

AFRICAN UNION

**African Committee of Experts on the
Rights and Welfare of the Child**



UNION AFRICAINE

**Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant**

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*"An Africa Fit for
Children"*

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**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS BY THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE INITIAL REPORT OF THE REPUBLIC OF MADAGASCAR ON
THE STATUS OF IMPLEMENTATION OF THE AFRICAN CHARTER ON THE
RIGHTS AND WELFARE OF THE CHILD**

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of the Republic of Madagascar and wishes to acknowledge with thanks the receipt of the initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter). The ACERWC, during its 25th Ordinary Session which was held from 20 to 24 April, 2015 considered the report which was submitted in accordance with the State Parties obligation under Article 43 of the Charter.
2. The Committee extends its compliments to the Government of Madagascar for ratifying the Charter. The Committee also welcomes the productive discussion with the delegation of Madagascar which was led by H.E. Mme Noeline RAMANANTENASOA, the Minister of Justice. The dialogue enlightened the Committee about the measures the State Party has taken towards the implementation of the Charter. Subsequent to the fruitful dialogue, the Committee adopted the following concluding observations and recommendations.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

3. The Committee welcomes the measures the Government of Madagascar is taking to protect the rights of children including:
 - i. setting the minimum age of employment at 15 years;
 - ii. establishment of an Independent National Human Rights Institution;
 - iii. establishment of National Child Protection Committee;
 - iv. adoption of Decree No. 2009-1147 of 1 September 2009 which provides for inclusive education;
 - v. ratification of various international human rights instruments such as the Second Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts; and the Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption.
 - vi. adoption of the National Action Plan on Ending Violence Against Children and the establishment of a Child Protection Network; and
 - vii. establishment of the Central Authority to monitor and follow-up inter-country adoption.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

4. While commending the establishment of the National Human Rights Institution, the Committee notes that it does not have any specific division for children. The Committee recommends that the State Party strengthens the National Human Rights Institution by forming a special division for children; providing technical and financial support as well as by maintaining its independence.
5. With regard to statistical data, the Committee is concerned that the State Party report presents contradictory statistics; for instance the data provided by ENSOMD and Ministry of Water shows significant disparity. The Committee therefore recommends for the State Party to collect and analyse recent and updated statistics in all sectors in collaboration with non-governmental organizations and civil societies to ensure that the statistics is consistent and reliable.
6. The State Party report indicates that the Government of Madagascar translated and distributed various international instruments including the Convention on the Rights of the Child. However, the report is silent about the African Charter on the Rights and Welfare of the Child. The Committee calls upon the State Party to disseminate the African Children's Charter and raise awareness about the provisions among children, parents, the society and all stakeholders.

B. Definition of a child

7. The Committee commends the State Party for providing definition of the child consistent with the African Children's Charter and for adopting Act No 2007-022 of 20 August 2007 which sets the minimum age of marriage at 18 years. **Nevertheless, the Committee notes with concern that children below the age of 18 years may be allowed to get married for reasons such as pregnancy, provided that they consent to the marriage and the President of the First Instance Court authorises such marriage.** The Committee however is of the view that a child is not in a position to consent for marriage in any case and providing otherwise renders the fundamental principles of African Children's Charter futile. Therefore, the Committee urges the State Party to remove this exception and proscribe marriage below the age of 18 years with no exception in accordance with Article 21 of the African Children's Charter.

C. General principles

Non-discrimination

8. The Committee welcomes the measures taken by the Government of Madagascar to ensure non-discrimination in the education and health sector. However, there are indications that children with disabilities are stigmatized even by their parents; and that girls face discrimination on education, recreational activities, and leisure as a

result of high level of domestic household task and society's less value towards girls education. Further, girls are discriminated in succession. There are also reports that reveal that children born out of wedlock are discriminated by the society at the time of inheritance. The Committee, hence, recommends that the State Party through its executive and judiciary branches enforces the laws and tangibly ensure that children born out of wedlock, children with disabilities, and girls are not discriminated. To this end, the State Party should create awareness among parents and the society on the negative effects of discrimination; create conducive environment for children with disability in schools and health care facilities; and provide incentive for girls in schools. Furthermore, the State Party should closely monitor succession proceedings in urban and rural areas to ensure that girls and children born out of wedlock are not discriminated during succession.

