

**Submission by the United Nations High Commissioner for Refugees (UNHCR)**

**For the Office of the High Commissioner for Human Rights' Compilation Report**

**– Universal Periodic Review:**

**MADAGASCAR**

**I. BACKGROUND AND CURRENT CONDITIONS**

Madagascar is a State party to the *1951 Convention relating to the Status of Refugees* (acceded on 18 December 1967) but has not acceded to its 1967 Protocol. The Government of Madagascar is party to the *1969 OAU Convention governing the specific aspects of refugee problems in Africa* (signed on 10 September 1969). Madagascar is not party neither to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*. The Government of Madagascar acceded to the 1954 Convention in 1962 but denounced it few years later; the denunciation took effect on 2 April 1966. Madagascar has not signed the 2009 African Union Convention for the Protection and Assistance of Internally displaced Persons in Africa (Kampala Convention). Madagascar has a monist system, which facilitates application of international instruments that the Country is party to in the national context.

Madagascar currently hosts 12 refugees and 3 asylum seekers. They reside in the Malagasy capital Antananarivo. UNHCR has no presence in Madagascar, but monitors the situation and assists the refugees through a partnership established with UNDP (Memorandum of Understanding). UNHCR does not have reliable information on the number of stateless persons or persons at risk of statelessness in Madagascar.

**II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

The Government of Madagascar observes the principle on non-refoulement with respect to persons in need of international protection who seek asylum on its territory. It also fully cooperates with UNHCR (and UNDP – the agency representing UNHCR on the ground) in providing documentation and assistance to refugees.

**III. CHALLENGES AND CONSTRAINTS**

**Issue 1: Asylum legislation**

The Government of Madagascar made reservations on articles 7, 8, 9 and 17 of the *1951 Convention relating to the Status of Refugees* as follows:

- The provisions of article 7 (1) [on exemption from reciprocity] shall not be interpreted as requiring the same treatment as is accorded to nationals of countries with which the Malagasy Republic has concluded conventions of establishment or agreements on co-operation;

- The provisions of articles 8 and 9 [on exemption from exceptional measures and on provisional measures] shall not be interpreted as forbidding the Malagasy government to take, in time of war or other grave and exceptional circumstances, measures with regard to a refugee because of his nationality in the interests of national security.

- The provisions of article 17 [on wage earning employment] cannot be interpreted as preventing the application of the laws and regulations establishing the proportion of alien workers that employers are authorized to employ in Madagascar or affecting the obligations of such employers in connexion with the employment of alien workers.

While the country has put in place a practice of protection and assistance to refugees, in close collaboration with UNHCR and UNDP, it has neither passed legislation nor administrative regulations on asylum and refugee protection, therefore lacking a national asylum system and procedure. To date, the refugee status determination is done by UNHCR (through missions from the Regional UNHCR office in Pretoria).

Moreover, Madagascar has not acceded to the 1967 Protocol relating to the status of refugees neither did it ratify the 1969 OAU Convention governing the specific aspects of refugee problems in Africa (signed on 10 September 1969), thereby making the legal regime that governs the refugee protection in the country blurred.

During the *Ministerial Intergovernmental Event on Refugees and Statelessness Persons* held in December 2011,<sup>1</sup> Madagascar pledged to consider accession to the 1967 protocol. Moreover, the Committee Against Torture has encouraged Madagascar to “to accede to the 1967 Protocol relating to the Status of Refugees and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.”<sup>2</sup>

#### **Recommendations:**

- Lift the reservations made on articles 7, 8, 9 and 17 of the *1951 Convention relating to the Status of Refugees*;
- Accede to the 1967 Protocol relating to the status of refugees;
- Ratify the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*; and
- Consider enacting a national law or regulation establishing national procedures for refugee status determination.

#### **Issue 2 Trafficking in persons**

Trafficking in persons has consistently been raised as a major concern in Madagascar, which might have been facilitated by its geographical situation. This practice has

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<sup>1</sup> UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, pages -92-93, available at: <http://www.refworld.org/docid/50aca6112.html>.

<sup>2</sup> Committee Against Torture, 47<sup>th</sup> Session, 31 October–25 November 2011, Concluding observations, para. 19, available at: [http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fcat%2Fdocs%2Fco%2FCAT.C.MD.G.CO.1\\_en.doc&ei=kvMBU7i3AuS70wX8gIGgDg&usq=AFQjCNFqV-g4XU-EeahAeESmna3vqsA-eQ](http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fcat%2Fdocs%2Fco%2FCAT.C.MD.G.CO.1_en.doc&ei=kvMBU7i3AuS70wX8gIGgDg&usq=AFQjCNFqV-g4XU-EeahAeESmna3vqsA-eQ)

particularly targeted children and women, considered as the main victims of the phenomenon. Moreover, the response provided by the Government to this phenomenon has not always been adequate and likely to contribute to curb the practice. UNHCR has consistently recommended that persons with international protection needs who find themselves victims of trafficking should be channelled through the appropriate mechanisms, which would enable access to the most appropriate response.

