



# 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 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

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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\* The annexes may be consulted in the files of the Committee secretariat.

## Introduction

1. Madagascar ratified the Convention on the Rights of the Child on 19 March 1991 and submitted its second periodic report on 12 February 2001. In its concluding observations (CRC/C/15/Add.218), adopted after consideration of the report, the Committee on the Rights of the Child recommended that Madagascar ratify and implement the two protocols to the Convention:

- 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 the recommendation, in September 2004, Madagascar ratified both protocols.

3. Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires States to submit to the Committee an initial report and periodic reports providing comprehensive information on the measures they have taken to implement the provisions of the protocol.

4. After consideration of the third and fourth periodic reports on the implementation of the Convention on the Rights of the Child<sup>1</sup> in 2012, the Committee on the Rights of the Child also recommended that Madagascar submit initial reports on the two protocols. In conformity with article 8 of the Optional Protocol and in implementation of the above recommendation, the interministerial drafting committee has drawn up the present report.

5. The human rights reports drafting committee, which was set up by interministerial decree No. 18600 of 30 October 2003, comprises representatives of the following Ministries:

- Of Justice;
- Of Foreign Affairs;
- Of the Population, Social Protection and Recreation;
- Of Education and Scientific Research;
- Of the Economy, Finance and Budget, represented by the National Institute of Statistics;
- Of the Interior;
- Of Public Security;
- Of Defence;
- And representatives of civil society in the capital and the regions.

6. 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.

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<sup>1</sup> Recommendation No. 75 of the Committee on the Rights of the Child CRC/C/MDG/CO/3-4 of 2 February 2012.

7. 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.

8. Madagascar has successively submitted and presented to the relevant treaty bodies its 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).

9. 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 to help it draft the report.

## **I. General application measures**

### **A. Report preparation process**

*Article 8, paragraph 1: "Each State Party shall submit, within two years following the entry into force of the Optional Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment."*

10. Consequently, as a State party Madagascar is obliged to present reports on the measures taken and the progress made to ensure the rights recognized by the Protocol.

11. The present document constitutes the initial report of Madagascar on the implementation of the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict.

### **B. Status of the Optional Protocol under domestic law**

12. Madagascar ratified the Convention on the Rights of the Child on 19 March 1991. In response to the various recommendations made by the Committee on the Rights of the Child, Madagascar has prepared initial reports on the implementation of the two Optional Protocols to the Convention, which it ratified on 22 September 2004.

### **The Constitution**

13. The immediate applicability of international conventions by the national courts is guaranteed by the Constitution, the preamble to which affirms that the International Bill of Human Rights and international conventions on the rights of women and children are an integral part of positive law.

14. The Constitution also stipulates that upon publication, duly ratified treaties take precedence over domestic law.

15. Consequently, the Optional Protocol may be invoked before the domestic courts and in case of conflict with legislative provisions that run counter to it, those of the Optional Protocol take precedence. However, the Optional Protocol does not take precedence in criminal law, where legislative reforms are required to allow its implementation.

16. Efforts have been made to bring domestic legislation into line with the requirements of duly ratified international conventions. By way of example, the minimum age of recruitment for national service has been raised to 18 years by Act No. 2005-037 of 20 February 2006.

## **C. Judicial authorities and other institutions with competence in respect of human rights**

### **1. Judicial authorities**

17. The courts have jurisdiction over all human rights violations. Anyone who is a victim of a human rights violation is entitled to set the matter before the courts and to exercise their right of appeal in order to obtain redress for the harm resulting from the violation.

18. However, it has to be recognized that case law rarely refers to those international instruments that have been ratified.

19. In order to address this, since 2007 a number of training courses have been organized for those responsible for the application of the law.

20. In 2011, the directors of the professional colleges of the judiciary, lawyers, the police, the gendarmerie, prison warders and the army made a commitment to devote a significant amount of course time to teaching human rights within their respective institutions.

21. In September 2012, a joint training course for human rights trainers was held in Antsirabe with support from the Office of the United Nations High Commissioner for Human rights and UNDP. The course was intended for teaching staff from the above colleges.