9. Finally, the Committee recommends for the State Party to take affirmative actions for children living in rural and remote areas with a view of providing them with equal basic services as urban children.

Best interests of the child

10. The Committee notes with appreciation that the best interest of the child is given consideration in cases of inter-country adoption as well as civil and criminal court proceedings concerning the child. The Committee further encourages the State party to make the best interest of the child its primary consideration in enacting laws, policies and regulations; in allocating budget for various sectors; and in all measures taken that could supposedly affect children.

Right to life, survival and development

11. The Committee welcomes the ratification of the Second Protocol to the International Covenant on Civil and Political Rights which abolishes death penalty. The State Party report also indicates that the State Party is in the process of domesticating the Protocol by initiating a law reform and adopting a bill that abolishes death penalty. The Committee encourages the State Party to expedite the process before the Council of Ministers.
12. While noting the decline in the rate of under-five mortality, the Committee still regrets that under-five mortality is very high, which stands at 62%. Even though the maternal mortality rate has not increased as mentioned in the State Party reports, the Committee is concerned that it has not decreased too. Moreover, the Committee is concerned that a significant number of children under the age of 5 suffer from chronic malnutrition, acute malnutrition and are underweight. As Malaria is the primary cause for child mortality, the Committee regrets that the proportion of under-five children who have gained appropriate anti-malarial drugs is very low. Therefore, the Committee urges the State Party to:

- a. Establish easily accessible and nearby health care centers where birth could be attended by professional health personnel;
 - b. promote good feeding practice in the community;
 - c. promote nutrition enhancing agriculture;
 - d. integrate nutrition objectives into agricultural and developmental programmes;
 - e. promoting exclusive breastfeeding for the first 6 month after birth;
 - f. Intensify distribution of mosquito net for a full coverage.
13. Finally, the Committee encourages the State Party to refer to and implement the African Regional Nutritional Strategy 2005-2015.

The views of the child

14. The Committee commends that the State Party has established children's parliament and children's commune, as well as the celebrations of the Day of the African Child and the Day of the Struggle against Child Labour. However, some reports show that the Government does not provide any kind of support to children's parliament and children's commune. The Committee, hence, calls upon the State Party to provide material, technical and financial support to these structures; and to establish such structures in all regions of the Country particularly in rural areas. Furthermore, the Committee encourages the State Party to have a child led celebration of child rights events.
15. The Committee also recommends that the State Party gives appropriate consideration to the views of children in decision and policy making mechanisms.

D. Civil rights and freedoms

Right to name, nationality and birth registration

16. The Committee appreciates that every child is legally entitled to birth registration within 12 days after birth. The Committee observed that failure to register birth within the prescribed time results in criminal penalty. The Committee is of the view that such penalty will discourage birth registration after the 12 days have lapsed and hence recommends that the State Party removes such barrier.
17. The Committee is also concerned that millions of children are not registered despite the legal requirement to do so and that there are regional disparities in birth registration. Thus, the Committee encourages the State Party to provide mobile birth registration system in remote areas; to establish computerized birth registration system in health care centers; to provide the necessary facilities required for registration; and to train personnel working in civil registration services.
18. Moreover, the Committee is concerned about the customary practice of late naming up to two years from birth which is against Article 6 of the African Children's Charter. In accordance with the Charter, children have the right to birth registration immediately after birth, which is few days or weeks after birth and not months or

years. This immediate aspect of birth registration also extends to the right to name of the child, and hence naming should not take more than a month. Additionally, acquiring a civil status is a precondition to acquire nationality in Madagascar. Therefore, the Committee urges the State Party to encourage birth registration by sensitizing the society to name children early and to register their birth immediately after birth.

