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Rights of the Child in Madagascar

Report on the implementation of the
Convention on the Rights of the Child
by Madagascar

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Introduction

The rights of the child, as a specific dimension of human rights, cannot be understood without being linked to their broader political, economic and social context.

As children are more vulnerable to the effects of violence than adults and might have limited capacity to understand, as well as express and defend themselves, they are particularly affected by political and economic crisis and their negative impact on their rights.

Madagascar, an island with cultural and historical ties both to Africa and Asia, located in the Indian ocean, was a French colony from 1896 until independence in 1960. A military government was in power until the system became multiparty in 1990 after several political and economic crises. The economy of Madagascar is dominated by agriculture, which employs three-fourths of the population. While economic development has been slow over the past 20 years, the population has continued to grow. Madagascar has also suffered renewed political crisis with the contested presidential elections on 16th December 2001. In 2002-2003, the international community has gradually recognised the government of Mr. Ravalomanana, which gained control over the entire country. Having managed to restore peace in the remaining provinces in which violent clashes occurred between supporters of the two sides, his government is embarking on an economic recovery programme with some foreign aid ¹. Still, Madagascar is one of the poorest countries in the world. Today, 72% of the Malagasy live on less than a dollar a day, despite the fact that their land has abundant agricultural and mineral resources.

Nearly half of the 15 million inhabitants of Madagascar are under 18. They are constantly prone to malnutrition, poor health and lack of quality education. Recurrent natural phenomena such as cyclones and droughts regularly turn into acute emergencies, to which children are most vulnerable. In July 2003, as a consequence of serious droughts in the south of the country, many children became at risk due to a combination of disease, inadequate diet and unsafe drinking water. The south of the country did not have a successful harvest for two years, which led to an increase in the number of severely malnourished children arriving at government-run nutrition centres, despite governmental efforts.² Malaria, intestinal worms causing anemia, tuberculosis, and leprosy, as well as occasional outbreaks of bubonic plague and cholera, are also recurring health care problems. A recent study by the country's national statistics institute, Instat, showed that nearly half the infants below the age of three suffer from retarded growth - the highest proportion in Africa -and that one child in six dies before reaching the age of five. According to UNESCO, school attendance between the ages of 6 and 23 nearly halved, from 60% to 33%, between 1970 and 1995, and nearly three-quarters of all schoolchildren fail to complete primary school.

OMCT welcomes the second periodic report submitted Madagascar to the Committee in accordance with article 44 (1) b of the Convention on the Rights of the Child (CRC).

OMCT's alternative report to the Committee covers the provisions of the CRC which fall under the mandate of OMCT, namely the right to life, the right to be protected from torture and other cruel, inhuman, or degrading treatment or punishment, the rights of children in

¹ Source : World Bank Group

² IRIN News, 14.07.2003

conflict with the law, and the right to be protected from any form of violence and discrimination.

1. International standards

Madagascar ratified the CRC on 19th April 1990, without any reservation or specific declaration, and it came into force on 19th March 1991. Madagascar also signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 7th September 2000, but still has not ratified them.

Madagascar is also a party to other international instruments related to human rights, in particular the International Covenant on Civil and Political Rights, which was ratified on 21 June 1971. However, Madagascar signed in October 2001, but still has not ratified the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

At a regional level, Madagascar is a party to the African Charter on Human and Peoples' Rights. It signed the African Charter on the Rights and Welfare of the Child in February 1992, but has not yet ratified it.

OMCT welcomes that the Preamble of the Constitution of Madagascar specifically refers to the international commitments of the State. It explicitly mentions the International Charter of Human Rights, the African Charter of Human Rights and the Convention on the Rights of the Child, considering these instruments as “an integral part of (the) law”. As such, it gives constitutional ranking to their provisions.

OMCT would recommend that the government ratify international conventions which contribute to the protection of children from torture and other forms of violence, namely the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 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, and the African Charter on the Rights and Welfare of the Child

2. Definition of the child

The definition of the child in the legal system of Madagascar varies according to the field contemplated.

Civil majority is fixed at 21 years old in Madagascar³ and matrimonial majority at 18 years old.⁴ However, 17 years old boys and 14 years old girls may marry with the consent of their

³ Ordonnance 62-011 du 10 09 1962 relative aux dispositions générales du droit privé, art. 15.

⁴ Ordonnance 62-089 du 10 01 1962 relative au mariage, Article 5 : « *L'enfant ne peut contracter mariage avant l'âge de dix huit ans révolus sans l'autorisation de son père ou de sa mère, ou à leur défaut, de la personne qui selon l'usage ou la loi a autorité sur lui. On entend par mineur, au sens du présent texte, l'enfant âgé de moins de dix huit ans* ».

parents or their legal representatives.⁵ In this case, as explained in the government report, they obtain full legal capacity.⁶ OMCT believes that this is discriminatory (see point 3 below) and fears that granting full legal capacity to under 18 girls and boys also exposes them to inadequate responsibilities, such as full penal responsibility.

We would thus recommend that Madagascar revise the legal minimum age of marriage with parental consent and amend its legislation so that, even in instances of marriage and independent management before 18, the rights of all persons under 18 be fully protected.

The law of Madagascar is excessively vague when dealing with recruitment in the armed forces. Article 18 of the Constitution states: “National service shall be an honourable duty. It shall not affect employment or political rights”. However neither the Constitution nor the law fixes the requirements for performing military service. Moreover, no information is available on the recruitment practice in Madagascar.⁷

Thus OMCT would recommend that the government of Madagascar clearly establish by law that the minimum age of voluntary and compulsory recruitment be fixed at 18 year old.

The minimum age of criminal responsibility will be dealt with in chapter 7 of this report.

3. Discrimination

OMCT believes that discrimination is one of the root causes of torture and other forms of violations of human rights. As State party to the Convention, Madagascar is bound to treat all children living in its territory “without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.⁸

In this respect, article 8 of the Constitution of Madagascar states that “Citizens shall be equal under the law, enjoying the same fundamental liberties protected by law” and that “the State shall prohibit all discrimination based on sex, education, wealth, origin, race, religion, or opinion”.

