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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid**

**Addendum**

**Mission to Madagascar\* \*\***

#### *Summary*

The Special Rapporteur conducted an official visit to Madagascar from 15 to 26 July 2013. In this report, she examines the question of the sale and sexual exploitation of children in Madagascar, in the light of international human rights standards. On the basis of information gathered before, during and after the visit, the Special Rapporteur provides an analysis of the situation and of the replies provided. She also makes practical recommendations to prevent the sale of children, child prostitution and child pornography and to effectively protect children from them.

\* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in English only.

\*\* The footnotes to the report are reproduced as received, in the language of submission only.



## Annex

[English and French only]

### Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her mission to Madagascar (15–26 July 2013)

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## I. Introduction

### A. Conduct of the visit

1. The Special Rapporteur on the sale of children, child prostitution and child pornography conducted an official visit to Madagascar from 15 to 26 July 2013. She visited the cities of Antananarivo, Toliara, Nosy Be and Toamasina.

2. The Special Rapporteur would like to thank the Government of Madagascar for organizing the meetings with the various authorities and for its cooperation before, during and after the visit.

3. The Special Rapporteur met with the Prime Minister, the Minister for Foreign Affairs, the Minister of Tourism, the Minister of Youth and Recreation and the Director of the Office of the Prime Minister. She met with representatives of the Ministry of Population and Social Affairs — including the Adoption Authority — the Ministry of Justice, the Ministry of Internal Security — including, the central department of the vice and minors protection squad — the Ministries of Education, Labour, Vocational Training, Health, Transport and Mines and the State Secretariat for the Gendarmerie. The Special Rapporteur also met with the heads of the regions visited, the heads of district, the regional technical services and directorates, and with members of the judicial system, local gendarmerie and police, river and maritime traffic officials, and transporters. She met with the child protection network officials in all the regions visited. She also met with a representative of the National Statistics Institute and with members of parliament.

4. The Special Rapporteur met with representatives of the United Nations system in Madagascar, in particular, the Resident Coordinator, the representative of the United Nations Children's Fund (UNICEF) and his team, and with representatives of the United Nations Development Programme (UNDP), the International Labour Organization (ILO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the International Organization for Migration (IOM), the Office for the Coordination of Humanitarian Affairs (OCHA), the World Health Organization (WHO), the World Food Programme (WFP) and the United Nations Population Fund (UNFPA).

5. The Special Rapporteur met with members of civil society and the private sector and visited reception centres.<sup>1</sup> She met with child victims of sexual exploitation and street children. She also met with youth associations carrying out prevention activities. She visited a counselling and legal advice centre in Toamasina. She also carried out day and night visits to places where child sexual exploitation is most visible.

### B. Background

6. Madagascar is composed of 22 regions which are divided into 119 districts, subdivided into communes and *fokontany*. It has an estimated population of 21.9 million and 53.4 per cent of the population is aged under 18.<sup>2</sup> The country has a high population

<sup>1</sup> Le Centre d'accueil d'urgence d'enfants d'Antananarivo, le Centre d'accueil du Syndicat des professionnels diplômés en travail social (SPDTS) à Antananarivo, la Maison d'adoption Saint-Antoine à Toamasina, l'Association et dispensaire SISAL (*Sambatra izay salama*), l'Organisation non gouvernementale (ONG) Bel Avenir.

<sup>2</sup> Rapport relatif aux activités menées par le Ministère de la population et des affaires sociales sur la protection de l'enfant (ci-après «Rapport MPAS 2013»), juillet 2013, p. 3.

growth rate, with a fertility rate of five children per woman in 2011 according to UNICEF. Madagascar is particularly prone to natural disasters: it is the fifth most vulnerable country in the world to hurricanes,<sup>3</sup> it experiences periods of drought and flooding, which is highly detrimental to its development. According to UNICEF, in 2012, some 330,000 persons were affected by hurricanes that damaged hundreds of schools and many health-care centres.<sup>4</sup>

7. Madagascar is one of the least developed countries in the world in spite of its significant economic potential. Recent decades have been marked by ongoing political instability and a sharp rise in poverty. According to the World Bank, in 2013, more than 92 per cent of the Malagasy population lived on less than \$2 a day, which is 10 per cent more than in 2008.<sup>5</sup> The country remains near the bottom of the human development index, ranking 151st out of 186 countries.<sup>6</sup> The chronic problems arising from inadequate governance have considerably weakened the country, which is mired in an unprecedented political and socioeconomic crisis. The state of poverty and vulnerability of the population is alarming, and Malagasy children are at increased risk of violence, abuse and exploitation in all its forms, particularly sexual exploitation. According to UNICEF, approximately 1.5 million primary school-age children are out of school.<sup>7</sup> Child labour is a major problem: some 24.7 per cent of children aged between 5 and 17 work in Madagascar<sup>8</sup> and almost half a million children are reportedly engaged in the worst forms of labour.

8. Moreover, in the aftermath of the February 2009 coup d'état and in view of the international community's non-recognition of the new Transitional Government (*Haute Autorité de Transition*), many foreign donors and partners decided to suspend their programmes, with the exception of emergency assistance to the country. Nevertheless, in early 2012, the Secretary-General of the United Nations authorized cooperation with the central and regional government ministries. The elections scheduled for July were not held until the last quarter of the year. It is very difficult to ensure the sustainability and implementation of social programmes and policies in this politically unstable climate. The cuts in social expenditure by the Government have also had a serious impact on the population.

## II. Situation analysis

### A. Extent and forms of sale and sexual exploitation of children

9. While it is impossible to provide specific figures on the true extent of the sale and sexual exploitation of children in Madagascar, given the clandestine nature of these activities, the lack of centralized, disaggregated data and, in particular, the very low number of reported cases, child sexual exploitation in Madagascar is clearly a blight on the country. It is visible everywhere and so commonplace that it has become taken for granted.

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<sup>3</sup> *Global Risks Atlas 2012*, Maplecroft.

<sup>4</sup> UNICEF, *Rapport annuel 2012: Madagascar*, p. 5.

<sup>5</sup> [www.banquemondiale.org/fr/news/feature/2013/06/05/madagascar-measuring-the-impact-of-the-political-crisis](http://www.banquemondiale.org/fr/news/feature/2013/06/05/madagascar-measuring-the-impact-of-the-political-crisis).

<sup>6</sup> PNUD, *Rapport sur le développement humain 2013*, p. 155.

<sup>7</sup> UNICEF, *Rapport annuel 2012: Madagascar*, p. 6.

<sup>8</sup> INSTAT, *Enquête périodique auprès des ménages 2010: Rapport principal* (ci-après EPM 2010), août 2011, p. 68, par. 123.

### Child prostitution

10. Notwithstanding the lack of official data disaggregated by sex, background, age and status of the victims and of data on perpetrators arrested and tried, which would help to quantify the problem, the stakeholders interviewed unanimously agreed that child prostitution in Madagascar has reached alarming levels and has risen sharply in recent years, particularly since 2009. It affects the whole country and occurs in the majority of urban areas (Antananarivo, Mahajanga, Toamasina, Toliara, Antsiranana), mining areas (Ilakaka, Moramanga, Tamatave and so forth) and tourist resorts (Nosy Be, Diego-Suarez, Mangily, Mahavelona, Île Sainte Marie, Fort Dauphin and so on).