19. With regard to right to nationality, the State Party report indicates that the Government has decided to adopt a nationality bill that amends and supplements the Malagasy Nationality Cod and avoids any form of discrimination. However, the Committee is concerned that the bill has not yet been adopted. The Committee recommends for the State Party to fast-track the adoption of the bill amending and supplementing the Malagasy Nationality Code and to include in it provisions that vividly provide for Malagasy nationality for stateless children and avert any discrimination against children born from stateless parents.
20. The Committee also encourages the State Party to refer to its General Comment No. 2 on Article 6 of the African Children's Charter for additional guidance on the implementation of the provision.

Freedom of expression, access to appropriate information, freedom of thought, conscience and religion

21. The Committee, while appreciating that those children who are capable of discernment have the right to express their opinion, is concerned how the State Party differentiates capacity of discernments. The Committee recommends that the State Party adopts clear and unequivocal standards that can be used to implement Article 7 of Act No. 2007-023 on the rights and protection of children.
22. In relation to freedom of association, the Committee appreciates the fact that children can freely join associations to express their views. But, the Committee also notes that civil majority is required to register an association. Therefore, the Committee encourages the Government of Madagascar to make sure that this requirement does not impede children's rights to association; and to formulate a mechanism in which children can fully exercise their freedom of association as enshrined in the African Children's Charter.
23. Concerning freedom of thought, conscience and religion, the Committee recommends for the State Party to balance parental responsibility and control with the child's freedom of religion. It is also important the State Party ensures the right to privacy of children in the family, schools and in the community; and to extend this protection to child witnesses, child victims and juvenile delinquents.
24. The Committee would also like to encourage the State Party to empower children themselves in order to build their capacity to actively seize their freedoms.

Protection against abuse and torture

25. The Committee notes with regret that the State Party promotes corporal punishment in the family as a way of domestic disciplining. However, the Committee has a strong stand that corporal punishment should be banned in all settings taking its negative impact on the physical, mental and psychological wellbeing of the child into consideration; and that State Parties should introduce positive disciplining mechanisms at home. Therefore, the Committee recommends that the State Party legally proscribes corporal punishment and promote positive disciplining without physically or verbally harming the child.
26. Despite the measures taken by the Government to protect children from abuse and torture, the Committee laments that many children are victims of sexual violence and corporal punishments. The Committee reprehends these violations and regrets that many of the sexual abuses are perpetrated by family members. Consequently, the Committee urges the State Party to investigate and prosecute perpetrators of sexual violence and ensures no impunity, and encourages the society to report such cases and stop stigmatization against those who report sexual abuse by family members. In addition, the Committee recommends that the State Party bans corporal punishment in all settings including home and schools.

E. Family environment and alternative care

Protection of the family, Parental guidance and parental responsibilities

27. The Committee notes that the State Party does not have a comprehensive family law or family policy. In order to advance the protection of the family and regulate the family unit properly, the Committee calls upon the State Party to enact a family code to protect the rights and welfare of the family.
28. The Committee commends the provisions of Act No. 2007-023 of 20 August whereby the State Party provides support to the family in the event that parents are incapable of discharging their responsibility. Despite this legal requirement, there are indications that there is no specific government organ responsible to implement this legal provision which in effect results in the non-implementation of the law. Thus, the Committee encourages the State Party to devise a structure in which the State Party can deliver assistance to the family as provided in the legislation. In addition to this, the Committee learns that majority of the population lives under poverty line which also affects the family and children. The Committee therefore recommends that the State Party provides agricultural support in addition to financial support since the main livelihood of the country is agriculture. An agricultural support could include providing fertilizers and other agricultural goods; introducing commercial agriculture; and providing adequate services to agriculture.
29. Moreover, the Committee observes that traditional authorities play a tremendous role in supporting the family. The Committee appreciates this and further encourages the State Party to provide the necessary training and knowledge to the

traditional leaders in order to sensitize them about child rights issues and the best interest of the child.