Despite this commitment, the Malagasy law still provides, as mentioned before, for different minimum ages of marriage for boys and girls. Article 3 of the 1962 Ordinance on marriage provides that “men younger than 17 years old and women younger than 14 years old may not get married”.⁹ This is particularly unfortunate, since the Committee, in its last concluding observation on Madagascar, had already expressed its concern, emphasizing that “such

⁵ Ibid., art. 3: « *Sauf dispense d'âge accordée pour des motifs graves par le président du tribunal du lieu de la célébration du mariage, l'homme avant dix-sept ans révolus, la femme avant quatorze ans révolus, ne peuvent contracter mariage* », and 5.

⁶ Loi 63.022 du 20 septembre 1963, relative à la filiation, adoption, rejet et tutelle, art. 101ff

⁷ The Coalition to Stop the Use of Child Soldiers, Child soldiers, CRC country briefs, Pre-sessional working group 34th session, 09/06/03 – 13/06/03: Madagascar, p. 12f.

⁸ Art. 2 par. 1.

⁹ Ordonnance 62-089 du 1962-10-01 relative au mariage, Article 3 : « *Sauf dispense d'âge accordée pour des motifs graves par le président du tribunal du lieu de la célébration du mariage, l'homme avant dix-sept ans révolus, la femme avant quatorze ans révolus, ne peuvent contracter mariage* ».

situations may raise the question of compatibility with the principles of non-discrimination and the best interests of the child”.¹⁰

The differentiation of the age of marriage as it is provided for by the law encourages boys to be educated up to the age of 17, while girls' education risk to be stopped earlier, implying that they are of secondary importance. Dropping out of school or of professional training at an early age has serious consequences on the well-being of girls and women in terms of, notably, emancipation and paid employment. In this regard, the government itself recognizes that girls are often obliged to stop their education in order to let their brothers to keep studying or because of early pregnancy.¹¹

As a consequence, OMCT would recommend that the Malagasy authorities amend article 3 of the Ordinance on marriage so as to raise the minimum age for marriage for girls and hence avoid the discriminatory consequences mentioned above.

OMCT would also recommend that the government develop and implement new policies aimed at promoting a comprehensive participation of girls and women in the Malagasy society based on a full recognition of equal rights and opportunities both for boys and girls. In this regard, OMCT wishes to raise some concern on the adequacy of the National Plan of Action for the Education of Girls (PANEF), established through decree 95-645 of 10 October 1995. As described in the government report, this plan seems to be mainly focussed on the preparation of girls by their mother to their “roles as wives, mothers, citizen and participants to the development”.¹² While OMCT recognizes that the educational influence of the mothers on their daughters is fundamental, it should be emphasized that governmental institutions should also take a proactive part in the achievement of full gender equality. In addition, OMCT would request the government to give more information on the content of this Plan of Action, which seems to promote a differentiation of responsibilities between girls and boys, rather than full equality.

4. Protection from torture and other cruel, inhuman or degrading treatment or punishment

Article 37 of the Convention provides that “States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

OMCT believes that the Government report’s handling of the issue of torture and other forms of ill-treatment is insufficient. The report provides almost no information on *de facto* cases of torture or ill-treatment of children and *de jure* protection. Regarding children in detention, for example, the report mentions that ill-treatment and all kinds of threats committed by prison guardians are frequently reported.¹³ The report, however, does not explain whether the government has implemented measures to prevent such treatment and to punish those responsible. Thus, OMCT believes that the Committee should be provided with more information thereon.

¹⁰ Concluding observations of the Committee on the Rights of the Child : Madagascar. 24/10/94. CRC/C/15/Add.26, par. 9.

¹¹ Government report p. 47

¹² See government report, p. 47.

¹³ p. 178.

a. Madagascar's legal framework

OMCT is concerned that the Malagasy legal framework to protect individuals, and particularly children, against torture is very weak.

First, there is no specific prohibition of torture in the Constitution. Only article 17 of the Constitution, which deals with "personal integrity, dignity, and development", states that "the State shall organize the exercise of rights which guarantee to the individual personal integrity and dignity, and complete physical, intellectual, and moral development". This provision is located under the chapter titled "Economic, Social and Cultural Rights and Duties". Thus, a systematic interpretation based on the structure of the Constitution leads to the conclusion that the field of application of the personal integrity and dignity protection is too restricted.

OMCT would recommend to the government to amend the Constitution in order to provide for an explicit prohibition of torture and other forms of ill treatment both under economic, social and cultural rights, and civil and political ones.

Second, the Malagasy Criminal Code does not provide for a satisfying prohibition of torture. Article 303 of this Code states that those responsible for torture or acts of barbarity leading to the death of the victim shall be considered as murderers (*coupables d'assassinats*).¹⁴ However, this provision is too limited since it does not allow for a punishment of torture as such, but only deals with it as an aggravating circumstance of unlawful killing. Therefore, torture, when not resulting in the death of the victim, is not covered by this provision. Moreover, article 303 of the Criminal Code only defines the perpetrator of torture in general terms as a "ill-doer" (*malfaiteur*), whereas the UN Convention against Torture requests State Parties to establish a specific criminal provision to prosecute and punish perpetrators of torture, when they are State agents.

Therefore, OMCT believes that the government commitment to fight against torture must include a thorough legal framework aimed at adequately punishing any person who perpetrated acts of torture, with special emphasis on State agents. OMCT would reiterate its recommendation that the government ratify the UN Convention against Torture and would particularly insist on the necessity that article 4 of this Convention¹⁵ be implemented within the shortest period possible.

b. Practice

Information is hardly available on the treatment imposed to children under the power of official agents in Madagascar. Some general reports, however, provide sufficient information to raise serious concern. In its 1998 global report on children in detention, the *Observatoire international des prisons* (OIP) mentions various cases where children were subject to torture,

¹⁴ « Seront punis comme coupables d'assassinats, tous malfaiteurs, quelle que soit leur dénomination, qui, pour l'exécution de leurs crimes, emploient des tortures ou commettent des actes de barbarie ».