22. In addition, specific training taking into account the particularities of the work of each branch of law enforcement was held in Antsirabe and in Antananarivo.

23. In Antsirabe, in September 2012, military human rights instructors were provided with training that addressed their concerns in respect of their day-to-day activities.

24. Human rights instructors within the judiciary, the national prison administration college, the national police college, the national college of the gendarmerie and the lawyers' training institute also received specific training in Antananarivo.

25. In February 2012, the Ministry of Justice, via its directorate of human rights and international relations and in collaboration with the Office of the High Commissioner for

Human Rights, organized a training course in Fort Dauphin for law enforcement officials, including judges, police officers gendarmes and military personnel.

26. The course focused on the use of force during civil disturbances and was designed to teach participants the universal standards relating to the use of force and weapons during disturbances, together with current national legislation.

27. The purpose of the training courses was to equip law enforcement officials with the required knowledge to ensure proper application of international instruments that have been ratified and to expand the body of case law that makes reference to international instruments that have been ratified, including the two Optional Protocols.

28. Efforts are also being made to disseminate information on the human rights instruments to inform the public of their rights and of the ways and means of exercising them.

## 2. Other institutions

29. As a State party to the Optional Protocol, Madagascar is obliged to take all appropriate measures to ensure its implementation via legislative and other measures.

30. The implementation of the Optional Protocol concerns parliament, the Government and the military authorities.

### (a) Legislative authority

31. Parliament must refrain from adopting any legislation that contravenes the provisions of the Protocol.

32. The legislative body is also required to carry out reform to legislation so as to make it compatible with the Protocol. To this end, the minimum age for recruitment and enlistment has been raised to 18 years.

### (b) Executive authority

33. The executive must refrain from any act which violates the Optional Protocol and, in case of a blatant violation of the Protocol, must conduct investigations, prosecute the perpetrator and ensure the victim receives reparation.

### (c) Military authority

34. In carrying out their missions, the military authorities must ensure they comply with the Protocol. They are obliged to respect international humanitarian law and human rights, including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

35. This requirement is enshrined in the Army's Code of Conduct, whose section VIII, articles 48 to 50 contains the following provisions:

Art. 48: In time of armed conflict, members of the Armed Forces shall comply with the obligations, rules and principles of international humanitarian law.

Art. 49: International humanitarian law comprises the body of rules and principles which, for humanitarian reasons, limit the impact of armed conflict. It protects people who are no longer taking part in combat and restricts the means and methods of warfare.

Art. 50: Members of the Armed Forces must in all circumstances comply with the obligations, rules and principles of human rights.

36. Implementation of the Code of Conduct makes it possible to comply with all the prohibitions set forth in it, including the prohibition on recruiting and employing children under 18 years of age in armed conflicts.

(d) *National institutions for the protection of human rights*

37. Independent national institutions for the protection of human rights have been established.

The Ombudsman's Office (Médiature)

38. The Ombudsman's Office was instituted by decree No. 92-012 of 29 April 1992 in order to protect the rights of citizens in case of conflict with the administration. It intervenes in the following cases:

- Problems with the public administration;
- Failure by the administration to respect the rights of individuals;
- Inflexibility of certain societal rules in connection with an action to obtain equal treatment.

The National Human Rights Commission

39. Article 40, paragraph 2 of the Constitution stipulates that the "State shall guarantee, through the establishment of specialized bodies, the promotion and protection of human rights". Accordingly, the National Human Rights Commission was established in 1996. The mandate of this institution expired in 2002. In 2008 Act No. 2008-012 established the National Human Rights Council.

40. Taking into account the recommendations made by the treaty bodies, in May 2012 the Directorate for Human Rights of the Ministry of Justice organized a workshop, in partnership with the Office of the High Commissioner for Human Rights, to evaluate the conformity with the Paris Principles of Act No. 2008-012 of 17 July 2008 which established the National Human Rights Council.

41. During the workshop, each article of the Act was scrutinized. The analysis showed that several of its provisions, in particular those relating to the appointment by the executive branch of seven of the Council's nine members, did not conform to the Paris Principles.

