

INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS



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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

MADAGASCAR

[16 July 1977]

I. LEGISLATION AND INTERNATIONAL CONVENTIONS

Provisions or requirements of the Covenant.
Relevant articles of the Constitution or texts implementing them.

- 1. All individuals within the territory shall enjoy all the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art.2, para.1).

Articles 12 and 39 of the Constitution of 31 December 1975^{1/}

Art.12. The State ensures the equality of all citizens by:
Guaranteeing the unity of the social order and of the socialist legal system, and the unity of the economic system, in the matter of laws and regulations;

Undertaking to remove economic and social obstacles which limit equality between citizens, impede the development of the human person and prevent the effective participation of all workers in political, economic and social organization;

^{1/} Aliens who are not excluded from their application are covered by these provisions. Furthermore Madagascar has acceded to the Convention relating to the Status of Refugees.

Ordinance No. 62-041 of 19 September 1962 concerning general provisions of municipal and private international law provides as follows:

"Art.20. Aliens in Madagascar shall enjoy the same rights as nationals with the exception of those which are expressly denied them by law; the exercise of a right may, however, be made conditional upon reciprocity."

Prohibiting any discrimination based on race, origin, religious belief, educational level, property or sex.

Art.39. Freedom of conscience and of religion is guaranteed by the neutrality of the State in relation to all beliefs.

Religious denominations shall be free to organize and function in conformity with the law;

(Compliance with the requirements of article 2, paragraph 3, is amply ensured by the provisions of the Constitution which are reproduced in this report.)

2. Guarantee of effective justice in the event of violation of the provisions of the Covenant as laid down in article 2 (particularly paragraph 3)

A. Article 42 of the Constitution of 31 December 1975

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No search may be made save in virtue of the law and on a warrant issued in writing by the competent judicial authority.

No one may be prosecuted, arrested or detained save in the cases determined by the law in accordance with the procedures which it prescribes.

No one may be punished save in virtue of a law promulgated and published before the commission of the offence.

No one may be punished twice for the same offence.

The law guarantees to all persons the right to obtain justice, and lack of means shall be no obstacle thereto.

The State guarantees the full enjoyment and inviolability of rights to defence before all courts at all stages of the proceedings.

B. Ordinance No. 60-107 of 27 September 1960, as amended, reforming the judicial organization 2/

Article 1. The courts of the judicial order are:

1. Courts of first instance and district or post courts;
2. The Court of Appeal;

2/ The establishment of People's Courts as prescribed by the Constitution is under consideration. It will help to bring the courts closer to those under their jurisdiction, to educate the citizen and to ensure his participation in the administration of justice.

3. Criminal courts and special criminal courts;
 4. The Court of Cassation.
- C. Ordinance No. 60-048 of 22 June 1960 establishing the procedure to be followed before the Administrative Court (Journal officiel de la République malgache (JORM), 1960, p. 1078):

Art.4. 1. The time-limit for application for an order to quash a regulatory or individual administrative act shall be three months from the publication or notification of the said act;

2. Except in matters concerning public works, contentious business may not be referred to a court save on appeal against a decision of the Administration. The time-limit for appeal shall be three months from the notification or publication of the decision;

3. Any time-limit of less than three months prescribed by a special text shall, under penalty of nullity, be mentioned in the notification of the decision;

4. Failure by the competent authority to pronounce itself on the claim within a period of four months shall be construed as dismissal of the claim. An appeal against that decision may be filed within a period of three months from the expiry of the above-mentioned period of four months.

5. In contentious matters, however, if an express decision dismissing the claim is reached after this period of four months, the person concerned shall be allowed a further period of three months in which to appeal against that decision.

If the administrative authority is a deliberative body, the above-mentioned period of four months shall if necessary be extended until the end of the first legal session following the filing of the claim. Nothing in this article shall affect any text which has introduced a special time-limit of a different duration.

D. Abuses of authority against individuals

Penal Code

Art.184. Any administrative or judicial official, officer of justice, police officer or commander or member of the law enforcement service who, acting in that capacity, enters the home of a citizen against the latter's will otherwise than in the cases prescribed by the law and without observing the formalities therein prescribed shall be liable to imprisonment for not less than six days and not more than one year and to a fine of 25,000 francs, without prejudice to the application of article 114, second paragraph.

Art.185. Any judge, court, administrator or administrative authority who, on any pretext whatsoever, including the silence or obscurity of the law, denies to the parties the justice which he owes to them after being asked for it and who

persists in such denial after being warned or instructed by higher authority shall be liable to prosecution, to a fine of not less than 37,500 francs and not more than 150,000 francs and to debarment from public service for not less than five and not more than 20 years.

Art.186. Where a public official or officer, an administrator, an agent or servant of the Government or police, a person enforcing a judicial warrant or judgement or a senior or subordinate commander of the law enforcement service has without a good and sufficient reason used violence or caused violence to be used against any person in the performance or on the occasion of the performance of his functions, he shall be liable, depending on the nature and gravity of such violence, to a penalty which shall be increased in accordance with the rule laid down in article 198 below.

Art.187. Any official or agent of the Government or of the postal administration who withholds or opens letters entrusted to the post or who aids and abets such withholding or opening shall be liable to a fine of not less than 25,000 and not more than 150,000 francs and to imprisonment for not less than three months and not more than five years. The guilty party shall in addition be debarred from any public service or public employment for not less than five and not more than ten years.

Apart from the cases provided for in the first paragraph of this article, any person who maliciously withholds or opens correspondence addressed to another shall be liable to imprisonment for not less than six days and not more than one year and/or to a fine of not less than 25,000 and not more than 150,000 francs.

3. Equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant (art. 3)

Constitution of 31 December 1975

Art.12 (first and last paragraph). The State ensures the equality of all citizens by:

Guaranteeing the unity of the social order and of the socialist legal system, and the unity of the economic system, in the matter of laws and regulations;

Prohibiting any discrimination based on race, origin, religious belief, educational level, property or sex.

Art.21 (paragraph 2). Everyone shall be required to contribute according to his capacity.

Art.24. The State shall promote the practice by every citizen of an activity in keeping with his qualifications in the economic, administrative, social and cultural spheres.

Art.26. Access to public service, occupations and employment shall be open to every citizen subject to no conditions other than those of ability and skill.

Art.40. Every citizen who satisfies the legal requirements shall have the right to vote and to be elected.

4. Measures derogating from obligations under the Covenant in time of "public emergency" (art. 4)

Article 16 of the Constitution of 31 December 1975

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The citizen's rights and freedoms are also limited by the law and the imperatives of national necessity.

The procedure for giving effect to this article has not yet been laid down. The state of national necessity is governed by Ordinance No. 75-008 of 11 July 1975, which guarantees the rights of citizens without imposing any specific restrictions.

Ordinance No. 72-001 concerning the state of national necessity (JORM of 19 June 1972, p. 1266)

Art.1. A state of national necessity shall be proclaimed by the President of the Republic by decree in the Council of Ministers with the prior concurrence of the Presidents of the National Assembly and the Senate.

Such a proclamation shall, in addition, be conveyed in a message from the President of the Republic to the nation.

Art.2. The proclamation of a state of national necessity shall confer on the President of the Republic full powers to lead the country for the period in question.

Art.3. The exercise of such full powers shall be guided by the will to seek the public welfare, maintain national unity and safeguard the Republican institutions.

