purely social affairs and the relative inertia of NGOs as a dynamic element in civil society mean that the protection of a large number of children in particularly difficult circumstances or barely surviving is, in practice, the exclusive concern of juvenile court judges, who already have considerable responsibilities.

1097. An organized and coherent system of social protection, organized by the public authorities in conjunction with civil society, should be available as a first recourse for the child whose physical and moral safety are threatened in addition to the availability of protection through a juvenile court judge.

**B. Narcotics control**

1098. The Government is currently making a major effort to control narcotics. Legislation comprises the international conventions to which the State is party and domestic legislation.

1099. The Republic of Madagascar is party to the Convention of 26 June 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs, the Single Convention on Narcotic Drugs of 1961, and the Convention on Psychotropic Substances of 1971.

1100. Domestic legislation includes the Decree of 12 November 1916 on the importation, trading, possession and use of toxic substances, including opium, morphine and cocaine, and Ordinance No. 60-073 of 28 July 1960 prohibiting the cultivation, preparation, transportation, sale, possession or consumption of Indian hemp, or "*rongony*".

1101. But the situation has changed in that drug use has increased, particularly use of *rongony* (cannabis) in the category of sedative psychotropic substances. The drug is readily available in

practical and financial terms as it is grown locally. Use of cocaine and heroin is less widespread owing to their high price, which means that only a relatively wealthy minority of the population can obtain them. But trafficking is increasing.

1102. In a survey of 300 children concerning drug use, 101 (30.8 per cent) acknowledged use of drugs, and 227 (69.2 per cent) said that they did not use drugs. More than half (52.7 per cent) use drugs on a daily basis, 30.8 per cent occasionally, and 16.5 per cent weekly.

1103. Consumption and distribution of *rongony* are widespread in adult circles and extend to children struggling to survive, abandoned children, working children and street children. A feature of *rongony* is that, in moderate doses, it alleviates hunger and has curative properties for certain illnesses.

### 1. Protection measures

1104. The Government has taken measures to combat drug use, as part of which the Government Council has adopted a decree establishing an inter-ministerial commission to coordinate narcotics control measures. Prior to this the formulation of narcotics policy was the responsibility of an inter-ministerial body under the Government, then the Office of the President.

1105. The newly established commission is presided over by the Prime Minister, or, in his absence, by the Minister of Justice. It is a deliberative and decision-making body responsible for directing government narcotics control policy. The commission has a secretary-general, selected on the basis of expertise in the field of drugs and related areas, who is responsible for preparing and ensuring implementation of commission decisions.

### 2. Legislation

1106. The legislator has also accorded importance to narcotics control. Act No. 97-039 on control of psychotropic substances and precursors in Madagascar was adopted on 4 October 1997.

1107. The Act has three parts. The first part relates to the classification and regulation of the cultivation, production, manufacture and trading of narcotics, psychotropic substances and precursors.

1108. All plants and substances classified as narcotic drugs or psychotropic substances under the international conventions or in implementation of those conventions, as well as their preparation, and all other plants and substances which endanger public health, owing to their toxic effects when abused, are classified as follows:

- Schedule I - high-risk plants and substances with no medical applications;
- Schedule II - high-risk plants and substances with medical applications; and
- Schedule III - lower-risk plants and substances with medical applications.



1109. Article 9 of the Act prohibits the production, manufacture, trading and distribution, transportation, possession, sale, free transfer or transfer for payment, acquisition, use, importation, exportation or transit through the country of the plants, substances and preparations included in schedule I.

1110. Article 11 of the Act provides that the cultivation, production, manufacture, trading and distribution, and use of the plants, substances and preparations in schedules II and III require a special licence from the competent administrative authority.

1111. The second part of the Act relates to the suppression of the production of and illicit trafficking in controlled substances and measures to combat abuse of narcotic drugs and psychotropic substances.

1112. In the implementation of the provisions of the 1997 Act, a distinction is drawn between “high-risk drugs”, namely those plants and substances listed in schedules I and II, and “lower-risk drugs”, namely those plants and substances listed in schedule III, and “precursors”, the substances listed in schedule IV.

