



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Concluding observations on the fourth periodic report of
Madagascar**

Addendum

**Information received from Madagascar on follow-up to the
concluding observations***

[Date received: 15 March 2019]

* The present document is being issued without formal editing.



Information on implementation of the recommendations contained in paragraphs 8, 14 and 30 of the concluding observations adopted by the Human Rights Committee following its consideration of the fourth periodic report of Madagascar

Recommendation in paragraph 8

The State party is encouraged to: (a) ensure that the Independent National Human Rights Commission is provided, as soon as possible, with an independent budget that is sufficient for it to implement its mandate in full; (b) ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) by launching an accreditation procedure as soon as possible; and (c) step up the process of establishing the High Council for the Defence of Democracy and the Rule of Law and ensure the independence of that institution by granting it financial autonomy and sufficient resources for it to carry out its mandate in full.

(a) Sufficient and independent budget of the Independent National Human Rights Commission

1. The members of the Commission took office after being sworn in before the Supreme Court on 13 October 2016. The secretary general, the chief financial officer and the heads of the units responsible for human rights of the Commission were subsequently appointed to ensure that it functioned correctly.

2. To ensure that the Commission can fully perform its mandate, its budget, which is provided for in the 2017 Finance Act, was made available in 2018, enabling it to become fully operational. In addition, a building belonging to the Ministry of Finance and Budget has been made available to the Commission.

3. Since being formally established, the Commission has:

- Investigated cases of human rights violations
- Conducted activities aimed at raising awareness of human rights
- Published reports on its achievements

(b) Compliance with the Paris Principles

4. The Commission is a new national institution for the protection of human rights, established by Act No. 2014-007 of 22 July 2014.

5. Its compliance with the Paris Principles is indicated by:

- Its administrative and budgetary independence in relation to the Government (second paragraph of article 1)
- Its broad mandate, which is based on universal human rights standards (article 2) and enshrined in law
- Its independence, which is guaranteed by the protection afforded to its members under paragraph 4 of article 1
- The pluralist and representative nature of the members, the majority of whom come from civil society organizations and are elected by their peers (article 6)
- Its competences in respect of investigations and inquiries, as spelled out in article 21
- The transparency of the procedures for appointing and electing members through wide-ranging consultations and the involvement of as many candidates as possible from a broad range of associations and non-governmental organizations (Decree No. 2015-052 of 3 February 2015)

Accreditation process

6. An application for accreditation was sent to the Chairperson of the Global Alliance of National Human Rights Institutions in February 2018. Following this application, the Commission will be examined by the Global Alliance's Subcommittee on Accreditation in March 2020.

(c) Establishment of the High Council for the Defence of Democracy and the Rule of Law

7. The Council, which was established by Act No. 2015-001 of 12 February 2015, has been in operation since its nine elected and appointed members were sworn in before the Supreme Court on 27 April 2018.

8. Following the establishment of the board and the post of governor, the executive secretariat is now being established.

Independence, financial autonomy and sufficient resources

9. The Council is an independent constitutional body that enjoys administrative and financial autonomy.

10. In that regard, its members are wholly independent and may not be prosecuted, investigated, arrested, detained or put on trial for the opinions that they express or the actions that they take in the performance of their duties.

11. In order to ensure that the Council can carry out its mandate in full, the 2019 Finance Act provides for the doubling of the budget allocated to it in 2018. The Council has also been allocated space to use as an office and meeting place.

12. Since its establishment, the Council has received three complaints, all during the 2018 election campaigns.

Recommendation in paragraph 14

The State party should speed up the process of national reconciliation, by, inter alia: (a) investigating all allegations of acts of torture, enforced disappearances and summary and extrajudicial executions, ensuring that no serious human rights violations perpetrated in the past go unpunished; and (b) making the Malagasy Reconciliation Council and the National Reparations and Compensation Fund operational by providing them with adequate resources.

(a) Investigations into human rights violations

13. No reliable information on investigations of human rights violations is available as yet.

(b) Conseil du Fampihavanana Malagasy (Malagasy Reconciliation Council)

14. The Malagasy Reconciliation Council succeeded *Filankevitra ny Fampihavanana Malagasy* as the body responsible for national reconciliation in Madagascar. In order to ensure that it can successfully bring about national reconciliation, its mission has been expanded. In that regard, Act No. 2016-037 of 2 February 2017 on national reconciliation grants the Council special powers in three areas: peacebuilding; conflict prevention before, during and after the elections; and the rebuilding of the Republic. A number of new bodies (the Truth and Forgiveness Commission, the Commission for the Rebuilding of the Nation and the Republic, and the Reparation/Compensation Commission) have been established to ensure that the Council can carry out its tasks successfully. Having been in operation since October 2017, the Council has inherited the budget allocated to *Filankevitra ny Fampihavanana Malagasy* under the 2018 Budget Rectification Act.

15. The Malagasy Reconciliation Council is now operational.

16. In accordance with Act No. 2016-037 of 2 February 2017 on national reconciliation, the main task of the Truth and Forgiveness Commission is to investigate and establish responsibility for the events occurring between 2002 and the end of the transition period.

