



# 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 under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Reports of States parties due in 2006

**Madagascar\***

[Date received: 13 November 2012]

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\* The present document is being issued without formal editing.

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## Introduction

1. Madagascar ratified the Convention on the Rights of the Child on 19 March 1991 and has submitted its second periodic report followed, in a single document, by its third and fourth periodic reports. In its concluding observations on the second periodic report (CRC/C/15/Add.218), the Committee on the Rights of the Child recommended that Madagascar ratify and implement the two Optional Protocols:

- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

2. In order to implement this recommendation, Madagascar ratified both Optional Protocols in September 2004.

3. Article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography requires States to submit to the Committee on the Rights of the Child an initial report and periodic reports providing comprehensive information on measures it has taken to implement the provisions of the Optional Protocol.

4. In 2012, in its concluding observations on the third and fourth periodic reports on the implementation of the Convention on the Rights of the Child (CRC/C/MDG/CO/3-4), the Committee also recommended that Madagascar submit its initial reports on the implementation of the two Optional Protocols.

5. In conformity with article 12 of the Optional Protocol and in order to implement the above recommendation, the interministerial drafting committee has drawn up the present initial report.

6. The report has been prepared following the Committee's revised guidelines. The drafting process began in 2007 in Antsirabe and resumed in 2012 in the capital. The delay was caused by the need to make up the time lost in drafting and submitting other overdue periodic reports.

7. Madagascar has successively submitted and presented to the relevant treaty bodies reports on the implementation of the following treaties:

- The International Convention on the Elimination of All Forms of Racial Discrimination, in 2004;
- The International Covenant on Civil and Political Rights, in 2007;
- The Convention on the Elimination of All Forms of Discrimination against Women, in 2008;
- The International Covenant on Economic, Social and Cultural Rights, in 2009;
- The national report under the universal periodic review, in 2010;
- The initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2011;
- The Convention on the Rights of the Child (third and fourth reports).

8. The drafting committee received technical and financial support from the European Union, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to help it draft the report. The interministerial drafting

committee consists of representatives of all the ministries concerned, together with representatives of civil society from the capital and the regions. The participation of civil society organizations does not prevent them from submitting alternative reports for the purpose of providing any supplementary information required in order to grasp the actual status of, or trends in the promotion and protection of human rights.

## **Part I**

### **General information**

#### **A. Definition of the child under Malagasy law**

9. The definition of the child under Malagasy law is identical to that in the Convention on the Rights of the Child, according to article 1 of which “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

10. This definition is reflected in the national laws on:

- Adoption;
- The right of children to protection;
- Marriage and marital property regime;
- The amendment of certain provisions of the Criminal Code on efforts to control trafficking in persons and sexual tourism.

#### **B. Status of the Optional Protocol under domestic law and its applicability before the national courts**

11. Madagascar ratified the Optional Protocol on 22 September 2004.

12. The preamble to the 1992 Constitution specifies the status of the Convention on the Rights of the Child under domestic law by stating that “the Convention on the Rights of the Child [...] is an integral part of Malagasy positive law”.

13. Moreover, article 137 *in fine* of the Constitution of Madagascar, of 10 December 2010, confirms the primacy of international instruments which have been ratified in the following terms: “Treaties and agreements which have been duly ratified or adopted take precedence, upon their publication, over other laws.” In case of conflict between the provisions of national law and those of conventions and protocols, the latter take precedence.

14. Consequently, the provisions of the Optional Protocol are self-executing and may be invoked before the courts in Madagascar. This is not the case of criminal law, where legislative reforms are required to bring it into conformity with the Optional Protocol.

#### **C. Implementation of the Optional Protocol**

15. To give effect to the Optional Protocol, legislative reforms have been carried out in the sectors of education, health, employment, justice and the police as well as in the prison administration and the Armed Forces.

16. Implementation of the Optional Protocol takes into consideration the general principles of the Convention on the Rights of the Child reflected in national legislation, and in particular the following principles:

- Non-discrimination;
- Consideration for the best interest of the child and for his or her opinions;
- The right to life, survival and to development.

17. These principles are enshrined in criminal and civil procedure as well as in adoption procedure and decisions on custody.

## **Part II**

### **Application of the Optional Protocol**

#### **A. Prohibition on the sale of children, child prostitution and child pornography (article 3 of the Optional Protocol)**

##### **1. General information**

18. In order to enhance protection against the sale of children, child prostitution and child pornography, Malagasy criminal procedure has broadened the jurisdiction of the courts to cover Malagasy citizens and foreigners who are the perpetrators of or accomplices in trafficking, sexual exploitation and sexual tourism and whose habitual place of residence is in Madagascar.