11. According to the Antananarivo vice and minors protection squad, 546 of the 1,048 minors questioned in 2011 were victims of prostitution (471 girls and 55 boys). Out of 1,061 minors questioned in 2012, there were 566 victims of prostitution (500 girls and 66 boys).<sup>9</sup>

12. The Ministry of Population and Social Affairs has a national child protection database, which is updated from the report forms completed at the *fokontany* level. The data provided by child protection networks from January to August 2012 showed that 1,043 children suffered abuse, with 3.16 per cent of cases linked to sexual exploitation. Children aged 15 to 17 are the worst affected (51 per cent), followed by children aged 6 to 14 (35 per cent).<sup>10</sup> Statistics from the Ministry of Population and Social Affairs show that sexual violence within the family remains the most common form.

13. The investigation conducted by ILO on child victims of sexual exploitation in the cities of Antsiranana, Toliara and Antananarivo highlighted the extent of the problem and indicated that the average age of entry into prostitution was 13 for girls and 12 for boys.<sup>11</sup> The Antananarivo vice and minors protection squad confirmed that child victims of sexual exploitation were increasingly younger and that their number was constantly growing.

14. In 2000, the number of child victims of prostitution was reportedly between 1,309 and 2,217 in Toamasina and between 700 and 850 in Nosy Be. In 2005, approximately 70 per cent of girl workers aged 12 to 18 in the Ilakaka region — which has a very high level of child workers — were victims of commercial sexual exploitation. In 2006, almost a quarter (23 per cent) of all 2,640 working children aged 6 to 17 in Antsiranana were victims of child sexual exploitation. The vast majority of sexually exploited children are girls (90 per cent). In Toliara and Ifaty, 28 per cent of working children aged 12 to 17 are victims of sexual exploitation (i.e., 2,286 children).<sup>12</sup>

15. A survey conducted by the Tamaga Youth Forum<sup>13</sup> in Toamasina identified 1,000 child victims of sexual exploitation in Toamasina since 2011, of whom 70 per cent were out of school.

<sup>9</sup> La PMPM a souligné que l'objectif des interpellations était de protéger les mineurs contre les maltraitances dont ils pourraient être victimes.

<sup>10</sup> Rapport MPAS 2013.

<sup>11</sup> BIT, Programme international pour l'abolition du travail des enfants (IPEC), *Enquête sur les pires formes de travail des enfants n° 25--Madagascar*, «Les enfants victimes de l'exploitation sexuelle à d'Antsiranana, de Toliara et d'Antananarivo: une évaluation rapide», Genève, juin 2002, p. 32.

<sup>12</sup> *Étude sur l'exploitation sexuelle des enfants, 2000: Étude de base sur les pires formes de travail des enfants à Antsiranana et dans le Sud de Madagascar*, BIT-IPEC/UNICEF, décembre 2006.

<sup>13</sup> Club de jeunes pairs éducateurs sous la tutelle du Ministère de la jeunesse et des loisirs.

*Child sex tourism*

16. With regard to the sexual exploitation of children in tourism, all the stakeholders interviewed noted with concern the growing scale of the problem in recent years. They explained that for many Malagasy families, engaging with a *vazaha* (foreigner) is highly regarded and possibly conducive to upward social mobility. Madagascar has gradually acquired the sad distinction of being a major destination for sex tourism. Ministry of Tourism statistics show that Madagascar hosted 225,005 tourists in 2011, 15 per cent more than the previous year, and that 58 per cent of the total number of tourists were French.<sup>14</sup> Child sex tourism has increased in coastal cities with the recent development of tourism. According to the preamble to Act No. 2007-038 of 2008 amending and supplementing provisions of the Criminal Code on human trafficking and sex tourism, “it has been noted that sexual exploitation and sex tourism are currently growing at a staggering rate in Madagascar; children are particularly exposed to the widespread and continuing practice of child prostitution and sex tourism, hence the need to punish those who sexually exploit children, who are treated as sexual and commercial objects”.<sup>15</sup>

17. Sexual exploitation of children in tourism is a growing problem and is becoming more and more difficult to control. Sexual predators now try to obtain accommodation in private homes, where they can escape controls. Bars, discotheques and karaoke venues are also favourite spots.

18. The Special Rapporteur was able to witness first-hand the gravity of the situation, in the most deprived areas of Antananarivo and in the other cities, in tourist resorts, bars, restaurants, cafés and around nightclubs. The Special Rapporteur was also informed of the new and growing trend of massage parlours set up as a cover for child sexual exploitation.

*Child pornography*

19. The Special Rapporteur received only very little information on child pornography. Although Internet access and use are still very limited in the country,<sup>16</sup> risks do still exist.

20. The Ministry of Population and Social Affairs recognizes the existence of this problem in Madagascar, while noting that it is still difficult to assess its extent given the lack of reliable data.<sup>17</sup> The vice and minors protection squad registered only one case of child pornography in 2011. A 60-year-old French man had abused a 13-year-old girl in Toamasina, and the act had been filmed and made public. An investigation was opened, three individuals were remanded in custody and the main perpetrator was arrested in June 2013.

21. The Special Rapporteur noted with concern the total lack of supervision of Internet cafés and the absence of awareness-raising on the subject. There is currently no awareness of the issue. She encouraged the efforts made to implement a legal framework on cybercrime (currently being drafted).

22. The research and various interviews conducted by the Special Rapporteur clearly demonstrated the lack of a centralized information and data-collection system that could provide reliable disaggregated data despite the existence of the Ministry of Population and Social Affairs database. Major obstacles to the collection of information on child sexual exploitation are the very low number of reported cases and frequent out-of-court

<sup>14</sup> [www.tourisme.gov.mg/?page\\_id=603](http://www.tourisme.gov.mg/?page_id=603).

<sup>15</sup> *Journal officiel*, n° 3173 du 19 mars 2008, p. 1191 (<http://legislation-madagascar.cwebh.org>).

<sup>16</sup> Selon l’UNICEF, en 2011, il y avait 2 utilisateurs d’internet pour 100 personnes ([www.unicef.org/french/infobycountry/madagascar\\_statistics.html](http://www.unicef.org/french/infobycountry/madagascar_statistics.html)).

<sup>17</sup> Rapport MPAS 2013.

settlements. In its report, the Ministry of Population and Social Affairs also criticized the involvement of senior officials in the handling of some cases of abuse.<sup>18</sup>

### Sale of children

23. The sale of children in Madagascar was not presented as a major problem during the visit of the Special Rapporteur. It is difficult to assess the true extent of the sale of children for intercountry adoption purposes. The aforementioned report of the Ministry of Population and Social Affairs refers to 43 child victims of abduction for illegal adoption purposes between 2004 and 2006, 28 of whom were returned to their parents and 15 were adopted internationally. Act No. 2005-014 of 7 September 2005 on adoption represents a considerable step forward in the protection of children's rights in adoption proceedings. Nevertheless, there remains a significant risk of illegal adoption given that intercountry adoptions account for some 80 per cent of all adoptions in Madagascar.