To this end, the Commission has put in place a mechanism and device that will enable it to carry out its mission. A procedural manual has recently been drawn up and, in August 2018, the Commission began conducting hearings related to the events occurring between 2002 and the end of the transition period.

17. With regard to requests for amnesty, Act No. 2016-037 of 2 February 2017 on national reconciliation authorizes the Malagasy Reconciliation Council to grant amnesty in relation to the lists put forward by the Truth and Forgiveness Commission, following the issuance of a reasoned legal opinion by the Independent Special Commission for Amnesty at the level of the Supreme Court.

18. With regard to reparation, 1,233 claims for compensation are currently being examined. In addition, the Truth and Forgiveness Commission has already interviewed around 60 persons with a view to establishing the facts relating to the public order violations that took place in Brickaville in 2009.

19. With regard to inquiries, the Malagasy Reconciliation Council, in partnership with law enforcement officials, has conducted a number of investigations. In that regard, 197 files have been processed, including 14 cases related to amnesty and 13 cases in which military personnel have requested promotion to a higher rank.

20. To ensure the effective operationalization of the Malagasy Reconciliation Council, a draft implementing decree concerning the national solidarity fund, which is to be incorporated into the Finance Act, is currently being prepared.

21. The National Reparations and Compensation Fund has not yet been established.

Recommendation in paragraph 30

The State party should: (a) amend Act No. 2008-008 as soon as possible to include penalties for ill-treatment, the non-applicability of statutory limitations to torture and the inadmissibility of confessions obtained under coercion or torture as evidence before the courts; (b) make the amendments needed to ensure that the provisions of Act No. 2008-008 are reflected in the Criminal Code and the Criminal Procedure Code; (c) ensure that alleged cases of torture and ill-treatment committed by the police or security forces are thoroughly investigated and that the alleged perpetrators are prosecuted and, if found guilty, are sentenced appropriately; (d) ensure that victims are properly compensated and offered rehabilitation services; and (e) establish an independent mechanism to investigate complaints of acts of torture or ill-treatment committed by members of the police or security forces.

(a) Amendment of Act No. 2008-008

22. The reform of Act No. 2008-008 of 25 June 2008, which prohibits torture and other cruel, inhuman or degrading treatment or punishment, is being finalized. The draft reform essentially provides for:

- The inclusion of a scale of penalties for ill-treatment
- The extension of the limitation period
- The extension of the scope of application of the Act to private persons
- The inclusion of a provision requiring the immediate launch of an investigation
- The criminalization of acts of torture
- The designation of the Independent National Human Rights Commission as the national preventive mechanism

23. The presentation of the Act to the Councils of Ministers and the Government, with a view to its being adopted, is included in the Ministry of Justice's agenda for the first half of the year.

(b) Make the amendments needed to ensure that the provisions of Act No. 2008-008 are reflected in the Criminal Code and the Criminal Procedure Code

24. In order to facilitate the implementation of the Act, and because it is an independent piece of legislation, its provisions will not be incorporated into the Criminal Code.

25. However, certain provisions of the Malagasy Code of Criminal Procedure have been amended and supplemented by Act No. 2016-017 of 22 August 2016 in order to facilitate the implementation of criminal law, including laws on torture.

26. The following innovations have been made:

- The establishment of witness protection measures, such as anonymous testimony
- The introduction of court supervision
- Highly specific and objective criteria for placing a suspect in pretrial detention
- The use of new investigation techniques, including undercover work, surveillance, decryption and the interception of computer data and emails
- Investigations under an assumed name with a view to effectively fighting crime in all its forms, including torture

(c) Investigations, prosecutions and convictions of members of police and security forces who have committed acts of torture

27. Of the 313 complaints received by the Inspectorate General of the National Police between 2014 and 2016, one related to a case of torture and 10 to cases of assault and battery committed by police officers.

28. To step up the fight against torture and ill-treatment, training and awareness-raising activities, aimed at judges and judicial police officers, have been held in the capital in collaboration with the Geneva-based Association for the Prevention of Torture in order to improve the implementation of procedural guarantees during police custody.

29. In 2017 and 2018, in partnership with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights, members of the defence and security forces from the 22 regions received training in human rights, including the prohibition of torture and ill-treatment.

(d) Compensation for torture victims

30. No information on compensation for victims of torture is available as yet.

(e) Establishment of an independent mechanism to investigate complaints of acts of torture or ill-treatment committed by members of the police or security forces

31. The Independent National Human Rights Commission is an independent mechanism empowered to investigate allegations of torture or ill-treatment committed by members of the police or security forces.

32. In order to strengthen its role in this respect, Act No. 2018-028 of 8 February 2019, amending and supplementing certain provisions of Act No. 2014-007 of 22 July 2014, provides for the designation of the Commission as the national preventive mechanism responsible for conducting unannounced visits to places of detention, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Madagascar through Act No. 2016-054 of 17 January 2017.