Ordinance No. 76-035 of 1 October 1976 concerning home searches and visits in time of national necessity in connexion with a crime or serious offence against State security

Art.1. In time of national necessity, notwithstanding the provisions of the Code of Penal Procedure, home searches and visits in the course of a preliminary inquiry or investigation in connexion with a crime or serious offence against State security may be carried out at any hour of the day or night. 3/

3/ Under ordinary law a search may be made only between the hours of 5 a.m. and 7 p.m. This exception has been made in order to make it possible, in particular, to surprise conspirators meeting at night - as they usually do - and to seize documents prepared at night for circulation in the morning.

5. Right to life and other questions covered by article 6 4/

Article 42 of the Constitution of 31 December 1975

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Every citizen is guaranteed the inviolability of his person and home and the secrecy of correspondence.

No search may be made save in virtue of the law and on a warrant issued in writing by the competent judicial authority.

No one may be prosecuted, arrested or detained save in the cases determined by the law and in accordance with the procedures which it prescribes.

No one may be punished save in virtue of a law promulgated and published before the commission of the offence.

No one may be punished twice for the same offence.

The law guarantees to all persons the right to obtain justice, and lack of means shall be no obstacle thereto.

The State guarantees the full enjoyment and inviolability of rights to defence before all courts at all stages of the proceedings.

Article 549 of the Code of Penal Procedure

When the death penalty has been pronounced, the State Counsel shall, as soon as the sentence is made final, bring it to the attention of the Minister of Justice.

The sentence shall not be carried out until pardon has been refused.

The execution shall be carried out in accordance with the provisions of articles 12, 25, 26 and 27 of the Penal Code. Any statement the condemned person may wish to make shall be received by one of the judges of the place of execution, assisted by the clerk of the court.

4/ The death penalty is prescribed only in extremely grave cases:

Murder;

Grievous bodily harm inflicted in certain circumstances (other than premeditation, ambush, murder preceded, accompanied or followed by another crime, parricide, matricide, etc.);

Certain offences against State security: treason, incitement to civil war, incitement to looting, etc.;

Certain thefts committed in aggravating circumstances.

The death penalty is not being abolished. However, although the death sentence has been pronounced on several occasions, there have been no executions since 1958.

Art.12. (Ordinance No. 60-161 of 3 October 1960). Any person sentenced to death shall be shot.

Art.25. The sentence shall in no case be carried out on a national or religious holiday or a Sunday.

Art.26. The execution shall be carried out within the precincts of the penal institution which shall be designated in the sentence from a list drawn up by order of the Keeper of the Seals, Minister of Justice.

Only the following persons shall be permitted to attend the execution:

1. The President of the Criminal Court or, in his absence, a member of the bench appointed by the First President;
2. An officer appointed by the State Counsel General from among his staff;
3. A judge of the court of the place of execution;
4. The Clerk of the Criminal Court or, in his absence, a clerk of the court of the place of execution;
5. The condemned person's defence counsel;
6. A minister of religion;
7. The director of the penal institution;
8. The superintendent of police and, if necessary, such members of the law enforcement service as the Chief State Counsel may require;
9. The prison doctor, or in his absence, a doctor appointed by the State Counsel General or the Chief State Counsel.

Art.27. If a woman sentenced to death claims and is in fact found to be pregnant, she shall not be executed until after her confinement.

Ordinance No. 62-038 of 19 September 1962 concerning the protection of children

Art.45. If the criminal court for minors finds a minor between 13 and 16 years of age guilty of a criminal offence, the extenuating excuse of minority shall automatically apply and the penalty shall be enforced in accordance with the following provisions:

1. If the minor has incurred the death penalty, hard labour for life or deportation, he shall be sentenced to a penalty of imprisonment for not less than 10 and not more than 20 years;

2. If he has incurred the penalty of a term at hard labour, detention or rigorous imprisonment, he shall be sentenced to imprisonment for a term of not more than one-half the term for which he could have been sentenced to one of those penalties;

3. If he has incurred the penalty of civic degradation, he shall be sentenced to imprisonment for not more than two years.

Art.46. If the accused is over 16 but under 18 years of age, the provisions of the preceding two articles shall be applicable. Nevertheless, the criminal court for minors shall have the power to dismiss, by a special decision stating the reasons therefor, the extenuating excuse of minority.

In no case may a person under 18 years of age be sentenced to death.

6. Prohibition of torture and of cruel, inhuman or degrading treatment and punishment

Art.303 of the Penal Code. Any offender, however described, who uses torture or acts of barbarity to carry out his crimes shall be punished as if guilty of murder.

Art.344 of the Penal Code. The penalty shall, however, be death if the persons arrested, detained or falsely imprisoned have been subjected to physical torture.

Art.309 of the Penal Code. 5/ Any person who wilfully inflicts any wound or blows, or commits any act of violence or battery, which results in illness or inability to work for more than 20 days shall be liable to imprisonment for not less than two and not more than five years and to a fine of not less than 25,000 and not more than 100,000 francs.

Where the violence described above has resulted in mutilation, the amputation or loss of the use of a limb, blindness, loss of an eye or any other disability, the guilty party shall be liable to imprisonment for not less than five and not more than ten years.

If the wilfully inflicted blows or wounds were not intended to cause death but nevertheless did so, the guilty party shall be liable to a term at hard labour.

Art.310. Where there was premeditation or an ambush, the penalty shall be:

1. If death ensued, hard labour for life;

5/ Reproduced for ease in understanding what follows.

2. If the violence resulted in mutilation, the amputation or loss of the use of a limb, blindness, loss of an eye or any other permanent disability, a term at hard labour;
3. In the case covered by article 309, first paragraph, imprisonment for not less than five and not more than ten years.

Art.311. Where the wounds, blows, other acts of violence or battery did not result in any illness or inability to work of the kind mentioned in article 309, the guilty party shall be liable to imprisonment for not less than six days and not more than two years and/or to a fine of not less than 25,000 and not more than 90,000 francs.

Where there was premeditation or an ambush, the term of imprisonment shall be not less than two and not more than five years and the fine not less than 25,000 and not more than 150,000 francs.

Art.312 (paragraph 6). Any person who wilfully inflicts any wound or blows on a child under 15 years of age, or wilfully deprives such a child of food or care to the prejudice of his health, or commits any other act of violence or battery except slight violence against such a child shall be liable to imprisonment for not less than one year and not more than five years and to a fine of not less than 25,000 and not more than 750,000 francs. 6/

7. Prohibition of slavery and the slave trade in all their forms, servitude and forced or compulsory labour (art. 8).

At the legislative level, Parliament adopted and the President of the Republic promulgated Act No. 71-027 of 23 November 1971 authorizing the accession of the Malagasy Republic to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

The Act was published in the Journal Officiel de la République Malgache on 27 November 1971. The text of the Supplementary Convention was reproduced in an annex.

Ordinance No. 75-013-0/DM establishing the Labour Code

Art.2. Forced or compulsory labour is prohibited. The term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

6/ Article 312 increases the penalties if:

The victims are ascendants of the perpetrators of the wounds and blows;
The blows and wounds were inflicted on a child under 15 years of age and the perpetrators are his ascendants (even adoptive ascendants), are in authority over him or have custody of him.