¹⁵ UN Convention against Torture, Article 4 : "1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature".

cruel, inhuman and degrading treatment in police stations, prisons or re-educational centres. According to OIP, this treatment, which targeted children as young as 12 years old in some cases, included slapping, kicking, beating, hitting with a stick, flogging, whipping with an electric wire, burning with a candle on the back or on the feet. These examples are not isolated cases. They reflect common practice. Following a study conducted in 1996, OIP estimated that at least 37 “minors from 12 to 18 years old”, who were placed in the Anjanamasina re-educational centre, had been abused during their police custody. Those children were also subject to corporal punishment, such as being obliged to walk on their knees on the road or being hit with stick or electric wires, in the centre itself.¹⁶

Since this information dates back to 5 years ago, OMCT would suggest that the government provides information on the current situation of children in detention, in order to determine whether this situation improved or not.

OMCT would also strongly recommend that the government implement monitoring procedures aimed at preventing torture and other forms of violence against children in detention. In particular, independent and qualified medical personnel should be allowed to carry out regular examinations of these children.

5. Protection from other forms of violence

Article 19 of the CRC requires children’s protection “(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

a. Violence in the family

OMCT welcomes the fact that the government extensively reported on the issue of violence in the family, recognising the extent and gravity of the phenomenon in the Malagasy society¹⁷. However, the government does not appear to have a comprehensive strategy to curb domestic violence, domestic child abuse and neglect beyond merely implementing child protection law when cases are reported to state authorities and social services – which is rarely the case.

OMCT would thus urge Madagascar to undertake proactive prevention measures and develop a broad awareness-raising and attitude change campaign on the issue.

b. Sexual abuse and exploitation

The CRC provides that in article 34 that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials”.

¹⁶ Observatoire international des prisons, *Enfants en prison, Rapport d’observation sur les conditions de detention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 235f.

¹⁷ Second periodic report to the CRC on Madagascar, page 78-92

Pursuant to article 334 paragraph 1 of the Malagasy Criminal Code, procuring is an offence punishable with imprisonment from 2 to 5 years and a fine between 5 000 000 and 50 000 000 Fmg. Furthermore pursuant to section 334 bis, if the offence is committed against a minor, it is punishable with 5 to 10 years of imprisonment or a fine from 20 000 000 to 100 000 000 Fmg.¹⁸

Furthermore, pursuant to section 331, indecent assault and/or exposure (*attentat à la pudeur/outraging modesty*), consumed or attempted without violence, against a child of less than 14 years, are subject to a 5 to 10 years imprisonment and a 10 000 000 to 50 000 000 fine.¹⁹ For indecent assault and/or exposure consumed or attempted with violence, of children aged less than 15, the offender may be subject to 5 to 20 years of forced labour. For cases where rape has been committed against a child aged less than 15, the offender will be sentenced to forced labour. In other cases of rape, the offender will be sentenced to 2 to 5 years imprisonment.²⁰

As emphasized by the ILO report on the sexual exploitation of children in Antsiranana, Toliary, and Antananrivo, in 2002 there were 7026 cases brought before the courts and it was found that there were 35 cases of rape and 43 cases indecent assault and/or exposure. In Antsiranana, the offences committed against children represent 1,6% of the cases brought before the court.²¹

During the research conducted in three selected communities, 93 girls and 19 boys with average ages of 14.7 and 14.5 years respectively, participated in individual interviews. In addition, directed discussion groups were held with 32 girls and 6 boys. All the children interviewed had become involved in the sex trade. The vast majority (80 per cent) were school drop outs or had never been to school, whereas a minority (14.3 per cent) were still enrolled in school. Likewise, the majority (64.3 per cent) of the children in question were engaged exclusively in the sex trade, whereas a minority (21.4 per cent) were involved in the sex sector and held a job as well.

According to the Study, poverty and disinterest in pursuing their studies were the main reasons why children decided to drop out of school and to engage in lucrative activity such as prostitution. The need to compensate for the lack of money at home, but especially the desire to have money for their own needs, were the main factors leading the children concerned to

¹⁸ Loi No. 98-024 portant refonte du Code pénal concernant la pédophilie, article 334 (bis) ; «*La peine sera d'un emprisonnement de cinq à dix ans et d'une amende de vingt millions à cent millions de francs dans les cas où ; 1. Le délit a été commis à l'égard d'un mineur ; 2. Le délit a été accompagné de contrainte, d'abus de volonté ou de dol ; 3. L'auteur du délit était porteur d'une arme apparente ou caché ; 4. L'auteur du délit est appelé, de par ses fonctions, à la lutte contre la prostitution, à la protection de la santé ou au maintien de l'ordre public ; 5. Le délit a été commis à l'égard d'une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse est apparente ou connue de son auteur ; (...).*»

¹⁹ Loi No. 98-024 portant refonte du Code pénal concernant la pédophilie, article 331 ; «*L'attentat à la pudeur consommé ou tenté sans violence sur la personne d'un enfant de l'un ou l'autre sexe âgé de moins de quatorze ans, sera puni de cinq ans à dix ans d'emprisonnement et d'une amende de dix millions à cinquante millions de francs.*»

²⁰ Loi No. 98-024 portant refonte du Code pénal concernant la pédophilie, article 332 ; «*Quiconque aura un crime de viol sur la personne d'un enfant au-dessus de l'âge de quinze ans accomplis subira la peine des travaux forcés à temps. Dans les autres cas, le coupable de viol ou de tentative de viol ou de tentative de viol sera puni de cinq à dix ans d'emprisonnement. (...)*»

²¹ International Labour Organization, International Programme for the Elimination of Child Labour (IPEC), *Madagascar: The Sexual Exploitation of Children in Antsiranana, Toliary, and Antananrivo: Une Evaluation Rapid Evaluation*, by Noroarisoa Ravaozanany, Léon N. Razafindrabe, Liliane Rokotoniarivo, June 2002, Geneva, Switzerland, p. 6.

turn to moneymaking activities. Also, nearly all girls victims of sexual exploitation had some form of contact with the world of prostitution before becoming involved in it themselves.

The Study stresses that there is no specific structure or action known which systematically takes in charge child victims of sexual exploitation, although some NGOs provide them with assistance.²²

According to the earlier Concluding Observations of the Committee on the Rights of the Child, insufficient measures have been taken to prevent and combat the incitement to child pornography as well as prostitution involving children living and/or working on the streets, particularly children who are victims of sexual tourism.²³ Unfortunately, this recommendation does not seem to have been adequately implemented.

