



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Seventieth session

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Item 4 of the provisional agenda

### Consideration of reports of States parties

## List of issues in relation to the report submitted by Madagascar 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

### Addendum

## Replies of Madagascar to the list of issues\*

[Date received: 12 June 2015]

### Introduction

1. In response to the request by the Committee on the Rights of the Child that Madagascar should submit additional, updated information, the Government has prepared the present report to address issues relating to the report submitted pursuant to 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.

### Coordinating body responsible for giving effect to the Optional Protocol

2. Madagascar has a National Commission for International Humanitarian Law and regional commissions for international humanitarian law in the three regions of Haut Mahatsiatra, Boeny and Antsinanana.
3. The National Commission is the body responsible for issues related to armed conflict, including the implementation of the Optional Protocol.

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



### **Information relevant to the implementation of the Optional Protocol**

4. Further to the information provided in paragraphs 19 to 28, law enforcement officials have not yet received specific training in the implementation of the Optional Protocol.

5. This is because Madagascar has not yet been affected by armed conflict involving children. However, as a preventive measure, there are plans to conduct public awareness-raising and training programmes, which will also be extended to law enforcement officials.

### **Inclusion of courses on children's rights and the Optional Protocol in military and civilian curricula**

6. While courses on children's rights and the Optional Protocol are already conducted in the professional training establishments of the judiciary, the national administration service and the national prison administration service, that is not yet the case in all military schools. Efforts will be made to address this.

### **Establishment of an independent national human rights institution in line with the Paris Principles**

7. A recent development was the establishment of the National Independent Commission for Human Rights under Act No. 2014-007 of 19 June 2014. It is a national human rights institution in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

8. The Act provides for:

- The independence of Commission members vis-à-vis the executive in the performance of their duties;
- The appointment procedure to be conducted by each agency represented in the Commission rather than by the executive;
- The administrative and financial independence of the Commission;
- The regular and continued exercise by the Commission of its mandate;
- The Commission's gender balance and pluralism; and
- The widening of the Commission's terms of reference to cover the promotion and protection of all human rights, without exception.

9. The members of the Commission serve for a renewable term of four years. This term is fixed, except on serious grounds provided by law.

10. The Commission contains a representative of associations, non-governmental organizations or civil society organizations working for the protection of children's rights.

11. The Commission is authorized to receive and investigate complaints, including those from children in the case of trafficking-related offences. Article 44, paragraph 2, of Human Trafficking Act No. 2014-040 of 20 January 2015 makes provision for children themselves to report acts committed against them or lodge a complaint with

the Public Prosecutor's Office and the relevant authorities and to seek redress for damage suffered.

### **Birth registration**

12. Madagascar has established the National Programme for Rehabilitating Birth Registration, known as "*EzakaKopia ho an'nyAnkizy*", for the period 2004-2013, in accordance with Decree No. 2004-495 of 26 April 2004.

13. With the support of the United Nations Children's Fund (UNICEF), the programme has provided assistance to 921 out of the country's 1,579 municipalities.

### **Retroactive registration of births under late registration procedures**

14. As regards the retroactive registration of births under late registration procedures, 1,029,005 children without birth certificates, out of the 1,532,857 recorded between 2004 and 2010, have been entered in the civil registry.

15. On the basis of the data currently available, 503,852 children without birth certificates should have their births registered retroactively.

16. Work remains to be done in the 628 municipalities that have yet to receive support under the programme.

### **Systematic registration of births**

17. Data from population and health surveys suggest that the rate of underreporting of children under 5 fell from 25 per cent in 2003-2004 to 20 per cent in 2008-2009, which represents a reduction of 5 per cent over a five-year period, or an average decrease of 1 per cent per year.

### **Proposed extension of time limit for birth registration**

18. In order to enable every person to register his or her children, a bill has been introduced to extend the time limit for birth registration to 45 days.

19. The issuance of a birth certificate to every child makes it possible to prevent the recruitment and use of children by the armed forces.

### **Situation of children educated at the Sekoly Miaramilam-Pirenena military school**

20. The Sekoly Miaramilam-Pirenena military school is responsible for preparing young persons to join the military academy. They are not child soldiers.

21. In the past, military studies began at sixth grade and continued until the last year of secondary school. Now, they start from the tenth grade and continue until the second year of university.

22. In addition to the military school's general education programme, children receive basic military training, apart from training in weapons handling or shooting and combat exercises.