Separation of children and family reunification

30. The State Party is exerting efforts to prevent separation of the child and for the placement of the child in extended families or foster families if the need to separate children from their parents is in their best interest. While this is appreciated, the Committee notes that the reasons for separation of child are mostly related to poverty. There are a number of parents who send away their children for labour to other regions unaccompanied. Accordingly, the Committee urges the State Party to identify and address the root causes of separation of children. The Committee furthermore recommends that the State Party works towards reunification of separated children with their parents.

Alternative care and adoption

31. The Committee appreciates the fact that the State Party gives priority to alternative care in the home country such as domestic adoption or placing children in extended families. The Committee also commends the monitoring mechanism that is available to follow-up the living conditions of children in cases of inter-country adoption and encourages the State Party to continue its efforts in this regard through capacity building of the Central Authority and enforcing the reporting system every six month as required.

Exploitation, neglect and abuse

32. The Committee recommends that the State Party takes measures against parents who economically exploit their children for their livelihood in the house as well as by subjecting children to labour in urban cities. There are reports that indicate that parents sale their children for commercial sexual and economic exploitation due to poverty. The Committee calls upon the State Party to urgently take measures against such practice and prosecute perpetrators.

F. Basic health and welfare

33. The Committee appreciates the measures that are being taken by the State Party to improve the health care services among others, the formulation of the National Policy on Communal Health, the National Policy of Nutrition, the Expanded Program on Immunization; family allowance for vulnerable children; and the establishment of Basic Health Centers.

34. However, the insufficient health personnel and medical facilities; the closing down of health centers; the lack of health centers in rural areas; and the poor quality of health care facilities are worrisome. Furthermore, only 27.7% of the population has access to improved drinking water and the increase is not significant from 2010.

Likewise, less than half of the population gets sanitary facilities. Majority [more than 70%] of urban dwellers live in slums where there are inadequate access to improved drinking water and inadequate access to improved facilities. There are also indications that the price of health care services is high and that people particularly children with disabilities can't reach health care centers due to infrastructural difficulties. Additionally, the State Party report states that there has been a decrease in the budget allocated for the promotion of the rights of persons with disabilities and the budget allocated for the purification of water.

35. Therefore, the Committee urges the State Party to take concrete measures to reopen health care centers and establish new centers in unreached areas; to train health care personnel; to escalate the quality of health care facilities by setting necessary facilities and to reduce the cost to get access to health care services. The Committee also recommends that the State Party increases its budget allocation for the purification of water and fortifies its efforts to build dams and establish pipe drinking waters in order to ensure sustainable access to safe drinking water. Moreover, the Committee encourages the State party to upgrade the living conditions of children through investing on housing, latrines and basic welfare facilities with its available resource.
36. With regard to children with disabilities, the Committee commends that the State Party gives due priority to prevention through vaccination and early identification of impairments. The Committee encourages the State Party to continue its efforts in this respect and to further provide health care and sanitary facilities that are accessible to children with disabilities. To this end, the Committee highly encourages the State Party to cooperate with non-governmental institutions to mobilize resource.

G. Education, leisure and cultural activities

37. The Committee notes the measures taken by the Government of Madagascar to achieve the goals of Primary education for all including the three year Interim Plan for Education. The Committee also appreciates the provision of free and compulsory primary education and inclusive education. The fact that the Labour code provides a minimum age of employment which should not be below the age of completion of compulsory education is noteworthy.
38. Albeit these efforts, the Committee is concerned that primary education enrolment and net attendance rate significantly declined between 2006 and 2013. The rate of drop out from primary education and the rate of repetition are continuously increasing which is the repercussion of poverty and indirect costs associated to schools in Madagascar. There is also a considerable gender disparity both in primary and secondary education; particularly it is higher in secondary education. Moreover, the Committee is concerned that the numbers of schools are very limited especially in rural areas; that teachers are recruited by the community which has

limited fund; and that schools are devoid of infrastructure, facilities and teaching materials.