24. The Special Rapporteur noted with concern the continuing practice of early marriage, particularly in some rural areas, although since 2007 the minimum legal age for marriage has been 18. Marriage is sometimes seen as a strategy for the survival of the family. Notwithstanding the legal provision that the union of two persons is illegal if one of them is a minor (other than in exceptional circumstances and subject to a court decision), in 2009, 48 per cent of girls aged 20 to 24 were married or in union before the age of 18.<sup>19</sup> According to UNFPA, this is one of the highest levels in the world.<sup>20</sup>

25. A report by the National Confederation of Human Rights Platforms suggests that "girl markets" still exist in some southern parts of the country, where men choose a partner in exchange for money or goods (*tsenan'ampela*, where young girls are displayed in cattle markets).<sup>21</sup>

### Trafficking in children

26. Many stakeholders have expressed concern about trafficking in persons — including children — to neighbouring countries and the Middle East, for domestic servitude and sexual exploitation purposes. In August 2013, the Transitional Government issued Decree No. 2013-594 suspending the deployment of Malagasy migrant workers to high-risk countries.

## B. Causes and risk factors

27. There are numerous interrelated factors underlying the sale and sexual exploitation of children. These include "push" factors (families facing severe hardship, poverty, lack of economic opportunities, difficulty accessing basic social services, school dropout, non-secure Internet access, social expectations) and "pull" factors relating to demand (growing demand for sexual services from children, increasingly structured exploitation networks, the fast pace of development in child sex tourism destinations).

<sup>18</sup> Ibid.

<sup>19</sup> Voir l'*Enquête démographique et de santé, Madagascar 2008-2009*, INSTAT, Ministère de l'économie et de l'industrie, avril 2010, p. 99 à 101 (ci-après EDSMD IV) [www.instat.mg].

<sup>20</sup> *Marrying Too Young: End Child Marriage*, FNUAP, 2012, annexe 1, p. 69. (www.unfpa.org/public/home/publications/pid/12166).

<sup>21</sup> *Rapport alternatif sur l'application de la Convention relative aux droits de l'enfant, 2003-2011*, Confédération nationale des plate formes en droits humains, Madagascar, avril 2011, p. 13. (www2.ohchr.org/english/bodies/crc/docs/ngos/Madagascar\_NGOPDH\_CRC.pdf).

28. Some categories of children are at greater risk, namely children living on or roaming the streets, children without birth certificates, migrant children, child workers, abandoned children and orphans, children from institutions and child victims of sexual abuse within the family.

29. All the stakeholders interviewed expressed concern about the early sexualization of children. According to a joint UNICEF/UNFPA study conducted in the south of the island,<sup>22</sup> the average age of first sexual intercourse is 12 to 13 — in some cases even 8 to 10 — for girls, and 14 to 17 for boys. In social terms, the high value attached to sexual intercourse makes it more likely to occur early. Both male and female adolescents gain status from “daring” (*mahasaky*). The study suggests that this promotes social tolerance of child sexual abuse and exploitation.<sup>23</sup>

30. Many of the stakeholders interviewed also raised the problem that some customs promote social tolerance of child sexual exploitation, and complained of the acquiescence of parents and communities.

31. The Special Rapporteur also noted that the mirage of the *vazaha* is highly prevalent, particularly in some coastal areas. Having a — supposedly rich — foreign sexual partner is a symbol of a girl’s success: such a relationship, in addition to the material benefits it brings and which the girl would have to share with her family, reportedly carries a certain amount of prestige.

32. Family impoverishment in Madagascar and the subsequent lack of parental responsibility make Malagasy children highly vulnerable. Their educational and employment prospects have shrunk considerably and many have to work to support their families. The Special Rapporteur was nevertheless outraged that poverty should be used as an argument to justify child sexual exploitation.

33. The health situation in Madagascar is alarming. Half of the children aged under 5 suffer from chronic malnutrition, placing Madagascar among the six countries with the highest levels of malnutrition.<sup>24</sup> The maternal mortality rate is 498 per 100,000 and the child mortality rate is 24 per 1,000.<sup>25</sup> According to UNICEF, an increasing number of health-care centres are closing down (more than 250 in 2012). Madagascar has the fourth worst record in sub-Saharan Africa in terms of access to safe drinking water.<sup>26</sup> In 2010, 51.2 per cent of the population did not have access to sanitation.<sup>27</sup> The Government’s expenditure on sanitation has been reduced by half since 2010.

34. According to UNICEF, access to education is limited and inequalities have increased in recent years. The quality of education has declined because two thirds of teachers have no formal training. Education costs for families have increased even though education is supposed to be free of charge. Only 3 out of 10 children complete their primary

<sup>22</sup> *Étude sur les facteurs qui sous-tendent la sexualité des adolescents dans la Région Atsimo Andrefana*, UNICEF-FNUAP, 2012.

<sup>23</sup> Au niveau national, l’EDSMD IV nous renseigne qu’en 2009, l’âge médian du premier rapport sexuel des filles est de 17,3 ans, situation qui n’a pas changé depuis trois générations: 14 % des femmes âgées de 25-49 ans ont eu le premier rapport avant d’atteindre 15 ans.

<sup>24</sup> *Analyse globale de la sécurité alimentaire et nutritionnelle et de la vulnérabilité en milieu rural à Madagascar 2010*, UNICEF, PAM, ONN [Office national de nutrition], MSP [Ministère de la santé publique], novembre 2011, p. 9, et p. 38 à 43.

<sup>25</sup> EDSMD IV, p. 228.

<sup>26</sup> *Aperçu de la situation de l’eau potable et de l’assainissement en Afrique, Mise à jour 2012*, Conseil des Ministres africains de l’eau (AMCOW), 2012, en collaboration avec le Programme conjoint de suivi de l’approvisionnement en eau et de l’assainissement de l’OMS/UNICEF.

<sup>27</sup> Voir EPM 2010 (voir la note 8 *supra*), p. 11, par. 33.



school education.<sup>28</sup> In addition to the lack of human and financial resources, quality social services are not provided in some parts of the country owing to difficulty of access.

35. With regard to child labour, the results of the National Child Labour Survey in Madagascar carried out in 2007 show that 28 per cent of Malagasy children aged between 5 and 17 are economically active.<sup>29</sup> The majority of economically active children aged between 5 and 17 (82 per cent, i.e. some 1,534,000 children, including 1.2 million aged under 15) carry out hazardous work. The National Child Labour Survey shows that child labour is a major barrier to education. Children end up being sexually exploited mainly as a result of: (a) relations and contacts with the prostitution scene, (b) the lax or even complicit attitude within the community, including parents, (c) easy access to such work for minors and (d) the non-implementation of existing laws.

36. There are no specific data on the actual number of street children in Madagascar. The Special Rapporteur nevertheless witnessed the scale of the problem. According to information provided by some centres within the Civil Society Platform for Children in Antananarivo, the number of street children they receive is estimated at around 4,500. The aforementioned Ministry of Population and Social Affairs report suggests that 12 per cent of Malagasy children do not live with their parents.

37. In terms of demand, the absence of effective control of places of sexual exploitation and impunity for perpetrators have made the country a sex tourism destination. Not to mention the lack of security for children on the Internet, which provides sexual predators with easy access to children, particularly through social networks.

### **III. Measures to combat and prevent the sale of children, child prostitution and child pornography**

#### **A. Regional and international instruments for the promotion and protection of human rights**

38. Madagascar ratified the Convention on the Rights of the Child in 1991 and its two optional protocols — the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict — in 2004.<sup>30</sup>

39. Madagascar ratified the ILO Minimum Age Convention, 1973 (No. 138) in 2000 and Worst Forms of Child Labour Convention, 1999 (No. 182) in 2001. It also ratified the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in 2004 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”, 2000) in 2005.