42. Consequently, a bill was drafted by representatives of the Office of the Prime Minister, of the Ministry of Justice, members of parliament, of the press association, of universities, lawyers and members of civil society.

43. The bill was transmitted to the Government for submission to parliament for adoption.

44. The bill is designed to set up an institution for the protection of human rights which is in conformity with the Paris Principles, by ensuring:

- Its independence from the executive branch;
- As broad a mandate as possible;
- Membership that is both pluralist and representative;
- Independent appointment procedures;
- Regular and effective full-time operation;
- Adequate funding.

45. The bill assigns responsibility for appointing representatives of the bodies concerned to their peers, with the exception of the representative of the executive branch, which does not have a right to vote so as to avoid it exerting influence over the institution.

46. Moreover, the title National Human Rights Council has been superseded by National Independent Human Rights Commission.

47. In the same spirit, appointment of the members of the Commission combines representativeness with pluralism, expertise, experience, a sound sense of ethics, integrity, dedication to the values and principles of human rights and a prohibition on members being leaders of political parties.

48. In the interest of greater efficacy and stability, the members of the Commission serve in a full-time capacity to enable them to provide rapid and appropriate responses to cases of violations committed between the Commission's sessions. Lastly, it is essential to ensure the Commission possesses adequate human, technical and financial resources.

## **D. Other non-judicial mechanisms for the protection of human rights**

49. In Madagascar there are non-judicial remedies for the protection of human rights in the form of the legal counselling and advice centres and legal clinics.

### **1. Legal counselling and advice centres**

50. Public and private legal counselling and advice centres have been set up in communes, with the support of the United Nations Population Fund. Their purpose is to provide psychosocial case management for victims, including abused children.

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

### **2. Legal clinics**

52. Legal clinics serve as community-level human rights centres which provide assistance to the most impoverished members of the population to enable them to assert their rights in cases of violation without having to resort to the conventional courts. Non-governmental organizations are chosen to operate the centres. Their task is to arbitrate conflicts in a way that jeopardizes neither the interests of victims nor those of society.

53. They also provide information about laws and instruments relating to human rights in general. The paralegal staff who work in the clinics are provided with basic and in-service training to enable them properly to perform their role.

54. The work of the legal clinics is supervised and coordinated by the Ministry of Justice and their local courts of first instance. They have been in operation since 2007 and receive technical and financial support from UNDP and the European Union. There are currently nine legal clinics in the following locations: Antananarivo, Mananjary, Manakara, Farafangana, Tolagnaro, Ihosy, Ambalavao, Sakaraha and Toliara.



## II. Prevention (arts. 1, 2, and 6, para. 2)

### A. The conscription process, from registration to enlistment

*In accordance with article 1 of the Protocol, “States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities”.*

*Article 2 further stipulates that “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their Armed Forces”.*

55. To ensure observance of these articles, Malagasy legislation provides that compulsory recruitment for national service concerns only persons over 18 years of age, in order to ensure that children do not participate in armed conflict.

#### 1. Under article 18 of the 2010 Constitution, persons are honour bound to perform national service as required by law

56. With regard to registration for national service, article 5 of the provisions of Ordinance No. 78-002, of 16 February 1978, on the general principles of national service stipulates that all citizens are required to register in the year of their eighteenth birthday. They make up the annual intake. Those who fail to register with their age group are classified as “unregistered” and are liable to the penalties laid down by the legislation in force.

#### 2. Under article 20 “All Malagasy citizens residing abroad are liable to national service”

57. For purposes of implementing the above ordinance, article 2 of decree No. 86-238 of 6 August 1986 stipulates that “it is mandatory for citizens who meet the requirements for registration to register in the year of their eighteenth birthday, regardless of their place of residence, subject to the penalties laid down by the regulations in force”.