1113. Contravention of the legal provisions governing the production, use and transportation of high-risk drugs is a crime punishable by life imprisonment with hard labour and a fine.

1114. Similarly, the manufacture, importation, exportation, transportation, sale and possession of equipment and materials for precursors for the purpose of using them in or for the illicit cultivation, production or manufacture of narcotic drugs constitute a crime punishable by life imprisonment with hard labour and a fine of FMG 500,000 to FMG 5 million.

1115. Contravention of the legal provisions governing the cultivation, production, manufacture, processing, importation, exportation, sale and possession of narcotic drugs constitutes an offence punishable by 5 to 10 years’ imprisonment and a fine of FMG 10,000 to FMG 1 million.

1116. The law provides for aggravating and mitigating circumstances. Article 108 doubles the sentences and replaces long-term hard labour by life imprisonment with hard labour where:

- The perpetrator of the offence belongs to an organized gang or criminal organization;
- The perpetrator of the offence participates in other illegal acts facilitated by the offence;
- The perpetrator of the offence discharges public functions and the offence is committed in the exercise of those functions;
- The drug was given or offered to or its use was facilitated in the case of a minor, a person with mental disabilities or a person undergoing drug rehabilitation;
- A minor or a person with mental disabilities participates in the offence;
- The drugs made available caused the death or seriously imperilled the health of one or more persons;

- The offence was committed in a prison, a military base, an educational or training institution, a hospital or care-providing centre, a social services centre or other location at which schoolchildren and students engage in educational, sports or social activities or in the immediate vicinity of such establishments and premises;
- The perpetrator of the offence adds to the drugs' substances which increase the danger of them; or
- The perpetrator of the offence is a repeat offender.

1117. While making a drug available to or facilitating its use by a minor or mentally handicapped person is an aggravating circumstance in sentencing, the question arises of whether this is so in the case of a minor.

1118. With regard to mitigating circumstances, article 109 provides for mitigation where information is provided to the administrative or judicial authorities on the criminal organization responsible for the offence with a view to avoiding commission of the offence and identifying the other perpetrators.

1119. Article 110 provides for mitigating circumstances in respect of any person who, prior to proceedings, enables or facilitates the identification of other guilty parties or, once proceedings have begun, enables or facilitates the arrest of such parties. In such cases sentences shall be reduced by half.

1120. Further, the 1997 Act provides for the punishment of money-laundering by life imprisonment with hard labour and a fine of FMG 500,000 to FMG 5 million.

1121. Lastly, the third part of Act No. 97-039 relates to coordination of efforts to combat abuse of narcotics and psychotropic substances. The goal is to facilitate investigations by allowing seizures, searches of items involved in the offence, and surveillance of the postal services. In this part the Act also establishes measures intended to uncover assets-laundering.

1122. In order to guarantee payment of the fines and confiscation of the assets of the convicted person, article 130 of the Act (second part) stipulates that the competent judicial authority, at the request of the public prosecutor, may order, to offset the cost to the State in accordance with the relevant procedures, protective measures against the assets of the person who is the subject of proceedings. In this connection conviction leads to confirmation of the conservatory attachment measures and placing of a lien on the collateral assets.

### **3. National narcotics control policy**

1123. The inter-ministerial commission on coordination of narcotics control is responsible for defining, formulating, promoting and coordinating national policy against the abuse, production and sale of, demand for, trafficking in and distribution of narcotic drugs, psychotropic substances and precursors.

1124. A master plan is in preparation that will take account of the geographical situation of the country, current economic and social conditions and the country's participation in international efforts to control narcotics trafficking. It is difficult to offer an assessment of the scope of the plan, which is still being formulated.

1125. With regard to young people in particular, the national policy must take account of two major problems: use of high-risk drugs in certain wealthy circles; and the more or less routine use in very modest circles of moderate doses of *rongony*, which, like cheap adulterated alcohol, allows users to forget life's tribulations and creates for a while a feeling of well-being, but leads already weakened and physically broken-down individuals to character problems and aggression.