40. Madagascar is a party to most of the international human rights treaties but has not yet acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or ratified the 2006 Convention on the Rights of

<sup>28</sup> Selon le Ministère de l'éducation nationale, le taux d'achèvement du primaire pour l'année scolaire 2011-2012 était de 57,77 % (voir Rapport MPAS 2013).

<sup>29</sup> *Enquête nationale sur le travail des enfants à Madagascar, 2007*, BIT-IPEC, 2008, p. 41.

<sup>30</sup> Déclaration contraignante au titre de l'article 3.

Persons with Disabilities (signed in 2007) or the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (signed in 2007).

41. Madagascar is a member of the African Union and has ratified several of its instruments, such as the African Charter on the Rights and Welfare of the Child (in 2005), the African Charter on Human and Peoples' Rights (in 1992) and the Constitutive Act of the African Union (in 2003).

## **B. National legal framework**

### **1. General legal framework for child protection**

42. Madagascar has a relatively comprehensive legal framework for child protection. The Constitution contains many child protection provisions.

43. Article 4 of Act No. 2007-023 of 20 August 2007 on the rights and the protection of the child provides that "no child shall be subject to any form of neglect, discrimination, exploitation, violence, cruelty or oppression". According to article 66, "the State must protect children against all forms of ill-treatment and take legislative, administrative, social or other measures to eradicate it". Under article 69:

"Anyone, including parents, relatives, neighbours, friends, local authorities, teachers, religious dignitaries, social workers, medical personnel or criminal investigation police, who becomes aware of any abuse or attempted abuse must report it to the competent administrative or judicial authorities subject to the penalties provided for in article 62, paragraph 1, of the Criminal Code.

The child may also report the abuse. If a child shows signs of abuse, medical personnel must draw up a medico-legal report.

For this purpose, the medical personnel shall not be bound by the obligation of confidentiality."<sup>31</sup>

44. Act No. 2007-040 on the issuance of substitute birth certificates under the National Programme for Rehabilitating Birth Registration<sup>32</sup> empowers the administrative authorities to issue substitute birth certificates. In December 2008, the Government Council approved a new procedure that extended the statutory period for systematic birth registration from 12 to 45 days. The bill was not adopted by the parliament, as it was dissolved during the political events of 2009.

45. Act No. 2005-014 on adoption<sup>33</sup> in Madagascar establishes a new procedure for full adoption, including international adoption, and the principle of subsidiarity of intercountry adoption. It sets the age for the full adoption of a child at 12 and strengthens the procedure both at the administrative and judicial stages to prevent any form of misappropriation. Decree No. 2006-596 laying down the procedures for implementing the Act<sup>34</sup> establishes the Adoption Authority (arts. 2–13) and regulates the approved social and adoption reception centres (arts. 14–32). It sets out the documents required for the procedure and the financial contribution to be made by the adoptive parents (arts. 33–41).

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<sup>31</sup> *Journal officiel* n° 3 163 du 28 janvier 2008, p. 158. (<http://legislation-madagascar.cwebh.org>).

<sup>32</sup> *Ibid.* n° 3 173 du 19 mars 08, p.1208 (<http://legislation-madagascar.cwebh.org>).

<sup>33</sup> *Ibid.*, n° 3022 du 3 avril 2006, p. 1917 à 1925 (<http://legislation-madagascar.cwebh.org>).

<sup>34</sup> *Ibid.*, n° 3064 du 30 octobre 2006, p.4694 à 4702 (<http://legislation-madagascar.cwebh.org>).

46. Decree No. 2005-025 of 18 January 2005<sup>35</sup> establishes a Commission on the Rights of the Child to examine legislation on children's rights with a view to establishing a legal and institutional framework consistent with the principles of the Convention of the Rights of the Child.

## 2. Sale of children

47. Act No. 2007-038 amending and supplementing provisions of the Criminal Code on human trafficking and sex tourism introduces article 333 ter, which defines sale of children as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".<sup>36</sup> However, the criminal penalty imposed for the sale of children is not specified, which can make it difficult to apply in practice.

48. Article 15 of Act No. 2005-014 on adoption provides for a term of hard labour for any material and/or financial gain or other improper benefit or advantage derived from adoption proceedings.<sup>37</sup> However, a lack of precision, and complexities and gaps in the legislation make the system complex. For instance, current legislation provides for a series of deadlines or lack of deadlines, resulting in children being institutionalized for extended periods, which is inconsistent with the general principles enshrined in the legislation. Another shortcoming of the Act is the absence of criteria enabling the Adoption Authority to adequately match children for adoption with prospective adoptive parents.

## 3. Child prostitution

49. Many provisions in Malagasy law define and criminalize child sexual exploitation.

50. Article 13 of Decree No. 2007-563 on child labour provides that "the recruitment, use, offer and employment of children of either sex for the purpose of prostitution, the production of pornography or commercial sexual exploitation are prohibited".<sup>38</sup>

51. Act No. 2007-038 mentioned above significantly supplemented and amended the Criminal Code with regard to combating human trafficking and sex tourism. It introduces article 331 bis, which states that "anyone who violates morals by inciting, promoting or encouraging immoral behaviour, corruption or the prostitution of children of either sex, in order to satisfy the passions of others, shall be sentenced to a term of hard labour".

52. The Act also introduces article 333 ter, which states that "a child means every human being below the age of 18 years" and that "sexual exploitation of a child of either sex, for commercial purposes, refers to an act whereby an adult obtains the services of a child to have sexual intercourse for remuneration, compensation or payment in kind or cash, paid to the child or to one or more third parties as mentioned in articles 334 to 335 bis of the Criminal Code, with or without the consent of the child". Pimps are punished under articles 334 ter, quater and quinto of the Criminal Code and under the second paragraph of article 334 ter: "If the offence has been committed against a child of either sex below the age of 15, the perpetrator shall be sentenced to a term of hard labour."

53. Article 334 quinto thus amended provides that "anyone who has sexual intercourse with a child in return for payment or any other consideration shall be punished by 2 to 5 years' imprisonment and/or a fine of 1 million to 10 million ariary".

<sup>35</sup> Ibid., n° 2961 du 28 mars 2005, p. 3252 (<http://legislation-madagascar.cwebh.org>).

<sup>36</sup> Voir *supra* la note 15.

<sup>37</sup> Voir *supra* la note 34.

<sup>38</sup> *Journal officiel*, n° 3163 du 28 janvier 2008, p. 182 (<http://legislation-madagascar.cwebh.org>).

*Sexual exploitation of children in tourism*

54. Sex tourism is defined in article 333 ter of the Criminal Code, as amended by Act No. 2007-038, and article 335.1 provides that “sex tourism shall be punished by a term of forced labour if it involves a child of either sex below the age of 15”.

55. Under article 335 ter of the Criminal Code, as amended by article 9 of Act No. 2007-038, “nationals and persons normally resident in Madagascar who engage in trafficking, sexual exploitation and sex tourism in other countries shall be prosecuted and punished in accordance with the provisions of the Criminal Code”. Under article 335 quater, “requests for the extradition of persons wanted for prosecution in a foreign State shall be granted in respect of the offences provided for in this Act or to enforce sentences for such offences”. Extraterritorial jurisdiction thus facilitates action against child sex tourism.