19. Under article 335 ter of the Criminal Code “nationals and persons who have their habitual residence in Madagascar and who engage in trafficking, sexual exploitation or sexual tourism in other countries shall be prosecuted and punished in accordance with the provisions of the Penal Code”.

20. The period of statutory limitation begins only when the child victim reaches the age of majority.

21. Under article 335.7 of the Criminal Code, “where the offences of trafficking, sexual exploitation, sex tourism and incest involving children are concerned, the period of statutory limitation for prosecution shall commence only on the date on which the child victim attains the age of 18 years”.

22. The purpose of this provision is to make it possible for child victims to file a complaint after the end of the normal period of limitation, which is 3 years for ordinary crimes and 10 years for serious crimes. The reason for this is that while they are minors, child victims are afraid to lodge a complaint because they are financially dependent on the perpetrator of the offence.

23. A further innovation has been introduced by article 335, paragraph 6, which makes it possible for child victims to bring the case to the attention of the competent authorities by lodging a complaint, which was not previously possible. Before this provision was introduced, the child victim’s parents or guardians were alone able to lodge a complaint. Thanks to this innovation, it is possible to lodge a complaint against any parents who are the perpetrators of or accomplices in the offences covered by the Optional Protocol.

24. The public prosecutor’s office may also act of its own motion if it receives a complaint or report. Failure to report a case in itself constitutes the crime of aiding and abetting under article 333 quater 3 of the Criminal Code, whereby “anyone who, while having full knowledge of the existence of prostitution, sexual exploitation or sexual tourism,

fails to file a complaint or report them to the competent authorities, in accordance with the provisions of articles 69 and 70 of Act No. 2007-023 of 20 August 2007 on the rights and protection of the child shall be considered to be an accomplice". For purposes of the application of this provision, those concerned are liable to the same penalties as the perpetrators.

25. In order to enhance the effectiveness of efforts to control trafficking, sexual exploitation and sex tourism, legislation has been introduced making it mandatory to act on any complaint or report relating to them. In this case, the law excludes the possibility of deciding whether a prosecution is opportune. Consequently, as an exception to the normal rule requiring the opportuneness of a prosecution to be established, a prosecution is automatically lawful.

26. In order to encourage and protect them, informants may remain anonymous.

27. Where offences relating to trafficking, sexual exploitation, sex tourism and incest involving children are concerned, suspended sentences are proscribed by article 335.9 of the Criminal Code, under which "sentences handed down for crimes involving trafficking, sexual exploitation, sex tourism and incest involving children may not be suspended".

28. Finally, under article 335.7 of the Criminal Code, an offender held in custody may not be released on bail. Under the article, "if an offender is held in custody, the possibility of bail provided for by articles 346 et seq. of the Code of Criminal Procedure shall not apply".

## **2. Penalization and punishment**

### *(a) Penalization and punishment of the sale of children*

29. Under article 3, paragraph 1, of the Optional Protocol, States parties are required to cover under their criminal law the offering, delivering or accepting of a child for the purpose of sexual exploitation, transfer of organs of the child or engagement of the child in forced labour.

30. For the purpose of implementing these provisions, article 6 *in fine* of Act No. 2007-038 of 14 January 2008 defines the sale of children as "any act or transaction involving the transfer of a child from one person or group of persons to another person or group of persons in exchange for remuneration or any other consideration".

31. Although the article defines the sale of children, it does not specify the penalty for the crime. Criminal law is strictly construed, which accounts for the difficulties in applying it in practice. Legislative reform to remedy this is under way. The Ministry of Justice has a commission on reform of the system of criminal law which is currently supplementing the relevant provisions to determine the length of the sentence applicable to the sale of children. The commission is currently identifying the shortcomings of the law so as to propose reforms better to control the phenomenon.

### *(b) Penalization and punishment of illegal adoption*

32. Under article 3, paragraph 1, of the Optional Protocol "each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis". Subparagraph (ii) refers to "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption".

33. After its consideration of the third and fourth periodic reports on the implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child

recommended that Madagascar revise its legislation to combat the sale of children through illegal adoption.

34. Previously, adoption was regulated by Act No. 63-022 of 20 November 1963 on filiation, adoption, rejection and guardianship, whose provisions on kinship and the consent of biological parents heightened the risk of trafficking in children.

35. To remedy this, in its article 15, Act No. 2005-014 of 7 September 2005 on adoption provides for a term of hard labour for anyone who derives material and/or financial gain or other undue benefit or advantage from adoption proceedings.

36. The establishment of a central authority, provided for by articles 51 to 58 of the new Act, is intended to ensure the lawfulness and trustworthiness of kinship.

37. Madagascar intends to implement the recommendations made by the Committee on the Rights of the Child by:

- Suitable legislative reforms;
- Strengthening the human, technical and financial capacity of the central authority;
- Greater efforts to issue birth certificates;
- Criminalizing illegal adoption, investigating, prosecuting and convicting those responsible.

