



24 November 2020

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 8, 14 and 30 of the concluding observations on the report submitted by Madagascar ([CCPR/C/MDG/CO/4](#)), adopted by the Committee at its 120th session in July 2017.

On 15 March 2019, the Committee received the reply of the State party. At its 130th session (12 October to 06 November 2020), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 2 (see [CCPR/C/130/2/Add.2](#)) to the Report on follow-up to concluding observations (see [CCPR/C/130/2](#)). I hereby include a copy of the Addendum 2 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the fifth periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Marcia V.J. KRAN

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# Report on follow-up to the concluding observations of the Human Rights Committee

## Addendum

### Evaluation of the information on follow-up to the concluding observations on Madagascar\*

<i>Concluding observations (120th session):</i>	<a href="#">CCPR/C/MDG/CO/4</a> , 22 August 2017
<i>Follow-up paragraphs:</i>	8, 14 and 30
<i>Follow-up reply:</i>	<a href="#">CCPR/C/MDG/CO/4/Add.1</a> , 15 March 2019
<i>Committee's evaluation:</i>	Additional information required on paragraphs 8[A][B], 14[C][B] and 30[B][C]

#### Independent National Human Rights Commission and the High Council for the Defence of Democracy and the Rule of Law

8. The State party is encouraged to: (a) ensure that the Independent National Human Rights Commission is provided, as soon as possible, with an independent budget that is sufficient for it to implement its mandate in full; (b) ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) by launching an accreditation procedure as soon as possible; and (c) step up the process of establishing the High Council for the Defence of Democracy and the Rule of Law and ensure the independence of that institution by granting it financial autonomy and sufficient resources for it to carry out its mandate in full.

#### Summary of State party's reply

(a) The Commission's budget was made available in 2018, enabling it to become fully operational.

(b) Act No. 2014-007 (2014) established the Commission. An application for accreditation was submitted to the Global Alliance of National Human Rights Institutions in February 2018.

(c) The High Council, which was established by Act No. 2015-001 (2015), has been in operation since April 2018.

The High Council is an independent constitutional body that enjoys administrative and financial autonomy. The 2019 Finance Act provides for the doubling of the budget allocated to it in 2018.

#### *Information from the Global Alliance of National Human Rights Institutions*

The accreditation status of the State party's NHRI (Commission Nationale Indépendante des Droits de l'Homme), was A, as of 27 November 2019.

#### Committee's evaluation

[A]: (b) The Committee welcomes the State party's successful launching of an accreditation process for the Commission Nationale Indépendante des Droits de l'Homme and the A status awarded to the NHRI, reflecting compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

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\* Adopted by the Committee at its 130<sup>th</sup> session (12 October – 6 November 2020).



**[B]:** (a), and (c): The Committee welcomes the budget for the Independent National Human Rights Commission made available in 2018. It requests information on whether the referred budget is sufficient for the Commission to implement its mandate in full and efficiently.

The Committee welcomes the measures taken to establish the High Council for the Defence of Democracy and the Rule of Law. It requests information on whether the Council is fully operational and if the budget allocated is sufficient for it to perform its functions.

#### **Investigations of human rights violations committed between 2009 and 2013 and the process of national reconciliation**

14. **The State party should speed up the process of national reconciliation, by, inter alia: (a) investigating all allegations of acts of torture, enforced disappearances and summary and extrajudicial executions, ensuring that no serious human rights violations perpetrated in the past go unpunished; and (b) making the Malagasy Reconciliation Council and the National Reparations and Compensation Fund operational by providing them with adequate resources.**

#### **Summary of State party's reply**

(a) No reliable information on investigations of human rights violations is yet available.

(b) The Malagasy Reconciliation Council, in operation since October 2017, inherited the budget allocated to *Filankevitra ny Fampihavanana Malagasy* under the 2018 Budget Rectification Act. In August 2018, the Council began conducting hearings relating to the events between 2002 and the end of the transition period.

Concerning reparation, 1,233 claims for compensation are currently being examined. The Council, in partnership with law enforcement officials, has conducted a number of investigations.