58. For purposes of illustration, the table below shows the figures for young recruits in 2006:

**Intake of young recruits for 2006**

Quota per corps	Joined		Call-up notice sent	Unfit	Fit	Deserter	Sent back home	Present	Missing	% Enlisted	
	Volunteer	Called up								Volunteer	Conscript
60	27		71					27		45.0	0.0
100	55	33	122					88		55.0	33.0
50			63							0.0	0.0
50	23	12	64					48		46.0	24.0
80	79	12	47					91		98.8	15.0
30			27							0.0	0.0
50	67		95					67		134.0	0.0
50	43	1	76	1	37			44		86.0	2.0
60			87							0.0	0.0
60			16							0.0	0.0
60	41	1	104	6	36		4	38		68.3	1.7
50	57	35	65	11	67		11	62		114.0	70.0

Quota per corps	Joined		Call-up notice sent	Unfit	Fit	Deserter	Sent back home	Present	Missing	% Enlisted	
	Volunteer	Called up								Volunteer	Conscript
50	75		79	6	67			75		150.0	0.0
50			59							0.0	0.0
50	50		56		51			50		100.0	0.0
30	17	1	38		16			17		56.7	3.3
30	38	15	31	9	44	6	6	47		126.7	50.0
50	57	35	80	11	67	19		62		114.0	70.0
50	7		26					7		14.0	0.0
50	42	7	72					49		84.0	14.0
50	19	4	53					23		38.0	8.0
50	50	3	70					53		100.0	6.0
50	47	10	62	6	39		6	51		94.0	20.0
50	7	2	33					9		14.0	4.0
50	33	14	54	5	29	1	5	42		66.0	28.0
120	112	13	159	25	120			125		93.3	10.8
120	95	19	142	12	89	5	12	97		79.2	15.8
100	76		129					76		76.0	0.0
1 650	1 117	217	1 980	92						67.7	13.2

Source: Army Headquarters.

### 3. The compulsory recruitment process:

- 1st stage: a census statement as provided for by decree No. 86-238 of 6 August 1986. article 4;
- 2nd stage: a review as provided for by article 16 of the above decree and by the conscription order. which provides that "review takes place after the census in order to complete the information obtained to allow conscripts who meet the requirements of national service in terms of numbers and suitability to be called up".

### 4. Incorporation into the Armed Forces takes two forms:

- Obligatory recruitment of conscripts;
- Voluntary recruitment for the legal period of enlistment.

59. Under the obligatory recruitment procedure. the minimum age requirement of 18 years is ascertained by checking the birth certificate and national identity card.

60. Even under exceptional circumstances. Malagasy legislation makes no provision for the minimum age requirement to be reduced.

61. In this connection. progress has been made by raising the minimum age requirement to 18 years. which was not the case previously.

62. In accordance with article 4, paragraph 2 of Ordinance No. 78-002 of 16 February 1978 on the general principles of national service: "When a total or partial mobilization has been declared or in case of need. the minimum age of enlistment may be set below the age of 18. on the terms established by decree."

63. In actual fact, Madagascar has never faced a situation that justified the declaration of a total or partial mobilization.

64. For purposes of implementing article 1 of the Protocol, Act No. 2005-037 of 20 February 2006 on the general principles of national service has superseded article 4, paragraph 2 above with the following provision: "The minimum age for recruitment into the army to perform national military service is set at 18 years, even in cases in which a total or partial mobilization has been declared."

65. This new provision has brought Madagascar into line with the requirements of the Optional Protocol with regard to the minimum age for national service.

66. There has never been a situation in which Madagascar has suspended compulsory military service.

## **B. Voluntary enlistment**

67. Safeguards have been introduced by law to ensure that enlistment is truly voluntary:

1. Article 11 of Ordinance No. 78-002 of 16 February 1978 makes it possible for young people of both sexes who are over 18 years of age to enlist in the Armed Forces or outside the Armed Forces before other persons of their age group;

2. The same article 11 makes it possible for all persons over the age of 18 years to apply for enlistment for a set period in the Armed Forces;

3. In addition to the birth certificate and national identity card, volunteers are required to produce an extract from their criminal record (bulletin No. 3) together with a certificate of residence;

4. Malagasy legislation ensures observance of the minimum age for voluntary enlistment, in conformity with the requirements of the Protocol.