23. Pursuant to the principle of freedom of choice in education provided for in article 23 of the Constitution, children are free to leave the military school once they obtain their baccalaureate.

24. After obtaining their baccalaureate, children attend special classes within the military school in preparation for their entry into the higher educational establishments of their choice, including the military academy.

25. The military school does not currently accept female students.

### **Criminalization and punishment of child recruitment**

26. Article 92 of the Criminal Code stipulates that “the death penalty shall apply to anyone who raises armed forces, hires or enrolls or has persons hired or enrolled as soldiers or provides them with or purchases for them army or munitions without the authorization of the legitimate authority”.

27. It should be noted that the death penalty was abolished by Act No. 2014-035 of 9 January 2015 and the applicable penalty is now forced labour for life.

28. Furthermore, the prohibition of recruitment, while not explicitly stated, also applies to the recruitment of children.

### **Criminal liability of legal persons**

29. The criminal liability of legal persons for violation of the Optional Protocol on the involvement of children in armed conflict has not yet been established, by contrast with the situation regarding trafficking in children, for which legal persons can be prosecuted.

30. Legislative reform could address this shortcoming.

31. By way of comparison, article 30 of Human Trafficking Act No. 2014-040 of 20 January 2015 establishes the criminal liability of legal persons: “Legal persons, with the exception of the State, may be liable for the offence of trafficking committed on their behalf by their bodies or representatives, acting through natural persons exercising a managerial, administrative, governing or supervisory function or any other persons in a position of power having the authority and resources to fulfil their duties.”

32. The criminal liability of legal persons does not obviate the criminal liability of natural persons who commit or abet the commission of such acts.

33. Legal persons may also incur:<sup>1</sup>

- A permanent ban or suspension for a period of up to five years from directly or indirectly engaging in certain professional activities;
- The permanent closure, or closure for a period of up to five years, of any facilities belonging to them that were used for committing the offence;
- Their dissolution, if they were established with a view to committing the offences in question;
- The dissemination of the decision by the written media or by any other form of audiovisual communication.

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<sup>1</sup> In the case of trafficking, legal persons incur a fine of between 100 million and to 500 million Malagasy ariary, in the circumstances referred to in paragraph 1.

## Extraterritorial jurisdiction

34. Further to the information provided, article 507 of the Malagasy Code of Criminal Procedure provides that: “Any national of Madagascar who has committed an act outside the national territory that contributes a crime under Malagasy law may be tried and convicted by the Malagasy courts. Any national of Madagascar who has committed an act outside the national territory that constitutes an offence under Malagasy law may be tried and convicted by the Malagasy courts, if the act is punishable under the legislation of the State in which it was committed.”

35. These provisions do not provide for Malagasy jurisdiction if the crime or offence was committed against a Malagasy national or a resident of the State party.

36. However, it should be noted that article 38 of Human Trafficking Act No. 2014-040 of 20 January 2015 has expanded extraterritorial jurisdiction by stipulating that:

“Malagasy courts are competent to prosecute, sentence and punish any person who has committed the offence of trafficking outside the territory of Madagascar if:

- The perpetrator or the victim is of Malagasy nationality;
- The perpetrator is a foreign national who is located in or is a habitual resident of Madagascar following the commission of the act of trafficking.

The penalties provided for by this law shall apply even if any element of the trafficking was committed abroad.”

## Reintegration programmes for children participating in the so-called “dahalos” armed groups

37. During 2013 and 2014, a new type of crime emerged involving armed attacks by armed groups of 200 to 300 cattle rustlers.

38. Between 500 and 1,000 cattles are estimated to have been rustled.

39. In an effort to prevent similar occurrences in future, operations have been conducted with the support of traditional leaders to disarm the *dahalos*. Around 6,000 of them have laid down their arms publicly pledging to desist from further crime and to assist the law enforcement agencies in putting an end to such activities.

40. During the deposition of weapons, it was not possible to identify children who had been involved in these attacks.

41. The disarmament of the *dahalos* has reduced the number of large-scale cattle thefts perpetrated by armed groups of over 100 persons. It has simultaneously reduced the risk of children being recruited into armed groups.

## Illegal trade in arms

42. Under article 29 of the Counter-Terrorism and Transnational Organized Crime Act No. 2014-005 of 17 July 2014, trafficking in firearms, their parts and components and ammunition is punishable by 5 to 20 years’ hard labour.