The Committee on Economic, Social and Cultural Rights (CESCR) urged Madagascar to “effectively implement the legislation against trafficking, to intensify its efforts to combat trafficking in persons, especially in women and children, in particular for the purposes of sexual exploitation. It also recommends that the State party strengthen its programmes and information campaigns to prevent trafficking, to provide mandatory training for law officials and judges, and to prosecute and punish those responsible. It further recommends that the State party address the root cause of trafficking and exploitation by increasing its efforts to improve education for children and create employment-generating activities, in particular for women in rural and remote areas.”<sup>3</sup>

In the same vein, the Committee on the Rights of the Child urged Madagascar to:

“(a) Ensure the effective implementation of relevant legislation, policy and programmes to combat trafficking in children, including timely prosecution and punishment of traffickers and the provisions of protection and support to victims; (b) Adopt a comprehensive action plan to address trafficking and ensure the allocation of sufficient human and financial resources for its effective implementation, including collection of disaggregated data;”<sup>4</sup>

#### **Recommendations:**

- Take all appropriate measures in order to curb the phenomenon of trafficking which impacts particularly women and girls; and
- Ensure that persons in need of international protection are channeled through the right procedure and have access to the protection or assistance they deserve.

#### **Issue 3: Birth Registration**

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of the link between the child and the country of nationality of the parents and/or the country of birth and therefore facilitates acquisition or proof of nationality for the child. In addition to the risk of statelessness, failure to document a person’s legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care.

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<sup>3</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Madagascar*, 16 December 2009, E/C.12/MDG/CO/2, para. 24, available at: <http://www.refworld.org/docid/52e3856d4.html>.

<sup>4</sup> UN Committee on the Rights of the Child, Fifty-ninth session, Opcit, para. 64.

Madagascar has a relatively high birth registration rate compared to other African countries but, according to UNICEF, 20 per cent of children are not registered or in possession of a birth certificate. While recognizing the on-going efforts of the country on this issue, more remains to be done to ensure a 100% birth registration rate. The Committee on the Rights of the Child recommended that Madagascar “*continue and intensify its efforts in ensuring free and compulsory birth registration for all children, including through use of mobile registration centres, and raise public awareness about the importance of birth registration. To achieve this objective, the State party should allocate adequate human, technical and financial resources to ensure easy access to registration by population in rural as well as urban areas.*”<sup>5</sup>

**Recommendation:**

- Ensure that births of all children are registered in line with the regional objective of *zero children* without a birth certificate.

**Issue 4: Accession to the Statelessness Conventions**

Madagascar is not a State party to either the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. The Government of Madagascar acceded to the 1954 Convention on 20 February 1962 but denounced it years later by a notification received by the Secretary-General on 2 April 1965. The denunciation took effect on 2 April 1966.<sup>6</sup> Accession to the 1954 Convention would establish a framework to protect stateless persons or persons at risk of statelessness and would contribute to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Accession by Madagascar to the *1961 Convention on the Reduction of Statelessness (1961 Convention)* would establish a stronger framework to prevent and reduce statelessness. The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This instrument is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment by stateless persons of their basic rights.

The right to nationality is established by the 2010 Constitution and the nationality law of Madagascar.<sup>7</sup> The provisions of the nationality law appear to meet a number of international standards with respect to the prevention and reduction of statelessness. For example, the law does not contain provisions stipulating loss or withdrawal of

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<sup>5</sup> UN Committee on the Rights of the Child, Fifty-ninth session, 16 January–3 February 2012, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Madagascar, paragraph 34, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MDG/CO/3-4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MDG/CO/3-4&Lang=En)

<sup>6</sup> United Nations treaty collection, available at: [https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&lang=en#6](https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en#6)

<sup>7</sup> *Ordonnance No. 1960-064 portant Code de la nationalité malgache.*

Malagasy nationality for persons who have long-term residence abroad and stipulates safeguards for the acquisition of citizenship by foundlings.

Nevertheless, there are also several gaps between the current nationality law and international standards on equality and prevention and reduction of statelessness. In particular, contrary to Article 9.2 of CEDAW, the law also distinguishes between men and women in the right to confer the Malagasy nationality to their children. Mothers can confer nationality on children born in wedlock only if the father is stateless or of unknown nationality, and on all children born out of wedlock, while fathers can always confer nationality on children born in wedlock. Children born to Malagasy mothers and foreign fathers can claim Malagasy nationality by declaration until they reach majority.<sup>8</sup> UNHCR has collected and had access to empirical evidence which shows that these discriminative provisions have often led to statelessness. In addition to the discriminatory provisions, the law is often not applied correctly and unauthorized discretion appears to be exercised by the authorities when issuing documents which serve as proof of nationality. This has also led to situations where persons born in Madagascar are unable to establish their nationality and are therefore unable to enjoy their rights.