68. The following requirements are laid down for incorporation into the Armed Forces:

- Presentation of an application for voluntary enlistment addressed to the Army Chief of Staff together with a form providing personal information describing the applicant's skills;
- An order to report sent by the Army Chief of Staff in order to take the psychological and technical aptitude test;
- A medical examination carried out by an army physician;
- A medical certificate of fitness for service.

69. Articles 12 and 13 of the same ordinance set forth other measures relating to voluntary enlistment.

70. Under article 12, "applications for voluntary early conscription and voluntary enlistment are to be satisfied on the basis of the requirements of national service and of the employment opportunities available within or outside the Armed Forces".

71. Article 13 provides that "citizens who join the Armed Forces voluntarily shall be bound by the conditions of service. The duration of the obligation to which they are subject shall be that set for the intake for the year in which their contract is signed".

72. Persons who enlist voluntarily are required to be acquainted with the conditions of recruitment and living conditions, as well as with the rights and duties that apply to the Armed Forces.

73. Article 8 of the ordinance sets the legal duration of the obligation at 24 months.
74. However, volunteers may withdraw before they are actually incorporated. The only acceptable justification for early release from military service is a certificate from a military physician certifying that a person is unfit for service.
75. Children under the age of 18 years have never been recruited into the Armed Forces in Madagascar. Consequently, no penalties have ever been handed down either by the courts or by military discipline.

**Measures to encourage voluntary national service**

76. As part of its policy to encourage voluntary enlistment, Madagascar instituted military service through action for development (SMAD), by decree No. 2006-650 of 5 September 2006, which established, organized and determined the operation of the service.
77. Article 2 of the decree provides that “National service through action for development shall be established on a voluntary basis for young Malagasy persons. Volunteers shall be recruited in the region in which their training unit is based”.
78. In the units providing training in rural skills, each volunteer is assigned a five hectare plot of land together with a temporary permit to occupy the land, which may be renewed in accordance with the applicable legislation. Definitive assignment of the land is decided by the Ministry of Agriculture, Livestock and Fisheries in accordance with the legislation in force. During their preliminary period of installation, volunteers are the responsibility of the Malagasy Army. On completion of their military service in the form of action for development, volunteers receive support from the army for five years and are entitled to keep the proceeds of their production.
79. Currently, SMAD operates in 16 regions and the current intake is the fifth. Each intake is made up of some 60 volunteers.

**C. Educational establishments under the administration or control of the Armed Forces**

80. Candidates for the competitive entry exam for the military academy must have reached the age of 18. The age of entry to the other colleges run by the Armed Forces varies depending on the level and vocation of the other establishments.
81. The only educational establishment managed and controlled by the Armed Forces is Fianarantsoa National Military College, otherwise known as “Sekoly Miaramilam-Pirena” or SEMIPI.
82. Pursuant to decree No. 95-102 of 31 January 1995, the minimum age for admission to the upper secondary level is 15 years.
83. Only boys aged from 15 to 17 years may sit the SEMIPI entry exam. If they are successful, they are considered to be pupils and under no circumstances may they take part in armed conflicts. They may not be called up, even during emergencies.
84. The curricula and teaching programmes are determined by articles 3 and 4 of the above decree. Lessons are taught by both civilian and military staff.
85. Although courses on international humanitarian law are taught at the Military Academy and at the gendarmerie and police colleges, they are not yet part of the curriculum at SEMIPI.

86. Pursuant to article 25 of the same decree on the organization of the college. “a student may be excluded from the college at any time. either at his request. at the proposal of the Board or if he is unsuited for the studies. as a disciplinary measure or on grounds of health. Any exclusion shall require a decision by the Ministry of the Armed Forces. at the proposal of the Army Chief of Staff”.

87. Under article 26 of the decree. “any pupil excluded at his own request or as a disciplinary measure is required to reimburse his school fees”.

88. Article 27 also stipulates that “any pupil excluded from the college shall. unless he is physically unfit. perform his national military service as required by law”.

89. The internal regulations of the college punish any abuse of the students. who are entitled to complain against instances of abuse.

90. Once they have passed the baccalaureate. all SEMIPI students sign a four-year contract with the college.

91. Students at SEMIPI who wish to take the entry exam for the Military Academy are required to follow two years of preparatory classes.