The provisions of the preceding paragraph shall not apply in the cases listed below:

1. Work, services or assistance required in the event of accident, commotion, shipwreck, flood, fire or other disaster, brigandage, looting, flagrante delicto or hue and cry or in enforcement of a judicial decision;
2. Work in the interest of the community carried out pursuant to an agreement, freely entered into by the members of the fokonolona, which has become enforceable;
3. Work in the public interest executed in virtue of the legislative provisions organizing defence and instituting national service;
4. Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and in furtherance of a project in the public interest.

Any measure taken by an employer contrary to the provisions of the preceding paragraphs shall automatically be deemed null and void and shall entitle the injured person to damages. 7/

Art.5. Persons carrying on the same occupation, similar trades or allied occupations associated in the preparation of particular products, or the same liberal profession, may freely establish a trade union. Any worker or employer may join the trade union of his choice within his occupation.

Art.6. The founders of any trade union shall deposit the articles of association and the names of those responsible in any capacity for its administration or management.

7/ Art.151. The following shall be liable to a fine of not less than 20,000 and not more than 200,000 Malagasy francs and/or to imprisonment for not less than six days and not more than three months:

1. Any person who infringes the provisions of article 2 on the prohibition of forced labour and article 67 (paragraph 2) on the payment of wages in alcohol or alcoholic beverages;
2. Any person who by violence, threats, fraud, theft or promises forces or attempts to force a worker to take employment against his will or who by the same means attempts to prevent or prevents him from taking employment or performing the obligations imposed by his contract.

Such deposit shall be made at the subprefecture in whose territory the trade union is established and the subprefect shall send a copy of the documents deposited to the labour inspector and the Chief State Counsel of the jurisdiction.

Any amendment to the articles of association and any change in the composition of the management or administration of the trade union shall be brought to the attention of the same authorities in the same manner. The above-mentioned documents shall be exempt from stamp and registration duty.

From the legal point of view accession to the Supplementary Convention has entailed no change in existing Malagasy law, which contains no provisions inconsistent with the terms of the Convention.

In practice no domestic or international offence relating to slavery, the slave trade or the practices referred to in article 1 of the Supplementary Convention has been brought to the attention of the Department of Justice. No State has requested its co-operation or assistance in the matter.

Decree No. 59-121 of 27 October 1959 concerning the general organization of prison services in Madagascar 8/

Art.68. Obligation to work

(a) Convicts. All prisoners of either sex sentenced to deprivation of liberty and declared fit shall be required to work, with the exception, however, of:

Those sentenced for a political crime or serious political offence;

Those imprisoned for debt.

(b) Untried prisoners. Untried prisoners shall not be required to work.

Prisoners not required to work shall take part in the cleaning and maintenance of the institution premises. If they so expressly so request and if on the advice given to them, the examining judge and the State Counsel in court (parquet) do not object, they may be used on any work; preferably, however, they shall be employed on work performed inside the institution.

Art.69. Rest. Prisoners are entitled to weekly rest on Sunday. Part of the morning may, however, be spent in cleaning the premises, washing articles of clothing and attending to their bodily cleanliness.

When an exception must be made to this rule for an urgent and unforeseen task, those prisoners who work on Sunday shall be given a compensatory day of rest during the week.

8/ This Decree is being rewritten.

Art.70. Use of prison labour. The work of prison labour shall be performed either directly for the State or on hire.

(a) Work on State account. With a view to the rational employment of prison labour, workshops shall be established or, at least, premises shall be equipped in which the most useful and productive work in the region will be performed.

A design section shall be established at the headquarters of the Prison Administration with a view to the rational and profitable organization of work on State account.

(b) Work on hire. Prison labour may be hired out either to government departments or establishments or to private enterprises or persons where the labour is to be employed on work of national utility, such as reafforestation, the planting of trees for industrial or agricultural use, or on work of economic value included in a plan approved by the economic services of the territory or province.

Any application for labour on hire shall contain all relevant information, in particular the name and position of the applicant, the number of prisoners needed and the nature, probable duration and place of the work. The hiring shall be authorized by the Minister of Justice. The power of decision may be delegated.

If the work is of long duration and is to be performed far from the penal institution, a prison camp shall be opened for the purpose.

The mandatory number of warders to be assigned to the contractor shall be fixed by an order.

(c) Prison camps: Prison camps as prescribed in article 7 shall be established on a temporary basis for the performance of important work of general interest.

They shall be established at the request of the administrative authority and organized in consultation therewith.

Prisoners shall be assigned to them by decision of the central authority of the Prison Administration.

A prison camp shall be placed under the direction of a camp commandant and attached for administrative purposes to the nearest place of detention (maison d'arrêt).

(d) Prohibited work: Save in the cases specified above, a prisoner may not be employed for any reason whatsoever in the service or for the personal convenience of any individual, whether a public official or a private person.

In the event of any breach of this rule, the chief warder and the individual making use of the prisoner's services shall be personally and civilly liable both to the administration and to any third party for any resultant damage. Furthermore the chief warder shall incur the disciplinary penalties prescribed by his service regulations.

The prohibition shall apply in particular to the provincial inspector, the chief warden and the entire administrative and custodial staff of penal institutions.

No exception may be made to it save by special authorization, stating the reasons therefor, granted by the central authority of the prison administration when free manpower is unobtainable and there are in the locality no convicts on licence as defined in article 71 below.

(e) Duration of the prisoner's work: Prisoners' working hours shall be fixed by the internal regulations of the institution with the consent of the general labour inspectorate.

8. Arrest, detention, penitentiary system and other questions raised in articles 9, 10 and 11

(a) Infringements of liberty

Art. 114 of the Penal Code. Any public official or agent or servant of the Government who orders or commits any arbitrary act or any act infringing the individual liberty or civic rights of any citizen or citizens or the Constitution shall be sentenced to civic degradation.

Nevertheless, if he shows proof that he acted at the order of his superiors in a matter within their competence in which they were entitled to the obedience of their subordinates, he shall be exempt from the penalty, which shall in this case be applied solely to the superiors who gave the order.

Art. 117. Damages adjudicable by reason of the infringements described in article 114 shall be claimed either in the criminal prosecution or in civil proceedings and shall be assessed with regard to the persons, the circumstances and the injury sustained but shall in no case, whosoever the injured individual may be, exceed 25 francs per individual per day of illegal or arbitrary detention.

Art. 118. If the act contrary to the Constitution was committed on the authority of a forged signature of a Minister or public official, the perpetrator of the forgery and any person who knowingly made use thereof shall be liable to a term at hard labour which shall in this case always be the maximum.

Art. 119. Any public official in charge of the administrative or judicial police who refuses or neglects to act upon a legal complaint of unlawful and arbitrary detention, either on premises intended for the custody of prisoners or in any other place, and who fails to prove that he has reported the complaint to higher authority shall be liable to civic degradation and for damages which shall be assessed as provided by article 117.

Art. 122. Any State Counsel General, Chief State Counsel, Deputy State Counsel, judge or officer of the court (officier public) who detains any individual or causes him to be detained in any place other than those determined by the Government or the public administration, or who brings any citizen before a criminal court without first having him legally committed for trial, shall also be liable to civic degradation.

(b) Unlawful arrest and false imprisonment

Art. 341. Any person who, except in a case in which the law directs that persons accused of an offence shall be apprehended, arrests or detains another without a warrant from constituted authority, and any person who falsely imprisons another shall be liable to a term at hard labour.

Any person who lends premises for such detention or false imprisonment shall be liable to the same penalty.