(c) *Penalization and punishment of child prostitution*

38. Child prostitution is of deep concern to Madagascar. In an effort to control it, legislative reforms have been introduced via Act No. 2007-038. The penalties incurred are set forth in Act No. 2007-038 and have been incorporated into the Criminal Code.

39. The Malagasy Criminal Code contains provisions which criminalize and punish the acts and activities covered by article 3 of the Optional Protocol: "Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law [...] offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2."

40. For the purpose of implementing article 3 of the Optional Protocol, article 333 ter of the Malagasy Criminal Code provides that "the sexual exploitation of a child of either sex, for commercial purposes, refers to an act whereby the adult obtains the services of a child to engage in sexual relations for remuneration, compensation or payment in kind or cash, paid to the child or to one or more third parties as specified in articles 334 to 335 of the Criminal Code, with or without the consent of the child".

41. The existence of consent does not affect the crime; under article 333 quinto of the Criminal Code "consent by a victim of trafficking in persons for exploitation shall be null and void whenever any of the means described in article 333 quater has been employed".

42. The perpetrator of such an offence is liable to punishment in accordance with the provisions of articles 334 et seq. of the Criminal Code:

"If the offence has been committed against a child of either sex of less than 15 years of age, the perpetrator shall be punished by a period of hard labour."

43. In this instance, the fact that the victim is a child is an aggravating circumstance:

"If the sexual exploitation has been committed for commercial ends against a child of 18 years of age, the perpetrator shall be punished by a period of hard labour."

44. In both cases, the offences referred to constitute crimes that come under the jurisdiction of the ordinary criminal courts:

“If the same offences have been committed against victims who are adults, the penalties incurred shall be from two to five years’ prison and a fine of from 1,000,000 to 10,000,000 ariary.”

45. Apart from the type of sexual exploitation referred to above, anyone who has had full sexual relations with a child in exchange for any form of remuneration or other advantage shall incur a sentence of from 2 to 5 years’ prison and a fine of from 1,000,000 to 10,000,000 ariary or one of the penalties alone, in accordance with article 334 quater.

(d) *Penalization and punishment of child pornography*

46. The Malagasy Criminal Code contains provisions which penalize and punish the acts and activities covered by article 3 of the Optional Protocol: “Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law [...] producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.”

47. In order to implement the Optional Protocol to the Convention on the Rights of the Child in respect of the prohibition of child pornography, Malagasy law classifies the acts and activities relating thereto as criminal offences.

48. Under article 333 ter of the Criminal Code “child pornography shall be understood as any representation, by whatever means, of a child engaged in explicit, real or simulated sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”.

49. Under article 335.1, paragraph 3 “child pornography, which makes use of children, in any representation and by any means, or the possession of pornographic material involving children, is punishable by the penalties prescribed by article 334 of the Criminal Code”.

50. The scope of this provision encompasses any representation by any medium, as is made clear by the terms “by any means”.

51. This provision may be applied as a basis for prosecuting any pornographic representation of children on the Internet.

52. It also covers the possession of equipment intended for the production of pornographic material representing children.

53. The Criminal Code punishes the production, recording and dissemination by modern media of pornographic images of minors and any messages of a violent or pornographic nature.

54. Article 346 of the Code establishes a penalty of from 2 to 5 years’ prison and a fine of from 2 million to 10 million ariary, for disseminating, taking, recording or transmitting a pornographic picture of a minor and the act of disseminating such an image by any means whatsoever.

55. If the minor is under 15 years of age the penalties are increased to a prison sentence of from 3 to 10 years and a fine of from 4 million to 20 million ariary.

56. Moreover, article 347 provides for a prison sentence of from 2 to 5 years and a fine of from 10 million to 20 million ariary for the production, transport and dissemination by any means or any medium whatsoever of violent or pornographic images or images which are of a nature such as to seriously harm human dignity, and the marketing of such messages, if they are likely to be seen by or come to the attention of a minor.



### 3. Criminal liability of bodies corporate

57. There is no specific legislation in Madagascar relating to the liability of bodies corporate in respect of the sale of children and child pornography.

58. However, article 335 of the Criminal Code punishes any individual who manages, directs or operates an establishment for purposes of prostitution or who habitually tolerates the presence of one or more individuals who engage in prostitution inside hotels, furnished premises, bars, clubs, private clubs, dance halls or entertainment venues or the annexes thereof.

59. The premises on which the offences take place may have their licences withdrawn or be definitively closed by decision of a court.

60. To remedy this shortcoming, Madagascar plans to carry out legislative reforms to make bodies corporate liable if they are found to be involved in the production, circulation or marketing of supports and/or material intended for child pornography.