## **1. The Military Academy**

92. The minimum age of admission for civilians into any branch of the Military Academy. which constitutes incorporation into the Army. is 18 years of age. An interministerial decree sets the conditions for organizing the entry exam.

93. The conditions of admission to the entry exam are set out in the notice informing of the exam:

- Requirements for civilian candidates:
  - Malagasy nationality;
  - Male;
  - A minimum age of 18 years and a maximum of 26 years of age on 1 December 2005;
  - A minimum height of 1.60 m;
  - Declaration of fitness from a military physician;
  - An educational qualification representing two years’ study after the baccalaureate or its equivalent;
- Requirements for military candidates:
  - An educational qualification representing two years’ study after the baccalaureate or its equivalent;
  - Permission from one’s superior officer;
  - A maximum age of 28 years (subject to a derogation of two years. equivalent to the obligatory period of service).

## **2. The National Gendarmerie College**

94. The minimum age of entry to the National Gendarmerie College in Ambositra is 20 years.

95. Madagascar has never experienced a period of armed conflict involving the formation of an armed group distinct from the national Army. Consequently. no children

have ever been recruited by any such group. Under the Criminal Code it is an offence to form an army distinct from that of the State. Article 92 of the Code stipulates that “the death penalty shall apply to anyone who raises armed forces, hires or enrolls, has persons hired or enrolled as soldiers or provides them with or purchases for them arms or munitions without the authorization of the legitimate authority”.

96. One of the aims of the National Commission on International Humanitarian Law (CONADIH) is widely to disseminate information in order to promote peace and prevent attacks on civilian objectives protected under international humanitarian law and other international instruments, including places where there are generally large numbers of children, such as schools and hospitals.

97. Training courses and information campaigns on the harmful impact of the involvement of children in armed conflicts are organized for the members of the Armed Forces, law enforcement officers, teachers and pupils.

98. An effort will be made to have the Optional Protocol translated into the national language in order widely to disseminate it among the public, the media, children, teachers and law enforcement officials.

99. Steps will also be taken to assess the effectiveness of the efforts made.

### **III. Prohibition and related issues**

#### **A. Prohibition**

*Article 4 paragraph 2 of the Optional protocol: “States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.”*

100. To ensure the observance of this article, the legislation described above has set the minimum age of recruitment at 18 years to prevent the recruitment and use of children in armed conflicts.

101. However, current legislation does not explicitly criminalize the forced recruitment of children under the age of 18 years for direct participation in hostilities.

102. In order to remedy this situation and to actually implement articles 1 and 2 of the Optional protocol, legislative reforms will be introduced to criminalize and punish the forced recruitment of children under the age of 18 years.

103. The purpose of the reform is to abrogate provisions that contravene the Optional Protocol and also to protect subordinates who refuse to carry out acts ordered by their superior and which are in violation of the Optional Protocol.

104. The reform concerns the provisions of article 8 of decree No. 97-1133 of 17 September 1997 which sets forth the general disciplinary regulations of the Armed Forces: “A subordinate shall not carry out an order which involves the performance of an act which is manifestly illegal or contrary to the customs of war or to the international conventions. A subordinate who has any doubt as to the lawfulness of an order received shall express his objections to his immediate superior or to the latter’s superior. Should the superior insist, the subordinate shall carry out the order without objection although he shall bear no responsibility for the consequences of carrying out the order.”

105. In practice, under the planned reform, persons who carry out an act which violates the Optional Protocol would not be immune from prosecution for the act on the sole

grounds that they were merely carrying out an order from a superior and after having expressed their doubt as to the lawfulness of the order received.

106. After the reform, an effort will be made to ensure the effective implementation of the new legislation in conformity with the Optional Protocol to ensure the possibility of invoking it before the courts and its application by them.

107. Citizens' awareness of the new legislation and its application by the courts will lead to the development of case law that refers to the Optional Protocol.

## **B. Related issues**

108. Since 2008, Madagascar has been a party to the Rome Statute of the International Criminal Court which established the International Criminal Court.

109. Madagascar has already ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and has taken immediate action to eliminate them.