The International Secretariat of the OMCT is greatly preoccupied by this situation and would recommend that the Committee on the Rights of the Child urge the government of Madagascar to:

- develop a specific plan of action to protect children against sexual exploitation in line with the Stockholm Agenda for Action and the Yokohama Declaration, including special attention to boys and to perpetrators;
- ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography that it has signed on 7th Sep 2000;
- adopt and implement a criminal policy which seeks to investigate and punish those responsible for sexual exploitation of children, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- adopt preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- supply information on concrete measures aimed at providing assistance and protection to child victims, in particular on the programme elaborated by the National Board of the Minor and the Family for the attendance of sexually exploited children;
- provide for recovery and reintegration of child victims through, inter alia, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood.

c. Child labour and exploitation

In addition to article 19 of the CRC already mentioned, which protects children against any form of violence, article 32 paragraph 1 specifically recognizes “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”. For this purpose, art. 32 par. 2

²² International Labour Organization, International Programme for the Elimination of Child Labour (IPEC), *Madagascar: The Sexual Exploitation of Children in Antsiranana, Toliary, and Antananrivo: Une Evaluation Rapid Evaluation*, by Noroarisoa Ravaozanany, Léon N. Razafindrabe, Liliane Rokotoniarivo, June 2002, Geneva, Switzerland, p. 7

²³ *Concluding observations of the Committee on the Rights of the Child : Madagascar. 24/10/94. CRC/C/15/Add.26.*, para 15

requires States Parties to “take legislative, administrative, social and educational measures to ensure the implementation of the present article (...)”.

In its concluding observations of 1994, the Committee on the Rights of the Child expressed its concerns “that child labour continues to be a serious problem in Madagascar, particularly in the rural areas and in the informal sector. In this connection, the Committee notes with alarm that there is no effective inspection in rural areas to combat this problem nor is there labour legislation covering domestic workers”.²⁴

While some progress has been made to improve the situation of child labourers in Madagascar, there is still need for immediate action. Although, the State Party has now ratified the ILO Conventions 138 (31/05/2000) and 182 (04/10/2001), the existing Malagasy legal framework does not conform in some respects to International Law.

As mentioned in the State Party Report, Malagasy legislation requires children helping their working father not to be considered as workers under the law. Also, the minimum age to start working is 14 and children cannot be employed by a company unless this is authorized by an Inspector. Furthermore, while it is forbidden to employ children to work on night shifts, a derogation to this rule is possible upon due authorization of the Minister on Labour (and after an investigation of an Inspector).²⁵

OMCT deeply regrets that these provisions still allow recourse to child labour. OMCT would like highlight that pursuant to article 2.3. of the ILO Convention 138 concerning the Minimum Age for Admission to Employment, the “minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.” Also, pursuant to article 3.1, the “minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.”

As explained in the State Party Report, the Malagasy government has been involved with the ILO (IPEC) and was able to carry out certain investigations and studies in order to elaborate a National Plan of Action as well as several Sectoral Plans of Action targeted at the elimination of child labour.²⁶ OMCT welcomes this initiative, but would also like to highlight that this programme concerns only children aged 7 to 14 years and that it should also include all children under 18.

Moreover, despite current efforts and improvements, the situation of all child labourers in Madagascar remains precarious and exposes them to abuse. Newspapers regularly report cases such as that of 15 year old Fanja, employed as a domestic worker under an oral contract between her family and her employer for 50 000 Malagasy francs paid to her mother, who says she is content because for the first time her employer treats her “*like a human being*” and does not beat her like his predecessors²⁷. This is common and regarded as absolutely normal in the country.

OMCT recommends that more projects in favour of child laborers up to 18 years of age aimed at concrete improvements be implemented (rather than only research based projects).

²⁴ Madagascar. 24/10/94. CRC/C/15/Add.26. (Concluding Observations/Comments)

²⁵ Madagascar, Second Periodic Report to the CRC, CRC/C/70 Add.18, p.189-191

²⁶ Madagascar, Second Periodic Report to the CRC, CRC/C/70 Add.18, p.191

²⁷ Thursday, January 24, 2002 <http://www.namibian.com.na/2002/January/africa/023CE7426E.html>

The Malagasy government should also deploy greater efforts in order to monitor and support already instituted programmes in the long run and to reinforce the capacity of the existing National Directing Committee (the entity set up to supervise the project with a three year mandate).

d) Street children

Another source of concern for OMCT is the situation of street children in Madagascar who often live in precarious conditions and are exposed to health hazards and State brutality.

Médecins sans Frontières (Doctors Without Borders), a French NGO, estimated in 1997 that there were 3,500 boay kely (Antananarivo street children). One of the street children's worst fears are the police crackdowns. In an interview for the UNESCO Courier, a street child called Rado recalled a crackdown that took place in the summer of 1997, when there was a clean-up before the Jeux de la Francophonie, an international sporting event bringing together countries that use French as a common language. Shacks were torn down and the street children were taken off and dumped in a reception centre 50 km outside the city although the children soon ran away and went back to living off petty thieving. Street children are also exposed to serious diseases such as the bubonic plague. The health authorities responded to an epidemic in 1997-1998 by knocking down all the shacks and dousing the area with clouds of chemicals. Many children allegedly died during this operation. Rado was shocked by what survivors told him upon their return from hospital about the nurses and attendants, which refused to treat the sick children.²⁸

While some efforts have been deployed to identify the problem of street children²⁹ and while some NGOs provide medical and social assistance to them, OMCT deeply regrets that little concrete action has been taken by the government to improve their health, living conditions and social reintegration from a child rights approach.

OMCT recommends that the government of Madagascar revises and develops its policy towards children living and working in the streets. In particular, mass clean-up operations of street children which are performed by the local authorities should be completely prohibited and replaced by long term reintegration programmes, with a special emphasis on educational, health and economic support.

6. Children in conflict with the law

The situation of children in conflict of the law in Madagascar is an issue which has not been adequately addressed by the Malagasy authorities.

Generally, section 13 of the Constitution of Madagascar provides that :

“(3) No one may be prosecuted, arrested, or detained except in cases determined by law, according to the forms prescribed by law.

