

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 89TH SESSION (NEW YORK, 12 TO 30 MARCH 2007) MADAGASCAR (3RD PERIODIC REPORT)

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Information submitted to the Committee

Madagascar submitted its third periodic report¹ and written replies to the Human Rights Committee's (the Committee) list of issues and questions regarding the implementation of the *International Covenant on Civil and Political Rights* (the Covenant).² The delegation noted, in its introductory comments, Madagascar's recent ratification of the *Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment*³ and the two additional protocols to the *Convention on the Rights of the Child*, as well as the promulgation of the 2006-015 decree calling for the administrative reorganisation of the penitentiary.⁴

The report outlines the major institutional, political, judicial and legislative developments which have taken place since submission of the previous report in 1991. The report discusses in brief each article under the Convention while pinpointing where the various provisions of the Convention find expression in the revised 1998 Malagasy Constitution, for which a constitutional referendum is planned again for April 2007. The

¹ CCPR/C/MDG/2005/3, available at <http://www.ohchr.org/english/bodies/hrc/hrcs89.htm>.

² The list of issues, replies to the list of issues, NGO parallel reports and the Concluding Observations of the Committee are available at <http://www.ohchr.org/english/bodies/hrc/hrcs89.htm>.

³ Details available at <http://www.ohchr.org/english/countries/ratification/9.htm>.

⁴ Details available at http://www.ohchr.org/english/countries/ratification/11_b.htm and http://www.ohchr.org/english/countries/ratification/11_c.htm.

report makes clear that the Constitution was developed with the wording, spirit and structure of the Covenant in mind. Much of the Constitution is cited *verbatim* and categorically referenced, drawing direct parallels to the substance of the Covenant.

Parallel reports were submitted by a number of non-governmental organisations (NGOs).⁵ The issues raised included the right to life, prohibition of torture and slavery, and humane treatment of detainees in Madagascar, as well as humane treatment of women and children and the right of conscientious objection to military service.

Madagascar has no reservations to the ICCPR.

Themes and issues⁶

Implementation and procedure

The Committee was pleased to learn that the independence of the judiciary was granted in the draft Constitution, yet there was general concern over the practical implementation of the text, and a strong recommendation for a code of conduct was included. The delegation provided little information other than that important changes have been made to improve judges' training and conduct.

State of emergency

The Committee was concerned that the definition of a state of emergency in the Constitution be more specific in order to avoid future discrimination on the grounds of political allegiance. The Committee was curious to know to what extent non-derogable rights are safeguarded in times of emergency, but little clarity was offered on the issue. More information was requested on the matter. In its concluding comments, the Committee expressed its concern regarding the current lack of clarity surrounding this issue.

Right to life and prohibition of torture

The Committee noted its ongoing concern with capital punishment for crimes such as 'cattle theft' and reiterated that Article 6 states that only the most serious crimes may carry the death penalty.

The practice of the use of *Dina* was recurrently raised throughout the session, marking another clear point of concern for the Committee, particularly with regard to summary executions.⁷ The delegation assured the Committee that with the adoption of recent legislation, the *Dina* decisions may be appealed to the national courts, thereby setting it in conformity with the Constitution and operating in parallel with the judiciary. It was pointed out that the *Dina* regulates disputes of 'minor importance' at the village level, raising concerns among the Committee members that these 'lesser issues' may in fact justify certain traditions and customs which are inconsistent with the Covenant.

One Committee member vehemently stated that impunity and discrimination are two of the greatest enemies of the democratic order and asked for more detailed information about exactly how the *Dina* takes the Covenant into account, its procedure, the rights of the defendant and limits of these rights, and information

⁵ Comité Technique aux Droits Humains; Confédération nationale des Plateformes en Droits humains; Association des Chrétiens pour l'abolition de la torture; Organisation Mondiale Contre la Torture; Conscience and Peace Tax International.

⁶ For a more detailed description of the dialogue between the Committee and the State, please see the press release of the proceedings available at <http://www.un.org/News/Press/docs/2007/hrct683.doc.htm>.