### **C. Child labour**

1126. As a result of socio-economic crisis throughout the world, increasing numbers of children must work, especially in developing countries. Madagascar is no exception, and has seen an increase in the number of children, ever younger, working in various sectors, in contravention of labour legislations and regulations.

#### **1. Existing legislation**

1127. Madagascar has relatively comprehensive labour legislation and regulations for the protection of children. The legislation is largely based on international labour standards, in particular those adopted by the Malagasy State.

##### **(a) Convention**

1128. The provisions of article 32 of the Convention recognize the right of the child to be protected from economic exploitation and from performing any work endangering the child's health, education or development.

##### **(b) International labour standards**

1129. In application of the principle of the continuity of law and succession to international conventions, the Republic of Madagascar is bound by conventions relating to child labour or containing applicable provisions. Notwithstanding the obsolete nature and age of some of these conventions, it is useful to recall them:

Minimum Age (Industry) Convention, 1919;

Night Work of Young Persons (Industry) Convention, 1919;

Workmen's Compensation (Agriculture) Convention, 1921;

Weekly Rest (Industry) Convention, 1921;

Equality of Treatment (Accident Compensation) Convention, 1925;

Minimum Wage-Fixing Machinery Convention, 1928;

Forced Labour Convention, 1930;  
Minimum Age (Non-Industrial Employment) Convention, 1932;  
Labour Inspection Convention, 1947;  
Night Work of Young Persons (Industry) Convention (Revised), 1948;  
Protection of Wages Convention, 1949;  
Equal Remuneration Convention, 1951;  
Discrimination (Employment and Occupation) Convention, 1958;  
Social Policy (Basic Aims and Standards) Convention, 1962;  
Equality of Treatment (Social Security) Convention, 1962;  
Employment Policy Convention, 1964;  
Minimum Age (Underground Work) Convention, 1965;  
Medical Examination of Young Persons (Underground Work) Convention, 1965;  
Maximum Weight Convention, 1967;  
Labour Inspection (Agriculture) Convention, 1969;  
Minimum Age Convention, 1973.

**(c) African Charter on the Rights and Welfare of the Child**

**(d) Labour Code**

1130. There have been three labour codes in Madagascar since independence: 1960, 1975 and the most recent, Act No. 94-029 of 25 August 1995, implemented by Decree No. 95-715 of 23 November 1995.

1131. The Labour Code governs workers whose labour contracts, of whatever kind, are enforceable in Madagascar. Accordingly, all employees, whatever their status or sector of activity, are subject to the provisions of the Code (art. 1). Minor children helping their fathers to work are not workers within the meaning of the Labour Code (art. 1, para. 4). The minimum age of employment is 14 years. Before that age children may not be employed in any enterprise, even as apprentices, without authorization by the labour inspector, who will take a decision on the basis of local conditions: the work must not endanger the health of children or their normal development (art. 100).

1132. A prior medical examination is mandatory before any child or teenager is allowed to enter into employment.

1133. Actual work by minors and apprentices under 18 years of age must not exceed 8 hours a day or 40 hours a week (art. 95).

1134. Children must have a daily rest period of 12 consecutive hours (art. 92).

1135. Employment of women, and a fortiori children, in night work is prohibited, including in factories, plants, mines and quarries, yards, workshops and outbuildings. However, a derogation may be authorized by the Minister of Labour, following investigation by the competent labour inspector into conditions of employment.

1136. The right to equality of opportunity and non-discrimination in the workplace with respect to disabled persons has been acknowledged (arts. 102-106).

1137. Article 126 deals with apprenticeship contracts.

**(e) Act No. 94-026 of 17 November 1994 establishing the Social Protection Code**

1138. The Act establishes a decentralized national system of social protection. The system seeks to ensure each citizen “the minimum level of social benefits consistent with human dignity”. As yet there is no implementing decree for this act.