### 4. Attempted offences and complicity

61. Under Malagasy law, any attempt to commit a crime constitutes a punishable offence. However, attempts to commit minor offences are punishable only if the law so specifies.

62. As a result, any attempt to commit the offences covered by the Optional Protocol and classified as crimes under Malagasy law are punishable.

63. Under article 335.5: “Any incipient attempt at trafficking, sexual exploitation in any form, sex tourism and incest that has not been interrupted or that has failed to achieve completion through circumstances beyond the author’s control shall be considered as the offence itself and shall carry the same penalty.”

64. Under Malagasy law, complicity is covered in articles 59 and 60 of the Criminal Code. It applies only in connection with a punishable predicate offence.

65. The acts constituting complicity must take place before or at least be concomitant with the predicate offence, thereby excluding complicity after the event.

66. In order to enhance the effectiveness of efforts to control trafficking in persons and better to protect children, article 333 quater paragraph 4 of the Criminal Code has introduced a special category of complicity: “Anyone who is aware of the existence of procurement, sexual exploitation or sex tourism and who has failed to file a complaint or report it to the competent authorities, as required by articles 69 and 70 of Act No. 2007-023 of 20 August 2007 on the rights of and protection for children, shall be considered as an accomplice. Acts involving participation shall be considered distinct offences.”

67. This category of complicity constitutes a distinct offence, as an exception to conventional complicity, which is covered by articles 59 and 60 of the Criminal Code.

68. The purpose of this special category of complicity is to encourage people to report offences and to punish those who are aware of such offences but fail to report them to the police and judicial authorities.

### 5. Comments on the minimum requirements under national legislation

69. The minimum requirements set out in article 3 of the Optional Protocol are met by Act No. 2007-038, which penalizes and lays down penalties for the sale of children, child prostitution and child pornography in the articles referred to above.

## **B. Criminal procedure (arts. 4–7)**

### **1. Jurisdiction (art. 4)**

70. In accordance with article 4 of the Optional Protocol “each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

- When the offences are committed in its territory or on board a ship or aircraft registered in that State;
- When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
- When the victim is a national of that State;
- When the alleged offender is present in its territory and it does not extradite him or her to another State party on the ground that the offence has been committed by one of its nationals.

The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.”

71. Article 335 ter of the Criminal Code is in conformity with the Optional Protocol since it extends jurisdiction to Malagasy and foreign nationals who are the perpetrators of or accomplices in trafficking, sexual exploitation and sex tourism and who have their habitual residence in Madagascar.

72. The purpose of extending jurisdiction is to increase the effectiveness of the global effort to control the above acts.

73. As a result, the offences of trafficking, sexual exploitation and sex tourism committed by Malagasy nationals and foreign nationals abroad may be brought before the Malagasy courts when the perpetrators have their habitual residence in Madagascar. This extension of jurisdiction is an exception to the conventional rule of territorial jurisdiction over criminal offences.

### **2. Extradition and legal assistance**

74. Article 335 of the Criminal Code, as amended by Act No. 2007-038 referred to above, stipulates that “applications for the extradition of persons wanted in connection with proceedings in a foreign State shall be accepted if they concern offences covered by the Act or are connected with a sentence for such an offence”.

75. This procedure is facilitated when there is an agreement on legal cooperation and assistance. Madagascar has such an agreement with France and the Comoros.

76. In practice, in the absence of an extradition treaty or legislation, an extradition may be carried out in accordance with the procedure laid down in the Model Treaty on Extradition and in compliance with the principles laid down therein.

77. Consequently, Madagascar may refer to the procedure of and respect the principles laid down in the Model Treaty on Extradition, adopted by the General Assembly of the United Nations in resolution 45/116.

78. Under Act No. 2004-020 of 19 August 2004 on money-laundering, tracking down and confiscating the profits of crime and on international cooperation in that respect, a request for the extradition of the perpetrators or accomplices in money-laundering, earning money from trafficking, sexual exploitation or child pornography may be made.

### **3. Seizure, confiscation and closing down premises**

79. The provisions of the Malagasy Code of Criminal Procedure relating to seizure and confiscation are applicable to the sale of children, child prostitution and child pornography. The premises concerned may be closed down as an administrative measure.

80. Such a measure was applied to the Pharaon Super-Club. This establishment in Antananarivo was closed down after a raid by the central department of the vice and minors protection squad on 18 April 2012. Adolescents aged from 12 to 15 years, most of whom were under the influence of psychotropic drugs or alcoholic beverages were the victims of incitement to immoral behaviour by the owner of the establishment.

81. An investigation, followed by a trial and convictions, was conducted into three persons accused of possession of cannabis and incitement of minors to immoral behaviour. They were tried on 22 March 2012; the charge of possession of cannabis was dismissed but they received a 5-year sentence for incitement of minors to immoral behaviour. An expulsion order was also issued against the owner of the establishment.