39. Therefore, the Committee recommends that the State Party adopts an education policy and include in it directions and strategies on accessibility of education, increasing enrolment rate, and decreasing dropout rates. The Committee also urges the State Party to take practical measures to achieve primary education for all, including increasing the budget allocated for the education sector; removing indirect costs of education; providing better facilities and teaching materials in schools; putting in place affirmative action for girls; and providing school feeding schemes. The Committee recommends that the State Party takes the responsibility of recruiting teachers so that teachers are well trained and educated. The Committee also urges the State Party to build new schools in remote areas and to maintain the existing ones with the view to decrease the teacher-student ratio and make schools more accessible. Finally, the Committee encourages the State Party to give attention to and provide for the particular needs of children with disabilities to make inclusive education a reality.

H. Special Protection Measures

Children in emergency situations

40. The Committee notes that there are cyclones and floods attacking schools and houses. While the Committee appreciates the actions taken by the National Office of Risk and Disasters Management, the Committee is concerned that there are no sustainable solutions to this scourge. The Committee hence recommends that the State Party fortifies its efforts on prevention measures as well as addressing the needs of children who are affected by the catastrophe. The Committee recommends that the State Party builds schools and provides housing for its population in areas where cyclones and floods are not common or less likely to happen. Additionally, in cases where such disasters materialize, the Committee urges the State Party to institute redress mechanisms such as temporary housing for those who live in the affected area; emergency food provision schemes; and re-establishment of families who have been displaced due to the phenomena.

Children in armed conflicts

41. The Committee commends that the State Party sets the minimum age for military recruitment at the age of 18 and appreciates the ratification of the 2nd Optional Protocol to the Convention on the Rights of the Child. However, reports indicate that a substantial number of children were victims of the Tandroka operation in the southern part of the State Party. Many children reportedly lost their civil status certificates. Therefore, the Committee recommends that the State Party ensures that civilians particularly children are not attacked at the time of conflict and that places

where civilians reside or undertake their living should not be military objectives in accordance with Article 22(4) of the African Children's Charter. The Committee also calls upon the State Party to take the necessary measures to register children who lost their certificate during the Tandroka operation as well as to redress the victims thereof.

Children in conflict with the law

42. The Committee welcomes the diversion program for juvenile justice put in place by the Government and the separation of juvenile from adults in detention centers. While appreciating these and many other efforts of the State Party in this regard, the Committee recommends for the State Party to use accelerated procedures for juvenile especially in cases of petty offences; and to give effect to jurisdiction for juvenile by increasing the number of judges who specialized in child rights.
43. Moreover, there are signals as to the fact that children on the street who are in conflict with the law are discriminated and subjected to arbitrary justice. Thus, the Committee urges the State Party to ensure the non-discrimination these children and make sure that they avail from all protections accorded to other delinquents.
44. The Committee notes with satisfaction that the State Party opts for separation of adults and children. Yet, reports show that adult detainees are allowed to move in places where children are detained; that the detention centers where children are kept lack basic facilities and rehabilitation services; and that the numbers of rehabilitation centers for juvenile are few in number. Therefore, the Committee recommends for the State Party to reinforce the separation of adults and children in detention centers; and to establish rehabilitation centers for children in conflict with the law in all regions of the Country. It is also the Committee's strong stand that the purpose of detention of children should be their rehabilitation and reintegration and hence encourages the State Party to provide education, health care and rehabilitation services for juvenile detainees.
45. In this regard, the Committee encourages the State Party to make reference to the U.N. Rules for the Protection of Juveniles Deprived of their Liberty for further guidance.