Code of Penal Procedure

Art. 333. Detention pending trial is an exceptional measure. It shall not be applicable to any individual prosecuted for an act for which the law prescribes a police-court penalty or a correctional penalty other than imprisonment.

Art. 334. Detention pending trial may in no case be extended beyond a period equal to the maximum penalty of deprivation of liberty applicable. As soon as this limit has been reached, the accused person in custody shall be released unless he is detained on another charge.

Art. 335. Any person who has knowledge of an irregular or wrongful detention pending trial may apply to the State Counsel General or the president of the chamber of commitment for trial to have the necessary inquiries made and the wrongful detention, if any, brought to an end.

In all cases the chamber of commitment for trial, after hearing the State Counsel, may of its own motion order the release of an untried prisoner while the summary investigation or preliminary examination is in progress.

(c) Penitentiary system

Ordinance No. 62-038 of 19 September 1962 concerning the protection of children

Art. 8. In courts with sufficient staff, a judge assigned the functions of children's judge shall be specially responsible for the judicial protection of:

1. Delinquent minors;
2. Minors whose safety, morals, health or education are threatened.

In other courts, the functions of children's judge shall be performed by the president or by a judge appointed by him.

Art. 9. The competent children's judge shall be that of the minor's domicile or residence, of the place where he was found or of the locus delicti.

Art. 10. When measures of protection only are required, the matter shall be referred to the children's judge by the Chief State Counsel, the parents, the legal representative or the child himself; he may in addition take up the matter on his own initiative.

After ordering, where necessary, a social inquiry and a medical examination under the conditions prescribed in articles 11 and 12, he shall issue an order for the minor to be placed in the care of his parents, his legal representative, a trustworthy person or a State-approved institution.

Decree No. 59-121 of 27 October 1959 concerning the general organization of prison services in Madagascar

Art. 1. The prison services of Madagascar, attached to the Ministry of Justice by Act No. 59-28 of 24 February 1959, shall be placed under the responsibility of a Director of Prison Administration.

The institutions under the control of the Prison Administration shall be:

1. Hard-labour prisons;
2. Central prisons;
3. Places of detention;
4. Places of preventive detention;
5. Reformatory and rehabilitation centres (prison villages);
6. Prison camps;
7. Institutions for delinquent or abandoned children.

Art. 6. Reformatory centres and rehabilitation centres shall be open institutions in which prisoners who have pledged to mend their ways are placed with a view to their rehabilitation for work under a system of licence or complete liberty.

They shall be rural centres, away from agglomerations, set up or adapted by the convicts themselves.

The convicts shall be employed in farm, stock-breeding and handicraft work of various kinds which contribute to their subsistence or is profitable to the community.

The centre shall be under the authority of a director, assisted by a clerk/bookkeeper. A custodial service or a force responsible solely for keeping order shall be established at the centre.

A centre shall be established by order of the Minister of Justice. The order shall lay down the specific conditions of administration and operation, which shall be suited to the needs of each centre with due regard for the categories of convicts for which it is intended. Convicts deemed worthy of assignment to the centre shall be designated by the Minister of Justice.

9. The right of everyone to liberty of movement within the territory of a State and the freedom of everyone to choose his residence there, to leave any country and to enter his own country (art. 12)

Art. 38 of the Constitution of 31 December 1975: Every citizen in full possession of his civil and political rights shall have, under the conditions established by the law, the right to settle and the right to freedom of movement anywhere in the national territory.

Act No. 62-006 of 6 June 1962 concerning the organization and control of immigration

Art. 4. Any alien wishing to enter Madagascar must be in possession of the documents and visas required by the international conventions and regulations in force.

Art. 5. He must have deposited a security guaranteeing his return, or have been exempted from such deposit. Any carrier accepting as a passenger an alien bound for Madagascar who has not completed the aforementioned formalities shall be required to repatriate the alien at his own expense.

Art. 6. Any alien who intends to stay in Madagascar for a period of more than three months must be in possession of a residence card issued by the Minister of the Interior.

Art. 7. An alien shall leave the territory upon the expiry of the residence visa issued.

An alien in possession of a residence card who wishes to leave the national territory shall apply for an exit permit. He may be granted a permit to re-enter Madagascar.

10. Conditions prescribed by article 13 for the expulsion of an alien

Act No. 62-006 of 6 June 1962 concerning the organization and control of immigration

Art. 12. An alien who has entered the territory illegally or who has not left it upon the expiry of the period of residence allowed him may be expelled without prejudice to any sentence imposed.

Art. 13. An alien who has been granted temporary residence may also be expelled if his presence in the territory constitutes a threat to the maintenance of public order or to the protection of public health, morals or safety.

Art. 14. Expulsion may be imposed by order of the Minister of the Interior if the alien's residence in the territory constitutes a threat to public order or safety.

The expulsion order shall be cancelled, if necessary, in the same manner.

Art. 15. Except in a case of absolute emergency recognized by the Minister of the Interior, the alien shall have the right, if he so requests within eight days after notification of an expulsion order, to be heard, alone or assisted by counsel, by a special commission which shall sit in the chief town of the province and whose composition and procedure shall be established by decree.

Art. 16. The person concerned may submit all arguments in his defence to this commission. The commission shall sit in camera.

A record of the explanations given by the person concerned shall be transmitted with the commission's opinion to the Minister of the Interior for his ruling.

11. Points covered by article 14:

Equality before the courts and tribunals;

The right to defence.

Art. 42 of the Constitution of 31 December 1975

.....

Every citizen is guaranteed the inviolability of his person and home and the secrecy of correspondence.

No search may be made save in virtue of the law and on a warrant issued in writing by the competent judicial authority.

No one may be prosecuted, arrested or detained save in the cases determined by the law and in accordance with the procedures which it prescribes.

No one may be punished save in virtue of a law promulgated and published before the commission of the offence.

No one may be punished twice for the same offence.

The law guarantees to all persons the right to obtain justice, and lack of means shall be no obstacle thereto.

The State guarantees the full enjoyment and inviolability of rights to defence before all courts at all stages of the proceedings.

Penal procedure applicable to young persons and their re-education

Ordinance No. 62-038 of 19 September 1962 concerning the protection of children

Art. 33. Each case shall be tried separately; minors involved in other cases due to be heard shall not be present.

The hearing shall be held in camera. Only the minor and his counsel, the parents or in their absence the legal representative, the warder, members of the bar, the representative of institutions or agencies devoted to children's welfare and witnesses shall be admitted. Co-perpetrators or accomplices who are of full age may be heard for information purposes only.

The president shall have the right at any time to instruct the minor to withdraw for the whole or part of the hearing. Moreover, if the child's interest so requires, the president may excuse him from appearing at the hearing. In this case, the minor shall be represented by his advocate and the court's decision shall be deemed to have been rendered after a full hearing of the parties.

Publication in any form whatsoever of the record of the proceedings of the children's court is prohibited.

Art. 34. The judgement shall be delivered in open court in the presence of the minor and may be published, but the minor's name shall not be indicated, even by an initial, under penalty of a fine of not less than 10,000 and not more than 100,000 francs.

TITLE IX

SYSTEM OF SUPERVISED LIBERTY

Art. 53. Any educational measure adopted or punishment imposed by the children's judge, the children's court, the Court of Appeal or the criminal court for minors may always be accompanied by an order for supervised liberty up to an age not exceeding 21 years.

The re-education of minors at supervised liberty shall be carried on, under the authority of the children's judge, by voluntary tutors.

