



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

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

**MADAGASCAR**

**Information received from Madagascar on the implementation  
of the concluding observations of the Human Rights Committee  
(CCPR/C/MDG/CO/3)**

[3 March 2009]

## **Introduction**

1. In response to the recommendations made by of the Human Rights Committee in its concluding observations (CCPR/C/MDG/CO/3) following consideration of the third periodic report of Madagascar on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/MDG/2005/3), the Malagasy Government has:

- Undertaken a review of its legislation to bring its National Human Rights Commission back into operation (I)
- Implemented the new law limiting the duration of remand detention in order to remedy the situation in respect of cases of long-term detention (II) and increase the resources provided to the Ministry of Justice so that it can fulfil its functions effectively (III)

### **I. RELAUNCHING THE OPERATION OF THE NATIONAL HUMAN RIGHTS COMMISSION**

2. In order to implement paragraph 7 of the Committee's concluding observations, requesting that the State party should take measures in accordance with the Paris Principles, the Malagasy Government adopted Act No. 2008-012 of 17 July 2008 establishing the National Human Rights Commission (CNDH), enacted and published in Official Journal No. 3218 of 27 October 2008 (pp. 7681 to 7686).<sup>1</sup>

3. This reform has led to the following innovations:

(a) The replacement of the decree establishing the CNDH by an act which reflects the Malagasy Government's wish to involve the parliament in restarting the work of the Commission;

(b) The shift from a decree to an act fosters a legal environment that is more stable and conducive to the sustainability of the CNDH;

(c) Incorporation of the basic provisions of the Paris Principles;

(d) Provisions relating to the independence of the CNDH, the possibility of investigating cases of human rights violations and the Commission's organizational structure, including pluralist entities, have been incorporated in the act.

4. Before this matter was referred to parliament, meetings were convened with the participation of:

- Church representatives

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<sup>1</sup> The text of Act No. 2008-012 may be consulted on the Internet at: [www.senat.gov.mg/index.php?option=com\\_content&view=category&id=37&Itemid=84](http://www.senat.gov.mg/index.php?option=com_content&view=category&id=37&Itemid=84)

- Members of the Office of the Ombudsman
  - Non-governmental human rights organizations
  - Former members of the CNDH
5. Relevant views that are in line with the Paris Principles have been incorporated in the act.
6. A multi-year plan, backed by the United Nations Development Programme (UNDP), provided for resumption of the work of the CNDH, with Government support for the process of appointing and training future members, lobbying for adequate financial resources and fostering decentralization by setting up regional offices.
7. The appointment process is currently under way.

## **II. MEASURES TO STOP AND PREVENT THE CYCLICAL REAPPEARANCE OF LONG-TERM DETENTIONS AND TO PUNISH DELINQUENT OFFICIALS**

8. Pursuant to paragraphs 24 and 25 of the Committee's concluding observations, the Malagasy Government has adopted a substantive solution by way of the adoption and implementation of Act No. 2007-021 of 30 July 2007, amending and supplementing certain provisions of the Code of Criminal Procedure relating to remand detention and limiting the period thereof.

### **A. Limiting the period of remand detention**

9. In relation to the preliminary judicial investigation:
- (a) *Maximum period of detention on remand for ordinary offences* (article 3, paragraph 1 of Act No. 2007-021): "Without prejudice to the provisions of article 334, the period of validity of the committal order issued by an investigating judge or the chamber, provided for in article 223 bis, as well as that of the arrest warrant issued by the investigating judge in cases where the accused has been apprehended, is six (6) months for ordinary offences, and eight (8) months for serious offences";
- (b) *Maximum period of detention on remand for serious offences* (article 3, paragraph 1 of Act No. 2007-021): "Without prejudice to the provisions of article 334, the period of validity of the committal order issued by an investigating judge or the chamber provided for in article 223 bis, as well as that of the arrest warrant issued by the investigating judge in cases where the accused has been apprehended, is six (6) months for ordinary offences, and eight (8) months for serious offences";
- (c) *Time-limit for processing by the Indictments Chamber* (article 3, paragraph 2 of Act No. 2007-021): "In the case of an order for transfer to the Indictments Chamber, the said Chamber must give a ruling within twelve (12) months of the date of the order";

(d) *Limitation of the writ of *habeas corpus** (article 3, paragraph 2 of Act No. 2007-021): “In the cases covered by articles 238, 290, 291 and 309 of the Code of Criminal Procedure, relating to committal orders by the public prosecutor, transfer orders, committal orders by the investigating judge and writs of *habeas corpus*, the period of validity of the writ of *habeas corpus* is limited to thirty (30) months from the date of writs, subject to immediate enforcement”.

### B. Penalties applicable to delinquent officials

10. According to article 5 of Act No. 2007-021 of 30 July 2007, amending and supplementing certain provisions of the Code of Criminal Procedure relating to remand detention: “Judges, registrars and government officials shall incur liability in case of non-compliance, whether wilful or resulting from simple negligence, of the time-limits provided for in the present Code, including those applicable to remand detention.”

## III. TRENDS IN THE BUDGET OF THE MINISTRY OF JUSTICE (2006-2008)

### A. Trends in the operational budget

	2006	Rate of change 2006-2007	2007	Rate of change 2007-2008	2008
Salaries	19 692 559 000	27.80%	25 184 810 000	22.15%	30 764 745 000
Total 1	19 692 559 000		25 184 810 000		30 764 745 000
Operations (excluding salaries)					
Judiciary	5 706 556 000	54.80%	8 838 410 000	0.82%	8 911 253 000
of which: Criminal Justice Funds (FJC)	868 800 000	245.30%	3 000 000 000	0%	3 000 000 000
Prisons	1 559 900 000	252.40%	5 497 605 000	2.16%	5 616 775 000
of which: “Food products”	698 900 000	269.10%	2 579 665 000	35.67%	3 500 000 000
Compensation	2 045 152 000	46.60%	3 000 000 000	55.50%	4 665 000 000
Legal and Registry Service Training College (ENMG)/Prison Administration Training College (ENAP)	680 000 000	361.40%	3 138 000 000	0.02%	3 137 371 000
Total 2	11 559 308 000	77.12%	20 474 015 000	9.06%	22 330 399 000
Grand total (1 + 2)	31 251 867 000	53.80%	45 658 825 000	16.53%	53 095 144 000

### B. Trends in the investment budget

Internal financing					
	2006		2007		2008
Establishment and further development of courts and tribunals	1 500 000 000	20%	1 800 000 000	23.90%	2 230 202 000
Internal security	1 500 000 000	20%	1 800 000 000	100.60%	3 611 420 000
Coordination programme support	150 000 000	-33.30%	100 000 000	65.30%	165 375 000
Strengthening of monitoring capacity	200 000 000	0%	200 000 000	33.70%	267 590 000
Audit court					
Public Investment Programme (PIP), Region					905 382 000
Total	3 350 000 000	16.41%	3 900 000 000	84.10%	7 179 969 000
External financing					
	0		500 000 000		1 511 732 000
Grand total	34 601 867 000	44.60%	50 058 825 000	23.42%	61 786 845 000

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