In addition, contrary to Article 9.1 of the CEDAW, the law distinguishes between men and women with regard to acquisition, change and retention of citizenship. Women can renounce their nationality if they marry a foreigner but this does not render them stateless. No similar provision exists for male nationals who marry foreign women. Foreign wives have facilitated access to acquire their Malagasy husband's nationality but no similar right exists for foreign husbands of Malagasy women.<sup>9</sup>

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<sup>8</sup> *Ordonnance No. 1960-064 portant Code de la nationalité malgache*

Article 9: Est malgache:

(1) L'enfant légitime né d'un père malgache;

(2) L'enfant légitime né d'une mère malgache et d'un père qui n'a pas de nationalité ou dont la nationalité est inconnue.

Article 10: Est malgache:

(1) L'enfant né hors mariage lorsque la mère est malgache;

(2) L'enfant né hors mariage lorsque la mère est inconnue ou de nationalité inconnue, mais dont le père est malgache.

Article 16: L'enfant légitime né d'une mère malgache et d'un père de nationalité étrangère pourra, jusqu'à sa majorité, réclamer la nationalité malgache. La même faculté appartiendra à l'enfant né hors-mariage, lorsque celui de ses parents à l'égard duquel la filiation a été établie en second lieu est Malgache, si l'autre parent est de nationalité étrangère.

<sup>9</sup> *Ordonnance No. 1960-064 portant Code de la nationalité malgache*

Article 22: La femme étrangère qui épouse un Malgache n'acquiert la nationalité de Malgache que sur sa demande expresse ou si, en conformité des dispositions de sa loi nationale, elle perd nécessairement sa nationalité. La femme apatride qui épouse un Malgache acquiert la nationalité malgache. Article 29: Pourront toutefois être naturalisés sans condition de stage: (2) La femme de l'étranger qui acquiert la nationalité malgache; Art. 47: La femme malgache qui épouse un étranger conserve la nationalité malgache à moins qu'elle ne déclare expressément vouloir acquérir, en conformité de la loi nationale de son mari, la nationalité de ce dernier. Elle perd la qualité de Malgache si les époux fixent leur premier domicile hors de Madagascar après la célébration de leur mariage et si la femme acquiert nécessairement la nationalité du mari, en vertu de la loi nationale de ce dernier.

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Finally, the Nationality Law lacks a safeguard for acquisition of nationality for children born on the territory who would otherwise be stateless because he/she was born to parents who are stateless, of unknown nationality or foreign citizens who are unable to transmit their nationality to a child born abroad.

The Committee on the Rights of the Child has recommended that *“that the State party urgently finalize the reform of the legislation on nationality of children and ensures that no discrimination exists against children born of a Malagasy mother and a father of foreign nationality or children born out of wedlock.”* The Committee also urged Madagascar *“to ensure that children born in Madagascar do not risk being stateless.”*<sup>10</sup>

Madagascar hosts communities of migrant origins, in particular Karana and Comorian communities that have resided in Madagascar for generations. Many individuals among these communities have not been able to obtain Malagasy nationality, do not have and are not able to obtain another nationality either and are therefore stateless. The exact numbers of such individuals are not known and further efforts are needed in order to identify them, confirm whether they qualify for Malagasy nationality, provide them with nationality documentation and ensure that their rights are protected until such time as they acquire nationality.

#### **Recommendations:**

- Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*;
- Amend legislation to include safeguards against statelessness that provides that children born in the territory, who would otherwise be stateless, acquire Malagasy nationality;
- Amend legislation to ensure that men and women enjoy equal rights to acquire, change and retain nationality, and to confer nationality to their children;
- Undertake measures to ensure that all persons who are Malagasy nationals under the law are recognized as such and provided with nationality documentation; and
- Undertake measures to identify stateless persons and ensure protection of their rights.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2014**

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<sup>10</sup> UN Committee on the Rights of the Child, Fifty-ninth session, Opcit, para. 32.

## **Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures Reports**

### **- Universal Periodic Review:**

## **MADAGASCAR**

We would like to bring to your attention the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Madagascar.