**4. Child pornography**

56. Article 333 ter of the Criminal Code, as amended by Act No. 2008-038, defines child pornography and article 335.1 provides that: “Child pornography, representing children in any way and by any means, or the possession of pornographic material involving children, is punishable by the penalties prescribed by article 334 of the Criminal Code”. This provision also applies to the dissemination of child pornography on the Internet.

57. Furthermore, since the entry into force of Act No. 98-024 of January 1999, article 346 of the Criminal Code provides that:

“The act of capturing, recording or transmitting a pornographic image of a minor for the purpose of its dissemination shall be punished by 2 to 5 years’ imprisonment and a fine of 2 million to 10 million ariary.

Disseminating such an image by any means shall be subject to the same penalties.

Penalties shall be 3 to 10 years’ imprisonment and a fine of 4 million to 20 million ariary when the minor is under the age of 15.”

58. The Special Rapporteur noted some gaps and vague wording in the legislation, particularly in the definitions and provisions relating to the penalties incurred, and she commends the work carried out by the Criminal Justice Reform Commission.

**C. Institutional framework for child protection**

59. The Ministry of Population and Social Affairs is responsible for implementing the Government’s protection and social development policy. Despite its very limited resources (its operating budget accounted for 0.68 per cent of the State budget in 2013), its remit is absolutely enormous. It is responsible for: (a) developing application frameworks; (b) coordinating all activities contributing to economic and social development; (c) implementing and following up strategies; (d) developing partnerships; (e) evaluating the implementation of relevant national and international instruments; and (f) supporting the population in the field of non-formal education and reintegration into social and professional life. Through its Family and Child Protection Directorate, the Ministry oversees all child protection activities. The Ministry is also responsible for the Adoption Authority, which implements policies relating to adoptions.

60. The child protection networks are community-based and are responsible for: (a) monitoring the situation of children in their district; (b) systematically collecting data and

information on the situation of children; (c) coordinating interventions; (d) establishing links between the community and available protection services; (e) providing the community with a chain of services for child protection and care in cases of ill-treatment; (f) addressing child protection issues in humanitarian emergencies and crisis situations; and (g) mobilizing resources and organizing advocacy for child protection. The child protection network comprises those involved in informal child protection (children, parents, relatives, neighbours, community leaders, associations, religious and traditional leaders) and those working in formal or institutional child protection (health, education, population, police, gendarmerie, tourism, the courts, youth services, transport, districts, municipalities, *arrondissements* and *fokontany*). There are a total of 765 community child protection networks. Unfortunately, most of the stakeholders interviewed recognized that, despite the efforts made, these networks are not always operational. Some members do not attend meetings, reports are not systematically submitted and many cases of abuse suffered by children are still settled out of court within the community.

61. The Ministry of Justice is responsible for the legal protection of children through juvenile judges and prosecutors. While some judges do commendable work, all stakeholders vehemently criticized the lax attitude, complacency, and even corruption, that is poisoning the justice system as a whole. The Malagasy people have no confidence in their justice system. Even if the family or the victim takes the matter to court, it is often covered up. The Special Rapporteur recalled that impunity is one of the main reasons why child sexual exploitation is now so widespread. The Ministry of Justice also suffers from limited resources. For instance, there are only 13 juvenile judges in the whole of Madagascar and some courts in remote areas do not have access to the Internet.

62. The vice and minors protection squad and the gendarmerie play a key role in protecting children from sexual exploitation, sale and trafficking by providing assistance to child victims. The Special Rapporteur noted the extremely limited resources available to the vice and minors protection squad in all the towns visited. The vice and minors protection squad and the gendarmerie sometimes have no way of getting to the child victim because there is no fuel, or even a vehicle. Data collection is often not computerized and patrols<sup>39</sup> are restricted and cannot be carried out in all high-risk areas. None of the vice and minors protection squad premises have special interview rooms adapted to the needs of child victims (interviews are not filmed although this is required under Act No. 2007-023). While some members of the vice and minors protection squad and the gendarmerie do admirable work with very limited resources, the Special Rapporteur was informed not only by child victims of sexual exploitation, but also by street children, that they were sometimes subjected to violence and blackmail by the police.

63. The Ministry of National Education is involved in child protection through its educational policy of risk prevention. In addition to the information and awareness-raising activities required from them, educational institutions are also expected to inform the child protection network they belong to of any risk or potential risk situations, and may report the most serious of them to the police and the judiciary.

64. The Ministry of Tourism, through its policy on healthy and sustainable tourism (resisting the worst aspect of tourism), is committed to combating child sexual exploitation in tourism. The Ministry supports the dissemination of material to prevent it (booklets, leaflets, posters), and works with many partners to that end. Despite its limited resources, the Ministry carries out checks in hotels wherever possible, but is powerless to halt the growth of the informal sector.

<sup>39</sup> Exercices de repérage d'enfants en danger dans les rues.

65. The Ministry of Youth and Recreation plays an active role in child protection, particularly through prevention projects (dealing with addiction, prostitution, sexually transmissible diseases and crime) and social reintegration projects, and through its support for youth centres and forums.

66. The Ministry of Health has produced a handbook on assistance for victims of violence, including children, in cooperation with UNFPA. However, such assistance remains inadequate and not easily accessible, mainly owing to a lack of resources. According to UNICEF, the health sector budget was cut by 40 per cent between 2009 and 2010.

67. The Ministry of Public Service and Labour has established a Division for the Prevention, Abolition and Monitoring of Child Labour to devise a national plan to combat child labour.<sup>40</sup>

68. The voluntary sector also plays an important role in child protection. It takes on a liaison or service provision role, sometimes carrying out patrols and providing assistance in the community, as well as shelter, accommodation and support facilities, and reintegration programmes for children and young adults. The Special Rapporteur noted the need to strengthen the voluntary sector and regretted that none of the main international child protection NGOs were working in Madagascar.

69. The National Child Protection Committee, established by Decree No. 2012-848 of 25 September 2012,<sup>41</sup> is responsible for guiding national child protection policy and programmes and for coordinating child protection activities. The Committee is chaired by the Minister of Population and Social Affairs and is made up of a steering committee and a technical commission comprising specialists from the ministerial departments and bodies represented on the steering committee. The steering committee includes a representative from the Office of the Prime Minister, a director-general from each ministerial department and civil society representatives. The Special Rapporteur welcomed the establishment of the National Child Protection Committee but noted with concern that the steering committee had not met once since it was formed. The various stakeholders interviewed criticized the decision makers for their lack of involvement. Strengthening the relationship between the Committee and the child protection networks is essential for effective coordination. The Committee also needs to be strengthened through technical and financial support.

## **D. Policies and programmes for the identification, support and follow-up of children**

### **1. Policies, action plans and programmes**

70. In recent years, Madagascar has developed child protection policies and action plans, including the National Action Plan to Combat Child Sex Tourism, the National Action Plan to Combat Child Labour, the National Plan of Action on Violence Against Children,<sup>42</sup> the National Policy for the Advancement of Women,<sup>43</sup> the National Gender and Development Action Plan and the plan of action to implement the recommendations of the Committee on the Rights of the Child (CRC/C/MDG/CO/3-4, para. 12) of 3 February 2012 (in progress).

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<sup>40</sup> Voir [www.lcte.gov.mg/index.php](http://www.lcte.gov.mg/index.php).