²⁸ Madagascar's undaunted street children, Adelson Razafy, journalist in Antananarivo, Madagascar, courier de l'UNESCO, 1999.06

²⁹ Madagascar, Second Periodic Report to the CRC, CRC/C/70 Add.18, p.190

- (4) No one may be punished except by virtue of a law promulgated and published prior to the commission of the act to be punished.
- (5) No one may be punished twice for the same deed.
- (6) The law shall assure everyone access to justice; lack of resources will not be no obstacle.
- (7) The State shall guarantee full, inviolable rights of defense in all jurisdictions and all stages of procedure, including the preliminary investigation, Judicial police, and court.”

a. Age of criminal responsibility and sentence

The Convention on the Rights of the Child requires in article 40 paragraph 3 that States set a minimum age of criminal responsibility. The Convention does not however specify any particular age of criminal responsibility.

In Madagascar, Order 62-038 of 1962-09-19 on the protection of childhood stipulates in article 4 that criminal majority is fixed at 18 years at the moment of committing the offence.³⁰ The minimum age of criminal responsibility, pursuant to article 6 of the same order is 13 years.³¹ Children under the age of 13 who have been arrested for a misdemeanour will only be subjected to a police warning (*admonestation*).³² Children under 13 who have been convicted of a serious offence can only be inflicted educational measures (returned to parents, tutor, guardian or trustworthy person), which can be accompanied by probation.³³

For children between 13 and 18 more complex measures apply and give large discretionary powers to the juvenile judge in order to decide whether the child is to be charged or not for the offence. If a child aged between 13 and 18 years is found guilty of a misdemeanour, the tribunal can give a fine, as required by the law, and also direct the child to the juvenile judge whom must decide to put him/her on probation.³⁴

If a child aged between 13 and 16 years is found guilty of an offence, the defence of minority will automatically reduce the severity of the sentence by half of the one for adults.³⁵ For a serious crime, the excuse of minority will be retained. The sentence normally applied to adults

³⁰ Ordonnance 62-038 de 1962-09-19 sur la protection de l'enfance, article 4 ; « La majorité pénale demeure fixée à dix-huit ans : l'âge du mineur s'apprécie au moment où il a commis l'infraction. »

³¹ Ibid., article 6 ; « Si le mineur est âgé de moins de treize ans, il ne pourra faire l'objet que d'une admonestation du tribunal de simple police. »

³² Ibid., article 6, « Si le mineur est âgé de moins de treize ans, il ne pourra faire l'objet que d'une admonestation du tribunal de simple police. »

³³ Ibid., article 35 ; « Si la prévention est établie à l'égard d'un mineur de treize ans, le tribunal pour enfants ne pourra prendre à son encontre qu'une simple mesure éducative: remise aux parents, au tuteur, à la personne qui en avait la garde ou à une personne digne de confiance.» ; article 43 (crimes) : « Si l'accusé est mineur de treize ans, les mesures éducatives de l'article 35 pourront seules être prescrites »

³⁴ Ibid., article 7, « Si le mineur est âgé de treize ans et de moins de dix-huit ans et si la prévention est établie, le tribunal de simple police prononcera la peine d'amende prévue par la loi. Il pourra, en outre, transmettre, après le jugement le dossier au juge des enfants, qui aura la faculté de placer le mineur sous le régime de la liberté surveillée. Même en cas de récidive, le mineur ne pourra être puni d'emprisonnement pour Contravention.»

³⁵ Ibid., article 36 ; « Si la prévention est établie à l'égard d'un mineur de treize à seize ans, le tribunal pour enfants délibérera sur la question de sa responsabilité pénale : Si celle-ci est retenue, l'excuse atténuante de minorité jouera de plein droit : la peine prononcée contre le mineur ne pourra s'élever au-dessus de la moitié de celle à laquelle il aurait été condamné s'il avait été majeur au moment de l'infraction ; Si au contraire, l'irresponsabilité pénale est admise, le tribunal pour enfants ordonnera, soit l'une des mesures éducatives visées à l'article précédent, soit le placement du mineur dans un centre de rééducation pour une période déterminée, qui ne pourra excéder l'époque où l'intéressé aura atteint l'âge de vingt et un ans. », article 44 ; « Si l'accusé a plus de treize ans et moins de seize ans et si son irresponsabilité pénale est admise, la cour criminelle des mineurs prononcera les mesures éducatives prévues à l'article 36, paragraphe 3. »

criminals will be reduced. If the sentence is death, forced labour for life or deportation, the minor will be sentenced from ten to twenty years of imprisonment; if the sentence is forced labour, detention or reclusion, the decision of the judge will be the half of the one provided for adults; if the minor has been found guilty of civic degradation, the sentence will be to a maximum of two years of imprisonment.³⁶

When the child between 13 and 16 is declared irresponsible, the court could order one of the educative measures or a placement in a re-education centre for a period that could last until the child reaches the age of 21.³⁷

For children aged between 16 and 18 found guilty of an offence, the judge can decide to put aside the excuse of minority, and the child will then be sentenced as an adult.³⁸ However, children can be sentenced to death under no circumstances.³⁹

OMCT is greatly preoccupied by the regime of offences and sentences applicable to Malagasy children. It appears that even if a child is declared criminally irresponsible, he/she can be committed to re-education in a closed institution up to his 21st birthday. Moreover, children over 13 can be imprisoned. In this regard, OMCT wishes to remind that the CRC provides that “detention or imprisonment of a child (..) shall be used only as a measure of last resort and for the shortest appropriate period of time”.⁴⁰

OMCT would also like to highlight that the sentences contained in the Criminal Code are not proportional to the offence committed. Misdemeanours, such as theft of food, may be punished with several years of imprisonment. In a similar vein, OMCT would like to emphasize that pursuant to section 45 of the Order 62-038 of 1962-09-19 on the protection of childhood, a child is eligible to a sentence of up to twenty years of imprisonment. Moreover, OMCT is concerned by the authority of the judge, when fixing a sentence, to withdraw the mitigating excuse of minority for children between 16 and 18 years old. Under such a provision, the children concerned might be sentenced, for example, to forced labour for life or deportation. This is not compatible with the CRC, which prohibits States Parties to sentence child offenders to life imprisonment without possibility of release⁴¹ and which establishes the right of every condemned child to be treated in a manner taking into account “the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”.⁴²