### **I. Treaty Bodies**

#### **Committee on the Rights of the Child**

CRC/C/MDG/CO/3-4, 59<sup>th</sup> Session

8 March 2012

#### **II. Follow-up measures undertaken and progress achieved by the State party**

3. The Committee welcomes the adoption of the following legislative measures:

(a) Law No 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Penal Code combating trafficking in persons and sex tourism;

#### **IV. Main areas of concerns and recommendations**

##### **Best interests of the child**

25. The Committee welcomes the incorporation of the principle of the best interest of the child into national legislation. The Committee is nevertheless concerned at the low level of awareness of this principle among professionals working with children and for children, the general public and in particular among children.

26. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings, as well as in all policies, programmes and projects relevant to and having an impact on children. The legal reasoning for all judicial and administrative judgments and decisions should also be based on this principle. The Committee further recommends that the State party raise awareness of the principle of the best interest of the child among professionals working with children such as teachers, judges and social workers, traditional and community leaders and in the community at large, including children, through radio, television and newspaper campaigns.**

##### **Nationality**

31. The Committee notes with concern that legislation on nationality discriminates against children born to a Malagasy mother and a father of foreign nationality, as well as children born out of wedlock in some cases, and welcomes the indication given by the State party that this legislation is currently being reviewed. The Committee is further concerned that Malagasy legislation does not grant children born in Madagascar Malagasy nationality in cases where such children would otherwise be stateless.

**32. The Committee recommends that the State party urgently finalize the reform of the legislation on nationality of children and ensures that no discrimination exists against children born of a Malagasy mother and a father of foreign nationality or children born out of wedlock. The Committee also urges the State party to ensure that children born in Madagascar do not risk being stateless.**

#### **Birth registration**

33. The Committee welcomes the progress made in registering children at birth through the National Programme for Rehabilitating Birth Registration (EKA). However, the Committee is concerned that the level of birth registration is still low (20 per cent of births were not declared in 2008–2009), that the EKA programme does not cover all regions (only 921 out of 1,549 municipalities received support in 2010) and reports that funding for the programme decreased in 2010.

**34. The Committee recommends that the State party continue and intensify its efforts in ensuring free and compulsory birth registration for all children, including through use of mobile registration centres, and raise public awareness about the importance of birth registration. To achieve this objective, the State party should allocate adequate human, technical and financial resources to ensure easy access to registration by population in rural as well as urban areas.**

#### **Violence against children, including abuse and neglect of children**

45. The Committee notes with concern the high level of domestic violence in the State party, including sexual violence, affecting in particular women and girls, which appears to be socially tolerated. The Committee is seriously concerned at reports of sexual abuse of children, which remain without investigation, sanction or reparation. The Committee notes with concern the absence of a child protection policy and that the State party has not set a legal age for sexual consent. While the Committee welcomes the establishment of telephone helplines, the Committee is concerned that such services are not accessible for children in all regions.

**46. The Committee urges the State party to take all necessary measures to combat violence and abuse of women and children, including through:**

- (a) Implementing existing legislation and ensuring investigation and prosecution;**
- (b) Establishing a minimum age for sexual consent;**
- (c) Strengthening the capacities of relevant government institutions ensuring the law enforcement officers are trained in working with child victims of violence and abuse;**
- (d) Expanding the telephone helpline services to all regions;**
- (e) Strengthening community-based mutual-help groups to address psychosocial and economic challenges (for example parenting and micro-credit groups);**
- (f) Strengthen welfare programmes to support families' standard of living including direct allowances to children at a certain age; counselling support to caregivers having difficulties with employment, housing and/or child-rearing; therapeutic programmes to assist caregivers with domestic violence, addictions to alcohol or drugs or other mental health needs (including mutual-help groups);**
- (g) Raising public awareness through the media and education programmes on violence against women and children;**
- (h) Strengthening availability and access to social and educational treatment and restorative approaches, in addition to purely punitive judicial involvement, in particular in cases of violence where perpetrators are primary caregivers; and**



**(i) Ensuring that effective remedies are available, including compensation to victims and access to redress mechanisms and appeal or independent complaint mechanisms.**

#### **Harmful practices**

53. The Committee notes with deep concern the continuing prevalence of harmful practices, including discrimination and abandonment of twins and forced marriage (*moletry*). While welcoming that the State party has increased the minimum age of marriage to 18 years and facilitated registration of traditional marriages under the formal legal system, the Committee is concerned that early traditional marriages still occur. The Committee also notes with concern that a number of traditional festivities seem to result in an increase in children that have been subjected to rape and sexual abuse.

**54. The Committee recommends that the State party strengthen all measures to address harmful practices, including through working with traditional leaders and community based organisations to raise awareness of the harmful effects of these practises as well as pursue investigation and prosecutions of persons responsible for violations of children's rights through such practises.**

#### **Trafficking of children**

63. The Committee is greatly concerned at high level of trafficking in persons, including children, from Madagascar to neighbouring countries and the Middle East for purposes of domestic servitude and sexual exploitation. The Committee is concerned at trafficking for sexual exploitation and illegal adoption. While the Committee notes that the Law on Anti-trafficking was adopted in 2008, it is concerned that the law is not sufficiently implemented and, in particular, that the law has not resulted in any known convictions to date.