<sup>41</sup> Disponible sur le site du Ministère sous l'onglet « décret » ([www.population.gov.mg](http://www.population.gov.mg)).

<sup>42</sup> Caduque depuis 2011, pas de nouveau plan adopté depuis.

<sup>43</sup> Projet «Prise en charge des orphelins et enfants vulnérables et de leur famille».

71. The Governance for Child Protection programme, developed in cooperation with UNICEF, should strengthen the institutional and legal child protection system. It aims to establish and strengthen the community-based system to protect children from violence, abuse and exploitation and helps put a stop to the non-registration of children at birth.

72. The Special Rapporteur noted that it was difficult to assess the real impact of these policies in the absence of a standardized information system providing sound knowledge of the number and profile of child victims and children at risk, and of a monitoring and evaluation system measuring the impact of initiatives undertaken on the situation of children. She regretted that many policies, action plans and programmes could not be properly implemented owing to the many obstacles at the executive level and also a serious lack of resources. The Special Rapporteur also noted with regret the absence of a comprehensive national child protection policy.

## 2. Identification, support and rehabilitation of children

73. The effective care and protection of children who are victims of sale, trafficking, abuse or sexual exploitation is a complex process that requires an interdisciplinary, holistic approach in order to provide children with medical, psychological, social and legal support and assistance, to facilitate their rehabilitation and reintegration and to ensure appropriate follow-up.

### (a) Identification, reporting and complaint mechanisms

74. There are many reporting mechanisms in Madagascar. As mentioned earlier, Act No. 2007-023<sup>44</sup> introduced several innovations, including mandatory reporting, to strengthen the protection of child victims. Various provisions of the aforementioned Act No. 2007-038<sup>45</sup> against sex tourism also encourage reporting. Report forms, available at the *fokontany* level, have been devised by the Ministry of Population and Social Affairs.

75. Two hotlines have been set up. The helpline (147) is used as a tool to report cases of ill-treatment and violence against children and child abuse and exploitation. The 147 helpline counselling centres operating from the vice and minors protection squad in 11 towns received and referred 1,090 calls in 2012. The majority of cases involve sexual abuse and physical assault of minors. The 511 hotline is operated by the Association Serasera Fanantenana and aims to provide young people with guidance and advice on various issues affecting them directly. Both hotlines receive support from UNICEF.

76. In addition to the protection provided under criminal law, child victims may seek assistance from non-judicial referral mechanisms, namely, counselling and legal advice centres and legal clinics. The counselling and legal advice centres, supported by UNFPA, have been created at the municipal level to ensure that child victims are heard. The legal clinics are attached to the Ministry of Justice in cooperation with technical and financial partners. The Rapporteur noted with regret that their resources are too limited to provide effective psychological and social care to victims.

77. The Special Rapporteur noted during interviews that most of the complaint mechanisms were deficient. Many stakeholders also expressed concern over the slow pace of legal procedures, which adversely affects the right of child victims to an appropriate remedy. Moreover, the participation of children in legal proceedings is inconsistent with international standards (Guidelines on Justice in Matters involving Child Victims and

<sup>44</sup> Voir *supra* la note 32.

<sup>45</sup> Voir *supra* la note 15.

Witnesses of Crime<sup>46</sup>) which provide that children's testimonies and safety should be taken into account and confidentiality observed.

(b) *Support and rehabilitation*

78. A pool of lawyers specializing in the protection of women and child victims of abuse was established in September 2011. At the moment, this pool operates in Antananarivo and there are plans to extend it throughout the national territory. The Ministry of Justice expressed concern about the absence of social workers in the courts. There are reportedly only two social workers for the whole of Antananarivo. According to the Association of Professional Social Workers, counselling for child victims is less than adequate and psychological assessments are hardly ever done.

79. According to the Ministry of Population and Social Affairs, there are 75 social centres and 21 authorized adoption centres, which cater for a total of 7,583 children. Altogether, 161 centres have been identified. The vice and minors protection squad emphasized the difficulty of finding centres for children with disabilities and the problem of having to pay for expert medical assessments (a medical report provided in cases of abuse or ill-treatment costs 6,000 ariary).

80. The foster family system (Decree No. 2006-885<sup>47</sup>) is an alternative temporary placement measure, ordered where children are at risk (street children, lost children, child victims of violence or abandonment) before they are returned to their families of origin or, as a last resort, adopted. A circular on implementation of the Decree provides for the system to be tested in four pilot areas (Diego-Suarez, Antsirabe, Toamasina and Antananarivo); however, only the Diego-Suarez project has been implemented.

81. Many associations specializing in combating all forms of ill-treatment, abuse and exploitation of children, including trafficking and prostitution, provide care to child victims. Their mission is to report such cases and to receive, house and/or reintegrate child victims of sexual exploitation, but they operate with very limited resources. They also face many obstacles created by the authorities and sometimes receive inadequate support from United Nations agencies, as the Special Rapporteur observed during her visits to programmes and reception centres.

82. The Special Rapporteur expressed deep concern at the obvious lack of programmes and mechanisms providing integrated care. There is an acute shortage of social reintegration mechanisms in Madagascar in relation to the very large and growing number of children at risk and child victims. The Special Rapporteur also noted that there are few initiatives to follow up children taken into care, owing to a lack of resources.

(c) *Prosecution and punishment of offenders*

83. The Special Rapporteur noted with deep concern that none of the judicial services interviewed had been able to cite a single conviction for child sexual exploitation, even though it is recognized to be a real plague in Madagascar.

84. The Special Rapporteur noted with alarm the large number of complaints that are not upheld, as a result of the lack of enforcement of laws by the judicial authorities and also frequent out-of-court settlements. One of the major challenges in the protection of child victims relates to impunity and corruption, which seriously hinders law enforcement.

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<sup>46</sup> Résolution 2005/20 du Conseil économique et social, en date du 22 juillet 2005.

<sup>47</sup> *Journal officiel* n° 3091 du 5 mars 2007, p. 1699 à 1702 (<http://legislation-madagascar.cwebh.org>).



## E. Preventive measures

85. The public and private media produce programmes on the fight against sexual tourism and child sexual exploitation and trafficking. For example, local radio stations in Ambanja, in the Diana Region, simultaneously broadcast a programme on child protection every Wednesday at 2 p.m.

86. Furthermore, audiovisual information and awareness-raising materials have been produced on child sexual exploitation. With the support of UNICEF and UNDP, films have been produced and broadcast on the public and private channels (*Vero sy Haingo, Aina, Jaomalaza, Fandrika*).

87. In an effort to eliminate child labour, the Tackling child labour through education (TACKLE) project, coordinated by ILO and supported by the European Commission, the Ministry of Education and the Ministry of Labour, aims to ensure equitable access to primary education and to skills development.

88. The Special Rapporteur regrets that sex education is included only in the secondary school curriculum<sup>48</sup> despite the fact that most pupils are already sexually active. According to information received, little information is provided on contraception and protection against sexually transmitted diseases (STDs). Although according to UNICEF figures, the prevalence of HIV/AIDS is only 0.3 per cent, the Special Rapporteur expressed great concern about the risks incurred by children frequently having unprotected sex, which leads to a high level of early pregnancies.<sup>49</sup> During her visit, the Special Rapporteur was also informed that most child sexual exploitation victims did not use any contraception or protection against STDs.