**(f) Act No. 94-027 of 17 November 1994 establishing the Labour Hygiene, Safety and Environment Code**

1139. The Act contains hygiene and safety measures offering collective and individual protection for the life and health of workers. However, it relates only to formal employment, whereas most working children, whether in urban, suburban or rural areas, are in the informal sector. In major conurbations a somewhat artificial distinction is made between children living off the street and children living on the street.

1140. The child living off the street remains part of a fragile family, living in absolute poverty, but where there is a home structure. Boy or girl, the child is from 5 to 12 years of age and does not attend school. He or she looks on the street for work and food for him or herself and for the family (begging, fetching and carrying, sale of small items). The family frequently makes girls carry young children while they are begging.

1141. The child living on the street does so in extremely precarious conditions in terms of hygiene and health. The child is psychologically and physically abandoned by the family and has lost all permanent contact with his or her original social group. This child is older than the child living off the street. Girls engage in casual prostitution. The work provides both casual work, and food, earned as opportunity arises from theft or the charity of passers-by.

1142. The environment (alleys, huts, gardens in squares) offers accommodation in the hot season but exposes minors to the rigours of the climate, violence by adults, accidents and illnesses, leaving them helpless. Their leisure comprises hanging out in poorly supervised video rooms showing violent or adult films. In groups they find their dreams and escape in the consumption of adulterated alcohol and Indian hemp. As the opportunity arises they find work as parking lot attendants, porters in markets, mechanics’ assistants, errand boys or girls for shops and stores, or workers in bars, small hotels, and cheap restaurants, especially in suburban areas.

1143. A common feature of street children is their spirit of independence and their reluctance to be brought into community and care facilities. For them the street is a symbol of freedom and a place in which to express a certain *joie de vivre*. As a result there is serious difficulty in reaching out to them and gaining their trust. There are, however, some successes, in particular community initiatives by highly motivated NGOs. On the other hand, efforts to “pick up” groups and house them in uncomfortable and unsafe conditions have often ended in failure and have traumatized some children.

## **2. Programme to improve the situation of child workers in Madagascar**

1144. In 1996/97, the Government became aware of the extent of the phenomenon of child labour and embarked on a wide-ranging initiative in the context of the International Programme on the Elimination of Child Labour (IPEC). Established in 1991, IPEC receives funding from a dozen donor countries, including France, which have agreed to fund and support programmes and activities relating to child labour in Madagascar. The programme aims to abolish child labour throughout the world. Pending the attainment of this very long-term objective, it seeks to improve their working conditions.

1145. In March 1997, the Minister for the Civil Service, Labour and Social Legislation and the representative of the International Labour Organization in Madagascar signed project document MAG/97/MO1/FRA, funded by France over a three-year period in the amount of US\$ 210,000. ILO/IPEC served as implementing agency. The project covered child workers between 7 and 14 years of age.

1146. The main aim of the project was to help the Government of Madagascar to prepare a national action plan on child labour.

### **(a) Surveys and studies**

1147. Before formulating the plan, surveys and studies had to be undertaken. A first study, intended to shed light on the main determinants of child labour and its impact on schooling, was conducted in June 1997 by researchers on the MADIO project. The study, entitled “Child labour in Madagascar: an evaluation”, was conducted at the request of IPEC/ILO and UNICEF to serve as a basis for in-depth surveys of a broad sample of working children. These in-depth surveys were undertaken by multidisciplinary teams. In 1997 a multidisciplinary team comprising three people (a labour inspector, a doctor and an NGO organizer dealing with children in difficult circumstances) was constituted in each of the six provinces of Madagascar.

1148. The surveys conducted by the multidisciplinary teams produced 2,649 interviews and observations of children working in the following sectors:

- 33.3 per cent - agricultural, livestock, forestry, fishing;
- 11.6 per cent - mining, precious stones, quarries;
- 17.5 per cent - food industries, wood, textiles, brickmaking;
- 13 per cent - domestic service;
- 24 per cent - trade and services.

1149. Distribution by age bracket:

- 13-14 years of age - 48.2 per cent;
- 10-12 years of age - 38 per cent;
- 7-9 years of age - 13 per cent;
- Under 7 years of age - 1.5 per cent.