Art. 54. Such voluntary tutors shall be selected from among persons of either sex not less than 25 years of age, of good moral character and in possession of their civic and political rights.

Art. 55. The list of voluntary tutors for the area under each court's jurisdiction shall be drawn up annually by the Minister of Justice on the proposal of the children's judge. Such list shall not be limitative.

Art. 56. In addition a full-time officer may be appointed under the children's judge. His duties shall be to co-ordinate and guide the activity of the voluntary tutors and to take charge of the re-education of minors placed in his personal care by the judge.

Art. 57. The tutor shall in every case be appointed either immediately by the judgement, or subsequently, by order of the children's judge. Wherever possible the voluntary tutor shall be chosen by persons belonging to the same community, the same locality or the same social environment as the minor.

He may in particular be appointed from among members of the communal council or the assembly of notables of the fokonolona.

Art. 58. In every case where an order for supervised liberty is made, the minor, his parents or legal representative and the person in whose care he is placed shall be informed of the nature and purpose of the order and the obligations it entails.

Art. 59. The supervising tutor shall report to the children's judge in the event of any misbehaviour by or moral danger to the minor or of any systematic hindrance to supervision, and in any case where some change in the placement or care of the minor seems to him desirable.

In the event of the death, serious illness, change of residence or unauthorized absence of the minor, the parents or the persons in charge of the child shall inform the tutor of that event without delay.

Art. 60. If some incident during supervised liberty reveals any serious failing in the supervision exercised by the parents or persons in charge of the child, or any systematic hindrance to the discharge of the tutor's duties, the children's judge may, irrespective of the decision taken with regard to the minor, sentence the parents or persons in charge to a fine of not less than 1,000 and not more than 25,000 francs.

Art. 61. The children's judge may of his own motion or upon the application of the State Counsel, the minor, his parents, his legal representative or the person in charge of him, or on the report of the supervising tutor, rule on any incident, any request for a change of placement or care or any application for reimposition of care. The judge may order any appropriate measures of protection or supervision and cancel or modify any measure already taken.

The children's court shall where appropriate have the same powers.

Detention pending trial

Ordinance No. 75-030 of 30 October 1975

This Ordinance sets a maximum limit of 20 months to the duration of detention pending proceedings:

Before the examining judge;

Before the correctional courts.

This period of 20 months is divided into an initial period of eight months and a renewable period of six months. At the expiry of each period, the judge or court is bound to render a decision concerning extension, giving its reasons.

On the expiry of the 20 months, if the accused has not been tried, he must be released.

Two stages of jurisdiction

Code of Penal Procedure

Art. 29. Appeals against judgements rendered at first instance by the correctional courts or their sections or by the police courts shall lie to the correctional and police-court chamber of the Court of Appeal.

Art. 30. The chamber of commitment for trial of the Court of Appeal shall hear:

An appeal from the order of the examining judge;

An appeal from the order of the president of the correctional court or a section thereof on a matter of detention pending trial;

An application for provisional release where no other court is competent;

An application for rehabilitation;

An application for extradition.

It shall also be the examining court of second instance in criminal proceedings in the cases specified by this Code. 9/

Code of Penal Procedure

Rights of defence

Art. 53. At the defendant's first appearance, the examining judge, after taking the action prescribed in article 273 of this Code, shall advise the defendant of his right to select a counsel from among the advocates and probationary advocates of the bar of Madagascar.

At any time during the investigation, the defendant may inform the examining judge of the name of the counsel he has selected. If he appoints several counsel, he shall indicate to which one of them invitations and notices should be addressed.

Art. 60. Within twenty-four hours after one of the orders listed below has been made by the examining judge, the clerk of the court shall notify counsel for the defendant thereof by a letter sent by registered post or delivered by hand against a dated receipt:

Order of refusal to investigate;

Order ruling on jurisdiction;

Order refusing further examination;

Order granting or refusing provisional release;

Order ruling on the admissibility of a civil claim in the case;

Order of referral to the State Counsel for settlement;

Order of commitment to the Criminal Court, correctional court or police court;

Order of referral to the chamber of commitment for trial;

Order dismissing the case.

Art. 65. At hearings in the Criminal Court, the presence of counsel for the defendant shall be mandatory.

Before the opening of the trial in the Criminal Court, the president of the court or the member of the bench to whom he delegates that function shall invite the defendant to select a counsel for his defence.

9/ These articles guarantee a defendant a hearing in two stages both on trial and under investigation.

If the defendant fails to select a counsel, the president or the member of the bench to whom he delegates that function shall appoint one ex officio. This appointment shall be void if the defendant subsequently selects a counsel and if the latter serves.

Art. 67. A defendant may always communicate freely with his counsel. The latter may examine all the documents in the file on the spot, but such examination shall not delay the course of the proceedings.

Counsel may copy or have a copy made of any document in the record of the proceedings, without removing the latter, at the defendant's expense.

Art. 68. (Act No. 66-008 of 5 July 1966.) At a hearing in the correctional court or the Court of Appeal, the defendant shall be assisted by counsel if the penalty prescribed for the offence is imprisonment for a period exceeding five years or if the defendant is liable to rigorous imprisonment.

The same shall apply if the defendant is suffering from a disability likely to impair his defence.

The provisions of articles 65 (second and third paragraphs), 66 and 67 shall be applicable to all defendants referred to in this article.

Right to a hearing after arrest

Art. 104. A defendant to whom a summons to appear has been issued shall be interrogated forthwith by the judicial officer who issued the summons.

The same shall apply to a defendant arrested by virtue of a warrant to compel attendance; however, if the interrogation cannot take place immediately, the defendant shall be taken to a prison, where he may not be held for more than 24 hours.

Upon the expiry of that period he shall automatically be brought by the chief warder before a State Counsel, who shall request the examining judge, the president of the court or a judge designated by the latter to conduct the interrogation forthwith, failing which the defendant shall be released. At a place where sections of the court sit, the prisoner shall be brought directly before the section president for interrogation.

If every member of the section bench is absent or unable to serve, the prisoner shall be brought before the nearest State Counsel for interrogation.

Art. 105. Any defendant arrested by virtue of a warrant to compel attendance who has been held in a prison for more than 24 hours without being interrogated shall be deemed to have been arbitrarily detained.

Any member of the bench or official who has ordered or knowingly tolerated such arbitrary detention shall be liable to the penalties prescribed by the Penal Code, articles 119 and 120.

Art. 226. A defendant arrested under the conditions specified in the preceding article shall be summoned to appear at the first appropriate ordinary or circuit hearing at the suit of the State Counsel.

If the hearing is held shortly thereafter, the defendant may be brought directly before the court without a summons, upon a mere notice.

Assistance of an interpreter before the examining judge

Art. 265. Witnesses shall be heard separately, with the defendant not present, by the examining judge, assisted by his clerk; a record shall be made of their statements.

The examining judge may have the assistance of an interpreter not less than 21 years of age, who shall not be a witness. If not already sworn, the interpreter shall swear to translate the evidence faithfully.

Right to be informed of the actus reus

At the preliminary inquiry:

Art. 217.
The officer of the criminal police shall be bound only to warn the person concerned, before interrogating him, that he is suspected of having taken part in the crime or serious offence committed. It shall be unlawful to take any statement under oath from a person against whom there is serious evidence of participation in the offence.