### **4. Criminal prosecution**

82. In Madagascar, determining whether an offence has been committed, gathering evidence and identifying the alleged perpetrators is the responsibility of the criminal police, which comprises the national police and the gendarmerie. They also have responsibility over the offences covered by the Optional Protocol.

83. The central department of the vice and minors protection squad and its branches in the provinces and regions are responsible for dealing with offences against morals, including those covered by the Optional Protocol.

84. The same department is also responsible for gathering data on the offences covered by the Optional Protocol. The divisions in the six provinces, together with those in Madagascar's large towns, Morondava, Fort-Dauphin and Nosy-Be also gather such data.

85. As regards judicial proceedings, prosecution is the responsibility of the public prosecutor's office, represented by the public prosecutor or a deputy.

86. A case of a planned sale of a child, followed by a killing, was set before the public prosecutor in Tuléar on 6 October 2012.

87. Where the facts are concerned, the gendarmerie was informed that a 13-year-old child had been kidnapped for some 7 months.

88. The abductors allegedly intended to sell the child. Gendarmerie officers presented themselves as potential purchasers. A price of 10 million ariary was set and the exchange was due to take place on Thursday 4 October 2012 at an agreed venue. However, on the day of the handover, the kidnappers said that the child had died. Four persons, including a woman were arrested, placed under investigation and handed over to the prosecutor. They were charged with the attempted sale of a child and homicide and have been committed for trial. The investigation is still under way.

### **C. Protection of the rights of child victims**

89. It should be emphasized that at all stages in criminal proceedings, the best interest of the child is taken into account in all decisions concerning child victims.

## 1. Protection of victims during criminal proceedings

### (a) Reporting procedure

90. Act No. 2007-023 has introduced numerous innovations, one of which is reporting procedure, to enhance protection for child victims; according to the articles of the Act:

“Article 69: All persons, and in particular parents, family members, neighbours, friends, local authorities, teachers, religious leaders, social workers, medical personnel and the criminal police who are aware of actual or intended abuse of a child shall report it to the administrative or judicial authorities, subject to the penalties provided for in article 62, paragraph 1 of the Criminal Code.

Children may also report any abuse of which they are the victims.

If any signs of abuse are found on a child, medical personnel are required to prepare a forensic report, in which case they are not bound by professional secrecy.

Article 70: The person filing the report may remain anonymous if he or she so wishes; in this case, the administrative or judicial authority which receives the report shall respect his or her anonymity.

Article 71 paragraph 2: the authority to whose attention the case is brought shall act on it under penalty of prosecution. To this end, it is under the obligation to record the statement in writing and to subsequently set the matter before the competent court as quickly as possible.”

91. To avoid double victimization, article 7, paragraph 2 of the Act provides that “any competent authority hearing a child shall take such non-coercive measures as are necessary to facilitate and shorten his or her statement”.

92. Child victims must be fully informed of their rights and assisted by their parents or guardians, counsel or an official from their children’s home at every stage in the procedure. The hearing must be conducted by a person of the same sex as the child. There must be no confrontation between the child victim and the perpetrator.

93. In order to avoid repeating the hearing of a child victim of abuse, the first hearing may be video recorded either by the criminal police officer or juvenile judge; however, a written recording of the hearing is mandatory. This possibility has not yet come into effect for lack of resources.

94. The national office to monitor sexual and gender-based violence, which received support at its inception from the United Nations Development Fund (UNDP), the United Nations Population Fund (UNFPA) and the United Nations Children’s Fund (UNICEF), provides legal, medical and psychosocial support for child victims of violence, including sexual violence.

95. The provision of helplines is intended to encourage reporting of cases of child abuse, including sexual exploitation and trafficking in children. In 2008, the 805 helpline was set up in collaboration with the Telma, Airtel and Orange telephone companies; it was subsequently replaced by the 147 helpline in 2011. At present, the helpline covers 11 large towns where the level of risk is high.

### (b) Support and assistance for victims

96. In accordance with article 49 of Act No. 2007-023 “the juvenile judge shall be competent to decide on any measures of educational assistance suited to the situation of the child”.

97. These measures are decided by the juvenile judge at the joint request of the father and mother or of one of them, of the person or service to which the child has been entrusted or of the guardian, of the child him or herself or of the public prosecutor. The juvenile judge may also decide the measures of his or her own motion.

98. Educational assistance measures may be ordered simultaneously or separately for several children under the authority of the same parents.

(c) *Sheltered substitute accommodation*

99. In accordance with article 13 of Act No. 2007-023 of 20 August 2007, responsibility for the harmonious development of the child lies first and foremost with the parents.

100. However, a child victim exceptionally has the right to be raised within a family other than his or her own as a protective measure.