⁷ *Dina* is a traditional court which reflects the wishes of the population of rural village communities for the purpose of establishing community rules of governance.

regarding the prosecuting authority. Other Committee members were curious about its functionality and right of recourse for those subject to its judgments. After the Committee raised their concerns on these issues on several occasions throughout the session, the delegation offered to draw a more detailed picture in writing at a later date as to its essential function and power.

Another issue which visibly disheartened the Committee was the practice of twin murder.⁸ This issue was periodically raised throughout the session, and in a heated manner. The Committee repeatedly pressed for information regarding the existence of educational and awareness-raising efforts to curb the practice. Although the delegation assured the Committee that positive developments have occurred, notably the establishment of adoption and care centres which take in the abandoned twin, the Committee was very disappointed to note that the practice itself has not at all been targeted, raising serious concerns. One Committee member became quite heated in comments about the State party's seeming indifference to the issue, and sharply disputed the respect for traditions and cultural practices where they violate certain statutes under the Covenant, stressing that Madagascar must measure each and every practice against the Covenant.

The status of abortion was also raised as the Constitution stipulates that the right to life is protected "from the moment of conception". Little headway was made, however, in discussing intentions for its decriminalisation. The Committee also voiced their disappointment regarding insufficient awareness-raising and education about contraceptive use. Torture was raised in brief and the delegation emphasised that torture was not permitted under any circumstances.

Prohibition of slavery and forced labour

The Committee was concerned over the implementation of Article 8, particularly regarding the trafficking of foreign women and children for the purposes of forced labour. While the Committee was pleased to learn of the measures taken to illegalise child labour, it regretted to note that it still exists. Pressing for information on initiatives taken to tackle the problem, to support victims, and to criminalise perpetrators, the Committee added that this form of modern day slavery would most likely continue if not prohibited in a more forcible way. Avoiding the issue of trafficking altogether, the delegation responded that Madagascar's foreign citizens enjoy equal participation and protection before the law. The Committee was pleased to learn of the illegalisation of unpaid labour in prisons, but it requested information detailing the scope and nature of the provision which allows inmates to enjoy remunerated work outside of the prison system. The delegation did not sufficiently elaborate.

Security of person and arbitrary detention

There was a general lack of clarity regarding the maximum amount of time allowed for a person to be held on remand. The Committee was shocked to learn of the case of Nosy Lava, who has been waiting for an appeal since 1978, and vehemently recalled respect of the principles of the Covenant. One Committee member made a personal request to Madagascar to uphold its commitments to the Covenant, saying that this trend is extremely worrisome and simply not humane. The delegation offered little discussion on this matter, directing the Committee instead to the report for further details.

Right to fair trial

The Committee was concerned on several levels about the right to a fair trial, most notably in terms of the shortage of judges, the loss of detainee files, provisions for legal aid, and human rights education for the judiciary. The delegation assured the Committee that these issues were being tackled, citing that the number of staff for legal aid and judges doubled in 2006, and that a specialised institute has been set up to train judges

⁸ In some villages in the south-east of the island, the birth of twins is considered a bad omen. As a result, one or both twins, and the mother systematically rejected from the village. The delegation noted that the twin is not murdered, it is merely abandoned.

in human rights. It reminded the Committee that the right to appeal is open to everyone and that social assistance and legal aid is free and available for those who cannot pay. The delegation furthermore admitted that a few files have indeed been lost, but assured the Committee that through the recent digitisation of files this is less likely to occur in the future. The delegation was urged to further strengthen its system of computerisation, so as to avoid this situation.

Freedom of thought, conscience and religion

The Committee praised Madagascar's religious diversity, acknowledging it as a clear source of wealth, yet did not appear entirely convinced of the State party's strict adherence to Article 18. Establishing a religion in Madagascar requires a complicated and lengthy procedure of acquiring legal recognition. One Committee member warned that delaying the recognition of a religion is tantamount to denial of it and stressed that the process must be simplified and expedited. While the delegation argued that all religions are guaranteed recognition the Committee appeared concerned that the condition of 'respect' may provide an all too easy pretext for denial while also allowing for the political implementation of dominant religions.

Other issues

The treatment of prisoners was discussed in brief. Without providing specifics the delegation cited a decrease in the number of deaths in prison, an improvement in the quality of food, and sex and age segregation as a measure of the improved conditions. It furthermore mentioned that alternatives to detention were being considered, notably with respect to children and women, but again, it provided no details.

