



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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Committee on the Elimination of Discrimination
Against Women

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 18 OF THE CONVENTION

Initial Reports of the States Parties,

MADAGASCAR

Part I

Background

1. Madagascar features a young population with a high rate of fertility. The female population is in the majority, representing 50.9 per cent of the population (in 1984), with 81 per cent of the female population living in rural areas.
2. Malagasy women are a significant and ever increasing human resource since they make up 51.7 per cent of the population of working age (1984) compared with 50.8 per cent in 1975.
3. Contemporary Malagasy society is patriarchal in nature, but in earlier times it was a matriarchal society where women occupied a dominant position, a fact illustrated by queens who reigned during the precolonial period.
4. The traces of this civilization lie basically in the fact that women are considered as a link between the past and the future because of their ability to bear children.
5. In Madagascar, private law governing women is in part based on custom, in which the influence of French private law is not insignificant. In any case, it reflects efforts made by legislators to promote the status of women.
6. In addition, since its admission to the United Nations, Madagascar has acceded to and/or ratified international conventions and covenants concerning the status of women:

International conventions concerning:

- Suppression of the traffic in women of full age;
- Political rights of women;
- Suppression of the traffic in women and children;
- Abolition of slavery;
- Elimination of all forms of racial discrimination.

International covenants relating to:

- Economic, social and cultural rights;
- Civil and political rights;

Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.

7. The institutions responsible for monitoring the implementation of the principle of equality between men and women are the Administrative Chamber of the Constitutional High Court to which recourse is possible for women wishing to challenge an administrative decision or a discriminatory text.

8. In order to promote and ensure the full development and advancement of women aimed at guaranteeing them the exercise and enjoyment of their fundamental rights and freedoms on an equal basis with men, Madagascar established in 1976 a Ministry for Population, Social Welfare, Youth and Sports incorporating a Department on the Status of Women and Children, the national body responsible for monitoring the status of women (cf Part II, 2.4).

Part II

9. Firstly, the following general consideration should be mentioned: most of the laws and regulations concerning women, still in force at the present time, were passed during the first 10 years after Madagascar's independence, which took place in 1960. These laws and regulations were confirmed and added to by the Constitution of the Second Republic, which came into force on 26 December 1976.

10. Article 37 of this Constitution provides that "the State protects the family, women and children, and recognizes the right of every citizen to found a family and to bequeath his personal property".

11. However, to make it easier to explain the various provisions in force, it would be useful to consider women at different stages of their lives:

Infants and girls

12. At birth, regardless of sex, the child receives a name of its own; this name may be different from that of the father or mother.

13. The girl may keep her name throughout her life, even if she marries later.

14. Order 62.003 of 24 July 1962 entitles every person to add a patronymic to their name.

Education and instruction

15. "Every citizen has the right to instruction". The State ensures the exercise of this right by providing basic education.

It organizes and supervises teaching.

It ensures equal access of all to instruction, vocational training and culture subject only to the limitation of each individual's aptitude.

"The State and the communities shall assist in the provision of education and instruction of children" article 41 of the Constitution.

16. In Madagascar laws guaranteeing and requiring universal education for children from 6 to 14 years have already been adopted. Moreover, Madagascar has ratified the UNESCO Convention against Discrimination in Education.

At all levels, primary, secondary and higher, schooling is co-educational with a common syllabus for pupils of both sexes.

17. Girls must do their national service under the same conditions as boys (article 1 of order No. 76-025 of 9 July 1976).

Marriage of minors

18. Order No. 62-085 of 1 October 1962, regulating marriage stipulates that oral or written permission from the father and mother is required if one of the future spouses is under the age of 18.

19. The minimum age for contracting marriage is 17 years for boys and 14 years for girls.

20. Although article 5 of the same order clearly states that majority is attained at 18 years, minors of either sex acquire full legal capacity by virtue of their marriage: in their own right they can carry out any act of disposition concerning their estate. (Law No.63-022 of 28 November 1963 governing filiation, adoption, rejection and guardianship.)

Political and civil rights of girls having reached their majority

21. A girl who has reached her majority enjoys full legal capacity. She can go to law, belong to a union, adopt or reject a child, manage her possessions as she sees fit without having to seek permission from anyone.

22. No distinction is made between the rights of succession for heirs of either sex - none the less problems remain regarding the implementation of these dispositions, for in some regions certain traditional customs allow only men to acquire property.

23. The exercise of political rights by women is subject to the same rules as for men. The right to vote is acquired at the age of 18.

Married women:

24. Order No.62-089 of 1 October 1980 relating to marriage.

The constitution of a marriage

25. For the marriage to be valid, the consent of both spouses is necessary (article 4);

26. Polygamy is prohibited (article 7);

27. Marriage is prohibited between parents and relatives in direct line at all degrees and in collateral line (between brother and sister, uncle and niece, aunt and nephew) (article 12);

28. Objection to the marriage may be made, under clearly defined circumstances, by the mother or father of the future spouses (cf.18-21 above) or by a person who is already married to one of the future spouses (article 16 et seq.).

The effects of marriage

29. Spouses are mutually bound to fidelity, help and assistance (article 52 of the order mentioned in 24);

30. The husband is the head of the family but the concurrence of his wife is required in the moral and material care of the family; they must feed, bring up, instruct and educate their children (article 52 and 62);

31. The husband establishes the common residence of the spouses (article 54);

32. Children owe sustenance to their father and mother as do sons and daughters-in-law to their fathers and mothers-in-law (article 63 and 64).