On the other hand, OMCT welcomes the application of a probationary regime to children as required by the Order, in which case re-education measures are applied under the authority of a judge for juveniles by volunteers. These measures are meant to help and assist the family in its natural role of educator of the child. The children concerned are those in moral danger, those that require re-education in a familiar environment and those that require permanent surveillance. However, in a Study conducted recently, it was reported that the probationary

³⁶ Ibid., article 45

³⁷ Ibid., article 44

³⁸ Ibid., article 37 ; « Si la prévention est établie à l'égard d'un mineur de seize à dix-huit ans, les dispositions de l'article 36 seront applicables. Toutefois, le tribunal pour enfants aura la faculté d'écarter, par décision spéciale et motivée, l'excuse atténuante de minorité. »

³⁹ Ibid., article 46 ; « En aucun cas, la peine de mort ne pourra être prononcée contre un mineur de dix-huit ans. »

⁴⁰ CRC, Art. 37 par. b.

⁴¹ CRC, Art. 37 par. a.

⁴² CRC, Art. 40 par. 1.

regime is not fully implemented.⁴³ It was suggested that this is due to the fact that the function of delegate to probation is not paid and that the delegates are volunteers.

OMCT would strongly urge the government to allocate sufficient resources for the delegates and further develop that regime, as well as other alternatives to imprisonment.

b. Jurisdictions

The CRC emphasizes the importance of the child's right to be tried in accordance with its status. Article 40 states:

Also, article 40.3 of the CRC requires that: "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (...) (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."

Furthermore, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") stress the need of creating a comprehensive juvenile justice system within the country. It provides that "[j]uvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society".

In Madagascar, the main legislation which regulates the juvenile justice system and establishes courts for this purpose is Order 62-038 of 1962-09-19 on the protection of childhood. Pursuant to article 27 of the Order, a Tribunal for Children was created and it is situated at the headquarters of the first instance tribunals. The juvenile judge is chosen among the judges of the first instance in function of his/her interests in issues pertaining to children and his/her aptitudes.⁴⁴ A magistrate is also designated by the Attorney General which is in charge of following child cases and suggests all the possible measures which are bound to improve child protection.⁴⁵ In the Court of Appeal, a magistrate designated by the president also follows the cases of children and has the title of delegated advisor on child protection.⁴⁶ In tribunals where the means exist, an examining judge designated by the president is be put in charge specifically of issues which pertain to children.⁴⁷ In addition to this, a social service in charge of conducting investigations (under the control of the Attorney of the Republic and the juvenile judge, and attached to the courts of first instance) and assisting the juvenile judge can be established.⁴⁸

Pursuant to the Order, when it is convenient to take protection measures, the juvenile judge may be seized by the Attorney of the Republic, the parents, the legal representative or the

⁴³ Andreas, Monique, Programme des Nations Unies pour le Développement et Haut Commissaire des Nations Unies pour les Droits de l'Homme/Ministère de la Justice, Projet Mag/97/AH/10, *Renforcement des Capacités Nationales dans le Domaine de Droit de l'Homme : Révision des Lois et Procédures Relatives à la Protection de la Femme et de l'Enfant*, p. 5

⁴⁴ Ordonnance 62-038 de 1962-09-19 sur la protection de l'enfance, article 29

⁴⁵ Ibid., article 66

⁴⁶ Ibid., article 67

⁴⁷ Ibid., article 68

⁴⁸ Ibid., article 69

child.⁴⁹ The only persons admitted to the trial are the child, his/her lawyer, parents or legal representative, guardian, members of the Bar, representatives from juvenile institutions and witnesses.⁵⁰ The president has the right to order at any given time that the child should be taken away during a part of the subsequent debates or sometimes the entire hearing.⁵¹ Also, the publication of the deliberations of the hearing is forbidden. However, the judgement is given publicly in the presence of the juvenile and can be published, but the juvenile's name must be concealed.⁵²

OMCT welcomes these measures which provide for the establishment of special institutions for the protection and rehabilitation of juvenile offenders. It should be noted however that there are difficulties in implementing these provisions, and a wide gap exists between the special protection measures enshrined in the law and reality. According to reliable sources, the juvenile justice system in Madagascar suffers from a lack of information to the public, lack of judges for juveniles (about 50 in the whole country), lack of specialised training for judges, lack of social workers to assist the judges and lack of resources. In many cases, children end up in residential institutions without the involvement of a judge. Another concern is that the judges for minors occupy this function on a temporary basis.

c. Grounds of arrest and detention

According to article 37 of the CRC, "(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (...)."

In Madagascar, pursuant to article 3 of the Order 62-038 of 1962-09-19 on the protection of childhood, the State can intervene in order to help and assist the family when the morality, health or education of a child (i.e. person aged less than 18) is compromised or when the circumstances or the personality of the child seem to require it in order to refer the child to specialized jurisdiction.⁵³

In 1998, OIP expressed its concern for the situation of children living or working in the street. Those children, aged between 2 and 18 years old, were deemed to be around 4000 in Antananarivo. Their main sources of income were casual working and begging. OIP denounced that the police of Madagascar frequently arrested them for non penal reasons. The children were detained without opening any judicial prosecution and then placed in re-educational centres managed by the penitentiary and controlled education administration.⁵⁴

⁴⁹ Ibid., article 10

⁵⁰ Ibid., article 33

⁵¹ Ibid., article 33

⁵² Ibid., article 34

⁵³ Ibid., article 3. « Toutefois, lorsque la sécurité, la moralité, la santé ou l'éducation d'un mineur de dix-huit ans sont compromises, l'Etat intervient, soit pour aider et assister la famille dans son rôle d'éducateur naturel de l'enfant, soit pour prendre des mesures d'assistance éducative et de surveillance appropriées, soit enfin, lorsque les circonstances et la personnalité de l'enfant paraîtront l'exiger, pour déférer le mineur à des juridictions spécialisées de l'ordre judiciaire. » See also article 8 : « Dans les juridictions dont l'effectif le permet, un magistrat délégué dans les fonctions de juge des enfants est spécialement chargé de la protection judiciaire : 1. Des mineurs délinquants ; 2. Des mineurs dont la sécurité, la santé, la moralité, la santé ou l'éducation se trouvent compromises. Dans les autres juridictions, les attributions du juge des enfants sont exercées par le président ou par un juge désigné par lui. »

⁵⁴ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 236.