**64. The Committee urges the State party to:**

**(a) Ensure the effective implementation of relevant legislation, policy and programmes to combat trafficking in children, including timely prosecution and punishment of traffickers and the provisions of protection and support to victims;**

**(b) Adopt a comprehensive action plan to address trafficking and ensure the allocation of sufficient human and financial resources for its effective implementation, including collection of disaggregated data;**

**(c) Ensure that the judiciary, prosecutors, law enforcement, social workers and other relevant professionals receive specialised training in combating trafficking in children;**

**(d) Strengthen awareness-raising campaigns on trafficking, in particular targeting vulnerable communities where children are most at risk, including rural areas and areas of poverty;**

**(e) Ensure rehabilitation and social integration of children who have been victims of trafficking;**

**(f) Address the root cause of trafficking and exploitation by increasing its efforts to improve education for children and create employment-generating activities, in particular for women in rural and remote areas;**

**(g) Include in its next reports specific information on follow-up to these recommendations;**

**(h) Consider these recommendations together with the recommendations on trafficking of the Committee on the Elimination of Discrimination against**

Women (CEDAW/C/MDG/CO/5, para. 21) and the Committee on Economic, Social and Cultural Rights (E/C.12/MDG/CO/2, para. 24).

### **Committee against Torture**

CAT/C/MDG/CO/1, 47<sup>th</sup> Session

21 December 2011

#### **Trafficking in persons**

12. The Committee regrets that there is no information in the State party's report on trafficking in persons despite a persistent problem of sex tourism and exploitation of street children (arts. 2, 12, 13 and 14).

**The State party should investigate all allegations of trafficking in persons, in accordance with Act No. 2007-038 of 14 January 2008 concerning trafficking and sex tourism and with the relevant international standards. It should carry out awareness raising campaigns and organize training sessions for law enforcement officers as a means of preventing and combating trafficking in persons. It should offer protection to victims and provide them with access to medical, social and legal services, including rehabilitation services. The Committee invites the State party to include detailed information in its next report on the number of investigations carried out, complaints filed and convictions handed down for trafficking in persons.**

#### **Violence against women and children**

13. The Committee is concerned about information indicating that there is a large number of cases of early and forced marriages and of ill-treatment and domestic violence. It is also concerned about the fact that complaints are not lodged due to social and family pressure, despite the existence of Act No. 2000-21, which criminalizes domestic violence and sexual abuse (arts. 2, 12, 13 and 16).

**The State party should hold discussions at the community level, in particular with the heads of the *fokontany*, and take other steps to reduce the incidence of and ultimately eliminate forced marriages and *moletry* (probationary one-year marriages involving underage girls). It should enforce the obligation to register all marriages in order to monitor their compliance with domestic law and the conventions it has duly ratified. The State party should also prohibit early marriages, and prosecute offenders. The Committee encourages the State party to pass a law to prevent and punish marital rape and prohibit corporal punishment of children. It invites the State party to ensure that methods for detecting violence against women and children are included in the training of law enforcement officers.**

#### **Refugees**

19. The Committee notes that article 19 of the national law against torture prohibits extradition to a State where a person runs the risk of being tortured but says nothing about deportation or refoulement cases. The Committee also notes the lack of information on the situation of refugees in the country and the absence of a law on asylum (art. 3).

**The State party should amend article 19 of the law against torture of 25 June 2008 so that it also covers cases of deportation and refoulement, in accordance with article 3 of the Convention. The Committee encourages the State party to accede to the 1967 Protocol relating to the Status of Refugees and the**

**Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. It invites the State party to include information on the situation of refugees in Madagascar in its next periodic report.**

**Committee on Economic, Social and Cultural rights**

E/C.12/MDG/CO/2, 43<sup>rd</sup> Session

16 December 2009

13. The Committee is concerned that discrimination against the descendants of slaves persists, despite the legislation protecting against discrimination. (art. 2)

**The Committee urges the State party to take appropriate measures to eliminate discrimination against the descendants of slaves, including by applying the existing legislation against discrimination, to take awareness-raising measures to combat persistent negative attitudes and stereotypes and to include in the next periodic report information on the situation of the descendants of slaves.**

14. The Committee is concerned that under the current Nationality Code, children born to a mother of Malagasy nationality and a father of foreign nationality cannot acquire Malagasy nationality. (arts. 3 and 10)

**The Committee urges the State party to adopt revised legislation, so as to guarantee Malagasy nationality to children born to a mother of Malagasy nationality and a father of foreign nationality, on an equal footing to children born to a Malagasy father and a mother of foreign origin.**

15. The Committee is concerned about the absence of framework legislation on equality between women and men. (art. 3)

**In the light of general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), the Committee recommends that the State party adopt specific legislation on equality between women and men on which strategies and plans could be built.**

16. The Committee is concerned that, in practice, women's unequal status in marriage and family matters owing to customary and traditional attitudes remains, despite the adoption of Act No. 2007-022 of April 2007 concerning marriage and systems of matrimonial property, which sets the age of marriage at 18 for girls and boys, and guarantees the same rights and obligations to spouses in the household.