To ensure the effective operationalization of the Council, a draft implementing decree concerning the national solidarity fund is currently being prepared. A national reparations and compensation fund has not yet been established.

#### **Committee's evaluation**

**[C]:** (a): The Committee regrets the lack of information on investigations into allegations of acts of torture, enforced disappearances and summary and extrajudicial executions, and reiterates its recommendation.

**[B]:** (b): The Committee welcomes the information provided according to which the Malagasy Reconciliation Council is functioning, but regrets that a national reparations and compensation fund has not yet been established. It requests information on the budget allocated to the Council and on whether it is sufficient for it to perform its functions. The Committee reiterates its recommendation.

#### **Prohibition of torture and ill-treatment**

30. **The State party should: (a) amend Act No. 2008-008 as soon as possible to include penalties for ill-treatment, the non-applicability of statutory limitations to torture and the inadmissibility of confessions obtained under coercion or torture as evidence before the courts; (b) make the amendments needed to ensure that the provisions of Act No. 2008-008 are reflected in the Criminal Code and the Criminal Procedure Code; (c) ensure that alleged cases of torture and ill-treatment committed by the police or security forces are thoroughly investigated and that the alleged perpetrators are prosecuted and, if found guilty, are sentenced appropriately; (d) ensure that victims are properly compensated and offered rehabilitation services; and (e) establish an independent mechanism to investigate complaints of acts of torture or ill-treatment committed by members of the police or security forces.**



### Summary of State party's reply

(a) The reform of Act No. 2008-008, which prohibits torture and other cruel, inhuman or degrading treatment or punishment, is being finalized.

(b) The provisions of the Act will not be incorporated into the Criminal Code. However, certain provisions of the Criminal Procedure Code have been amended and supplemented by Act No. 2016-017 in order to facilitate the implementation of criminal law, including laws on torture.

(c) Awareness-raising activities for judges and judicial police officers, in order to improve the implementation of procedural guarantees during police custody, have been held in the capital in collaboration with the Geneva-based Association for the Prevention of Torture.

In 2017 and 2018, in partnership with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights, members of the defence and security forces from the 22 regions received training in human rights, including on the prohibition of torture and ill-treatment.

(d) No information on compensation for victims of torture is yet available.

(e) The Independent National Commission on Human Rights is an independent mechanism empowered to investigate allegations of torture or ill-treatment committed by members of the police or the security forces.

In order to strengthen its role in this respect, Act No. 2018-028 (2019) provides for the designation of the Commission as the national preventive mechanism responsible for conducting unannounced visits to places of detention, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 2017.

### Committee's evaluation

[B]: (a), (c) and (e): The Committee welcomes the information provided that the reform introduced by Act No. 2008-008 of 25 June 2008, which prohibits torture and other cruel, inhuman or degrading treatment or punishment, has been finalized. It requests information on its content, including on whether it complies with the Committee's recommendation and whether it has been adopted.

The Committee welcomes the information provided on training that has been carried out. It requests information on the measures taken, since the adoption by the Committee of its concluding observations, to ensure that alleged cases of torture and ill-treatment committed by the police or security forces are thoroughly investigated and that alleged perpetrators are prosecuted and, if found guilty, sentenced appropriately.

The Committee welcomes Act No. 2018-028 of 2019, which provides for the designation of the Commission as the national preventive mechanism responsible for conducting unannounced visits to places of detention, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also takes note of the information that the Independent National Commission on Human Rights is an independent mechanism empowered to investigate allegations of torture or ill-treatment committed by members of the police or of security forces. The Committee requests further information on investigations carried out by the Commission.

[C]:(b) and (d): The Committee takes note of the information provided by the State party, but requests information on the measures taken, since the adoption by the Committee of its concluding observations, to ensure that the new provisions of Act No. 2008-008 can be implemented and do not contradict the Criminal Code and the Criminal Procedure Code.

The Committee regrets that the State party has not provided information on measures taken to ensure that victims are properly compensated and offered rehabilitation services. It reiterates its recommendations.



**Recommended action:** A letter should be addressed to the State party to inform it of the discontinuation of the follow-up procedure. The information requested should be addressed by the State party in its next periodic report.

**Next periodic report due:** 28 July 2021.

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