OMCT is concerned by these legal categories which only seem to promote the protection and re-integration of child victims of precarious socio-economic conditions, but in reality are used to arrest and detain children. Due to their broad contents, they extend the possibilities of arrest and detention of children, whereas such a decision should be an exceptional measure. In addition, because of their vagueness, these legislations increase the risk of arbitrary practices.

OMCT wishes to recall article 37 (b) of the CRC which lays down that “no child shall be deprived of his or her liberty unlawfully or arbitrarily” and that “the arrest, detention or imprisonment of a child shall be used only as a measure of last resort”.⁵⁵

It must also be highlighted that, due to the economic and social crisis that Madagascar is currently undergoing, there is a risk that these provisions especially affect socially and economically disadvantaged groups, such as street children. Indeed, these children are more likely to be perceived by State authorities as being “materially or morally abandoned or in a state of moral danger” or “unprotected in the street”, and thus more likely to be targeted with coercive intervention.

As a result, these provisions seem to promote an attitude of discrimination and repression against children living in a particularly difficult situation. Such an attitude would be incompatible with article 2 of the CRC, which obliges States Parties to respect the CRC “without discrimination of any kind”.

d. Alternative measures

The state of the juvenile justice system regarding alternative measures is not adequate and needs to be improved. Rule 18.1 of the UN Beijing Rules on the administration of juvenile justice state that various alternatives to imprisonment should be provided for by the State. It provides that “ (...) Such measures, some of which may be combined, include: (a) Care, guidance and supervision orders; (b) Probation; (c) Community service orders; (d) Financial penalties, compensation and restitution; (e) Intermediate treatment and other treatment orders; (f) Orders to participate in group counselling and similar activities; (g) Orders concerning foster care, living communities or other educational settings; (h) Other relevant orders.”

Pursuant to the Order on the protection of childhood, the judge can apply some alternative measures to replace imprisonment. During the investigation of the case, the judge may commit the child to his parents, to a tutor, to a trustworthy person, to an institution of the State, to a hospital or to an institution which will dispense the necessary care.⁵⁶ The judge can also resort to probation, and then measures for the re-education of the child will be taken by the judge and delegated volunteers.⁵⁷ The delegate on probation will make a report to the judge in case of bad behaviour, moral danger, disturbances to surveillance or any other

⁵⁵ See also art. 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

⁵⁶ Ordonnance 62-038 de 1962-09-19 sur la protection de l'enfance, article 12, «*Pendant l'enquête, le juge des enfants peut confier par ordonnance le mineur à ses parents, à son tuteur, à une personne digne de confiance, ou à une institution agréée par l'Etat, ou le faire retenir dans un hôpital ou dans un établissement susceptible de lui donner les soins que réclamerait sa santé. Il peut édicter à l'égard de la personne ou de l'institution qui reçoit la garde toutes mesures de contrôle ou de surveillance nécessaire.*»

⁵⁷ article 53; «*Les mesures éducatives ou les sanctions pénales prises par le juge des enfants, le tribunal pour enfants, la cour d'appel et la cour criminelle des mineurs pourront toujours être assorties du régime de la liberté surveillée jusqu'à un âge qui ne pourra excéder vingt et un ans. La rééducation des mineurs en liberté surveillée sera assurée, sous l'autorité du juge des enfants, par des délégués bénévoles.*»

modification relating to the placement or maintenance of the child.⁵⁸ If it is established that a child between 13 and 18 renders the surveillance and protection measures taken inoperative, he/she may be placed in a re-education centre until the age of twenty-one.⁵⁹

OIP reported that there are eight re-education centres in Madagascar. Three of these re-education centres are under the competence of the Ministry of Justice: Anjanamasina, Ambohimangely and Ivoabe-Fianarantsoa. Five of these centres are private, laic or religious. The Centre of Anjanamasina receives juveniles, which are abandoned or maladapted and against which a decision has been taken by the competent magistrate. There are two centres in Antananarivo for girls and two for boys. Pursuant to a judicial order for child placement, they receive children which are known to be in danger or who have committed offences.⁶⁰ However, it is not unusual that juveniles over 13 and juveniles which have committed serious offences are imprisoned in adult jails.

While some alternatives to imprisonment of children exist, OMCT is greatly preoccupied by the fact that they are not sufficient, as recognized by the government's report, and that the living conditions in re-education centres are appalling. OMCT would recommend that the government provide adequate resources and personnel in order that living conditions in the re-education centres be conform with international standards. OMCT further urges the government not to imprison juveniles together with adults, including those having committed serious offences.

e. Police custody and pre-trial detention

Excessive length of police custody and pre-trial detention is a source of concern in Madagascar. According to OIP, for example, children, as young as 12 years old, are frequently kept in the Anjanamasina police station for more than 15 days. In some cases, they remained detained for 30 days.⁶¹ Furthermore, according to the same source, 84% of the children in prison were awaiting trial on October 31st, 1996. This number included 445 boys from 13 to 19 years old and 80 girls from 15 to 18 years old.⁶² Those children may wait for months, even for years, before being tried and, in some instances, they do not know the reason for their detention. More recently, particular concern was expressed regarding the re-education centre of Ajananasima, where children were have been detained "for years".⁶³

OMCT regrets that the government report does not provide recent information on police custody and pre-trial detention. OMCT would recommend that the Malagasy authorities ensure that their policy in these matters be conform with the requirement of article 37 (b) of the Convention and articles 2 and 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which state that imprisonment must be a last resort and for the shortest period of time. OMCT also would like to recall the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), in particular the section related to pre-trial detention.

⁵⁸ Ordonnance 62-038 de 1962-09-19 sur la protection de l'enfance, article 59

⁵⁹ Ordonnance 62-038 de 1962-09-19 sur la protection de l'enfance, article 62

⁶⁰ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de detention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 237.

⁶¹ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de detention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 236.

⁶² Ibid.