110. National legislation does not yet recognize the criminal liability of bodies corporate, except in cases of money-laundering. However, those responsible for a body corporate may be held personally liable if they are found to have acted as the perpetrators of or accomplices in an offence.

111. Madagascar favours reform of criminal law to make it possible to hold bodies corporate such as private military and security companies criminally liable.

112. The same holds for the determination of jurisdiction, including extraterritorial jurisdiction over serious violations of international humanitarian law.

113. Madagascar has not yet received any requests for extradition concerning the offences covered by the Optional Protocol.

## **IV. Protection, rehabilitation and reinsertion**

114. As Madagascar has not yet been faced with a situation in which children have been involved in armed conflicts, there has been no need to address measures to ensure the protection, rehabilitation and reintegration of victims.

115. Nevertheless, the planned reform must encompass the protection, rehabilitation and reintegration of the child victims of the offences covered by the Optional Protocol.

## **V. International assistance and cooperation**

116. In October 2000, a training course on international humanitarian law was provided by the International Committee of the Red Cross (ICRC) for senior officers and generals of the Armed Forces, together with an observer from the Ministry of Justice.

117. As part of cooperation with the International Institute of Humanitarian Law, staff from the Ministry of Defence receive training on the Code of Conduct in Non-International Armed Conflict, including the prohibition on the recruitment, whether voluntary or not, of child soldiers.

118. As part of its cooperation with ICRC, Madagascar participates in the annual seminar on international humanitarian law in Pretoria, South Africa, at which it is represented by the Ministry of Foreign Affairs and the Ministry of Defence.

119. ICRC at Geneva, in Pretoria and in Madagascar, is the technical partner of CONADIH.

120. Since 2007, the Ministry of Justice has organized a capacity-building workshop for members of CONADIH, in cooperation with ICRC.

121. Through CONADIH, Madagascar plays an active role in the annual seminar on the application of international humanitarian law, organized by ICRC in Pretoria, South Africa, as well as in the universal conferences of the national commissions on international humanitarian law organized by ICRC in Geneva.

122. The Indian Ocean regional delegation of ICRC provides the Ministry of Justice with technical support to improve the capacity of CONADIH to disseminate information and provide training on international humanitarian law by organizing workshops.

123. At these workshops, CONADIH has set up regional commissions on humanitarian law in Antsinanana, Boeny and Haute Matsiatra, in 2010, 2011 and 2012 respectively, thereby facilitating the implementation of international humanitarian law at the regional level.

## VI. Accession by Madagascar to the other instruments

124. In addition to the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, which is covered by this report, since 1963 Madagascar has been a State party to the four Geneva Conventions of 1949 and since 8 May 1992 to the 1977 Additional Protocols to the Geneva Conventions. On 3 December 2005, Madagascar signed the Third Additional Protocol to the Geneva Conventions in Geneva. The ratification process is under way.

125. On 24 June 2005, Madagascar ratified the 1990 African Charter on the Rights and Welfare of the Child.

126. Also in 2005, Madagascar ratified the United Nations Convention on Organized Transnational Crime and its Additional Protocol to prevent, prosecute and punish human trafficking, particularly the trafficking of women and children.

127. Madagascar ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) on 4 October 2001 and legislative reforms are being made to ensure its implementation.

## Conclusion

128. Despite the deep social and political crisis besetting Madagascar since the end of 2008, the country has striven to meet its international obligations deriving from its ratification of the two Optional Protocols, and in particular to prepare this national report. The report covers the legislative measures taken in order to bring national legislation into line with the Optional Protocol.

129. Although Madagascar has not been faced with situations of armed conflict in which children under the age of 18 years have been involved, it is committed to adopting every appropriate measure to ensure the effective application of the Protocol.

130. The challenges that remain include:

- Identifying any national legislation which is not in conformity with the Optional Protocol, in order to amend it;



- Translating the Optional Protocol into the national language in order widely to publicize it;
  - Incorporating a subject covering the application of the Optional Protocol into the human rights curriculum of the colleges of the judiciary. the gendarmerie and the army;
  - Disseminating the army's code of conduct and providing training so that the army actually shows respect for human rights.
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