1150. Distribution of child workers by sex: boys, 62 per cent; girls, 38 per cent.

1151. Social status of child workers:

- 61 per cent live normally with their mother and father but must work for various reasons: large family (80 per cent have three to nine children), parents in poor health;
- 22 per cent live in single-parent families, mostly headed by the mother;
- 17 per cent live with other relatives or have no close family members;
- Family income is irregular or unstable in 85 per cent of cases, and 6 per cent are in families in a state of destitution.

1152. Branches of activity in which children work (in ascending order of importance):

- Agriculture;
- Domestic service;
- Extractive industries (quarries, salt works);
- Miscellaneous manufacturing industries;
- Livestock;
- Transport and handling;
- Trading (fixed vendors);
- Casual street employment (pedlars, vendors, cleaners, doormen);
- Fishing (small-scale traditional);
- Metalworking (garages);
- Silviculture (forestry);
- Marginal activities;
- Catering.

1153. Principal problems and risks incurred:

- Lack of preventive health measures (97 per cent);
- Lack of protective measures for the individual in the workplace (94 per cent);
- No apprenticeships for trades (perpetual labour or without expectation of social advancement) (83 per cent);
- Total dependence on the employer (abusive exploitation, overwork) (71.5 per cent);
- Carrying of excessive weights (5 kg-over 10 kg) (60 per cent);
- Very long working day (63.5 per cent);
- Uncomfortable, very tiring work positions (62 per cent);
- Uncomfortable climatic conditions (sun exposure, sudden chilling) (51 per cent);
- Smoky or dusty air in the workplace (26 per cent);
- Risk of violence (injury, physical and psychological suffering) (23 per cent).

1154. Intolerable situations:

- Dangerous natural environment and working circumstances:
  - Uncomfortable climatic conditions;
  - Use of toxic raw materials;
  - Handling of dangerous products;
- Excessive workdays, inadequate salary:
  - Workday longer than 10 hours;
  - Little or no pay, one tenth to one twentieth of the official minimum wage.

1155. Health impact of work by children: disorders observed among working children, in particular those in intolerable situations:

- Digestive disorders;
- Trauma, bruising, burns;
- Skin diseases;
- Malaria;



- Lumbago, back pain;
- Low weight;
- Vision disorders;
- STD;
- Drug addiction.

**(b) Seminars**

1156. In addition to the surveys, seminars have been organized. Three seminars were held between July 1997 and April 1998 to put together the information gathered, evaluate and understand the sectoral evaluation of the working conditions of children, highlight the disquieting situation justifying priority action, and formulate the national plan of action and six sectoral plans.

*National plan of action*

1157. • Measures to combat poverty and rural underdevelopment;
- Improvement of education and training systems;
  - Social protection;
  - Awareness-raising and training.

*Sectoral plans*

1158. • Rural child workers (agriculture, livestock, silviculture, fishing);
- Extractive industries;
  - Manufacturing industries (metalworking, garages, wood, brickmaking, construction);
  - Children in domestic service;
  - Children working in catering and trade;
  - Children engaged in miscellaneous activities.

1159. To coordinate the various programmes, a national steering committee (CDN) has been established. It brings together ministerial departments and NGOs; its role is to coordinate and approve the various national programmes of action, covering a minimum of three years, on child labour. The committee, which is already operational, meets regularly; a national coordinator has been designated.

#### **D. Minority children**

1160. Malagasy civilization is fundamentally hostile to any form of discrimination. Under the constitution “citizens are equal before the law and enjoy the same fundamental freedoms under the protection of the law without discrimination on the basis of sex, level of education, physical appearance, origin, race, religious belief or opinion” (art. 8).

1161. Further, the Nationality Code is based essentially on nationality of origin. It is also largely open, given the possibilities of naturalization.

1162. Although there have been social disturbances in Madagascar’s history, there have been no civil wars that might have led to the emergence of minorities subject to exclusion or hostility.

1163. Further, the fact that the country is an island has helped to make the population closer, to absorb and assimilate small minorities, so that there are few problems concerning minority children.