⁶³ Note pour la Commission SI du 29/02/03, Annexe 1 (extraits du rapport de Stéphanie Derozier), p. 3.

f. Conditions of detention

OMCT wishes to recall that section 37 (c) of the CRC states that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, save exceptional circumstances.”

According to Cimade, an NGO based in Paris (France), there are only 6 prisons which have areas reserved for children, namely Fiananarantsoa, Toliary, Mahajanga, Toamasina and Antsirabé. It was found that the number of juvenile detainees is 456.⁶⁴

According to OIP, conditions of detention for children are not adequate in Madagascar. In its 1998 global report, the organisation emphasized that detained children were suffering from malnutrition. It has been estimated that the daily meal provided amounts to 500 kilocalories, whereas the minimum quantity is normally 2500 kilocalories. Furthermore, the food was not diversified enough, since it was made of one product, such as corn or manioc.⁶⁵

Poor sanitary conditions and overcrowding are also a primary concern. Access to water is often limited for budgetary reasons and sanitary material, such as soap and cleaning products, are not provided. As a result, detained children suffer from various kind of diseases and parasites, such as eczema or scabies. Medical services are not adequate. There are no disease prevention programmes and ill children do not receive particular care. In the most serious cases, children are escorted to hospitals.⁶⁶

In Madagascar, there are still detention facilities where children are kept with adult prisoners. According to OIP, children, as young as 13 years old, may be incarcerated in prisons for adults in Madagascar. In some cases, special facilities are provided for children. In others, children are separated from adults only by night.⁶⁷ This obviously is contrary to article 37 (c) of the Convention. OMCT strongly believes that detained children must be held separately from adults. The risks for children detained with adults, to both their physical and psychological integrity, are enormous. In particular, children have been subject to sexual abuse by adult prisoners.⁶⁸ Thus, OMCT would urge that the Government outline what measures it is planning to amend this intolerable situation.

⁶⁴ Note pour la Commission SI du 29/02/03, Annexe 1 (extraits du rapport de Stéphanie Derozier), p. 3.

⁶⁵ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 238.

⁶⁶ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 238.

⁶⁷ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 237.

⁶⁸ Observatoire international des prisons, *Enfants en prison, Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Lyon, OIP, 1998, p. 237.

Conclusion and recommendations

The International Secretariat of OMCT wishes to emphasize that information on the situation of the rights of the child is lacking. OMCT is particularly concerned that no recent evaluation of the treatment of children in conflict with the law is accessible. Therefore, OMCT would encourage the government to develop comprehensive data collection system, in order to adopt and implement national policy plans of action aimed at meeting international children's rights standards. More specifically, OMCT wishes to suggest the following recommendations.

Regarding the legal system of Madagascar, OMCT recommends that the Committee on the Rights of the Child:

ask the Government of Madagascar to:

- ratify the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 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, as well as the African Charter on the Rights and Welfare of the Child;
- undertake all appropriate legislative, administrative, and other measures to ensure the full implementation of the provision the CRC at national level.

Regarding discrimination, OMCT recommends that the Committee on the Rights of the Child:

urge the Government of Madagascar to:

- amend its legislation to fix the same minimum age of marriage for both girls and boys, without exception on a discriminatory basis;
- ensure that children living in precarious conditions, such as street children, be subject to criminal proceedings and detained in closed institutions, but receive adequate protection and assistance and participate in reintegration programmes.

Regarding torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT recommends that the Committee on the Rights of the Child:

urge the Government of Madagascar to:

- adopt a thorough legal framework, including constitutional and criminal provisions, aimed at prohibiting torture and other forms of ill-treatment and adequately punishing any person who perpetrated acts of torture, with special emphasis on State agents;
- undertake a detailed survey in all the country, so as to evaluate of the treatment of children in detention and in institutions;
- implement monitoring procedures aimed at preventing torture and other forms of violence against children in detention. In particular, independent and qualified medical personnel should be allowed to carry out regular examinations of these children;
- elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include

specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, in particular the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Regarding protection from other forms of violence against children OMCT recommends that the Committee on the Rights of the Child:

urge the Government of Madagascar to:

- undertake proactive prevention measures and develop a broad awareness-raising and attitude change campaign on the issue of violence in the family;
- develop a specific plan of action to protect children against sexual exploitation in line with the Stockholm Agenda for Action and the Yokohama Declaration, including special attention to boys and to perpetrators;
- ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography that it has signed on 7th Sep 2000;
- adopt and implement a criminal policy which seeks to investigate and punish those responsible for sexual exploitation of children, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- adopt preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- supply information on concrete measures aimed at providing assistance and protection to child victims, in particular on the programme elaborated by the National Board of the Minor and the Family for the attendance of sexually exploited children;
- provide for recovery and reintegration of child victims through, inter alia, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood;
- implement more projects in favour of child labourers up to 18 years of age aimed at concrete improvements and deploy greater efforts in order to monitor and support already instituted programmes in the long run and reinforce the capacity of the existing National Directing Committee;
- revise and develop state policy towards children living and working in the streets, prohibit mass clean-up operations and replaced them by long term reintegration programmes, with a special emphasis on educational, health and economic support to those children.

Regarding the juvenile justice system, OMCT recommends that the Committee on the Rights of the Child:

urge the Government of Madagascar to:

- provide for adequate alternative measures to detention and pre-trial detention, so as to stop keeping children in conflict with the law incarcerated in police stations;
- ensure that children in pre-trial be tried without undue delay or release;

- ensure that the juvenile justice system provided by law be fully established in practice, in particular by providing adequate resources and personnel, including specialized judges and social workers;
- ensure that the probationary regime for children in conflict with the law be fully implemented, in particular by guaranteeing that adequate resources and personnel are provided;
- amend its criminal legislation, so as to ensure that sentences that may be applied to children in conflict with the law be compatible with the CRC, which requires that arrest, detention or imprisonment be used only as a measure of last resort and for the shortest appropriate period of time;
- abrogate criminal provisions attributing to the judge the authority to withdraw the mitigating excuse of minority when fixing a sentence;
- ensure that a clear distinction be established between child offenders and child victims of precarious socio-economical life conditions, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions;
- ensure that life conditions in police stations and child institutions be in conformity with article 37 of the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular by resolving overcrowding problems, poor hygiene, lack of food and restrictions on family visits;
- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;