Dissolution of marriage

33. This follows the decease of one of the spouses or a divorce petitioned before the competent court by one of the spouses, on the grounds of the dereliction by the other of the obligations devolving from marriage (adultery, a court sentence involving the death penalty, prison or exile) (article 66 et seq.).

34. Adultery among women is governed by stricter rules than in the case of men.

35. Desertion of a pregnant woman for a period exceeding 2 months is the subject of special provisions in the codes relating to desertion of the family.

36. Such an act is a criminal offence, carrying for the delinquent husband a term of imprisonment and/or a fine on a scale fixed by the law (law 63-022 of 22.11.63/filiation, adoption, rejection and guardianship, article 25).

37. The MISINTAKA, an institution maintained by written law but governed by custom (article 55 of order 62-089 of 1 October 1962), is an "option by which an unhappy housewife who, without being at fault herself, can lodge grievances against her husband, is entitled to return home to her parents in order to put a temporary end to a miserable existence, in the hope that her repentant husband will mend his ways." (Le FAMPODIANA).

38. The dissolution of marriage results in the division of common property acquired during the marriage.

(a) "The collectivity of common property, after all deductions have been made and common debts settled, is divided into three parts of which two go to the husband and one to the woman" (article 40 of law 67-030 of 18 December 1967 relating to matrimonial régimes and wills made by women).

This method of division is the ordinary law régime or "KITAV TELO ANDALANA".

However, other options can be established by a simple declaration of the spouses on their wedding day.

(b) With regard to the property of the spouses in the event of decease of one of them and in the absence of a will, the surviving spouse takes eighth place in the ranking of beneficiaries, the last, in the ninth place, being the State.

Single mothers

39. The law relating to filiation permits the single mother to prove and establish the paternity of the father of her child, then to claim from him an allowance for the maintenance of her child.

40. Article 25 of this law provides that paternity out of wedlock can be established in law following an action brought by the mother, on behalf of her child.

Concubines

41. This relates to a woman living with a man without the marriage being recorded by the official registrar.

42. In this case, where the union is dissolved, the concubine has the right to claim half of the property acquired during the union: she is treated much more favourably than the legitimate wife, who has the right to only a third of the property (cf above: 38(a)).

Women working in the formal sector

43. The Constitution of the Democratic Republic of Madagascar, dated 27 December 1976, provides in article 21, that "work is an honour and the bounden duty of every citizen who must voluntarily accept its discipline."

44. "From each will be demanded according to his ability - each will be remunerated according to the quality and quantity of his work".

45. This is supplemented by article 26: "Access to public service, professions, positions and employment is open to all citizens with no conditions other than those of capacity and aptitude".

46. According to these provisions, women are placed on an equal footing with men with regard to employment.

47. With regard to recruitment and, remuneration, as well as rights such as promotion and retirement, there are no special provisions for women. However, they are entitled to maternity leave and the option of leave of absence.

(a) Maternity leave

- For women working in the civil service, maternity leave is eight weeks in all, which cannot be combined with other statutory leave (annual leave or sick leave).
- The eight weeks are paid in full; maternity allowances (pre- and post-natal) are paid to the mother and the administration pays for 80 per cent of the confinement costs.
- During the first fifteen months of the child's life, the mother has the right to one hour's absence per day for breast-feeding.
- The female employee in the private sector has the right to fourteen weeks maternity leave, during which she receives allowances of half her salary, paid in several instalments by the National Special Security Fund. She is entitled to pre- and post-natal allowances and a lump sum payment, which is paid as reimbursement of confinement costs.
- During her maternity leave, the female employee is guaranteed that her job will be kept open.

(b) Leave of absence

The female employee in the public sector may be granted special leave of absence at her own request in two circumstances:

- To bring up a child under the age of five years or one suffering from an infirmity requiring constant care;
- To follow her husband if the latter is obliged to establish his residence, as a result of his employment, at a place distant from where the woman discharges her functions.

48. With regard to women in rural areas, it should be recalled that:

- They are entitled to land and water,
- They are entitled to participate on their own account and with equality of votes in public organizations (associations, co-operatives ...).

National machinery

49. The Department on the Status of Women and Children was established in 1986 within the Ministry for Population, Social Welfare, Youth and Sports and is responsible for implementing Government policy concerning the participation of women in the economic, social and political development of the country; as well as co-ordinating the activities of organizations and associations working to improve the status of women.

50. Through its three services - Service for the Status of Children, Service for the Promotion of Women, Service for Family Welfare - the Department on the Status of Women and Children directs its activities essentially towards:

- Improving the status of children;
- Improving the status of women in general;
- Eliminating unemployment: creation of structures for women - social and pre-co-operative centres; the former are training centres for young women and girls, the latter workshops enabling women to carry on income-generating activities.

Violence against women

51. One of the main objectives of the regulation of female employment is to ensure protection of women workers against exploitation and abuse:

- It is specifically prohibited to employ women in work of an immoral or hazardous nature.

52. As a general rule, the Inspector of Labour may require a medical examination of women to verify whether or not their work is beyond their strength.

53. The Department on the Status of Women and Children includes a service which is responsible for the family; one of its terms of reference is to provide support for women who are the victims of aggression or ill-treatment.

III. Conclusion

54. If women are to enjoy equality and the benefits of development and peace, they must not only have the opportunity and the right to participate in political life and decision-making, but they must also be informed of their rights in order to claim them.

55. All women must therefore be able to read and write in order to have access to information which can assist them and their families in improving their status.

56. "Information for women" is currently one of the priority measures to be implemented by the national body concerned - the Department on the Status of Women and Children.