1164. However, attention should first be drawn to the situation of minorities from outside the country. Despite the insular nature of Madagascar, there are minorities from outside who attempt to integrate in indigenous life but may be the subject of distrust or exclusion because of their origin. In particular, this applies to:

- African minorities, refugees or people entering the country to escape problems in their regions of origin;
- Indian or Pakistani minorities living in the country for several generations in some cases but poorly integrated and who frequently have difficulties with the local population;
- Asian, in particular Chinese, communities, in some cases present for several generations and integrating easily in the Malagasy population;
- Arab minorities, present since time immemorial and fully assimilated into the Malagasy nation, for example the Comorians.

1165. The population of Madagascar is 99.8 Malagasy and 0.2 per cent foreign. Of the foreigners, 33 per cent are Europeans, 29 per cent Asians and 27 per cent Africans.

1166. Secondly, there are the former slaves. Slavery was practised by the local population in Madagascar in historical times. Slaves were denied the personal rights recognized in the case of other individuals. Slavery was abolished in 1896. It offered a means of expansion for the great Malagasy kingdoms, and was an essential element in the pre-colonial social structure. Abolition itself, in terms of how it was implemented, raises questions. How was it implemented? How were issues relating to the re-employment of slaves and the assets they owned settled? To what extent did slavery continue in relations between masters and slaves as a social fault line?

1167. Former slaves, and later their descendants, were often isolated, losing their village roots, and were scattered throughout the major centres in particular areas. Slowly they became integrated in society, becoming full citizens of Madagascar.

1168. However, certain categories of children still suffer from the persistence of old exclusionist habits. But in no case does this affect their fundamental rights or their integration in society.

### **Conclusion**

1169. Comparison with the 1993 report shows clear progress in the following areas:

- Establishment of protection structures, either announced or put forward in projects;
- Dissemination and greater awareness of the Convention;
- Refinement of analysis of various concepts contained in the Convention, but whose implementation and implications for Madagascar remained to be explored; these include definition of the protection of the child, ill-treatment, child labour, responsibilities of blood relatives and the family group, the scope of problems relating to the right of the child to health and a healthy environment, regional disparities, updating of legislation;
- Mobilization of civil society.

1170. It must be acknowledged that considerable efforts are still required in fundamental areas, such as health and welfare of the child, effective school attendance, and protection of children in difficult circumstances.

1171. This report seeks to highlight the new efforts under way, the programmes established and officially announced completed projects.

1172. However, implementation of the Convention, in terms of actual attainments, must form part of a broader national policy, which must comprise:

- Genuine poverty alleviation;
- Ending environmental degradation;
- Robust economic growth at the national and regional levels;
- Strengthening of the management and organizational capacities of the State and its components, and establishment of a State under the rule of law and of good governance.

### Notes

- <sup>1</sup> According to Malagasy tradition, *tsiny* is the reproach for failing to observe an ancestral custom or recommendation. Any person who incurs *tsiny* is threatened with *tody*, which is the punishment for *tsiny*.
- <sup>2</sup> Current usage prefers the expression “reduction of poverty”. The main idea is there is, strictly speaking, no such thing as “poverty” only “extreme difficulty”: *Ny Malagasy dia tsy mahantra fa sahirana*. However, this does not prevent families from living in absolute poverty.
- <sup>3</sup> The above passages are extracted from or inspired by the report entitled “The condition of children in particularly difficult situations in the district of Antananarivo Renivohitra”, UNICEF, 1997. It would be wrong to rely only on the criminal sanctions contained in article 312, paragraph 6, of the Criminal Code, which has already been mentioned, in considering ways of defining punishment for ill-treatment, thereby isolating it from its environment where one encounters the problems of poverty, the slow disintegration of family structures, insufficient health coverage, decline in respect for children, and shortcomings in the area of solidarity and social response.
- <sup>4</sup> Based on: Henry Raharijaona, “La protection de la personne, de l’enfant dans le droit positif malgache”, *Annales de l’Université de Madagascar* (1968).

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