89. In an effort to prevent sex tourism, the Ministry of Tourism, in cooperation with a number of partners, distributed 33,000 posters and 50,000 brochures throughout the national territory, through the regional tourism directorates, tourism professionals and their partners. An awareness-raising campaign was launched in 2011 in three pilot regions. As part of the campaign, 3,700 copies of a new booklet, “Best practices for tourism professionals in combating child sex tourism” were produced in 2012 with the support of End Child Prostitution, Child Pornography and Trafficking Children for Sexual Purposes (ECPAT) France. The Special Rapporteur recommended that this awareness-raising material should be prominently displayed in aircraft, including on domestic flights.<sup>50</sup>

90. The prevention of all forms of child exploitation is a long-term endeavour which should extend beyond mere awareness-raising campaigns. Effective prevention addresses the root causes of the problem, including risk factors, push factors and factors linked to demand.

<sup>48</sup> Le Ministère de l'éducation, en collaboration avec l'UNICEF et le FNUAP, est en train de finaliser l'élaboration d'un programme d'éducation sexuelle pour les cycles primaires et secondaires.

<sup>49</sup> On constate que 32 % des adolescentes de 15 à 19 ans ont déjà commencé leur vie reproductive: 26 % d'entre elles ont eu, au moins, un enfant et 5,7 % sont enceintes du premier enfant. (EDSMD-IV, p. 72).

<sup>50</sup> En 2013, 150 000 encarts sur l'ESEC ont été insérés par l'UNICEF dans des livrets distribués aux nouveaux arrivants.

## **F. Training and capacity-building**

91. In terms of capacity-building for practising judges, particularly those handling cases involving minors, in-service training is scheduled annually at the National College of the Judiciary and Court Officers.

92. For the Criminal Investigation Police, the National Police Academy and the National Gendarmerie Academy provide specialized training on the concept of abuse and the rights of children, in listening and interviewing techniques in dealing with child victims, and in child protection laws and procedures. At least 50 officers from the Brigade for the Protection of Minors are trained each year.

93. In order to implement the recommendations made during the universal periodic review (A/HRC/14/13), the Ministry of Justice organized training sessions on combating trafficking in persons, especially women and children, in partnership with UNDP and the Office of the United Nations High Commissioner for Human Rights (UNHCR).

94. The sociology department of the University of Antananarivo provides training for social workers. The Association of Professional Social Workers also provides training for social workers on the protection of the rights of child victims. The Special Rapporteur noted, however, that the social work sector was not highly regarded and was under-funded.

95. Training for doctors providing care to child victims is planned for 2014. A handbook on medical care for victims of sexual violence, for use by medical professionals, was approved in 2012. Nevertheless, the Special Rapporteur noted with serious concern the lack of involvement of the health sector in child protection issues.

## **G. Participation by children**

96. The Rapporteur welcomed the many initiatives involving children and young people in Madagascar. She visited the Tamaga Youth Forum in Toamasina and spoke to the young people there, who carry out prevention, awareness-raising, training, outreach and counselling activities. She also met with members of the Nosy Be Youth Centre who are equally very involved in prevention activities focusing, for instance, on sexual exploitation. Despite the poor condition of their premises and the very limited resources available, these young people do admirable work and represent a beacon of hope for the country.

97. The Special Rapporteur was informed of other initiatives in place, such as the Children's Parliament in Diego-Suarez, which, however, appears not to be working properly.

98. UNICEF supported the introduction of Junior Reporters' Clubs. Their mission is to host programmes, cover the news, encourage discussion and promote reflection on topics of interest to them, through the medium of radio. Forty Junior Reporters' Clubs are currently in operation in 21 regions of Madagascar. Their aim is to raise awareness among their peers — but also among adults — about issues that affect them. They investigate local issues and initiate discussion with their peers, their elders and local officials in order to find local solutions.

99. The Special Rapporteur noted with regret that so little weight is given to children's testimonies in Madagascar and lamented the burden imposed by a "culture of silence".

## H. Monitoring bodies

100. The National Human Rights Council was established in 2008. It had been in existence since 1996 as the National Human Rights Commission. It is not operational yet because it has no members. There is no independent mechanism in Madagascar to follow up and monitor the human rights situation, particularly that of children's rights.<sup>51</sup>

## I. Social responsibility of the private sector

101. The private sector in Madagascar has started to take action against child sexual exploitation, particularly in the tourism sector. During her official visit, the Special Rapporteur attended the closing session of a training workshop for hotels in combating child sexual exploitation, which brought together some 60 hotels in Nosy Be and resulted in the signing of a code of conduct against the commercial sexual exploitation of children (a project supported by UNICEF, ILO, the European Union, the African, Caribbean and Pacific Group of States and the Madagascar National Tourist Board). The Special Rapporteur also noted that the Toliara and Toamasina Regional Tourist Boards were firmly committed to the issue and actively participated in awareness-raising activities.

102. The telecommunications sector has also demonstrated its commitment to child protection. The telephone operators Telma, Orange and Airtel supported the establishment of hotlines 147 and 511.

103. The Special Rapporteur noted with concern Internet providers' lack of commitment to protecting children online.

## J. International and regional cooperation

104. In the light of the political situation and the international community's non-recognition of the Transitional Government, international cooperation has declined since 2009. Only emergency activities (health, education, food) have been maintained.

105. The Special Rapporteur encourages the international community to support the introduction of efficient mechanisms for good governance and justice, the establishment of a comprehensive child protection policy and the implementation of local development plans (including a child protection and family support component) to effectively and sustainably combat all forms of violence against children and child abuse and exploitation.

106. The Special Rapporteur commends the efforts made by international organizations to support child protection and development projects but these initiatives would be more effective if they were part of a synergistic and concerted effort.

## IV. Conclusions and recommendations

### A. Conclusions

**107. The scourge of child sexual exploitation through prostitution and sex tourism is ubiquitous in Madagascar and too often justified by reference to poverty or social attitudes. Its spiralling levels, especially since 2009, are alarming. The true extent of**

<sup>51</sup> Le projet de loi sur le CNDH est actuellement bloqué au niveau du Conseil des ministres.

the problem is difficult to determine owing in part to reluctance to report cases, and to fear of reprisals. The few cases reported do not give rise to severe penalties such as those prescribed by law. Significant social and economic hardship, the complicity of some parents and school dropout have made children highly vulnerable to all forms of economic and sexual exploitation.