At the summary investigation (flagrante delicto):

(Serious offences) Art. 223. In the cases provided for in article 178, paragraphs 2, 3 and 4, of this Code, the State Counsel, after questioning the offender as to his identity, shall inform him of the acts with which he is charged.

(Crimes) Art. 232. In the cases provided for in article 178, paragraph 1, of this Code, the State Counsel, after questioning the person concerned as to his identity, shall inform him of the acts with which he is charged. 10/

Hearing in public and in camera

Art. 356. Hearings shall be public. Nevertheless the court, by a decision or judgement rendered in open court in which it finds that a public hearing will be prejudicial to law and order or public morals, may direct that the trial shall be held in camera.

The decision to hold the trial in camera shall apply to the delivery of any separate judgements on motions or procedural objections.

The decision on the merits shall always be pronounced in open court.

Hearing of witnesses; confrontation

Art. 383. Every witness shall, after giving his evidence, remain in the courtroom until the end of the hearing unless the president orders otherwise.

The State Counsel and the parties may request and the president may at any time order that a witness, after giving his evidence, should leave the courtroom for the time being, to be brought back and heard if need be after other evidence has been taken, either with or without a confrontation.

Assistance of an interpreter at the hearing

Art. 426. The president may of his own motion, when he considers it necessary, appoint an interpreter not less than 21 years of age, who shall at once swear to translate faithfully the words exchanged in different languages.

10/ Article 178 lists the cases in which, in addition to the cases generally prescribed, an offence may be considered flagrant:

Art. 178. The summary investigation procedure may be applied in proceedings for:

1. Flagrant crimes other than those for which the statutory penalty is death, forced labour for life or deportation;
2. Flagrant serious offences and serious offences deemed to be flagrant in accordance with the provisions of article 206 of this Code;
3. Serious offences attested by a police report which is considered authoritative until it is affirmed to be false or refuted by contrary evidence;
4. Non-flagrant serious offences whose perpetrator has been identified, if he has made a confession which has been confirmed, or the evidence against him is plain.

The interpreter shall not, even with the consent of the parties, be selected from among the judicial officers, the jurors, the clerk of the court and the usher present at the hearing, the civil party or the witnesses.

12. Right to be tried without undue delay

Crimes subject to the heaviest penalties - death, forced labour for life and deportation - are prone to complexity, and consequently the legislator has made no special provision for them apart from requiring the examining judge to release the untried prisoner if the examination is not completed by the time he has been in custody for 20 months.

However, in the case of other crimes and serious offences which fall within the scope of article 178 of the Code of Penal Procedure (reproduced in foot-note 10), the accused person must be tried within three months after the referral of the case to the State Counsel; otherwise, if he is in custody, he must be released.

Art. 4 of the Penal Code. No petty offence, serious offence or crime shall be subject to any penalty which was not prescribed by law before the offence was committed. 11/

11/ Notwithstanding the non-retroactivity of the law, if a law is adopted prescribing a lighter penalty for an act which has not been re-classified for penal purposes, the new, lighter penalty is to be imposed even if the offence was committed before the promulgation of the law prescribing it.

This is a standing judicial practice.

13. Right to recognition everywhere as a person before the law (art. 16)

Ordinance No. 62-041 of 19 September 1962 concerning general provisions of municipal and private international law

Art. 17. The rights of personality are inalienable.

Any voluntary limitation on the exercise of such rights shall be null and void if it is contrary to public order.

Art. 18. Any unlawful attack on the personality shall entitle the victim to demand that it be stopped, without prejudice to such liability as may be incurred by its perpetrator.

Art. 19. No Malagasy national or alien may be deprived of the exercise of his civil and family rights save by the decision of a court under the conditions prescribed by the law.

14. Prohibition of arbitrary or unlawful interference with privacy (art. 17)

Every citizen is guaranteed the inviolability of his person and home and the secrecy of correspondence.

No search may be made save in virtue of the law and on a warrant issued in writing by the competent judicial authority.

No one may be prosecuted, arrested or detained save in the cases determined by the law and in accordance with the procedures which it prescribes.

Art. 184 of the Penal Code. Any administrative or judicial official, officer of justice, police officer or commander or member of the law enforcement service who, acting in that capacity, enters the home of a citizen against the latter's will otherwise than in the cases prescribed by the law and without observing the formalities therein prescribed shall be liable to imprisonment for not less than six days and not more than one year and to a fine of not less than 25,000 and not more than 150,000 francs, without prejudice to the application of article 114, second paragraph.

Any individual who enters the home of a citizen by means of threats or violence shall be liable to imprisonment for not less than six days and not more than three months and to a fine of not less than 25,000 and not more than 90,000 francs.

15. Rights and freedoms referred to in articles 18 to 22: articles 18 and 19: Freedom of thought, conscience, religion and opinion

Constitution of 31 December 1975

(a) Art. 28. Freedom of expression, of the press and of assembly is guaranteed to citizens when exercised in conformity with the objectives of the Revolution and the interests of the workers and of the community and with a view to strengthening the new democracy for the advent of a socialist State.

Art. 39. Freedom of conscience and of religion is guaranteed by the neutrality of the State in relation to all beliefs.

Religious denominations shall be free to organize and function in conformity with the law.

(b) Art. 20. Prohibition of any call to national, racial or religious hatred constituting an incitement to discrimination, hostility or violence.

Press Charter 12/

Art. 63, paragraph 2. Any person who, by the same means, 13/ defames a group of persons not specified by article 62 of this Ordinance but belonging by their origin to a particular race, nation or religion shall be liable to imprisonment for not less than one month and not more than one year and to a fine of not less than FMG 3,000 and not more than FMG 5 million if his purpose is to arouse hatred among the citizens or inhabitants.

12/ The Malagasy Press Charter was promulgated on 27 March 1974.

Art. 2. Printing and the book trade shall be unrestricted. The only limitations on the exercise of this fundamental freedom shall be those required for the maintenance of the social order and the necessities of public order and of the internal and external security of the State.

Art. 5. Any newspaper or periodical may be published without prior authorization and without any deposit of security after the declaration prescribed in article 8 has been made.

Art. 8. Not less than seven clear days before the publication of any newspaper or periodical, a declaration of publication shall be made to the Office of the Chief State Counsel, to his deputy for a section of the court or, in their absence, to the president of the section.

13/ Such means may be:

Speeches, cries or threats;

Printed matter sold or distributed;

Posters or graffiti;

Dossiers, prints, paintings, emblems or obscene pictures;

provided that publication is proved.

(c) Freedom of assembly

Ordinance No. 60-082 of 13 August 1960, as amended 14/

Art. 1. Public assemblies, whatever their purpose, shall be subject to prior authorization by the General Representative of the Government for the city of Tananarive, or of the subprefect, as the case may be, who may refuse such authorization if the proposed assembly is likely to disturb public order.

The application for authorization must reach the office of the General Representative of the Government or of the subprefect not later than 48 hours before the date of the proposed assembly.

The administrative authority, if it considers that the assembly is likely to disturb public order, shall immediately prohibit it by official letter or telegram.

Authorization shall be given in the same manner.

Silence on the part of the administrative authority shall be construed as authorization.

No assembly may be held on the public highway.

Any private assembly in the course of which one or more persons speak on political or trade-union matters shall be deemed to be a public assembly if it is held out of doors or if, for lack of appropriate arrangements, the speeches can be heard on the public highway.