**The Committee encourages the State party to implement effective measures, in particular by pursuing the dialogue with traditional chiefs, on strengthening understanding of the equality between women and men, and to enhance a positive and non-stereotypical portrayal of women.**

18. The Committee is concerned about the high rate of underemployment in the State party, in particular among the vulnerable population and that it has greatly increased among women. It is further concerned about the precarious working conditions and low wages in the formal and informal sectors. (arts. 6 and 7)

**The Committee recommends that the State party develop effective employment strategies focusing on young people and women, as well as legislation and policies aimed at improving the working conditions and wages in the formal and informal sectors.**

23. The Committee is concerned about the prevalence of violence against women, including marital rape, which is not recognized as a criminal offence, and violence against children. It is also concerned that such violence is socially tolerated and goes unreported because of a practice of silence, resulting in victims not lodging complaints against perpetrators. The Committee is further concerned about the lack of information and disaggregated data on domestic violence. (art. 10)

**The Committee recommends that the State party combat violence against women and children, by implementing the existing legislation and adopting comprehensive measures to address all forms of domestic violence. The Committee also recommends that the State party ensure victims' access to justice, by encouraging the reporting of crimes and that perpetrators are prosecuted and punished. The Committee calls upon the State party to ensure that marital rape constitute a criminal offence. It requests the State party to raise public awareness through the media and education programmes on violence against women and children. The Committee also requests that the State party provide information on the impact of such measures, as well as data on the prevalence of various forms of such violence, disaggregated by age groups.**

24. The Committee is concerned about the persistence of trafficking in women and children, including sex tourism, in the country, in particular for girls living in poverty in rural and remote areas, despite the adoption of Act. No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Criminal Code concerning measures to prevent trafficking in persons and sex tourism, and the Act ratifying 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), as well as awareness-raising campaigns on sex tourism. The Committee regrets the absence of data relating both to trafficking and prostitution. (art. 10)

**The Committee urges the State party to effectively implement the legislation against trafficking, to intensify its efforts to combat trafficking in persons, especially in women and children, in particular for the purposes of sexual exploitation. It also recommends that the State party strengthen its programmes and information campaigns to prevent trafficking, to provide mandatory training for law officials and judges, and to prosecute and punish those responsible. It further recommends that the State party address the root cause of trafficking and exploitation by increasing its efforts to improve education for children and create employment-generating activities, in particular for women in rural and remote areas.**

31. The Committee is concerned that access to schools remains a problem for children living in rural and remote areas. It is also concerned about the high rate of repetition and dropouts, in particular for girls attending secondary schools. The Committee is further concerned that the status of teachers is less favourable than the status of other public servants in terms of salaries and benefits, and that the budget allocated to education remains insufficient. Furthermore, the Committee is concerned about the situation of children with disabilities in the school system. (art. 13)

**The Committee urges the State party to strengthen its various measures and programmes in order to:**

**(a) Address the problem of access to schools for children living in rural and remote areas;**

- (b) Take appropriate measures to ensure regular school attendance and reduce the dropout rate of children in particular in secondary schools;**
- (c) Strengthen the capacity of teachers through training and review their status;**
- (d) Develop programmes aimed at integrating children with disabilities into formal schooling. The Committee also recommends that the State party increase its budget for education and seek international assistance to deal with the above-mentioned issues, in particular those related to children with disabilities.**

#### **Committee on the Elimination of Discrimination against Women**

CEDAW/C/MDG/CO/5, 42<sup>nd</sup> Session

7 November 2008

#### **Positive aspects**

4. The Committee commends the State party on the extensive legal reforms undertaken to eliminate discrimination against women and promote gender equality.

In particular, it welcomes Law No. 2007-002, which sets the age of marriage for both women and men at 18, and Act No. 2000-021, amending and supplementing certain provisions of the Criminal Code relating to violence against women and indecent assault.

#### **Principal areas of concern and recommendations**

##### **Stereotype and adverse cultural practices**

16. The Committee is concerned at the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such customs and practices perpetuate discrimination against women that they are reflected in women's disadvantageous and unequal status in many areas, including in public life and decision-making and in marriage and family relations, and in the persistence of violence against women, and that, thus far, the State party has not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and practices.