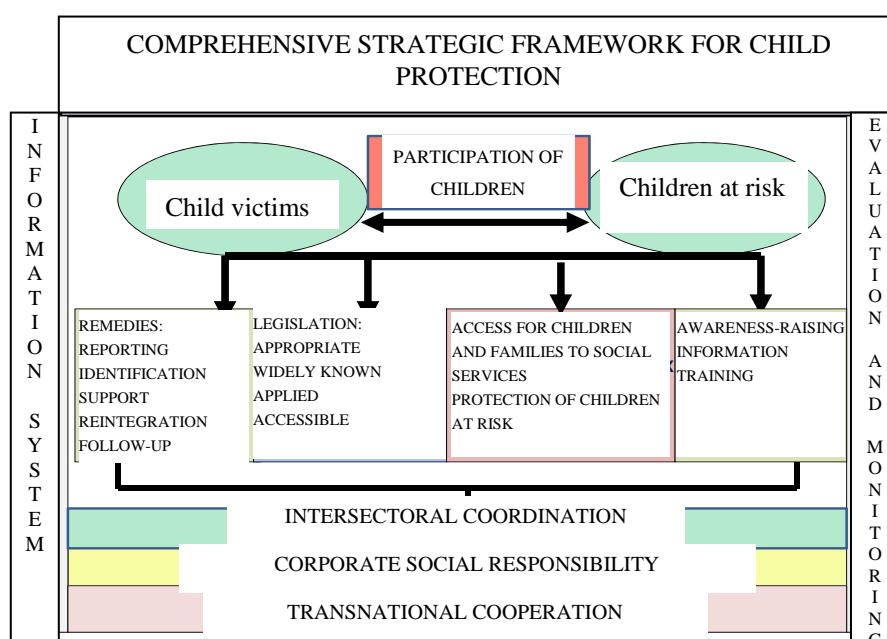
108. While Madagascar has a relatively comprehensive legal framework, its implementation lacks effectiveness because of impunity and children's difficulty in accessing remedies guaranteeing their protection and safety. Out-of-court settlements are often made at the community level, at the children's expense, their testimonies receiving very little attention. The Special Rapporteur expresses deep concern at the trivialization of child sexual exploitation and impunity for perpetrators of such crimes.

109. Notwithstanding the initiatives undertaken, the support provided to children remains highly fragmented and suffers from a severe lack of resources. The Special Rapporteur stresses the seriousness of the situation and the need to take urgent action to create a comprehensive child protection framework. Eliminating child sexual exploitation in Madagascar is a long-term process that will simultaneously require (a) capacity-building in institutions and services for children, (b) combating corruption and impunity, (c) ensuring operational intersectoral coordination, (d) establishing accountability mechanisms, (e) implementing sustainable social and economic alternatives and (f) promoting protective social norms. These measures will be largely dependent on stable policies that respect human rights.

## **B. Recommendations**

110. In a spirit of dialogue and cooperation, the Special Rapporteur would like to make the following recommendations. She is confident that every effort will be made to implement them and stands ready to offer her full cooperation and assistance.

111. In order to effectively and sustainably protect all children from all forms of violence, abuse and exploitation, the Special Rapporteur urges the Government to adopt a cross-cutting approach based on children's rights, with a view to establishing a comprehensive national strategic framework for child protection. This strategy will make it possible to establish integrated protection mechanisms consistent with international human rights standards.



112. With regard to legislation, the Special Rapporteur recommends that the Government ensure the effective application of laws by:

(a) Effectively combating corruption and impunity and fully applying the laws in force, which impose severe penalties for perpetrators of child sexual exploitation;

(b) Accelerating the reform process to bring the national legal framework in line with international standards and address the shortcomings in some of the legislation on child protection;

(c) Accelerating judicial proceedings and the issue of substitute birth certificates;

(d) Providing training in the legislation for judges and law enforcement officials, and for all the stakeholders involved in child protection;

(e) Publicizing and disseminating laws;

(f) Guaranteeing the protection and safety of children participating in legal proceedings, ensuring confidentiality and preventing the re-victimization of child victims;

(g) Establishing mechanisms to regularly monitor the implementation of laws.

113. At the institutional level, the Special Rapporteur recommends:

(a) Mapping the various stakeholders to provide a clear overview of the roles and responsibilities;

(b) Strengthening child protection institutions by providing them with adequate means and resources;

(c) Strengthening intersectoral coordination mechanisms;

(d) Setting up accountability mechanisms by area of activity;

(e) Establishing a monitoring and evaluation system involving the development of child protection indicators, in cooperation with all stakeholders, and the introduction of rigorous methods to monitor and evaluate the activities undertaken and their impact.

114. Regarding support for children, the Special Rapporteur recommends strengthening and ensuring access to protection mechanisms for all children, without discrimination, by:

(a) Encouraging reporting by disseminating and simplifying reporting forms and mechanisms and by establishing redress mechanisms easily accessible to children and guaranteeing their protection and safety;

(b) Strengthening child protection networks by granting them the necessary means and resources to ensure that they are fully effective;

(c) Strengthening child crisis centres;

(d) Capacity-building for child protection institutions;

(e) Setting standards for reception centres and foster families;

(f) Systematizing in-service and interdisciplinary training for professionals working with child victims and children at risk, with a view to harmonizing practices and ensuring the effective protection of children, and giving formal recognition to the knowledge and skills provided by the training;

(g) Introducing alternative forms of sustainable reintegration for street children, working children and children exploited through prostitution;

(h) Regularly monitoring children.

115. With respect to prevention, the Special Rapporteur recommends the implementation of effective and sustainable preventive measures by initiating or strengthening:

(a) Integrated local development plans to improve the living conditions and standards of vulnerable populations and provide vulnerable children and families with equitable access to social and protection services;

(b) Social protection and support strategies for families facing hardship, through administrative and legal assistance, support and parental guidance;

(c) Strategies promoting social norms that protect children, with the involvement of families, communities and their leaders;

(d) Awareness-raising programmes closely involving the media, social networks, associations, the private sector and, in particular, children's and young people's organizations;

(e) Identification of children at risk on the street;

(f) Inspection of bars, restaurants, discotheques and Internet cafés;

(g) Appropriate sex education from the end of primary school;

(h) Child protection on the Internet, in partnership with the private sector.

116. With regard to the participation of children, the Special Rapporteur recommends:

(a) Providing children with easy access to information;

(b) Ensuring that children's views are taken into account in decisions affecting them;

(c) Supporting children's and young person's activities and organizations to ensure that children are more effectively equipped to protect themselves and their peers.

117. For improved knowledge of the scale of these phenomena and related developments, the Special Rapporteur recommends:

(a) The establishment of a centralized, standardized and reliable information-gathering and processing system to collect data disaggregated by age, sex, background and status, and giving a clear description of the crime committed against the child;

(b) The conduct of studies and/or research activities to more effectively determine scale, trends, causes and demand, and risk factors for children.

118. With regard to observation and monitoring, the Special Rapporteur recommends the creation of a national human rights institution with a child-friendly mechanism guaranteeing:

(a) Easy access for all children without discrimination;

(b) The evaluation of programmes and strategies and of their impact on the situation of children and their rights;

(c) The promotion and monitoring of the implementation of the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and of other relevant international and regional instruments.

119. Regarding the social responsibility of the private sector, the Special Rapporteur encourages:

(a) The Government to develop and strengthen its partnerships with the private sector, particularly the tourism and travel sector, Internet access providers, telecommunications companies, banks and media and transport sector unions, in order to combat child sex tourism and child pornography on the Internet;

(b) All hotels, tour operators and transporters in Madagascar to sign the Code of Conduct and to promote protective and responsible tourism;

(c) Private telephone operators to sustain their commitment to supporting the operation of the helplines.

120. In order to strengthen regional and international cooperation and effectively combat these activities, which transcend borders, the Special Rapporteur recommends that the Government:

(a) Strengthen its efforts to share information and cooperate with the police and judicial authorities with the aim of: (i) identifying more child victims and providing input into the INTERPOL database; (ii) arresting the perpetrators of the crimes; and (iii) dismantling child trafficking rings;

(b) Involve sex tourists' countries of origin in preventing child sex tourism and in sharing information on the predators, as well as in enforcing penalties;

(c) Seek technical and logistical support from countries with the necessary resources and expertise.