(d) Freedom of association (art. 22)

Ordinance No. 60-133 of 3 October 1960

Art. 3. Subject to the provisions of chapter III of this Ordinance concerning foreign associations, associations of persons may be formed freely without authorization or prior declaration, but shall not enjoy legal capacity unless they have complied with the provisions of article 6 below.

Art. 5. Any association seeking to acquire the legal capacity provided for in the article below shall be declared by its founders or by its administrators or managers and made public.

14/ This text makes public assemblies subject to authorization, but the only ground on which the administration may refuse such authorization is fear of a disturbance of public order; this is fully in the spirit of the Covenant (art. 21).

Private assemblies are not restricted.

The prior declaration thereof shall be deposited in triplicate at the offices of the province in which the association is to have its registered office. The declaration shall state the name and purpose of the association, the address of its establishments and the names, forenames, occupations and domiciles of the persons responsible in any capacity for its administration or management. A receipt shall be issued therefor.

(e) Trade-union freedom (art. 22)

Ordinance No. 75-13-0/DM

Art. 4. It shall be unlawful for any employer to take trade-union membership or activity into consideration in making his decisions concerning in particular recruitment, the conduct and distribution of work, vocational training, promotion, pay and social benefits, disciplinary measures and dismissal.

It shall be unlawful for any employer to deduct trade-union subscriptions from the wages of his staff and to pay such subscriptions in their stead.

The head of an enterprise or his representatives shall not bring any means of pressure to bear for or against any particular trade-union organization.

Any measure taken by an employer contrary to the provisions of the preceding paragraphs shall automatically be deemed null and void and shall constitute grounds for a claim for damages by the injured person.

Art. 5. Persons carrying on the same occupation, similar trades or allied occupations associated in the preparation of particular products, or the same liberal profession, may freely establish a trade union. Any worker or employer may join the trade union of his choice within his occupation.

Art. 6. The founders of any trade union shall deposit the articles of association and the names of those responsible in any capacity for its administration or management.

Such deposit shall be made at the subprefecture in whose territory the trade union is established, and the subprefect shall send a copy of the documents deposited to the labour inspector and the Chief State Counsel of the jurisdiction.

16. Rights concerning the family, marriage and children (arts. 23 and 24)

Constitution of 31 December 1975

Art. 37. The State shall protect the family, women and children and shall recognize the right of every citizen to found a family and to transmit his personal property by succession.

Act No. 63-022 of 20 November 1963

Art. 92. Pending the entry into force of the provisions governing the capacity and guardianship of minor children, the following rules shall be applied.

Art. 93. The purpose of guardianship is the protection of minor children and the administration of their property.

Guardianship shall be exercised by a guardian.

Art. 94. Guardianship shall be exercised:

1. During the parents' lifetime, by the father;
2. If the father is dead or unable to express his will, by the mother;
3. In the event of divorce, by whichever of the parents is given custody of the child.

Art. 95. Where both parents are dead or unable to express their will, guardianship shall be exercised by the person who by law or custom has authority over the minor.

Art. 96. In the event of the guardian's incapacity or breach of trust in his administration, and generally when the protection of the minor so requires, the guardianship shall be entrusted to the parent not exercising it or, failing such parent, to a third party.

The new guardian shall be appointed by the president of the court of the minor's place of residence, upon the application of a near relative or connexion, in informal proceedings, the incumbent guardian being present or having been duly summoned.

Art. 97. Steps may also be taken to replace the incumbent guardian whenever his interests conflict with those of the minor or where necessary for some particular purpose.

In such cases, the replacement shall be appointed by the president of the court of the minor's place of residence by an order made upon application.

Art. 98. An appeal against the orders provided for in articles 96 and 97 may be lodged in accordance with the procedure and time-limit prescribed by the ordinary law.

The decision on appeal shall be final.

Art. 99. The following may not be guardians:

Minors;

Persons of unsound mind;

Persons who have been sentenced to any penalty affecting the person and honour or who are known for their ill-conduct.

Art. 100. The guardian shall take care of the minor's person and shall represent him in all civil acts.

He shall administer the minor's property prudently and shall be answerable for his administration in accordance with the ordinary law.

Art. 101. The guardian may not give away or acquire directly or through an intermediary any property belonging to the minor in his own right.

Art. 102. He may not consent to any alienation of or arrangement concerning immovable property of the minor without authorization given in the manner prescribed in articles 97 and 98.

Nevertheless, where guardianship is exercised during the parents' lifetime by the father, the mother's consent shall suffice.

Art. 103. A minor aged 18 years or over may perform alone all purely administrative acts concerning his inheritance.

Art. 104. Any guardian other than the father or mother shall be accountable for his administration when it comes to an end.

The account shall be due to the minor who has attained his full legal capacity, or to his heirs.

Art. 105. In the event of successive guardianships, the last guardian's account shall cover all previous administrations.

Art. 106. If any dispute arises in connexion with the account, it shall be settled, as in civil proceedings, according to the rules of ordinary law.

Art. 107. The minor shall acquire full legal capacity by marriage.

Art. 108. When the minor has reached the age of 18 years, full legal capacity may also be conferred on him by the guardian after authorization has been given in the manner prescribed in articles 97 and 98.

Nevertheless, where guardianship is exercised during the parents' lifetime by the father, the mother's consent shall suffice.

Art. 109. The deed conferring legal capacity shall be drawn up in authentic or authenticated form.

Art. 110. Guardianship shall be an honorary office.

Ordinance No. 62-038 of 19 September 1962

Art. 1. The child has a privileged position in the family; he has the right to the fullest possible material and moral security.

Art. 2. Responsibility for his education lies in the first place with the family, which shall ensure the harmonious development of his personality.

Art. 3. Nevertheless, whenever the safety, morals, health or education of a minor under 18 years of age are threatened, the State shall intervene for the purpose either of aiding and assisting the family in its role as natural educator of the child, or of taking appropriate measures of educational assistance and supervision, or, when the circumstances and personality of the child appear so to require, of bringing the minor before special courts.

Art. 4. The age of majority for penal purposes shall be 18 years; the age of a minor shall be determined as of the time of committing the offence.

Proof of minority shall be established by a birth certificate, by a suppletive judgement, or by a physical examination in lieu of a birth certificate or suppletive judgement.

Ordinance No. 62-089 of 1 October 1962 concerning marriage

Art. 4. Consent shall not be valid if it has been extorted by violence or given only as a result of an error concerning some essential consideration such that the other spouse would not have entered into the marriage if he had learned the error.

Art. 5. A child under 18 years of age may not contract marriage without the permission of his father or mother or, failing these, of the person who by custom or law has authority over him.

For the purposes of this text, "minor" means a child under 18 years of age.

Art. 52. The spouses owe each other fidelity, help and assistance.

Art. 53. The husband is the head of the family.

The wife shall co-operate with him in the moral and material guidance of the family and in bringing up the children.

If the husband is under a suspension of certain rights, incapable or unable to be present, or if he voluntarily ceases to live with his wife, she shall perform alone the duties prescribed in the preceding paragraph.

Art. 54. The spouses are bound to live together. The husband shall determine the joint residence.

Art. 55. Nevertheless, for serious cause, the wife may temporarily leave the conjugal home in the manner and under the conditions prescribed by custom.

Art. 56. Marriage shall not affect the legal capacity of the spouses but their powers may be restricted by the matrimonial regime.

Art. 57. Each of the spouses may give the other a general or specific power of attorney to represent him (her).