17. **The Committee requests the State party to view its culture as a dynamic aspect of the country's life and social fabric and as subject, therefore, to change. It urges the State party to put in place without delay a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women, in conformity with articles 2 (f) and 5 (a) of the Convention. Such measures should include efforts which should be undertaken in collaboration with civil society, to raise awareness of this subject, targeting women and men at all levels of society, including traditional leaders. The Committee urges the State party to tackle harmful cultural and traditional customs and practices, such as the practice of "moletry" (bride price) in the north-west and the custom that prescribes the abandonment of a twin child in Mananjary, more vigorously. The Committee encourages the State party to implement effective and innovative measures to strengthen the understanding of the equality of women and men and work with the media in order to enhance a positive and non-stereotypical portrayal of women.**

##### **Violence against women**

18. The Committee expresses concern at the high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence, including rape. The Committee is also concerned that such violence appears to be socially legitimized and is accompanied by a culture of silence and impunity, so that victims of such violence do not press charges against perpetrators because of fear of retaliation, that cases of violence are thus underreported and that women are encouraged through customary law to leave the family home temporarily. The Committee is further concerned about the lack of information and data disaggregated by age groups on all forms of violence against women, and at the lack of information on the implementation of Act No. 2000-21, which criminalizes domestic and sexual violence. Furthermore, it notes with concern that marital rape is not recognized as a criminal offence and that the Criminal Code only criminalizes acts leading to physical injury and does not cover verbal, psychological and economic violence.

**19. The Committee urges the State party to give priority attention to combating violence against women and to adopt comprehensive measures to address all forms of violence against women and girls, in accordance with its general recommendation No. 19. It requests the State party to raise public awareness, through the media and education programmes, of the fact that all forms of violence against women are a form of discrimination under the Convention and therefore in violation of women's rights. The Committee calls upon the State party to ensure that violence against women and girls, including domestic violence, marital rape and all forms of sexual abuse, constitute a criminal offence; that perpetrators are prosecuted, punished and rehabilitated; and that women and girls who are victims of violence have access to immediate means of redress and protection. The Committee requests the State party to remove any impediment faced by women in gaining access to justice and recommends that legal aid be made available to all victims of violence, including through the establishment of additional legal aid clinics in rural or remote areas. The Committee recommends the implementation of training for the judiciary and public officials, in particular law enforcement personnel, health-service providers and community development officers, in order to ensure that they are sensitized to all forms of violence against women and can provide adequate gender-sensitive support to victims. It also recommends the establishment of counselling services and shelters for victims of violence. The Committee requests that the State party provide information on the laws and policies in place to deal with violence against women and girls and on the impact of such measures, as well as data and trends on the prevalence of various forms of such violence, disaggregated by age groups.**

#### **Trafficking and exploitation of prostitution**

20. While noting the adoption of Law No. 2007-38, modifying and completing the provision in the Penal Code concerning trafficking in persons and sex tourism, and the efforts of the State party aimed at raising awareness about sex tourism, the Committee expresses concern at the persistence of trafficking and sexual exploitation of women and girls, including sex tourism, in the country. In particular, the Committee expresses concern about the trafficking and sexual exploitation of girls in rural areas stemming from poverty and from their need to provide support for themselves as a consequence of being evicted from the parents' house upon reaching puberty. The Committee regrets the absence of data in respect of both trafficking and prostitution as well as the lack of a national plan of action to address both trafficking and sexual exploitation in the report of the State party.

21. **The Committee urges the effective implementation of the newly adopted law, and the introduction of effective prevention measures, timely prosecution and punishment of traffickers and the provisions of protection and support to victims. It recommends that information and training on the new law be provided to the judiciary and law enforcement officials, including border police, public officials, social workers and community development officers. It further recommends that the State party adopt a comprehensive action plan to address trafficking and sexual exploitation and ensure the allocation of sufficient human and financial resources for its effective implementation, including collection of disaggregated data. It also recommends that the State party address the root cause of trafficking and exploitation of women by increasing its efforts to improve the economic situation of women generally and, in particular, of girls who have reached puberty, thereby eliminating their vulnerability to exploitation and traffickers, including measures for the rehabilitation and social integration of women and girls who have been victims of such activity. The Committee also calls upon the State party to increase its efforts aimed at combating sex tourism, including in cooperation with countries of origin.**

#### **Nationality**

24. While noting that the State party has adopted Law No. 2008-017, which authorizes the ratification of the Convention on the Nationality of Married Women and is aimed at rectifying the inequality of rights between women and men with respect to nationality, the Committee notes with concern that the Nationality Code does not comply with article 9 of the Convention in that it does not allow a Malagasy woman married to a foreigner to transmit her nationality to her husband or children on the same basis as a Malagasy man married to a foreigner.