The issue of imprisonment for civil debt was also briefly raised. The delegation stated that efforts to end this practice were under way, but provided no substantive specifics. The Committee did not seem convinced, and the issue was not discussed further.

The treatment and status of foreigners was also touched on briefly, notably with regard to the report's distinguishing between ethnic Malagasy groups and 'others' called foreign groups, such as the French and the Greek. The delegation confirmed that foreign communities can become naturalised citizens and hold the same rights as Malagasies, and strongly stressed the importance of social integration. Little information was provided with regard to ethnic and linguistic minorities and the possible implications thereof. Gender equality was briefly discussed, notably in relation to harmful customary practices and equality before the law, with the Committee requesting information regarding measures taken to ensure the full implementation of Article 3. The delegation admitted that much work remains to be done, but assured the Committee that with the establishment of a national policy enforcing equality of the sexes the situation was improving. No specifics were detailed.

The Committee voiced concern over double standards of treatment based on political allegiance, especially in light of the recent political crisis of 2002. While NGO reports cite government harassment and detention of opposition groups, the delegation readily assured the Committee that procedures for detention make no reference to political affiliation.

Conclusions and next steps

The Committee emphatically addressed the right to life and prohibition of cruel, inhumane and degrading treatment (Articles 6 and 7) and the right to a fair trial (Article 14). It pressed on the issue of the strength and independence of the judiciary as well as calling for detailed information concerning the strength, composition

and functions of *Dina*, including what summary and judicial executions have been carried out pursuant to these customary court decisions.

The delegation, in its closing comments, noted improvements in respect to the rights of women, persons with disabilities, and detainees. Recognizing, however, the disparity between *de jure* and *de facto* rights, the delegation assured the Committee that every effort was being made to bridge this gap, and confirmed that Madagascar strives for rapid and sustainable development, recognizing the link between education, democracy, and development.

The Committee noted several areas of concern, warning that local custom threatens the guarantees in the Covenant and conflicts with the modernisation of institutions, reiterating the sentiments of the Committee on the Rights of the Child (CRC)⁹, which has also expressed concern for the lack of legislation and awareness-raising to counter dangerous customary practices, stereotypes and beliefs (specifically with regard to twin murder). The Committee also focused on the issue of detainees and forced labour in detention, including a request for further information. Finally, it requested that the future report provide greater clarity regarding the definition of minority rights and that it more thoroughly promote the *de facto* protection of their rights, as well as political rights, freedom of conscience and freedom of expression. Family planning education and high maternal mortality remains an obstacle in conforming to the Covenant, and was also identified as such by the Committee for the Elimination of Discrimination Against Women.¹⁰ CEDAW has also discussed many similar issues involving women as the Committee, including recommending improving access to health and protection from violence. The Committee on the Elimination of Racial Discrimination (CERD) has also recommended improving education of human rights in Madagascar.¹¹

The Committee appeared pleased with the overall flow and the dialogue. Questions were answered in a succinct and orderly manner. The delegation's responses, however, were often too general in nature and drove the Committee to reiterate and reposition their questions throughout the dialogue. The Committee Chair underlined the importance of reporting in a timely and regular manner, and expressed hope that in the future the State party would respect its reporting obligations and report more regularly to the Committee.

In its Concluding Observations, which at the time of publishing, are only available in French, the Committee reiterated its concern about the rights of women in Madagascar, noting that women should be able to inherit property and required greater legal protection from domestic violence and economic inequality. The Committee also expressed its ongoing concern about the rights of women regarding abortion, particularly where the life of the mother is in danger. The Committee also expressed its ongoing concern about the *Dina* courts and the role that they appear to play in undermining the judicial system, which should be accessible to all and apply human rights equally, regardless of tradition.

⁹ CRC/C/15/Add.218, para. 31, available at http://www.bayefsky.com/.html/madagascar_t4_crc.php.

¹⁰ CEDAW A/49/38 paras. 215, 216., available at http://www.bayefsky.com/.html/madagascar_t4_cedaw.php.

¹¹ CERD/C/476/Add.1, available at http://www.bayefsky.com/.html/madagascar_t4_cerd.php.

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