101. In both cases, those raising the child have the duty to provide the living conditions essential for the child's development, taking into account their abilities and financial capacities.

102. In order to afford protection, a child may be placed temporarily in a centre by a substantiated decision of a juvenile judge.

(d) *Fast-track procedure*

103. Pursuant to article 78 of Act No. 2007-023 of 20 August 2007: "The case shall be heard as quickly as possible in chambers, after consultation with the office of the public prosecutor. The juvenile judge may dispense with the need for the child's presence or order him or her to withdraw for all or part of the debate."

**2. Compensation (art. 9, para. 4)**

104. In Madagascar, the law makes provision for compensation to be awarded during the criminal trial for any harm resulting from the offence.

105. New article 335.6 of the Criminal Code provides that "the child victim of crimes related to trafficking, sexual exploitation, sexual tourism and incest may, at any time, report or refer to the public prosecutor's office or any other competent authority the acts committed against him or her and demand redress for the harm suffered". The innovation introduced by this provision is that it enables a child to lodge a complaint and directly to claim compensation for the harm suffered, without the need to involve his or her parents or legal guardian.

106. As a rule, in criminal matters the deadline for claiming compensation depends on the period of statutory limitation that applies to the offence. Specifically, in cases involving the sale of children, child prostitution and child pornography the period starts only when the child victim reaches the age of majority.

**3. Training and capacity-building for persons responsible for protecting child victims (art. 8, para. 4)**

107. As part of the capacity-building effort for practising judges, and more particularly those responsible for cases involving minors, annual in-service training is scheduled at the National College of the Judiciary and Court Officers.

108. This also applies to all those involved in the judicial process, judges, criminal police officers, lawyers, prison officials, public health workers, social workers, etc.

109. In connection with the implementation of the recommendations made under the universal periodic review, starting in 2012 and for a two-year period, the Ministry of Justice intends to organize, in partnership with UNDP and OHCHR, training sessions for the same group of beneficiaries focusing on efforts to combat trafficking in persons and more particularly trafficking in women and children.

110. Where the criminal police are concerned, the National Police and Gendarmerie Academies provide specialized training for officers from the vice squad. To take into account the specialized nature of this work, a central department of the vice and minors protection squad has been set up. A similar specialized department is currently being established within the gendarmerie.

111. At the University of Antananarivo, the sociology department of the Faculty of Law, Economics, Management and Sociology provides training for social workers.

112. A special private-sector institute, the Higher Institute of Social Work in Antananarivo specializes in training and capacity-building for social workers and other interested parties.

113. In addition to the public and private institutes and higher education establishments, organizations such as the union of social work graduates also provide training on the protection of the rights of child victims for social workers.

#### **4. Other measures for the protection of child victims**

114. A guide for the medical profession on medical case management of the victims of sexual violence was approved on 25 May 2012.

115. For the second semester of 2012, two training courses are planned for doctors dealing with child victims.

116. As regards the bar council, a pool for the protection of women and children who are victims of abuse was set up in September 2011. At the moment, the pool operates in Antananarivo and is due to be extended to the whole country. In 2012, capacity-building training sessions are scheduled for the 48 lawyers concerned.

117. Combined training courses for judges, criminal police officers, members of the bar, of the medical profession and representatives of the Ministry of Population have been held since 2007, following the entry into force of the new children's rights protection Act No. 2007-023.

118. The Ministry of Population and Social Affairs has set up community-based child protection networks as part of the cooperation programme between the Government of Madagascar and UNICEF for good governance for the protection of children.

119. The child protection network is a system to enable persons with different but complementary mandates to collaborate and coordinate their action for a common purpose: the protection of children from all forms of violence, abuse and exploitation, including the loss of their family.

120. The networks rely on:

- A community base in the communes which organizes, commits itself and works to protect children by means of preventive measures and actual protection, involving the identification of cases of violence, implementation of measures the network is able itself to adopt and referral or reporting to the competent authorities;
- A district-level community base which ensures complementarity and coordination among the different services, filling gaps in terms of services, relations with the community and capacity-building and mobilization.

121. The child-protection networks have been gradually set up since 2005; currently 765 communes (representing 48 per cent of the communes in Madagascar) in 88 districts are covered by the networks.

122. In addition to the protection afforded by criminal law and procedure, child victims are able to turn to non-judicial mechanisms such as the legal counselling centres and clinics.

(a) *Legal counselling centres*

123. These centres, which are both public and private, receive support from UNFPA and have been set up in communes to attend to child victims.

124. The Ministry of Population has 15 operational centres located in the following regions: Analamanga, Atsinanana, Vakinankaratra, Androy, Atsimo Andrefana, Boeny, Bongolava, Haute Matsiatra, Alaotra Mangoro, Menabe and Amoron'i Mania.