25. **The Committee urges the State party to amend the Nationality Code so as to bring it in line with article 9 of the Convention.**

#### **Vulnerable groups of women**

34. The Committee notes that the State party's report lacked information and statistics about particularly vulnerable groups of women, including elderly women and women with disabilities who often suffer from multiple forms of discrimination.

35. **The Committee requests the State party to provide, in its next report, a comprehensive picture of the de facto situation of vulnerable groups of women, including elderly women and women with disabilities, in all areas covered by the Convention.**

## **II. Special Procedures**

### **Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian**

Addendum: Mission to Madagascar (10 to 19 December 2012)

Human Rights Council, 24<sup>th</sup> Session

A/HRC/24/43/Add.2, 24 July 2013

165. **The Government should strengthen awareness-raising campaigns on slavery like practices, in particular by targeting vulnerable communities where children are most at risk.**

166. The Government is heavily centralized. Consequently, laws, policies and financial resources do not trickle down to communities. Malagasy legislation is not enforced at the local level, while customary law has preferential consideration, even by local government officials. In many cases, the ministries in the capital are unaware of the harmful traditional practices in the regions, particularly in rural areas. Coordination should be effective at all levels of intervention; at the community level, within the local administration and at the national level, with clear leadership from the Prime Minister.

169. The Government should reinforce the legal framework to combat the worst forms of child labour, and take all the legal and policy measures necessary to eradicate them. It should establish a strong monitoring mechanism that includes the *fokontany*, the police, the judiciary and civil society organizations to identify children at risk or who are victims of servitude. In order to harmonize the measures taken to prevent children from servitude or hazardous work, a referral system should be established at the local level to streamline all different interventions. Child protection networks must be strengthened, and involve the stakeholders necessary to ensure that children have access to basic social and health care.

#### **B. Malagasy domestic workers abroad**

173. The Ministry of Labour should be more diligent in ensuring that Malagasy migrant domestic workers are aware of their rights and are of legal age.

174. The Special Rapporteur recommends that the Government of Madagascar:

- (a) Adopt a comprehensive plan of action to address domestic servitude, and ensure the allocation of sufficient human and financial resources for its effective implementation, including the collection of disaggregated data;
- (b) Ensure that the judiciary, prosecutors, and law enforcement and social workers and other relevant professionals receive specialized training in combating child and adult domestic servitude;
- (c) Establish a partnership with recipient countries and bilateral agreements, and set up a mechanism responsible for proper identification and issuance of work permits to migrant workers, maintaining and updating a database on all migrant workers, and monitoring the work and living conditions of workers;
- (d) Ensure that Malagasy migrant domestic workers are adequately informed by recruitment agencies about their rights and what to expect when they arrive in destination countries prior to their departure;
- (e) Strengthen the legal framework of Malagasy domestic workers and ensure that it is adequately applied, with no room for corruption;
- (f) Stop issuing licenses to recruitment agencies, ensure that all placement agencies operating in Madagascar are legally established and comply with all relevant laws prevailing in both Madagascar and recipient countries, take stock of the situation and review what needs to be in place in the country, and consider how best to work with recipient countries in order to provide better protection for Malagasy migrant domestic workers.

#### **C. Servile marriage**

175. With regard to servile marriage, the Special Rapporteur recommends that the Government of Madagascar:



- (a) Develop a specific law to prohibit harmful traditional practices, such as *moletry* and girl markets;**
- (b) Take steps to ensure equal access of girls and young women to all levels of education, to retain girls in school and to implement re-entry policies so that girls and young women return to school after pregnancy. The Government should also take measures to increase the enrolment of girls at all levels, and introduce incentives for parents to send girls to school;**
- (c) Take measures to improve women's access to health care, especially emergency obstetric care and health-related services and information in rural areas. The Government should improve the availability of sexual and reproductive health services, including family planning, with the aim of preventing early pregnancies and clandestine abortions;**
- (d) Hold discussions at the community level, in particular with the *fokontany*, and take other steps to reduce the incidence of and ultimately eliminate forced marriages and *moletry*. The Government should enforce the obligation to register all marriages in order to monitor their compliance with domestic law and the conventions that it has ratified;**
- (e) Strengthen all measures to address harmful practices, including by working with traditional leaders and community-based organizations to raise awareness of the harmful effects of these practices, and pursue investigation and prosecution of persons responsible for violations of children's rights through such practises;**
- (f) Take effective and innovative measures to strengthen the understanding of the equality of women and men, and work with the media in order to promote a more positive, non-stereotypical image of women.**