Children of imprisoned parents or care-givers

46. The Committee commends the State Party for providing separated bedrooms for mothers who are detained with their children. In order to better cater for the rights of children whose parents are in conflict with the law, the Committee recommends for the State Party to give priority to non-custodial punishments for parents who trespassed the law. In the event where this is not feasible, the Committee calls upon the State Party to ensure that children who are detained with their parents get access to food, medication, education and healthy environment. In cases where children of imprisoned parents are staying with extended families or foster care, the

State Party should facilitate visits insofar as it does not contradict with the best interest of the child. The State Party is also recommended to give attention to the Committee's General Comment No. 1 on Article 30 of the African Children's Charter.

Children in situation of exploitation and abuse

47. The Committee appreciates the fact that any form of child labour is prohibited below the ages of 15 years; that children below the age of 18 cannot engage in employment in hazardous and unhealthy works, night works and overtime works; and that the Government has established the National Committee against Child Labour. However, the State Party report indicates that the Labour Inspector can authorize the employment of children below the age of 15 if the work is not harmful to their health or intellectual development. Furthermore, one in four children suffers from child labour; and many children work in the mines and quarries where they face health problems as well as sexual exploitations. In order to rectify these situations, the Committee recommends that the State Party removes all exceptions of child labour below the ages of 15 both in the formal and informal sectors. The Committee also urges the State Party to put sanctions against those who employ children and to closely monitor the working conditions of children who are employed.
48. Concerning the sale, trafficking and sexual exploitation of children, the Committee notes with appreciation the legislative and administrative measures that are being taken to combat these practices. Nonetheless, a large number of children are trafficked to Middle East for domestic servitude and commercial sexual exploitation. Sexual exploitation is also very common within the country. Young girls are used as sex workers even by their parents. This situation is exacerbated by impunity which results from the failure of the government to reprimand such acts through prosecution and conviction of perpetrators. Accordingly, the Committee strongly recommends for the State Party to control that children are not trafficked and forced to undertake domestic works and commercial sexual works [child prostitution] by:
- putting stringent requirements on the travel of both accompanied and unaccompanied children;
 - Entering into bilateral and multilateral treaties with Middle East Countries to ensure that children are not subjected to any form of exploitation in those countries;
 - Innovating other forms of earning livelihood to address the poverty of the society;
 - Investigating, prosecuting and convicting perpetrators including family members; and
 - Facilitating the return, rehabilitation and reintegration of children in situation of abuse and exploitation from abroad and within the Country.
49. The Committee also observed from reports that the number of children on the street begging is increasing from time to time. More devastating is the fact that many of

these children are forced to beg by their parents and are exposed to abduction and trafficking. Hence, it is important that the State Party takes measures to reunite street children with their family; to create awareness among parents on the negative effects of child begging; and when appropriate to take measures against those who put children on the street to beg.

Children affected by harmful traditional practices

50. The Committee commends the engagement of the State Party with traditional leaders, religious leaders and the local population on the ground to address issues of harmful traditional practices against children such as abandonment of twins; ritual sacrifices, and forced marriage. Therefore, the Committee calls upon the State Party to take necessary legislative and administrative measures to combat these harmful traditional practices through aggressive sensitization and peer education using traditional and religious leaders. The State Party should also put penalty against those who force girls to marriage and those who perform ritual sacrifice of children.

I. Responsibility of the child

51. The Committee encourages the State Party to include the responsibility of the child in its legislative framework and ensure that the responsibility of the child does not result in child labour or any responsibility that contradicts the rights of children as enshrined in the Charter.

J. Conclusion

52. The African Committee of Experts on the Rights and Welfare of the Child appreciates with satisfaction the efforts invested by the Government of Madagascar and aspires for the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to ascertain the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its combined third and fourth periodic report which the Committee considers the first periodic report by June 2019.

53. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Madagascar the assurances of its highest consideration.