Art. 58. If one of the spouses is incapable or in default, the other spouse may, whenever the interest of the family so requires, secure judicial authorization to represent the first spouse either generally or for particular acts.

The conditions and scope of such representation shall be determined by the court.

Art. 59. Each of the spouses shall have the power to perform any act justified by the expenses of the marriage. Any debt contracted for that purpose shall be jointly binding on both spouses in relation to third parties, unless the other spouse has refused and his (her) refusal has been brought to the notice of the creditor in advance.

Art. 60. Unless the spouses have determined their respective shares in the expenses of the marriage, they shall contribute thereto according to their respective capacities.

If one spouse fails to meet his obligations, the other spouse may apply to the court for permission to seize, attach and draw, in proportion to his needs, all or part of the first spouse's income, whether it be that which he receives under the matrimonial regime, the fruits of his labour or any other sums owed to him by third parties.

The court order shall determine the conditions of the permission and the sum up to which it shall apply. It shall be enforceable against any other debtor after notice has been given by the clerk of the court.

The order shall be provisionally enforceable notwithstanding any application for reconsideration or any appeal, but shall be open to review at any time.

Art. 62. The spouses assume jointly, by entering into marriage, the obligation to feed, maintain, bring up and educate their children.

Art. 63. The children are under a duty to support their parents and other ascendants if they are in need and vice versa.

Art. 74. The court may grant a spouse to whom a divorce has been granted and who has been injured by such divorce reparation in the form of an indemnity finally and irrevocably determined by the judgement or order granting the divorce.

Art. 75. Each of the parents remains bound to contribute to the maintenance of the children of the marriage in proportion to his income.

Art. 76. Custody of the children shall devolve according to custom.

Nevertheless the court may order, even of its own motion, in the interest of the children that all or some of them may be entrusted to one or the other of the parents or to a third party.

The exercise of the right to visit shall be subject to the discretion of the judge, who shall rule as the children's interest requires.

Art. 86. An order of non-conciliation may, where necessary, authorize the spouses to have separate residences; entrust to one or the other the custody of the children of the marriage, rule upon claims for support for the duration of the proceedings and upon any other provisions to be made, direct the handing over of personal effects ... and in general prescribe all such provisional measures as are deemed desirable in the interest of the spouses and children and for the conservation of the family property.

Act No. 61-025 of 9 October 1961 concerning vital records

Art. 24. Declarations of birth shall be made within 12 days after the birth.

Ordinance No. 60-064 of 20 July 1960 establishing the Malagasy Nationality Code

TITLE I

Attribution of Malagasy nationality
as nationality of origin

Art. 9. The following persons are Malagasy nationals:

1. A legitimate child of a Malagasy father;
2. A legitimate child of a Malagasy mother and of a father who has no nationality or whose nationality is unknown.

Art. 10. The following persons are Malagasy nationals:

1. The child born out of wedlock of a Malagasy mother;
2. The child born out of wedlock of an unknown mother or of a mother whose nationality is unknown and a Malagasy father.

Art. 11. A child born in Madagascar of parents who are unknown, but of whom at least one may be presumed to be Malagasy, is a Malagasy national.

The following points in particular may be taken into consideration: the name of the child, his physical characteristics, the personality of those who are bringing him up and the circumstances in which he came to them, the education he is receiving and the environment in which he is living.

Nevertheless, a child shall be deemed never to have been a Malagasy national if, during his minority, an alien is proved to be his parent.

A new-born child found in Madagascar shall be presumed, until the contrary is proved, to have been born there.

17. The right and the opportunity of every citizen:

- To take part in the conduct of national affairs;
- To vote and to be elected;
- To have access to public service (art. 25).

Constitution of 31 December 1975

Art. 26. Access to public service, occupations and employment shall be open to every citizen subject to no conditions other than those of ability and skill.

Art. 40. Every citizen who satisfies the legal requirements shall have the right to vote and to be elected.

Art. 47.

The President of the Republic shall be elected for seven years by direct universal suffrage.

He may be re-elected.

Art. 65.

The members of the Popular National Assembly shall bear the title of Deputy of the Democratic Republic of Madagascar.

They shall be elected for five years by direct universal suffrage.

Organic Act, as amended, of 6 June 1959

Art. 1. All Malagasy citizens, without distinction as to sex, who have attained the age of 18 years and are in possession of their civil and political rights shall be entitled to vote and to be elected.

Art. 69. The vote shall be personal.
.....

Art. 70. The ballot shall be secret.
.....

Art. 72.

He shall then, without leaving the room, go alone into the part which has been so fitted out that he is out of sight when placing his ballot paper in the envelope; he shall then show the presiding officer that he is carrying only one envelope; the presiding officer shall verify this without touching the envelope, which shall be placed in the urn by the voter himself; the booths shall be so placed that the public can see that the poll has been properly conducted.

18. Equality before the law without any discrimination (art. 26)

Art. 6 (Constitution of 31 December 1975). The law is the expression of the people's will.

It is the same for all, whether its purpose be to protect, to bind or to punish.

19. Right of ethnic, religious or linguistic minorities (art. 27)

Article 12 of the Constitution of 31 December 1975

The State ensures the equality of all citizens by:

.....

Prohibiting any discrimination based on race, origin, religious belief, educational level, property or sex.

II. JUDICIAL MATTERS

In drawing up the laws of the Democratic Republic of Madagascar, whether promulgated before or since the country's accession to the Covenant, it has been a constant concern to respect, both in form and in substance, the letter and spirit of the Covenant.

The courts of first instance, under professional judges trained to international standards (university degree in law, two years' training at a specialized institute, competitive entry and in-service training), have applied the laws faithfully under the constant supervision of the higher courts.

Access to the courts for the purpose of exercising the rights proclaimed in the Covenant is greatly facilitated by the mandatory requirements of:

Bringing the courts closer to those under their jurisdiction;

Availability of justice free of charge;

Simplicity of procedure;

Rapidity of procedure.

Recourse to the higher courts is available on the same terms.

It may be affirmed that the guarantees required, with regard to remedies in general, by article 2, paragraphs 3 (a) and (b), of the Covenant are amply provided by the development of judicial remedies and by the favourable treatment which the competent authorities give to applications for those remedies when they are found to be justified.

The table below gives an instructive picture of the activities of the courts in broad outline.

COURTS	Nature of decisions	Number of decisions rendered in				
		1973	1974	1975	1976	
Courts of first instance and their sections	Correctional judgements	19 284	21 319	23 167		
	Civil and commercial judgements	14 671	16 366	15 504		
	Judgements of the labour courts	1 729	1 809	1 011		
Criminal courts	Ordinary	296	314	357		
	Special (cattle cases)	872	967	1 164		
Court of Appeal	Chamber of commitment for trial	292	304	346	515	
	Correctional orders	1 181	1 224	1 161	1 208	
	Civil and commercial orders	1 335	1 023	832	1 108	
	Orders in labour cases	269	242	268	174	
Cassation Chamber of the Supreme Court	Civil orders	77	86	60	92	
	Criminal orders	331	223	233	425	
Administrative Chamber of the Supreme Court		160	109	128	139	Applications for an order to quash and contentious appeals

Note: The totals of decisions in criminal cases include decisions in application, firstly, of the laws designed to protect children and the family and secondly of those designed to protect citizens against offences constituting an abuse of authority or an infringement of liberty: arbitrary arrest or detention, violation of the home, of correspondence, etc. denial of justice, etc.