125. The mission of the centres is to attend to and provide psychosocial case management for victims.

(b) *Legal clinics*

126. The legal clinics are centres for the protection of human rights which are located in communities for the purpose of assisting the most disadvantaged members of the population to enable them to assert their rights when these have been violated, without resorting to the conventional courts. Non-governmental organizations are selected to operate the clinics with the mission of arbitrating minor disputes which endanger neither the interests of the victim nor those of society.

127. They also disseminate information about human rights legislation and instruments in general. The paralegal staff who work in the clinics are given basic and periodic training, together with in-service training to enable them to carry out their tasks satisfactorily.

128. The legal clinics are supervised and coordinated by the Ministry of Justice and the courts of first instance within whose jurisdiction they are located. They have been in operation since 2007 and receive technical and financial support from UNDP and the European Union. At present there are nine legal clinics located in Antananarivo, Mananjary, Manakara, Farafangana, Tolagnaro, Ihosy, Ambalavao, Sakaraha and Toliara respectively.

129. The legal clinics are under the authority of the Ministry of Justice, in cooperation with the technical and financial partners.

(c) *Participation by civil society organizations, non-governmental organizations and associations involved in child protection and promotion*

130. Associations and non-governmental organizations help to implement actions to promote and protect the rights of the child. They include Action by Christians for the Abolition of Torture, the qualified social workers professional union and the French association for assistance to distressed girls and women. They specialize in efforts to combat all forms of child abuse, including child trafficking and prostitution. Their mission encompasses reporting, caring and providing accommodation and rehabilitating young girl victims of sexual exploitation.

**D. Preventive measures (art. 9, paras. 1 and 2)**

131. Pursuant to article 9 of the Optional Protocol, States parties are required to adopt policies and to carry out information and preventive campaigns in order better to protect children from sexual exploitation and sale.

132. In order better to combat the scourge of child sexual exploitation and trafficking it is vital to identify its exact scale, extent and underlying causes. Reliable and credible data are necessary in order to draw up a policy and plan of action that includes preventive measures in order better to protect children. At present, Madagascar has no central database in which all data on trafficking in children, child prostitution and child pornography are compiled.

133. Madagascar is thus making a substantial effort, with the support of its partners and in particular UNICEF, to centralize data submitted by the child protection networks on child abuse throughout the country.

134. In the same connection, in 2012, with the support of UNDP, UNFPA, UNICEF, Norway and of the Office of the United Nations High Commissioner for Refugees a centre for monitoring sexual and gender-based violence, including violence against children and a centre for monitoring access to justice were established within the Ministry of the Population and the Ministry of Justice respectively.

135. The centres have branches in the regions, communes and quarters. Their basic task is to provide information feedback from the base upwards on human rights violations, including those covered by the Optional Protocol.

136. As regards programmes and activities, especially information and education campaigns for the population, through its legal outreach programme the Ministry of Justice puts out weekly information on human rights, including information on trafficking, prostitution and child abuse in general. The information campaign is broadcast on the national radio (RNM).

137. The public and private media, radio and television stations in the provinces, regions, districts and communes are involved in the child protection effort by broadcasting special programmes dealing with efforts to combat sex tourism, sexual exploitation of children for commercial ends and trafficking in children. For example, in Ambanja, in Diana region, the local radio stations broadcast a programme on child protection every Wednesday at 2 p.m.

138. Audiovisual aids have been produced to provide information and raise awareness about the sexual exploitation of children. The following films have been produced with the assistance of UNICEF and of UNDP and broadcast on the public and private channels:

- Vero sy Haingo;
- Aina;
- Jaomalaza;
- Fandrika, etc.

139. Each year, during Children's Month, campaigns to raise awareness about child labour are organized in the major towns and in rural areas in Madagascar by the Ministry of Population and Social Affairs and the Ministry of the Public Service, Labour and Social Legislation in partnership with the International Labour Organization (ILO) and UNICEF. On 12 June, activities focus on efforts to control the worst forms of child labour, including child prostitution.

140. Since the end of October 2012, the Tackle project has been operating in Sakaraha in Atsimo Andrefana, as well as in three other communes in the same region, to address the worst forms of child labour.

141. The launch of the project was marked by a training workshop in Sakaraha for all stakeholders.

142. The project is being carried out by Aide et Action Internationale, in partnership with the ILO International Programme on the Abolition of Child Labour.



143. In Madagascar, 28 per cent of children aged from 5 to 17 years are economically active; in other words there are 1,873,135 child workers. The rate is slightly higher among boys than among girls.

144. Child labour is also detrimental to children's schooling. The data show that school attendance is less than 44 per cent among economically active children in Madagascar, in comparison with 74 per cent among those who do not work.

145. In Atsimo Andrefana region, 111,000 children work, 97,000 of them in hazardous work.

146. The Project has the following goals in the three communes of Andranolava, Mihary Taheza and Ambinany:

- Enrolment of 500 children in school;
- Highlighting the issues at stake in efforts to control child labour;
- Provision of school supplies;
- Assistance to enable birth certificates to be issued to 200 children;
- Vocational training for 80 adolescent victims;
- Development of income-generating projects for 150 parents of child victims or children under threat of having to work.

147. As a means of removing girls from prostitution, the Association française d'aide aux filles et femmes en détresse, which operates in Fianarantsoa, Morondava and Antsirabe, is building shelters and vocational training workshops as well as homes for mothers and their children.

148. The goal is to take in and provide accommodation for victims and to provide them with general and, if appropriate, vocational training to enable them to give up prostitution and take their place at work and in society.

149. Since the shelter's establishment in Fianarantsoa seven years ago, more than 40 girls have been rehabilitated, have married and/or found decent employment, while 23 are completing their vocational training and possess the skills they need to give up prostitution for good.

150. Handbooks, guides and brochures have been published by the ministries responsible for the protection of children, including the Ministry of Education, the Ministry of Justice, the Ministry of Population and Social Affairs, the Ministry of Tourism and the Ministry of Public Health.

151. In 2007, with the support of UNDP, the Ministry of Justice published thousands of illustrated posters showing the relevant procedure and penalties incurred for trafficking, as part of the project in support of the promotion and protection of human rights. The posters were located in busy public places and in the entrances to hotels.

152. In 2009, the campaign was repeated by the Ministry of Tourism which printed and put up similar posters on the same sites.

153. Since 2003, the Ministry of Education has incorporated the rights of the child into primary- and secondary-school curricula. The Office for Mass Education and Civic Education was set up to design and monitor the introduction of the programme. In that year, the Ministry published brochures on the rights of the child in Malagasy.

154. Non-enrolment in school or dropping out of school early contribute to the resurgence of child prostitution and the sexual exploitation of children as a whole. In response, measures have been taken to enrol and persuade children to remain in school. The

measures involve the distribution of school kits, the provision of free school canteens and free primary education.

155. With the same objective in mind and with the support of UNDP and OHCHR, human rights will be incorporated into the curricula of the professional training colleges, including the National College of the Judiciary and Court Officers, the Prison Administration College, the Armed Forces Academy, the Police Academy and the Professional Training Institute for Lawyers.

156. It was decided that in addition to issues specific to each establishment, trafficking, violence against women and children would be addressed as a priority. A training programme for trainers was held in Antsirabe from 16 to 20 September 2012 to help implement this measure.

157. As a means of countering the risk of trafficking in children because of failure to issue sufficient birth certificates, Act No. 2007-040 of 14 January 2008 on substitute rulings and the issue of replacement birth certificates was adopted as part of the national programme to rehabilitate the registration of births (EKA).

158. In order to combat trafficking in children, the central adoption authority ensures that the proper procedure has been followed so as to prevent illegal adoptions in which intermediaries earn improper financial gain.

159. Community outreach workers hold periodic awareness-raising sessions for people living in places where the child protection network operates. The sessions focus on protection for children, sexual exploitation of children and trafficking in children.

## **E. International assistance and cooperation**

160. In the light of the national and international nature of the offences covered by the Optional Protocol, Madagascar cooperates with national and international organizations. Madagascar receives support from UNDP, UNICEF, OHCHR, UNFPA, the World Food Programme, the World Health Organization, ILO, the United Nations Food and Agriculture Organization, UNESCO, the European Union, the World Bank, the African Development Bank, Norway, the United States Agency for International Development, Switzerland and AFD.

161. These organizations help to promote the rights of the child in the spheres of education, health, employment, food and the administration of juvenile justice. More specifically, UNICEF and ILO are involved in efforts to combat the offences covered by the Optional Protocol.

## **Conclusion**

162. This report offers an overview of the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography.

163. Efforts have undoubtedly been made in terms of legislative reform and the introduction of preventive and protective measures for children since the ratification of the Optional Protocol. However, it has to be recognized that a number of challenges still remain in the following areas:

- Legislative reform in order more closely to align national law with the Optional Protocol;

- Application of the Optional Protocol and of national implementing legislation by the courts;
  - Setting up and bringing into operation the entity responsible for efforts to combat trafficking in persons, for which provision is made in the plan for the implementation of the recommendations of the universal periodic review. Specifically, this will be an independent entity to combat trafficking, the worst forms of child labour, including prostitution, the sale and illegal adoption of children and domestic work by children;
  - The missions of this interministerial entity will include prevention, gathering reliable data on the offences concerned, including data on the number of cases handled by the courts, in order to draft a national policy to combat trafficking, the worst forms of child labour, including prostitution, the sale and illegal adoption of children and domestic work by children.
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